JUDGMENT OF THE COURT (Fifth Chamber)
7 May 1987 *

In Case 256/84

Koyo Seiko Company Limited, Osaka, Japan, represented by Jean-Pierre Karsenty, Advocate at the cour d'appel, Paris, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 38 rue du Curé,

applicant,

v

Council of the European Communities, represented by Erik Stein, acting as Agent, with an address for service in Luxembourg at the office of Jörg Käser, European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

supported by

Commission of the European Communities, represented by John Temple Lang, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, Jean Monnet Building, Kirchberg,

and

Federation of European Bearing Manufacturers' Associations (Febma), represented by Dietrich Ehle, Ulrich C. Feldmann, Volker Schiller and Hilmar Nehm, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Ernest Arendt, rue Philippe-II,

interveners,

APPLICATION under Article 173 of the EEC Treaty for a declaration that Council Regulation (EEC) No 2089/84 of 19 July 1984 imposing a definitive anti-

* Language of the Case: French.

dumping duty on imports of certain ball bearings originating in Japan and Singapore (Official Journal 1984, L 193, p. 1) is void,

THE COURT (Fifth Chamber),

composed of: Y. Galmot, President of the Chamber, F. Schockweiler, U. Everling, R. Joliet and J. C. Moitinho de Almeida, Judges,

Advocate General: G. F. Mancini
Registrar: S. Hackspiel, Administrator

having regard to the Report for the Hearing and further to the hearing on 23 September 1986, at which the applicant was represented by J. P. Karsenty, the defendant by E. Stein and H. J. Rabe, the Commission of the European Communities by J. Temple Lang and Febma by D. Ehle,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 December 1986,

gives the following

Judgment

1 By an application lodged at the Court Registry on 2 November 1984, Koyo Seiko Limited, Osaka, Japan, (hereinafter referred to as 'Koyo Seiko') brought an action before the Court under Article 173 of the Treaty for a declaration that Council Regulation No 2089/84 of 19 July 1984 imposing a definitive anti-dumping duty on imports of ball bearings with a greatest external diameter of not more than 30 mm originating in Japan and Singapore (Official Journal 1984, L 193, p. 1) is void.

2 By Regulation No 744/84 of 19 March 1984 (Official Journal 1984, L 79, p. 8) the Commission had imposed a provisional anti-dumping duty on imports of such small ball-bearings originating in Japan and Singapore.

3 Reference is made to the Report for the Hearing for the relevant regulations, the facts of the case and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

4 The Council considers that the application is admissible only in so far as it is concerned with the anti-dumping duty imposed on the applicant. The Council observes that the contested measure is a regulation and therefore only those of its provisions which are of direct and individual concern to the applicant may be contested in an application for a declaration of nullity.

5 The Court has consistently held, in particular in its judgment of 21 February 1984 in Joined Cases 239 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, that measures imposing anti-dumping duties, adopted pursuant to 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), are liable to be of direct and individual concern, within the meaning of the second paragraph of Article 173 of the Treaty, to those producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations. The Council does not deny that the contested regulation is liable to be of direct and individual concern to Koyo Seiko, which is expressly named therein.

6 However, it should be noted that the contested regulation does not lay down general rules which apply to a whole group of traders without distinguishing between them but imposes different anti-dumping duties on a series of manufacturers or exporters of small ball bearings established in Japan and Singapore who are expressly named, and also on other undertakings which are not named but which pursue the same activities in those same countries. Under those circumstances it must be concluded that Koyo Seiko is individually concerned only by those provisions of the contested regulation which impose on it a specific anti-dumping duty and determine the amount thereof, and not by those provisions which impose anti-dumping duties on other undertakings.

7 It follows from the foregoing that the applicant's claim for a declaration that Regulation No 2089/84 is void in its entirety must be dismissed. It is, however,

necessary to examine the merits of the claim for a declaration that those provisions of the contested regulation which are of concern exclusively to Koyo Seiko are void.

Substance

8 The applicant makes various submissions which, in the light of the various arguments put forward, must be rearranged as follows:

(a) Submission that the anti-dumping investigation conducted with regard to the applicant was illegal;

(b) Submission concerning infringement of the principles of protection of legitimate expectation and of business certainty;

(c) Submission that the refusal to take account of the price undertakings offered was illegal;

(d) Submission that no adequate statement of reasons was given for the assessment of the injury suffered by the Community industry and the amount of the anti-dumping duty.

