

ORDER OF THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)
7 March 2000 *

In Case T-2/95 (92),

Industrie des Poudres Sphériques, established in Annemasse (France), represented by C. Momège, of the Paris Bar, with an address for service in Luxembourg at the Chambers of A. May, 398 Route d'Esch,

applicant,

v

Council of the European Union, represented originally by R. Torrent and J. Monteiro, then by Mr Torrent and Y. Cretien, Legal Advisers, and subsequently by Mr Torrent and A. Tanca, of its Legal Service, acting as Agents, assisted by P. Bentley, Barrister, with an address for service in Luxembourg at the office of A. Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: French.

supported by

Commission of the European Communities, represented by N. Khan and X. Lewis, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

Péchiney Électrométallurgie, established in Courbevoie (France),

and

Chambre Syndicale de l'Électrométallurgie et de l'Électrochimie, established in Paris (France),

represented originally by J.-P. Gunther and H. de Broca, of the Paris Bar, then by Mr Gunther alone, and subsequently by O. Prost, of the Paris bar, 99-101 Rue de la Loi, Brussels (Belgium),

interveners,

APPLICATION for taxation of the costs to be paid by the applicant to the intervener Péchiney Électrométallurgie following the judgment of the Court of First Instance of 15 October 1998 in Case T-2/95 *Industrie des Poudres Sphériques v Council* [1998] ECR II-3939,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fifth Chamber, Extended Composition),

composed of: R. García-Valdecasas, President, P. Lindh, R.M. Moura Ramos,
J.D. Cooke and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

Order

Facts, procedure and forms of order sought by the parties

- 1 By application lodged at the Registry of the Court of First Instance on 9 January 1995, the company Industrie des Poudres Sphériques (hereinafter 'IPS') brought an action for annulment of Council Regulation (EC) No 2557/94 of 19 October 1994 imposing a definitive anti-dumping duty on imports of calcium metal originating in the People's Republic of China and Russia (OJ 1994 L 270, p. 27). By orders of 28 April and 28 November 1995, the President of the Fifth Chamber, Extended Composition, of the Court of First Instance granted the Commission, on the one hand, and Pêchiney Électrométallurgie (hereinafter 'PEM') and the Chambre Syndicale de l'Électrométallurgie et de l'Électrochimie (hereinafter the 'Chambre Syndicale'), on the other, leave to intervene in support of the forms of order sought by the Council.
- 2 By judgment of 15 October 1998 in Case T-2/95 *Industrie des Poudres Sphériques v Council* [1998] ECR II-3939 (hereinafter the '*IPS v Council*')

judgment'), the Court of First Instance dismissed the application and ordered IPS to bear its own costs and pay those of the Council, including those relating to the application for interim relief, and also to pay the costs of the intervener PEM. The Chambre Syndicale and the Commission were ordered to bear their own costs.

- 3 On 15 December 1998, IPS lodged an appeal against that judgment which is pending before the Court of Justice.
- 4 Following an exchange of correspondence between their lawyers, IPS refused to pay to PEM the amount claimed by it for recoverable costs but offered to pay it a sum of the same order as that claimed by the Council.
- 5 By application lodged at the Registry of the Court of First Instance on 14 July 1999, PEM made an application for taxation of costs in which it requests that the total amount of the recoverable costs be fixed, pursuant to Article 92(1) of the Rules of Procedure of the Court of First Instance, at FRF 773 810.50, corresponding to FRF 704 345 for lawyers' fees, FRF 7 507.50 for the fees of a person authorised to accept service in Luxembourg and FRF 61 958 for sundry expenses.
- 6 On 20 September 1999, IPS submitted its observations in which it considers PEM's claim to be excessive and agrees to pay it FRF 152 250 by way of recoverable costs.

