

ORDER OF THE COURT
11 March 1987 *

In Case 121/86

(1) **Anonimos Eteria Epichirisseon Metalleftikon Viomichanikon kai Naftiliakon AE,**

(2) **Makedoniki Lefkolithi Metalleftiki, Viomichaniki kai Naftiliaki Eteria AE,**

(3) **Elliniki Lefkolithi Metalleftiki Viomichaniki Naftiliaki kai Emboriki Eteria AE**

and

(4) **Magnomin Geniki Metalleftiki Eteria AE, Metalleftiki Emboriki kai Metapyittiki,**

having their registered offices in Athens (Greece), represented by Panagiotis Bernitsas of the Athens Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-rue,

applicants,

v

Council of the European Communities, represented by Erik Stein, Legal Adviser, and Christos Mavrakos, a member of the Council's Legal Department, both acting as Agents, with an address for service in Luxembourg at the office of Jörg Käser, European Investment Bank, 100 boulevard Konrad-Adenauer,

and

Commission of the European Communities, represented by J. Temple Lang and Dimitrios Gouloussis, Legal Advisers, both acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

defendants,

* Language of the case: Greek.

APPLICATION for a declaration that Council Decision No 86/59/EEC of 6 March 1986 terminating the anti-dumping proceeding concerning imports of dead-burned (sintered) natural magnesite originating in the People's Republic of China and North Korea and any other related decision, prior or subsequent, is void,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: Sir Gordon Slynn

Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

ORDER

Facts and Issues

By an application lodged at the Court Registry on 23 May 1986 the four undertakings named above brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Decision No 86/59/EEC terminating the anti-dumping proceeding concerning imports of dead-burned (sintered) natural magnesite originating in the People's Republic of China and North Korea (Official Journal L 70 of 13 March 1986, p. 41) is void.

By a document lodged at the Court Registry on 15 September 1986 the Commission raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure and asked the Court to declare the application inadmissible in so far as it is directed against it on the ground that it cannot be made a defendant to the proceedings since the contested decision

emanates from the Council. The Commission also submits that the inadmissibility of the application also arises indirectly from Article 176 (1) of the EEC Treaty.

By a document lodged at the Court Registry on 30 January 1987 the applicant undertakings contest the plea that the Commission cannot be made a defendant to the proceedings and ask the Court to dismiss the objection of inadmissibility or, in the alternative, to examine the question of admissibility at the same time as the substance of the case.

The applicants maintain in this regard that the basic regulation on anti-dumping matters, Regulation No 2176/84, confers exclusive power on the Commission *inter alia* to initiate and to conduct the investigation and to conclude the proceeding. In

the present case, the Commission is the institution which has conducted all the investigations relating to the anti-dumping proceeding which led to the contested decision. The fact that the Council took the final decision in that procedure is a purely formal matter.

In the applicants' view, if the Court were to uphold the objection of inadmissibility, the acts of the Commission would be excluded from review by the Court since the Council contends that the irregularities allegedly contained in the decision at issue are attributable only to the Commission.

Decision

Article 91 (3) of the Rules of Procedure provides that the remainder of the proceedings on the objection is to be oral, unless the Court decides otherwise. The Court considers that it has sufficient information in this case and that it is not necessary to open the oral procedure.

The conclusions in the application are directed expressly and exclusively to Council Decision No 86/59 of 6 March 1986.

The Court further observes that the Commission's role is part of the Council's decision-making process. It is clear from the provisions of Council Regulation No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1984, L 201, p. 1), on the basis of which the decision at issue was adopted, that the Commission is responsible for conducting investigations and deciding upon the basis of those investigations whether any protective measure appears necessary and to conclude the proceeding. However, if, as in this case, objections to the conclusion of the proceeding are raised before the Advisory Committee provided for in Article 6 (1), Article 9 requires the Commission to submit to the Council a proposal that the proceeding be terminated. The decision-making power therefore lies with the Council, which may take a decision different from that proposed by the Commission.

It follows from the foregoing that the application for a declaration that Decision No 86/59 is void is inadmissible in so far as it is directed against the Commission.

On those grounds,

THE COURT

hereby orders as follows:

- (1) The application is dismissed in so far as it is directed against the Commission;
- (2) The applicants are ordered to pay the costs relating to the objection of inadmissibility raised pursuant to Article 91 of the Rules of Procedure.

Luxembourg, 11 March 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President