# Case 121/86 R

## Anonimos Eteria Epichiriseon Metalleftikon, Viomichanikon kai Naftiliakon AE and Others

v

## Council and Commission of the European Communities

(Dumping — Request for production of documents — Confidentiality)


Summary

*Application for the adoption of interim measures — Interim measures — Purpose — Conditions — Serious and irreparable damage*
*(EEC Treaty, Art. 186; Rules of Procedure, Art. 83 (2))*


ORDER OF THE PRESIDENT OF THE COURT
27 June 1986 *

In Case 121/86 R

**Anonimos Eteria Epichiriseon Metalleftikon, Viomichanikon kai Naftiliakon AE,**

**Makedoniki Lefkolithi, Metalleftiki, Viomichaniki kai Naftiliaki Eteria AE,**

**Elliniki Lefkolithi, Metalleftiki Viomichaniki, Naftiliaki kai Emboriki Eteria AE, and**

* Language of the Case: Greek.

**Magnomin Geniki Metalleftiki Eteria AE, Metalleftiki, Emboriki kai Metapiitiki,**

companies incorporated under Greek law, represented by P. Bernitsas of the Athens Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicants,

v

**Council of the European Communities,** represented by its Agents, E. Stein and C. Mavrakos, members 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 Agents, J. Temple Lang and D. Gouloussis, members of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION principally for an interim order that the defendants should produce to the Court all the documents in their possession concerning Council Decision No 86/59 of 6 March 1986 terminating the anti-dumping proceeding concerning imports of dead-burned (sintered) natural magnesite originating in the People's Republic of China and North Korea (Official Journal L 70, p. 41) and that their Agents should declare under oath that no other documents exist,

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 23 May 1986, the four abovementioned Greek undertakings brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Decision 86/59 of 6 March 1986 by which the Council terminated the anti-dumping proceeding concerning imports of dead-burned natural magnesite originating in the People's Republic of China and North Korea (Official Journal L 70, p. 41) and any preceding or succeeding act connected therewith are void.

2 By an application lodged at the Court Registry on 23 May 1986, the applicants applied under Article 186 of the EEC Treaty and Article 83 of the Rules of Procedure for interim relief in the form of an order that the defendants should produce all the documents relating to Council Decision 86/59 and that their Agents should declare under oath that they have no other documents.

3 The defendants submitted their written observations on 6 June 1986. The parties presented oral argument on 24 June 1986.

4 Before considering whether the present application for the adoption of interim measures is well-founded, it would appear to be useful to recall to mind briefly the various stages in the anti-dumping proceeding which preceded the adoption by the Council of Decision 86/59.

5 In June 1982, the Commission received a complaint under Article 5 of Council Regulation No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal L 339, p. 1) lodged by five Greek undertakings whose collective output constituted at that time all Community production of dead-burned natural magnesite, alleging that dumping was being practised in respect of imports of that product originating in the People's Republic of China and in North Korea.

6 Since the Commission considered that the complaint contained sufficient evidence of dumping and of material injury resulting therefrom, it announced, in a notice of 29 June 1982, the initiation of an anti-dumping procedure (Official Journal C 162, p. 3) and undertook the necessary inquiries in that regard.

7 Since the Commission's preliminary investigation succeeded in establishing that the Community products and the imported products should be regarded as like products and in revealing the existence of a dumping practice with a margin of 114% in respect of the products originating in the People's Republic of China and 85% in the case of the product originating in North Korea as well as various factors revealing the existence of injury, such as, in particular, a substantial reduction in the market share held by the Greek producers of that product within the Community and a corresponding increase in the market share held by the Chinese and North Korean products, a 47% drop in the sales of Community products and a drop in the average utilization of production capacity from 54% in 1979 to 22% in 1981, the Commission, by Regulation No 3542/82 of 22 December 1982 (Official Journal L 371, p. 25) imposed an anti-dumping duty equal to the amount by which the price per tonne net, free-at-Community frontier, before duty, was less than 169 ECU, valid for a period of four months from 1 January 1983.

8 That provisional anti-dumping duty was extended for a period of two months beginning on 1 May 1983 by Council Regulation No 991/83 of 25 April 1983 (Official Journal L 110, p. 27). On 9 June 1983, the Commission, since it considered that the necessary conditions were fulfilled, submitted a proposal to the Council for the imposition of a definitive anti-dumping duty on the imports of magnesite concerned (COM(83) 341 final). The Council declined, however, to adopt that proposal.

