JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
8 July 2003 *

In Case T-132/01,

Euroalliages, established in Brussels (Belgium),

Péchiney électrométallurgie, established in Courbevoie (France),

Vargön Alloys AB, established in Vargön (Sweden),

Ferroatlántica, SL, established in Madrid (Spain), represented by D. Voillemot and O. Prost, lawyers,

applicants,

supported by

Kingdom of Spain, represented by L. Fraguas Gadea, acting as Agent, with an address for service in Luxembourg,

intervener,

* Language of the case: French.

Commission of the European Communities, represented by V. Kreuschitz and S. Meany, acting as Agents, and by A.P. Bentley QC, with an address for service in Luxembourg,

defendant,

supported by

TNC Kazchrome, established in Almaty (Kazakhstan),

and by

Alloy 2000 SA, established in Strassen (Luxembourg),

represented by J. Flynn, J. Magnin and S. Mills, Solicitors,

interveners,

APPLICATION for partial annulment of Commission Decision 2001/230/EC of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ 2001 L 84, p. 36), with regard to imports originating in the People's Republic of China, Russia, Ukraine and Kazakhstan,

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

composed of: N.J. Forwood, President, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges,

Registrar: J. Palacío González, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 November 2002,

gives the following

Judgment

Background to the case

1 Anti-dumping measures have been imposed in respect of imports of ferro-silicon originating in certain non-member countries since the early 1980s. Measures relating to imports originating in Venezuela were introduced in 1983. Imports originating in Brazil and the Soviet Union were the subject of Commission Regulation (EEC) No 2409/87 of 6 August 1987 imposing a provisional anti-dumping duty on imports of ferro-silicon originating in Brazil and accepting undertakings offered by Italmagnésio SA of Brazil and from Promsyrio-Import of the USSR (OJ 1987 L 219, p. 24). The Council imposed a definitive anti-dumping duty on imports of ferro-silicon originating in Brazil by Regulation (EEC) No 3650/87 (OJ 1987 L 343, p. 1). In February 1990 the Council, by Regulation

(EEC) No 341/90 (OJ 1990 L 38, p. 1), accepted undertakings and imposed a definitive anti-dumping duty on imports of ferro-silicon originating in Iceland, Norway, Sweden, Venezuela or Yugoslavia, except those sold for export to the Community by companies whose undertakings had been accepted. Those measures were supplemented and extended by Council Regulation (EC) No 3359/93 of 2 December 1993 amending anti-dumping measures on imports of ferro-silicon originating in Russia, Kazakhstan, Ukraine, Iceland, Norway, Sweden, Venezuela and Brazil (OJ 1993 L 302, p. 1). The measures imposed on imports from Iceland, Norway and Sweden were suspended from 1 January 1994 by Council Regulation (EC) No 5/94 of 22 December 1993 on the suspension of the anti-dumping measures against EFTA countries (OJ 1994 L 3, p. 1).

2 On 17 March 1994 the Council adopted Regulation (EC) No 621/94 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in South Africa and in the People's Republic of China (OJ 1994 L 77, p. 48).

3 A definitive anti-dumping duty was also imposed on imports of ferro-silicon originating in Poland and Egypt by Regulation (EC) No 3642/92 of 14 December 1992 (OJ 1992 L 369, p. 1). That duty ceased to apply following the adoption of Commission Decision 1999/426/EC of 4 June 1999 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Egypt and Poland (OJ 1999 L 166, p. 91), since the Commission considered that injury was unlikely to recur. The appeal brought by Euroalliages against that decision was dismissed by the Court of First Instance in Case T-188/99 *Euroalliages* v *Commission* [2001] ECR II-1757, '*Euroalliages I*').

4 On 10 June 1998 the Commission published a notice of impending expiry of anti-dumping measures imposed under Regulations Nos 3359/93 and 621/94 (OJ 1998 C 177, p. 4).

5 Following the publication of that notice the applicant Euroalliages requested, pursuant to Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1, 'the basic regulation') an expiry review of the measures concerning imports originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela.

6 Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review under Article 11(2) of the basic regulation, the Commission published a notice of initiation of that procedure in the *Official Journal of the European Communities* (OJ 1998 C 382, p. 9) and commenced an investigation. The investigation of dumping covered the period between 1 October 1997 and 30 September 1998 ('the investigation period'). The examination of injury covered the period from 1993 to the end of the investigation period. In order to examine the Community interest the Commission analysed the time from 1987 until the investigation period.

7 In accordance with the first subparagraph of Article 11(2) of the basic regulation, the measures initiated against the imports covered by the expiry review remained in force pending the outcome of the review.

8 The investigation lasted more than two years, which the Commission attributes to the difficulties met in gathering certain information, in view of the large number of countries involved and the changes in the composition of the Community in 1995, and the time given to the parties to present their views, given the complexity of the analysis of the Community interest.

9 The Commission set out the facts and essential information providing the basis for the proposed recommendation that the measures should be allowed to expire in a document dated 28 August 2000 ('the disclosure document').

10 On 21 February 2001 the Commission adopted Decision 2001/230/EC terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ 2001 L 84, p. 36, 'the contested decision').

11 That decision states that the review led the Commission to conclude that, as regards imports of ferro-silicon from China, Kazakhstan, Russia and Ukraine, continuation or recurrence of dumping and injury would be encouraged if the measures were allowed to lapse. Recital 129 of the preamble to the contested decision reads as follows:

'In the light of the findings of a likelihood of continuation and recurrence of dumping, and of the findings that dumped imports originating in China, Kazakhstan, Russia and Ukraine may significantly increase should measures be allowed to lapse, it is concluded that the situation of the Community industry would deteriorate. Even though the extent of this deterioration is difficult to evaluate, taking into account the declining trends in prices and profitability of this industry, it is none the less likely that injury will recur. In respect of Venezuela, should measures be allowed to lapse, there is unlikely to be any material injurious effect.'

12 The Commission then examined whether it would be in the overall interest of the Community to maintain the anti-dumping measures. As part of its assessment, it took account of a number of factors, which were, firstly, that the Community industry had not been in a position to benefit sufficiently from the measures in

force since 1987 and had also been unable to benefit in terms of market shares from the demise of former Community producers and, secondly, that Community steel producers had had to bear additional costs linked to the anti-dumping measures over the period of validity of those measures.

13 In recitals 153 and 154 of the preamble to the contested decision the Commission concluded as follows:

'(153) Thus, while the precise impact of the expiry of measures on the Community industry is uncertain and while past experience shows that it is not guaranteed that maintaining measures will provide sizeable benefits to the Community industry, it is clear that the steel industry has experienced long-term cumulated negative effects which would be unduly prolonged if measures were maintained.

(154) Therefore, after an appreciation of the impact of the continuation or expiry of the measures on the various interests involved, as required by Article 21 of the basic Regulation, the Commission could clearly conclude that maintaining the existing measures would be contrary to the interests of the Community. The measures should, therefore, be allowed to expire.'

14 On those grounds, the operative part of the contested decision terminates the anti-dumping proceeding concerned and consequently allows the measures in respect of the imports under examination to lapse.

Procedure and forms of order sought

15 By application lodged at the Court Registry on 16 June 2001, the applicants instituted the present proceedings.

16 By separate document lodged at the Court Registry on the same day, they also applied, primarily, for an order suspending application of the contested decision in so far as it terminates the anti-dumping proceeding concerning imports of ferro-silicon originating in China, Kazakhstan, Russia and Ukraine, and an order that the Commission re-impose anti-dumping duties imposed by Regulations Nos 3359/93 and 621/94; in the alternative they sought an order that the Commission require the importers of ferro-silicon originating in those four countries to provide security corresponding to the anti-dumping duties imposed by those regulations and to subject their imports to registration or, in the further alternative, for an order that the Commission require the said importers to subject their imports to registration.

17 By separate document lodged at the Court Registry also on the same day the applicants further applied for adjudication under an expedited procedure pursuant to Article 76*a* of the Rules of Procedure of the Court of First Instance. That application was dismissed by decision of the Second Chamber, Extended Composition, of 12 July 2001.

18 By order of 1 August 2001 in Case T-132/01 R *Euroalliages and Others* v *Commission* [2001] ECR II-2307, the President of the Court of First Instance ordered imports of ferro-silicon originating in China, Kazakhstan, Russia and Ukraine to be subject to a system of registration, without provision of security by importers.

19 By order of 14 December 2001 in Case C-404/01 P(R) *Commission* v *Euroalliages and Others* [2001] ECR I-10367, the President of the Court of Justice set aside the order of the President of the Court of First Instance of 1 August 2001 and referred the case back to the Court of First Instance.

20 By order of 27 February 2002 in Case T-132/01 R *Euroalliages and Others* v *Commission* [2002] ECR II-777, the President of the Court of First Instance dismissed the application for interim measures.

