JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

30 March 2006 *

In Case T-367/03,

Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ, established in Ümraniye, Istanbul (Turkey), represented by R. Sinner, lawyer, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by M. Bishop and D. Canga Fano, acting as Agents,

and

Commission of the European Communities, represented by G. Boudot and X. Lewis, acting as Agents, with an address for service in Luxembourg,

defendants,

* Language of the case: English.

ACTION for compensation for damage allegedly caused by the implementation of the procedures of the Customs Union instituted by the Agreement establishing an Association between the European Economic Community and Turkey and its Additional Protocols and Decision 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 8 September 2005,

gives the following

Judgment

Legal and factual context

1 The Agreement establishing an Association between the European Economic Community and Turkey ('the Ankara Agreement') was signed at Ankara on 12 September 1963 by the Republic of Turkey of the one part and the Community and its Member States of the other part. On 23 December 1963, the Council adopted Decision 64/732/EEC on the conclusion of the Ankara Agreement (JO 1964 217, p. 3685).

2 Article 2(1) of the Ankara Agreement provides:

'The aim of this Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.'

3 Pursuant to Article 2(3) of the agreement:

'Association shall comprise:

(a) a preparatory stage;

(b) a transitional stage;

(c) a final stage.'

4 Article 3(1) of the agreement provides:

'During the preparatory stage Turkey shall, with aid from the Community, strengthen its economy so as to enable it to fulfil the obligations which will devolve upon it during the transitional and final stages.

The detailed rules for this preparatory stage, in particular those for aid from the Community, are set out in the Provisional Protocol and in the Financial Protocol to this Agreement.'

5 Article 5 of the agreement states:

'The final stage shall be based on the Customs Union and shall entail closer coordination of the economic policies of the Contracting Parties.'

6 Article 6 of the agreement provides:

'To ensure the implementation and the progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred upon it by this Agreement.'

7 Finally, under Article 30 of the agreement:

'The Protocols annexed to this Agreement by common accord of the Contracting Parties shall form an integral part thereof.'

8 Annexed to the Ankara Agreement is, inter alia, Protocol No 2, entitled 'Financial Protocol', which is intended to lay down financial mechanisms to promote the accelerated development of the Turkish economy.

9 On 23 November 1970 an Additional Protocol ('the 1970 Additional Protocol') and a Second Financial Protocol (JO 1972 L 293, p. 4) were signed and annexed to the Ankara Agreement. Those protocols entered into force on 1 January 1973. A Third Financial Protocol was signed on 12 May 1977 (OJ 1979 L 67, p. 14).

10 On 22 December 1995 the EC-Turkey Association Council adopted Decision No 1/95 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1). That decision institutes a Customs Union between the Community and Turkey for goods, in principle, other than agricultural goods. It provides for the elimination of customs duties and charges having equivalent effect and the elimination of quantitative restrictions and measures having equivalent effect.

11 The company Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ ('Yedaş Tarim') is a legal person governed by Turkish law. Its activities consist of importing and manufacturing ball bearings and importing housings and belts as spare parts for, inter alia, agricultural machinery and the automotive industry.

Procedure

12 By application lodged at the Registry of the Court of First Instance on 2 December 2003, the applicant brought the present action.

13 By separate documents lodged at the Registry of the Court of First Instance on 19 and 26 March 2004, the Commission and the Council raised objections of inadmissibility against the action under Article 114 of the Rules of Procedure of the Court of First Instance. The applicant lodged its observations on 17 May 2004. By order of the Court of 19 January 2005, the objections were joined to the substance and costs were reserved.

14 In accordance with Article 47(1) of its Rules of Procedure, the Court of First Instance (Fifth Chamber) decided that a second exchange of pleadings was not necessary.

15 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure.

16 By letter lodged at the Registry of the Court of First Instance on 18 July 2005, the applicant requested that, if necessary, an expert be appointed.

17 The parties presented oral argument and their replies to the Court's questions at the hearing on 8 September 2005. At that time the defendants submitted their observations on the application for appointment of an expert.

Forms of order sought

18 The applicant claims that the Court should:

— order the defendants to compensate it for the losses suffered;

— order the defendants to pay the costs.