9 The Commission then broke off its inquiries until mid-June 1985, the date on which it received new *prima facie* evidence of dumping and renewed injury caused by the imports from China of dead-burned natural magnesite. On the basis of that information, the Commission decided to continue the anti-dumping procedure in regard to those imports (Official Journal C 149, p. 2) but this time, on the basis 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 L 201, p. 1), which has replaced Council Regulation No 3017/79.

10 Following an inquiry which it conducted during the summer of 1985, the Commission, after making a comparison of the figures in its possession for the years 1981 to 1984, came to the conclusion that the evidence before it clearly showed that imports of dead-burned natural magnesite originating in the People's Republic of China and in North Korea were no longer causing to Community production serious injury of such a degree as to justify the imposition of a definitive anti-dumping duty. It therefore submitted a proposal to the Council for the termination of the anti-dumping proceeding concerning those imports.

11 The Council accepted that proposal and, on 6 March 1986, on the basis of Article 9 of Regulation No 2176/84, adopted the abovementioned decision terminating the anti-dumping proceeding which is the subject of this application for the adoption of interim measures.

12 Article 186 of the Treaty provides that the Court of Justice may in any cases before it prescribe any necessary interim measures.

13 In order for interim measures of the kind sought in this case to be adopted, Article 83 (2) of the Rules of Procedure requires that the application state the factual and legal grounds establishing a *prima facie* case for the interim measures applied for and the circumstances giving rise to urgency.

14 The Court has consistently held that urgency within the meaning of Article 83 (2) of the Rules of Procedure in regard to an application for the adoption of interim measures must be assessed on the basis of whether it is necessary to adopt such measures in order to avoid serious and irreparable damage to the party seeking the adoption of those measures.

15 In that regard, the applicants claim that by reason of the initiation of proceedings before the Court, there was a danger that relevant documents would be concealed or altered whereas it was essential that they should have access to them if they were to be in a position to reply to the defendant's arguments and prove that their allegations are well-founded.

16 For their part, the defendants, in the written observations which they submitted in the context of this application for the adoption of interim measures, consider that the applicants have put forward no argument demonstrating the existence of a risk of irreparable damage since it is inconceivable that the defendant institutions might conceal or falsify documents.

17 It should be noted that in the absence of exceptional circumstances which must be proved and which do not exist in this case, an application for the adoption of interim measures is not in principle an appropriate procedure for obtaining the production of documents of the kind applied for in this case. Such a measure is similar to a measure of inquiry of the kind which the Court may order under Article 21 of the Statute of the Court of Justice in the context of the procedure dealing with the substance of the case. It should also be mentioned that during the hearing, the Community institutions confirmed the undertaking appearing in their written observations to the effect that they would make available to the Court in accordance with the applicable procedures any document production of which the Court considered necessary in order to be adequately informed on this case.

18 That principle is reinforced by the fact that the possible danger of concealment or alteration put forward by the applicants in order to justify the need to produce documents before the Court appears to be wholly irrelevant, since the Greek undertakings which submitted the complaint giving rise to the anti-dumping procedure at issue did not consider it necessary to address a formal written request to the Commission under Article 7 (4) (a) of Council Regulation No 2176/84 indicating the information required. In reply to a question put by the Courty at the hearing, the applicants were unable to produce a document showing that they had made such a request.

19 It appears from the documents in the case that the only argument put forward to justify urgency is the obvious danger of modification or concealment of relevant documents by the European institutions involved in the dispute. In that regard, the Court made it abundantly clear at the hearing that it was not prepared to permit an accusation of that nature, casting doubt on the good faith and impartiality of the European institutions, to be made without any proof being advanced in support of it. In the light of the Court's position on that point, the applicants

informed it that they withdrew from their application any statement containing an accusation of that sort. It must therefore be found that that withdrawal removes the only argument advanced by the applicants on the question of urgency.

20 The observations set out above show clearly that the applicants have not succeeded in proving urgency as required by Article 83 (2) of the Rules of Procedure and it thus does not appear to be necessary to consider whether the factual and legal grounds advanced by them establish a *prima facie* case for the interim measures applied for.

On those grounds,

THE PRESIDENT,

by way of an interim decision,

hereby orders as follows:

**(1) The application is dismissed.**

**(2) The applicants are ordered to pay the costs.**

Luxembourg, 27 June 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President