

Case T-188/99

Euroalliages

v

Commission of the European Communities

(Dumping — Decision terminating an expiry review —
Action for annulment)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 20 June 2001 II - 1761

Summary of the Judgment

1. *Actions for annulment of measures — Interest in bringing proceedings — Action brought against a decision terminating an expiry review of anti-dumping measures (Arts 231 EC and 233 EC; Council Regulation No 384/96, Art. 11(2))*

2. *Common commercial policy — Protection against dumping — Expiry review procedure — Retention of a measure — Conditions — Continuation or recurrence of injury — Assessment criteria — Likelihood of continuation or recurrence of injury (Council Regulation No 384/96, Art. 11(2), first subpara.)*
3. *Common commercial policy — Protection against dumping — Expiry review procedure — Discretion of the institutions — Judicial review — Limits (Council Regulation No 384/96, Art. 11(2))*
4. *Common commercial policy — Protection against dumping — Expiry review procedure — Initiation of procedure — Conditions — Sufficient evidence — Possible situations — Difference from the conditions justifying the retention of anti-dumping measures (Council Regulation No 384/96, Art. 11(2))*
5. *Common commercial policy — Protection against dumping — Expiry review procedure — Investigation — Whether information relating to a period subsequent to the investigation period to be taken into account as justification for the retention of an anti-dumping measure — Such information not to be taken into account (Council Regulation No 384/96, Arts 6(1) and 11(2) and (5))*

1. An action for annulment brought by a natural or legal person is not admissible unless the applicant has an interest in seeing the contested measure annulled. Such an interest can be present only if the annulment of the measure is itself capable of having legal consequences.

tion of production companies representing the Community industry.

(see paras 26-29)

That is the case for annulment of a decision terminating the expiry review of anti-dumping measures under Article 11(2) of the basic anti-dumping regulation (Regulation No 384/96) initiated at the request of an associa-

2. It is clear from the first subparagraph of Article 11(2) of the basic anti-dumping regulation (Regulation No 384/96) that retention of a measure depends on the result of an assessment of the consequences of its expiry, that is, on a forecast based on hypotheses regarding future developments in the situation on the market concerned. It is also clear that the mere possibility that injury might continue or recur is insuf-

ficient to justify retaining a measure; that is dependent on the likelihood of continuation or recurrence of injury being established. It is not necessary for there to be proof of the continuation or recurrence of injury, merely that there should exist a likelihood of this.

(see paras 42, 44)

3. In the context of an expiry review of anti-dumping measures under Article 11(2) of the basic anti-dumping regulation (Regulation No 384/96), the assessment of the likelihood of recurrence of the injury after expiry of the measures adopted calls for an appraisal of complex economic questions in which the Community institutions have a wide discretion. Judicial review of such an assessment must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error in assessing those facts or a misuse of powers.

(see para. 46)

4. The conditions for initiating an expiry review of anti-dumping measures should not be confused with the conditions for retaining the measures. It is clear from the broad logic of Article 11(2) of the basic anti-dumping regulation (Regulation No 384/96) that it is sufficient for the purposes of initiating a review that the request submitted on behalf of the Community industry be supported in particular by evidence of one of the three situations listed in the second sentence of the second subparagraph of Article 11(2). Those three situations do not, as such, constitute criteria for assessing the likelihood of recurrence of injury within the meaning of the first subparagraph of Article 11(2).

As far as the first situation is concerned, a review should be initiated on the basis of sufficient evidence that dumping and injury are continuing; it is not necessary that continuation be already established. However, the existence of such evidence should not prejudice the result of the review. As far as the second situation is concerned, admittedly a review should be conducted where the request contains sufficient evidence that removal of the injury is due in whole or in part to the existence of measures. However, removal alone does not support the conclusion that it is likely that injury will recur if the measures expire. The third situation concerns expressly the likelihood of further injurious dumping. It is not necessary, however, in order for a review to be initiated, that

the circumstances of exporters and the market conditions which make recurrence of dumping and injury likely be actually established. The request for a review need merely contain evidence on which to base the relevant inquiry. However, in order to retain measures in accordance with the first subparagraph of Article 11(2) of the basic regulation, the circumstances surrounding that likelihood must be established on the basis of the results of an investigation.

(see paras 51-56)

5. The rule laid down in Article 6(1) of the basic anti-dumping regulation (Regulation No 384/96) that information relating to a period subsequent to the investigation period is not, normally, to be taken into account applies

also to investigations relating to expiry reviews.

Article 11(2) of the basic regulation makes the retention of protective measures after the expiry of a five-year period conditional upon the conduct of an investigation in accordance with the basic regulation in order to establish the factual data from which the likelihood of recurrence of injury may be inferred. However, where the results of such an investigation are insufficient to justify retaining anti-dumping duties, the basic regulation provides that they should expire. That means that factors which arise after the investigation period cannot be taken into account in order to retain anti-dumping measures.

(see paras 74, 76-77)