ORDER OF THE PRESIDENT OF THE COURT
14 OCTOBER 1977 [1]

NTN TOYO Bearing Co., Ltd.
v Council of the European Communities

Case 113/77 R and 113/77 R-Int.

In Cases 113/77 R and 113/77 R-Int.,

NTN TOYO BEARING CO., LTD., Osaka, acting on its own behalf and on behalf of its subsidiaries or affiliates NTN Wälzlager (Europa) GmbH, Erkrath, NTN-Roulements Sidag S.A., Schweighouse-sur-Moder, and NTN Bearings-GKN Ltd., Burntwood, Walsall, represented by Dr. W. Stoecker and Malte Sprenger, of the Düsseldorf Bar, Dr. Werner von Simson, Professor of Law, University of Freiburg im Breisgau, and Martin von Simson, Barrister, of the Middle Temple, London, with an address for service in Luxembourg at the Chambers of Danielle d'Itnart, 11 A, Boulevard Prince Henri,

applicant,

and

(1) NIPPON SEIKO K.K., Tokyo,

(2) NSK BEARINGS EUROPE LTD., London,

(3) NSK KUGELLAGER GMBH, Ratingen,

(4) NSK FRANCE S.A., Clichy,

represented by Jeremy Lever, Queen's Counsel, of Gray's Inn, David Vaughan, Barrister, of the Inner Temple, London, and Messrs Coward Chance, Solicitors, London, with an address for service in Luxembourg at the Chambers of J. C. Wolter, 2, Rue Goethe,

interveners,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Brückner, assisted by Mr Beseler, Counsel for the Commission of the

1 — Language of the Case: English.

European Communities, with an address for service in Luxembourg at the office of Mr Van den Houten, European Investment Bank, Place de Metz,

defendant,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

ORDER

Facts

1. Article 15 (1) (a) of Regulation (EEC) No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community (OJ, English Special Edition 1968 (I), p. 80) provides as follows:

Where preliminary examination of the matter shows that there is dumping and there is sufficient evidence of injury and the interests of the Community call for immediate intervention, the Commission ... shall:

— ..., fix an amount to be secured by way of provisional anti-dumping duty, collection of which shall be determined by the subsequent decision of the Council under Article 17;

...

— stipulate that entry of such products for Community consumption shall be conditional upon the provision of security for the aforementioned amount.

Having regard in particular to the aforesaid article, the Commission of the European Communities, by Regulation (EEC) No 261/77 of 4 February 1977 (OJ L 34, 1977, p. 60):

— Imposed a provisional anti-dumping duty of 20 % on ball bearings, tapered roller bearings and parts of those two types of bearings, originating in Japan;

— Ordered that the entry of those products into free circulation should be conditional upon the deposit of security for the amount of the provisional duty.

By Council Regulation (EEC) No 944/77 of 3 May 1977 (OJ L 112, 1977, p. 1), the provisional duty was extended for a period not exceeding three months. The regulation was to apply 'until the entry into force of a Council act adopting definitive measures or, at the latest, until the expiry of a period of three months beginning on 5 May 1977'.

The definitive measures in question were adopted by Council Regulation (EEC) No 1778/77, of 26 July 1977 (OJ L 196, 1977, p. 1), which entered into force on 4 August 1977. This regulation:

— Imposed a definitive anti-dumping duty of 15 % on ball bearings and tapered roller bearings originating in Japan (Article 1 (1));

— Suspended, under given conditions, the application of this duty (Article 1 (2));
— Ordered that the amounts secured by way of provisional duty under the provisions of Regulations Nos 261/77 and 944/77, in respect of products manufactured and exported by — among others — NTN TOYO Bearing Co. Ltd. (hereinafter referred to as 'NTN') and Nippon Seiko K.K. (hereinafter referred to as 'NSK'), 'shall be definitively collected to the extent that they do not exceed the rate of duty fixed in this regulation', that is, 15 % (Article 3).

2. On 20 September 1977 NTN, 'on its own behalf and on behalf of its subsidiaries and affiliates in the Common Market', lodged an application against the Council in which it claimed that Article 3 of Regulation (EEC) No 1778/77, in so far as it applies to NTN and its subsidiaries and affiliates (hereinafter collectively referred to as 'the NTN Group'), should be declared inapplicable (Case 113/77).

On 28 September 1977 NTN in addition applied to the Court in pursuance of Articles 185 and 186 of the EEC Treaty for the adoption of interim measures ordering that the aforementioned Article 3 'is suspended and shall not be enforceable before the Court has passed its decision [in Case 113/77] ... with the effect that the Commission may, without undue delay, instruct the authorities of the Member States to abstain from the implementing of [the aforesaid Article 3] and to withdraw and cancel any request for payment' (Case 113/77 R).

The latter application was lodged both in NTN's own name 'and on behalf of its subsidiaries and affiliates in the Common Market'. In the oral procedure on 10 October 1977 NTN stated that in Case 113/77 R the NTN Group, apart from NTN itself, consisted of the following companies: NTN Wälzlager (Europa) GmbH, NTN-Roulements Sidag S.A. and NTN Bearings-GKN Ltd.

In support of this application NTN states essentially as follows:

As appears from the documents in the file, the competent British, French and German customs authorities are insisting that the NTN Group shall pay forthwith the amounts arising under the aforementioned Article 3 of Regulation (EEC) No 1778/77;

The applicant is ready to maintain in force the security provided, in pursuance of Regulations Nos 261/77 and 944/77, in the form of bank guarantees. In these circumstances there is no necessity to insist on the immediate implementation of Article 3 of Regulation No 1778/77;

The immediate payment of the sums demanded would burden the NTN Group with additional financing costs. The cost of maintaining the security is stated to be considerably less than the expenditure which, if the NTN Group were now to pay the sums arising under Article 3 of Regulation No 1778/77, it would definitively incur — even in the event of NTN's succeeding in the main action. It must be assumed that in that event the national customs authorities would simply reimburse the sums paid but would not pay interest.

