JUDGMENT OF THE COURT (Third Chamber)
27 November 1991 *

In Case C-315/90,

Groupement des Industries de Matériels d'Équipement Électrique et de l'Électronique Industrielle Associée (Gimelec), whose registered office is in Paris,

Asociación Nacional de Fabricantes de Bienes de Equipo (Sercobe), whose registered office is in Madrid,

Sole SpA, a company governed by Italian law, whose registered office is in Pordenone (Italy), and

Nuova IB-MEI SpA, a company governed by Italian law, whose registered office is in Asti (Italy),

represented by Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg in the Chambers of Freddy Brausch, 8 Rue Zithe,

applicants,

v

Commission of the European Communities, represented by Eric White, a Member of its Legal Service, acting as Agent, assisted by Claus-Michael Happe, a German judge seconded to the Commission in the framework of exchange schemes for officials between the Commission and the Member States, with an address for service in Luxembourg at the Chambers of Roberto Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for a declaration that Commission Decision 90/399/EEC of 26 July 1990 terminating an anti-dumping proceeding concerning imports of certain single-phase, two-speed electric motors originating in Bulgaria, Romania and Czechoslovakia (Official Journal 1990 L 202, p. 47) is void,

THE COURT (Third Chamber),

composed of: F. Grévisse, President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: W. Van Gerven,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 25 June 1991,

after hearing the Opinion of the Advocate General at the sitting on 26 September 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 October 1990, the Groupement des Industries de Matériels d'Équipement Électrique et de l'Électronique Industrielle Associée (Gimelec), the Asociación Nacional de Fabricantes de Bienes de Equipo (Sercobe), and Sole SpA and Nuova IB-MEI SpA, two companies governed by Italian law, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Commission Decision 90/399/EEC of 26 July 1990 terminating an anti-dumping proceeding concerning imports of certain single-phase, two-speed electric motors originating in Bulgaria, Romania and Czechoslovakia (Official Journal 1990 L 202, p. 47) (hereinafter referred to as 'the contested decision') is void.

2 In July 1989 Gimelec and Sercobe and the Associazione Nazionale Industrie Elettrotechniche e Elettroniche (ANIE), trade associations representing the Community producers of single-phase two-speed electric motors used for the manufacture of low-speed washing machines (hereinafter referred to as 'electric motors') lodged a complaint with the Commission pursuant to the provisions of Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1988 L 209, p. 1) (hereinafter referred to as 'the basic regulation'), alleging that imports of similar electric motors from Bulgaria, Romania and Czechoslovakia were being dumped.

3 The Commission, taking the view that the complaint contained sufficient evidence of dumping and consequent injury, published a notice in the *Official Journal of the European Communities* of 14 November 1989 (Official Journal 1989 C 286, p. 11) announcing the initiation of an anti-dumping proceeding, and started an investigation.

4 At the end of that investigation, which related to the period from 1 January to 30 September 1989, the Commission came to the conclusion that the imports of electric motors originating in Romania and Czechoslovakia had not caused significant injury to the Community industry. The Commission eliminated Bulgaria from the investigation as no exports from that country had been recorded during either 1988 or the investigation period.

5 Consequently the Commission, in pursuance of Article 9 of the basic regulation, adopted the contested decision.

6 In support of their action the applicants put forward two pleas concerning, on the one hand, the Commission's finding that no significant injury had resulted from the imports originating in Romania and Czechoslovakia and, on the other hand, the elimination from the investigation of imports originating in Bulgaria.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are hereinafter mentioned or discussed only in so far as is necessary for the reasoning of the Court.

The plea concerning the lack of significant injury resulting from the imports originating in Romania and Czechoslovakia

8 By this plea the applicants claim that the contested decision is manifestly erroneous inasmuch as it is based, on the one hand, on a supposed reduction in the market share represented by the imports in question and, on the other hand, on the fact that such imports are said to have had no effect on the prices charged by the Community producers. As regards those two matters, they claim that the contested decision, moreover, provides an insufficient and incorrect statement of the reasons on which it is based.

