ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

26 August 1996 *

In Case T-75/96 R,

Söktaş Pamuk Ve Tarım Ürünlerini DeĞerlendirme Ticaret Ve Sanayi A.Ş., a company incorporated under Turkish law, established in Söke/Aydın (Turkey), represented by Izzet M. Sinan, Barrister, of the Bar of England and Wales, instructed by Morgan, Lewis & Bockius, Brussels, with an address for service in Luxembourg at the Chambers of Arendt and Medernach, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by Nicholas Kahn and Dimitris Triantafyllou, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: English.

APPLICATION for suspension of operation of the notice of initiation of anti-dumping proceedings concerning imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1996 C 50, p. 3),

THE PRESIDENT OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

...

1 Following a complaint lodged with the Commission by the Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton), alleging that imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey were being dumped and were thereby causing material injury to the Community industry, the Commission commenced an investigation pursuant to Article 5 of Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ 1994 L 349, p. 1).

2 The notice of initiation of anti-dumping proceedings concerning imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey was published in the *Official Journal of the European Communities* of 21 February 1996 (OJ 1996 C 50, p. 3).

3 By application lodged with the Registry of the Court of First Instance on 20 May 1996 Söktaş Pamuk Ve Tarım Ürünlerini Değerlendirme Ticaret Ve Sanayi A.Ş., a company which manufactures *inter alia* the types of cotton fabric allegedly being dumped and exports them to the Community, brought an action under the fourth paragraph of Article 173 and Article 178 of the EC Treaty seeking annulment of the 'decision' to initiate anti-dumping proceedings concerning imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey, announced in the said notice of 21 February 1996, and an order that the Commission make good the damage allegedly caused to the applicant by the contested measure.

4 By a separate document lodged with the Court Registry on the same date, the applicant also made an application under Article 185 of the EC Treaty for suspension of operation of 'the contested decision in so far as it affects the applicant, and Turkey in general'. The Commission submitted written observations by a document lodged with the Court Registry on 11 June 1996. On 30 July 1996 it produced certain documents at the request of the President of the Court. Having regard to the documents in the case, the President considered that he had all the information needed to decide the present application for interim relief, without there being any need first to hear argument from the parties.

Law

5 Under the combined provisions of Articles 185 and 186 of the Treaty and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance (OJ 1988 L 319, p. 1), as amended by Council Decisions 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21) and 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29), the Court may, if it considers that circumstances so require, order operation of the contested act to be suspended or prescribe any necessary interim measures.

6 Article 104(1) of the Rules of Procedure of the Court of First Instance provides that an application to suspend operation of a measure is admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance. Article 104(2) provides that applications for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Such measures must be provisional in the sense that they do not prejudge the decision on the substance of the case (see the order of the President of the Court of First Instance in Case T-41/96 R *Bayer* v *Commission* [1996] ECR II-381, paragraph 13).

The objection that the main application is inadmissible

— Arguments of the parties

7 The Commission argues that the main application challenging the initiation of anti-dumping proceedings is manifestly inadmissible. In the first place, it submits that such a measure is a preparatory act which is not capable of altering the applicant's legal position distinctly, immediately and irreversibly. There is therefore no need to examine the present application for interim relief.

8 In particular, the Commission rejects the applicant's argument that the conditions to which the adoption of anti-dumping measures is subject under Article 47 of the Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey (OJ 1977 L 361, p. 60) were not met in the present case. Even if that circumstance relied upon by the applicant were established, which the Commission denies, it would have no effect on the nature of the contested act. Moreover, the Turkish authorities did not claim in their letters to the Commission, with respect to the anti-dumping proceedings at issue, that the initiation of those proceedings had infringed Turkey's rights under Article 47 of the Additional Protocol.

9 In the second place, the Commission submits that in any event the contested act is not of direct and individual concern to the applicant. The notice of initiation of the anti-dumping proceedings mentions only the product and the countries concerned. It does not refer to any exporting or importing undertakings specifically. Their number and identity were not fixed or ascertainable at the time of initiation of the proceedings, contrary to the criterion defined by the Court of Justice in Joined Cases 106/63 and 107/63 *Töpfer and Getreide-Import* v *Commission* [1965] ECR 405. Furthermore, while seeking suspension of the anti-dumping proceedings as regards 'Turkey generally', the applicant did not at any point claim that all exports from Turkey of the products concerned by the proceedings were exported by it.