The Council contends that the application should be dismissed. The applicant has failed to establish *prima facie* that it would suffer serious and irreparable injury if the relief sought were not granted. The Council does not contest the statement that the NTN Group would incur additional financing costs if payment were to be made forthwith. However, these additional charges are trifling in comparison with the turnover of the companies concerned and could be recovered if the applicant were to succeed in the main action. Moreover the interests of the Community require that Community regulations be immediately complied with; circumstances justifying an exception are not present in this case.

3. By a document dated 7 October 1977, lodged at the Court on the same day, NSK and its subsidiaries NSK Bearings Europe Ltd., NSK Kugellager GmbH and NSK France S.A. (hereinafter collectively referred to as 'the NSK Group' applied in pursuance of Article 37 of the Protocol on the Statute of the Court of Justice of the EEC to intervene in Case 113/77 R in support of NTN. In addition they claimed in the oral procedure that the Council should be ordered to pay the costs of the intervention.

The abovementioned companies state that they have an interest in the granting of NTN's application for the adoption of interim measures. They state that it is their intention also to lodge forthwith an application for a declaration that Article 3 of Regulation No 1778/77 is inapplicable and at the same time to lodge an application for the adoption of interim measures. If the Court were to reject the application of NTN there would be a risk that its decision would be based on considerations of principle which might prevent it from granting a corresponding application from the NSK Group.

On 10 October 1977 the NSK Group lodged with the Court an application for a declaration of the inapplicability of the aforementioned Article 3 and an application for the adoption of interim measures (Cases 119/77 and 119/77 R).

NTN states that it has no objection to the admission of the companies in question as interveners. The Council, however, contends that the application to intervene should be dismissed. The NSK Group has not, it is claimed, established any interest in the result of Case 113/77 R as each of the two applications for the adoption of interim measures must be adjudged on its own merits.

4. On 10 October 1977 the parties presented oral argument before the President of the Court of Justice and answered questions put by the President regarding the application of the NSK Group to be allowed to intervene and regarding the application by NTN for the adoption of interim measures. NTN explained, in the absence of the representatives of the NSK Group, that in the event of the dismissal of the application for the adoption of interim measures additional monthly expenditure of a considerable amount, of which details were provided by NTN, would be incurred by it or by the NTN Group until the delivery of judgment in the main action, Case 113/77. NTN asked that the abovementioned details should be treated as confidential.

Decision

1 (1) The NSK Group has established that it has an interest in the result of Case 113/77 R. In the present situation it cannot be excluded that considerations which are of decisive importance for the decision in this case may also be of significance for the decision in Case 119/77 R.

2 The application of the NSK Group to intervene must therefore be allowed.

3 The admission of the NSK Group as interveners is closely related to the application lodged by this group for the adoption of interim measures and to its application in the main action (Cases 119/77 R and 119/77). It therefore appears appropriate to reserve the decision regarding the costs of the intervention for the final judgment in Case 119/77.

4 (2) The Council has not contested that the competent British, French and German customs authorities are insisting that the payments required under Article 3 of Regulation No 1778/77 shall be made forthwith. Nor has it contested that the NTN Group will incur the additional charges referred to by NTN in the event of the dismissal of the latter's application for the adoption of interim measures.

5 It has not been possible to establish conclusively within the context of the present proceedings whether, in the event of NTN's being successful in the main action, this expenditure would be wholly recouped.

6 Having regard to the probable duration of the procedure in the main action, charges at the rate quoted by the applicant cannot be regarded as negligible.

7 On the other hand the Council has not been able to demonstrate that the adoption of the interim measures applied for would cause appreciable detriment to the European Economic Community if the NTN Group were to maintain the existing bank guarantees in the sums to be paid in accordance with Article 3 of Regulation No 1778/77 and if NTN were to be unsuccessful in the main action.

8 NTN has thus substantiated the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the suspension of the application, as far as the NTN Group is concerned, of the abovementioned Article 3 (Article 83 (2) of the Rules of Procedure of the Court of Justice).

9 To that extent therefore the application of the said article must be suspended until the final judgment in the case of *NTN* v *Council* (Case 113/77) on condition that and for so long as the NTN Group continues to provide security for the performance of its obligation in the amounts which it is required to pay in pursuance of Article 3 of Regulation No 1778/77.

10 The decision with regard to costs should be reserved for the final judgment in Case 113/77.

On those grounds,

The President,

as an interlocutory decision, hereby orders as follows:

1. **The intervention of Nippon Seiko K.K., NSK Bearings Europe Ltd., NSK Kugellager GmbH and NSK France S.A. in this interlocutory procedure is allowed;**

   Costs of the intervention are reserved for the final judgment in the case of NSK and Others v Council (Case 119/77);

2. **The application to NTN, NTN Wälzlager (Europa) GmbH, NTN-Roulements Sidag S.A. and NTN Bearings-GKN Ltd. of Article 3 of Council Regulation (EEC) No 1778/77 is suspended until the final judgment in the case of NTN v Council (Case 113/77), on condition that and for so long as these companies continue to provide security for the performance of their obligation in the amounts which they are required to pay in pursuance of the aforementioned Article 3;**

3. **Costs of the application for the adoption of interim measures are reserved for the final judgment in the case of NTN v Council (Case 113/77).**

Luxembourg, 14 October 1977.

A. Van Houtte — Registrar

H. Kutscher — President