

Case 59/84

Tezi Textiel BV

v

Commission of the European Communities

(Common commercial policy — Protective measures)

Summary

1. *Free movement of goods — Goods in free circulation — Included — Full application of the Treaty rules — Conditions — Implementation of a common commercial policy*
(EEC Treaty, Arts 9 (2), 113 and 115)
2. *Common commercial policy — Import arrangements for products originating in non-member countries which are parties to the Multi-Fibre Arrangement — National protective measures — Permissibility — Powers of the Commission*
(EEC Treaty, Art. 115; Council Regulation No 3589/82)
3. *Common commercial policy — National protection measures — Commission authorization — Conditions — Authorization granted to the Benelux countries to adopt protective measures with regard to products originating in non-member countries which are parties to the Multi-Fibre Arrangement:*
(EEC Treaty, Arts 9, 30, 115; Council Regulation No 3589/82)
4. *Non-contractual liability — Conditions — Illegality of the action which caused the damage*
(EEC Treaty, Art. 215, second paragraph)
5. *Procedure — Costs — Intervention — Party intervening in support of the successful party — No claim as to costs — Consequences*
(Rules of Procedure, Art. 69 (2))

1. The provisions for the liberalization of intra-Community trade apply in identical fashion to products originating in Member States and to products from non-member countries which are in free circulation in the Community even where the import arrangements applying to them involve the division of a Community quota into national sub-quotas. However, the full application of the principle of free movement to goods imported from non-member countries is conditional upon the establishment of a common commercial policy, based, in accordance with Article 113 (1) of the Treaty, on uniform principles.

The assimilation to goods originating within the Member States of goods originating in a non-member country but in free circulation in one of the Member States may only take full effect if those goods are subject to the same conditions of importation, with regard to customs and commercial considerations, irrespective of the State in which they were released into free circulation.

Where that is not the case, the Commission has the power, under Article 115, to authorize Member States to take, with regard to those goods, protective measures to prevent deflections of trade or economic difficulties.

2. Although, as regards products originating in non-member countries which are parties to the Multi-Fibre Arrangement, Regulation No 3589/82 is undoubtedly a step towards the establishment of a common commercial policy based on uniform principles, it does not appear that the system established by that regulation has brought about complete uniformity as regards conditions of importation for the products in question.

The Commission has therefore retained the power under Article 115 to grant a Member State authorization to adopt protective measures with regard to textile products covered by Regulation No. 3589/82 and in free circulation in other Member States where the circumstances justify such action.

3. Because the derogations allowed under Article 115 of the Treaty constitute not only an exception to the provisions of Articles 9 and 30 of the Treaty, which are fundamental to the operation of the common market, but also an obstacle to the implementation of the common commercial policy provided for in Article 113, they must be interpreted and applied strictly. Moreover, since the system introduced by Regulation No 3589/82 constitutes a step towards the establishment of a common commercial policy based on uniform principles, the Commission must show great prudence and moderation in exercising the powers which it still has under Article 115 with regard to the products covered by that regulation. It follows that, as far as those products are concerned, the Commission may, solely for serious reasons and for a limited period, after a full examination of the situation in the Member State seeking a decision under Article 115 and having regard to the general interests of the Community, authorize, pursuant to that article, the protective measures which cause the least disruption of intra-Community trade.

The Commission did not exceed the limits of its powers under Article 115 by authorizing the Benelux countries to adopt protective measures with regard to certain products originating in non-member countries which are parties to the Multi-Fibre Arrangement since the

economic difficulties invoked by the Benelux countries were real and due, at least in part, to imports of textile products originating in non-member countries.

4. The Community may incur liability under the second paragraph of Article 215 of the Treaty only if the institutions have acted unlawfully, actual damage has been sustained and a causal link exists between the action complained of and

the alleged damage. Where the institution's action which allegedly caused the damage suffered is not unlawful in any respect, a claim for damages must be dismissed, without it being necessary to consider whether the other conditions are met.

5. An intervener which has not made any claim as to costs must bear its own costs even if it intervened in support of the successful party.

OPINION OF MR ADVOCATE GENERAL
VERLOREN VAN THEMAAT
delivered on 2 October 1985 *

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* Translated from the Dutch.