ORDER OF THE COURT
8 July 1987 *

In Case 295/86

SA Garelly, a company incorporated under French law, having its registered office at Freyming Merlebach, represented by Jean-Pierre Karsenty, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 38 rue du Curé,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Marie-José Jonczy, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Articles 2 and 3 of Commission Regulation No 2800/86 of 9 September 1986 imposing a provisional anti-dumping duty on imports of certain deep-freezers originating in the USSR, accepting the undertakings in connection with the investigation of imports of certain deep-freezers originating in Yugoslavia or in the German Democratic Republic and terminating the investigation, and terminating the proceeding concerning imports of certain deep-freezers (Official Journal 1986, L 259, p. 14),

THE COURT,

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

* Language of the Case: French.

after hearing the views of the Advocate General

makes the following

Order

1 By an application lodged at the Court Registry on 27 November 1986 SA Garelly brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Articles 2 and 3 of Commission Regulation No 2800/86 of 9 September 1986 are void; Article 2 accepts the undertakings given by Union Haushaltgeräte in connection with the investigation into imports of deep-freezers originating in the German Democratic Republic and Article 3 terminates the investigation in respect of those imports.

2 The applicant is a French company, 50% of whose turnover is derived from its activities as the sole importer for Union Haushaltgeräte (the East German exporter) of certain types of deep-freezer.

3 In support of the admissibility of its application, the applicant argues that on 13 December 1985 the Commission sent it a questionnaire, to which it replied, and that inquiries were conducted by the Commission at the applicant's registered office; it concludes that it is therefore a person to whom the regulation is of 'direct and individual concern' within the meaning of Article 173 of the EEC Treaty.

4 By an application lodged at the Court Registry on 13 January 1987, the Commission raised a preliminary objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure, claiming that the Court should declare inadmissible the application submitted by the applicant.

5 First, the Commission rejects the applicant's argument based on the fact that it participated in the proceeding. It cites the judgment of 6 October 1982 (Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463), in which the Court

held that the distinction between a regulation and a decision 'may be based only on the nature of the measure itself and the legal effects which it produces and not on the procedures for its adoption', and further argues that the rule laid down in the judgment of 21 January 1986 (Case 169/84 *Cofaz* v *Commission* [1986] ECR 391) is not applicable here since that case was concerned with the rights of complainants.

6 Secondly, the Commission observes that, even if the applicant had put forward further submissions in support of the admissibility of its application, the Court has ruled against the admissibility of applications by independent importers for the annulment of anti-dumping regulations, holding in its judgments of 6 October 1982, cited above, and 21 February 1984 (Joined Cases 239 and 275/82 *Allied Corporation* v *Commission* [1984] ECR 1005) that in relation to independent importers such regulations constitute measures of general application and not decisions which are of direct and individual concern to them. The Commission maintains that the applicant is in that position, especially since the existence of dumping was substantiated by reference to the export price, not to the resale price charged by the importer.

7 Lastly, the Commission claims that if a provisional, or even definitive, anti-dumping duty is not of direct and individual concern to an importer even though the regulation obliges him to pay that duty, neither *a fortiori* is a price undertaking given by the exporter. In the Commission's opinion, since the exporter is at liberty to give or to withhold the undertaking, the applicant's situation is no different for present purposes from the situation in which it would find itself if the exporter decided unilaterally to raise its prices. The Commission regulation does no more than accept the undertaking offered to it by the exporter. Consequently, the injury alleged by the applicant arises from the trading relationship between exporter and importer.

8 In its written observations on the objection of inadmissibility, the applicant argues that the conditions of admissibility laid down in the second paragraph of Article 173 of the EEC Treaty are satisfied in this case.

9 Referring to the judgments of the Court of 18 November 1975 (Case 100/74 *CAM* v *Council and Commission* [1975] ECR 1393) and 15 July 1963 (Case 25/62

Plaumann v *Commission* [1963] ECR 95), the applicant maintains that Article 2 of Regulation No 2800/86 is a decision addressed to another person which is of individual concern to it in its capacity, known to the Commission, as a trading partner of Union Haushaltgeräte. Article 2 of the regulation is also of direct concern to the applicant on the ground that the acceptance of the undertaking by the Commission takes effect without any intervening legal measure adopted by another authority on the basis of that regulation.

10 The applicant further notes that in the judgment of 29 March 1979 (Case 118/77 *ISO* v *Council* [1979] ECR 1277), which, unlike the cases cited by the Commission, was concerned with the acceptance of an undertaking given by an exporter, the Court held the application of an importer to be admissible on the ground that importer and exporter were closely connected, as in the present case.

11 According to Article 91 (3) of the Rules of Procedure, the remainder of the proceedings concerning a preliminary objection are to be oral unless the Court decides otherwise. The Court does not consider it necessary to open the oral procedure, and, pursuant to Article 91 (4), will decide on the application on the basis of the written pleadings.

12 The second paragraph of Article 173 of the Treaty provides that an application by an individual for the annulment of a measure is admissible only if the contested measure, even if it was adopted in the form of a regulation, is in reality a decision of direct and individual concern to the applicant.

13 As far as the present case is concerned, it should be observed that the application seeks the annulment not of the provisions of the contested regulation which impose an anti-dumping duty but of the provisions which accept the price undertakings given by an exporter, pursuant to Article 10 of Council Regulation No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1984, L 201, p. 1).

14 That being so, the contested provisions simply accept price undertakings offered by the exporter. For the purposes of the second paragraph of Article 173 of the Treaty, therefore, those provisions can be of direct and individual concern only to that trader and not to other persons, who are necessarily not party to the undertakings given.

15 Consequently, the application must be dismissed as inadmissible.

Costs

16 Pursuant to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the applicant has failed in its action it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the applicant to pay the costs.

Luxembourg, 8 July 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President