



Reports of Cases

Case C-15/12 P

Dashiqiao Sanqiang Refractory Materials Co. Ltd

v

Council of the European Union

(Appeal — Dumping — Regulation (EC) No 826/2009 — Imports of certain magnesia bricks originating in the People's Republic of China — Regulation (EC) No 384/96 — Article 2(10)(b) — Fair comparison — Article 11(9) — Interim partial review — Obligation to apply the same methodology as in the investigation leading to the imposition of the duty — Change in circumstances)

Summary — Judgment of the Court (Second Chamber), 19 September 2013

1. *Common commercial policy — Protection against dumping — Review procedure — Exception — Change in the method of calculation — Conditions — Change in circumstances — Restrictive interpretation — Need for the method applied to be consistent with Article 2 of Regulation No 384/96 — Burden of proof*

(Council Regulations No 384/96, Arts 2 and 11(9), and No 1225/2009, Arts 2 and 11(9))

2. *Common commercial policy — Protection against dumping — Review procedure — Change in the method of calculation — Non-application of the adjustment made at the time of the initial procedure — Infringement of Article 11(9) of Regulation No 384/96 — None*

(Council Regulations No 384/96, Arts 2(10) and 11(9) and No 1225/2009, Arts 2(10) and 11(9))

1. As regards the method of calculation which is to be used in a review procedure for an anti-dumping duty, the exception, provided for by Article 11(9) of the basic anti-dumping Regulation No 384/96, replaced by Regulation No 1225/2009, whereby the institutions may, in the review procedure, apply a method different from that used in the original investigation when the circumstances have changed must be interpreted strictly, for a derogation from or exception to a general rule must be interpreted narrowly. The burden of proof relating to such a change in circumstances lies with the institutions, which must prove that those circumstances have changed in order to apply, in the review investigation, a method different from that implemented during the original investigation. However, as regards the fact that such a change in circumstances for the purposes of Article 11(9) of the basic anti-dumping regulation constitutes an exception, the requirement that a provision be interpreted strictly cannot permit the institutions to interpret and apply the provision in a manner inconsistent with its wording and purpose. In particular, the method applied must be consistent with Article 2 of that regulation.

(see paras 17-19)

2. As regards the method of calculation which is to be used in a review procedure for an anti-dumping duty, given that Article 11(9) of basic anti-dumping Regulation No 384/96, replaced by Regulation No 1225/2009, expressly requires the method applied in the review to comply with the requirements of Article 2 of that regulation, such a review may not give rise to an adjustment that is not authorised, in particular, by Article 2(10)(b) of that regulation.

Thus, since the asymmetry which was the reason for an adjustment at the time of the initial procedure, such as an adjustment on a 'value added tax inclusive' basis intended to take account of the refund in part of that export tax, ceases to exist, at the time of the review it is no longer necessary to re-establish the symmetry between normal value and export price, which is the aim of any adjustment under Article 2(10) of the basic anti-dumping regulation. From the moment the factor that caused the asymmetry in the original investigation, namely, the partial refund of the export value added tax, ceased to exist, it was no longer necessary to correct that asymmetry or therefore to make any adjustment, regardless of the method of adjustment actually applied. Accordingly, the circumstances that justified an adjustment having changed, the General Court was fully entitled to hold that the point was not whether there had been any change of method but rather that the conditions for such an adjustment were not satisfied and, for the sake of completeness, that, even if there had been a change of method, it would have been warranted by changing circumstances.

(see paras 27, 29, 36-38)