

Case T-170/94

Shanghai Bicycle Corporation (Group)

v

Council of the European Union

(Dumping — State-trading country — Like product — Individual treatment —
Calculation of the dumping margin)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 25 September 1997 II - 1389

Summary of the Judgment

1. *Actions for annulment of measures — Locus standi — Legal persons — Definition — Possession of legal personality in accordance with national law or treatment as an independent legal entity by the Community institutions*
(EC Treaty, Art. 173; Rules of Procedure of the Court of Justice, Art. 38(5)(a); Rules of Procedure of the Court of First Instance, Art. 44(5)(a))

2. *Actions for annulment of measures — Natural or legal persons — Measures of direct and individual concern to them — Regulation imposing an anti-dumping duty — Third-country exporter named and a participant in the investigation*
(EC Treaty, Art. 173, fourth para.)

3. *Common commercial policy — Protection against dumping — Dumping margin — Determination of normal value — Imports from a non-market economy country — Determination of 'like products' — Sampling — Discretion of the institutions — Judicial review — Limits*
(Council Regulation No 2423/88, Art. 2(5), (12) and (13))
4. *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, Arts 2(5), (9), (13) and (14) and 13(3))
5. *Common commercial policy — Protection against dumping — Fixing of anti-dumping duties — Individual treatment of exporters from a non-market economy country — Conditions — Evidence that undertakings are independent of the State — Discretion of the institutions — Judicial review — Limits*
(Council Regulation No 2423/88)
6. *Community law — Principles — Rights of the defence — Compliance with administrative procedures — Anti-dumping — Duty of the institutions to satisfy requests for information from the undertakings involved — Limits*
(EC Treaty, Art. 214; Council Regulation No 2423/88, Arts 7(4)(b) and 8(2) and (3))

1. The admissibility of an action for annulment brought by an entity under Article 173 of the Treaty depends primarily on the legal personality of the applicant. Under the Community judicial system, an applicant is a legal person if it has acquired legal personality in accordance with the law governing its constitution or if it has been treated as an independent legal entity by the Community institutions.

Procedure of the Court of First Instance, where the applicant is a legal person governed by private law, its application must be accompanied by the instrument or instruments constituting or regulating that person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law. A copy of the commercial register evidencing its registration as a 'corporate legal person' owned by the People's Republic of China and possessing legal personality under Chinese law constitutes proof of an entity's existence in law for the purposes of those provisions.

In accordance with Article 38(5)(a) of the Rules of Procedure of the Court of Justice and Article 44(5)(a) of the Rules of

In any event, it cannot be argued that a legal person is not an independent legal

entity when it has been treated as such by the Community institutions during the administrative procedure preceding the adoption of the contested measure.

by the mere fact that the duty in question is a single duty and is imposed by reference to a State and not to individual undertakings.

2. Although, in the light of the criteria set out in the fourth paragraph of Article 173 of the Treaty, regulations imposing anti-dumping duties are indeed, as regards their nature and their scope, of a legislative character in that they apply to all the traders concerned taken as a whole, their provisions may none the less be of individual concern to certain traders.

A regulation imposing an anti-dumping duty is of individual concern to an undertaking whose products are subject to an anti-dumping duty, where it has participated in the administrative procedure as far as it could and where its participation was expressly referred to in the contested regulation.

Accordingly, measures imposing anti-dumping duties are liable to be of direct and individual concern to those producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations and, more generally, to any trader who can establish the existence of certain attributes which are peculiar to him and which, as regards the measure in question, differentiate him from all other traders.

Furthermore, that undertaking must also be considered to be directly concerned by the regulation in question, since a regulation which imposes an anti-dumping duty obliges the Member States' customs authorities to levy the duty imposed without leaving them any discretion.

Moreover, the judicial protection afforded to individual undertakings concerned by an anti-dumping duty cannot be affected

3. With respect to imports from non-market economy countries, the determination of 'like products' in calculating normal value pursuant to Article 2(5) and (12) of the basic anti-dumping regulation, No 2423/88, is covered by the wide discretion enjoyed by the Community institutions in analysing complex economic situations. The institutions have the same discretion when applying Article 2(13) of the basic

anti-dumping regulation in respect of sampling techniques.

— Article 2(9) concerns only the comparability of prices and the adjustments that are intended to take account of the differences affecting such comparability;

Judicial review of such assessment must be limited to verifying whether the relevant 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 of the facts or a misuse of power.

— the fact that Article 2(13) provides that, where prices vary, export prices are as a rule to be compared with normal value on a transaction-by-transaction basis does not mean that a single anti-dumping duty cannot be fixed;

4. A policy which results in the imposition of a single anti-dumping duty in respect of 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 protection measures being circumvented.

— neither Article 13(3) of the basic anti-dumping regulation nor Article 8(3) of the GATT Anti-Dumping Code prohibits the imposition of a single duty or requires calculation of a dumping margin for each exporter individually; all they require is that there should be a connection between the amount of duty, even if a single duty, and the dumping margin, even if determined singly;

There is no provision in the basic anti-dumping regulation which prohibits the imposition of a single anti-dumping duty for State-trading countries:

— Article 2(5) merely indicates the criteria on the basis of which normal value is to be determined in the case of imports from non-market economy countries;

— while Article 2(14)(a) of the basic anti-dumping regulation defines the dumping margin as the amount by which the normal value exceeds the export price, Article 2(14)(b) provides that where dumping margins vary, weighted averages may be established;

— finally, although it follows from both the scheme and purpose of Article 13(2) of the basic regulation — which provides that an anti-dumping regulation is to 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 it was practicable; it is not practicable to indicate the name of each supplier if, in order to avoid the risk of circumventing anti-dumping duties, it is necessary to impose a single duty for an entire country, which is the case where, with regard to 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, while it follows from its various provisions that the normal value and the export prices must normally be established individually for each exporter, 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) of the basic regulation, 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.

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

As with respect to complex economic matters, the institutions enjoy a wide discretion in the assessment of factual situations which are of a political and legal nature within a State-trading country, and judicial review of such an assessment must be limited to verifying whether the relevant 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 of the facts or a misuse of power.

6. In connection with an administrative procedure such as that preceding the imposition of anti-dumping duties, the rights of the defence are respected if the undertaking concerned has been afforded the opportunity during the administrative procedure of making known its views on the truth and relevance of the facts and circumstances alleged and, where appropriate, on the documents used.

The Commission's duty to supply information must, however, always be balanced against the prohibition on revealing confidential information laid down in

both Article 8(2) of the basic anti-dumping regulation, which provides that neither the Community institutions nor the Member States, nor their officials, are to reveal any information received pursuant to the regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier, and in Article 214 of the Treaty and Article 8(3) of the basic regulation, which provide that the Community institutions may consider certain information to be confidential if to disclose it is likely to have a significantly adverse effect upon the supplier or the source of such information.