9 The Commission observes, in the first place, that it may be seen from points 8 to 16 of the contested decision that it is not exclusively based on the two grounds suggested by the applicants but that it took account of all the factors listed in Article 4(2) of the basic regulation. It therefore concludes that, even if the criticisms made by the applicants were justified, they would in no way have been sufficient to invalidate the Commission's finding with regard to the lack of significant injury.

10 That view cannot be upheld. As the Commission has itself recognized in its rejoinder, a number of essential factors, including in particular those mentioned by the applicants, led it to conclude that there was no injury. As these are essential factors, it cannot be accepted that, even if the applicants' criticisms of the Commission's assessment of these two factors were justified, the contested decision would nevertheless be valid in view of the other factors taken into account.

11 It is therefore necessary to examine the applicants' arguments regarding the two factors in question, namely the reduction of the market share represented by the imports originating in Romania and Czechoslovakia and the statement that such imports had no effect on the selling prices charged by the Community producers.

The reduction of the market share represented by the imports originating in Romania and Czechoslovakia

12 The applicants first contest the reliability of the figures used to determine the volume of the imports in question for 1986 to 1988 and for the investigation period, in so far as the figures are taken exclusively from the answers to the anti-dumping questionnaires supplied by the Romanian and Czechoslovak exporters, were not checked in any way and do not correspond to the data available to the applicants.

13 In that connection it should be emphasized that in this case the Commission was entitled to base its decision on the specific data resulting from its investigation, even if they did not correspond to the Community statistics on which the applicants rely. In fact, as the Commission has pointed out, without being challenged on that point by the applicants, the Community statistics cannot provide any evidence because they classify the electric motors under a tariff heading which includes other products as well.

14 It follows that the Commission determined the volume of imports in question on the basis of the information reasonably available to it.

15 The defendants' argument relating to the reliability of these figures must therefore be rejected.

16 Next the applicants claim that the Commission, by basing its decision on the idea that an increase in the market share covered by the imports in question was a condition *sine qua non* for a determination of injury within the meaning of Article 4(2) of the basic regulation, made an erroneous interpretation of that article.

17 It should be pointed out that in accordance with Article 4(2) of the basic regulation the examination of injury must take account of a whole series of factors, and no single factor can in itself be decisive (see the judgment in Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport* [1990] ECR I-2945, paragraph 50).

18 It may be seen from the recitals in the preamble to the contested decision that the Commission did in fact determine the injury on the basis of several of the factors set out in Article 4(2) of the basic regulation. The findings made in this respect relate in fact to the volume of imports in absolute terms and relative to Community consumption (points 8 and 9), the prices of imports (point 10), Community production (point 11), the utilization of the capacity of the Community industry (point 12), the sales of the Community industry and their market share (points 13 and 14), the selling prices of the Community producers (point 15) and their profits (point 16).

19 That assessment by the Commission is in accordance with the criteria laid down by Article 4(2) of the basic regulation for the purposes of the examination of injury even though the Commission regarded the reduction in the market share represented by the imports in question as an essential factor.

20 In those circumstances the applicants' argument to the effect that Article 4(2) of the basic regulation has been wrongly interpreted is unfounded.

21 The applicants also claim that the Commission manifestly discriminated against them by refusing for no reason to apply to this case its consistent practice of taking account only of the 'free market' when part of the Community production is sold within the 'captive market' of an integrated group, since that part cannot be regarded as being the subject of normal trading transactions and is not therefore exposed to the effects of the imports causing the price undercutting. They state that if the Commission had followed that practice it would have found not only that the imports in question represented a larger market share (39 to 40%, with more than 50% on the Italian market), but also that that share had remained stable or had slightly increased between 1986 and 1989.

22 In that respect it should be pointed out that under Article 4(2)(a) of the basic regulation the volume of imports must be examined to determine 'in particular whether there has been a significant increase, either in absolute terms or relative to production or consumption in the Community'.

23 It follows that, if the increase in imports is not expressed in absolute terms, the market share covered by the imports alleged to have been dumped must in principle be assessed in relation to the whole of Community production or consumption, that is, by reference to the volume of the 'whole market'. An exception to this rule can be justified only in so far as the market concerned shows a clear separation between a 'captive market' and the 'free market', since in such a case sales on the 'captive market' do not come into competition with products sold on the 'free market' and cannot therefore be subject to the effects of any dumping.

