Case 150/87

Nashua Corporation and Others
v
Council and Commission of the European Communities

(Admissibility)

Order of the Court, 11 November 1987 4421

Summary of the Order

Action for a declaration that a measure is void — Council Regulation imposing a definitive anti-dumping duty — Action directed against the Commission — Inadmissibility
(EEC Treaty, Art. 173; Council Regulations Nos 2176/84 and 535/87)

In view of the role which Regulation No 2176/84 assigns to the Commission in the procedure resulting in the adoption by the Council of a regulation imposing a definitive anti-dumping duty, an action for a declaration that such a regulation is void can be brought only against the Council, which also has the power of decision in the matter.

ORDER OF THE COURT
11 November 1987 *

In Case 150/87

(1) **Nashua Corporation,** whose head office is in Nashua, New Hampshire 03061, United States of America,

* Language of the Case: English.

(2) **NV Nashua Belgium SA,** whose head office is in Overijse, Belgium,

(3) **Nashua Copycat Limited,** whose head office is in Berkshire, England,

(4) **Nashua Copygraph GmbH,** whose head office is in Hanover, Germany,

(5) **Nashua Denmark A/S,** whose head office is in Glostrup, Denmark,

(6) **Nashua France SA,** whose head office is in Créteil, France,

(7) **Nashua Nederland BV,** whose head office is in 'sHertogenbosch, the Netherlands,

(8) **Nashua International Limited,** whose head office is in Hamilton, Bermuda,

(9) **Nashua Reprographics SpA,** whose head office is in Milan, Italy, and

(10) **Nashua España SA,** whose head office is in Barcelona, Spain,

represented by Michael Hutchings and John Pheasant, Solicitors, of Lovell, White & King, 489 avenue Louise, 1050 Brussels, with an address for service in Luxembourg at the Chambers of J. C. Wolter, 8 rue Zithe,

applicants,

v

Council of the European Communities, represented by Hans-Jürgen Lambers, a director in its Legal Department, and its Legal Adviser Erik H. Stein, acting as Agents, assisted by H.-J. Rabe and M. Schütte, of Schön and Pflüger, Hamburg and Brussels, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad Adenauer, Kirchberg,

and

Commission of the European Communities, represented by its Legal Adviser John Temple Lang, 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,

defendants,

APPLICATION for the annulment of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan,

THE COURT

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

Advocate General: J. Mischo
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 13 May 1987, Nashua brought an action pursuant to the second paragraph of Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan, in so far as it concerns the applicants..

2 By a document lodged at the Court Registry on 27 July 1987, the Commission raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure seeking a declaration that the application was inadmissible in so far as it was directed against the Commission. In support of its submission the Commission relied on the orders of the Court of 8 May 1985 in Case 256/84 *Koyo Seiko* v *Council and Commission* ECR 1351, and Case 260/84 *Minebea* v *Council.*

3 In a document lodged at the Court Registry on 24 September 1987 the applicants argued that the Commission's decision to reject their undertaking was unlawful

and that the direct consequence of the Commission's unlawful act was to invalidate the regulation referred to above in so far as it concerns the applicants.

4 The applicants point out to the Court that the legality of the Commission's decision to reject the undertaking offered by the applicants is the subject of separate proceedings before the Court (Case 133/87 *Nashua Corporation* v *Commission*). They take the view that if final judgment is not given in Case 133/87 before the Court considers its judgment in this case, the legality of the Commission's rejection of the applicants' undertaking will be an issue of prime importance for the Court's decision in Case 150/87. Consequently, the Court must have the opportunity of seeking further information from the Commission or of putting questions to the Commission's agent at the hearing.

5 Pursuant to Article 91 (3) of the Rules of Procedure, unless the Court decides otherwise the remainder of the proceedings on the objection are to be oral. The Court does not consider it necessary to open the oral procedure; in accordance with Article 91 (4), it will rule on the objection on the basis of the written observations of the parties.

6 The Court has already held that the Commission's role forms an integral part of the Council's decision-making process (order of the Court of 8 May 1985 in Case 256/84 *Koyo Seiko* v *Council and Commission* ECR 1351; order of the Court of 15 October 1986 in Case 299/85 *Tokyo Juki* v *Council and Commission* ECR 2965).

7 It is clear from the provisions 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), 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 make 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.

8 Consequently, the Commission's decision, as part of that process, to reject an undertaking does not necessarily mean that the Council will adopt a decision on the basis of the proposals subsequently submitted to it by the Commission.

9 It follows from the foregoing that the application for the annulment of Council Regulation No 535/87 is inadmissible in so far as it is directed against the Commission.

On those grounds,

THE COURT

hereby:

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

(2) Orders the applicants to pay the costs relating to the objection of inadmissibility raised by the Commission pursuant to Article 91 of the Rules of Procedure.

Luxembourg, 11 November 1987.

Acting as President

P. Heim
Registrar

G. Bosco
President of Chamber