JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
29 November 2000 *

In Case T-213/97,

Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton), established in Brussels, Belgium,

Ettlin Gesellschaft für Spinnerei und Weberei AG, established in Ettlingen, Germany,

Textil Hof Weberei GmbH & Co. KG, established in Hof, Germany,

H. Hecking Söhne GmbH & Co., established in Stadtlohn, Germany,

Spinnweberei Uhingen GmbH, established in Uhingen, Germany,

F.A. Kümpers GmbH & Co., established in Rheine, Germany,

Tenthorey SA, established in Éloyes, France,

Les Tissages des Héritiers de G. Perrin — Groupe Alain Thirion (HPG-GAT Tissages), established in Cornimont, France,

Établissements des Fils de Victor Perrin SARL, established in Thiéfosse, France,

Filatures et Tissages de Saulxures-sur-Moselotte, established in Saulxures-sur-Moselotte, France,

Tissage Mouline Thillot, established in Thillot, France,

* Language of the case: English.

Tessival SpA, established in Azzano S. Paolo, Italy,

Filature Niggeler & Küpfer SpA, established in Capriolo, Italy,

Standardtela SpA, established in Milan, Italy,

represented by C. Stanbrook, QC, and A. Dashwood, Barrister, with an address for service in Luxembourg at the Chambers of A. Kronshagen, 12 Boulevard de la Foire,

applicants,

v

Council of the European Union, represented by M.A. Santacruz, A. Tanca and S. Marquardt, Legal Advisers, acting as Agents, and H.-J. Rabe and G.M. Berrisch, Rechtsanwälte, Hamburg, and of the Brussels Bar, with an address for service in Luxembourg at the office of E. Uhlmann, General Counsel of the Legal Affairs Directorate in the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by J.E. Collins, of the Treasury Solicitor's Department, acting as Agent, with an address for service at the British Embassy, 14 Boulevard Roosevelt,

intervener,

APPLICATION for annulment of the Council's 'decision' not to adopt the proposal for a regulation imposing a definitive anti-dumping duty on imports of unbleached (grey) cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey, (COM(97) 160 final, of 21 April 1997) and for compensation for the damage suffered as a result of that 'decision',

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

composed of: J. Pirrung, President, J. Azizi, A. Potocki, M. Jaeger and A.W.H. Meij, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 26 January 2000

gives the following

Judgment

Facts and Procedure

1 On 8 January 1996 the Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton) lodged a complaint with the Commission

alleging that imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey were being dumped and were thereby causing material injury to the Community industry.

2 On 21 February 1996, the Commission published a notice of initiation of anti-dumping proceedings concerning imports of unbleached cotton fabrics from those countries (OJ 1996 C 50, p. 3).

3 On 18 November 1996, the Commission adopted Regulation (EC) No 2208/96 imposing a provisional anti-dumping duty on the imports in question (OJ 1996 L 295, p. 3).

4 On 21 April 1997, the Commission submitted a proposal for a Council Regulation imposing a definitive anti-dumping duty on those imports (COM(97) 160 final).

5 Under Article 6(9) 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, hereinafter 'the basic regulation'), anti-dumping investigations 'shall in all cases be concluded within 15 months of initiation'. In the present case, therefore, the period allowed ended on 21 May 1997.

6 On 21 May 1997 the Council issued a press release (Press Release on 2007th Council meeting — Internal Market, 8134/97 — Press 156) stating:

'Following the written procedure concerning the introduction of definitive anti-dumping duties on cotton fabrics originating in certain third countries which had expired on 16 May [1997], with a negative result, the French delegation once again insisted on the need for such measures to be taken.'

7 By fax of 23 June 1997, Eurocoton asked the General Secretariat of the Council to confirm that the Council had decided to reject the Commission proposal and to send it a copy of the decision or minutes incorporating such a decision.

8 On 24 June 1997 Eurocoton received a reply stating that 'by written procedure which ended on 16 May 1997 the Council found there was no simple majority necessary for the adoption of the regulation [in question]'.

