JUDGMENT OF THE COURT
20 March 1985 *

In Case 264/82

Timex Corporation, Harrison Road, Dundee, Scotland, represented by Ivo Van Bael and Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Elvinger and Hoss, 15 Côte d'Eich, Luxembourg,

applicant,

supported by

The Federal Republic of Germany, represented by Martin Seidel and Dietrich Ehle, of the Cologne Bar, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany, 20-22 Avenue Émile-Reuter,

by

The Chambre Française de l'Horlogerie [French Clock and Watchmakers' Association], 34 Avenue de Messine, 75008 Paris,

and by

Pforzheimer Uhren-Rohwerke Porta GmbH & Co., 46 Maximilianstraße, 7530 Pforzheim,

both represented by Dominique Borde, of the Paris Bar, acting for Siméon Moquet, Borde and Associates, a *société civile professionnelle*, with an address for service in Luxembourg at the Chambers of Elvinger and Hoss, 15 Côte d'Eich,

interveners,

v

Council of the European Communities, represented by its Legal Adviser, Gijs Peeters, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

and

Commission of the European Communities, represented by its Legal Adviser, John Temple Lang, assisted by Peter Jan Kuyper, a member of its Legal Department, with an address for service in Luxembourg at the office of Manfred Beschel, Jean Monnet Building, Kirchberg,

defendants,

* Language of the Case: English.

APPLICATION lodged pursuant to the second paragraph of Article 173 of the EEC Treaty for partial annulment of Article 1 of Council Regulation (EEC) No 1882/82 of 12 July 1982 imposing a definitive anti-dumping duty on mechanical wrist-watches originating in the USSR (Official Journal 1982, L 207, p. 1),

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

**

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

By an application lodged at the Court Registry on 27 September 1982, Timex Corporation of Dundee, Scotland, brought an action against the Council and the Commission under the second paragraph of Article 173 of the EEC Treaty for the partial annulment of Article 1 of Council Regulation (EEC) No 1882/82 of 12 July 1982 imposing a definitive anti-dumping duty on mechanical wrist-watches originating in the Soviet Union (Official Journal 1982, L 207, p. 1).

** after hearing the Opinion of the Advocate General delivered at the sitting on 5 December 1984,

2 In June 1980, the British Clock and Watch Manufacturers' Association Limited lodged a complaint on behalf of manufacturers of mechanical watches in France and the United Kingdom concerning the dumping of mechanical watches and watch movements originating in the Soviet Union. The anti-dumping proceeding opened pursuant to that complaint ended in the adoption on 14 January 1982 of Commission Regulation (EEC) No 84/82 imposing a provisional anti-dumping duty on mechanical wrist-watches originating in the Soviet Union (Official Journal 1982, L 11, p. 14). The period of application of that provisional duty was extended by Council Regulation (EEC) No 1072/82 of 4 May 1982 (Official Journal 1982, L 125, p. 1).

3 On 12 July 1982, the Council adopted Regulation No 1882/82, cited above. Article 1 thereof, which is the article at issue, imposed a definitive anti-dumping duty on mechanical wrist-watches originating in the Soviet Union. The rate of duty, equal to the dumping margin found, is 12.6% for watches without gold-plating or with gold-plating of a thickness not exceeding five microns and 26.4% for watches with gold-plating of a thickness exceeding five microns.

4 However, no anti-dumping duty, provisional or definitve, was imposed on the movements of such watches. In this regard, it is stated in the preamble to Commission Regulation No 84/82 that: ' ... as regards mechanical watch movements, the Commission has determined that, while there are substantial margins of dumping, the low level of market penetration and the effect of the quantitative restrictions in force in France are such that material injury is not being caused and there is no threat that it will be caused'. On the other hand, mechanical watch movements are not mentioned in the preamble to Council Regulation No 1882/82.

5 Those regulations are based on Council Regulation (EEC) 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 1979, L 339, p. 1). That regulation determines the circumstances in which an anti-dumping duty or countervailing duty is to be imposed. It defines *inter alia* the concepts of dumping and injury and also lays down rules of procedure governing, in particular, the lodging of complaints, the initiation and conduct of investigations, confidentiality and the termination of proceedings where protective measures are unnecessary.

