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ECJ: Avoidance of customs duty by relocating the production of goods and determination of the non-preferential origin

In the present proceedings, the European Court of Justice (ECJ) had to decide whether the Commission may refuse to recognize a relocation of production solely on the ground that the relocation is intended to escape customs duties imposed in connection with a trade dispute between two States. The plaintiffs claim for the relocation of the origin of the goods (here: Harley Davidson motorcycles) was dismissed by the General Court. The ECJ as the court of last resort also rejected the grounds of appeal.

Background

Companies that relocate their production to avoid (anti-dumping) duties are facing difficult times.

In 2018, the USA introduced additional tariffs on imports of steel and aluminum from the EU. In response, the EU also introduced high customs duties on the import of certain goods from the US, including motorcycles manufactured by Harley-Davidson. Eventually, Harley-Davidson decided to produce its motorcycles at its existing factory in Thailand. The EU Commission, however, believed that this was an unacceptable circumvention as it did not mirror the economic facts and that the origin was therefore still in the USA. Harley Davidson appealed against the Commission's decision. The General Court of the European Union dismissed the action in its judgment of 1 March 2023 and held that the Commission's decision was justified. The working or processing carried out in Thailand was not economically justified.

In her Opinion, the Advocate General concluded that the appellants' challenge was justified and proposed that the ECJ should set aside the judgment of the General Court of 1 March 2023 - which the ECJ in fact did not.

ECJ decision

The ECJ stated that none of the grounds of appeal could be upheld and thus dismissed the appeal in its entirety.

In support of the claim, the appellants had raised **three grounds of appeal**:

The **first ground of appeal** in essence concerns the General Court's interpretation of Article 33 of Delegated Regulation 2015/2446 (judgment, para.36 through 81).

The General Court was entitled, without infringing the first paragraph of Article 33 of Delegated Regulation 2015/2446, to find that it was *prima facie* established that the relocation at issue was aimed at avoiding the application of the commercial policy measures. It was then for the economic operator concerned to prove that there was a different reasonable ground, showing that the principal or dominant purpose of the operation was unconnected with that aim.

As regards the alleged distortion of the evidence by the General Court, the ECJ notes that the appellants are, in fact, seeking a fresh assessment of the evidence, without indicating in a sufficiently precise manner the distortion levelled against the General Court or showing the errors of analysis which, in their view, led it to commit that distortion. Such a challenge is, therefore, inadmissible at the appeal stage.

With the **second ground of appeal**, it was alleged that the General Court exceeded the limits of the delegation conferred by Article 62 of the Union Customs Code (judgment, para. 82 to 88).

The appellants' line of argument is based on the premise that the General Court interpreted the first paragraph of Article 33 of Delegated Regulation 2015/2446 as including a subjective test. As stated in more detail in paragraphs 67 and 68 of the judgment that premise is incorrect. Therefore, the second ground of appeal was rejected by the ECJ.

The **third ground of appeal**, alleging infringement of the right to good administration (judgment, para. 88 to 114).

Among others, the ECJ states that the reasonableness of the length of proceedings cannot be determined by reference to a precise maximum limit determined in an abstract manner. The same applies to the determination of the starting point for the calculation of that length, in the absence, as in the present case, of precise indications in the applicable provisions.

In that context, the appellants' arguments can only succeed if it is established that the General Court distorted the facts. The appellants do not allege such distortion, merely requesting, in essence, a fresh assessment of the facts, which does not fall within the jurisdiction of the ECJ in an appeal.

Source:

ECJ, judgment of 21 November 2024 **C-297/23 P** *Harley-Davidson Europe and Neovia Logistics Services International v Commission*.

Keywords

customs, customs duty