

Case T-7/99

Medici Grimm KG

v

Council of the European Union

(Dumping — Regulation closing an interim review — Retroactivity — Recovery of duties — Action for annulment — Admissibility)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 29 June 2000 II-2675

Summary of the Judgment

1. *Actions for annulment — Action brought against an anti-dumping regulation closing an interim review and reducing the definitive anti-dumping duty — Action limited to challenging non-retroactivity of the regulation — Simultaneous request for recovery under the basic anti-dumping regulation — Distinct — Admissibility*
(EC Treaty, Art. 173, fourth para. (now, after amendment, Art. 230 EC, fourth para.); Council Regulation No 384/96, Art. 11(8))
2. *Actions for annulment — Interest in bringing proceedings — Importer challenging non-retroactivity of a regulation reducing anti-dumping duties*
(EC Treaty, Art. 173, fourth para. (now, after amendment, Art. 230 EC, fourth para.))

3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Regulation amending anti-dumping duties — Importer whose resale prices have been used to construct the export price*
(EC Treaty, Art. 173, fourth para. (now, after amendment Art. 230 EC, fourth para.))
4. *Common commercial policy — Protection against dumping — Review procedure — Purpose*
(Council Regulation No 384/96, Art. 11)
5. *Common commercial policy — Protection against dumping — Review of the facts justifying the imposition of anti-dumping duties — Review relating to the same period as the initial investigation — Finding that the criteria for imposing duties were not satisfied — Duty of the institutions to abide by the consequences — Retroactive application of corrective measures — Permissibility — Infringement of the principle of legal certainty — None*
(Council Regulation No 384/96, Art. 1)

1. The exception to the principle of autonomy of remedies — whereby an applicant who has not challenged an act within the time-limits prescribed by Article 173 of the Treaty (now, after amendment, Article 230 EC) cannot rely on a different remedy in order to circumvent the inadmissibility of an application for annulment — presupposes that the applicant has already had an opportunity to submit for review by the Community judicature the act or conduct of the administration which is effectively the subject of the second claim. It does not apply, therefore, where the two actions arise as a result of different acts or conduct on the part of the administration, even if the financial outcome of the two actions is the same for the applicant.

the Council adopts a regulation reducing the duties on imports by certain operators to 0%, an action by such an operator seeking annulment of that regulation in so far as it was not applied retroactively, and an application for recovery of the duties paid under the amended regulation made under Article 11(8) of the basic regulation, are distinct and relate to different acts.

(see paras 44-45)

In that connection, where, following a review of the measures imposed in the context of an anti-dumping procedure,

2. An undertaking which has imported goods subject to anti-dumping duty into the Community has an interest in the annulment of a Council regulation which, following a review, reduces that

duty to 0%, in that the Council did not grant its request for retroactive application of the provisions amending the rate of duty chargeable on its imports. The fact that the contested regulation is favourable to the applicant overall in no way diminishes its interest in the annulment of the part of the regulation unfavourable to it, namely the provision relating to the entry into force of the amended duties as they apply to it.

to them and the procedure therefore presupposes that those factors have altered.

(see para. 82)

(see para. 55)

3. An importer whose resale prices were used in order to construct export prices in an anti-dumping procedure is individually concerned by a regulation amending the anti-dumping duties following a review and has *locus standi* to bring an action for annulment against that regulation.

(see para. 65)

4. The review procedure provided for under Article 11 of the basic anti-dumping Regulation No 384/96 applies if there is a change in the circumstances on the basis of which the values applied in the regulation imposing the anti-dumping duties were established. The purpose of the review procedure is therefore to adapt the duties imposed to take account of an evolution in the factors which gave rise

5. Where, in an investigation such as that carried out by the Commission in order to enable undertakings which did not participate in an anti-dumping procedure to receive individual treatment based on their export prices, the institutions, having used the same investigation period as that used for the original investigation, find that one of the factors on the basis of which the definitive anti-dumping duties were imposed is missing, it is no longer possible to consider the conditions laid down in Article 1 of the basic anti-dumping Regulation No 384/96 were satisfied at the time when the original regulation was adopted and that the trade-protection measures were therefore necessary. That being so, the institutions are bound to abide by all the consequences flowing from their choice of investigation period for the review in question and, where they find that the person in question did not engage in dumping during that period, they must give that finding retroactive effect.

Although, as a general rule, the principle of legal certainty precludes a Community act from taking effect as from a date prior to its publication, the position may exceptionally be otherwise

where the purpose to be attained so requires and the legitimate expectations of the persons concerned are properly respected. Consequently, the retroactive application of acts of the institutions is permissible if it is capable of placing the person concerned in a more favourable legal situation and

provided that his legitimate expectations are properly respected.

(see paras 87, 90-91)