21 By order of the President of the Second Chamber of the Court of First Instance, Extended Composition, of 6 November 2001, the Kingdom of Spain was given leave to intervene in support of the forms of order sought by the applicants. By order of the President of the Second Chamber of the Court of First Instance, Extended Composition, of 7 January 2002, the undertakings TNC Kazchrome and Alloy 2000 SA were given leave to intervene in support of the Commission. The applicants applied under Article 116(2) of the Rules of Procedure, for certain confidential information contained in their application for adjudication under an expedited procedure to be omitted from the documents sent to the interveners. They produced a non-confidential version of that application. The documents sent to the interveners were restricted to that non-confidential version. The interveners did not raise any objection to this. They lodged their statements within the time-limit set for so doing.

22 The applicants claim that the Court should:

— annul the contested decision with regard to imports originating in the People's Republic of China, Russia, Ukraine and Kazakhstan;

— order the Commission to pay the costs.

23 The Commission contends that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

24 The Kingdom of Spain claims that the Court should:

— declare the application admissible;

— grant the forms of order sought by the applicants;

— order the Commission to pay the costs.

25 The interveners TNC Kazchrome and Alloy 2000 SA contend that the Court should:

— dismiss the application;

— order the applicants to pay the costs incurred by the interveners.

Law

26 The applicants set out their complaints in two pleas, alleging, first, infringement of Articles 11(2), 21 and 6(6) of the basic regulation and of their rights of defence in the determination of the Community interest and, second, manifest errors of assessment in the analysis of the Community interest. In essence, the complaints raised in those two pleas may be divided into five groups. First, the applicants complain that the Commission, in its assessment of the Community interest, took into consideration certain information in breach of Article 11(2) and Article 21 of the basic regulation (first to fourth limbs of the first plea, see B below). Second, the applicants claim infringement of Article 6(6) of the basic regulation and of their rights of defence on the ground that the Commission refused to organise a meeting with the users to allow for an exchange of views (fifth limb of the first plea, see C below). Third, the applicants submit that the Commission should not have called into question the findings regarding the Community interest adopted by the Council when the measures were imposed (first limb of the second plea, see A below). Fourth, the applicants claim that the Commission committed several manifest errors of assessment in its analysis of the Community interest (second to fourth limbs of the second plea, see D below). Lastly, without submitting an express plea in that regard, the applicants complain that the Commission failed to provide an adequate statement of reasons for several aspects of the contested decision (see E below).

27 It is appropriate first of all to deal with the principles governing an assessment of the Community interest during a review of measures that are expiring, and to consider in that context the first limb of the second plea.

A — *The principles governing an assessment of the Community interest during a review of measures that are expiring and the first limb of the second plea*

1. *Arguments of the parties*

28 As regards, on the one hand, the overall legal framework of the present case, in their arguments in respect of the applicants' pleas the parties have expressed differing opinions regarding the interpretation of the provisions governing the powers and obligations of the Commission in the present case.

29 The Kingdom of Spain, intervening in support of the applicants, considers that the contested decision conflicts with a literal interpretation of Article 11(2) of the basic regulation. It considers that, since it has been established that there is a likelihood of dumping and injury recurring, the Commission should have given due effect to that provision and its power of assessment should not have led it to the conclusion which it has reached in the present case.

30 As regards examination of the Community interest, the applicants argue that Article 21 of the basic regulation is intended to lay down strictly both the conditions under which interested parties may make known their views and the information which the institutions may take into consideration. They point out that that new provision allows Community institutions not to adopt anti-dumping measures even if injurious dumping is found to exist, which is a particularly serious decision in terms of its impact on the Community industry concerned. According to the applicants, a liberal interpretation of Article 21 is contrary to the intentions of the Member States, whose wish was that the analysis of the

Community interest in the context of an anti-dumping proceeding should not lead to any 'drift' that would undermine the necessary use of that instrument. The applicants rely in this regard on recital 30 of the preamble to the basic regulation.

31 The applicants are of the view that it was not the intention of Article 21 of the basic regulation that the Commission should of its own accord conduct a detailed analysis of the Community interest. They consider that that detailed analysis should be made as a result of the relevant statements and evidence supplied by interested parties. They maintain that the burden of proof in this context lies mainly with the users. According to the applicants, additional analyses which the Commission may conduct should serve only to verify the statements and evidence supplied by interested parties.

32 On the other hand, in support of the first limb of their second plea the applicants point out that the Council concluded at the time the measures forming the subject of the contested review were adopted that it was in the Community interest to impose anti-dumping measures, particularly in view of the impact of the measures on users. They consider that the Commission could not call those findings into question unless there was fresh evidence that those measures had an abnormal and adverse impact on the situation of the users. The applicants point out that the Commission considered in its disclosure document of 28 August 2000 that a new situation existed for the users because the share of the cost of ferro-silicon in the users' production costs had increased, but it did not maintain that view after the applicants had put forward their arguments on the subject. The applicants infer from this that, as the share of the cost of ferro-silicon in the users' production costs remained the same during the time the measures were in force, there is no valid reason for the Commission to depart from the Council's findings. Moreover, the applicants are of the view that the Commission cannot rely on an alleged cumulative effect of the measures in order to justify their expiry.

33 The Commission disputes the applicants' view that it should play an essentially passive role, limited to verifying the statements and evidence supplied by

interested parties, when it comes to analysing the Community interest. The Commission considers that its duty is to act with objectivity and diligence according to the principles of sound administration. It infers from this that it should not consider only evidence that may have been supplied to it by interested parties.

34 The interveners contend that the Commission has considerable discretion in deciding whether there is a Community interest in continuing anti-dumping duties.

35 As regards the first limb of the second plea, the Commission maintains that the assessment it makes when balancing the various interests at stake must be prospective and may evolve over the five years in which the measures are due to remain in force.

2. *Findings of the Court*

(a) The interpretation of Article 11(2) and Article 21 of the basic regulation

36 The first subparagraph of Article 11(2) of the basic regulation provides that an anti-dumping measure is to expire five years from its imposition 'unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury'.

37 It is clear from that provision, first of all, that the expiry of a measure after five years is the rule, whilst retaining it constitutes an exception. It is also clear 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. Lastly, it is clear from that provision that the mere possibility that injury might continue or recur is insufficient to justify retaining a measure; that is dependent on the likelihood of continuation or recurrence of injury actually having been established by the competent authorities on the basis of an inquiry (*Euroalliages I*, paragraphs 41, 42 and 57).

38 Article 11(2) of the basic regulation does not refer expressly to the Community interest as one of the conditions for retaining a measure that is due to expire.

39 However, Article 11(5) of the basic regulation provides that the expiry review should be conducted in accordance with the relevant provisions of that regulation concerning the procedures and conduct of investigations. Moreover, Article 11(9) of the basic regulation provides:

'In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17'.

40 It may be inferred from those provisions that the conditions for retaining a measure that is due to expire are *mutatis mutandis* the same as those for the imposition of new measures.

41 In that regard, Article 9(4) of the basic regulation provides:

'Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee'.

42 Consequently, the Community interest requirement, provided for in Article 9(4) and Article 21 of the basic regulation, must also be taken into consideration during a review when deciding whether to retain measures that are due to expire.

43 In that context it is appropriate to point out that the imposition of anti-dumping measures is optional, as is clear inter alia from Article 1(1) of the basic regulation, which reads:

'An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury'.

44 It is clear from all the abovementioned provisions that the basic regulation does not confer on the complainant Community industry the right to have protective measures imposed, even where the existence of dumping and injury have been established. Nor does the Community industry have the right to retain a measure that is due to expire even where the likelihood of dumping and injury continuing and recurring has been established. Such measures may only be imposed or

retained where it has also been established, in accordance with Article 9(4) and Article 21 of the basic regulation, that they are justified in the Community interest.

45 In that regard, it is initially for the Commission, under Article 9(2) and (4) of the basic regulation, to consider the Community interest and to determine, after consulting the Advisory Committee, whether intervention is necessary.

46 Detailed rules governing examination of the Community interest are contained in Article 21 of the basic regulation, paragraphs 2 to 7 of which lay down the relevant rules of procedure and paragraph 1 of which provides:

'A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures'.

47 Examination of the Community interest in accordance with that provision requires an evaluation of the likely consequences both of applying and of not applying the measures proposed both for the interest of the Community industry

and for the other interests at stake, in particular those of the various parties referred to in Article 21 of the basic regulation. That evaluation involves a forecast based on hypotheses regarding future developments, which includes an appraisal of complex economic situations.

48 An assessment of the Community interest also requires the interests of the various parties concerned to be balanced against the public interest and is therefore based on choices of economic policy. In that regard, the last sentence of Article 21(1), which provides that the authorities may cease to apply measures where they 'can clearly conclude that it is not in the Community interest' to apply them, requires the Commission in particular to balance the interests in a transparent manner and to justify its findings, setting out the facts justifying the decision and the legal considerations on the basis of which it adopted that decision. The Commission is therefore required to state the reasons for its assessment in sufficiently precise and detailed a manner so as to enable the Court of First Instance effectively to conduct a judicial review of that determination.