19 The Council and the Commission contend that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

Arguments of the parties

20 The applicant submits that the losses it claims to have suffered were caused by the manner in which the Customs Union instituted by Decision No 1/95 has been implemented by the Community. Firstly, the applicant complains of a lack of financial support which it attributes to opposition by Greece. In that regard, it states that the Community must be considered liable because it failed to take action against Greece concerning its attitude. The applicant goes on to challenge the effects of agreements which the Community has concluded with third countries. The applicant further submits that the Commission failed to take certain institutional measures. In particular, the Republic of Turkey was excluded from the discussions on the common policies on trade, inter alia in areas directly connected to the Customs Union. For example, the Turkish authorities were unable to participate in

the special committee instituted by Article 133 EC. Finally, it claims that the Commission failed to advise the Republic of Turkey and that it failed to oppose practices contrary to the development of fair competition in the context of the Customs Union.

21 Furthermore, at the hearing, the applicant stated, in essence, that it did not claim that the act giving rise to damages was the adoption of Decision No 1/95 or that of another act of the institutions but the manner in which that decision was implemented by the defendants. In addition, the applicant stated that the act giving rise to damages was a failure to act by the defendants. The Court of First Instance took formal note of this in the minutes of the hearing.

22 The applicant bases the allegation that the abovementioned conduct was unlawful on Article 2(1), the first subparagraph of Article 3(1) and Article 6 of the Ankara Agreement. It refers also to the Financial Protocol annexed thereto and to the later Additional Protocols. It submits that those instruments should be considered as secondary Community legislation pursuant to Article 310 EC. The applicant also submits that the Community failed to honour an undertaking to give Turkey financial support of EUR 2 500 million; that undertaking was allegedly given at the meeting of the EC-Turkey Association Council following which Decision No 1/95 was adopted and was annexed to it in the form of a unilateral declaration. Finally, the applicant claims that, in the context of Euro-Mediterranean cooperation, promises of aid were made which have not been honoured and that there were difficulties in the granting of subsidies.

23 With regard to the causal link between the loss suffered by the applicant and the wrongful conduct on the part of the Community, the applicant submits firstly that the Customs Union has had a negative effect on the Turkish economy as a whole.

24 Secondly, as regards the applicant more particularly, it claims to have decided, in 1990, to invest in the production of ball bearings because domestic production was both stimulated by special premiums and subsidies and protected by a particular customs tariff. The applicant adds that at the time the participation of the Republic of Turkey in a Customs Union with the Community was not expected for 10 years. Its production unit began operations in 1993. Following the entry into force of the Customs Union on 1 January 1996, all customs taxes and duties and other charges affecting the import of ball bearings and housings were lifted. The Turkish market was then swamped by high-quality imported products originating from the Member States of the Community and by cheap and lower-quality products from the Far East. Consequently, the applicant's ball bearing production division suffered losses during the period from 1996 to 2003. Furthermore, the applicant claims that, because of the abolition of customs duties on 1 January 1996, the Customs Union had a negative effect on the import operations of its commercial division, since the intensified competition had the effect of reducing its sales of imported goods.

25 Basing its arguments on an accounting and financial report, the applicant submits in its application that it suffered damage estimated at EUR 1 200 000. In its observations in reply to the defendants' objections of inadmissibility, however, the applicant requests that they be ordered to pay it the sum of EUR 4 578 518.

26 The defendants put forward, firstly, three pleas of inadmissibility. They submit that the applicant is seeking compensation for alleged damage caused by Decision No 1/95, which is an act neither of the Commission nor of the Council, so that it cannot form the basis of an action for damages. They also claim that the applicant's application is time-barred under Article 46 of the Statute of the Court of Justice. Finally, they argue that the application is imprecise and that it fails to comply with the requirements of Article 44(1) of the Rules of Procedure.

27 Secondly, with regard to the substance, the defendants dispute that the Community's attitude could have caused the damage alleged by the applicant. In particular, the Council rejects the assertions relating to the alleged inadequacy of the financial aid granted to Turkey. The Commission points out that the fact that Turkey was not involved in the reduction or abolition of customs duties affecting goods imported from third countries does not infringe any of the provisions cited by the applicant. In any event, on abolition of customs and other barriers, no economic operator can claim a right to property in a market share formerly protected by those barriers. Such a market share constitutes only a momentary economic position exposed to the risks of changing circumstances. The defendants also take the view that the application does not contain any element to support the existence of a causal link between the alleged unlawful conduct and loss. Finally, they dispute that loss.

