Case 304/86 R

Enital SpA
v
Council and Commission of the European Communities

(Dumping — Provisional duties)

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Summary of the Order

1. *Application for interim measures — Suspension of operation — Conditions — Serious and irreparable damage*
   (EEC Treaty, Art. 185; Rules of Procedure, Art. 83 (2))

2. *Measures adopted by the institutions — Regulations — Temporal application — Immediate entry into force — Permissibility — Conditions*
   (EEC Treaty, Art. 191)

ORDER OF THE PRESIDENT OF THE COURT
16 January 1987 *

In Case 304/86 R

Enital SpA, a company incorporated under Italian law, whose registered office is in Milan, represented by Dino Ranieri, of the Como Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 34 B rue Philippe-II,

applicant,

* Language of the Case: Italian.

Council of the European Communities, represented by its Agent, E. Stein, a member of its Legal Department, with an address for service in Luxembourg at the office of J. Käser, Director of the Legal Department of the European Investment Bank, 100 boulevard Konrad-Adenauer,

and

Commission of the European Communities, represented by its Agent, E. de March, a member of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION for the suspension of the operation of:

Council Regulation (EEC) No 3018/86 of 30 September 1986 repealing the regulation accepting the undertakings given respectively by exporters in Bulgaria, Czechoslovakia, the German Democratic Republic, Poland and Romania in connection with the anti-dumping procedure concerning imports of standardized multiphase electric motors having an output of more than 0.75 kW but not more than 75 kW originating in these countries (Official Journal 1986, L 280, p. 66),

and

Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multiphase 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 (Official Journal 1986, L 280, p. 68),

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 3 December 1986, Enital brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Regulation No 3018/86 and Commission Regulation No 3019/86 (Official Journal 1986, L 280, pp. 66 and 68 respectively) are void.

2 By an application lodged at the Court Registry on 17 December 1986 Enital applied under Article 185 of the EEC Treaty, Article 36 of the Statute of the Court of Justice of the EEC and Article 83 of the Rules of Procedure for suspension of the operation of Council Regulation No 3018/86 and Commission Regulation No 3019/86 insofar as Enital is concerned until the Court had delivered final judgment in the main proceedings.

3 The defendants submitted their written observations on 9 January 1987. Since the written statements of the parties include all the information necessary to decide on the application for interim measures, it has not been considered necessary to hear oral argument from the parties.

4 Before considering whether the application for interim measures is well founded, it is appropriate to describe briefly and in so far as the applicant is concerned the principal stages in the anti-dumping proceeding which preceded the adoption by the Council and the Commission of Regulations Nos 3018 and 3019/86.

5 In October 1985 the Groupement des industries de matériel d'équipement électrique et de l'électronique industrielle associés [Association of Electrical Equipment and Industrial Electronics Industries, hereinafter referred to as 'Gimelec'] asked the Commission under Article 14 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) to review its decisions to accept the price undertakings given by exporters in connection with the previous proceeding concerning imports of standard multiphase 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.

6 It should also be pointed out that Enital imports into the Community standardized multiphase electric motors having an output of more than 0.75 kW but not more than 75 kW originating in the USSR and that the Soviet company which exports those products, Energomachexport, is one of its shareholders.

7 During the previous proceedings, the Council, in Reguation No 2075/82 of 28 July 1982 (Official Journal 1982, L 220, p. 36), on the one hand accepted the price undertakings given by exporters from Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, and Romania and terminated the proceedings concerning imports originating in those countries and, on the other hand, imposed a definitive anti-dumping duty on imports of those products from the USSR.

8 After being asked to review the definitive anti-dumping duty by Energomachexport, the Commission, in Decision 84/189 of 2 April 1984 (Official Journal 1984, L 95, p. 28) accepted that company's undertaking to comply with minimum export prices. The Council therefore, in Regulation No 1275/84 of 7 May 1984 (Official Journal 1984, L 123, p. 22) repealed the definitive anti-dumping duties mentioned above and terminated the anti-dumping proceedings in respect of those imports.

9 Since it considered that the evidence put forward by Gimelec indicated a change of circumstances justifying review of the earlier decisions, the Commission announced, in a notice of 26 November 1985, the re-opening of an anti-dumping proceeding concerning imports of standardized multiphase electric motors having an output of more than 0.75 kW but not more than 75 kW falling within Common Customs Tariff subheading ex 85.01 B I (b), corresponding to Nimexe Codes ex 85.01-33, ex 85.01-34 and ex 85.01-36, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the Soviet Union (Official Journal 1985, C 305, p. 2).

