JUDGMENT OF THE COURT OF 16 MARCH 1978 [1]

Unione Nazionale Importatori e Commercianti Motoveicoli Esteri (UNICME) and Others v Council of the European Communities

Case 123/77

Application for annulment — Natural or legal persons — Measures of individual concern to them — Criteria
(EEC Treaty, second para. of Art. 173)

The possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them.

In the present case the fact that all the applicants might possibly be refused an import authorization pursuant to Regulation No 1692/77 does not provide a sufficient basis for regarding the regulation as being of individual concern to them in the same way as if a decision had been addressed to them.

In Case 123/77

UNIONE NAZIONALE IMPORTATORI E COMMERCIANTI MOTOVEICOLI ESTERI (UNICME), Rome,

I.A.P. INDUSTRIALE S.P.A., Piazzano di Atessa (Chieti),

YAMOTO ITALIA S.P.A., Rovido di Buccinasco (Milan),

SUZUKI ITALIA S.P.A., Turin,

KAWASAKI MOTOR ITALIA S.P.A., Genoa,

represented and assisted by Giuseppe de Vergottini, of the Bologna Bar, with an address for service in Luxembourg at the Chambers of Charles Turk, 4 Rue Nicolas Welter,

applicants,

1 — Language of the Case: Italian.

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Franco Giuffrida, with an address for service in Luxembourg at the office of J. N. van den Houten, Director of the Legal Department of the European Investment Bank, 2 Place de Metz,

defendant,

APPLICATIONco regarding, at the present stage of the procedure, the admissibility of the application for the annulment of Regulation No 1692/77 of the Commission of 25 July 1977 (Official Journal L 188, p. 11) concerning protective measures on imports of certain motor-cycles originating in Japan,

THE COURT,

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

The facts, the course of the procedure, the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts

(1) Following a communication from the Italian Government the Commission entered into discussions in the course of 1977 with the Japanese authorities in order to establish the actual conditions for the importation into Japan of certain products (ski boots) originating in the Community.

In the course of these consultations it appeared that the Japanese authorities had in fact adopted measures affecting the importation of those products.

On 25 July 1977 since the Council of the European Communities considered that "in these circumstances it seems necessary to adopt protective measures on imports of certain motor-cycles originating in Japan; ... since the export of ski boots to Japan principally concerns the Italian industry these protective measures should be limited to imports into Italy"; the Council therefore adopted Regulation No 1692/77.

The first article of that regulation provides:

"Imports into Italy of motor-cycles having a cylinder capacity of 380 cc or more, falling within heading ex 87.09 of the Common Customs Tariff, originating in Japan, are hereby made subject to the production of an import authorization issued by the Italian authorities.

The total quantity of products for which import authorizations shall be issued for the period 1 January to 31 December 1977 shall not exceed 18 000 items."

According to Article 2 that regulation was to enter into force on 29 July 1977 and remain in force until 31 December 1977.

(2) The products in question are covered by Council Decision No 72/455/EEC of 19 December 1972 (Official Journal, English Special Edition 1972 (30 and 31 December), p. 101) since the system for the importation of such products varies from one Member State to another.

With regard in particular to Italy the products in question were regulated until 26 May 1977 by the system provided for in Article 2 of the Ministerial Decree of 6 May 1976 (Ordinary Supplement to the Gazzetta Ufficiale No 157 of 16 June 1976), that is to say they were "products which may be imported freely without quantitative restrictions".

The importation of such products was subject to a system of import declarations.

Pursuant to the Ministerial Decree of 26 May 1977 (Gazzetta Ufficiale No 143 of 27 May 1977), the system of importation of the relevant products was modified and importation was made subject to the rules provided for in Article 3 of the above-mentioned Ministerial Decree of 6 May 1976. The rules cover products which require an authorization from the Minister as a condition of their importation.

II — Procedure

The applicant undertakings represent Italian traders who import motor-cycles from Japan and who are members of UNICME, which is also an applicant. By an application lodged on 14 October 1977 they instituted the present proceedings for the annulment of Council Regulation No 1692/77 of 25 July 1977.

The Council, in a statement lodged on 21 November 1977, has applied to the Court, pursuant to Article 91 of the Rules of Procedure, for a decision on a procedural issue concerning the admissibility of the application, for a declaration that the application is inadmissible and for an order that the applicants should bear the costs.

In their application on the procedural issue, lodged on 11 January 1978, the applicants requested the Court to "find that the legal conditions laid down in subparagraph (c) of the second paragraph (sic) of Article 173 of the Treaty have been fulfilled ... and consequently declare that the objection of inadmissibility submitted by the Council is unfounded and consequently dismiss it so that consideration of the substance of the case is not thereby precluded. Moreover they maintain the claims set out in the application".

Having heard the report of the Judge-Rapporteur and the Advocate General, the Court decided to open the oral procedure concerning the objection of inadmissibility without any preparatory inquiry.