49 In those circumstances, it is for the Community judicature, when hearing an action for annulment against a Commission decision terminating an anti-dumping proceeding on grounds of Community interest, to verify 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 any error of law or manifest error of assessment of those facts or a misuse of powers (see, by analogy, Case C-179/87 *Sharp Corporation* v *Council* [1992] ECR I-1635, paragraph 58, and Case T-2/95 *Industrie des poudres sphériques* v *Council* [1998] ECR II-3939, paragraph 292).

50 However, it is not for the Community judicature to substitute its assessment for that of the institutions which are responsible for making that choice.

51 In the context of its review, it is for the Community judicature to verify, in particular, whether the Commission has complied with the procedural rules contained in Article 21(2) to (7) of the basic regulation.

52 The principles governing that procedure are set out in Article 21(2) of the basic regulation, which provides:

'In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organisations may, within the time-limits specified in the notice initiating the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information'.

53 It is clear from the terms of Article 21(2) of the basic regulation that the purpose of the procedural rules contained in that article is to ensure that an assessment of the Community interest is made on the basis of information which is as complete as possible, and as representative and reliable as possible, and on which all interested parties have had the opportunity to put their points of view. The purpose of those provisions is in particular to lay down the circumstances in which the Commission is required to take into consideration the information provided by the interested parties referred to in that paragraph.

54 However, those provisions are not intended to prevent the Commission from taking into account other information which might be relevant for the purposes of assessing the Community interest and which has not been brought to its attention according to the procedure laid down in Article 21 of the basic

regulation. It is for the Commission to determine in as objective a manner as possible whether a protective measure is in the Community interest. In that regard, the Commission has not only the right but also the obligation to carry out an overall assessment of the situation on the market concerned by the measures and on other markets which those measures will affect. This means that the Commission can take into consideration any information that may be relevant for its assessment, irrespective of its source, provided it is representative and reliable.

(b) The first limb of the second plea

55 In the present case, examination of the Community interest took place as part of an expiry review. An expiry review procedure is different from a procedure imposing new measures in that, in the case of a review, an assessment of the Community interest has already taken place when the measures were first adopted and that examination has resulted in the finding that it was compatible with the Community interest to impose such measures.

56 This does not mean, however, that the institutions are bound, in the context of a review, by the findings reached by the Council regarding the Community interest when the measures were originally imposed.

57 In particular, the basic regulation operates on the principle that the duration of the measures is limited to five years and retaining them once that period has expired constitutes an exception. That rule is justified not only by compliance with Article 11 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the WTO Anti-dumping Agreement'), but also on the ground that further assessment of the

Community interest may be appropriate after a certain time. The data on which an assessment of the Community interest is based are liable to change during the application of the measures, owing in particular to the effects of those measures.

58 A further balancing of the relevant interests in an assessment of the Community interest in order to determine whether measures should be retained beyond the period of five years for which they were adopted is not only necessary, as the applicants maintain, where the effects of the measures are particularly adverse for the users or where the trends on the market concerned during the application of the measures differ from those envisaged when the measures were imposed. Even where the effects of the measures are totally in accordance with those forecast by the institutions, the fact remains that the various interests at stake were originally balanced with a view to the measures being of limited duration. That initial balancing is therefore no longer directly relevant, by definition, when it comes to deciding whether to retain the measures beyond the period originally envisaged.

59 It is appropriate to add that an expiry review takes place in a situation in which protective measures are in force. The institutions therefore have specific and verifiable data available to them concerning the effects which the measures have had since they entered into force. Those data may make analysis of the Community interest easier than an investigation into whether new measures should be imposed, where no such data are available. None the less, those data do not replace either the analysis of the future effects of retaining the measures or of their expiry so far as the Community interest is concerned, or the balancing of interests which the institutions must undertake.

60 The Commission was therefore required to conduct a fresh analysis of the Community interest as part of the procedure for reviewing the measures in question. Moreover, the extent of judicial review of that assessment of the Community interest is not altered by the fact that the analysis took place as part of a review. It is clear from all the above considerations that the first limb of the applicants' second plea is unfounded.

B — *The first four limbs of the first plea*

1. *The first limb of the plea, alleging infringement of Article 11(2) and Article 21 of the basic regulation because the period since 1987 was taken into account in the analysis of the Community interest*

(a) Arguments of the parties

61 The applicants, supported by the Kingdom of Spain, consider that the analysis of the situation of the Community industry in the contested decision is distorted because the period from 1987 until the investigation period was taken into consideration. In their view, the Commission should have taken as the starting point the situation of the Community industry at the time the measures under review were adopted, which in this case was in December 1993 and February 1994.

62 They maintain that taking the period before the measures were imposed is contrary to the Commission's practice as regards reviews under Article 11(2) of the basic regulation. They infer from this that the Commission intentionally took the period from 1987 to the investigation period with the aim of not renewing the measures and thereby undermining the Community industry.

63 In the reply, the applicants add that the questionnaires sent to the Community producers and users were intended specifically to obtain information for the period from 1994 until the investigation period. They consider that, as the Commission had sought to obtain information only for the period after 1994, to take into consideration the period before 1994 goes beyond the scope of the analysis, which is strictly defined by Article 21 of the basic regulation.

64 The applicants are of the view that the Commission should have examined separately the periods between 1987 and 1993, and between 1993/94 and the investigation period. If it had done so, the Commission would have found that the situation of the Community industry had deteriorated during the first of those periods and had necessitated the adoption of stronger or supplementary measures, but that it had improved following the adoption of the measures concerned by the present review.

65 In the alternative, the applicants maintain that the Commission's reasoning is based on a factual error, since the Commission failed to recognise that in the present case 1987 could not validly be used as a reference year.

66 The Commission, supported by the interveners, maintains that Article 21 of the basic regulation does not set any time-limit on the information which the Commission must take into account in determining the Community interest. It is of the view that it was its duty to examine the impact of the anti-dumping measures concerning the same product which had been in force since 1987, in order to construct valid reasoning with regard to the future.

(b) Findings of the Court

67 Where assessment of a complex economic situation is involved, the Commission has a broad margin of appreciation when evaluating the Community interest. The Community judicature must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate or whether there has been a manifest error of appraisal or a misuse of powers (see, by analogy, Case T-210/95 *EFMA* v *Council* [1999] ECR II-3291, paragraph 57).

68 The Commission's discretion also covers the information which it takes into consideration in order to assess the effects of the measures for the Community industry and for other groups whose interests are relevant as regards assessing the Community interest. In that regard, the Commission's view that it was relevant, for the purposes of its analysis, to compare the situation during the time the measures that were due to expire were in force with the previous situation cannot be regarded as manifestly incorrect. Indeed, a full analysis of past data, including data relating to the period before the measures were imposed, only serves to reinforce the validity of the long-term assessment of the Community interest which the Commission is required to carry out as part of the review.

69 In those circumstances, the fact that the Commission has followed a different practice in other review procedures does not affect the validity of the approach taken by the Commission in the present case.

70 Nor does the fact that the questionnaires sent to the Community producers and users related only to the period from 1994 onwards preclude data relating to the preceding period, which were available to the Commission as a result of the investigations it had conducted for the purposes of introducing the duties concerned in the present case, from also being taken into consideration. In fact, as was stated in paragraph 54 above, the procedural rules contained in Article 21 of the basic regulation do not prevent the Commission from taking into account other information that might be relevant for the purposes of assessing the Community interest, which has not been brought to its attention according to the procedure laid down in that article. They do stipulate, however, that all parties should have the opportunity to make their views known with regard to that information. The applicants do not deny that interested parties were able to acquaint themselves with that information during the review procedure and that they had the opportunity to comment on it.

71 In connection with this limb of the plea, the applicants also complain about the Commission's analysis of the information. Those complaints are considered

below in connection with the second plea alleging manifest errors of assessment. Subject to consideration of that information, the first limb of the first plea is therefore unfounded.

2. The second limb of the plea, alleging infringement of Article 21(2) and (5) of the basic regulation because submissions which users sent in late were taken into consideration

(a) Arguments of the parties

72 The applicants, supported by the Kingdom of Spain, complain that the Commission infringed Article 21(2) and (5) of the basic regulation by using submissions which users sent in after the time-limit specified in the notice initiating the review procedure. They point out that the notice initiating the review procedure had set 19 January 1999 as the time-limit for the various interested parties to make themselves known to the Commission and to supply it with information for the purposes of an assessment of the Community interest. They state that both the voluntary submissions made by two associations and a company, and the replies to the questionnaire which the Commission sent to the users, were submitted after 19 January 1999, with delays of between 23 and 87 days. They consider that the Commission should not therefore have taken those submissions and replies into account in its analysis.

73 The applicants complain that the Commission sent its questionnaire to the users on 9 February 1999, giving 11 March 1999 as the time-limit for replies, even though 19 January 1999 was the overall time-limit specified in the notice initiating the procedure. They consider that the Commission's practice whereby the users' questionnaires were sent out after the questionnaires for producers, exporters and importers is contrary to Article 21 of the basic regulation, which

seeks to specify strict procedural time-limits. The applicants complain in particular that the Commission based the contested decision to a great extent on the information supplied by the association Wirtschaftsvereinigung Stahl. They contend that the document sent by that association within the time-limit specified by the Commission for returning replies to the questionnaire should not be regarded as a reply as such, but should be treated as a voluntary submission, which was manifestly sent in after the time-limit expired.

