ORDER OF THE PRESIDENT OF THE COURT
8 May 1987 *

In Case 82/87 R

Autexpo SpA, a company incorporated under Italian law, having its registered office in Ora, represented by A. Pesce of the Milan Bar, with an address for service in Luxembourg at the Chambers of J. C. Wolter, 8 rue Zithe,

applicant,

v

Commission of the European Communities, represented by its Agent, E. de March, a member of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION primarily for an order suspending the operation of the Commission Decision of 19 December 1986 authorizing the Italian Republic to apply intra-Community surveillance to imports of motor vehicles for the transport of goods or materials (other than off-road vehicles), originating in Japan and in free circulation in the Community (Official Journal 1987, L 32, p. 18) and the Commission Decision of 19 January 1987 authorizing the Italian Republic not to apply Community treatment to such vehicles (Official Journal 1987, C 17, p. 2),

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

* Language of the Case: Italian.

Order

1 By application lodged at the Court Registry on 20 March 1987, Autexpo SpA (hereinafter referred to as 'Autexpo') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of:

(i) Commission Decision No 87/61/EEC of 19 December 1986 authorizing the Italian Republic to apply until 31 December 1988 intra-Community surveillance to imports of motor vehicles for the transport of goods or materials (other than off-road vehicles), falling under subheading 87.02 ex B of the Common Customs Tariff, originating in Japan and in free circulation in the Community (Official Journal 1987, L 32, p. 18);

(ii) the Commission Decision of 19 January 1987 authorizing the Italian Republic not to apply, until 31 May 1987, Community treatment to the aforesaid vehicles, originating in Japan and in free circulation in the Community (Official Journal 1987, C 17, p. 2).

2 By an application lodged at the Court Registry on the same day, the applicant sought an interim order under Article 185 of the EEC Treaty and Article 83 of the Rules of Procedure suspending the operation of the aforesaid Commission decisions on the terms and conditions needed to permit the importation into Italy of a number of Suzuki commercial vehicles which it had already purchased, by the time of the adoption of Decision No 87/61 of 19 December 1986, as part of its normal business planning for the period from January 1987 until the end of May 1987, and which were held in storage on German territory owing to the entry into force of the Decision of 19 January 1987 excluding them from Community treatment.

3 The defendant submitted its written observations on 8 April 1987. The parties presented oral argument on 4 May 1987.

4 Before the merits of this application for interim measures are considered, it may be helpful to describe briefly the context and the legal framework of this case as well

as the main stages in the procedure which preceded the adoption by the Commission of its aforesaid Decisions of 19 December 1986 and 19 January 1987.

5 Autexpo distributes *inter alia* Suzuki motor vehicles in Italy. It employs 55 persons directly and 600 persons indirectly, if dealers and service points are taken into account. In 1986 it distributed in Italy approximately 12 000 new motor vehicles. Of these, 3 568 were of Japanese origin and prior to their importation into Italy had been in free circulation in the Federal Republic of Germany.

6 Since 1969 direct imports into Italy of motor vehicles originating in Japan have been subject to quantitative restrictions under the 'Agreed minutes' in force at that time between Italy and Japan. In the meantime, the Council authorized the extension of that trade agreement by various decisions. The most recent of those decisions, Decision No 86/456/EEC of 15 September 1986 (Official Journal 1986, L 266, p. 32), authorized the extension of that agreement until 30 September 1987. The Ministerial Decree of 6 May 1976 (Official Journal of the Italian Republic, Ordinary Supplement of 16 June 1987, No 157), the national measure implementing that agreement, provides in Article 3 that the products in question may not be freely imported but only subject to ministerial authorization. That system of authorization was implemented by ministerial decrees laying down, from year to year, the import quotas for motor vehicles for the transport of persons and for off-road vehicles. However, no provision is made for the importation of motor vehicles for the transport of goods. That system is authorized at Community level by the third indent of Article 1 (2) of Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports (Official Journal 1982, L 35, p. 1).

7 Taking the view that the effectiveness of national measures applicable to direct imports would be considerably reduced, or even completely nullified, if there were no supervision of indirect imports of motor vehicles originating in Japan and in free circulation in other Member States, the Italian Republic sought authorization from the Commission to subject such imports to intra-Community surveillance. On the basis of Article 115 of the EEC Treaty and Decision No 80/47/EEC of 20 December 1979 on surveillance and protective measures which Member States may be authorized to take in respect of imports of certain products originating in

third countries and put into free circulation in another Member State (Official Journal 1980, L 16, p. 14), the Commission authorized the Italian Republic, by Decision No 87/61 referred to above, to apply intra-Community surveillance until 31 December 1988 to imports, including motor vehicles for the transport of goods originating in Japan.