10 In its application for interim relief, the applicant maintains for its part that the main action is admissible. It refers to its arguments in the main application. It submits that the 'decision' to initiate anti-dumping proceedings under Article 5 of Regulation No 3283/94 has legal effects for it, in that it disregards the procedure provided for in Article 47 of the Additional Protocol and creates the legal basis for the imposition of provisional anti-dumping duties. The applicant would not have been exposed to such a financial risk if the procedure provided for in Article 47 for the friendly settlement of this type of dispute had been followed. Pursuant to that article, the Commission should have made an application to the Association Council and wait for it either to adopt a decision within three months or to fail to act altogether, before being able to take unilateral protective measures. The contested decision thus constitutes the starting point of proceedings without which a decision adverse to the interests of the parties concerned cannot be taken. In that respect its effects are analogous to those of a decision to initiate the procedure provided for in Article 93(2) of the EC Treaty in a State aid case.

11 In support of its arguments, the applicant explains that Article 47(1) provides that Turkey and the Community are to resolve problems relating to dumping in a joint institutional framework. It is for the Association Council to assess whether or not dumping is being practised. The Association Council thus takes the place of the Commission and addresses recommendations directly to the person or persons with whom the practices in question originate, in order to bring them to an end.

12 The first subparagraph of Article 47(2) provides only that an 'injured party' may act unilaterally if, after it has duly referred the matter to the Association Council, the latter either takes no decision within three months or else issues recommendations in accordance with Article 47(1) which produce no effect.

13 Finally, the second subparagraph of Article 47(2) permits only the introduction, after the Association Council has been informed, of interim protective measures lasting not more than three months from the date of the application or the date on which the injured party has taken unilateral protective measures following the ineffectiveness of the Association Council's recommendations.

14 In this case the Commission failed to observe the provisions of Article 47(1) by not making a prior application to the Association Council. Informing the Association Council after initiating the proceedings was not in accordance with the abovementioned provisions of Article 47. It appears from the minutes of the meeting of the EU-Turkey Customs Union Joint Committee of 19 February 1996 (annex 8 to the application) that Turkey does not agree with the Commission's interpretation of Article 47.

15 In that context, the Association Council has been given no opportunity to act to prevent the contested action. The only possibility it has is to suspend the measure introducing a provisional duty, pursuant to Article 47(3), pending the issue of recommendations under Article 47(1). However, such a decision is highly unlikely, in that the Community itself, represented by the Commission, would be called upon to agree to the suspension decision within the Association Council.

— Appraisal of the President

16 It is settled case-law that, in principle, the issue of the admissibility of the main action should not be examined in proceedings relating to an application for interim measures, so as not to prejudge the Court's decision on the substance of the case. It should be reserved for the examination of the main application, unless it is apparent at first sight that the latter is manifestly inadmissible (see the order of the President of the Court of First Instance in Case T-219/95 R *Danielsson and Others* v *Commission* [1995] ECR II-3051, paragraph 58).

17 In the present case, therefore, the President must examine whether, as claimed by the Commission, the main application for the annulment of the latter's 'decision' to initiate anti-dumping proceedings concerning imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey is to be considered as being at first sight manifestly inadmissible.

18 It must be examined in particular whether the conditions of admissibility of the application for annulment, with respect to the nature of the contested act, are, prima facie, met.

19 It is settled case-law that decisions against which an action for annulment lies under Article 173 are measures which produce binding legal effects capable of affecting applicants' interests and bringing about a distinct change in their legal position. In the case of acts or decisions adopted by a procedure involving several stages, an act is in principle challengeable only if it is a measure definitively laying down the position of the institution on the conclusion of that procedure, and not an intermediate step intended to pave the way for that final decision (see, in particular, Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraphs 8 to 12, and the order of 14 March 1996 in Case T-134/95 *Dysan Magnetics and Another* v *Commission* [1996] ECR II-181, paragraph 20).

20 In the present case, the President must assess whether the contested act appears, prima facie, capable in itself of producing legal effects liable to affect the applicant's interests, or whether it is in fact only a preparatory measure whose unlawfulness could be raised in an application brought against the final decision.

21 The applicant's argument that the initiation of anti-dumping proceedings pursuant to Article 5 of Regulation No 3283/94 brings about irreversible consequences, in that it has the effect of displacing the procedure for the friendly settlement of disputes provided for in Article 47 of the Additional Protocol, and thus exposes the person in question to the risk of provisional anti-dumping duties being imposed, does not appear well founded.

22 It is not apparent at this stage that the initiation of anti-dumping proceedings pursuant to Article 5 of Regulation No 3283/94 has the effect of depriving the applicant of the possibility of settling the dispute in accordance with the conditions defined in Article 47 of the Additional Protocol.