24 It cannot be said in this connection that the attitude adopted by the Commission in certain specific proceedings in which it referred only to the 'free market' to express the trend of the market share covered by the dumped imports constitutes a consistent practice. In fact in those proceedings the Commission, in accordance with Article 4 of the basic regulation, only applied the criteria allowing a derogation from the general rule requiring account to be taken of the 'whole market'.

25 Conversely, in this anti-dumping proceeding the Commission was right to take into account, for the purposes of the examination of injury, the volume of imports relative to the 'whole market', regard being had to a number of factors which were not contested by the applicants. Thus the electric motors, whether imported or of Community origin, are sold on the same market and used for the same purpose, namely the manufacture of washing machines. Furthermore, those producers of electric motors who are linked to washing-machine manufacturers sell also to other washing-machine manufacturers and charge for such sales more or less the same prices as those which they agree with the manufacturers to whom they are linked. Finally, the washing-machine manufacturers also buy imported electric motors as well as motors produced by the two so-called independent Community producers.

26 Regard being had to these considerations, the Commission cannot be accused of manifest discrimination against the applicants on the ground that it assessed the trend of the market share covered by the imports on the basis of the 'whole market'.

27 As regards the applicants' allegations that the Commission did not state the reasons for its refusal to take account only of the 'free market', it is sufficient to point out that, in assessing the trend of the market share covered by the imports on the basis of the 'whole market', the Commission was only applying the rule set out in Article 4(2)(a) of the basic regulation, so that no specific statement of reasons was required.

28 The applicants' argument that, by refusing for no reason to take account only of the free market, the Commission manifestly discriminated against them, must therefore also be rejected.

29 From all the foregoing considerations it follows that the complaint concerning the reduction in the market share of the imports originating in Romania and Czechoslovakia must be rejected.

The lack of effect on the prices charged by the Community producers of the imports originating in Romania and Czechoslovakia

30 The applicants state first of all that there was a basic inconsistency in the reasons put forward by the Commission for its conclusion that the imports in question had no effect on the prices charged by the Community producers, inasmuch as the Commission systematically sought reasons other than the impact of the imports in question to explain why 'the financial circumstances of Community producers seem overall to have deteriorated' as expressly mentioned in point 16 of the contested decision.

31 In this connection the applicants first claim that the increase, of some 3 or 4%, in the Community producers' selling prices, recorded for the two undertakings which were still showing a profit, namely Selni and IB-MEI, does not prove that they had suffered no injury, inasmuch as that increase would have been still greater but for the dumped imports since it only reflected the increase in production costs due to the increase in the world price of copper in 1989.

32 As regards the first part of that argument, it should be pointed out that it appears from the actual wording of Article 4(2)(c) of the basic regulation that the impact of the imports must be assessed on the basis of the trends in the relevant economic factors. That implies that it is possible to draw valid conclusions on the impact of the imports only if the Community producers' financial situation at the time of the investigation can be compared with that of preceding years.

33 However, the Commission was not in a position to make such a comparison since two of the complainant undertakings accounting for almost half the Community production during the investigation period, namely Sole and Nuova IB-MEI, supplied no data on their financial situation in preceding years. In the absence of such collaboration, the Commission was also unable to check whether the increase

in prices was actually enough to redress the Community producers' financial situation.

34 It follows that the first part of that argument must be rejected.

35 As regards the second part of the argument, the Commission stated at the hearing that an inspection of the invoices paid during the investigation period did not make it apparent that the increase in the world price for copper had had any impact on the Community producers' production costs. In that respect the Commission pointed out, without being challenged on that point by the applicants, that the prices invoiced to certain producers during that period did not reflect the increase in the world price of copper which had occurred at that time. In those circumstances the Commission was justified in thinking that there was no proof that the increase in production costs during the investigation period was due to the increase in the price of copper during that period.

36 The second part of that argument must therefore also be rejected.

37 The applicants claim in the second place that, as regards the two undertakings which recorded losses, namely Nuova IB-MEI and Sole, the Commission, whilst it had used the 'whole market' as its reference in examining the volume of imports, restricted its examination of the impact of imports to the 'free market', attributing the losses suffered to the purchasing policy of the groups, and ignored the fact that sales had been made at a loss on the 'whole market'.