8 In response to a request made by the Italian Republic on 12 January 1987, the Commission, by its Decision of 19 January 1987, authorized that Member State on the basis of Article 115 of the EEC Treaty not to apply Community treatment for the period from 2 January to 31 May 1987 to motor vehicles for the transport of goods or materials (other than off-road vehicles), falling under subheading 87.02 ex B of the Common Customs Tariff, Nimexe Code 87.02-81, 82, 86, 88, originating in Japan and in free circulation in the other Member States, in respect of which applications for import licences were submitted after 1 January 1987. The second paragraph of Article 1 of the aforesaid decision stated, however, that such authorization covered only a quantity of 1 000 vehicles, to be allocated amongst importers whose applications for the grant of an import licence were, at the date on which the decision was adopted, being duly considered by the Italian authorities.

9 By a letter lodged at the Court Registry on 27 April 1987, Autexpo drew the attention of the President of the Court of Justice to the fact that the competent Italian authorities had just issued to it, on 21 April 1987, a licence to import into Italy 1 000 commercial vehicles (other than off-road vehicles), falling under subheading 87.02 ex B of the Common Customs Tariff, originating in Japan and already in free circulation in the Community. The applicant also stated in its letter that, although that measure had the effect of substantially reducing the damage which it was suffering as a result of the adoption by the Commission of the two aforesaid decisions, it did not have the effect of making good the damage which it had already suffered or of preventing the risk that similar decisions might be adopted in future, again in breach of Community law.

10 Article 185 of the EEC Treaty provides that actions brought before the Court of Justice are not to have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

11 As a condition for the grant of an interim measure such as that requested, Article 83 (2) of the Rules of Procedure requires that an application for such a measure must state the factual and legal grounds establishing a prima facie case for the interim measure applied for and the circumstances giving rise to urgency.

12 The Court has consistently held that the urgency required by Article 83 (2) of the Rules of Procedure in regard to an application for interim measures must be assessed in the light of the need to adopt such measures in order to avoid serious and irreparable damage to the party requesting those measures.

13 Before examining the arguments put forward by the applicant to show that it has suffered serious and irreparable damage, it is necessary to consider briefly a question raised by the defendant which concerns the admissibility of the main application.

14 The defendant expresses serious doubts about the admissibility of the action for annulment to which the application for interim measures is an adjunct, at least in so far as the main application is directed against Decision No 87/61 of 19 December 1986 authorizing Italy to apply intra-Community surveillance. In support of its argument, the defendant contends that, since the decision is addressed to a Member State, an action for annulment brought by a legal person, such as Autexpo, on the basis of the second paragraph of Article 173 of the EEC Treaty, is admissible only if that decision is of direct and individual concern to that person. In that regard it points out that the Court has consistently held that 'persons other than those to whom a decision is addressed may claim to be individually concerned by that decision only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and if by virtue of those factors it distinguishes them individually just as in the case of the person addressed'. That condition is not satisfied in this case since the aforesaid decision, pursuant to which the importation of the goods in question may be made subject to the grant of an import licence which is issued automatically by the authorities in respect of any quantity applied for, concerns the applicant merely by reason of its objective capacity as an importer of the goods in question, in the same manner as any other trader who is, or might be in the future, in the same situation.

15 The Court has repeatedly emphasized that the issue of the admissibility of the main application should not, in principle, be examined in proceedings relating to an application for interim measures but should be reserved for the examination of the main application so as not to prejudge the substance of the case (see, in particular, Case 75/72 R *Perinciolo* v *Council* [1972] ECR 1201; Case 186/80 R *Suss* v *Commission* [1980] ECR 3501; Case 351/85 R *Fabrique de fer de Charleroi* v *Commission* [1986] ECR 1307; Case 23/86 R *United Kingdom* v *European Parliament* [1986] ECR 1085; and Case 65/87 R *Pfizer* v *Commission* [1987] ECR 1691); however, where, as in this case, an objection is raised that the main application to which the application for interim measures is an adjunct is manifestly inadmissible, it is necessary to establish the existence of certain factors which support the conclusion that the main application is prima facie admissible.

16 In that regard, it must be stated that, prima facie, no such factors exist. As the defendant has rightly emphasized, the decision authorizing Italy to apply intra-Community surveillance does not seem to be of individual concern to Autexpo which is affected only by reason of its objective capacity as an importer in the same manner as any other trader who is, or might be in the future, in the same situation. Such a decision therefore constitutes, with regard to importers, a measure of general application covering situations which are determined objectively and it entails legal effects for categories of persons envisaged in a general and abstract manner (see, in particular, the judgment of 14 July 1983 in Case 231/82 *Spijker Kwasten BV* v *Commission* [1983] ECR 2559). That finding is sufficient to support the conclusion that the main application and the application for suspension are prima facie inadmissible in so far as they are directed to the decision authorizing intra-Community surveillance.

