ORDER OF THE COURT
8 July 1987 *

In Case 279/86

SA Sermes, whose registered office is in Strasbourg, represented by Jean-Pierre Spitzer, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

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, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multiphase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR is void,

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: G. F. Mancini
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

* Language of the Case: French.

Order

1 By an application lodged at the Court Registry on 17 November 1986, SA Sermes brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multiphase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR (Official Journal 1986, L 280, p. 68) is void. In support of its action, the applicant alleges an infringement of Council Regulation (EEC) 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), and the breach of a number of general principles of Community law.

2 The anti-dumping proceeding which culminated in the imposition of the provisional duty at issue was reopened by the Commission in November 1985 following an application for a review of the price undertakings accepted by the Council and the Commission in 1982 and 1984 in relation to the importation of electric motors from the abovementioned countries (Official Journal 1985, C 305, p. 2).

3 It appears from the sixth recital in the preamble to the contested regulation that in the course of its investigation under Article 7 of Regulation No 2176/84 the Commission carried out inspections at the premises of a number of Community producers and importers into the Community of electric motors, including the applicant.

4 According to the thirteenth recital in the preamble to the contested regulation, the Commission assessed the existence of dumping by reference to the export prices actually paid or payable in the transactions in question, and did not in any of the cases construct the export prices, pursuant to Article 2 (8) (b) of Regulation No 2176/84, on the basis of the resale prices charged by Community importers.

5 Nevertheless, in Article 2 (3) (b) of the contested regulation the Commission lists six importers in respect of which its investigation showed that there was an association or a compensatory arrangement with an exporter within the meaning of Article 2 (8) (b) of Regulation No 2176/84. The applicant is not included amongst those companies.

6 Article 2 (4) of Regulation No 3019/86 makes the release for free circulation of the abovementioned type of electric motor subject to the payment of a deposit equivalent to the amount of the provisional duty.

7 It appears from the documents before the Court that the applicant is a French company which, *inter alia*, acts as the sole importer into France of electric motors exported from the German Democratic Republic by AHB Elektrotechnik, but is not 'associated' for the purposes of Article 2 (8) (b) of Regulation No 2176/84 with that company or with any of the other exporters concerned.

8 By a document lodged at the Court Registry on 23 December 1986, the Commission raised a preliminary objection of inadmissibility under Article 91 (1) of the Rules of Procedure. In support of its objection the Commission maintains that the regulation in question is not of direct and individual concern to the applicant but is, as far as the applicant is concerned, of general application. That assertion is not refuted by the fact that it would be possible to ascertain the number or even the identity of the traders to whom the regulation applies.

9 The Commission further argues that the mere fact that the applicant was concerned by the anti-dumping investigation or was identified in the contested measure does not affect the nature of that measure. The applicant's position was not specifically taken into account, because the dumping was substantiated by reference to the export price, not to the resale price which the applicant charged. As the Court has held, a direct action against a regulation imposing an anti-dumping duty is inadmissible in such circumstances. The Commission stresses that it was open to the applicant to challenge before the national courts or tribunals any individual measures regarding it adopted by the national authorities in pursuance of that regulation.

10 The applicant, on the other hand, claims that the contested measure is in fact a decision which, although in the form of a regulation, is of direct and individual concern to it. In that connection it points out that it was concerned by the preliminary investigations conducted by the Commission in the course of the anti-dumping proceeding inasmuch as it took part in all the stages of that proceeding. The applicant also stresses that in fixing the anti-dumping duty the Commission took account of the mark-up of importers, including the applicant.

11 The applicant goes on to observe that it is the sole importer of electric motors from the German Democratic Republic, and as such is unique in its Member State. Furthermore, the applicant is identified in the preamble to the regulation and is thus treated differently from importers who are not mentioned in it. It appears from Article 7 of Regulation No 2176/84 that importers are put on the same footing as exporters, being treated as 'an interested party likely to be affected by the result of the proceeding'. Lastly, since the anti-dumping duty in question is provisional, it is incorrect to claim that an effective legal remedy is available to the applicant under domestic law.

12 The issue of admissibility raised by the Commission must be resolved in the light of the second paragraph of Article 173 of the Treaty, under which 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 An application by an individual is, however, inadmissible in so far as it is directed at a regulation having general application within the meaning of the second paragraph of Article 189 of the Treaty; as the Court has consistently held, the criterion for distinguishing between a regulation and a decision is whether or not the measure at issue is of general application.

14 In that connection it should first be observed that regulations imposing an anti-dumping duty are in fact, as regards their nature and their scope, of a legislative character, inasmuch as they apply to all the traders concerned, taken as a whole (see judgment of 21 February 1984 in Joined Cases 239 and 275/82 *Allied Corporation* v *Commission* [1984] ECR 1005).

15 However, the Court has held that certain provisions of such regulations may nevertheless be of direct and individual concern to those producers and exporters who are charged, on the basis of information derived from their business activities, with practising dumping. That is generally true of producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations (see the judgments of 21 February 1984 *Allied Corporation* v *Commission*, cited above, and 23 May 1985 in Case 53/83 *Allied Corporation* v *Council* [1985] ECR 1621).

16 It is also true of those importers who are directly concerned by findings of dumping inasmuch as export prices have been determined by reference to those importers' resale prices and not to the export prices charged by the producers or exporters in question (see the judgments of 29 March 1979 in Case 118/77 *ISO* v *Council* [1979] ECR 1277 and 21 February 1984 *Allied Corporation* v *Commission*, cited above). Under Article 2 (8) (b) of Regulation No 2176/84 export prices may be constructed in that way *inter alia* where there is an association between exporter and importer.

17 The applicant belongs to neither of the two categories of trader described above who, the Court has held, have the right to bring proceedings directly against regulations imposing anti-dumping duties. The applicant itself concedes in its application that it is not associated with the exporter of the product at issue. Furthermore, the contested regulation shows that the dumping was substantiated not by reference to the applicant's resale prices but by reference to prices actually paid, or payable, on exportation.

18 The applicant's assertion that it is the sole importer in its Member State of electric motors from the German Democratic Republic cannot lead to a different conclusion. The contested regulation concerns the applicant not by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons but merely by virtue 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 (see the judgment of 14 July 1983 in Case 231/82 *Spijker* v *Commission* [1983] ECR 2559).

19 The applicant's argument that its participation in the successive stages of the investigation conducted by the Commission must make its application admissible cannot be upheld either, since the distinction between a regulation and a decision can 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 (see the judgment of 6 October 1982 in Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463).

20 That conclusion is consistent with the scheme of remedies provided for by Community law since importers have the right under national law to challenge before the national courts individual measures adopted by the national authorities in application of a Community regulation.

21 It follows from the foregoing that the contested measure is, as far as the applicant is concerned, a regulation of general application and not a decision within the meaning of the second paragraph of Article 173 of the EEC Treaty.

22 An order must therefore be made pursuant to Article 91 (3) and (4) of the Rules of Procedure dismissing the application as inadmissible, and it is not necessary to consider the substance of the case.

Costs

23 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions 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