I — *Submission that the anti-dumping proceeding conducted with regard to the applicant was illegal*

9 The applicant claims that the investigation conducted against it by the Commission was not justified since, apart from the mention of its name on the cover of Febma's complaint, that complaint did not concern the applicant. It adds that the review of the undertakings which it had given in 1977 and which, according to the notice published by the Commission on 15 November 1983 (Official Journal 1983, C 310, p. 3), was the basis for the anti-dumping proceeding, was even less justified since those undertakings, which related to all types of ball-bearings, were still in force.

10 It should first of all be emphasized that, according to the notice of initiation of an anti-dumping proceeding which was published on 14 July 1983 (Official Journal 1983, C 188, p. 9) and confirmed by the notice published on 15 November 1983, this proceeding entailed the review pursuant to Article 14 of Regulation No

3017/79 of undertakings which had been accepted by the Commission by Decision 81/406/EEC of 4 June 1981 (Official Journal 1981, L 152, p. 44). Among the undertakings listed in that decision were those provided by the applicant.

11 Under Article 14 (1) of Regulation No 3017/79, such a review may be held on the initiative of the Commission; the fact that Koyo Seiko was not concerned by Febma's complaint therefore could not in any event prevent the initiation of the proceeding against it.

12 Secondly, it should be noted that unlike Article 10 (6) of Regulation No 3017/79 concerning the infringement and withdrawal of undertakings in force Article 14 provides for undertakings to be reviewed where the circumstances so require. In that case, however, the review will not *per se* affect undertakings already given, which will remain in force until the end of the investigation referred to in Article 7.

13 The fact that the undertakings entered into by Koyo Seiko in 1977 were still in force when the Commission decided to initiate the review is therefore consistent with the provisions of Article 14 and consequently could not affect the legality of the proceeding.

14 It follows from the foregoing that this submission must be rejected.

II — *Submission concerning infringement of the principles of protection of legitimate expectation and of business certainty*

15 In order to understand the scope of the arguments put forward by the applicant, it must be stressed that according to paragraph 11 of the preamble to the contested regulation the normal value was calculated on the basis of a weighted average of the prices paid on the domestic market. Contrary to the method previously adopted (the weighted average method), the export price was calculated, as is stated in paragraph 16 of the preamble, according to the transaction-by-transaction method.

16 It is clear from the documents before the Court that under that method export prices above the normal value were taken into account after being artificially reduced to the level of the normal value and a weighted average was determined of all the export prices established, whether they were below the normal value or equal to normal value. The dumping margin was then determined by comparing the normal value calculated according to the weighted average method and the export price calculated according to the transaction-by-transaction method.

17 The applicant considers that the unilateral change in the method used to calculate the export price is contrary to the principles of business certainty and the protection of legitimate expectation. It also claims that the anti-dumping proceeding could not be based on the provisions of Council Regulation No 3017/79 because that regulation was not in force when its previous undertakings were given.

18 It should first be pointed out that Council Regulation No 3017/79 entered into force on 1 January 1980 and was applicable on 4 June 1981, when the Commission accepted the undertakings offered by Koyo Seiko, on 14 July 1983, when the Commission initiated the review of the undertakings given by the applicant, and on 29 July 1984, when the contested regulation was adopted.

19 Secondly, it should be stressed that the transaction-by-transaction method, which was used in this case to calculate the export price, is one of the methods which may be adopted by the institutions pursuant to Article 2 (13) of Regulation No 3017/79.

20 Consequently, as the Court held in its judgment of 28 October 1982 in Case 52/81 *Faust* v *Commission* [1982] ECR 3745, where the institutions enjoy a margin of discretion in the choice of the means needed to achieve their policies, traders cannot claim to have a legitimate expectation that the means originally chosen will be maintained, since these may be altered by the institutions in the exercise of their powers.