Substance

Arguments of the parties

- 7 PEM maintains, first, that the main proceedings were of considerable economic interest to it as the annulment of Regulation No 2557/94 and therefore the removal of all protection against imports of calcium metal originating from China and Russia would have exposed it to dumping practices and would have caused it a very significant injury, ultimately threatening the survival of its calcium metal production activity, as acknowledged by the Court in paragraph 389 of its judgment in *IPS v Council*.
- 8 Second, PEM states that the interest, from the point of view of Community law, of the main proceedings and the difficulty of those proceedings caused it to incur considerable lawyers' fees. Thus, the Court had to rule on the issue of the impact, in an anti-dumping proceeding, of factors linked to competition policy and, for the first time, on the question whether, following a judgment annulling anti-dumping measures, the Community institutions are authorised to resume the investigation within the initial proceeding. In its judgment in *IPS v Council* the Court also dealt with complex questions relating to the right to a fair hearing, to the Community's interest in imposing anti-dumping duties and to the examination of the similarity between the calcium metal manufactured by PEM and the product imported from China or Russia.
- 9 Finally, PEM maintains that it made a useful contribution to the examination of the action by the Court in that several of the arguments developed in its pleadings were taken into account. Thus, the judgment in *IPS v Council* included the following: the account of PEM's relations with IPS between 1991 and 1994, of decisive importance for showing, in particular, that PEM had not refused to meet IPS's needs for calcium metal (paragraphs 231 to 284); the demonstration that, on resuming the investigation, the Community institutions had given IPS more rights

than in a new proceeding (paragraph 101); the arguments, with regard to the right to a fair hearing, according to which, on one hand, IPS had waived its right to state its point of view before the resumption of the investigation and, on the other, the information supplied by the undertakings of the reference country which was used to calculate the normal value should have been treated confidentially (paragraphs 111, 113 and 162 to 164); the negative consequences which would have been caused for PEM by the non-adoption of duties (paragraphs 186 to 194) and, finally, the examination of the similarity between the calcium metal manufactured by PEM and the product imported from China or Russia.

- 10 IPS contends, first, with regard to the economic interest of the dispute, that PEM's survival was not threatened by imports of calcium metal from China and Russia because the calcium-related activity represented only 0.05% of PEM's turnover in 1995 and because the annual Community market for calcium metal amounts to only around 1 000 to 1 500 tonnes. In addition, the anti-dumping duties imposed by Regulation No 2557/94 were due to expire on 21 October 1999 and PEM had not asked for their renewal.
- 11 Second, with regard to the interest of the dispute from the point of view of Community law, IPS maintains that, with the exception of the issue of resuming the investigation, all the other questions relating to the right to a fair hearing, the injury suffered by the Community industry, the Community's interest in imposing anti-dumping duties and the examination of the similarity between the calcium metal manufactured by PEM and the product imported from China or Russia had already been settled by the Court. As for the competition issue, this is the subject of an action currently pending before the Court and has therefore not yet been settled.
- 12 Third, IPS contests the importance of PEM's contribution to the result of the case. On the commercial relations between the two companies, PEM simply repeated in its statement in intervention the information already supplied to the

Commission, to the Directorate-General for External Relations: Commercial policy, relations with North America, the Far East, Australia and New Zealand during the administrative procedure and to the Directorate-General for Competition in a complaint for abuse of dominant position. On the other questions, either PEM's arguments were not decisive or they had already appeared in the Council's pleadings.

- 13 Fourth, IPS maintains that PEM's claim is excessive in view of the work carried out and totally disproportionate in relation to the amount claimed by the Council, as the defendant, for much more work.
- 14 In this respect, IPS points out, first, that numerous services provided by PEM's advisers in the context of other matters have been charged to this case. It notes that, in parallel to the action for annulment brought before the Court of First Instance, other proceedings were in progress, namely an intermediate re-examination of the anti-dumping measures imposed by Regulation No 2557/94, opened by the Commission on 5 January 1996 (OJ 1996 C 2, p. 2), which led to the adoption of Council Regulation (EC) No 733/1999 of 30 March 1999 imposing a definitive anti-dumping duty on imports of calcium metal originating in Russia and the People's Republic of China and amending Regulation (EC) No 2557/94 (OJ 1999 L 94, p. 1), and a complaint for abuse of dominant position which it lodged on 11 July 1994 and whose rejection is the subject of an action pending before the Court. The services provided by PEM's lawyers in this case were limited to an application to intervene, lodged at the Registry of the Court of First Instance on 9 June 1995, a statement in intervention lodged on 16 April 1996 and their oral argument presented at the hearing of 2 December 1997.
- 15 IPS also states that the number of hours invoiced to PEM in this case is disproportionate as PEM is only an intervener. PEM's two lawyers spent 430 hours in total on the case whereas the Council, which was the defendant and which also monitored the interlocutory proceedings, lodged three pleadings and claimed reimbursement for 91 hours' work for the whole procedure.

