

ORDER OF THE PRESIDENT OF THE COURT
11 March 1994 ^{*}

In Case C-6/94 R,

Descom Scales Manufacturing Co. Ltd., a company incorporated under Korean law, with its registered office at Seoul (Korea), represented by Pierre Didier, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Mosar, 8 Rue Notre-Dame,

applicant,

v

Council of the European Union, represented by Bjarne Hoff-Nielsen and Jorge Monteiro, acting as Agents, assisted by Philip Bentley, Barrister of Lincoln's Inn, London, with an address for service in Luxembourg at the office of Bruno Eynard, Director of the Legal Service of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for the suspension of operation, in relation to the applicant, of Council Regulation (EEC) No 2887/93 of 20 October 1993 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Singapore and the Republic of Korea (Official Journal 1993 L 263, p. 1),

^{*} Language of the case: French.

THE PRESIDENT OF THE COURT

makes the following

Order

- 1 By application lodged at the Court Registry on 8 January 1994, Descom Scales Manufacturing Co. Ltd. (hereinafter referred to as 'Descom') applied, under the fourth paragraph of Article 173 of the EC Treaty, for the annulment of Council Regulation (EEC) No 2887/93 of 20 October 1993 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Singapore and the Republic of Korea (Official Journal 1993 L 263, p. 1), in so far as that regulation concerns the applicant.

- 2 By a separate document lodged at the Court Registry on the same day, the applicant also applied for interim relief under Article 185 of the Treaty and Article 83 of the Rules of Procedure of the Court, seeking suspension of the operation of that regulation, in so far as it concerns the applicant, until the Court has given judgment in the main proceedings.

- 3 The defendant submitted its written observations on 11 February 1994.

- 4 Article 1 of Commission Regulation (EEC) No 1103/93 of 30 April 1993 imposing a provisional anti-dumping duty on imports into the Community of certain electronic weighing scales originating in Singapore and the Republic of Korea (Official Journal 1993 L 112, p. 20) imposed a provisional anti-dumping duty on imports of electronic weighing scales for use in the retail trade incorporating a digital display of the weight, unit price and price to be paid, whether or not including a means of printing such data. In relation to Descom's products, the provisional duty was set at 29%.

5 Article 1 (2) (a) of Regulation No 2887/93 of 20 October 1993, referred to above, set the definitive anti-dumping duty on Descom's products at 26.7%. Article 2 provides that amounts secured by way of provisional anti-dumping duty are to be definitively collected at the duty rate definitively imposed, whilst amounts secured in excess of the definitive rate of duty are to be released.

6 The applicant argues that Regulation No 2887/93 is ostensibly unlawful because:

- a manifest error was made in calculating the export price, in breach of Article 2 (8) (b) of Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1988 L 209, p. 1),
- the applicant's rights of defence were infringed by a refusal to supply to it information essential to the defence of its interests, contrary to Article 7 (4) of Regulation No 2423/88, referred to above.

7 In the applicant's view, the urgency of suspension is shown by the fact that, since provisional anti-dumping measures were imposed, not a single unit has been exported to the Community. The market for the products in question being extremely competitive, the applicant could not bear a price increase of nearly 30%. Moreover, the competition had strengthened significantly since 1993, as a result of imports from other non-member countries, especially Taiwan, Turkey and Thailand. Application of the measures in dispute could only bring Descom's exports of retail weighing scales to a definitive end. The company's three importers in the Community had already chosen alternative sources of supply, and this situation could only result in the complete withdrawal of Descom, and the group of which it forms part, from the market in commercial weighing scales in both the Community and, as a consequence, the whole of Europe.

- 8 The applicant states finally, regarding the balancing of the interests involved, that the Community market share of the applicant and its parent company is 1.25%.
- 9 The Council contends that the application for interim measures should be dismissed.
- 10 In the first place, it considers that the regulation in question conforms with both Article 2 (8) (b) of Regulation No 2423/88 and the case-law of the Court, and it disputes the applicant's plea that its rights of defence have been infringed.
- 11 The Council contends that the applicant has failed to produce evidence that it has suffered serious and irreparable damage, as opposed to effects which are merely the normal and direct consequences of the imposition of definitive duties.
- 12 Thirdly, it argues that Descom has failed to prove that Community producers would not suffer appreciable damage if Regulation No 2887/93 were suspended, in the absence of a system of guarantees, essential to protect the balance of interests between the applicant and Community producers.

13 Article 185 of the Treaty provides:

‘Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.’

14 Under Article 83 (2) of the Rules of Procedure, suspension is granted only if circumstances exist which give rise to urgency and the pleas of fact and law relied upon establish a prima facie case for the measure applied for. The Court has also consistently held that, in order for such measures to be granted, the balance of all the interests concerned should be in favour of granting them (see, in particular, the orders in Case 258/84 R *Nippon Seiko KK v Council* [1984] ECR 4357, Case 250/85 R *Brother Industries v Council* [1985] ECR 3459, and Case 77/87 R *Technointorg v Council* [1987] ECR 1793).

15 Those three conditions are cumulative.

16 The urgency of an application for suspension must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party requesting suspension. To establish such urgency, it is not enough merely to refer to effects which are inherent in the imposition of anti-dumping duties, namely a rise in the price of the product affected by the duty and a corresponding diminution in Community market share. Indeed, the very purpose of an anti-dumping duty is to offset the dumping margin found to exist by increasing the price of the product in question (see, in particular, the orders in Cases 258/84 R, 250/85 R, and 77/87 R, referred to above, and the orders in Case 69/89 R *Nakajima All Precision Co. v Council* [1989] ECR 1689 and Case C-358/89 R *Extramet Industrie SA v Council* [1990] ECR I-431).

- 17 The Court's case-law requires proof of serious and irreparable damage specific to the applicant arising from the imposition of the anti-dumping duty.
- 18 The applicant's statements to the effect that it has not exported any more units since the provisional anti-dumping duties were applied, that the three importers seem to have chosen other sources of supply, and that that situation must result in its complete withdrawal from the market in commercial weighing scales in the Community and Europe as a whole are no more than assertions or conjecture. It has not produced any documentary evidence in support of those factual allegations or in support of any other circumstances which might lead to the conclusion that the damage alleged is serious, irreparable, and specific to the applicant. The applicant has not, therefore, discharged the burden of proof incumbent upon it.
- 19 Moreover, the applicant itself refers to circumstances casting doubt on whether the alleged damage, whatever its extent, is the main consequence of the anti-dumping duties. It cites a significant rise in competition in the Community market, linked to imports from several other non-member countries, and points out that its exports to the Community, overall and in terms of specific models, were stable, with a tendency to decrease during the last five years.
- 20 Since urgency has not been established, the application for interim measures must be dismissed without any need to examine whether the two other conditions, concerning a prima facie case and the balance of interests, are met.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. The application for interim measures is dismissed;
2. The costs are reserved.

Luxembourg, 11 March 1994.

R. Grass

Registrar

O. Due

President