Findings of the Court

Preliminary observations

28 It follows from the applicant's statements at the hearing (see paragraph 21 above) that it is not necessary to consider the arguments which it based, in its written submissions, on the alleged unlawfulness of Decision No 1/95 or an act of the Commission or the Council.

29 Nor, consequently, is there any need to examine the plea of inadmissibility which the defendants have raised because of the nature of that decision.

30 Furthermore, it is for the Court of First Instance to assess whether the proper administration of justice justifies the dismissal of the action on the merits without ruling on the objections of inadmissibility raised by the defendants (Case C-23/00 P *Council* v *Boehringer* [2002] ECR I-1873, paragraph 52). In the circumstances of the case, the Court considers that it is not necessary to rule on the plea that the action is time-barred.

31 Finally, it must be recalled that, pursuant to Article 21 of the Statute of the Court of Justice, which applies to the Court of First Instance by virtue of the first paragraph of Article 53 of the Statute, and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court of First Instance to decide the case, if appropriate without other information. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible the essential points of fact and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible (see Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraph 20, and the case-law cited).

32 To satisfy those requirements, an application for compensation for damage said to have been caused by a Community institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see Case T-19/01 *Chiquita Brands and Others* v *Commission* [2005] ECR II-315, paragraph 65, and the case-law cited).

33 However, it is clear from paragraph 22 et seq. above that the large number of arguments put forward by the applicant in its written submissions and the manner in which they are presented preclude a finding that the application as a whole is inadmissible.

The requirements for liability to be incurred

34 It is settled case-law that, for the Community to incur non-contractual liability within the meaning of the second paragraph of Article 288 EC, a series of conditions must be met, namely the conduct of which the institutions are accused must have been unlawful, the damage must be real and a causal link must exist between the conduct and the damage complained of (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44; and Case T-283/02 *EnBW Kernkraft* v *Commission* [2005] ECR II-913, paragraph 84).

— The alleged unlawfulness of the defendants' conduct

35 As regards the first of these conditions, the case-law requires that there must be established a sufficiently serious breach of a rule of law intended to confer rights on individuals (Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 51; Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 42; Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 53; Case C-472/00 P *Commission* v *Fresh Marine* [2003] ECR I-7541, paragraph 25; and *EnBW Kernkraft* v *Commission*, paragraph 87).

36 In the present case, Yedaş Tarim argues that the inadequacy of the financial support granted by the Community and its omissions infringe or disregard, firstly, Article 2(1), the first subparagraph of Article 3(1) and Article 6 of the Ankara Agreement; secondly, the Financial Protocols; thirdly, the 1970 Additional Protocol; fourthly, an undertaking made by the Community alongside the adoption of Decision No 1/95 to pay EUR 2 500 million to Turkey; and, fifthly, other promises of aid made in the context of Euro-Mediterranean cooperation.

37 It should be noted that the Ankara Agreement and the abovementioned protocols constitute international agreements concluded by the Community and the Member States with a non-member State.

38 Article 300(7) EC provides that such agreements are binding on the institutions of the Community and on Member States. Thus their provisions form an integral part of the Community legal order with effect from their entry into force (Case 181/73 *Haegeman* [1974] ECR 449, paragraph 5, and Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7). However, the effects in the Community legal order of the provisions of those agreements may not be determined without taking account of the international origin of the provisions in question (Case 104/81 *Kupferberg* [1982] ECR 3641, paragraph 17).

39 In particular, in order to decide whether the applicant may rely on certain provisions of the abovementioned agreements to establish the unlawfulness of the institutions' conduct of which it complains, it is necessary to consider whether those provisions may be regarded as having direct effect. In that regard, in the *Demirel* judgment (paragraph 14), the Court of Justice held that a provision of an agreement concluded by the Community with non-member States is to be regarded as having direct effect when, having regard to its terms and the subject-matter and nature of the agreement, it contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.