- 16 With regard to the amount of FRF 61 958 claimed by PEM for sundry expenses, IPS states that this is excessive and includes expenses which have nothing to do with this case.
- 17 Finally, IPS offers to pay to PEM the same sum as that claimed by the Council for the entire proceedings before the Court, namely FRF 152 250, which includes lawyer's fees and sundry expenses.
- 18 In addition, IPS states that only half of PEM's costs should be charged to IPS as the other half should be borne by the Chambre Syndicale. In this respect, IPS notes that the judgment in *IPS v Council* judgment specifies that the Chambre Syndicale is to bear its own costs. As the Chambre Syndicale and PEM chose the same lawyer, their statement in intervention was a joint pleading.

Findings of the Court

- 19 Under Article 92(1) of the Rules of Procedure:

‘[I]f there is a dispute concerning the costs to be recovered, the Court of First Instance hearing the case shall, on application by the party concerned and after hearing the opposite party, make an order, from which no appeal shall lie.’

- 20 According to Article 91(b) of the Rules of Procedure, recoverable costs are regarded as ‘expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers’.

- 21 According to settled case-law, the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but to determine the part of that remuneration which may be recovered from the party ordered to pay the costs (orders of the Court of Justice in Case 318/82 *Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 3727, at paragraph 2, and of the Court of First Instance in Joined Cases T-18/89 and T-24/89 *Tagaras v Court of Justice* [1992] ECR II-153, at paragraph 13, and in Case T-78/89 *DEP PPG Industries Glass v Commission* [1993] ECR II-573, at paragraph 36).
- 22 As Community law does not lay down any provisions on scales of costs, the Community judicature must freely assess the circumstances of the case, taking into account the subject-matter and nature of the dispute, its importance in terms of Community law and the difficulties of the case, the extent of the work which the proceedings before the Court could have caused to the agents or advisers acting in the case and the economic interests which the dispute represented for the parties. To this end, it does not have to take account of a national scale of costs fixing lawyers' fees or any agreement concluded in this respect between the party concerned and its agents or advisers (order in Case 318/82, at paragraph 3, and orders in Joined Cases T-18/89 and T-24/89, at paragraph 13, Case T-2/93 (92) *Air France v Commission* [1995] ECR II-533, at paragraph 16, and Case T-175/94 (92) *International Procurement Services v Commission* [1998] ECR II-601, at paragraph 10).
- 23 Finally, account must be taken of the fact that, as a general rule, the procedural task of an intervener is significantly aided by the work of the main party in support of which it has intervened (order of 4 February 1993 in Case C-191/86 *DEP TEC v Council*, not published in the European Court Reports). As an intervention is, by its nature, subordinate to the main action, it cannot therefore present as many difficulties as that action, save in exceptional cases (order in Case T-97/95 (92) *Sinochem v Council* [1999] ECR II-743, at paragraph 17). The fees of an intervener's lawyer cannot therefore, as a rule, be higher than those of the main party.

