

Joined Cases T-163/94 and T-165/94

NTN Corporation and Koyo Seiko Co. Ltd

v

Council of the European Union

(Anti-dumping duties on ball-bearings — Review —
Regulation modifying a definitive anti-dumping duty —
Determination of the injury)

Judgment of the Court of First Instance (Third Chamber, Extended Composition), 2 May 1995 II - 1384

Summary of the Judgment

1. *Common commercial policy — Protection against dumping — Review procedure — New investigation — Conditions — Sufficient evidence of dumping and of resulting injury (Council Regulation No 2423/88, Art. 4(1), 7(1), 14(2) and 15)*
2. *Common commercial policy — Protection against dumping — Injury — Relevant Community production — Exclusion of producers connected with undertakings responsible for dumping — Discretion of the institutions — Conditions for exercise (Council Regulation No 2423/88, Art. 4(5))*

3. *Common commercial policy — Protection against dumping — Discretion of the institutions — Scope of judicial review*
(Council Regulation No 2423/88)
4. *Common commercial policy — Protection against dumping — Procedure — Duration more than a year — Whether permissible — Condition — Reasonable period*
(Council Regulation No 2423/88, Art. 7(9)(a))

1. According to Article 7(1) of the basic anti-dumping regulation, Regulation No 2423/88, the existence of sufficient evidence of dumping and the injury resulting therefrom is always a pre-requisite for the opening of an investigation, whether at the initiation of an anti-dumping proceeding or in the course of a review of a regulation imposing anti-dumping duties.

in each case whether for the purpose of determining the injury caused by dumping they should exclude from Community production Community producers connected to the exporters or importers or who themselves import the allegedly dumped product.

Moreover, in the absence of specific provisions regarding the determination of injury, in the context of a review initiated by the institutions under Article 14 and 15 of the basic regulation, a regulation modifying existing anti-dumping duties after such a procedure must establish the existence of injury within the meaning of Article 4(1) of the basic regulation.

2. Article 4(5) of the basic anti-dumping regulation, Regulation No 2423/88, indicates that it is for the institutions, in the exercise of their discretion, to determine

3. Undertakings seeking the annulment of an anti-dumping regulation are entitled to put before the Court all the information which is necessary to enable it to be ascertained whether the Community institutions have observed the procedural guarantees accorded to them and whether they have not made errors of law or of fact or been influenced by considerations which would amount to a misuse of powers. In that context the Court may not intervene in the appraisal reserved to the Community authorities by the basic regulation but must exercise its normal power of review over a discretion granted to a public authority.

4. Although the one-year period for completing the investigation in an anti-dumping proceeding mentioned in Article 7(9)(a) of the basic anti-dumping regulation, Regulation No 2423/88, is a guideline and not a mandatory time-limit, the investigation must not extend beyond a reasonable period, to be determined in the light of the circumstances of the case.