38 That argument cannot be accepted. As regards the financial situation of Nuova IB-MEI, the Commission convincingly showed that that company was the subsidiary of an independent producer which was showing a profit, namely IB-MEI, and that, in the absence of any information on its financial situation in

preceding years, it had not been possible to show that the losses recorded during the investigation period had been caused by the imports in question. As regards Sole's financial situation, it should be stated that the Commission was right to assess the impact of imports on the 'free market', since sales within the group do not necessarily represent normal trading transactions so that it is not certain that the results reflect economic reality.

39 The argument that there was a basic inconsistency in the statement of the reasons which led the Commission to conclude that the imports in question had had no impact on the prices charged by the Community producers must therefore be rejected.

40 The applicants also claim that the statement of the reasons on which that conclusion is based is insufficient in so far as the Community producers are not identified and the reasons given partially overlap.

41 That argument is unfounded. In fact the Commission mentioned by name at point 5 of the contested decision the Community producers at whose premises it carried out inspections. That description also makes it possible to identify those Community producers referred to at points 15 to 17 of the contested decision regarding the examination of the Community producers' selling prices and profits. In those circumstances the Commission's statement of reasons meets the requirements of Article 190 of the Treaty as defined in the Court's consistent case-law, according to which the statement of the reasons on which a measure is based must disclose clearly and unequivocally the reasoning followed by the authority concerned in such a way as to make the persons concerned aware of the reasons involved, to enable them to defend their rights and the Court to exercise its supervisory jurisdiction (see, most recently, the judgment in Case C-69/89 *Nakajima All Precision* [1991] ECR I-2069, paragraph 14).

42 In view of all the foregoing considerations, the complaint regarding the lack of effect of the imports originating in Romania and Czechoslovakia on the selling prices charged by the Community producers is unfounded.

43 It follows that the plea relating to the absence of significant injury resulting from the imports originating in Romania and Czechoslovakia must be rejected in its entirety.

The plea concerning the elimination from the investigation of imports originating in Bulgaria

44 By this plea the applicants complain that the Commission eliminated imports originating in Bulgaria from its investigation without any reason whereas, in their complaint concerning dumping the trade associations had drawn the Commission's attention to the threat posed by the 50 000 electric motors originating in Bulgaria which had been imported into Spain in 1988.

45 It is clear from the Commission's statements that its decision to eliminate imports from Bulgaria was based on information from three sources. First, the Eurostat statistics did not mention any imports of electric motors originating in Bulgaria. Moreover the Bulgarian exporter had stated that it had not made any exports to the Community during 1988 or 1989. Finally the Spanish customs administration had confirmed that no electric motors originating in Bulgaria had been imported during either 1988 or the investigation period.

46 On the last point the applicants state that the Commission ought to have checked not only with the Spanish customs but also with the Italian and French customs whether there had been any imports.

47 It that connection it must be remembered that the Commission carried out an additional check with the Spanish customs administration on the ground that the Bulgarian exporter's statement and the figures in the Eurostat statistics contradicted the trade associations' statement that 50 000 electric motors had been imported into Spain in 1988. However, the documents in the case contained no evidence, which might have warranted an additional check, to indicate that there had been any imports into Italy or France of electric motors originating in Bulgaria.

48 In those circumstances the Commission cannot be regarded as being in any way at fault for failing to carry out such an additional check as regards imports into Italy or France.

49 The Commission's statements as a whole have not been challenged in any detail by the applicants, who have failed, in particular, to adduce any evidence regarding the import of 50 000 electric motors of Bulgarian origin.

50 In these circumstances the plea relating to the elimination of such imports must be rejected.

51 Since it has not been possible to uphold either of the pleas put forward by the applicants, the application must be dismissed in its entirety.

Costs

52 Under the terms of Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their pleas they must be ordered jointly and severally to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicants jointly and severally to pay the costs.

Grévisse Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 27 November 1991.

J.-G. Giraud
Registrar

F. Grévisse
President of the Third Chamber