

OPINION OF ADVOCATE GENERAL
GULMANN

delivered on 6 May 1993 *

*Mr President,
Members of the Court,*

1. The question referred to the Court for a preliminary ruling by the Finanzgericht (Finance Court) Baden-Württemberg arises out of a dispute between the German company, Dr Tretter GmbH&Co. (hereinafter 'Tretter'), and a German customs authority and concerns the levying of an anti-dumping duty on bearing bushes imported from Japan by the company in 1986.

2. The anti-dumping duty was levied on the basis of Council Regulation (EEC) No 1739/85 imposing a definitive anti-dumping duty on imports of certain ball bearings and tapered roller bearings originating in Japan.¹ That regulation imposed under Article 1(1) thereof a definitive anti-dumping duty on imports of 'ball bearings with greatest external diameter of more than 30mm ... falling within heading No ex 84.62 of the Common Customs Tariff and corresponding to Nimex codes 84.62-09 ..., originating in Japan ...'.

The customs authorities classified the imported bearing bushes under heading No 84.62 of the Common Customs Tariff²

(Nimex code 84.62-09)³ and levied an anti-dumping duty of 21.7% on the basis of Article 1(2) of the said regulation.

Tretter contended that that decision was unlawful and put forward two arguments in that regard, principally to the effect that the bearing bushes were not covered by the anti-dumping regulation since they did not fall within heading No 84.62 (Nimex code 84.62-09). The alternative argument was that Article 1 of the regulation was void if it covered bearing bushes, because the prior investigation in connection with the anti-dumping proceeding did not extend to bearing bushes.

3. In the order for reference, the Finanzgericht stated, in particular:

"Ball bearings" in the technical sense means only radial bearings. They are mass produced and imported in great quantities from Japan into the EEC. On the other hand the imported "bearing bushes", which apparently are manufactured and imported in much smaller quantities, have, like sliding bushes, *technically* only linear movements intended for sliding, for example, machine cartridges and tables. Both their function and construction thus distinguish them from "ball bearings" with which all they have in

* Original language: Danish.

1 — OJ 1985 L 167, p. 3.

2 — That heading has the following wording: 'Ball, roller or needle roller bearings'. See the annex to Council Regulation (EEC) No 3400/84 of 27 November 1984 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (OJ 1984 L 320, p. 1).

3 — That code number contains the following description: 'Other' (than ball bearings with greatest external diameter not more than 30 mm). See the annex to Commission Regulation (EEC) No 3529/84 of 14 December 1984 amending the nomenclature of goods for the external trade statistics of the Community and statistics of trade between Member States (Nimex) (OJ 1984 L 337, p. 1).

common from the technical point of view is the type of roller used, namely *balls*.’

The Finanzgericht added:

‘If in spite of that technical distinction the bushes are to be classified under Nimexe code 84.62-09, as the Senate inclines to think they should be, that does not necessarily mean that the wording (“ball bearings ... corresponding to Nimexe code 84.62-09 ...”) of Article 1(1) of Council Regulation (EEC) No 1739/85 is in that respect “too wide” and therefore invalid in so far as it includes bearing bushes although there may have been no investigation of dumping practices in relation thereto. At least in those circumstances the provision could be interpreted as not including bearing bushes.’

It is against that background that the question raised by the Finanzgericht should be understood. It reads as follows:

‘Is Article 1(1) of Council Regulation (EEC) No 1739/85 of 24 June 1985 imposing a definitive anti-dumping duty on imports of certain ball bearings and tapered roller bearings ... invalid or to be interpreted as meaning that “ball bearings ... corresponding to Nimexe code 84.62-09 ...” includes only ball bearings in the *technical* sense, that is to say only radial bearings, and not so-called bearing bushes (Kugelbushen) (linear-only guideways)?’

4. Thus, the question concerns *Article 1 of the anti-dumping regulation*. In my opinion, the question must be interpreted as meaning that the Finanzgericht started off from the premise that *heading No 84.62 of the Common Customs Tariff* (Nimexe code 84.62-09), covers the bearing bushes at issue here. It is on that basis that it asks whether that article of the *anti-dumping regulation* is *invalid*, or whether it may be *interpreted* restrictively, so that it does not cover bearing bushes.

I consider that the Court may also — in spite of Treitter’s arguments to the contrary — start from that premise.⁴

In those circumstances it is not necessary for the Court to express a view in this case on the interpretation of heading No 84.62.

That is all the clearer, since according to the observations of the Commission and the Council in this case, it may be considered as established that in no circumstances did Article 1 of the anti-dumping regulation seek to cover the bearing bushes at issue here.

5. That is due, in particular, to the fact that there is no doubt, in the light of the genesis and objective of the regulation that the bearing bushes in question were not to be subject to anti-dumping duty. They were not covered by the investigation concerning the relevant market, which is mandatory in accordance with the rules in force, before there can be any question of their being ‘dumped products’ and before an anti-dumping duty,

⁴ — The Commission explained that the Nomenclature Committee for the Common Customs Tariff stated at its 116th meeting on 15 May 1990 that bearing bushes should be classified as ball bearings in accordance with the Common Customs Tariff.

if appropriate, may be levied.⁵ The Commission, which undertook the investigation of the relevant market for ball bearings, stated that the anti-dumping proceeding did not concern bearing bushes which differ, both from an operational and from a structural point of view, from ball bearings, which rotate radially.

The conclusion which I have reached is also based on the fact that, as the Commission and Council have stated, Article 1 of the anti-dumping regulation refers to the diameter of the 'dumped products'. It is reasonable to speak of the diameter only where the products have radial motion, which is not necessarily the case with bearing bushes. Even though bearing bushes, whose movement may be linear, are also manufactured and used in a radial form, it would have been necessary to incorporate additional descriptive features in order that the regulation

might apply to that type of bearing bush and not also to bearing bushes with other cross-sections.

6. It is not necessary to declare, as Tretter claims, that Article 1 is void. As the Council and the Commission state, it is possible to interpret the regulation so as not to cover bearing bushes. Both the title of the anti-dumping regulation, under which it applies only to 'imports of certain ball bearings', and the words in Article 1(1) 'falling within heading No ex 84.62 ... corresponding to Nimexe codes ...' show that the regulation is intended only to apply to a limited group of all the products defined by the tariff heading to which it refers. Moreover, that is confirmed by the argument referred to above as regards the reference to the diameter of the products. Thus, it is possible to interpret that provision, in accordance with its genesis and objective, as covering only ball bearings in the technical sense and not bearing bushes.

Conclusion

7. I therefore propose that the Court should answer the question referred to it for a preliminary ruling as follows:

Article 1(1) of Council Regulation No 1739/85 of 24 June 1985 must be interpreted as meaning that the expression 'ball bearings ... corresponding to Nimexe code 84.62-09' includes only ball bearings in the technical sense, that is to say only radial bearings, and not so-called bearing bushes.

⁵ — The obligation to carry out a prior investigation before an anti-dumping duty is levied on the products is apparent from Article 7(1)(c) of Council Regulation (EEC) No 2176/84 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ 1984 L 201, p. 1).