III — Submission and arguments of the parties concerning the admissibility of the application

In their application the *applicants* claim that Regulation No 1692/77 is of direct and individual concern to them within the meaning of the second paragraph of Article 173 since that regulation was

adopted after the date of the initiation of procedures concerning the import declarations with the Italian Ministry for Foreign Trade which in many cases had already issued the declarations at the time when the Ministerial Decree of 26 May 1977 was issued.

In the proceedings in question the Council could not disregard the initial factor, namely the applications already submitted by the importers who, when the measure was adopted, were the only persons clearly interested in importation and consequently were just as clearly the only persons affected by the restrictive national measure authorized by the regulation.

The fact that the applicant undertakings in fact constitute all the Italian traders importing motor-cycles from Japan shows clearly that Regulation No 1692/77 was essentially directed at them.

They claim that it is clear that the regulation can relate only to the applications already submitted at that time by the applicants and that accordingly the number and identity of the traders can be determined with certainty.

The applicants are accordingly marked out by an interest peculiar to them which differentiates them from all other persons and they were already distinguished individually, at the time when the regulaton was adopted, just as in the case of a person to whom a decision is addressed.

The *Council* first of all sets out certain general considerations concerning the facts.

The Community intended to remedy the problem of the increasingly unfavourable balance of trade between the Community and Japan by increasing Community exports rather than by limiting imports from Japan.

The endeavours of the Community were met by Japan with unacceptable measures tending to affect Italian exports of ski boots.

The Council states that after Italy had informed the Community authorities of its intention to adopt retaliatory measures to counter the behaviour of the Japanese authorities the Commission entered into discussions with Japan.

These discussions confirmed that Italy's anxieties were well founded. Consequently the Commission proposed to the Council the adoption of protective measures consisting of a system of import authorizations and of a quota for certain products originating in Japan.

It was fully appropriate that such measures should affect motor-cycles since that sector is considered particularly sensitive.

With regard to admissibility the Council considers that Regulation No 1692/77 is not of individual concern to the applicants. The fact that they submitted applications for import permits before the entry into force of the Community regulation and in accordance with the system then in force with regard to the importation of the product in question is not sufficient to permit the applicants to be considered as individually concerned as though the regulation were addressed to them.

It is not correct that the provisions introduced by the regulation may be of concern only to traders who have already submitted an import declaration. The fact that at the date when the measures in dispute were adopted the number of persons concerned could be established is of no importance. In fact such persons may often be established in the case of measures which are clearly of a legislative nature.

The decisive point is whether the contested measures are applicable to an abstract category of addresses or whether they are in fact directed to a closed and restricted group of addresses which could not alter during the period when the measures were in force. The Council maintains that Regulation No

1692/77 applies to an abstract category of addressees. It introduces general rules applicable to any person, not only the applicants, who proposes to import the relevant products from Japan. Furthermore the Council observes that the application fails to substantiate the existence of a causal connexion between the Council's knowledge of the situation of the applicants and the measures adopted, which, in the view of academic writers, is clearly necessary.

According to the Council the applicants are affected by the regulation only in their capacity as Italian importers of motor-cycles.

The Council concludes by setting out general guide-lines which, in its opinion, are to be inferred from the relevant case-law of the Court of Justice and from the conditions attached under Article 173 to the admissibility of an application against a measure of a legislative nature. It recalls the reasons for the restriction of the right of individuals to institute proceedings against a measure of a legislative nature, namely:

(a) fear of the uncertainty which would thereby be created for other persons concerned if the right to contest legislative measures of a wide scope were to become general or in any event to be granted to a large number of persons;

(b) the extremely grave consequences which would follow in certain cases from even a partial annulment of measures adopted after protracted negotiations.

The *applicants* note in their observations that Regulation No 1692/77 does not come within the framework of purported guide-lines concerning the commercial policy of the Community which ultimately has opted for attaining a balance in trade through an increase in exports without recourse to protectionist methods.

The regulation in question was adopted with the sole purpose of obtaining extraordinary protection for a sector which was unable to keep abreast of developments by effecting technical adaptations.

The applicants dispute that Regulation No 1692/77 is a protective measure and observe that the regulation was adopted two months after the issue of the Italian Ministerial Decree of 26 May 1977 which, the applicants maintain, was then already applicable. In practical terms the regulation ratified the unilateral protective measure adopted by Italy.

The applicants maintain that the system established by the Ministerial Decree of 27 May 1977, which was to end on 31 December 1977, has already been transformed into a system of unlimited duration through the Ministerial Decree of 4 August 1977 (Gazzetta Ufficiale No 236 of 31 August 1977). That decree makes the importation of motor-cycles of a certain cylinder capacity and originating in Japan subject to the ministerial authorization provided for in the Ministerial Decree of 6 May 1977.

With regard to admissibility the applicants maintain that Regulation No 1692/77 is not a regulation within the meaning of Article 189 of the Treaty. It constitutes a measure which clarifies and implements through administrative means legislative provisions already in existence (namely Decision No 72/455/EEC). Accordingly it is not in the nature of a new legislative provision, in respect either of its general character or of the abstract nature of its provisions. In fact the Council measure has a retroactive scope since, by limiting to 18 000 the number of items which could be imported in 1977, it runs counter to the reasonable expectations, which, in the absence of prohibitions, were entertained by traders whose goods, when the regulation entered into force, were held by the customs, were in transit or formed the subject-matter of contractual obligations abroad.

