

## Case T-369/08

**European Wire Rope Importers Association (EWRIA) and Others**

**v**

**European Commission**

(Dumping — Imports of iron or steel ropes and cables originating in China, India, South Africa, Ukraine and Russia — Refusal to initiate a partial interim review of the anti-dumping duty imposed)

Judgment of the General Court (Eighth Chamber), 17 December 2010 . . . II - 6289

### Summary of the Judgment

1. *Actions for annulment — Actionable measures — Definition — Measures producing binding legal effects — Letter from the Commission announcing its refusal to initiate a partial interim review of an anti-dumping duty*  
(Art. 230 EC; Council Regulation No 384/96, Art. 11(3) and (6))
2. *Procedure — Application initiating proceedings — Formal requirements*  
(Rules of Procedure of the General Court, Art. 44(1)(c))
3. *Common commercial policy — Protection against dumping — Partial interim review of an anti-dumping duty*  
(Council Regulation No 384/96, Art. 11(3))

4. *Common commercial policy — Protection against dumping — Partial interim review of an anti-dumping duty*  
(Council Regulation No 384/96, Arts 11(3) and 21(1))
5. *Common commercial policy — Protection against dumping — Commission's preliminary response to requests for technical advice not constituting a decision — Breach of the principle of the protection of legitimate expectations — None*  
(Council Regulation No 384/96)

1. In order to determine whether a letter from the Commission responding to a request for a partial interim review under Article 11(3) of Regulation No 384/96 on the protection against dumped imports from countries not members of the European Community constitutes a decision for the purposes of Article 230 EC, it is necessary to ascertain whether, in the light of the substantive content of the letter, the intention of the Commission, and the context in which the letter was drafted, the Commission set out in that measure its definitive position on that request for review.

Since the Commission's letter informing the applicant that, on the basis of the information it submitted, it was not

possible to conclude that a partial interim review should be opened followed a letter from the applicant in which it informed the Commission of its intention not to supplement the request for review since the request contained sufficient evidence, it is clear that a decision was taken on that request.

By contrast with a situation in which the Commission decides, after consulting the Advisory Committee, in accordance with Article 11(6) of Regulation No 384/96, to initiate an interim review, the refusal to initiate such a review in the absence of sufficient evidence does not

constitute a preliminary or preparatory measure, since it cannot be followed by any other measure amenable to annulment proceedings.

It is not relevant in that regard that the applicant may still provide the Commission with additional information which might lead the Commission to review its position. That information has no effect on the fact that the first request for review is now refused. Moreover, the nature of that decision cannot be called in question solely on the ground that it emanates from the Commission's services and not from the Commission itself, since it produces binding legal effects capable of affecting the interests of the applicant and thus constitutes an actionable measure, in accordance with Article 230 EC.

(see paras 34-38, 40, 42-43)

2. Under Article 44(1)(c) of the Rules of Procedure of the General Court, every application initiating proceedings must state the subject-matter of the proceedings and contain a summary of the pleas in law on which it is based. That

statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself.

Whilst the body of the application may be supported and supplemented on specific points by references to certain extracts from documents annexed to it, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential submissions in law which must appear in the application. Moreover, it is not for the Court to seek and to identify, in the annexes, the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function. The application must accordingly specify the nature of the grounds on which the action is based, which means that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure.

(see paras 48-49)

3. In the sphere of measures to protect trade the institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine. The same applies as regards the complex technical assessments made by EU institutions.

Thus, the Commission has a broad measure of discretion for the purposes of deciding whether it is necessary to continue to impose anti-dumping measures, under Article 11(3) of Regulation No 384/96 on the protection against dumped imports from countries not members of the European Community, and whether a request for an interim review contains sufficient evidence to establish the need for such a review.

In that sphere, review by the Courts of the Union of assessments made by the institutions is therefore limited to verifying that the relevant procedural rules have been complied with, that the facts on which the contested choice is based have been accurately stated and that there has been no manifest error of assessment of the facts or misuse of power.

With regard to a change of circumstances that may justify exclusion of a particular product from the definition of the product concerned, in the context of the Commission's assessment of a request for an interim review of an anti-dumping duty under Article 11(3) of Regulation No 384/96, that regulation does not specify how the product or range of products which may be subject to an anti-dumping investigation is to be defined; nor does it require an intricate classification to be made. That discretion must be exercised on a case-by-case basis, by reference to all the relevant facts. For the purposes of defining the product concerned, the institutions may take account of a number of factors, such as the physical, technical and chemical characteristics of the products; their use; their interchangeability; consumer perception of the products; distribution channels; the manufacturing process; costs of production; and quality. In any event, even though the definition of a product concerned may correspond to a classification as given in a common standard, the definition of the product concerned by anti-dumping measures is not dependent on such a classification.

Consequently, a claim that the Commission committed a manifest error of assessment by refusing to initiate an interim review must be based on arguments which show that, in its assessment

of whether a review should be initiated, the Commission erred with regard to the factors it held to be relevant, or should have taken into account other more relevant factors which, in the context of the review, would have necessitated the exclusion of that product from the definition of the product concerned.

a matter relating to the determination of the need to maintain the anti-dumping measures concerned, in the context of an interim review under Article 11(3) of that regulation.

(see para. 107)

(see paras 77-79, 81-83, 87, 93)

4. It is clear from the second and third sentences of Article 21(1) of Regulation No 384/96 on the protection against dumped imports from countries not members of the European Community that the institutions have the right not to apply anti-dumping measures as determined, even if the other conditions for imposing an anti-dumping duty are met – namely dumping, injury and a causal link – if they conclude that it is not in the Community interest to apply such measures. In a case where Community production of products covered by anti-dumping measures is being gradually phased out, assessment of the Community interest is
5. The principle of the protection of legitimate expectations extends to any individual in a situation where it is clear that the EU administration has, by giving him precise, unconditional and concordant assurances, emanating from authorised and reliable sources, led him to entertain justified hopes. However, such assurances must comply with the applicable provisions and rules, since promises which do not take account of those provisions cannot give rise to a legitimate expectation on the part of the person concerned.

In the context of the Commission's assessment of a request for an interim review of an anti-dumping duty under Regulation No 384/96 on the protection against dumped imports from countries not members of the European Community, precise, unconditional and concordant assurances that an interim review

would be initiated cannot be provided by the Commission's preliminary response to requests for technical advice. Such a response does not constitute a formal or informal decision on its part, as the analysis of the file can take place only on the basis of arguments and actual evidence included in a request formally lodged and it cannot therefore, in any event, have generated any legitimate expectations that an interim review would take place. The fact that the Commission gave certain information or showed that it was

interested in a redefinition of the scope of the anti-dumping measures at issue or described the applicant's arguments as promising during such preliminary contacts do not amount to precise, unconditional and concordant assurances that a review would be initiated.

(see paras 139, 141-143)