

JUDGMENT OF THE COURT

16 May 1991 *

In Case C-358/89,

Extramet Industrie SA, a company incorporated under French law, whose registered office is in Annemasse (France), represented by Chantal Momège, of the Paris Bar and by Aloyse May, of the Luxembourg Bar, with an address for service at the latter's chambers,

applicant,

v

Council of the European Communities, represented by Yves Crétien and Erik Stein, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

(1) **Commission of the European Communities**, represented by Eric L. White, a member of its Legal Department, acting as Agent, assisted by Reinhard Wagner, a German magistrate on secondment to the Commission under the agreement on the exchange of national civil servants, with an address for service in Luxembourg at the office of Guido Berardis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

(2) **Péchiney Électrométallurgie SA**, a company incorporated under French law, whose registered office is in Paris,

* Language of the case: French.

(3) **Chambre Syndicale de l'Électrométallurgie et de l'Électrochimie, Paris,**

both represented by Xavier de Roux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 8 Rue Zithe,

interveners,

APPLICATION for a declaration that Council Regulation (EEC) No 2808/89 of 18 September 1989 imposing a definitive anti-dumping duty on imports of calcium metal originating in the People's Republic of China and the Soviet Union and definitively collecting the provisional anti-dumping duty imposed on such imports (Official Journal 1989 L 271, p. 1) is void,

THE COURT,

composed of O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: F. G. Jacobs

Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing,

after hearing oral argument by the parties at the hearing on 19 February 1991, in which Péchiney Électrométallurgie SA and the Chambre Syndicale de l'Électrométallurgie et de l'Électrochimie, the interveners, were represented by J. Gunther, of the Paris Bar,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 March 1991,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 27 November 1989, Extramet Industrie SA ('Extramet'), a company incorporated under French law, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Regulation No 2808/89 of 18 September 1989 imposing a definitive anti-dumping duty on imports of calcium metal originating in the People's Republic of China and the Soviet Union and definitively collecting the provisional anti-dumping duty imposed on such imports is void.
- 2 Extramet is the largest importer of calcium metal, essentially from the People's Republic of China and the Soviet Union. Imports of calcium metal constitute the main source of Extramet's supplies from which it manufactures, by a redistillation process which it has developed and patented, granules of pure calcium used primarily in the metallurgical industry.
- 3 Following the submission of a complaint by the Chambre Syndicale de l'Électrometallurgie et de l'Électrochimie (Electrometallurgy and Electrochemistry Trade Organization, hereinafter referred to as 'the Chambre Syndicale'), on behalf of Péchiney Électrometallurgie SA (hereinafter 'Péchiney'), the only producer of calcium metal in the Community and processor of pure calcium metal by its own distillation process, the Commission adopted Regulation (EEC) No 707/89 of 17 March 1989 imposing a provisional anti-dumping duty on imports of calcium metal originating in the People's Republic of China or the Soviet Union (Official Journal 1989 L 78, p. 10).

- 4 After extending the validity of the provisional duty, the Council adopted the contested regulation imposing, with effect from 21 September 1989, a definitive anti-dumping duty of 21.8% and 22% on imports of calcium metal originating in the People's Republic of China and the Soviet Union respectively.
- 5 The preamble to Regulation No 2808/89 states that following the imposition of the provisional anti-dumping duty the Community producer, namely Péchiney, and an independent importer (who also processes the product), namely Extramet, requested and were granted an opportunity to be heard by the Commission and made written submissions to the latter.
- 6 It further appears from the preamble to Regulation No 2808/89 that, according to the importer, the Community producer suffered self-inflicted injury *inter alia* by refusing to supply calcium metal to the importer, who therefore submitted a complaint to the French authorities alleging an abuse of a dominant position.
- 7 By a document lodged at the Court Registry on 11 December 1989, Extramet submitted an application for an interim order suspending the operation of Regulation No 2808/89. That application was dismissed by order of the President of the Court of 14 February 1990.
- 8 By orders of 17 January 1990 and 22 May 1990, the Court granted the Commission, Péchiney and the Chambre Syndicale leave to intervene in support of the form of order sought by the Council.
- 9 By a document lodged at the Court Registry on 15 February 1990 under Article 91(1) of the Rules of Procedure, the Council raised an objection of inadmissibility against Extramet's application. In accordance with Article 91(3) of the Rules of Procedure, the Court decided to open the oral procedure to consider the objection.

