



Reports of Cases

Case T-412/13

Chin Haur Indonesia, PT
v
Council of the European Union

(Dumping — Imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia — Extension to such imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Circumvention — Failure to cooperate — Articles 13 and 18 of Regulation (EC) No 1225/2009 — Obligation to state reasons — Error of assessment)

Summary — Judgment of the General Court (Seventh Chamber), 19 March 2015

1. *Common commercial policy — Protection against dumping — Course of the investigation — Powers of the Commission — Limits — Obligation of the undertakings concerned by a complaint to cooperate — Scope*
(Council Regulation No 1225/2009)
2. *Common commercial policy — Protection against dumping — Circumvention — Determination of circumvention — Product subject to anti-dumping measures sent via third countries — Criteria for assessment — Circumstances not demonstrating the existence of trans-shipment*
(Council Regulation No 1225/2009, Art. 13(1), second para., and (2))
3. *Common commercial policy — Protection against dumping — Course of the investigation — Use of the information available where the undertaking refuses cooperation — Conditions — Alternative nature*
(Council Regulation No 1225/2009, Art. 18(1))
4. *Common commercial policy — Protection against dumping — Course of the investigation — Use of the information available where the undertaking refuses cooperation — Conditions — False or misleading information — No need for conduct to be intentional*
(Council Regulation No 1225/2009, Art. 18(1))
5. *Common commercial policy — Protection against dumping — Course of the investigation — Use of the information available where the undertaking refuses cooperation — Conditions — Reception of a verification visit — Circumstance not in itself implying a finding of honest and diligent cooperation*
(Council Regulation No 1225/2009, Art. 18(1))

6. *Common commercial policy — Protection against dumping — Course of the investigation — Account taken of information not the best in all respects — Conditions — Cumulative nature*

(Council Regulation No 1225/2009, Art. 18(3))

7. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to have recourse to the facts available where the undertaking concerned by an anti-dumping investigation refuses to cooperate — No obligation on the institutions to demonstrate use of the best possible information*

(Art. 296 TFEU; Council Regulation No 1225/2009, Art. 18(1))

8. *EU law — Principles — Proportionality — Whether a measure proportionate to its aim — Criteria for assessment*

9. *Common commercial policy — Protection against dumping — Circumvention — Proof of the existence of dumping in connection with the normal values established in an initial investigation — Determination of the export price — Obligation to use the most appropriate method*

(Council Regulation No 1225/2009, Art. 13(1))

1. See the text of the decision.

(see paras 64, 80)

2. With regard to determination of the existence of circumvention of anti-dumping measures in force, by sending the product subject to those measures via third countries, within the meaning of the second subparagraph of Article 13(1) of the basic anti-dumping Regulation No 1225/2009, it is not apparent either from that regulation or from the case-law that the fact that the exporter concerned has been unable to show that it was a producer of the similar product or that it satisfied Article 13(2) of basic anti-dumping Regulation No 1225/2009 enables the EU institutions to conclude by default that that exporter was engaged in trans-shipment.

(see para. 105)

3. See the text of the decision.

(see para. 111)

4. As regards the possibility of having recourse to the facts available where a party has supplied false or misleading information, the second sentence of Article 18(1) of basic anti-dumping Regulation No 1225/2009 does not require that conduct to be intentional.

In that regard, the degree of effort displayed by an interested party in submitting certain information does not necessarily reflect the substantive quality of the information submitted, and in any case is not the only determinant thereof. Thus, where the requested information is not ultimately obtained, the Commission is entitled to resort to the facts available in respect of the requested information.

(see para. 122)

5. In the context of an anti-dumping investigation, it is for the EU institutions to decide whether, for the purposes of checking the information supplied by an interested party, it is necessary to corroborate that information by a verification visit at the premises of that party and that, where an interested party impedes verification of the information which it has supplied, Article 18 of basic anti-dumping Regulation No 1225/2009 applies and the facts available may be used.

Although a refusal to allow a verification visit to go ahead runs counter to the objective of honest and diligent cooperation which Article 18(1) of the basic regulation seeks to ensure, the fact of agreeing to a verification visit cannot in itself result in a finding of cooperation.

In those circumstances, the submission of an exemption form, and then a revised exemption form, and receiving the Commission's team during the verification visit is not sufficient to lead to a finding of cooperation or an obligation on the EU institutions to take into account deficient information.

(see paras 123, 124)

6. See the text of the decision.

(see para. 125)

7. In the context of an anti-dumping investigation, concerning a decision to have recourse to the facts available where the undertaking has refused to cooperate, neither Article 18(1) of basic anti-dumping Regulation No 1225/2009 nor the case-law imposes any obligation on the institutions concerned to state in what way the available facts that were used were the best possible.

(see paras 130, 139)

8. See the text of the decision.

(see para. 144)

9. See the text of the decision.

(see paras 149, 150, 152, 153)