ORDER OF THE PRESIDENT OF THE COURT
7 DECEMBER 1984 [1]

NTN Toyo Bearing Co. Ltd v Council of the European Communities

Case 240/84 R

Application for interim measures — Suspension of operation of a measure — Conditions for granting — Offer of securtiy — Not sufficient
(EEC Treaty, Arts. 185 and 186; Rules of Procedure, Arts 83 (2) and 86 (2))

Article 86 (2) of the Rules of Procedure, which provides that the enforcement of an interlocutory order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances, does not mean that a person who applies for the suspension of the operation of a measure is dispensed from the need to comply with the provisions of Article 83 (2) of the Rules of Procedure.

In Case 240/84 R

NTN Toyo Bearing Co. Ltd, 3-17, 1 Chome Kyomachibari, Nishi-Ki, Osaka, acting on its own behalf and on behalf of its subsidiaries and affiliates: NTN Wälzlager (Europa) GmbH, of Erkrath, NTN-France SA, of Schweighouse-sur-Moder, and NTN Bearings-GKN Ltd, of Burntwood, Walsall, represented by Malte Sprenger, Rechtsanwalt, Düsseldorf, and by Werner von Simson, Professor of Law, of the University of Freiburg im Breisgau, with an address for service in Luxembourg at the chambers of Claude Penning, Avocat, 43 Avenue du Dix-Septembre,

applicant,

1 — Language of the Case: English.

V

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Agents, M. Peeters and E. Stein, with an address for service in Luxembourg at the office of Jörg Käser, Director of the Legal Department of the European Investment Bank,

defendant,

and

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Agent, Mr Temple Lang, with an address for service in Luxembourg at the office of Manfred Beschel, Jean Monnet Building, Kirchberg,

intervener,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

delivers the following

ORDER

1 By an application dated 9 November 1984 NTN Toyo Bearing Co. Ltd sought an order suspending the application of Articles 1 and 2 of Council Regulation No 2089/84 of 19 July 1984 imposing a definitive anti-dumping duty on imports of certain ball-bearings originating in Japan und Singapore (Official Journal 1984, L 193, p. 1) until the delivery of the final judgment in Case 240/84 *(NTN* v *Council).*

2 That application, which was lodged at the Registry of the Court on 15 November 1984, was brought under Articles 185 and 186 of the EEC Treaty and Article 83 of the Rules of Procedure.

3 The applicant refers to its application for the annulment of Articles 1 and 2 of the aforesaid Regulation No 2089/84, which application it lodged at the Registry of the Court on 1 October 1984.

4 Under Article 83 (2) of the Rules of Procedure of the Court, applications for the adoption of interim measures must state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

5 In this regard, the applicant has merely stated that the immediate payment of the anti-dumping duties will impose on it financial burdens which would be unnecessary if it succeeded in the main action. It submits that the interests of the Community would be fully protected by the security which it has provided regarding the performance of its obligations up to the amounts payable by it under Articles 1 and 2 of the aforesaid regulation. It also cited the Order of the President of the Court of 14 October 1977 in Case 113/77 R and 113/77 R Int. *(NTN Toyo Bearing Co. Ltd* v *Council,* [1977] ECR 1721), stating that it had made deposits of security in the amount of the anti-dumping duty and that the deposits would be maintained in force until the delivery of the judgment.

6 It must be noted that Article 86 (2) of the Rules of Procedure, which provides that the enforcement of an interlocutory order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances, does not mean that a person who applies for the suspension of the operation of a measure is dispensed from the need to comply with the provisions of Article 83 (2) of the Rules of Procedure.

7 It is apparent that the applicant has failed to satisfy the conditions laid down in the last-mentioned provision, since the application states neither the circumstances giving rise to urgency nor the factual and legal grounds capable of justifying the suspension of the operation of the aforesaid Council regulation. The application must therefore be declared inadmissible.

On those grounds,

by way of an interlocutory ruling,

THE PRESIDENT

orders:

The application for interim measures is dismissed.

Luxembourg, 7 December 1984

J. A. Pompe
Deputy Registrar

A. J. Mackenzie Stuart
President