6 The applicant is the leading manufacturer of mechanical watches and watch movements in the Community and the only manufacturer of those products in the United Kingdom. In this action it contends that Regulation No 1882/82 was adopted in breach of the substantive and procedural rules laid down in the parent regulation, No 3017/79, and in the EEC Treaty in so far as the rate of anti-dumping duty imposed on the watches in question is insufficient and no anti-dumping duty has been imposed on the movements of such watches.

7 By orders of 9 March and 28 April 1983 leave to intervene in support of the applicant's submissions was granted under Article 93 of the Rules of Procedure to the Chambre Française de l'Horlogerie, to Pforzheimer Uhren-Rohwerke Porta GmbH & Co. and to the Federal Republic of Germany, which limited its observations to the question of the admissibility of the action.

Admissibility

8 The Council and the Commission raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure. By order of 21 September 1983, the Court joined the question of admissibility to the substance of the case in accordance with Article 91 (4) of the Rules of Procedure.

9 In support of their objection of inadmissibility the defendants argue that the contested regulation is not addressed to Timex, that Timex is not mentioned by name in its articles and that Timex is not directly and individually concerned by the regulation, which in their view affects all manufacturers of mechanical wrist-watches in the Community alike. That view is not altered by the fact that Timex may be entitled to request the opening of an anti-dumping proceeding, since, according to the decisions of the Court, the distinction between a regulation and a decision depends solely on the nature of the measure itself and its consequences in law.

10 On the other hand, Timex and the parties intervening in its support contend that the action is admissible because the contested regulation constitutes in reality a decision which is of direct and individual concern to Timex within the meaning of the second paragraph of Article 173 of the EEC Treaty. They submit that the regulation was adopted as a result of a complaint lodged on behalf of Timex, amongst others, and that it therefore constitutes the culmination of an

administrative proceeding initiated at Timex's request. Its interest in bringing proceedings is all the more evident in so far as it is the only remaining manufacturer of mechanical wrist-watches in the United Kingdom and the anti-dumping duty in question was fixed exclusively by reference to its economic situation.

11 The questions of admissibility raised by the Council and the Commission must be resolved in the light of the system established by Regulation No 3017/79 and, more particularly, of the nature of the anti-dumping measures provided for by that regulation, regard being had to the provisions of the second paragraph of Article 173 of the EEC Treaty.

12 Article 13 (1) of Regulation No 3017/79 provides that 'Anti-dumping or countervailing duties, whether provisional or definitive, shall be imposed by regulation'. In the light of the criteria set out in the second paragraph of Article 173, the measures in question are, in fact, legislative in nature and scope, inasmuch as they apply to traders in general; nevertheless, their provisions may be of direct and individual concern to some of those traders. In this regard, it is necessary to consider in particular the part played by the applicant in the anti-dumping proceedings and its position on the market to which the contested legislation applies.

13 It should be pointed out first of all that the complaint under Article 5 of Regulation No 3017/79 which led to the adoption of Regulation No 1882/82 was lodged by the British Clock and Watch Manufacturers' Association Limited on behalf of manufacturers of mechanical watches in France and the United Kingdom, including Timex. According to the documents before the Court, that association took action because a complaint which Timex had itself lodged in April 1979 had been rejected by the Commission on the ground that it came from only one Community manufacturer.

14 The complaint which led to the opening of the investigation procedure therefore owes its origin to the complaints originally made by Timex. Moreover, it is clear from the preamble to Commission Regulation No 84/82 and the preamble to Council Regulation No 1882/82 that Timex's views were heard during that procedure.

15 It must also be remembered that Timex is the leading manufacturer of mechanical watches and watch movements in the Community and the only remaining manufacturer of those products in the United Kingdom. Furthermore, as is also clear from the preambles to Regulations Nos 84/82 and 1882/82, the conduct of the investigation procedure was largely determined by Timex's observations and the anti-dumping duty was fixed in the light of the effect of the dumping on Timex. More specifically, the preamble to Regulation No 1882/82 makes it clear that the definitive anti-dumping duty was made equal to the dumping margin which was found to exist 'taking into account the extent of the injury caused to Timex by the dumped imports'. The contested regulation is therefore based on the applicant's own situation.