- 10 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case, the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 11 In support of the objection of inadmissibility, the Council, supported by the interveners, claims that, in accordance with well-established case-law, Extramet has no standing to seek a declaration that the contested regulation is void inasmuch as it is an independent importer whose selling prices were not taken into consideration for the determination of the export price and that, consequently, Extramet is not individually concerned.
- 12 Extramet maintains, however, that the contested regulation is of individual concern to it, in so far as it is the largest importer, it was involved in the anti-dumping procedure and it can be fully identified in the contested regulation.
- 13 In order to determine whether the objection of inadmissibility raised by the Council is well founded, it must be borne in mind that, although in the light of the criteria set out in the second paragraph of Article 173 of the Treaty regulations imposing anti-dumping duties are in fact, as regards their nature and their scope, of a legislative character, inasmuch as they apply to all the traders concerned, taken as a whole, their provisions may none the less be of individual concern to certain traders (see the judgments in Joined Cases 239/82 and 275/82 *Allied Corporation v Commission* [1984] ECR 1005, paragraph 11, and in Case 53/83 *Allied Corporation v Commission* [1985] ECR 1621, paragraph 4).
- 14 It follows that measures imposing anti-dumping duties may, without losing their character as regulations, be of individual concern in certain circumstances to certain traders who therefore have standing to bring an action for their annulment.

- 15 The Court has acknowledged that this was the case, in general, with regard to producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary measures (see the judgments in *Allied Corporation v Commission*, cited above, the judgments in Joined Cases C-133/87 and C-150/87 *Nashua Corporation v Commission and Council* [1990] ECR I-719, and in Case C-156/87 *Gestetner Holdings v Council and Commission* [1990] ECR I-781), and with regard to importers whose retail prices for the goods in question have been used as a basis for establishing the export prices (see, most recently, the judgments in Case C-304/86 *Enital v Commission and Council* [1990] ECR I-2939, Case C-305/86 *Neotype Techmashexport v Commission and Council* [1990] ECR I-2945, and Case C-157/87 *Electroimpex v Council* [1990] ECR I-3021).
- 16 Such recognition of the right of certain categories of traders to bring an action for the annulment of an anti-dumping regulation cannot, however, prevent other traders from also claiming to be individually concerned by such a regulation by reason of certain attributes which are peculiar to them and which differentiate them from all other persons (see the judgment in Case 25/62 *Plaumann v Commission* [1963] ECR 95).
- 17 The applicant has established the existence of a set of factors constituting such a situation which is peculiar to the applicant and which differentiates it, as regards the measure in question, from all other traders. The applicant is the largest importer of the product forming the subject-matter of the anti-dumping measure and, at the same time, the end-user of the product. In addition, its business activities depend to a very large extent on those imports and are seriously affected by the contested regulation in view of the limited number of manufacturers of the product concerned and of the difficulties which it encounters in obtaining supplies from the sole Community producer, which, moreover, is its main competitor for the processed product.
- 18 It follows that the objection of inadmissibility raised by the Council must be dismissed.

Costs

- 19 Costs are reserved.

On those grounds,

THE COURT

hereby:

- (1) Dismisses the objection of inadmissibility;**
- (2) Orders the resumption of the proceedings on the substance of the case;**
- (3) Reserves the costs.**

Due	Mancini	O'Higgins	Moitinho de Almeida	
	Rodríguez Iglesias	Díez de Velasco	Slynn	Kakouris
Joliet	Schockweiler	Grévisse	Zuleeg	Kapteyn

Delivered in open court in Luxembourg on 16 May 1991.

J.-G. Giraud
Registrar

O. Due
President