9 By application lodged at the Registry of the Court of First Instance on 18 July 1997, the applicants brought the present proceedings.

10 By separate document lodged at the Registry of the Court of First Instance on the same day, the applicants applied for interim measures, seeking, in particular, the

suspension of the operation of the contested decision. That application was dismissed by order of the President of the Court of First Instance of 2 October 1997, Case T-213/97 R *Eurocoton and Others* v *Council* [1997] ECR II-1609.

11 On 14 October 1997 the defendant raised an objection of inadmissibility. By order of the Court of First Instance (Third Chamber, Extended Composition) of 26 March 1998 (Case T-213/97 not published in the ECR) the decision on the objection of inadmissibility was reserved for the final judgment and the costs were reserved.

12 By applications lodged at the Registry of the Court of First Instance on 19 January 1998 and 22 January 1998 respectively, Broome and Wellington Ltd and the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in these proceedings in support of the forms of order sought by the defendant.

13 By order of the President of the Third Chamber, Extended Composition, of the Court of First Instance of 25 January 1999 (Case T-213/97 not published in the ECR), Broome and Wellington Ltd and the United Kingdom were granted leave to intervene; by the same order the request for confidential treatment made by the applicants vis-à-vis the interveners was granted.

14 A period was prescribed for the interveners to submit their statements in intervention.

15 By letter of 15 February 1999 the United Kingdom informed the Court that it would not lodge written observations.

16 By letter of 8 March 1999 Broome and Wellington Ltd informed the Court of First Instance that it had decided to withdraw from the present case. The other parties lodged no observations in that connection. By order of the President of the Second Chamber, Extended Composition, of the Court of First Instance of 17 May 1999 in Case T-213/97 *Eurocoton and Others* v *Council* not published in the ECR, Broome and Wellington Ltd was removed from the list of interveners and the parties were ordered to bear their own costs in connection with the intervention of Broome and Wellington Ltd.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber, Extended Composition) decided to open the oral procedure.

18 The parties were heard and gave replies to the questions posed by the Court at the hearing on 26 January 2000, apart from the United Kingdom, which did not wish to attend the hearing.

Forms of order sought

19 The applicants claim that the Court should:

— declare void the Council's decision to reject the Commission's proposal for a Regulation, first, imposing a definitive anti-dumping duty on imports of unbleached cotton fabric from China, Egypt, India, Indonesia, Pakistan and

Turkey and, second, collecting the provisional duty imposed by Regulation No 2208/96;

— order the Council to make good any damage caused to the applicants by the decision;

— order the Council to pay all the costs, or in any event, to pay the costs incurred by the applicants in connection with the objection of inadmissibility.

20 The Council contends that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicants to pay the costs.

21 The United Kingdom supports the forms of order sought and the pleas in law of the defendant.

Admissibility of the application for annulment

22 The defendant relies on three pleas in law to contest the admissibility of the application. The first concerns the absence of any reviewable act within the meaning of Article 173 of the EC Treaty (now, after amendment, Article 230 EC). The second alleges that the applicants have no interest in bringing proceedings. The third is based on the fact that the act which they seek to challenge is not of individual concern to the applicants, apart from Eurocoton.

23 The plea alleging that there is no reviewable act should be considered first.

Arguments of the parties

24 The Council's argument comprises in effect three points.

25 First, the outcome of the written procedure of 16 May 1997 does not constitute a reviewable act within the meaning of Article 173 of the Treaty (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9, and Case T-3/93 *Air France* v *Commission* [1994] ECR II-121, paragraph 43). It does not constitute a 'measure' in the terms of the judgment in *IBM* v *Commission*. In fact there was no act at all, as the Council confined itself to 'doing nothing', as the applicants acknowledge.

26 The Council points out that the outcome of the written procedure did not constitute a removal of the provisional anti-dumping duties imposed by Regulation No 2208/96. Under Article 3 of the Regulation, the provisional duties ceased to be applicable simply as the result of the expiry of the prescribed period of six months from the entry into force of the Regulation.

