JUDGMENT OF THE COURT (Third Chamber)
28 March 1996 *

In Case C-99/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht Rheinland-Pfalz (Germany) for a preliminary ruling in the proceedings pending before that court between

Robert Birkenbeul GmbH&Co. KG

and

Hauptzollamt Koblenz

on the interpretation of Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR (OJ 1986 L 280, p. 68), and of Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union, and definitively collecting the amounts secured as provisional duties (OJ 1987 L 83, p. 1),

* Language of the case: German.

THE COURT (Third Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida and C. Gulmann, Judges,

Advocate General: N. Fennelly,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Robert Birkenbeul GmbH&Co. KG, by Dietrich Ehle and Thomas Knaak, of the Cologne Bar,

— the French Government, by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Nicolas Eybalin, Secretary of Foreign Affairs in the same Directorate, acting as Agents,

— the Commission of the European Communities, by Claudia Schmidt and Eric White, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Robert Birkenbeul GmbH&Co. KG and the Commission at the hearing on 7 December 1995,

after hearing the Opinion of the Advocate General at the sitting on 30 January 1996,

gives the following

Judgment

1 By order of 9 March 1994, received at the Court on 22 March 1994, the Finanzgericht Rheinland-Pfalz (Finance Court, Rhineland-Palatinate) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR (OJ 1986 L 280, p. 68, hereinafter 'the provisional regulation'), and of Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union, and definitively collecting the amounts secured as provisional duties (OJ 1987 L 83, p. 1, hereinafter 'the definitive regulation').

2 Those questions were raised in proceedings between Robert Birkenbeul GmbH&Co. KG (hereinafter 'Birkenbeul') and the Hauptzollamt Koblenz (Principal Customs Office, Koblenz, hereinafter 'the Customs Office'), concerning anti-dumping duties on parts of electric motors imported from Czechoslovakia.

3 An anti-dumping duty was imposed, provisionally at first by Article 2(1) of the provisional regulation and then definitively by Article 1(1) of the definitive regulation, 'on imports of standardized, multi-phase electric motors having an output

of more than 0.75 kW but not more than 75 kW, falling within subheading ex 85.01 B I b) of the Common Customs Tariff, corresponding to NIMEXE code ex 85.01-33, 85.01-34 or 85.01-36, originating in (...) Czechoslovakia (...)'. According to Article 1(2) of the definitive regulation, the expression 'standardized multi-phase electric motors' includes 'all motors which are subject to international standardization, in particular to that of the International Electrotechnical Commission'.

4 Under Article 2(2) of the provisional regulation and Article 1(3) of the definitive regulation, 'the amount of duty shall be equal, for each type of motor, to the difference between the net unit price, free-at-Community-frontier, not cleared through customs, and the price specified in the Annex', which contains a table of minimum prices on importation into the Community of certain standardized multi-phase electric motors.

5 Finally, in accordance with Rule 2(a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, contained in Council Regulation (EEC) No 3618/86 of 24 November 1986 amending Regulation (EEC) No 3331/85 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (OJ 1986 L 345, p. 1): 'Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), imported unassembled or disassembled.'

6 In 1987 and 1988 Birkenbeul imported from Czechoslovakia batches of motor parts (stators with windings of standardized, multi-phase electric motors and rotors with shafts of similar motors) which together, in the view of the Customs Office, had the essential character of a complete or finished standardized multi-phase electric motor within the meaning of the General Rules for the

Interpretation of the Nomenclature of the Common Customs Tariff. Consequently, the Customs Office requested the importer to pay, in addition to customs duty, the anti-dumping duty relating to the motors covered by the provisional and definitive regulations.

7 After an unsuccessful complaint to the Customs Office, Birkenbeul brought an action before the Finanzgericht Rheinland-Pfalz claiming, chiefly, that the imports at issue did not include certain parts (in particular end bearing-plates for the driving and reverse ends) without which a motor cannot work, with the result that they did not have the essential character of a complete or finished motor.

8 Considering that resolution of the dispute depended on an interpretation of the regulations cited above, the Finanzgericht Rheinland-Pfalz referred the following questions to the Court:

'1. Are Commission Regulation (EEC) No 3019/86 of 30 September 1986 and Council Regulation (EEC) No 864/87 of 23 March 1987 to be interpreted as imposing anti-dumping duty only on imports of complete or finished (even if presented unassembled or disassembled) standardized multi-phase motors, within the meaning of Article 2(1) of Regulation No 3019/86 and Article 1(1) and (2) of Regulation No 864/87,

or

do those regulations also cover incomplete or unfinished goods which, by virtue of Rule 2(a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, fall to be classified as complete or finished standardized multi-phase electric motors?

2. If the second alternative in Question 1 is answered in the affirmative:

Which parts of a standardized multi-phase electric motor, either alone or in combination, have the essential character of a complete or finished standardized multi-phase electric motor,

and, in particular,

is even a stator and winding together with a rotor and shaft to be subject to anti-dumping duty?

3. If Question 2 is answered in the affirmative:

What rate of anti-dumping duty should be applied to imported parts of standardized multi-phase electric motors, and how, and under which provisions, is the duty on the imported motor parts to be accurately and fairly calculated, if necessary?'