74 The applicants are of the view that failure on the part of users or importers to meet the strict time-limits for their submissions laid down in Article 21 is damaging to complainants because it makes it difficult for them to acquaint themselves with those submissions in time.

75 The Commission, supported by the interveners, considers that it is by no means required to reject submissions lodged outside the time-limits specified in the notice initiating the procedure, provided that taking them into consideration does not adversely affect the sound administration of the procedure or create any discrimination between the parties.

(b) Findings of the Court

76 Article 21(2) of the basic regulation confers on representative users' and consumers' organisations in particular the right to make themselves known and provide information to the Commission within the time-limits specified in the notice initiating the anti-dumping investigation.

77 Article 21(5) provides that 'the Commission shall examine the information which is properly submitted'.

78 As was stated in paragraphs 53 and 54 above, the provisions of Article 21(2) to (5) of the basic regulation require the Commission to take into consideration the information provided by the interested parties under the conditions laid down therein, but they are not intended to prevent the Commission from taking into account other relevant information, even where it has not been brought to its attention according to the procedure laid down.

79 It is therefore not unlawful for the Commission to send questionnaires to users and users' associations even though Article 21 does not expressly empower it to do so. The practice of sending out such questionnaires is in accordance with the principles of sound administration and the purpose of Article 21(2) of the basic regulation.

80 In the absence of provisions expressly governing the sending out of such questionnaires, the Commission has discretion as to whether it is appropriate to do so, and regarding the choice of recipients and the relevant procedure. That discretion also permits it to select the appropriate time to send out the questionnaires. It is therefore not contrary to the basic regulation to do so on a date after the time-limit specified in the notice initiating the review procedure has already expired.

81 Also, as regards the fact that some replies to the questionnaires were sent back after the expiry of the time-limit laid down by the Commission for sending back replies, the Commission has broad discretion regarding whether it is appropriate to take them into consideration. In that connection it should be pointed out that it is necessary to lay down a time-limit for replies in order to ensure the smooth running of the procedure within the time-limits provided for in the basic regulation. However, since the taking into consideration of replies to questionnaires sent back after the time-limit fixed for that purpose had expired is not liable to infringe the procedural rights of the other parties and does not have the effect of unduly prolonging the procedure, it cannot be considered to be improper. In the present case the applicants are not complaining either of a

breach of their right to take a view on the submissions or of the excessive length of the review. Consequently, taking late replies to the questionnaires into consideration does not make the contested decision unlawful.

82 Lastly, as regards the submissions by Wirtschaftsvereinigung Stahl, that document contains, essentially, replies to the Commission's questionnaire. The fact that it does not take the form of a reply to that questionnaire does not preclude its being taken into consideration.

83 It should be added that neither the applicants nor the Kingdom of Spain, which has intervened in support of their case, have adduced any evidence to show that taking into consideration users' submissions lodged outside the time-limit laid down in the notice initiating the review procedure has caused the Commission to make its assessment on an incomplete, inaccurate or erroneous factual basis.

84 The second limb of the first plea is therefore unfounded.

3. *Third limb of the first plea, alleging infringement of Article 21(5) of the basic regulation owing to the unrepresentative nature of the users' submissions*

(a) Arguments of the parties

85 The applicants, supported by the Kingdom of Spain, complain that the Commission infringed Article 21(5) of the basic regulation in considering that

the submissions made by the users were representative. The applicants state that, according to the Commission's disclosure document, users who have supplied information only represented 10% of Community consumption, which is manifestly unrepresentative in their view. The applicants complain about the fact that the contested decision contains no analysis to show that the very small number of users considered was representative. Nor was there any evidence to show this in the disclosure document. In the reply, the applicants point out that it is for the Commission to prove that it did analyse whether the information submitted by the users in the context of the administrative procedure was representative and valid. They complain that the Commission is attempting to reverse that burden of proof.

86 The applicants also assume that the Commission omitted to inform the Advisory Committee of the results of its examination of whether the information submitted in respect of the Community interest was representative and its opinion on the merits of that information. In the reply the applicants request the Court to order, by way of a measure of inquiry under Article 65(2) of the Rules of Procedure, the production of a copy of the document showing that the results of the examination of whether the information was representative and the opinion on the merits of the information were sent to the Advisory Committee.

87 The applicants consider that if an appropriate examination had been made of whether the submissions were representative it would have altered the result of the review procedure.

88 The Commission and the interveners dispute those complaints. The interveners consider that it is necessary to distinguish between representativeness and quantity, since the former does not refer to a measurement but to an analysis. They state that valid projections for an entire industry can be made on the basis of

a sample that is much less than 10%. The Commission considers that the submissions made were representative. It points out, moreover, that the applicants do not by any means dispute the facts submitted by the users.

(b) Findings of the Court

89 Article 21(5) of the basic regulation provides:

'The Commission shall examine the information which is properly submitted and the extent to which it is representative and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee. The balance of views expressed in the Committee shall be taken into account by the Commission in any proposal made pursuant to Article 9.'

90 As regards the complaint that the submissions of the users which provided information were not representative because those users represented only 10% of Community consumption, it should be pointed out that whether the submissions are representative or not does not depend on the number and market shares of the undertakings concerned. In order to determine whether information provided by a small number of undertakings is representative of the sector concerned it is more important to know whether those undertakings constitute a typical sample of the various categories of operator in that sector. Consequently, the mere fact that the five user undertakings which replied to the Commission's questionnaires represented only 10% of ferro-silicon consumption within the Community does not necessarily mean that they do not constitute a representative group of users. This is especially so since those five undertakings are established in four different Member States (Luxembourg, Spain, Germany and Belgium). The Commission also had the observations of Wirtschaftsvereinigung Stahl, which alone represents approximately 30% of Community steel production.

91 Consequently, the applicants have failed to show there was any error on the part of the Commission as to whether the users' submissions were representative. Moreover, the applicants have provided no specific evidence to prove that the information supplied by the users was such that it distorted the Commission's analysis of the Community interest.

92 As regards the second complaint made in the reply, alleging that the Commission omitted to carry out an effective analysis of whether the submissions were representative, it should be pointed out that the Commission stated, both in the disclosure document (point 9.4) and in the contested decision (recital 145), that it checked the information supplied by the users. It states in the contested decision in particular, and is not contradicted by the applicants, that it cross-checked the information with publicly available statistics. This shows that the Commission did examine whether that information was representative. The applicants' argument that it is for the Commission to prove that such an examination has taken place is therefore not relevant as regards the outcome of this case.

93 Moreover, the applicants have not adduced any specific evidence casting doubt on the fact that the submissions obtained by the Commission were representative. In those circumstances, the Commission cannot be required to go into detail on that subject in the disclosure document or in the contested decision.

94 Third, as regards the applicants' suspicion that the Commission infringed Article 21(5) of the basic regulation by omitting to inform the Advisory Committee of the results of its examination of whether the information submitted in respect of the Community interest was representative and its opinion on the merits of that information, it is necessary first of all to consider the applicants' request that the Court should order the production of the document sent to the Advisory Committee under Article 65(b) of the Rules of Procedure. On that

subject, Article 19(5) of the basic regulation provides that '[e]xchanges of information between the Commission and Member States, or any information relating to consultations made pursuant to Article 15, or any internal documents prepared by the authorities of the Community or its Member States, shall not be divulged except as specifically provided for in this Regulation'. Clearly, the confidential or internal nature of a document does not constitute an absolute obstacle preventing the Court from ordering its production by way of a measure of inquiry. However, according to settled case-law, during proceedings before the Community Courts internal documents of the institutions are not revealed to the applicant parties unless the exceptional circumstances of the case concerned so require, on the basis of solid evidence which it is up to them to provide (order of the Court of Justice in Joined Cases 142/84 and 156/84 *BAT and Reynolds* v *Commission* [1986] ECR 1899, paragraph 11; Case T-35/92 *John Deere* v *Commission* [1994] ECR II-957, paragraph 31). The applicants have not submitted evidence which would, by way of exception, justify an order that that document should be produced in the present case.

95 It should be pointed out that Article 21(5) of the basic regulation requires the Commission to inform the Advisory Committee of the results of its examination of the information submitted to it and its opinion on the merits of the information. That requirement does not, however, mean that the Commission must submit to that committee an exhaustive analysis of the representative nature of the submissions. In those circumstances, it was not necessary for the Commission to provide the Advisory Committee with evidence which went beyond that contained in the disclosure document and the contested decision, at the points mentioned in paragraph 92 above. There is no specific evidence casting doubt on the Commission's assertion that the Advisory Committee was in possession of information corresponding to the content of the disclosure document.