10 Since the review procedure revealed, notwithstanding the price undertakings described above, the persistence of substantial dumping and the consequent existence of considerable injury to Community industry, the Commission, in Regulation No 3019/86 of 30 September 1986, repealed Decision 84/189/EEC accepting the price undertaking offered by the Soviet exporter and imposed a

provisional anti-dumping duty on imports of products originating in the USSR. In the same regulation, it also imposed a provisional anti-dumping duty on imports of products originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and Romania. In Regulation No 3018/86, adopted on the same day, the Council repealed Regulation No 3075/82, which accepted the undertakings given by the exporters in Bulgaria, Czechoslovakia, the German Democratic Republic, Poland and Romania.

11 According to Article 185 of the EEC Treaty, actions brought before the Court of Justice do not have a suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

12 Article 83 (2) of the Rules of Procedure provides that in order for an interim measure of the kind sought by the applicant to be granted, the application must state the factual and legal grounds establishing a *prima facie* case for the interim measures applied for and the circumstances giving rise to urgency.

13 It follows from the settled case-law of the Court that the urgency of an application for interim measures under Article 83 (2) of the Rules of procedure must be considered in the light of the need to order interim measures in order to avoid serious and irreparable damage to the party seeking that measure.

14 In that regard, the applicant relies on only two arguments. It claims first that the Community institutions' decision to fix the date of entry into force of the contested measures at the day of their publication amounts in fact to giving them retroactive effect and that causes it serious damage because it has already determined its commercial policy on the basis of the price undertakings already accepted. Secondly, it alleges that the reference to the Common Customs Tariff in the identification of the products subject to the provisional anti-dumping duty imposed by Commission Regulation No 3019/86 involved the application of that

measure not merely to complete motors but also to parts for motors and that causes serious and unlawful damage to those who, like the applicant, import such products.

15 As the Commission rightly points out, it must be observed that the applicant's second argument appears, at first sight, to be devoid of all relevance. It can be seen by merely reading the Common Customs Tariff (Official Journal 1985, L 330, at p. 335) and the Nimexe code (Official Journal 1985, L 353, at p. 475) that heading No 85.01 of the Common Customs Tariff, entitled 'Electrical goods of the following descriptions: generators, motors, converters (rotary or static), transformers, rectifiers and rectifying apparatus, inductors', is divided into three subheadings:

85.01 A (goods for use in civil aircraft)

85.01 B (other machines and apparatus)

85.01 C (parts),

and that the reference in Commission Regulation No 3019/86 to subheading 85.01 B I (b) does not concern parts which come within subheading 85.01 C. Comparison with the corresponding headings of the Nimexe code (85.01-33, 85.01-34 and 85.01-36) confirms that view because they refer to standardized multiphase motors of an output of more than 0.75 kW but not more than 75 kW, whereas parts for motors are covered by Codes 85.01-89 and 85.01-90, to which Regulation No 3019/86 does not refer.

16 With regard to the applicant's first argument, it must be pointed out that, according to Article 191 of the EEC Treaty, regulations 'shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following their publication'. The EEC Treaty thus leaves it to the institution adopting the regulation to lay down therein the date on which it is to enter into force. Although it is true that the Court stated in its judgment of 13 December 1967 (Case 17/67 *Neumann* v *Hauptzollamt Hof* [1967] ECR 441) that the institution adopting the regulation 'cannot, without having an adverse effect on a legitimate regard for legal certainty, resort without reason to the procedure of an immediate entry into force', it nevertheless went on to state that recourse could be had to that procedure if there were, in the particular case, serious reasons for holding that any interval between the publication and the entry into force of the regulation might be prejudical to the Community. In this case, it must be observed that, as the Commission has argued, such reasons appear at first sight to exist. That provisional anti-dumping duties should enter into force immediately would appear

to follow from the provisional and protective nature of such duties which, in the terms of Article 11 of Council Regulation No 2176/84, are imposed in order to prevent injury being caused to the Community during the anti-dumping proceeding. It does not appear likely to cause serious and irreparable damage to the applicant.

17 Furthermore, it should also be pointed out that the application for interim measures must in any event be dismissed in so far as it is directed at the Council since Regulation No 3018/86, whose operation the applicant seeks to have suspended, does not concern imports from the Soviet Union. It was in fact Article 1 of Commission Regulation No 3019/86 which repealed Commission Decision 84/189 accepting the price undertaking offered by the Soviet exporter.

18 It is clear from the foregoing that the applicant has advanced no decisive argument showing that it will suffer serious and irreparable damage if the interim measures it is seeking are 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, 16 January 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President