The measure in question is in substance administrative and, pursuant to the Treaty, it constitutes a decision or rather a group of decisions. Accordingly that measure is of direct concern to the applicants. It provides a basis whereby the Italian authorities are able in practice to exercise the power to impose quotas and authorize imports case by case.

The Council measure is of individual concern to the applicants. In this connexion the applicants refer to the case-law of the Court of Justice. It must be considered that the Council measure is addressed only to the applicants since in the course of the discussions which preceded the adoption of Regulation No 1692/77 the Italian government must have indicated the state and number of the applications at that time pending with the national administration.

There is no justification whatsoever for the view that Regulation No 1692/77 might concern other traders. Furthermore the argument that the applicants are affected by the regulation in their capacity as importers of motor-cycles displays an excessive formalism. The applicants were the only undertakings dealing with importations before the adoption of Regulation No 1692/77 and they remain the only undertakings having such an interest after the entry into force of that regulation.

IV — Oral procedure

The parties presented oral argument at the hearing on 28 February 1978.

The Advocate General delivered his opinion in the course of the same hearing.

Decision

1 The applicants, by an application registered on 14 October 1977, have submitted an application to the Court pursuant to article 173 of the EEC Treaty for the annulment of Council Regulation No 1692/77 of 25 July 1977 concerning protective measures on imports of certain motor-cycles originating in Japan (Official Journal L 188, p. 11).

2 That regulation, which was adopted on the proposal of the Commission, in accordance with the provisions of Council Decision No 72/455/EEC of 19 December 1972 laying down certain transitional measures for the progressive standardization of the import terms of Member States as regards third countries (Official Journal, English Special Edition 1972 (30 and 31 December), p. 101) followed a notification from Italy that, because of the introduction of impediments to the importation into Japan of certain products, in particular ski boots, Italy intended to introduce import authorization arrangements for certain products originating in Japan, in particular for certain motor-cycles.

3 In the terms of Article 1 of the contested regulation: "Imports into Italy of motor-cycles having a cylinder capacity of 380 cc or more, falling within heading ex 87.09 of the Common Customs Tariff, originating in Japan, are hereby made subject to the production of an import authorization issued by the Italian authorities.

"The total quantity of the products for which import authorizations shall be issued for the period 1 January to 31 December 1977 shall not exceed 18 000 items".

4 The applicants maintain that that regulation adversely affects rights acquired under the previous Italian import system and is thus of direct and individual concern to them.

5 The Council, the defendant, has raised an objection of inadmissibility in a separate document, alleging that the contested regulation is neither of direct nor of individual concern to the applicants so that their application does not fulfil the conditions laid down by the second paragraph of Article 173 of the Treaty.

6 That article empowers private persons to contest decisions addressed to them or decisions which, although in the form of a regulation or a decision addressed to another person, are of direct and individual concern to the former.

7 It is unnecessary to consider whether the contested measure may be regarded as a regulation and it is sufficient to establish whether it is in fact of direct and individual concern to the applicants.

8 Regulation No 1692/77 establishes for a limited period a system covering the importation into Italy of motor-cycles specified therein and originating in Japan.

9 That system consists in introducing a requirement to produce an import authorization issued by the Italian authorities, and for the year 1977 such authorizatons were not to be issued for more than 18 000 items.

10 The system would only affect the interests of the importers in the event of the necessary authorization's being refused them.

11 Consequently Regulation No 1692/77 would only be of concern to the applicants if, pursuant to that measure, they were refused an import authorization.

12 In that case they will be able to raise the matter before the national court having jurisdiction, if necessary raising before that court their questions concerning the validity of the regulation, which the court will, if it thinks fit be able to deal with by means of the procedure under Article 177 of the Treaty.

13 In the present case the condition laid down in Article 173, to the effect that the contested measure must be of direct and individual concern to the applicants, is not fulfilled.

14 The applicants claim that, taken together, they represent all the importers affected by the import system introduced for motor-cycles originating in Japan.

15 They state that even before Regulation No 1692/77 was adopted it could have been established that they were the only persons concerned and that they were all concerned.

16 The possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them.

17 In the present case the fact that all the applicants might possibly be refused an import authorization pursuant to Regulation No 1692/77 does not provide a sufficient basis for regarding the regulation as being of individual concern to them in the same way as if a decision had been addressed to them.

18 On the contrary the regulation will not produce effects in individual cases until it is implemented by the Italian authorities.

19 Consequently, the second condition laid down by Article 173 likewise remains unfulfilled.

20 Since the conditions laid down by Article 173 have not been fulfilled the application must accordingly be dismissed as inadmissible.

Costs

21 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.

22 In the present case the applicants have failed in their submissions.

23 They must accordingly be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants to pay the costs.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 16 March 1978.

A. Van Houtte
Registrar

H. Kutscher
President