

ORDER OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

30 June 1998 *

In Case T-73/97,

British Shoe Corporation Footwear Supplies Ltd, a company incorporated under English law, with its registered office in Leicester (United Kingdom),

Clarks International Ltd, a company incorporated under English law, with its registered office in Somerset (United Kingdom),

Deichmann-Schuhe GmbH&Co. Vertriebs KG, a company incorporated under German law, with its registered office in Essen (Germany),

Groupe André SA, a company incorporated under French law, with its registered office in Paris,

Reno Versandhandel GmbH, a company incorporated under German law, with its registered office in Thaleischweiler-Froschen (Germany),

Leder & Schuh AG, a company incorporated under Austrian law, with its registered office in Graz (Austria),

* Language of the case: English.

represented by Alasdair Bell and Mark Powell, Solicitors, with an address for service in Luxembourg at the chambers of Marc Loesch, 11 Rue Goethe,

applicants,

v

Commission of the European Communities, represented by Nicholas Khan, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation (EC) No 165/97 of 28 January 1997 imposing a provisional anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia (OJ 1997 L 29, p. 3),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(First Chamber, Extended Composition),

composed of: B. Vesterdorf, President, C. W. Bellamy, R. M. Moura Ramos, J. Pirrung and P. Mengozzi, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

- 1 On 22 February 1995, the Commission published two notices in the *Official Journal of the European Communities* (OJ 1995 C 45, p. 2) initiating anti-dumping proceedings concerning footwear originating in the Far East. The first investigation concerned imports of footwear with textile uppers originating in the People's Republic of China and Indonesia, whereas the second concerned imports of footwear with leather and synthetic uppers originating in the People's Republic of China, Indonesia and Thailand.
- 2 Following the first investigation, the Commission adopted Regulation (EC) No 165/97 of 28 January 1997 imposing a provisional anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia (OJ 1997 L 29, p. 3; 'the contested regulation' or 'the provisional regulation'), falling within CN code 6404 19 10 and, with the exception of certain shoes described in Article 1(3) of the regulation, footwear falling within CN code ex 6404 19 90 (Taric code 6404 19 90 90).
- 3 By application lodged at the Registry of the Court of First Instance on 28 March 1997, the applicants brought this action for the annulment of the provisional regulation.

- 4 By document lodged at the Court Registry on 30 June 1997, the Commission raised an objection to admissibility, on which the applicants submitted their observations on 5 September 1997.

- 5 By document lodged at the Court Registry on 24 June 1997, the Foreign Trade Association requested leave to intervene in support of the applicants. By a document lodged at the registry on 20 August 1997, the Confédération Européenne de l'Industrie de la Chaussure (European Confederation of the Footwear Industry) requested leave to intervene in support of the Commission. The Commission submitted observations on those applications for leave to intervene on 25 July 1997 and 2 September 1997.

- 6 By document lodged at the Court Registry on 5 September 1997, the applicants requested confidential treatment in respect of certain information mentioned in the application. The Commission did not submit any observations in that regard.

- 7 On 29 October 1997 the Council adopted Regulation (EC) No 2155/97 imposing a definitive anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia and collecting definitively the provisional duty imposed (OJ 1997 L 298, p. 1; 'Regulation No 2155/97' or 'the definitive regulation'). The scope of that regulation is, however, narrower than that of the contested regulation, since it does not impose any anti-dumping duty on 'indoor' footwear falling within CN code 6404 19 10 (see Article 2(1) of Regulation No 2155/97).

- 8 By separate document lodged at the Court Registry on 13 November 1997, the Commission raised a preliminary plea under Article 114 of the Rules of Procedure of the Court of First Instance that there was no longer any need to adjudicate in Case T-73/97 and applied for an order to that effect. The applicants submitted their observations on that application by a document lodged at the Court Registry on 19 December 1997.

- 9 By application lodged at the Court Registry on 19 December 1997, the applicants in Case T-73/97 brought an action for the annulment of Regulation No 2155/97. The action was registered as Case T-598/97.