23 A summary analysis of the provisions of Article 47 shows that its purpose is not to displace the application *inter alia* of the Community's trade defence instruments, but to complement the arrangements for their implementation. It is evident at first sight from that article that it does not make the initiation by the Commission of anti-dumping proceedings subject to any specific condition, apart from informing the Association Council. It is only at a later stage in the proceedings that Article 47 makes action on the part of the Community subject to certain additional conditions. Thus, while Article 47(1) authorizes the Association Council, if it finds, on application by the party to the Association Agreement claiming to be injured, that dumping is being practised in trade between the Community and Turkey, to address recommendations to the persons with whom such practices originate, the second subparagraph of Article 47(2) merely requires the allegedly injured party — in this case the Community — to notify the Association Council if it intends to take a trade defence measure, which may be done only if the Association Council has not within three months from the making of the application addressed any recommendations to the undertakings concerned for the purpose of putting an end to the dumping practices in question, or if despite its recommenda-

tions those practices continue. Moreover, the second subparagraph of Article 47(2) expressly authorizes the introduction of provisional anti-dumping duties as interim measures, for a limited period, by a party to the Association Agreement, after informing the Association Council.

24 That interpretation of Article 47 appears to be borne out by Section III, on trade defence instruments, of Chapter IV of Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1). At first sight, it is clear from Articles 44 to 46 of that section that either party to the Association Agreement remains competent to apply its own trade defence instruments, subject to observing the modalities of implementation defined by the above provisions of Article 47 of the Additional Protocol.

25 In the present case, the Commission informed the Association Council by letter of 18 January 1996, added to the case-file at the President's request, of the complaint lodged with it by Eurocoton on 8 January 1996. Furthermore, by the Commission's letter of 23 February 1996 with a non-confidential copy of the complaint, also produced by the Commission at the President's request, the Association Council was informed, in accordance with Article 47, of the initiation of anti-dumping proceedings, the notice of which was published in the *Official Journal of the European Communities* on 21 February 1996. The procedure followed thus appears entirely in accordance with Article 47. The initiation of anti-dumping proceedings pursuant to Regulation No 3283/94 appears at first sight to be intended to allow the Commission to make the necessary investigation in order subsequently to be able to decide, on the basis of that investigation, either to terminate the proceedings or else to continue them by adopting provisional measures and proposing to the Council the adoption of definitive measures, in accordance with the provisions of Article 47.

26 In those circumstances, the contested act, which comes at an early stage of the procedure, does not appear such as to preclude possible intervention by the Association Council, in accordance with Article 47 of the Additional Protocol, in particular in the event that the Commission envisages the adoption of provisional measures or proposes to the Council the adoption of definitive measures.

27 It follows that the applicant's argument that the notice of initiation of the anti-dumping proceedings at issue has the effect of excluding intervention by the Association Council as provided for in Article 47 is prima facie unfounded.

28 Moreover, in any event, it must be observed that, unlike a decision to initiate the procedure provided for in Article 93(2) of the Treaty in relation to State aid, to which the applicant compares it, the initiation of anti-dumping proceedings is not capable of immediately and irreversibly affecting the legal position of the undertakings concerned. It does not automatically entail the imposition of anti-dumping duties, and the procedure may be terminated without measures being imposed, as provided for in Article 9 of Regulation No 3283/94. Furthermore, undertakings involved in an anti-dumping investigation are in no way compelled to alter their commercial policy as a result of the initiation of the proceedings, and they cannot be required to cooperate in the investigation (see the order in *Dysan Magnetics*, cited above, paragraphs 22 to 28).

29 In those circumstances, in any case, the initiation of the anti-dumping proceedings at issue constitutes in the present case, at first sight, a preparatory measure whose unlawfulness could be raised in an application brought against the final decision, ensuring sufficient protection for the applicant.

30 Consequently, the contested act does not prima facie constitute a decision within the meaning of Article 173 of the Treaty against which an action for annulment would lie. The main application seeking annulment of that act thus appears at this stage manifestly inadmissible, without there being any need to examine whether the applicant is directly and individually concerned by the contested act.

31 With respect, secondly, to the claim in the main application for compensation for the damage allegedly caused to the applicant by the initiation of anti-dumping proceedings, it suffices to state that, following settled case-law, that claim is at first sight manifestly inadmissible, since the alleged unlawful act which is said to have

given rise to the damage appears to have no legal effect, as follows from what has been said above (see, in particular, the order of the Court of Justice in Case C-117/91 *Bosman* v *Commission* [1991] ECR I-4837, paragraph 20). Furthermore, in any event, that claim is at first sight manifestly inadmissible, in so far as the applicant gives no indication of the nature and extent of the damage allegedly caused or to be caused by the initiation of the anti-dumping proceedings.

32 Accordingly, the present application for interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. Costs are reserved.

Luxembourg, 26 August 1996.

H. Jung — A. Saggio

Registrar — President