

Case T-191/98 R II

Cho Yang Shipping Co. Ltd

v

Commission of the European Communities

(Competition — Payment of a fine — Bank guarantee — Urgency —
Balance of interests)

Order of the President of the Court of First Instance, 28 June 2000 II-2553

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Cumulative requirements — Balancing of all the interests at stake*
(Arts 242 and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
2. *Applications for interim measures — Jurisdiction of the court hearing an application for interim relief — Limits — Claim seeking interim relief from the Court of First Instance to have effect until the Court of Justice delivers final judgment in any appeal — Inadmissible*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104)

3. *Applications for interim measures — Suspension of operation of a measure — Suspension of operation of an obligation to set up a bank guarantee as a condition for postponing immediate recovery of a fine — Conditions for granting — Exceptional circumstances*

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for interim measures must state the circumstances giving rise to the urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Those requirements are cumulative, so that an application for interim measures must be dismissed if either of them is absent. The Court hearing an application for interim measures must also, where appropriate, balance the various interests involved.

(see paras 22-23)

2. A claim for interim relief having effect until the Court of Justice delivers final judgment in any appeal against a decision of the Court of First Instance is manifestly inadmissible. A judge hearing an application for interim relief has no jurisdiction to order interim measures which are designed to pro-

duce their effects up to such time as the Court of Justice decides any appeal that might be brought against the final judgment of the Court of First Instance.

(see para. 41)

3. A application for an order suspending operation of a measure, the purpose of which is to relieve an undertaking of the obligation to provide a bank guarantee, which was the condition imposed in return for an agreement to refrain from immediately enforcing a fine levied on it, cannot be granted unless there are exceptional circumstances, for to do so would render nugatory the principle laid down in Article 242 EC that actions shall not have suspensory effect.

(see para. 42)