27 The applicants cannot rely on the judgments of the Court of Justice in Case C-121/86 *Epicheiriseon Metalleftikon Viomichanikon kai Naftiliakon and Others* v *Council* [1989] ECR 3919 and in Case C-315/90 *Gimelec and Others* v *Commission* [1991] ECR I-5589. In those cases it is beyond question that there was a reviewable act.

28 The applicants' plea on the substance that no reasons were given for the decision in fact bolsters the defendant's argument. When the Council adopts legislation it can only act on a proposal from the Commission. However, there is never before the Council a 'proposal' setting out reasons for not adopting a proposal of the Commission. The reasons why individual Member States vote against a proposal may be quite different and it is clearly impossible for the Council to provide such reasons.

29 Second, in the alternative, the Council contends that the negative outcome of the written procedure does not constitute a decision definitively rejecting the Commission's proposal. That proposal could still have been adopted by the Council under the conditions laid down by the Council's Rules of Procedure, and Article 2(5) thereof in particular (Council Decision 93/662/EC of 6 December 1993, OJ 1993 L 304, p. 1, amended by Decision 95/24/EC, ECSC, Euratom of 6 February 1995, OJ 1995 L 31 p. 14). In the event, attempts were in fact made by the French delegation to have the proposal discussed again and adopted but they were unsuccessful as the conditions laid down by the Rules of Procedure were not met.

30 Third, the Council contends that, in so far as the applicants challenge the purported decision resulting from the expiry of the 15-month period and no longer dispute the outcome of the written procedure of 16 May 1997, their argument is inadmissible under Article 48(2) of the Rules of Procedure of the Court of First Instance: as the argument was raised late, at the stage of the observations on the objection of inadmissibility, it changes the subject-matter of the application.

31 The applicants observe that the measure which they seek to have declared void is the Council's decision to reject the Commission's proposal for a regulation imposing definitive anti-dumping duties on the imports in question. In that regard the outcome of the written procedure of 16 May 1997 amounts to a Council decision definitively rejecting the Commission's proposal for a regulation (Joined Cases 23/63, 24/63 and 52/63 *Usines Emile Henricot and Others* v *High Authority* [1963] ECR 217).

32 Otherwise, complainants who initiate an anti-dumping enquiry would be denied any judicial remedy where the Council fails to act. This would be contrary both to general principles of law (see, as regards competition law, Case 26/76 *Metro* v *Commission* [1977] ECR 1875 and Case 210/81 *Demo-Studio Schmidt* v *Commission* [1977] ECR 3045; as regards State aid, Case 169/84 *COFAZ* v *Commission* [1986] ECR 391 and Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203; as regards countervailing duties, Case 191/82 *Fediol* v *Commission* [1983] ECR 2913; as regards institutional matters, Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339 and Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041), and to the objective of the basic regulation.

33 In fact the legal position of the applicants was undoubtedly affected by the failure of the Council to adopt the measures proposed by the Commission.

34 A remedy would have been available to the applicants if, after consultation, protective measures had been found to be unnecessary and the anti-dumping proceedings had been terminated pursuant to Article 9(2) of the basic regulation (*Epicheriseon Metalleftikon Viomichanikon kai Naftiliakon and Others* v *Council* and *Gimelec and Others* v *Commission*, cited above). There is a need, *a fortiori*, for such a remedy where proceedings are terminated as a result of the expiry of the 15-month period. If follows that, even if, as the Council asserts, it could have adopted the Commission's proposal after 16 May 1997, the fact that it allowed the time-limit of 15 months to expire amounts to a negative act confirming its rejection of the Commission's proposal.

35 Moreover, the documentary evidence suggests that the outcome of the written procedure of 16 May 1997 did constitute a definitive decision (see the Council press release of 21 May 1997 and the fax from the Council to Eurocoton of 24 May 1997). Where a vote is formally taken, whether in writing or not, and the necessary majority is not attained, that amounts to a rejection of the proposal and its legal force is spent: only a new proposal from the Commission can restart the legislative process.

