ORDER OF THE COURT
11 November 1987 *

In Case 205/87

Nuova Ceam Srl, whose registered office is in Busto Arsizio (Italy), represented by Dino Ranieri, of the Como Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by Eugenio de March, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation (EEC) No 1043/87 of 10 April 1987 imposing a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Yugoslavia,

THE COURT

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

Advocate General: J. L. da Cruz Vilaça
Registrar: P. Heim

after hearing the Opinion of the Advocate General,

makes the following

* Language of the Case: Italian.

Order

1 By an application lodged at the Court Registry on 6 July 1987, Nuova Ceam Srl brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of Commission Regulation (EEC) No 1043/87 of 10 April 1987 imposing a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Yugoslavia (Official Journal 1987, L 102, p. 5). In support of its application, the applicant alleges an infringement of Council Regulation (EEC) 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) and of a number of general principles of Community law.

2 The anti-dumping proceeding which led to the imposition of the provisional duty in question was initiated by the Commission in November 1986 following the submission of a complaint by the associations representing a majority of all Community manufacturers of the products in question (Official Journal 1986, C 282, p. 2).

3 As is clear from the 13th recital in the preamble to the contested regulation, the Commission referred in its dumping investigation to the export prices actually paid or payable in respect of the transactions in question, and in no case did it construct export prices, as provided for in Article 2 (8) (b) of Regulation No 2176/84, on the basis of the resale prices charged by importers in the Community.

4 However, in Article 1 (4) (b) of the contested regulation, the Commission mentioned two importers which are subject to the rules laid down for importers associated with an exporter within the meaning of Article 2 (8) (b) of Regulation No 2176/84. The applicant is not one of those companies.

5 Moreover, Article 1 (5) of the regulation in question makes the release for free circulation of the electric motors of the aforesaid type originating in Yugoslavia subject to payment of a security equivalent to the amount of the provisional duty.

6 According to the documents before the Court, the applicant is an Italian company which carries on the business of exclusive importer into Italy of electric motors originating in Yugoslavia and exported by a company called Sever, without, however, being associated, within the meaning of Article 2 (8) (b) of Regulation No 2176/84, with that exporter or with one of the other exporters concerned.

7 By a document lodged at the Court Registry on 7 August 1987, the Commission raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure, contending that the regulation in question is not of direct and individual concern to the applicant but constitutes a measure of general application with regard to the applicant. Since, in the Commission's view, the applicant is not associated with any of the Yugoslav exporters of the products in question and the existence of dumping has been established on the basis not of its resale prices but of the export prices of the Yugoslav producers and/or exporters, the applicant does not belong to any of the categories of traders whom the Court has recognized as having a direct right of action against regulations imposing anti-dumping duties.

8 The applicant states that it is the sole importer in Italy of electric motors produced by one of the Yugoslav companies and that the export price was calculated on the basis of the prices of that company. Accordingly, in its view, there is at least a *de facto* dependence, which means that it is in fact directly and individually concerned by the contested measure. Moreover, the Commission took into account the observations which it submitted during the anti-dumping proceeding. Finally, it maintains that to secure legal protection by means of an action before the national court would be far less effective and more uncertain because of the rather long period of time which would elapse before any finding of illegality was made and because the recovery of the anti-dumping duty by the national authorities during that period might cause it injury.

9 The question of admissibility raised by the Commission must be resolved with reference to the second paragraph of Article 173 of the Treaty, which makes the admissibility of an action for annulment brought by an individual subject to the condition that the contested measure, even though in the form of a regulation, must in fact constitute a decision of direct and individual concern to that person.

10 However, an action brought by an individual is not admissible if it is directed against a regulation having general application within the meaning of the second paragraph of Article 189 of the Treaty, the criterion for distinguishing between a regulation and a decision being, according to the established case-law of the Court, whether or not the measure in question has general application.

11 In that regard, it must be stated first of all that regulations imposing anti-dumping duties are in fact, by their nature, of general application inasmuch as they apply to the generality of traders concerned (see the judgment of 21 February 1984 in Joined Cases 239 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005).

12 However, the Court has recognized that some provisions of those regulations may be of direct and individual concern to those producers and exporters of the product in question who are charged with the dumping practices on the basis of information originating from their business. Generally, that is the case with producing and exporting undertakings which can show that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations (see the judgment of 21 February 1984 *Allied Corporation* v *Commission*, cited above, and the judgment of 23 May 1985 in Case 53/83 *Allied Corporation and Others* v *Council* [1985] ECR 1621).

13 The same is true of those importers who are directly concerned by the findings relating to the existence of a dumping practice by reason of the fact that the export prices were established by reference to their resale prices and not by reference to the export prices charged by the producers or exporters in question (see the judgment of 29 March 1979 in Case 118/77 *ISO* v *Council* [1979] ECR 1277, and the judgment of 21 February 1984 in *Allied Corporation* v *Commission*, cited above). As is clear from Article 2 (8) (b) of Regulation No 2176/84, export prices may be constructed in that way where, in particular, there is an association between the exporter and the importer.

14 The applicant does not belong to the category of importers which the Court has recognized as having a direct right of action against regulations imposing anti-dumping duties. It is apparent from the documents before the Court that the applicant is not associated with any of the exporters of the product in question and

that the existence of dumping was established on the basis not of the applicant's resale prices but of the export prices actually paid or payable.

15 The applicant's contention that it is the exclusive importer in its Member State of electric motors from one of the Yugoslav exporters cannot lead to a different assessment. The contested regulation concerns the applicant not by reason of certain attributes which are peculiar to it or by reason of circumstances which distinguish it from any other person but merely by reason of the applicant's objective status as an importer of the products in question in the same way as any other trader who is, or might be in the future, in the same situation (see the judgment of 14 July 1983 in Case 231/82 *Spijker Kwasten BV* v *Commission* [1983] ECR 2559, and the orders of 8 July 1987 in Case 279/86 *Sermes* [1987] ECR 3109, and in Case 301/86 *R. Frimodt Pedersen A/S* v *Commission* [1987] ECR 3123).

16 The applicant's argument that its application must be admissible by virtue of its participation in the investigation conducted by the Commission cannot be accepted either, since the distinction between a regulation and a decision can be based only on the nature of the measure itself and its legal effects and not on the circumstances surrounding the procedure preparatory to its adoption (see the judgment of 6 October 1982 in Case 307/81 *Alusuisse Italia SpA* v *Council and Commission* [1982] ECR 3463, and the orders of 8 July 1987 in Case 279/86 *Sermes* and in Case 301/86 *Frimodt Pedersen*, both cited above).

17 Moreover, that solution is in conformity with the system of remedies provided for by Community law since importers may, under the rules of national law, challenge before the national courts individual measures adopted by the national authorities in application of the Community regulation.

18 It is clear from the foregoing that the contested measure constitutes, with regard to the applicant, a regulation of general application and not a decision within the meaning of the second paragraph of Article 173 of the Treaty.

19 Consequently, in accordance with Article 91 (3) and (4) of the Rules of Procedure, the application must be dismissed as inadmissible by reasoned order without examination of its merits.

Costs

20 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

(1) The application is dismissed as inadmissible;

(2) The applicant is ordered to pay the costs.

Luxembourg, 11 November 1987.

P. Heim
Registrar

Acting as President
G. Bosco
President of Chamber