Case 256/84

Koyo Seiko Co. Ltd
v
Council and Commission of the European Communities

Summary

Application for annulment — Council regulation imposing a definitive anti-dumping duty — Action against the Commission — Inadmissibility
(EEC Treaty, Art. 173; Council Regulations Nos 3017/79 and 2089/84)

Having regard to the role assigned to the Commission by Regulation No 3017/79 in the procedure leading to the adoption by the Council of a regulation imposing a definitive anti-dumping duty, an application for the annulment of such a regulation may be brought only against the Council, which alone exercises the power of decision in that regard.

ORDER OF THE COURT
8 May 1985 *

In Case 256/84

Koyo Seiko Co. Ltd

v

* Language of the Case: French.

Council and Commission of the European Communities,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

makes the following

ORDER

Facts and Issues

By an application dated 2 November 1984 Koyo Seiko Co. Ltd brought an action against the Council and the Commission of the European Communities for a declaration that Council Regulation (EEC) No 2089/84 of 19 July 1984 imposing a definitive anti-dumping duty on imports of certain ball-bearings originating in Japan and Singapore (Official Journal 1984, L 193, p. 1) was void.

By a document lodged at the Court Registry on 11 December 1984 the Commission raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure of the Court seeking a declaration that the application was inadmissible in so far as it was directed against the Commission.

By a document lodged at the Court Registry on 12 March 1985, the applicant, which relies on the judgment of 29 March 1979 (Case 120/79 *Koyo Seiko* v *Council and Commission* [1979] ECR 1337) in which the Court accepted that the Commission was a proper defendant even though application was for a declaration that a Council regulation was void, has replied to the Commission's objection by contending that the Council acted on the basis of a proposal submitted by the Commission and that only the latter is in a position to reply to all the arguments advanced in support of the application for annulment.

On the basis of paragraph 34 of the above-mentioned judgment, the applicant considers that the Commission is a proper

defendant in this case because of the active role it played in the adoption of the contested decision, for which it did not merely submit propoals.

The applicant also states that its action further seeks to establish the unlawful character of the procedure leading up to the adoption of the contested Council regulation, inasmuch as the Commission, in Decision 81/406 of 4 June 1981 (Official Journal 1981, L 152, p. 44), accepted the applicant's undertakings to modify its prices and consequently could not pursue the procedure and propose that the Council impose a definitive anti-dumping duty.

Decision

1 Under Article 91 (3) of the Rules of Procedure, the remainder of the proceedings is to be oral unless the Court decides otherwise. In this case, the Court considers that it has sufficient information and that there is thus no need to open the oral procedure.

2 The conclusions in the application refer expressly and exclusively to Council Regulation No 2089/84 of 19 July 1984.

3 Furthermore, the Court observes that the Commission's role forms an integral part of the Council's decision-making process. It appears from the provisions of Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1979, L 339, p. 1) on the basis of which the contested regulation was adopted, that the Commission is responsible for carrying out the necessary investigations and for deciding, on the basis of those investigations, whether to terminate the proceedings or to continue them by adopting provisional measures and by proposing that the Council adopt definitive measures. However, the power of decision belongs to the Council, which is not obliged to take any decision at all if it disagrees with the Commission or may, if it wishes, adopt a decision on the basis of the latter's proposals.

4 Consequently, the application for a declaration that Council Regulation No 2089/84 is void is inadmissible in so far as it is directed against the Commission.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application in so far as it is directed against the Commission;

(2) Orders the applicant to pay the costs relating to the objection of inadmissibility raised in pursuance of Article 91 of the Rules of Procedure.

Luxembourg, 8 May 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President