36 The fact that it is difficult for the Council to give reasons for its decision is not an argument for excluding negative acts, such as those at issue in the present case, from judicial review.

Findings of the Court

37 Under Article 9(4) of the basic regulation, '[w]here 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'.

38 It is to be noted that, under Article 14(1) of the basic regulation, definitive anti-dumping duties are imposed by regulation.

39 It is common ground that where a regulation imposing definitive anti-dumping duties is adopted by the Council it is an act open to challenge within the meaning of Article 173 of the Treaty which may be subject to judicial review where the other conditions of admissibility laid down by that provision are fulfilled.

40 It cannot be inferred from that finding that where, conversely, the Council does not adopt a proposal for a regulation imposing definitive anti-dumping duties, there is necessarily a reviewable act within the meaning of Article 173 of the Treaty.

41 Whether there is a reviewable act within the meaning of that article can only be ascertained on a case-by-case basis.

42 In the present case, the applicants are seeking the annulment of the 'decision' by the Council not to adopt definitive anti-dumping duties. That decision, as paragraph 22 of the application makes clear, consists in 'the outcome of the written procedure of 16 May 1997'.

43 It is appropriate first to determine to what extent the applicants have a right to the adoption by the Council of a regulation imposing definitive anti-dumping duties and thus to examine the nature of the relevant powers of the Council.

44 In that regard, it must first be observed that no provision of the EC Treaty requires the Council to adopt, on a proposal submitted by the Commission, a regulation imposing definitive anti-dumping duties.

45 Second, examination of the system set up by the basic regulation reveals that, in an anti-dumping investigation conducted by the Commission, certain specific rights of the complainants are recognised (see, *inter alia*, to that effect *Fediol* v *Commission*, cited above, paragraph 25, as regards the imposition of countervailing duties).

46 However, the basic regulation does not confer on the applicants a right to the adoption by the Council of a proposal for a regulation imposing definitive anti-dumping duties.

47 Since Article 9(4) of the basic regulation provides that a definitive anti-dumping duty is to be imposed by the Council, 'acting by simple majority on a proposal submitted by the Commission', the reference to that voting procedure implies necessarily that the Commission proposal will not be adopted by the Council if only a minority of Member States consider that the conditions for the application of definitive anti-dumping duties have been fulfilled.

48 It should, moreover, be borne in mind that under Article 1 of the basic regulation, an anti-dumping duty 'may' be applied to any dumped product whose release for free circulation in the Community causes injury.

49 Whilst Article 6(9) of the basic regulation introduced a maximum duration for investigations, it cannot be inferred that the Council is obliged to accede to a Commission proposal to impose a definitive anti-dumping duty. Not only would that be incompatible with the rules set out above but it would also defeat the very purpose of the imposition of such deadlines. The sole object of such deadlines was to prevent over-long anti-dumping procedures and thus to allow all the parties concerned, both Community industry and undertakings in third countries, to know, by that date at the latest, what action was to be taken as a result of the investigation.

50 Finally, it cannot be inferred from the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the Anti-Dumping Code') that the Council is obliged to adopt definitive anti-dumping duties. Those rules merely fix the restrictive conditions which must be met before a contracting party may impose anti-dumping duties and thus have an impact on exports from another State party to the Agreement. As is clear from Article 1 of that Code, they merely serve to guarantee to the contracting parties that none of them will fix anti-dumping duties unless the conditions laid down are met.

51 On the other hand the rules cannot be construed as requiring the contracting parties to impose anti-dumping duties. On the contrary, Article 9(1) of the Anti-Dumping Code states that '[i]t is desirable that the imposition [of anti-dumping duties] be permissive'.

52 The applicants cannot, therefore, rely on a right to the adoption by the Council of a proposal for a regulation imposing definitive anti-dumping duties submitted to it by the Commission.

