



Press Release

BEITEN BURKHARDT Provides Advice to the Council of the European Union in Preliminary Ruling Proceedings on EU Anti-Dumping Legislation

Brussels, 16 September 2015 – The international law firm BEITEN BURKHARDT has successfully represented the Council of the European Union in Preliminary Ruling Proceedings before the European Court of Justice (ECJ).

The reason the Tax Court of Munich had submitted the reference for a preliminary ruling were imports of ceramic tiles originating in the People's Republic of China, for which the Council had imposed an antidumping duty rate by means of a Regulation. An undertaking concerned, Fliesen-Zentrum Deutschland GmbH, complained about the duties imposed on it by Central Customs Office Regensburg and filed a suit before the Munich Tax Court. Among other things, it took the view that the Regulation was invalid because the Union's institutions had determined the United States of America as reference country for the construction of the normal value of similar goods like the tiles at issue in the main proceedings. In fact, the undertaking stated that the choice of the United States of America as reference country was inappropriate due to the fact that the American and the Chinese ceramic tile market would be found to differ seriously. The Union institutions had, in particular, not taken account of alternative and more suitable reference countries like Thailand, Indonesia, Brazil and Turkey when constructing the normal value.

The Tax Court Munich suspended the proceedings and wanted the ECJ to clarify whether the undertaking's doubts as to the careful determination of the antidumping duty rate, would, in fact, result in the invalidity of the Regulation.

The ECJ (case C-687/13) found that the examination of the question submitted did not produce any results which could have had an impact on the appealed Regulation. The ECJ, thus, followed the representations of the Commission and the Council which were made by Dr. Rainer Bierwagen as the Council's legal representative. The Union's institutions had considered using third countries as reference countries for the anti-dumping investigation. However, they had unsuccessfully tried to contact producers in third countries in order to take into account their export prices in the calculation of the normal value. As producers in



Press Release

third countries, that are considered a reference country, are not obliged to cooperate, the fact that they have not fulfilled the request for assistance cannot substantiate a violation of the Union institutions' duty of care. The ECJ found that the Union institutions have taken due care in identifying the reference country.

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Information about BEITEN BURKHARDT

- BEITEN BURKHARDT is an independent international commercial law firm with a focused range of services and some 270 lawyers working in 10 locations.
- Through our long-established offices in Germany, Brussels, China and Russia we advise large and mid-sized companies and corporate groups from various industries, banks and financial institutions as well as the public sector.