16 It follows that the contested regulation constitutes a decision which is of direct and individual concern to Timex within the meaning of the second paragraph of Article 173 of the EEC Treaty. As the Court held in its judgment of 4 October 1983 in Case 191/82 *EEC Seed Crushers' and Oil Processors' Federation (FEDIOL)* v *Commission* ([1983] ECR 2913), the applicant is therefore entitled to put before the Court any matters which would facilitate a review as to whether the Commission has observed the procedural guarantees granted to complainants by Regulation No 3017/79 and whether or not it has committed manifest errors in its assessment of the facts, has omitted to take any essential matters into consideration or has based the reasons for its decision on considerations amounting to a misuse of powers. In that respect, the Court is required to exercise its normal powers of review over a discretion granted to a public authority, even though it has no jurisdiction to intervene in the exercise of the discretion reserved to the Community authorities by the aforementioned regulation.

17 Since the action is therefore admissible, the objection of inadmissibility raised by the Council and the Commission must be dismissed.

Substance

18 Timex advanced three submissions in support of its application. They are that in breach of Article 2 (5) of Regulation No 3017/79 the normal value of the dumped watches was determined incorrectly, that in breach of Article 7 (4) (a) of the same regulation it was refused certain information, and that in breach of Article 190 of the EEC Treaty no adequate statement of reasons was provided.

19 In view of all the arguments put forward, it is necessary to examine first the submission alleging a breach of Article 7 (4) (a) of Regulation No 3017/79. That provision states that:

'The complainant . . . may inspect all information made available to the Commission by any party to an investigation . . . , provided that it is relevant to the defence of [its] interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, [it] shall address a written request to the Commission, indicating the information required.'

20 Article 8, to which that provision refers, provides *inter alia* that:

'(2) (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information of a confidential nature received in pursuance of this regulation, or any information provided on a confidential basis by a party to an anti-dumping or countervailing investigation, without specific permission from the party submitting such information.

(b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary.

(3) Information will ordinarily be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.'

21 Timex complains that the Commission refused to supply it with certain information gathered from Hong Kong undertakings which had been selected as reference undertakings. Its complaint is that the Commission did not allow it to verify whether the watch cases and dials originating in Hong Kong were comparable to the equivalent Soviet products, and secondly that it did not supply Timex with any particulars of the prices or cost of the items assembled in Hong Kong. Timex maintains that such a refusal is contrary to the requirements of

Article 7 (4) of Regulation No 3017/79 since the information in question, which was used as a basis for determining the 'normal value' within the meaning of Article 2 of the regulation, is relevant to the defence of its interests and is not confidential within the meaning of Article 8 of the regulation. As regards, more specifically, the prices of the items assembled in Hong Kong, Timex maintains that there were various ways in which the information gathered from the Hong Kong undertakings could have been supplied to it without any material of a confidential nature being disclosed. In particular, the Commission could have disclosed the averages of the figures for the firms investigated or given an index of the relative costs and prices or supplied approximate figures within a given range of the actual prices.

22 The defendant institutions admit that no information concerning the watch cases and dials and the prices of the products in question was supplied to Timex. They do not dispute that in principle the Commission was obliged to disclose to Timex the information referred to in Article 7 (4) (a) of Regulation No 3017/79. However, they maintain that the information sought in this case is not covered by that provision. They submit first of all that Article 7 (4) (a) allows access only to information provided by a 'party to an investigation', which specifically excludes undertakings of a non-member country. As regards the relevant watch cases and dials, they point out that the Hong Kong firms do not provide the kind of specifications which might be useful to Timex and that the Commission was not under any obligation to keep samples.

23 As for the information regarding the prices of the items assembled in Hong Kong, the Commission and the Council further maintain that since such information was confidential within the meaning of Article 8 of Regulation No 3017/79 it could not be disclosed. Alternative methods of providing the information on prices (which Timex did not request during the investigation) were not practicable in particular because the prices of the reference undertakings were similar.