53 The question whether the applicants have a right to bring an action for annulment in a situation such as that in the present case must be answered in the light of the above findings, which follow both from the Treaty and from the basic regulation.

54 According to settled case-law, any measure which produces binding legal effects and is such as to affect the interests of an applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action under Article 173 for a declaration that it is void (*inter alia IBM* v *Commission*, cited above).

55 Thus an action for annulment is available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects (see Case 22/70 *Commission* v *Council* [1971] ECR 263, paragraph 42).

56 In the present case, as the vote taken in the Council on 16 May 1997 by written procedure did not result in a simple majority in favour of the proposal submitted to it for a regulation imposing a definitive anti-dumping duty, it follows that the Council did not adopt any measure.

57 Furthermore, the mere statement that the vote did not result in the majority required for the adoption of a proposal for an anti-dumping regulation is not in itself a reviewable act within the meaning of Article 173 of the Treaty.

58 If a positive vote is the legal means by which the act is adopted, a negative vote merely indicates the absence of any decision.

59 As regards the applicants' argument that they would have no legal protection if the present application for annulment is inadmissible, it must be observed that the review by the Court to which the applicants are entitled must be appropriate to the nature of the powers reserved to the Community institutions as regards anti-dumping measures (*Fediol* v *Commission*, cited above, paragraph 29). In that regard, the position in which the Commission is placed, particularly as regards consideration of the complaint and the action to be taken on it, is not comparable to that of the Council. While the Council has to place any proposal referred to it for a regulation imposing definitive anti-dumping duties on the agenda for its meetings, it is not obliged to adopt that proposal.

60 Finally, it must be pointed out that, in the event that the Council's failure to adopt a regulation imposing definitive anti-dumping duties is wrongful, for example because it is vitiated by a serious procedural error, the applicants still have the option of bringing an action for damages on the basis of Articles 178 and 215 of the EC Treaty (now Articles 235 EC and 288 EC). This is in fact exactly what they did in this case.

61 Accordingly, the application for annulment must be dismissed as inadmissible without there being any need to consider the other pleas of inadmissibility raised by the defendant.

62 In their observations on the objection of inadmissibility (paragraphs 7 and 9 in particular), the applicants also called into question the legality of the negative act which they claim resulted from the expiry of the period of 15 months provided for in Article 6(9) of the basic regulation.

63 It must be observed that, in so doing, the applicants submitted a new claim in breach of Article 19 of the EC Statute of the Court of Justice and Article 44 of the Rules of Procedure of the Court of First Instance. That claim must therefore be declared inadmissible.

64 In any event, mere expiry of the 15-month period provided for in Article 6(9) of the basic regulation does not constitute a decision by the Council which could be the subject of an action for annulment on the basis of Article 173 of the Treaty.

The action for damages

1. *Admissibility*

65 The defendant contends that the application does not comply with Article 19 of the Statute of the Court of Justice and Article 44 of the Rules of Procedure of the Court of First Instance. It is not as precise as is required for an action for damages to be admissible (see, for example, Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraphs 73 and 74).

66 That objection cannot be upheld.

67 The application contains sufficient information to identify the conduct of which the institution is accused, the nature and scale of the alleged damage and the reasons why the applicants consider that there is a causal link between the conduct complained of and the alleged damage.

68 The requirements of the above provisions have therefore been fulfilled. In fact, the objections raised by the defendant, in particular in so far as they concern the nature of the damage or the proof of a causal link, fall to be assessed with the merits of the application.

69 The objection of inadmissibility raised by the Council must therefore be dismissed.

2. *Merits*

70 According to settled case-law, if the Community is to incur non-contractual liability, it is necessary to prove that a number of conditions regarding the illegality of the conduct of which the Community institutions are accused are met, that the alleged damage is real and that there is a causal link between the conduct of the institution concerned and the alleged damage (Case T-54/96 *Oleifici Italiani and Fratelli Rubino* v *Commission* [1998] ECR II-3377, paragraph 66).