96 It follows that the three complaints raised in the context of the third limb of the first plea must be rejected.

4. *The fourth limb of the plea, alleging infringement of Article 21(7) of the basic regulation because submissions not substantiated by users were taken into consideration*

(a) Arguments of the parties

97 The applicants, supported by the Kingdom of Spain, complain that the Commission infringed Article 21(7) of the basic regulation by taking into account submissions made by the users that were not substantiated by specific evidence. In essence, the applicants are objecting to the content of the third and fourth sentences of recital 146, which state that according to the users the anti-dumping measures had limited their sources of supply, kept prices at an artificially high level and put users within the Community at a competitive disadvantage when compared to their competitors outside the Community. The applicants consider that the users' replies to the relevant questions in Section G ('other questions') of the questionnaire provided inadequate grounds for that assertion.

98 In the reply the applicants contend that the Commission shows, by its own admission that the users' replies to the abovementioned questions were only expressing an opinion, that there has been an infringement of Article 21(7) of the basic regulation in this case.

99 The applicants also point out that the Commission itself recognises that its analysis of the Community interest was not based on specific evidence supplied by the users but on hypothetical evidence.

100 The Commission, supported by the interveners, contends that in their replies to the questions contained in Section G of the questionnaire the users are only expressing an opinion and that it cannot be alleged that they did not supply specific evidence to substantiate it.

101 As regards the complaint that its findings are based on 'hypothetical' evidence, the Commission recognises that it did adopt the hypothesis of a 15% reduction in prices on the Community market in order to evaluate the effects of expiry of the measures. According to the Commission, the hypothetical nature of a 15% price reduction if the measures expire does not alter the undeniable fact that a price reduction would benefit the users.

(b) Findings of the Court

102 Article 21(7) of the basic regulation provides:

'Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.'

103 That provision should be interpreted in the light of Article 21(2) of the basic regulation, which seeks to ensure that the authorities have 'a sound basis on which [they] can take account of all views and information' when they decide on the Community interest.

104 That provision therefore allows the institutions not only to take into consideration 'information' but also 'views'. Article 21(7) of the basic regulation cannot

therefore be interpreted as meaning that the Commission should not take the users' views into consideration nor that in order for those views to be taken into account there must be evidence to corroborate them.

105 Article 21(7) of the basic regulation lays down the conditions under which interested parties may assert their right to ensure that the information they have supplied is taken into consideration, but it is not designed to limit the information which the institutions may take into account in order to assess the Community interest.

106 Furthermore, the Commission did not infringe Article 21(7) of the basic regulation by adopting a hypothetical basis regarding price reductions on the Community market in order to evaluate the effects expiry of the measures would have on the users. It is inevitable that hypotheses will have to be adopted when predicting the consequences of a future event. In that regard, there is no difference between examining the likelihood of dumping and injury recurring and examining the Community interest.

107 The fourth limb of the first plea is therefore unfounded.

C — *The fifth limb of the plea, alleging infringement of Article 6(6) of the basic regulation because of the refusal to organise a meeting to allow for an exchange of views*

1. *Arguments of the parties*

108 The applicants, supported by the Kingdom of Spain, complain that the Commission infringed Article 6(6) of the basic regulation and their rights of

defence by refusing to organise a meeting with the users to allow for an exchange of views. The applicants point out that they requested such a meeting in a letter dated 30 November 2000 but their request was rejected.

109 The applicants are of the view that Article 6 of the basic regulation is applicable in the context of the examination of the Community interest. They contend that the scope of an investigation within the meaning of Article 6 of the basic regulation should not be limited solely to the aspects of dumping and injury but should also cover aspects connected with the Community interest.

110 According to the applicants, the procedural rules contained in Article 21 of the basic regulation are intended solely to confer certain rights on users and consumers that are not covered by Article 6 of the said regulation, and to restate in certain cases the procedural rights of complainants which result fundamentally from that article. They cite Joined Cases T-33/98 and T-34/98 *Petrotub and Republica* v *Council* [1999] ECR II-3837 to show that Article 21 of the basic regulation does not preclude the application of other provisions conferring procedural rights on the interested parties. The applicants are of the view that the right of complainants to obtain a meeting to allow for an exchange of views cannot be denied on the ground that this would constitute discrimination in relation to users which have not been granted that right. They consider that such 'discrimination' already exists under Article 6(6) of the basic regulation.

111 The applicants add that the interpretation which they favour is in accordance with the WTO Anti-dumping Agreement, in particular Article 6.2.2 of that agreement.

112 The Kingdom of Spain, an intervener, states that Article 6(6) of the basic regulation is applicable in the context of review proceedings under Article 11(2) of that regulation. It considers that Article 21 should not be taken in isolation

from the rest of the regulation, since the Community interest should be assessed for all procedures. The Kingdom of Spain also considers that because they were refused a meeting to allow for an exchange of views the applicants have not been in a position to put their point of view on whether the facts and circumstances on which the Commission based its decision were genuine and relevant. It therefore considers that their rights of defence have been infringed, all the more so since, if it were not for the refusal, the administrative procedure might have produced a different result.

113 The Commission, supported by the interveners, points out that no provision is made for an exchange of views in Article 21 of the basic regulation, which under specific rules governs the way in which the Community interest is assessed. It states that an exchange of views is envisaged only in the context of Article 6 of the basic regulation, which deals with the procedure for an investigation relating solely to dumping and injury. According to the Commission and the interveners, the broader interpretation of the right to request a meeting to allow for an exchange of views advocated by the applicants is not necessary in order to ensure that their rights of defence are respected.

2. *Findings of the Court*

114 Article 6(6) of the basic regulation provides:

'Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with Article 5(10), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall

not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.'

115 Article 6 of the basic regulation applies to review proceedings under Article 11(5) of that regulation.

116 The basic regulation does not, however, state expressly whether the provisions of Article 6, and in particular Article 6(6), of the basic regulation, are applicable in the context of examining the Community interest under Article 21 of that regulation.

117 The procedural rules relating to examination of the Community interest are contained in principle in Article 21 of the basic regulation. In particular, Article 21(3) and (4) provide for the right to a hearing, and Article 21(6) provides for information to be given specifically to certain parties (namely, complainants, importers and their representative associations, representative associations of users and consumers) whose interests merit particular consideration when the Community interest is being assessed. Article 21(3), (4) and (6) therefore grant the parties mentioned therein a specific right to be heard regarding the Community interest.

118 For those parties, the procedural provisions of Article 21 constitute special provisions which fully guarantee their right to be heard, alongside which there is no need to apply the provisions of Article 6(6) of the basic regulation.

119 Moreover, any other interpretation of Article 21 and Article 6(6) of the basic regulation, as regards their respective scope, would involve discrimination between, on the one hand, importers and complainants and, on the other hand, users and consumers' organisations, which are not mentioned in those articles. If Article 6(6) of the basic regulation was applicable to the examination of the Community interest, the former would have the right to request a meeting concerning the Community interest whereas the latter would have no equivalent right.

120 It is appropriate to add that Article 6(6) of the basic regulation contains similar requirements to those of Article 6(2) of the WTO Anti-dumping Agreement. However, the WTO Anti-dumping Agreement concerns only the examination of dumping and injury. The Community legislature was therefore required to provide for meetings to allow for an exchange of views on both those aspects. However, there is no obligation under the WTO Anti-dumping Agreement with regard to the procedure for evaluating the Community interest. The Community legislature was therefore at liberty not to make provision for any such meetings on that subject.

121 Article 6(6) of the basic regulation is not therefore applicable in the context of the examination of the Community interest under Article 21(6) of that regulation.

122 It should be added that the further complaint made in particular by the Kingdom of Spain that, in the absence of a meeting, the applicants did not have the opportunity to put their point of view on whether the facts and circumstances on which the Commission based its decision were genuine and relevant, is not supported by any specific evidence. In those circumstances, the complaint alleging infringement of the rights of the defence must be dismissed.

123 The fifth limb of the first plea is therefore unfounded.

D — *Second to fourth limbs of the second plea, alleging manifest errors of assessment in the analysis of the Community interest*

1. *Second limb of the second plea, alleging a manifest error of assessment with regard to the situation of the Community industry, and the factual error invoked in the context of the first limb of the first plea*

(a) Arguments of the parties

124 The applicants object to the description of the trends in the situation of the Community industry given in recitals 135 and 136, which in their view is too negative. They consider that that analysis is distorted in so far as the Commission compares the situation of the Community industry during the investigation period with that in 1987.

125 They complain that the Commission, in the context of the first limb of the first plea, committed a factual error by failing to recognise that in the present case 1987 could not properly be used as a reference year. In that regard, the applicants point out that the definitive duties on imports from China were imposed in 1994. They consider that the analysis covering the period from 1987 to the investigation period cannot therefore be regarded as valid with regard to imports from China. As regards the former Soviet Union, the applicants recognise that measures were imposed from 1987 onwards, but they state that those measures did not become effective until 1993/94 because, between 1987 and 1993/94, the measures introduced consisted of price commitments which had been systematically broken by the exporters concerned. Lastly, as regards Venezuela and Brazil, the applicants point out that those measures were to be repealed on the basis of the analysis of dumping and injury and that that analysis should not therefore be taken into consideration in the Commission's reasoning regarding the Community interest.