17 The defendant has also expressed doubts about the admissibility of the application for annulment and, consequently, of the application for suspension in so far as they are directed to the Commission's Decision of 19 January 1987 authorizing non-appliance of Community treatment.

18 At the hearing Autexpo stated, although it was unable to furnish any supporting evidence, that it had applied for import licences before 19 January 1987, the date on which the decision authorizing non-appliance of Community treatment was adopted.

19 On the assumption that that fact, which would be sufficient to differentiate and to distinguish the applicant individually just as in the case of the addressee of the decision, is established, which is a matter for the Court to decide in connection with the main application, it is necessary to consider whether the other requirements for granting the interim measure sought by the applicant are fulfilled.

20 In order to establish that a measure suspending the operation of the Decision of 19 January 1987 should be granted as a matter of urgency, the applicant states that, at the time of the adoption by the Commission of Decision No 87/61 of 19 December 1986 authorizing intra-Community surveillance, it had already proceeded, as part of its normal business planning, to buy and pay for 1 000 Suzuki commercial vehicles which were intended to cover its requirements for the period from the end of January 1987 to the end of May 1987 and which were to be delivered in Italy during the same period. As a result of the Commission's Decision of 19 January 1987, that considerable number of commercial vehicles was held in storage on German territory. It claims that the damage sustained by it on account of the storage of those vehicles amounts to DM 1.85 per day per vehicle. It maintains, furthermore, that it has to contend with the damage resulting from the freezing of the sum of DM 13 156 000 which it has spent on financing the purchase of those vehicles. Moreover, that damage is increasing every day since the applicant is no longer able to supply its network of dealers.

21 The defendant points out first of all that the fact that Autexpo ordered, before 22 December 1986, 1 000 Suzuki commercial vehicles which were to be delivered in Italy between January 1987 and May 1987 does not mean that it has actually paid for them. Those orders were placed on the basis of an irrevocable opening of a line of credit so that payment is not actually made until the vehicles are delivered. Next, the defendant points out that it is clear from a letter annexed to the application for interim measures that the storage costs referred to in paragraph 13 of this order are borne by the vendor of those vehicles, namely Autexpo Fahrzeughandel GmbH and not by Autexpo SpA. Finally, it points out that the damage alleged by Autexpo can in no way be regarded as serious if it made applications to the Italian authorities for import licences which had still not been dealt with by the date on which the Commission's Decision of 19 January 1987 was adopted, since in those circumstances the applicant is authorized to share in the allocation of the 1 000 vehicles referred to in the second paragraph of Article 1 of that decision.

22 It must be stated that the issue on 21 April 1987 by the Italian Government of an import licence permitting Autexpo to import into Italy 1 000 commercial vehicles (other than off-road vehicles), classified under subheading 87.02 ex B of the Common Customs Tariff, originating in Japan and already in free circulation in the Community, substantially reduced the damage which the applicant claimed to have suffered as a result of the adoption by the Commission of the aforesaid Decision of 19 January 1987, since, as the applicant stated at the hearing, that licence enabled it to import the 1 000 Suzuki commercial vehicles referred to in paragraph 20 of this order. Moreover, that licence was not issued in respect of the quota of 1 000 vehicles which may be imported under the second paragraph of Article 1 of the Commission's Decision of 19 January 1987, so that the applicant is still eligible to share in any allocation of that quota.

23 However, the applicant pointed out at the hearing that the Commission's Decision of 19 January 1987 still has the practical effect, until the date of its expiry, of preventing it from proceeding with the normal planning of its business for the three months following the expiry of that decision. The Italian banks would refuse, on the basis of Italian national law, to grant it the letters of credit which it needs in order to purchase the vehicles which it intends to supply during that period to customers in Italy, on the ground that it lacks a general import licence issued by the Italian authorities. Therefore, until 31 May 1987, it would find it impossible to place the orders needed for the months subsequent to that date.

24 In that regard, it must be pointed out in the first place that by referring, in its oral argument, to future damage, Autexpo has altered its application which referred only to damage resulting from the impossibility of importing into Italy vehicles which had already been purchased in the Federal Republic of Germany. Moreover, this further damage alleged by the applicant seems to be more closely connected with certain difficulties inherent in the Italian domestic legal system than with the actual application of the aforesaid Commission decision. Moreover, it must be stated that, should it not be possible for Autexpo, as it alleges, to plan its business, this will only be for a very short time, that is to say until 31 May 1987, the date on which the aforesaid decision will expire.

25 Accordingly, it follows from the foregoing considerations that the applicant has not put forward any argument which would give grounds for believing that it would suffer serious and irreparable damage if the interim measure which it seeks were not granted.

On those grounds,

THE PRESIDENT,

by way of interim decision,

hereby orders as follows:

(1) The application is dismissed;

(2) Costs are reserved.

Luxembourg, 8 May 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President