



Reports of Cases

Case C-338/10

Grünwald Logistik Service GmbH (GLS)

v

Hauptzollamt Hamburg-Stadt

(Reference for a preliminary ruling from the Finanzgericht Hamburg)

(Dumping — Anti-dumping duty imposed on imports of certain prepared or preserved citrus fruits originating in China — Regulation (EC) No 1355/2008 — Validity — Regulation (EC) No 384/96 — Article 2(7)(a) — Determination of normal value — Non-market economy country — Commission's obligation to take due care to determine normal value on the basis of the price or constructed value in a market economy third country)

Summary of the Judgment

1. *Common commercial policy — Protection against dumping — Dumping margin — Determination of the normal value — Imports from non-market economy countries — Choice of an analogue country*

(Council Regulation No 384/96, as amended by Regulation No 2117/2005, Art. 2(7)(a))

2. *Common commercial policy — Protection against dumping — Dumping margin — Determination of the normal value — Imports from non-market economy countries — Reference to the price in a market economy third country*

(Council Regulation No 384/96, as amended by Regulation No 2117/2005, Art. 2(7)(a))

3. *Common commercial policy — Protection against dumping — Dumping margin — Determination of the normal value — Imports from non-market economy countries — Choice of an analogue country*

(Council Regulations No 384/96, as amended by Regulation No 2117/2005, Art. 2(7)(a), and No 1355/2008)

1. Article 2(7)(a) of the basic anti-dumping Regulation No 384/96, as amended by Regulation No 2117/2005, provides that in the case of imports from non-market economy countries, in derogation from the rules set out in paragraphs 1 to 6 of Article 2, normal value must, as a rule, be determined on the basis of the price or constructed value in a market economy third country. Under the second subparagraph of Article 2(7)(a), an appropriate market economy third country is to be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Indeed, it is for the Union institutions, whilst taking account of the possible alternatives, to try to find a third country in which the prices for a like product are formed in circumstances as similar as possible to those in the country of export, provided that it is a market economy country.

The exercise of the Union institutions' discretion is subject to review by the Court. As regards the choice of analogue country, it is desirable, in particular, to verify that those institutions have not neglected to take account of essential factors for the purpose of establishing the appropriate nature of the country chosen and that the information contained in the documents in the case was considered with all the care required for the view to be taken that the normal value was determined in an appropriate and not unreasonable manner.

(see paras 20-22)

2. It is apparent from the wording and scheme of Article 2(7)(a) of the basic anti-dumping Regulation No 384/96, as amended by Regulation No 2117/2005, that the main method of determining the normal value in the case of imports from non-market economy countries is that of the price or constructed value in a market economy third country or the price from such a third country to other countries, including the Union. Failing that, the stated alternative method of determining the normal value is that that value is to be determined on any other reasonable basis, including the price actually paid or payable in the European Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

The use of that wording in Article 2(7)(a) of the basic regulation shows that the aim of according that priority to the main method laid down by the provision is to obtain a reasonable determination of the normal value in the country of export through the choice of a third country in which the price for a like product is formed in circumstances which are as similar as possible to those in the country of export, provided that it is a market economy country.

It follows that the discretion enjoyed by the Union institutions in the choice of an analogue country does not authorise them to disregard the requirement to choose a market economy third country where such a choice is possible. They may choose not to apply the general rule set out in Article 2(7)(a) of the basic regulation for the determination of the normal value of products originating in non-market economy countries, using some other reasonable basis, only when it is impossible to apply that general rule.

(see paras 24-26)

3. Article 2(7)(a) of the basic anti-dumping Regulation No 384/96, as amended by Regulation No 2117/2005, under which priority is accorded to the main method laid down by that provision — which consists in determining normal value on the basis of the price or constructed value in a market economy third country — requires the Union institutions to examine with all due care the information they possess, including, in particular, Eurostat statistics, in order to ascertain whether it is possible to select an analogue country for the purposes of that provision. In particular, that provision's objective of seeking to find an analogue country where the price for a like product is formed in circumstances as similar as possible to those in the country of export would be jeopardised if the concept of 'reliable information made available' were restricted to information provided by the complainant in its complaint or to the information supplied subsequently by the parties concerned in the context of the investigation.

The Commission is therefore obliged to consider on its own initiative all the information available, since in an anti-dumping investigation it does not act as an arbitrator whose remit is limited to making an award solely on the basis of the information and the evidence provided by the parties to the investigation. Article 6(3) and (4) of Regulation No 384/96 authorises the Commission to request Member States to supply information to it and to carry out all necessary checks and inspections.

Consequently, when the Eurostat statistics available at the time of the investigation suggest that products similar to the product concerned are produced in market economy third countries in not insignificant quantities, it is the duty of the Commission to examine on its own initiative whether one

of those countries could constitute an analogue country for the purposes of Article 2(7)(a) of the basic regulation. The Commission is not entitled to confine itself to sending a single questionnaire to two undertakings situated in the same third country and conclude, because they did not reply, that it is impossible to determine the normal value on the basis of prices charged in a market economy third country.

(see paras 30-32, 34)