126 In the second limb of the second plea, the applicants dispute, on the one hand, the findings in the contested decision relating to the trends in the situation of the Community industry and the evaluation of the effects of the measures under review for that industry and, on the other hand, the assessment of the consequences of expiry of the measures.

127 The applicants state that, if the Commission had analysed properly the trends in the Community industry between 1994 and the investigation period, that is to say the trends in the industry following the imposition of the measures under review, several positive points would have been noted, which are not cited by the Commission in the contested decision. The applicants point to the following:

— the Community industry increased its sales by 15%;

— the Community industry increased its production capacity by 6%;

— the Community industry increased its productivity by 21%;

— the Community industry returned to profitability with an average of 8.2% profits during the period the measures were in force (compared to a 34% loss before the measures came into force);

— the Community industry held on to its market share of around 16.5%.

128 The applicants complain that the Commission committed a manifest error of assessment in concluding that the Community industry had not been able to benefit from the anti-dumping measures. They point out that the situation of the Community industry improved considerably between 1994 and the investigation period.

129 They complain that, in recital 139, the Commission referred to a 'deterioration' in the Community industry's profits by the end of the analysis period and, therefore, concluded that the expected effects were not obtained. According to the applicants, the fall in profits referred to by the Commission was due to the trend in the prices of ferro-silicon within the Community. The applicants point out that the Community industry had reported losses of 34% in 1993/94. The measures enabled it to become profitable and even to achieve profits of 11.2% in 1996, whereas the institutions had estimated when Regulation No 3359/93 was adopted that a profit margin of 6% was reasonable for the industry.

130 The applicants also dispute the assertion made in recital 139 that the Community industry's market share had fallen since 1994. According to the applicants, the market share of the Community industry was 16.9% in 1994 and not 17.3% as indicated in recital 99. They are of the view that that market share did not fall between 1994 and the investigation period, during which time it was 16.5%, but that it remained relatively stable. The applicants consider that it cannot be inferred from the fact that the Community industry's market share did not rise that the Community industry did not benefit from the measures. According to the applicants, the stabilisation of the Community industry's market share means that the Community industry did at least follow the trend in Community consumption, which is shown by the increase in production and sales on that market.

131 According to the applicants, the increase in imports from Norway cannot be cited in order to show that the Community industry did not benefit from the measures. They point out that the contested decision contains an error in that it states that

imports originating in Norway gained around 20 percentage points market share between 1987 and the investigation period, when, according to the figures contained in the contested decision itself, that increase was only around 11 percentage points. The increase in the market share of Norwegian imports is due, according to the applicants, to the fact that the anti-dumping measures with regard to those imports, which had been in force since 1983, were suspended in 1993 in preparation for the entry into force of the Agreement on the European Economic Area (EEA). They complain that the Commission failed to take that essential factor into account.

132 The applicants state that the purpose of the anti-dumping measures is not to protect the Community industry against fair imports, only against unfair imports, by restoring in particular a normal price level on the Community market. The applicants consider that the anti-dumping measures concerned in the present case met that objective.

133 The applicants are of the view that in those circumstances neither the closure of two companies between 1994 and the investigation period nor the fall in employment in the remaining companies invalidate the conclusion that the Community industry benefited from the measures concerned.

134 As regards the effect of the expiry of the measures on the Community industry, the applicants complain that the Commission committed a manifest error of assessment in its analysis given in recital 141. They point to a divergence between point 9.2.3 of the disclosure document and the contested decision on that subject, and infer from this that the Commission's reasoning has no serious basis. They also consider that there is a contradiction within the contested decision between recital 141, which states that users wish to keep secure sources of supply in the Community, and recital 146, which states that the users complained that sources of supply had been limited.

135 The Commission points out, first of all, that the applicants are not disputing the facts contained in recitals 135 and 136. It considers it was right in stating that the Community industry did not benefit sufficiently from the measures. It highlights the fact that, despite an increase in its production, production capacity and productivity, the Community industry was unable to increase its market share and points out that it was imports originating in Norway which increased their market share under the protection of the anti-dumping measures.

136 The Commission disputes the applicants' complaint that it simply compared the situation during the investigation period with that in 1987 and not with the situation in 1993/94. It objects to several aspects of the comparison made by the applicants between the Community industry's situation in 1994 and its situation during the investigation period. Whilst recognising that the Community industry increased its profitability, it points out that the measures did not enable that industry to maintain a reasonable profit margin of at least 6% during the investigation period.

137 As regards the effect of the expiry of the measures, the Commission considers that the applicants have failed to establish that the contested decision contains a manifest error. It considers that there is no conflict between the contested decision and the disclosure document.

(b) Findings of the Court

138 With regard to the factual error alleged by the applicants in their first plea, it is clear from recitals 133 and 134 that the Commission took into account both the fact that the definitive duties in respect of China were not imposed until 1994 and the fact that the measures concerning the Soviet Union were not effective before

1993/94 because exporters had broken their commitments, as had been pointed out by the applicants during the administrative procedure. The contested decision therefore contains no factual error in this regard.

139 Nor can taking into consideration the effects of the measures concerning Venezuela and Brazil, as referred to in the same review, be regarded as a manifest error. Those measures were as likely to have effects on the complainant industry as on the users, and such effects are relevant as regards the overall assessment of the situation on the markets concerned, which the Commission is required to make in the context of examining the Community interest.

140 As regards the complaint that the analysis of the trends within the Community industry is distorted because the Commission limited itself to comparing the situation in 1987 with that during the investigation period, it is clear from recitals 130 to 136 that the Commission did indeed take into account the trends in that situation throughout the period between 1987 and the investigation period. In particular, the Commission recognises in recital 134 that the situation of the Community industry had deteriorated between 1987 and 1993/1994, and, contrary to what the applicants assert, it also recognises, in recitals 99 and 105, that the trends in the Community industry between 1994 and the investigation period were positive in several respects, in particular as regards the volume of sales, production capacity, productivity and profits. The applicants' complaint in that regard is therefore groundless.

141 In the context of the second limb of the second plea, it is appropriate to ascertain first of all whether the Commission committed a manifest error of assessment in concluding, despite the positive evidence it found, that the Community industry had failed to benefit sufficiently from the anti-dumping measures. The Commis-

sion based that assessment, in recital 139, on four circumstances, namely the closure of two companies, the fall in employment in the remaining three companies, a reduction in the Community industry's market share, and a deterioration of profits by the end of the analysis period.

142 It is appropriate to consider, first, the applicants' complaints concerning the trend in profits, second, their complaints concerning the trend in market shares, third, their arguments concerning the closure of two companies and, fourth, the fall in employment.

143 As regards, first of all, the trend in the Community industry's profits, it should be pointed out, first, that the data given on this in recital 105 are not disputed by the applicants. It is clear from the contested decision that the Community industry had suffered 34% losses before the introduction of the measures that were due to expire, that between 1994 and 1997 it made profits of between 8.1% and 11.2%, and that during the investigation period the profits fell to 4.1%. During the investigation period the Community industry's profits did not therefore reach the 6% profit margin which the institutions had regarded as reasonable for the industry at the time when Regulation No 3359/93 was adopted.

144 It is therefore not a manifest error for the Commission to state, in recital 139, that there had been a deterioration of profits by the end of the analysis period.

145 The applicants' argument that the fall in profits referred to by the Commission was due to the trend in the prices for ferro-silicon within the Community does not preclude the Commission from taking it into consideration, together with other evidence, in order to determine whether the Community industry had benefited

from the measures. The Community industry's profits always depend on the fluctuations which prices for the product may experience, regardless of the dumping which producers from certain countries may practise on Community and international markets, and the anti-dumping measures should enable that industry to bring about sustainable improvement in its market position, which involves the capacity to cope with such price fluctuations. It is true that a temporary fall in profits due to fluctuations in the price of the product is insufficient in itself to justify the Commission's conclusion that the Community industry has not benefited sufficiently from the measures. In the present case, however, the fall in profits is only one of the factors examined as part of an overall assessment of that industry's situation. As such, it is not a manifest error for the Commission to take it into consideration.

146 Second, as regards the trend in the Community industry's market shares, it should be pointed out that the contested decision states in recital 136 that the Community industry's market share showed a downward trend between 1987 and 1994 and that trend continued during the analysis period, whilst imports originating in Norway gained around 20 percentage points market share from 1987 to the investigation period. Recital 139 of the contested decision refers to the reduction in the Community industry's market share and concludes that the expected remedial effects were not obtained. Recital 151 states that the Community industry was incapable of strengthening, or even maintaining, its position on the Community market, despite the application of the measures, nor was it able to benefit, in terms of taking market share, from the demise of former Community producers.

147 As regards, first of all, the applicants' argument that the Community industry's market share had not continued to fall after the measures were introduced in 1993/94 but had remained stable, it should be pointed out that, according to the applicants, that market share had gone from 16.9% in 1994 to 16.5% during the investigation period. Contrary to what the applicants maintain, those figures do not show that there was an error in the Commission's finding that the downward trend in the Community industry's market share continued despite the intro-

duction of further protective measures. Indeed, the figures supplied by the applicants also show a fall in their market share, although less significant than that calculated by the Commission, and at any rate they show that the Community industry was unable to strengthen its market position.