71 In the present case, the action for damages should be considered in the light of the first of those conditions.

Arguments of the applicants

72 As a preliminary point, the applicants maintain that it is sufficient for them to establish the existence of a simple wrongful act rather than a sufficiently serious breach of a superior rule of law for the protection of individuals. The powers devolved on the Council by the basic regulation do not allow it to make choices of economic policy within the meaning of the judgment of the Court in Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975. In any event, the wrongful acts of which the Council is accused in the present case constitute a sufficiently serious breach of a superior rule of law for the protection of individuals.

73 The applicants allege that the Council committed two distinct wrongful acts. The principal argument is that the Council rejected a proposal for a regulation put before it by the Commission when it had no authority to do so. In the alternative, even if it had that power, it exercised it in an arbitrary fashion in the present case.

The wrongful act relied on as a principal plea, alleging that the Council was not empowered to reject the Commission's proposal outright

74 According to the applicants, under Article 9(4) of the basic regulation, an anti-dumping duty 'shall be' imposed by the Council where the facts as finally established show that 'there is dumping and injury caused thereby and the Community interest calls for intervention'.

75 Furthermore, under Article 6(9) of the basic regulation, an investigation must be concluded within 15 months of initiation. The introduction of that time-limit in the basic regulation is said to have altered the legal position of the Council.

76 Thus, the discretion which the Council previously had (see Joined Cases C-133/87 and C-150/87 *Nashua Corporation and Others* v *Commission and Council* [1990] ECR I-719 and order of the Court of First Instance in Case T-208/95 *Miwon* v *Commission* [1996] II-635) is inevitably limited by the fact of having to seek to arrive, before expiry of the 15-month time-limit, at a solution which is acceptable to a simple majority of the Council, while remaining consistent with the Commission's definitive findings as to dumping, resultant injury and the Community interest. The Council has no obligation to adopt the Commission's original proposal. However, it is obliged, on expiry of the time-limit, to adopt or amend any proposal resulting from the discussions between the

two institutions. Thus, it cannot adopt a decision that is inconsistent with the Commission's conclusions, nor, which amounts to the same, can it decline to adopt its proposal. Moreover, the basic regulation contains no provision authorising the Council to reject the Commission's proposal or to decline to adopt it.

77 In fact there are two possible outcomes to an anti-dumping investigation. The first is the termination of the proceeding without the imposition of definitive measures; this can only be envisaged where a complaint is withdrawn, where there is no dumping or injury or it is not in the Community interest (Article 9(1) and (2)). The second is the imposition of definitive duties (Article 9(4) of the basic regulation) where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention.

78 The facts definitively established by the Commission are therefore determinative. Without any power of investigation, the Council has no authority to overrule findings of fact made by the Commission.

79 In order to comply with both the provisions of the basic regulation and those of Article 6(9) of the Anti-Dumping Code, the applicants' interpretation of the respective roles of the Commission and Council is the only possible one.

80 Finally, the applicants do not contest the principle that the members of the Council are free to vote as they wish. However there is a distinction between that freedom, for the exercise of which the Member States take political responsibility, and any legal obligations binding on the institution itself. The Council cannot escape an obligation imposed on it by arguing that its members will not allow it to fulfil that obligation.

The wrongful acts relied on in the alternative

— Wilful disregard or manifest error of appraisal of the facts found by the Commission

81 According to the applicants, both in the regulation imposing provisional duties and in the proposal for a regulation imposing definitive anti-dumping duties the Commission found clear evidence of dumping and serious injury caused thereby and concluded that it was in the interest of the Community to impose definitive anti-dumping duties. Since the Council, as a general rule, does not itself have access to the documents and detailed data compiled by the Commission, it is not conceivable that it could have made a different appraisal of the facts.

