

ORDER OF THE COURT

14 February 1996 *

In Case C-245/95 P,

Commission of the European Communities, represented by Eric White and Nicholas Khan, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Commission's Legal Service, Wagner Centre, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 2 May 1995 in Joined Cases T-163/94 and T-165/94 *NTN Corporation and Koyo Seiko v Council* [1995] ECR II-1381, seeking to have that judgment set aside,

the other parties to the proceedings being:

NTN Corporation, a company incorporated under Japanese law and having its registered office in Osaka (Japan), represented by Jürgen Schwarze and Malte Sprenger, Rechtsanwälte, Düsseldorf, with an address for service in Luxembourg at the Chambers of Claude Penning, 78 Grand-Rue,

* Language of the case: English.

Koyo Seiko Co. Ltd, a company incorporated under Japanese law and having its registered office in Osaka (Japan), represented by Jacques Buhart, of the Paris Bar, and Charles Kaplan, Barrister, with an address for service in Luxembourg at the Chambers of Messrs Arendt and Medernach, 8-10 Rue Mathias Hardt,

Council of the European Union, represented by Yves Cretien, Legal Adviser, and Antonio Tanca, of its Legal Service, acting as Agents, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Federation of European Bearing Manufacturers' Associations, having its headquarters in Frankfurt (Germany), represented by Dietrich Ehle and Volker Schiller, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Marc Lucius, 6 Rue Michel Welter,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm (Rapporteur), L. Sevón and M. Wathelet, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

- 1 By application lodged at the Registry of the Court of Justice on 10 October 1995, NSK Ltd, a company incorporated under Japanese law and having its registered office in Tokyo, along with eight of its European subsidiaries: NSK Bearings Europe Ltd, a company incorporated under English law and having its registered office in London, NSK-RHP France SA, a company incorporated under French law and having its registered office in Guyancourt (France), NSK-RHP UK Ltd, a company incorporated under English law and having its registered office in Rodington (United Kingdom), NSK-RHP Deutschland GmbH, a company incorporated under German law and having its registered office in Ratingen (Germany), NSK-RHP Italia Spa, a company incorporated under Italian law and having its registered office in Milan (Italy), NSK-RHP Nederland BV, a company incorporated under Netherlands law and having its registered office in Amstelveen (Netherlands), NSK-RHP European Distribution Centre BV, a company incorporated under Netherlands law and having its registered office in Amstelveen (Netherlands), and NSK-RHP Iberica SA, a company incorporated under Spanish law and having its registered office in Barcelona (Spain), along with Permarin SA, a company incorporated under Spanish law and having its registered office in Valencia (Spain), all represented by David Vaughan QC, instructed by Robin Griffith, Solicitor, with an address for service in Luxembourg at the Chambers of Marc Loesch, 8 Rue Zithe, applied for leave to intervene in Case C-245/95 P in support of the forms of order sought by NTN Corporation and Koyo Seiko Co. Ltd.

- 2 This case is an appeal brought by the Commission against the judgment of the Court of First Instance of 2 May 1995 in Joined Cases T-163/94 and T-165/94 *NTN Corporation and Koyo Seiko v Council* [1995] ECR II-1381. In that judgment, the Court of First Instance annulled Article 1 of Council Regulation (EEC) No 2849/92 of 28 September 1992 modifying the definitive anti-dumping duty on imports of ball-bearings with a greatest external diameter exceeding 30 mm originating in Japan imposed by Regulation (EEC) No 1739/85 (OJ 1992 L 286, p. 2) (hereinafter 'the contested regulation'), in so far as it imposed an anti-dumping duty on the applicants.

- 3 The application for leave to intervene was made in accordance with Article 93 and 123 of the Rules of Procedure of the Court of Justice.

- 4 In their application for leave to intervene, NSK Ltd and its eight subsidiaries (hereinafter 'the NSK Group') submit that they have an interest in the outcome of the case in so far as the subsidiaries of the NSK Group were required, under Article 1 of the contested regulation annulled by the Court of First Instance, to pay anti-dumping duties on ball-bearings imported into the Community. Consequently, if the appeal were to be dismissed and the annulment of Article 1 of the contested regulation confirmed, the subsidiaries of the NSK Group would no longer be required to pay anti-dumping duties on the ball-bearings in question and would be entitled to seek repayment of those duties which they have already paid and will continue to pay until such time as the Court of Justice delivers judgment on the appeal.

- 5 NSK Ltd also claims that it has an interest in the outcome of the case since, if the annulment of Article 1 of the contested regulation is confirmed, it will benefit directly from the repayment of the duties in question to its subsidiaries. NSK Ltd is also concerned to ensure that its ball-bearings are not placed at a disadvantage on the market place by continuing to have anti-dumping duties of 6.5% imposed on them.