Question 1

9 By that question, the national court seeks to ascertain whether the relevant regulations apply to complete or finished motors only or whether they also apply to

incomplete or unfinished goods which possess the essential characteristics of the complete or finished article, within the meaning of Rule 2(a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff.

10 Birkenbeul and the Commission maintain that even if the abovementioned regulations refer to the provisions in force concerning customs duties, they constitute special legislation providing for the levying of anti-dumping duty on complete or finished electric motors exclusively.

11 The French Government, on the other hand, is of the opinion that since protection against dumping requires the creation of duties similar to customs duties, it is reasonable for the authorities responsible in each Member State for laying down the tariff classification of products which may be liable to anti-dumping duties to rely on the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff.

12 First of all, the Court has consistently held that in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (see in particular Case C-136/91 *Findling Wälzlager Handelsgesellschaft* v *Hauptzollamt Karlsruhe* [1993] ECR I-1793, paragraph 11).

13 As regards the wording of the legislation in question, it is apparent from Article 2(5) of the provisional regulation and Article 1(5) of the definitive regulation that the provisions in force with regard to customs duties are to apply, subject to the

provisions of those regulations. Consequently, the customs provisions can only apply in so far as they are not contrary to the specific provisions of the abovementioned regulations.

14 Next, as the President of the Court has already had occasion to note (see the order in Case 304/86 R *Enital* v *Council and Commission* [1987] ECR 267, paragraph 15), the reference in those regulations to subheading ex 85.01 B I (b) of the Common Customs Tariff does not concern parts, which come within subheading 85.01 C.

15 Furthermore, Rule 2(a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, which provides that reference in a heading of the Common Customs Tariff to an article is to be taken to include a reference to that article even if incomplete or unfinished, provided that it has the essential characteristics of the complete or finished article, does not necessarily apply in an anti-dumping case where the relevant rules refer to such a heading. As the Court noted in respect of another regulation imposing an anti-dumping duty (see the judgment in Case C-90/92 *Dr Tretter* v *Hauptzollamt Stuttgart-Ost* [1993] ECR I-3569, paragraph 13), the actual wording of Article 2(1) of the provisional regulation and Article 1(1) of the definitive regulation, in particular the expression 'falling within subheading ex 85.01 B I (b) of the Common Customs Tariff', supports the conclusion that a product is not automatically subject to anti-dumping duty pursuant to those provisions merely because it is classified under that tariff heading.

16 Finally, as the national court observes, the anti-dumping duty imposed by those regulations is levied on motors of certain types and not on motor parts, and the amount is fixed for each type of motor. Furthermore, none of the provisions of

those regulations or their annexes refers to motor parts, which are only mentioned in one of the recitals in the preamble setting out some of the results of the inquiry opened in the anti-dumping proceeding.

17 As regards the context and purpose of the legislation in question, it is apparent from paragraph 35 of the recitals in the preamble to the provisional regulation and paragraph 38 of the recitals in the preamble to the definitive regulation that the Community authorities decided, in the interests of transparency and efficiency and in order to induce exporters to raise their prices, to impose a variable duty calculated according to the difference between a minimum price and the price to the first independent buyer. In addition, the Court has held that in taking that action, the authorities did not exceed the limits of their discretionary power since, in particular, a variable duty is generally more favourable to the traders in question than an *ad valorem* duty, on account of the fact that it makes it possible to avoid anti-dumping duties, provided that the imports are effected at prices above the minimum price fixed (judgment in Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport* v *Commission and Council* [1990] ECR I-2945, paragraph 60).

18 As Birkenbeul and the Commission point out, that type of variable duty, unlike an *ad valorem* duty, cannot be satisfactorily applied to incomplete motors or motor parts.

19 If the duty were, as was the case in the main proceedings, equal to the difference between the minimum price of a finished motor and the price of the parts paid for by the first independent buyer, the result of such a method of calculation would be

that unfinished motors worth less than finished motors would be subject to higher duties than finished motors. As the national court notes, an anti-dumping duty might even in certain cases be imposed on an incomplete motor where, because of its net import price, no such duty would be payable on a complete motor.

20 Furthermore, it is impossible to establish the difference between the agreed sale price of an unfinished motor or motor part and the minimum price of a corresponding motor or motor part, since minimum prices have been fixed in the annexes to the regulations only in respect of complete or finished motors. In that context, the customs authorities cannot use for reference information not provided for by the Community authorities, which have exclusive jurisdiction in the field of anti-dumping duties.

21 The answer to the first question must therefore be that Regulations No 3019/86 and No 864/87 must be interpreted as applying only to imports of standardized, multi-phase electric motors which are complete or finished.

Questions 2 and 3

22 In view of the answer to the first question, there is no need to reply to the second and third questions.

Costs

23 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a

step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Finanzgericht Rheinland-Pfalz by order of 9 March 1994, hereby rules:

Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR, and Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union, and definitively collecting the amounts secured as provisional duties, must be interpreted as applying only to imports of standardized, multi-phase electric motors which are complete or finished.

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 28 March 1996.

R. Grass J.-P. Puissochet

Registrar President of the Third Chamber