148 Next, as regards imports from Norway, the Commission recognises that recital 136 contains an error when it states that the market share of those imports gained 20% between 1987 and the investigation period, when in fact that increase was only 11%. The Commission's explanation that it was a slip of the pen which did not affect its assessment is confirmed by the disclosure document, which states in point 9.2.1 that that market share went from 40% in 1987 to 52% during the investigation period. The fact that the rise in the market share resulting from those figures is close to that of 11% resulting from the data contained in the contested decision shows that the conclusions drawn by the Commission from the increase in Norwegian imports were not affected by the error pointed out by the applicants. Hence, that error, however regrettable, is not one that calls into question the validity of the contested decision.

149 Lastly, the applicants' argument that the increase in the market share of Norwegian imports was due to the suspension, because of the entry into force of the EEA Agreement, of the anti-dumping duties which had applied to those imports between 1983 and 1993, does not preclude the Commission taking that increase into consideration. Although it cannot be excluded outright that the cessation of those duties might have contributed to the increase in the market share of imports from Norway, that was competition which the Community industry had to face following the entry into force of the EEA. In that regard the applicants do not dispute the Commission's statement in recital 95 that the price of imports from Norway were, during the investigation period, comparable with those of the Community industry, and they have recognised themselves that they consider that such imports constitute fair competition.

150 It follows that the complaints put forward by the applicants are not such as to affect the validity of the Commission's findings concerning the trend in the Community industry's market share.

151 Third, with regard to the closure of two companies, the applicants' explanation certainly appears plausible; it stated that those companies had experienced too many problems due to imports from the USSR and China at dumping prices or in breach of price commitments for them to be able to recover following the introduction in 1993/1994 of the measures in issue in the present case. It does not follow, however, that the Commission committed a manifest error in concluding, having taken that circumstance into consideration in an overall evaluation of the Community industry's situation, that the Community industry had failed to benefit sufficiently from the anti-dumping measures.

152 Fourth, as regards the fall in employment in the Community industry, it should be pointed out that the anti-dumping measures are intended to give the Community industry the opportunity of restructuring and becoming more efficient. A fall in employment, accompanied by an increase in production and productivity is therefore not necessarily a factor which by itself leads to the conclusion that the measures did not achieve the expected effects. Nevertheless, the fall in employment is a circumstance which, among others, can be taken into consideration in concluding, in the context of an overall assessment of the Community industry's situation, that it has deteriorated whilst the measures have been in force.

153 Lastly, as regards whether the conclusion the Commission has drawn from all that evidence that the Community industry has not benefited sufficiently from the measures is vitiated by a manifest error, it cannot be ruled out that the factual evidence on which that conclusion was based can be assessed in different ways.

However, none of those assessments appears to be totally correct or manifestly wrong. In those circumstances, it is not for the Community judicature to substitute its assessment of the effects of the measures for that of the Commission.

154 Hence, the applicants have failed to demonstrate that the Commission committed a manifest error in concluding that the anti-dumping measures concerned did not produce the expected effects.

155 In the context of the second limb of the second plea, it is appropriate to consider once again the applicants' contention that the Commission committed a manifest error of assessment concerning the effect of expiry of the measures on the Community industry. In recital 141, the Commission states in this regard that a deterioration in the situation of the Community industry is likely but that the extent to which the situation of the Community industry could deteriorate is difficult to evaluate precisely. It is also clear from that recital that the Commission is of the view that the total disappearance of the Community industry is unlikely because the users wish to keep secure sources of supply in the Community.

156 The divergence objected to by the applicants between the latter assertion and the wording of point 9.2.3 of the disclosure document, which reads: '[t]he impact on employment that would result from a possible stop in this production is not so clear, however, as furnaces could either be decommissioned or switched to the production of other ferro-alloys' does not, however, affect the substance of the Commission's reasoning, which is similar in both places. The fact that the Commission did not use those precise words in the contested decision and that it replaced them with the considerations contained in the previous paragraph of the disclosure document does not show that the assertion made in the contested decision contains a manifest error.

157 Moreover, there is no conflict between the assertion made in recital 141 of the contested decision that the users wish to keep secure sources of supply in the Community, and the assertion made in recital 146 of the preamble to that decision, that the users complained of limited sources of supply. The desire of the users to have at their disposal a number of sources of supply in different countries is not incompatible with their desire also to keep secure sources of supply in the Community.

158 The first limb of the first plea, in so far as it alleges a factual error, and the second limb of the second plea, alleging a manifest error of assessment as regards the situation of the Community industry, are therefore unfounded.

2. *Third limb of the plea, alleging a manifest error of assessment as regards the impact of the measures on the users*

(a) Arguments of the parties

— The cost of the measures for the users

159 The applicants point out that the share of the cost of the ferro-silicon in the production cost of steel did not change during the 1990s. They infer from this that the anti-dumping measures did not significantly increase the users' production costs and that in those circumstances the Commission had no need even to analyse the impact of the anti-dumping measures on the users in the

context of the review. The applicants consider that this is sufficient to demonstrate a manifest error of assessment of the facts as regards the impact of the measures on the users.

160 The applicants assert that the impact of the measures on the users' production costs represents 0.1% of those costs, which must be regarded as negligible. They cite the practice of the Community institutions and refer to several cases in which a more significant impact was not regarded as sufficient to prevent the adoption or retention of protective measures.

161 The applicants complain that the Commission based its calculations of the impact of the expiry of the anti-dumping measures on the steel industry, shown in recital 147, on the hypothesis of a 15% price reduction without first checking that figure by means of an in-depth economic analysis.

162 The Commission considers that it did not commit a manifest error of assessment in choosing to present the impact of the measures on the users' production costs in absolute terms, namely, 60 million euros a year. It points out that it estimated that extension of the measures for a further period of five years would have imposed an economically unjustifiable cost on the users (that is to say, 60 million euros a year), albeit minimal in percentage terms (0.1% of the manufacturing cost).

163 As regards the hypothesis of a 15% price reduction if the measures were repealed, the Commission considers that the exact amount of that reduction is irrelevant, given that a reduction in the prices of ferro-silicon would in any event reduce the users' costs.

— The impact of the measures on competition

164 The applicants are of the view that the Commission committed a manifest error of assessment in accepting the users' assertions that the measures significantly limit the sources of supply and keep prices on the Community market at an artificially high level, so that Community steel producers are at a competitive disadvantage when compared to steel producers outside the Community.

165 As regards sources of supply, the applicants recognise that the measures restricted imports from the countries affected by them. They point out, however, using the relevant figures contained in the contested decision, that there are significant sources of supply outside the Community industry and that imports from the countries affected by the anti-dumping measures have, to a great extent, been replaced by other imports, at prices which are not the result of harmful dumping.

166 The applicants dispute the Commission's claim that the price of ferro-silicon in the Community is artificially high. According to them, the price of ferro-silicon in the Community has followed the trend in the world price, as the Commission itself mentions in recital 104.

167 Lastly, as regards the users' competitive position, the applicants claim that the Commission has not put forward any specific evidence in support of its reasoning. They cite a letter from the Commission dated 13 September 2000, which said that the production costs of the steel industry in relation to turnover went from 80% down to 70% in the early 1990s. The applicants infer from those

figures that the steel industry improved its competitive position at international level. According to the applicants, the measures' 0.1% impact on steel production costs will make no difference to that improvement.

168 The applicants point out that the objective of the anti-dumping measures is to restore fair competition on the Community market. They regard it as normal that such measures increased the prices of imports from non-member countries guilty of dumping. The Commission's position would help to legitimise a price reduction that is due to unfair imports, solely for the benefit of the user industry and to the detriment of the Community industry. They contend that the Commission's reasoning runs counter to the logic, spirit and letter of Article 21 of the basic regulation because it amounts to condemning one industry, to the advantage of another industry which seeks to benefit from prices achieved through dumping.

169 The Commission considers it is clear that an increase in the prices of raw materials constitutes a competitive disadvantage for the users. In its view, the question is not to determine whether that disadvantage is marginal but whether it is justified, in view of the fact that the Community industry has not demonstrated that it is capable of reversing the unfavourable situation in which it found itself before the measures were tightened in 1993 and 1994.

— The cumulative effect of the cost of the measures

170 The applicants contend that the Commission committed a manifest error of assessment in citing the cumulative effect of the measures on the users. They point out that that argument has never before been used by the Commission in the context of reviews under Article 11(2) of the basic regulation. The applicants add that the Commission did not quantify in the contested decision the so-called

cumulative effect of the anti-dumping measures. According to the applicants, to recognise the cumulative effect in the context of determining interest within the Community would open up a significant breach in the effective application of the Community anti-dumping legislation.

171 The Commission retorts that the applicants fail to explain why the users should bear the cumulative effect of the measures if those measures do not bring the expected benefits from the Community industry point of view. As regards the allegation that the cumulative effect had not been quantified in the contested decision, the Commission points out that that effect can easily be estimated on the basis of the figures supplied in the decision.

