ORDER OF THE PRESIDENT OF THE COURT
9 April 1987 *

In Case 77/87 R

Technointorg, an independent foreign trade association having its registered office in Moscow, USSR, represented by E. Marissens, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Dupong, 14A rue des Bains,

applicant,

v

Council of the European Communities, represented by H.-J. Lambers and E. H. Stein, members of its Legal Department, acting as Agents, assisted by F. Jacobs, Queen's Counsel, with an address for service in Luxembourg at the offices of J. Käser, Director of the Legal Affairs Department of the European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

supported by

Commission of the European Communities, represented by J. Temple Lang, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the offices of G. Kremlis, Jean Monnet Building, Kirchberg,

intervener,

application primarily for an order suspending, as regards the applicant, the operation of Council Regulation No 29/87 of 22 December 1986 imposing a definitive anti-dumping duty on imports of certain deep-freezers originating in the Soviet Union (Official Journal 1987, L 6, p. 1), on condition that it continues to provide a security for the performance of its obligation under Commission Regulation No 2800/86 of 9 September 1986 imposing a provisional anti-dumping duty on imports of certain deep-freezers originating in the USSR (Official Journal 1986, L 259, p. 14),

* Language of the Case: English.

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By an application lodged at the Court Registry on 18 March 1987, Technointorg brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Regulation No 29/87 of 22 December 1986, imposing a definitive anti-dumping duty on imports of certain deep-freezers originating in the Soviet Union, is void in so far as that regulation applies to it.

2 By an application lodged at the Court Registry on the same day, the applicant requested the Court, under Article 186 of the EEC Treaty, Article 36 of the Protocol on the Statute of the Court of Justice of the EEC and Article 83 of the Rules of Procedure, to make an interim order suspending, as regards the applicant, the operation of Council Regulation No 29/87 until the Court has given judgment in the main proceedings, on condition that it continues to provide a security for the performance of its obligation under Commission Regulation No 2800/86. At the hearing, the applicant amended its application and stated that it was to be understood as seeking the suspension of the operation of Council Regulation No 29/87 for as long as it provided a security for the performance of its obligation under that regulation. In addition, the application requests an order that the competent customs authorities of the Member States be informed of the interlocutory decision prescribing the interim measure requested.

3 By an order of 23 March 1987, the Commission was granted leave to intervene in support of the defendant's conclusions under the first paragraph of Article 37 of the Protocol on the Statute of the Court of Justice of the EEC. It submitted written observations on 1 April 1987.

4 The defendant submitted its written observations on 1 April 1987. The parties presented oral argument on 6 April 1987.

5 Before examining the merits of this application for interim measures, it would seem useful to recall briefly the various stages of the anti-dumping proceeding which preceded the adoption by the Council of Regulation No 29/87.

6 In September 1985, the European Committee of Manufacturers of Electrical Domestic Equipment, on behalf of manufacturers accounting for virtually all Community production of freezers, lodged a complaint with the Commission in accordance with Article 5 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), alleging that imports of certain freezers originating in a number of East European countries, in particular the USSR, were being dumped and were therefore causing injury to the Community industry. The products concerned by that complaint are domestic electrical deep-freezers used to freeze and store fresh food products, falling under subheading ex 84.15 C II of the Common Customs Tariff and corresponding to Nimexe Codes 84.15-32, 84.15-41 and 84.15-46.

7 Considering that that complaint contained sufficient evidence of dumping and of resultant injury, the Commission, in a notice of 11 December 1985 (Official Journal 1985, C 319, p. 3), announced the initiation of an anti-dumping proceeding, pursuant to Article 7 of Council Regulation No 2176/84, and commenced the necessary investigation. In the course of that investigation it became clear that it was necessary to distinguish for that purpose between two types of deep-freezer in respect of which allegations of dumping were made, namely chest freezers (Nimexe Code 84.15-32) and upright freezers (Nimexe Codes 84.15-41 and 84.15-46), on the ground that those products did not constitute 'like products' within the meaning of the anti-dumping rules.

8 With regard to chest freezers, the Commission at the end of its preliminary investigation reached the conclusion that imports of those products could not have caused material injury to the Community industry. It therefore decided in Article 4 of Regulation No 2800/86 to terminate the anti-dumping proceeding with regard to that type of freezer.

9 With regard to upright freezers, on the other hand, and in particular those originating in the USSR, the Commission's preliminary investigation revealed the existence of dumping and various signs of material injury such as, in particular, a substantial increase in the volume of imports of those products into the common market and a corresponding increase in their share of the Community market, and also the existence of substantial price undercutting in those products. On the basis of those findings, the Commission took the view that the interests of the Community required the imposition of a provisional anti-dumping duty on imports of those products in order to prevent further injury from being caused to the Community industry during the anti-dumping proceeding. By Article 1 of Regulation No 2800/86 it therefore imposed on imports of upright freezers (Nimexe Codes 84.15-41 and 84.15-46) originating in the USSR a provisional anti-dumping duty equal to 33% of the net free-at-Community-frontier price, not cleared through customs, for a period of four months commencing on 11 September 1986. Article 1 (4) provides that the release for free circulation in the Community of that type of freezer is to be subject to the provision of a security equivalent to the amount of the provisional duty.

