

Case T-155/94

Climax Paper Converters Ltd  
v  
Council of the European Union

(Anti-dumping duties — State-trading countries —  
Individual treatment — Single dumping margin)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 18 September 1996 ..... II - 877

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Regulation imposing an anti-dumping duty on imports from a non-market economy country — Producers and exporters of the country concerned*  
(EC Treaty, Art. 173)
2. *Common commercial policy — Protection against dumping — Fixing of anti-dumping duties — Imposition of a single duty for all imports from a non-market economy country — Whether lawful — Conditions*  
(Council Regulation No 2423/88, Art. 2(14)(b) and Art. 13(2))

3. *Common commercial policy — Protection against dumping — Fixing of anti-dumping duties — Individual treatment of export companies from a non-market economy country — Conditions — Proof of the independence of the undertakings from the State — Discretion of the institutions — Judicial review — Limits — Not possible to rely on the principle of the protection of legitimate expectations*  
(Council Regulation No 2423/88)
4. *Community law — Principles — Rights of the defence — Observance of those rights in the course of administrative procedures — Anti-dumping*
5. *Common commercial policy — Protection against dumping — Fixing of anti-dumping duties — Establishment on the basis of a weighted average of the dumping margin for the only exporter who cooperated in the investigation and of the dumping margin calculated for the other exporters from a non-market economy country — Amount of the duty exceeding the dumping margin calculated for the cooperating exporter — Legality*  
(Council Regulation No 2423/88, Art. 13(3))

1. Although regulations imposing anti-dumping duties are, by their nature and scope, of a legislative character, they may be of direct and individual concern to those producers and exporters who are alleged to engage in dumping.

national authorities, its implementation by those authorities being purely automatic and occurring not in pursuance of intermediate national rules but of Community rules only.

In that regard measures imposing anti-dumping duties are, in general, of such a nature as to be of individual concern to those undertakings who are able to prove that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary measures.

2. A policy as a result of which a single anti-dumping duty is imposed for an entire country is not contrary to the letter or purpose or to the spirit of the basic anti-dumping Regulation No 2423/88, if that policy is necessary in order for the Community to protect itself against dumping and against the risk of protective measures being circumvented.

Moreover, those same undertakings must be considered to be directly concerned by the regulation at issue when that regulation does not leave any discretion to the

No provision in the basic anti-dumping regulation prohibits the imposition of a single anti-dumping duty for State-

trading countries. Although it follows both from the scheme and the purpose of Article 13(2) of that regulation, which provides that anti-dumping regulations 'shall indicate in particular the amount and type of duty imposed, the product covered, the country of origin or export, the name of the supplier, if practicable, and the reasons on which the regulation is based', that the obligation to indicate the name of the supplier in principle implies an obligation to fix a specific anti-dumping duty for each supplier, the legislature nevertheless expressly limited that obligation to cases where that is practicable. It is not practicable to indicate the name of each supplier if, in order to avoid the risk of the circumvention of anti-dumping duties, it is necessary to impose a single duty for an entire country, which is so where, in the case of a State-trading country, the Community institutions have examined the situation of the exporters concerned and are not convinced that those exporters are acting independently of the State.

The purpose of the basic anti-dumping regulation is *inter alia* to protect the Community against dumped imports. As to its spirit, it follows from its various provisions that the normal value and the export prices must normally be established individually for each exporter, but that does not mean that the Community institutions are obliged to do so in each case or that they are obliged to impose an individual anti-dumping duty for each exporter. The spirit of the regulation leaves the Community institutions with a

wide discretion in deciding when the most appropriate solution is to grant individual treatment to the exporters concerned. That follows *inter alia* from Article 2(14)(b) and Article 13(2), which leave to the Community institutions the possibility of establishing a weighted average of the dumping margins, and thus a single dumping margin, for an entire country and of imposing a single anti-dumping duty for that country.

3. The question whether an exporter in a State-trading country is acting with sufficient independence of a State for individual treatment to be granted to him in the context of an anti-dumping proceeding involves an assessment of complex factual situations which are, at one and the same time, of an economic, political and legal nature.

In that regard, and just as for complex economic matters, the institutions enjoy a wide discretion in regard to the assessment of factual situations of a legal and political nature in a State-trading country, and judicial review of such an assessment must be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers.

Moreover, although any economic operator for whom an institution has created justified hopes may rely on the principle of the protection of legitimate expectations, economic operators do not have a legitimate expectation that an existing situation which may be modified at the discretion of the Community institutions will be maintained. Consequently, an undertaking cannot have a legitimate expectation that the Community institutions will not change their policy regarding individual treatment if experience shows that such a change was necessary in order to reach a satisfactory solution to the problems caused by dumping practices alleged against exporters from State-trading countries.

4. The rights of the defence are observed if the undertaking concerned has been afforded the opportunity during the administrative procedure to make known its view on the truth and relevance of the facts and circumstances alleged.
5. According to Article 13(3) of Regulation No 2423/88, the amount of anti-dumping

duties may not exceed the dumping margin provisionally estimated or finally established and it should be less, so long as it is adequate to remove the prejudicial effect.

In that regard, although, *prima facie*, it may seem unfair to impose on the only exporter from a State-trading country who agreed to cooperate in the investigation an anti-dumping duty higher than the margin established for its own exports, calculated on the basis of a weighted average of that margin and the dumping margin calculated for the other exports, it cannot be argued that, in so doing, the institutions committed a manifest error in appraising the facts and infringing Article 13(3), since, first, that policy of the Community institutions is not contrary to the letter, purpose or spirit of Regulation No 2423/88, secondly, that exporter does not satisfy the necessary conditions for the grant of individual treatment and, finally, Article 2(14)(b) of Regulation No 2423/88 allows the Community institutions to establish a weighted average of the dumping margins and therefore a single dumping margin for an entire country.