

Case T-121/95

European Fertilizer Manufacturers Association (EFMA)

v

Council of the European Union

(Anti-dumping duties — Injury — Right to a fair hearing)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 17 December 1997 II - 2394

Summary of the Judgment

1. *Common commercial policy — Protection against dumping — Injury — Ascertainment by the Commission as investigating authority — Burden of proof — Determination of the price of the dumped product and the price of the product of Community origin — Adjustment to reflect quality differences — Taking into account of consumer perception — Discretion of the institutions — Judicial review — Limits*
(Council Regulation No 2423/88, Art. 4(2)(b))
2. *Community law — Principles — Right to a fair hearing — Observance of that right in administrative proceedings — Anti-dumping — Obligation of the institutions to ensure that undertakings concerned are given information — Scope*
(Council Regulation No 2423/88, Art. 7(4))

3. *Common commercial policy — Protection against dumping — Injury — Assessment of the effect of the imports on Community production — Producers' loss of profit — Discretion of the institutions — Judicial review — Factors which may be taken into account*
(Council Regulation No 2423/88, Art. 4(2)(c))

1. In an anti-dumping investigation, it is for the Commission as investigating authority to determine whether the product being dumped causes injury when put into free circulation in the Community. The Commission must ascertain whether there has been significant price undercutting compared with the price of a like product in the Community, and in doing so it must use the information available at the time without imposing the burden of proof on one of the parties.

The question whether the price of the dumped product should be adjusted to reflect a difference in quality between that product and the similar product of Community origin involves the appraisal of complex economic situations. Judicial review of such an assessment must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers.

Moreover, the question of a price adjustment for quality differences is essentially a question of consumer perception, since

what matters for determining an adjustment is the price which the consumer is prepared to pay for the dumped products compared with products of Community manufacture, not the objective differences between them.

2. The right to a fair hearing is respected if the undertaking concerned has been afforded the opportunity during the administrative procedure prior to the adoption of an anti-dumping regulation to make known its views on the correctness and relevance of the principal facts and considerations on which the institutions have based their conclusions. In this respect, the non-disclosure of information which is merely confirmatory of other information and does not form part of the statement of reasons in the regulation in question does not deprive the undertaking concerned of its right to a fair hearing.

3. In the context of judicial review of the determination of injury in an anti-dumping investigation, the Court of First Instance must ascertain whether the Community institutions, in assessing the

Community producers' loss of profits and more particularly the profit margin necessary for them to remain competitive, based their decisions on correct material facts and whether the assessment of those facts was not manifestly erroneous, in the situation as it appeared at the time of adoption of the contested measure. It fol-

lows that evidence which was not produced during the administrative procedure, and which the institutions were therefore unable to take into consideration when they adopted the contested regulation, may not be taken into account for the purposes of such judicial review.