— Denial of the procedural rights and legitimate expectations of the complainant

82 In an anti-dumping investigation complainants have specific rights under the basic regulation (*Fediol* v *Commission*, cited above, paragraph 28). A mockery would be made of those rights if the Council could reject the Commission proposal outright without taking account of the findings made by the Commission as a result of its investigation (see, by analogy, Opinion of Advocate General Verloren van Themaat in *Cofaz* v *Commission*, cited above, at p. 392, and Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223). At the very least the applicants had a legitimate expectation that the Council would give due consideration to the Commission's findings.

83 Contrary to the Council's assertion, procedural rights apply in relation to the Commission and to the Council. The GATT Anti-Dumping Code refers without distinction to 'the authorities' in that connection.

— Breach of the obligation to state reasons

84 The applicants claim that the Council did not give any reason for its rejection of the Commission's proposal. A bald statement that the written procedure was terminated for want of sufficient votes is not adequate to justify the rejection of the detailed findings of fact made by the Commission following an investigation which is designed to protect the procedural rights of all parties.

85 The absence of a Commission proposal including 'reasons' for not adopting anti-dumping measures does not exonerate the Council from the obligation to state reasons for its decisions. That obligation applies to an institution even if there is no specific legislation requiring it (see Case 113/77 *NTN Toyo Bearing Company and Others* v *Council* [1979] ECR 1185).

Findings of the Court

86 For the reasons set out above in paragraphs 43 to 52, the principal submission of the applicants must be dismissed. The Council is under no obligation to adopt a proposal for a regulation imposing definitive anti-dumping duties submitted to it by the Commission.

87 As regards the wrongful acts relied on by the applicants in the alternative, they are based on the mistaken premiss that they are entitled to the adoption of a regulation by the Council.

88 Thus, as regards the alleged disregard by the Council of the facts found by the Commission, it must be borne in mind that the Council is under no obligation to adopt, on a proposal submitted by the Commission, a regulation imposing definitive anti-dumping duties. The Commission will only refer to the Council a proposal for a regulation imposing definitive anti-dumping duties where it considers that the facts considered suggest that there was dumping, damage caused thereby and that the Community interest requires such action to be taken. That cannot alter the fact that it is legally impossible to adopt that proposal if only a minority of Member States consider that it should be adopted.

89 Similarly, in the absence of any obligation incumbent on the Council, the applicants cannot claim that the failure of the Council to adopt a definitive anti-dumping duty breaches the principle of the protection of legitimate expectations. Moreover, the only legitimate expectation to which the applicants refer is that the Council should examine the facts of the case carefully. There is nothing on the case-file to suggest that the Council did not conduct such an examination.

90 Moreover, the argument that the measure was unlawful as a result of the alleged failure to state reasons cannot be upheld. Suffice it to note that Article 190 of the EC Treaty (now Article 253 EC) provides that regulations, directives and decisions adopted by *inter alia* the Council are to state the reasons on which they are based. In the present case, as is clear from examination of the admissibility of the application, no act was adopted by the Council.

91 Finally, as regards the applicants' argument relating to procedural guarantees, it must be observed that this is in fact part of their principal plea which seeks to

establish that there is an obligation incumbent on the Council to adopt a proposal for an anti-dumping regulation. The applicants do not dispute that all their procedural rights under the directive were respected but argue that, if the Council can omit to adopt a proposal for a regulation, as in the present case, a mockery is made of those rights. As has previously been held, the fact that the Council has the option not to adopt a proposal for a regulation imposing an anti-dumping duty is inherent in both the system of the Treaty and the basic regulation itself.

92 It follows from all the foregoing that the action for damages must, in any event, be dismissed in the absence of fault on the part of the Council.

Costs

93 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. Since the applicants have been unsuccessful, they must be ordered to pay the costs, including the costs relating to the application for interim measures, as applied for by the defendant.

94 Under Article 87(4) of the Rules of Procedure, Member States which intervened in the proceedings are to bear their own costs. The United Kingdom must therefore bear its 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 all the costs and the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Pirrung Azizi Potocki

Jaeger Meij

Delivered in open court in Luxembourg on 29 November 2000.

H. Jung A.W.H. Meij

Registrar President