Whether there is no longer any need to adjudicate on the action

- 10 The applicants maintain that they retain a legal interest in pursuing the current proceedings, since the scope of Regulation No 2155/97 is narrower than that of the contested regulation. They argue in particular that they have 'a legal interest in establishing whether the Commission acted lawfully' in imposing provisional anti-dumping duties' on products, namely footwear falling within CN code 6404 19 10, no longer affected by the definitive regulation, since judicial review by the Court of First Instance:

- might prevent the Commission from adopting a provisional regulation with equivalent content in the context of the current investigation into leather and synthetic footwear originating in China, Indonesia and Thailand, with which the applicants are concerned;
- would allow them to apply for compensation in respect of damage suffered by them through the imposition of provisional anti-dumping duties on a product excluded from the scope of the definitive regulation.

- 11 The applicants' arguments cannot be accepted.

- 12 Under Article 2 of Regulation No 2155/97, the amounts secured by way of provisional anti-dumping duty under the contested regulation were definitively collected at the rate of the duty definitively imposed, with the particular exception of amounts relating to imports of footwear falling within CN code 6404 19 10, which

were released. Moreover, amounts lodged in excess of the definitive rate of anti-dumping duty were also released.

- 13 In those circumstances, the applicants cannot rely on any legal effect arising from the provisional regulation (Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport v Commission and Council* [1990] ECR I-2945). Consequently, following the Council's adoption of the definitive regulation, the applicants have in principle no further interest in contesting the provisional regulation (order of the Court of First Instance in Case T-208/95 *Miwon v Commission* [1996] ECR II-635, paragraph 20).
- 14 In its judgment in *Neotype Techmashexport v Commission and Council*, cited above, the Court of Justice has already implicitly rejected an argument similar to that put forward by the applicants in this case, to the effect that they have an interest in the provisional regulation being declared unlawful in order to prevent the Commission from committing once again, in another anti-dumping proceeding, the errors which it is alleged to have committed in the present case.
- 15 As for the applicants' argument that a judgment annulling the provisional regulation would enable them to apply for compensation in respect of the damage suffered through the imposition of a provisional anti-dumping duty on products subsequently excluded from the scope of Regulation No 2155/97, the Court observes that they have not, at any stage in the procedure, given particulars of any damage suffered by them concerning amounts lodged by way of security for those products and subsequently released pursuant to the definitive regulation. In those circumstances, the applicants have no interest in challenging the provisional regulation (*Neotype Techmashexport v Commission and Council*, cited above, paragraph 15).

- 16 It follows from the above that the adoption of Regulation No 2155/97 manifestly removes any interest of the applicants in continuing with the proceedings in this case. There is therefore no need to adjudicate on the action.

The applications to intervene and the application for confidential treatment

- 17 Since there is no longer any need to adjudicate on this action, there is also no longer any need to adjudicate on the applications to intervene (see the order of the Court of First Instance in Case T-463/93 *GUNA v Council* [1993] ECR II-1205, paragraph 19).
- 18 Nor, consequently, is there now any need to adjudicate on the applicants' application for confidential treatment.

Costs

- 19 Where a case does not proceed to judgment, Article 87(6) of the Rules of Procedure of the Court of First Instance provides that costs are to be in the Court's discretion.
- 20 The Commission argues that the applicants should be ordered to pay the costs, given that the contested regulation is a provisional regulation, that the applicants always knew that the case would not proceed to judgment, and that they *prima facie* lacked standing to challenge the regulation in question.

- 21 The Commission's argument cannot be accepted. Since this action was brought before the definitive regulation was adopted, there was nothing to prevent the applicants from challenging the provisional regulation. Moreover, the Council decided to restrict the scope of the definitive anti-dumping regulation in relation to that of the contested regulation. In those circumstances, the Court considers that an order that the Commission pay its own costs and one-half of the applicants' costs will constitute a just reflection of the facts.
- 22 Since there is no need to adjudicate on the applications to intervene, the applicants to intervene are ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
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hereby orders:

1. There is no need to adjudicate on the action in this case.
2. There is no need to adjudicate either on the applications to intervene by the Foreign Trade Association and the Confédération Européenne de l'Industrie de la Chaussure, or on the applicants' application for confidential treatment.

3. The Commission is ordered to pay its own costs and one-half of the costs of the applicants, who are ordered to bear the remainder thereof.

4. The applicants to intervene are ordered to bear their own costs.

Luxembourg, 30 June 1998.

H. Jung

Registrar

B. Vesterdorf

President