

Case T-255/01

Changzhou Hailong Electronics & Light Fixtures Co. Ltd and
Zhejiang Yankon Group Co. Ltd

v

Council of the European Union

(Anti-dumping — Determination of normal value — Market-economy
treatment — Analogous country — Article 2(7) of Regulation (EC) No 384/96)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composi-
tion), 23 October 2003 II-4744

Summary of the Judgment

1. *Common commercial policy — Protection against dumping — Dumping margin — Determination of normal value — Imports from a non-market economy country such as those referred to in Article 2(7)(b) of Regulation No 384/96 — Application of the*

rules relating to a market-economy country — Application reserved to producers satisfying the conditions set out in Article 2(7)(b) of Regulation No 384/96 (Council Regulations Nos 384/96, Art. 2(1) to (7), and 905/98)

2. *Common commercial policy — Protection against dumping — Dumping margin — Determination of normal value — Imports from a non-market economy country such as those referred to in Article 2(7)(b) of Regulation No 384/96 — General rule requiring reference to the price in a market-economy third country — Use of another reasonable basis only where it is impossible to apply the general rule (Council Regulation No 384/96, Art. 2(7)(a))*
3. *Common commercial policy — Protection against dumping — Dumping margin — Determination of normal value — Imports from a non-market economy country such as those referred to in Article 2(7)(b) of Regulation No 384/96 — Distinction between producers according to whether or not they operate in market-economy conditions — Principle of equal treatment — Breach — None (Council Regulation No 384/96, Art. 2(7)(b))*

1. It follows from the wording and structure of Article 2(7) of the basic anti-dumping regulation No 384/96, in particular in the light of the recitals in the preamble to Regulation No 905/98 amending that regulation, that determination of the normal value of products originating in the People's Republic of China by reference to the rules laid down in Article 2(1) to (6) is confined to specific individual cases in which the producers concerned have each of them made a properly substantiated claim in accordance with the criteria and procedures laid down in Article 2(7)(c).
2. The institutions with power to determine the normal value of products subject to anti-dumping measures may choose not to apply the general rule set out in Article 2(7)(a) of the basic anti-dumping regulation No 384/96 for the determination of the normal value of products originating in non-market economy countries, using a different reasonable basis, only where it is impossible to apply that general rule. Such impossibility arises only where the data required in order to determine normal value are not available or not reliable. That it happens to be necessary to adjust the data from a market-economy country in order to adapt them as closely as possible to the conditions which would obtain for producers in a non-market-economy country such as those referred to in Article 2(7)(b) if that country were a market-economy country does not in

(see para. 40)

itself demonstrate that it was either impossible or even inappropriate to use those data.

(see para. 59)

3. For the Community institutions to be accused of discrimination, they must be shown to have treated like cases differently, thereby placing some traders at a disadvantage by comparison with others, without such differentiation's being justified by the existence of substantial objective differences.

The fact that when they come to adopt anti-dumping measures in respect of goods from non-market-economy countries the institutions apply, in order to calculate the normal value of those goods, the rules laid down in Article 2(7)(a) of the basic anti-dumping regulation No 384/96 to undertakings which do not operate in market conditions and the rules laid down in Article 2(7)(b) to undertakings which do operate in those conditions and which have submitted substantiated claims in that connection cannot therefore be regarded as discriminatory action, even if the latter undertakings are thereby afforded more favourable treatment than the former.

(see paras 60-62)