24 It should be stated in this regard that the aim of Article 7 (4) (a) of Regulation No 3017/79 is to ensure that the traders or manufacturers concerned may inspect the information gathered by the Commission during the investigation so that they may effectively put forward their points of view. However, the protection of rights

guaranteed by that provision must where necessary be reconciled with the principle of confidentiality, which is given general recognition in Article 214 of the EEC Treaty, and which, as far as the procedure under Regulation No 3017/79 is concerned, is specifically laid down in Article 8 of that regulation.

25 It follows from those considerations that the argument advanced by the defendant institutions, based on the origin of the information gathered, cannot be accepted. The expression 'any party to an investigation' in Article 7 (4) (a) of Regulation No 3017/79 must be interpreted as meaning not only the parties which are the subject of the investigation but also the parties whose information has been used, as in this case, to calculate the normal value of the relevant products, since such information is just as relevant to the defence of complainants' interests as the information supplied by the undertakings carrying out the dumping. Consequently, all non-confidential information, whether supplied by a Community undertaking or an undertaking in a non-member country, which has been used by the Commission during its investigation and which has had a decisive influence on its decision regarding the anti-dumping duty must be made available to the complainant requesting it.

26 As regards the watch cases and dials originating in Hong Kong, the defendant institutions admit that the choice of the like product which had a decisive influence on the contested decision was made on the basis of the external appearance of the selected items and that those items were freely available on the market.

27 In those circumstances, the Commission had a duty either to make samples available to Timex or, failing that, to provide at least all the information necessary to enable it to identify the items in question so that it could ascertain whether the institutions had established the facts correctly.

28 As regards the second point, concerning the prices of the items assembled in Hong Kong, it should be noted that in response to Timex's request the Commission sent it only a list of movements selected in France and considered comparable to the Soviet movements and a 'scheme showing . . . how the normal value was

constructed', which, however, consisted only of a list of mechanical watch parts and other price components without any corresponding figures and which was therefore of no use to Timex.

29 The defendants are mistaken in claiming that the information in question was confidential and could not therefore be disclosed to the complainant. The Community institutions are bound by Article 214 of the EEC Treaty to respect the principle of confidential treatment of information about undertakings, particularly about undertakings in non-member countries which have expressed their readiness to cooperate with the Commission, even if no express request for such treatment is received under Article 8 of Regulation No 3017/79. That obligation, however, must be interpreted in such a way that the rights provided by Article 7 (4) (a) of that regulation are not deprived of their substance.

30 It follows that in the present case the Commission ought to have made every effort, as far as was compatible with the obligation not to disclose business secrets, to provide the applicant with information relevant to the defence of its interests, choosing, if necessary on its own initiative, the appropriate means of providing such information. Mere disclosure of the items referred to in the calculation of the normal value without any figures does not satisfy those imperative requirements. That conclusion is all the more warranted in view of the fact that the normal value was determined on the basis of the constructed value of the like product, within the meaning of Article 2 (5) (b) of Regulation No 3017/79, so that Timex was entirely dependent for the defence of its interests on the factors on which the Commission based its calculation.

31 Since the anti-dumping duty was therefore imposed in breach of the essential procedural requirements laid down in Article 7 (4) (a) of Regulation No 3017/79, Article 1 of Regulation No 1882/82 must be declared void, and it is unnecessary to consider the other submissions advanced by the applicant in support of the same claim.

32 However, the aim of the action is not to have the provision in question declared void but to have it replaced by a more stringent measure fixing a higher anti-dumping duty on mechanical watches and imposing such a duty on mechanical watch movements. The anti-dumping duty imposed by the provision declared void should therefore be maintained, in accordance with the second paragraph of

Article 174 of the EEC Treaty, until the competent institutions adopt the measures needed to comply with this judgment.

Costs

33 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings.

34 Since the defendants have failed in their submissions, they must be ordered to bear the costs jointly and severally.

On those grounds,

THE COURT

hereby:

(1) Declares void Article 1 of Council Regulation No 1882/82 of 12 July 1982;

(2) Orders the anti-dumping duty imposed by that provision to be maintained until the competent institutions adopt the measures needed to comply with this judgment;

(3) Orders that the applicant's and the interveners' costs shall be borne jointly and severally by the Council and the Commission.

Mackenzie Stuart Bosco Due Kakouris

Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 20 March 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President