(b) Findings of the Court

172 It is appropriate to consider together the applicants' arguments concerning the cost of the measures for the users, including the cumulative effect of those measures, before tackling the complaints concerning the users' competitive situation.

173 In the context of an expiry review, it is not only justified but necessary to take into consideration the cumulative effect of the measures in order to assess the Community interest. The reduction in the profits of the user industry caused by more expensive raw materials has repercussions on the value of the shares of those companies and on the conditions under which they can find the capital they need in order to invest. Those parameters are influenced by the profitability prospects of the user industry in the medium and long term, and it is clear that anti-dumping measures may have a cumulative effect in that regard.

174 It is therefore necessary to dismiss the applicants' argument that, since the share of the cost of ferro-silicon in the cost of steel production has remained stable the Commission should not have analysed the impact of the anti-dumping measures on the users in the present case. Similarly, the cumulative effect of the measures is a factor capable of justifying the fact that the findings regarding the Community interest in the context of the present are different from those which the Council reached when the measures were introduced.

175 The complaint alleging in this context that the Commission did not state either in its final conclusions or in the contested decision that the impact of the measures on the users' production costs represents 0.1% of those costs is a matter of presentation which is unlikely to have affected the substance of the decision. It must therefore be dismissed.

176 As regards also the criticisms levelled by the applicants against the Commission's choosing to adopt the hypothesis of a 15% price reduction in order to assess the likely effects of expiry of the measures so far as the users are concerned, it should be pointed out, first, that the assessment of those effects is prospective in nature, so that it will naturally be based on hypotheses. Second, the applicants do not deny that a reduction in the prices of ferro-silicon is likely following the expiry of the measures. The exact amount of that reduction is unlikely to have affected the validity of the Commission's reasoning.

177 The applicants have therefore not demonstrated that the Commission committed a manifest error regarding the cost of the measures for the users.

178 As regards the users' competitive situation, no manifest error is apparent in the assertions in the contested decision that the measures in question significantly limit the sources of supply and keep prices at an artificially high level on the Community market. The fact of having to pay higher prices than its competitors in non-member countries also places the Community steel industry at a

competitive disadvantage. That disadvantage is not altered by the fact that the share of production costs in the turnover of the Community steel industry has fallen. If that industry has succeeded in reducing its production costs despite the high prices of certain raw materials, the natural consequence of the expiry of the measures would be that that reduction would become even greater and that the Community steel industry's competitive position would therefore improve.

179 Therefore, the applicants' allegation that the Commission committed a manifest error of assessment as regards the impact of the measures on the users is unfounded.

3. *The fourth limb of the plea, alleging a manifest error of assessment as regards the balancing of interests*

(a) Arguments of the parties

180 The applicants, supported by the Kingdom of Spain, point out that the impact of the measures as a percentage of the users' production costs, namely 0.1%, should be regarded as negligible. They also consider that it is clearly shown that the situation of the user industry has not deteriorated and has even improved since the introduction of the measures. The applicants stress that the purported 15% reduction in prices in the Community, if it took place, would reduce production costs by 0.1% for the users, whilst it would lead to a 15% loss in turnover for the Community industry, which would mean it was condemned to fail economically. The applicants consider that in those circumstances the Commission cannot make a clear finding that it is not in the Community interest to apply anti-dumping measures.

181 The Commission is of the view that the approach proposed by the applicants is much too simplistic since it does not allow the effectiveness of the measures under review to be assessed. It disputes the applicants' assertion that a 15% price reduction on the market would mean that the Community industry was condemned to failure.

(b) Findings of the Court

182 First of all, it is appropriate to point out that the applicants have not demonstrated that the Commission's assessment that the disappearance of the Community industry is unlikely if the measures expire is manifestly wrong. The Commission itself does, however, work on the hypothesis that expiry of the measures is likely to lead to a significant deterioration in the situation of the Community industry.

183 Nevertheless, as the Commission rightly points out, it is not enough, for the purposes of balancing the interests of the Community industry against those of the user industry, to compare the disadvantages that are likely to result for each of them from a decision that is against its interests. It is also legitimate, and even necessary, to consider the point whether the measures have achieved the desired effects as regards the competitiveness of the protected industry and its future prospects.

184 Since the Commission found, without committing a manifest error of assessment, that the measures in issue in the present case did not produce the expected effects, it did not commit such an error either in considering that it could find clearly that it was not in the Community interest to continue to apply those measures despite the fact that the impact of the measures on the users' costs was not significant in percentage terms.

185 The fourth limb of the second plea is therefore unfounded. That plea should therefore be rejected in its entirety.

E — *The statement of reasons for the contested decision*

1. *Arguments of the parties*

186 Without submitting an express plea in that regard, the applicants consider that the statement of reasons for the contested decision is inadequate in several respects. First, they contend that the Commission omitted to explain the reasons why it did not take into account the Soviet Union's systematic breaking of its commitments. Second, they complain that the contested decision contains no analysis to show that the users who supplied information to the Commission were representative. Third, the applicants regard as an infringement of the obligation to state reasons the fact that the Commission did not use in the contested decision the figure of 0.1% to show the impact of the measures on the users' production costs. Fourth, the applicants complain that the Commission did not mention what the 'artificial' increase in the price of ferro-silicon in the Community was as a result of the anti-dumping measures. Fifth, the applicants allege that the Commission does not supply any specific evidence in support of its reasoning with regard to the impact of the measures on the users' competitive position. Sixth and last, the applicants complain that the Commission did not quantify the cumulative effect for the users.

2. *Findings of the Court*

187 Although the applicants did not raise a separate plea in that regard, it is appropriate to consider the various complaints raised by the applicants, in the context of the pleas considered above, regarding the statement of reasons for the contested decision.

188 The first complaint raised in that context, that the Commission failed to explain the reasons why it did not take into account the Soviet Union's systematic breaking of its commitments, is however devoid of purpose. It is clear from recitals 133 and 134 in the contested decision that the Commission did examine the effects of the breaking of commitments on the situation of the Community industry.

189 Second, as regards the lack of a statement of the reasons as to why the Commission considered that the users who supplied information to the Commission were representative, it is clear from paragraph 93 above that it was unnecessary for the contested decision to contain detailed considerations on that subject.

190 Third, the fact that the Commission did not use the figure of 0.1% in the contested decision to show the impact of the measures on the users' production costs but chose to present it in absolute terms, namely 60 million euros a year, cannot be regarded as an infringement of the obligation to state reasons. It is a matter of presentation, of no consequence as regards the substance of the decision, which contains, in recitals 145 to 147, figures showing the estimated impact of expiry of the measures on the users, which allow the Commission's

reasoning to be followed fully. In those circumstances, the presentation chosen by the Commission is unlikely to affect the understanding of the reasons for the decision contested by the applicants, nor the defence of their interests. Nor does it adversely affect judicial review of the contested decision.

191 Fourth, the Commission had no need to explain in the contested decision that the price of ferro-silicon in the Community was higher as a result of the anti-dumping measures than it would have been without them and hence under conditions of free competition. That finding results necessarily from the finding that recurrence of the injury was likely if the measures expired. Hence, the applicants cannot complain that the Commission did not mention what the 'artificial' increase in the price of ferro-silicon in the Community was as a result of the anti-dumping measures.

192 As regards the fifth complaint, that the Commission did not supply any specific evidence in support of its reasoning with regard to the impact of the measures on the users' competitive position, it is clear that higher prices of raw materials in the Community affect the competitive position of the Community users in relation to their competitors in non-member countries where no anti-dumping measures are in force. The Commission cannot therefore be required to provide explanations on this point.

193 Last, as regards the complaint that the Commission did not quantify the cumulative effect of the measures for the users, it should be pointed out that the validity of the reasoning of the contested decision with regard to that cumulative effect does not depend on the latter's quantitative significance. It is not necessary therefore to show this in order to enable the applicants to ascertain the reasons for the contested decision, nor to enable the Court of First Instance to conduct its review.

194 The applicants' complaints concerning the statement of reasons for the contested decision are therefore unfounded.

195 It is clear from the foregoing that the pleas raised by the applicants are unfounded. Their application must therefore be dismissed.

Costs

196 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

197 Since the applicants have been unsuccessful, they must be ordered jointly and severally to pay the costs of the Commission and the interveners, including those relating to the procedure for interim relief, as applied for by those parties.

198 Under the first subparagraph of Article 87(4) of the Rules of Procedure, the Member States which intervened in the proceedings are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

1. **Dismisses the application;**

2. **Orders the applicants to pay their own costs, and jointly and severally the costs incurred by the Commission and the interveners TNC Kazchrome and Alloy 2000, including the costs relating to the procedure for interim relief;**

3. **Orders the Kingdom of Spain, intervener, to bear its own costs.**

Forwood Pirrung Mengozzi

Meij Vilaras

Delivered in open court in Luxembourg on 8 July 2003.

H. Jung N.J. Forwood

Registrar President

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