- 6 For its part, Permarin SA considers that it too has an interest in the outcome of the case in so far as it owns 30% of NSK-RHP Iberica SA and purchases NSK ball-bearings from that company at a net price which includes the 6.5% anti-dumping duty.

- 7 Under Article 37 of the Protocol on the Statute of the Court of Justice of the EC, Member States and institutions of the Community may intervene in cases before the Court. The same right is open to any other person establishing an interest in

the result of any case submitted to the Court, with the exception of certain types of cases. Submissions made in an application for leave to intervene must be limited to supporting the submissions of one of the parties.

- 8 So far as NSK Ltd is concerned, it should be pointed out that it had an independent right of action against the contested regulation under the second paragraph of Article 173 of the EEC Treaty (now the fourth paragraph of Article 173 of the EC Treaty). It follows from the Court's case-law (in particular, Case C-174/87 *Ricoh v Council* [1992] ECR I-1335, paragraph 7) that a regulation imposing different anti-dumping duties on a series of traders is of direct concern to any one of them only on respect of those provisions which impose on that trader a specific anti-dumping duty and determine the amount thereof, and not in respect of those provisions which impose anti-dumping duties on other undertakings. Since in this case Article 1 of the regulation imposed a specific anti-dumping duty of 6.5% on NSK Ltd (referred to in the contested regulation by its former corporate name 'Nippon Seiko Co. Ltd'), it was directly and individually concerned by that regulation.
- 9 For that reason NSK Ltd must be granted leave to intervene in the present case. However, since it did not bring an action for annulment, its rights as intervener must be confined to supporting the forms of order sought by the respondents (orders of 28 January 1987 in Case 150/86 *Usinor and Sacilor v Commission*, not published in the European Court Reports, and in Case T-35/91 *Eurosport v Commission* [1991] ECR II-1359).
- 10 So far as all of the subsidiaries of the NSK Group are concerned, their interests will be affected by the judgment delivered on the appeal. They import into the Community ball-bearings manufactured by NSK Ltd and in that connection pay a specific anti-dumping duty of 6.5% pursuant to the contested regulation. They have therefore established a direct and present interest in ensuring that the forms of order sought by the respondents are granted by the Court.

- 11 For that reason, the applications for leave to intervene submitted by all of the companies in the NSK Group must be granted.

- 12 By virtue of Article 93(3) of the Rules of Procedure of the Court of Justice, which, pursuant to Article 118 thereof, is applicable to the procedure before the Court of Justice on appeal from a decision of the Court of First Instance, NSK Ltd and its eight subsidiaries shall receive copies of every document served on the parties. A period shall be prescribed within which they must state in writing the pleas in law in support of the forms of order sought by them.

- 13 So far as Permarin SA is concerned, the application for leave to intervene states that it owns 30% of NSK-RHP Iberica SA and purchases NSK ball-bearings from that company at a net price which includes the 6.5% anti-dumping duty.

- 14 Under indent (f) of the second subparagraph of Article 93(1) of the Rules of Procedure, every application for leave to intervene must contain a statement of the reasons establishing the intervener's right to intervene. In an appeal, such a statement forms the only basis on which the Court can rule on the application.

- 15 In the present instance, the reasons relied on by Permarin SA do not enable the Court to conclude with a sufficient degree of certainty that the company has a direct and present interest in the result of the case. According to the documents before the Court, Permarin SA is not required to pay the specific anti-dumping duty of 6.5% imposed on NSK ball-bearings. Moreover, it has not been established on what grounds it had to, and still has to, pay anti-dumping duty pursuant to the contested regulation. In those circumstances, Permarin SA's interest in the result of the case, within the meaning of the second paragraph of Article 37 of the Protocol on the Statute of the Court of Justice of the EC, has not been established to a sufficient extent.

- 16 In view of the foregoing, the application for leave to intervene submitted by NSK Ltd and its eight subsidiaries must be granted, while that submitted by Permarin SA must be dismissed.

On those grounds,

THE COURT

hereby orders:

1. NSK Ltd, NSK Bearings Europe Ltd, NSK-RHP France SA, NSK-RHP UK Ltd, NSK-RHP Deutschland GmbH, NSK-RHP Italia Spa, NSK-RHP Nederland BV, NSK-RHP European Distribution Centre BV and NSK-RHP Iberica SA are granted leave to intervene in Case C-245/95 P in support of the forms of order sought by the respondents.
2. The Registrar shall serve on the interveners copies of every document served on the parties.
3. A period shall be prescribed within which the interveners must state in writing the pleas in law in support of the forms of order sought by them.
4. The application for leave to intervene submitted by Permarin SA is dismissed.

5. The costs are reserved, except for those relating to the application for leave to intervene submitted by Permarin SA, which must be paid by that undertaking.

Luxembourg, 14 February 1996.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President