

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,

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,

* Language of the case: English.

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

By application lodged at the Registry of the Court of Justice on 10 October 1995, the Federation of European Bearing Manufacturers' Associations (hereinafter 'FEBMA'), 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, applied for leave to intervene in Case C-245/95 P in support of the form of order sought by the Commission.

- 2 This case is an appeal brought by the Commission against the judgment of the Court of First Instance of the European Communities 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.

- 3 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), in so far as it imposed an anti-dumping duty on the applicants.

- 4 In the proceedings before the Court of First Instance, FEBMA intervened in support of the form of order sought by the Council.

- 5 When an appeal is made to the Court of Justice, notice thereof must, under Article 114 of the Rules of Procedure, be served on all the parties to the

proceedings before the Court of First Instance. Those parties may, pursuant to Article 115(1) of those Rules, lodge a response within two months after service on them of notice of the appeal.

- 6 In the present case, notice of the Commission's appeal was, in accordance with Article 114 of the Rules of Procedure, served on FEBMA on 24 July 1995, with the result that the period referred to in Article 115(1) of those Rules, extended on account of distance under Article 81(2) thereof, expired on 2 October 1995.

- 7 As the Court held in its judgment in Case C-244/91 P *Pincherle v Commission* [1993] ECR I-6965, paragraph 16, it follows from Article 49 of the Protocol on the Statute of the Court of Justice of the EEC that interveners before the Court of First Instance must be treated as parties before that Court. Consequently, Article 115(1) of the Rules of Procedure, mentioned above, applies to them and releases them from the obligation to submit a fresh application for leave to intervene before the Court of Justice under Articles 93 and 123 of the Rules of Procedure.

- 8 It follows that an application for leave to intervene submitted in appeal proceedings by a party which intervened in the proceedings at first instance cannot be granted.

- 9 The application for leave to intervene must therefore be declared inadmissible.

On those grounds,

THE COURT

hereby orders:

- 1. The application for leave to intervene submitted by the Federation of European Bearing Manufacturers' Associations is dismissed as inadmissible.**
- 2. The Federation of European Bearing Manufacturers' Associations is ordered to bear its own costs.**

Luxembourg, 14 February 1996.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President