21 Lastly, it is clear from Article 14 of Regulation No 3017/79, on the basis of which the anti-dumping proceeding was initiated, that the review of undertakings

previously entered into may result in the amendment, repeal or annulment of the measures adopted in connection with such undertakings. Therefore the principle of legal certainty did not prevent the measures as adopted in 1981 from being re-examined.

22 This submission must therefore be rejected.

III — *Submission that the refusal to take account of the price undertakings offered was illegal*

23 The applicant claims that the refusal to consider any undertaking offered, expressed in paragraph 24 of the preamble to the contested regulation, is illegal. It follows from the provisions of Regulation No 3017/79 that anti-dumping duties are to be imposed only if undertakings which are offered are not satisfactory; thus offers of undertakings may not be ruled out *a priori.*

24 It is clear from the documents before the Court that the undertakings offered by the applicant were rejected after being given individual consideration. That finding is not affected by the fact that the Council referred in paragraph 24 of the preamble to the contested decision to past experience acquired in the ball-bearings sector, which had shown that undertakings do not constitute a satisfactory solution to the problems caused by dumping in that sector.

25 It should be stressed that the course of action adopted by the institutions was a correct application of the texts and fulfilled the function conferred upon them by the Community rules.

26 No provision of Regulation No 3017/79 compels the institutions to accept price undertakings which are offered. On the contrary, it is clear from Article 10 thereof that it is for the institutions, in the exercise of their discretionary power, to determine whether such undertakings are acceptable. Koyo Seiko has not shown that the reasons for refusing the undertakings offered which are set out in paragraph 24 of the preamble to the contested regulation and further supported in the Council's written observations exceeded the margin of discretion conferred upon the institutions.

27 In particular, the applicant has not refuted the Council's arguments that the undertakings offered were inadequate since they did not, *inter alia*, provide for any price increase.

28 The submission put forward by Koyo Seiko must therefore be rejected.

IV — *Submission that no adequate statement of reasons was given for the assessment of the injury suffered by the Community industry and the amount of the anti-dumping duty*

29 As the Court has consistently held, in particular in its judgment of 26 June 1986 in Case 203/85 *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main* [1986] ECR 2049, the statement of reasons required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and to enable the Court to exercise its supervisory jurisdiction.

30 That requirement was fully satisfied in this case by the reasons set out in paragraphs 23 to 32 of the preamble to Commission Regulation No 744/84, to which paragraph 21 of the preamble to the contested regulation refers.

31 Paragraphs 23 to 32 of the preamble to Regulation No 744/84 set out in detail the increase in the market share accounted for by the contested imports between 1979 and the end of the first half of 1983, the price differences established in relation to the prices charged by Community producers during the investigation period, the overall decline in production suffered by the Community industry concerned, the decrease in sales of the ball-bearings in question and the financial losses and loss of employment established. The Commission also established that the reduction in demand in the Community had affected Community production much more than it had affected the dumped imports. All those facts led the Commission to conclude that the effects of the dumped imports had to be regarded as constituting material injury to the Community industry concerned, and that, having regard to the extent of the injury caused, the rate of the provisional anti-dumping duty should correspond to the dumping margin provisionally established.

32 In those circumstances, it must be recognized that the contested regulation gave adequate reasons for the assessment of the extent of the injury suffered by the Community industry.

33 As regards the amount of the anti-dumping duty imposed, it should be noted that in the contested regulation the Council stated that no fresh evidence regarding injury to the Community industry had been submitted and it was therefore necessary to confirm the conclusions on injury reached in Regulation No 744/84. That implied that the definitive duty would, like the provisional duty, be fixed at a rate corresponding to the dumping margin.

34 It appears from paragraphs 16 to 20 of the preamble to the contested regulation that the rate of the definitive anti-dumping duty imposed on Koyo Seiko (4.03%) was lower than the rate of the provisional duty (4.36%) because the assessment of the dumping margin was reduced as a result of checks carried out in the course of the investigation.

35 It follows from the foregoing that the submission is unfounded and must be rejected. Consequently, the application must be dismissed in its entirety.

Costs

36 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs, including those incurred by the interveners.

Galmot Schockweiler

Everling Joliet Moitinho de Almeida

Delivered in open court in Luxembourg on 7 May 1987.

P. Heim
Registrar

Y. Galmot
President of the Fifth Chamber