10 At this point it would appear relevant to mention that the applicant has already, by an application for interim measures lodged in Case 294/86 R on 26 November 1986, applied for the suspension, with regard to it, of the operation of Article 1 of Commission Regulation No 2800/86, pending the Court's judgment in the main proceedings, on condition that it continued to provide security for the performance of its obligation in the amount which it was required to pay under that article (order of 17 December 1986 in Case 294/86 R *Technointorg* v *Commission* [1986] ECR 3979). The President of the Court dismissed that application principally on the ground that to grant the applicant's request that the measure should be suspended until the Court had given judgment on the main application would be tantamount to depriving the Council of the power conferred upon it by Article 12 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 (cited above). The President also came to the view that the damage suffered by the applicant was limited to the cost of providing a security for a period of four months and that such a disadvantage could not constitute serious and irreparable damage to it.

11 On 22 December 1986, pursuant to Article 12 of Council Regulation No 2176/84, the Council adopted Regulation No 29/87. Article 1 of that regulation imposes a definitive anti-dumping duty of 33% on the aforesaid freezers, while Article 2 provides that the provisional anti-dumping duty provided for by Commission Regulation No 2800/86 is to be collected definitively.

12 Under the terms of Article 185 of the EEC Treaty, actions brought before the Court of Justice do not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended. Under Article 186 of the EEC Treaty it may also prescribe any necessary interim measures.

13 In order that an interim measure such as that requested in this case may be prescribed, Article 83 (2) of the Rules of Procedure requires that an application for such a measure should state the circumstances giving rise to urgency and the factual and legal grounds establishing a prima-facie case for the interim measure applied for.

14 It follows from a consistent line of decisions of the Court that the urgency required by Article 83 (2) of the Rules of Procedure in regard to an application for interim measures must be considered in relation to the need to adopt such measures in order to prevent serious and irreparable damage from being caused to the party requesting those measures.

15 In that regard the applicant maintains that it would suffer serious damage since the collection of a definitive anti-dumping duty of 33% on imports of its products would result in a substantial rise in the price of those products and this would affect their competitiveness to the extent of making their sale difficult or even impossible. Such a price rise would also have the effect of bringing about a reduction or even the complete elimination of its market share. Its correspondence with Community importers, both independent and associated, copies of which are annexed to the application, shows clearly that the sale of Technointorg's products has actually ceased since the entry into force of Article 1 of Commission Regulation No 2800/86. The imposition of a 33% definitive anti-dumping duty can

only accentuate the drop in its sales. The damage caused to the applicant by that state of affairs would be not only serious but also irreparable because, even if it succeeded in its main application, the damage would have been caused. Upright freezers originating in the USSR would have been excluded from the market for more than a year without there being any certainty that they would ever regain a place in the market.

16 It must be observed that, in seeking to demonstrate the urgency of its application, the applicant confines itself to describing effects which are inherent in the imposition of anti-dumping duties, namely a rise in the price of its products and a consequent diminution of its market share. It is in the very nature of anti-dumping duties that they should result in an increase in the price of the product in question because their purpose is to counterbalance the dumping margin which has been established and to protect the Community industry against the injury caused by dumping.

17 Although it may be that in certain cases it is necessary to suspend the imposition of a definitive anti-dumping duty in order to prevent serious and irreparable damage from being caused to the party requesting suspension of the measure, nevertheless it is clear from a consistent line of decisions of the Court that that party must at least adduce evidence showing that:

(a) first, the damage suffered by the applicant as a result of the imposition of the anti-dumping duty is special to it (see in particular the order in Case 258/84 R *Nippon Seiko* v *Council* [1984] ECR 4357);

and

(b) secondly, the balance of the interests at stake points in its favour in the sense that the grant of the interim measures requested would not cause appreciable injury to the Community industry (see in particular the order in Case 250/85 R *Brother Industries* v *Council* [1985] ECR 3459).

18 It must be said that the applicant has adduced no such evidence. The Council and the Commission, on the other hand, have shown that the adoption of the interim measure requested would cause appreciable injury to the interests of the European Economic Community. The mere requirement of a security, for which the

applicant is arguing, would have considerably less protective effect than the collection of the anti-dumping duty itself, and hence such a measure would not take sufficient account of the interests of the Community industry and would be liable to nullify the effect intended by the imposition of a definitive anti-dumping duty.

19 It must further be stated that the applicant has not succeeded in demonstrating that the damage which it suffers from the imposition of such a duty in this case is special to itself. The damage which it claims to suffer is of a kind which may generally occur whenever a definitive anti-dumping duty is imposed.

20 It follows from the foregoing that the applicant has not put forward any conclusive argument demonstrating that it would suffer serious and irreparable damage if the interim measure which it requests were refused.

On those grounds,

THE PRESIDENT

by way of interim decision

hereby orders as follows:

(1) The application is dismissed.

(2) Costs are reserved.

Luxembourg, 9 April 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President