- 24 In this case, it must be noted, first, that the lawyers' fees which PEM, as an intervener, regards as recoverable costs, namely FRF 704 345, are much higher than those claimed by the Council, as the main party, in this respect, namely BEF 732 000 (FRF 119 029).
- 25 In this respect, it must be noted that the amount claimed by the Council consists solely of the fees of the lawyer who assisted its agents. The Council's defence was also undertaken by two agents who are legal advisers and belong to its Legal Service. Those agents provided substantial assistance to the lawyers instructed by the institution by preparing the documents in the case and collaborating with the lawyers during all the stages of the proceedings. In those circumstances, since the fees of the Council's lawyer do not include the working hours devoted to the case by the institution's agents, the total amount of the costs claimed by the Council is not sufficiently representative of the workload or of the difficulties which the case presented for it and, as a result, cannot serve as a reference for assessing the amount of the fees of PEM's lawyers, which must be considered as essential costs.
- 26 Second, the dispute was of some importance in terms of Community law and the subject-matter in question required analysis of both economic and legal questions and the investigation of complex facts which were studied and interpreted by PEM's lawyers. Thus, a question was posed in this case which had not been explicitly examined in the case-law, namely the possibility of the Community institutions, following a judgment annulling anti-dumping measures, resuming the investigation in the initial proceeding. The Court also had to examine the question whether any anti-competitive behaviour by PEM had resulted in breaking the causal link between the dumping and the injury suffered by the Community industry and therefore in barring the imposition of anti-dumping duties.
- 27 Third, PEM did not limit itself to reproducing the defendant's arguments but added new ones and clarified facts which were essential for the examination of

the application. Thus, PEM clarified its commercial relations with IPS and other important points in the dispute.

- 28 With regard to the economic interest, it need merely be observed that PEM was the only Community producer of the product covered by Regulation No 2557/94 and that the case was of considerable economic interest to PEM.
- 29 As a result, both the work carried out by PEM's lawyers and the difficulty of the dispute and the economic interest of PEM justify substantial fees, higher than those claimed by the Council.
- 30 However, the work which the case may have demanded of PEM's advisers, including research into and analysis of academic legal writing, the legislation and the case-law, was not of an extent justifying an amount as high as that claimed by way of fees. In addition, PEM's advisers were already familiar with the case as they had represented the company during the administrative procedure before the Commission. This not only facilitated their work but also reduced the time which they had to devote to the case (order in Case T-290/94 (92) *Kaysersberg v Commission* [1998] ECR II-4105, at paragraph 20).
- 31 With regard to the number of hours which, according to PEM, its lawyers devoted to the case, namely 430 hours, IPS rightly contends that they are disproportionate in relation to the work done.

- 32 The circumstances of the case do not, therefore, justify fees in amount as high as that claimed by PEM.
- 33 With regard to the sum of FRF 61 958 claimed for procedural, travel and accommodation expenses, it must be noted that PEM includes in this amount expenses incurred in Paris, where its own head office and its lawyers' offices are situated, and in Brussels, where its lawyers have another office. PEM includes taxi and restaurant bills in Paris and Brussels, hotel bills in Paris and urgent mail from Brussels to Paris and travel between those two cities. Finally, PEM includes the cost of translating from German to French the Commission Decision of 23 September 1991 in *Mannensmann v Boge*. These costs cannot be regarded as essential for the purposes of the proceedings in the sense contemplated in Article 91(b) of the Rules of Procedure.
- 34 Finally, IPS's argument that half of the services provided by the advisers of PEM and the Chambre Syndicale should be charged to the latter cannot be accepted. It is for the Court to determine whether the costs claimed by PEM are recoverable. It is clear from the documents in the case that the invoices proving the amount claimed by PEM's advisers are addressed to PEM. That being so, the fact that PEM and the Chambre Syndicale decided to be represented by the same lawyers and to lodge a joint pleading has no effect on this taxation of costs.
- 35 As a result, in view of the nature of the dispute, its difficulty and the importance of PEM's contribution to its examination, a fair assessment of the recoverable costs incurred to date in this case will be made by setting their total amount at FRF 207 507.50.

- 36 As this amount takes account of all the circumstances of the case to date, there is no need to rule separately on the costs incurred by the parties for the purpose of these proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)

hereby orders:

The total amount of the costs to be reimbursed by the company Industrie des Poudres Sphériques to the intervener Pêchiney Électrométallurgie is set at FRF 207 507.50.

Luxembourg, 7 March 2000.

H. Jung

Registrar

R. García-Valdecasas

President