40 The Court continued in the following terms (*Demirel*, paragraph 16):

'In structure and content, the [Ankara] Agreement is characterised by the fact that, in general, it sets out the aims of the association and lays down guidelines for the attainment of those aims without itself establishing the detailed rules for doing so. Only in respect of certain specific matters are detailed rules laid down by the protocols annexed to the Agreement, later replaced by the Additional Protocol.'

41 Accordingly, having regard to its nature and scheme, the Ankara Agreement is not included, in principle, in the norms in whose light the Court of First Instance reviews the lawfulness of the acts of the Community institutions.

42 In particular, Article 2(1) of the Ankara Agreement describes in general terms the purpose of the agreement, which consists in strengthening the trade and economic relations between Turkey and the Community. It also gives two general guidelines, namely the continuous and balanced nature of that strengthening and the taking into account of the accelerated development of the Turkish economy and the improvement of the level of employment and the living conditions of the Turkish people. It follows that that provision is programmatic in nature. It is not sufficiently precise and unconditional and is of necessity subject, in its implementation or effects, to the adoption of subsequent measures, precluding its having direct effect on the applicant's situation. In addition, it is not intended to confer rights on individuals.

43 The same is true with regard to Article 3(1) of the Ankara Agreement, the first subparagraph of which indicates in general terms the purpose of the preparatory stage of the association between Turkey and the Community. Thus, the second subparagraph of Article 3(1) of the Ankara Agreement refers to the protocols annexed for the definition of the implementing rules of that stage. Moreover, that constituted only the first of three stages provided for in the agreement and it came to an end with the entry into force of the 1970 Additional Protocol.

44 The same conclusion must also be reached with regard to Article 6 of that agreement, which is an institutional provision creating an Association Council.

45 In addition, the applicant relies on the Financial Protocol annexed to the Ankara Agreement without stating which provisions have been infringed. In order to be admissible within the meaning of Article 44(1)(c) of the Rules of Procedure, an allegation of unlawfulness must identify the unlawful conduct. That obligation is

reinforced in the present case by the fact that direct effect is not to be assessed globally but requires examination in each case of the nature, general scheme and wording of the provisions relied on (Case 41/74 *Van Duyn* [1974] ECR 1337, paragraph 12). It follows that, in the absence of any mention of the precise provision infringed, the argument drawn by the applicant from the abovementioned Financial Protocol is inadmissible. Yedaş Tarim also alludes to other Financial Protocols. However, even assuming that it refers to the Financial Protocols of 23 November 1970 and 12 May 1977, the same conclusion must be reached in that regard. In any event, the applicant stated at the hearing that none of the investment projects which it presented in the context of those protocols had been refused, which the Court noted in the minutes of the hearing.

46 The applicant also takes the view that the Community breached the terms of a unilateral declaration by which it undertook, at the time of the adoption of Decision No 1/95, to grant financial aid of EUR 2 500 million to Turkey. There is no such declaration amongst the Community declarations annexed to Decision No 1/95. In those circumstances, the allegation made by Yedaş Tarim is not sufficiently precise to be admissible within the meaning of Article 44(1)(c) of the Rules of Procedure. In addition, the applicant does not show that the declaration had legal effect. Moreover, according to the wording of the application itself, the aid in question was to have been granted to the Turkish State, so that it would not create rights for individuals.

47 The applicant also mentions the failure to honour promises of aid in the context of a special action programme, of macroeconomic assistance and of an Administrative Cooperation Fund. Its assertions are, however, not precise enough to identify, firstly, the conduct complained of with any certainty and, secondly, its possible unlawfulness. In any event, the applicant does not establish how individuals could acquire a right under those promises.

48 The applicant goes on to refer to difficulties and problems which arose in the context of Euro-Mediterranean cooperation. However, it fails to support them with evidence and does not indicate how they show unlawful conduct on the part of the defendants.

49 Finally, Yedaş Tarim also bases its action on the 1970 Additional Protocol and more particularly on the fact that it provides for 'reciprocal and balanced obligations' between the parties. However, that requirement appears only in the preamble to that protocol and thus has no inherent legal significance. Essentially, nevertheless, it does follow from Article 2(1) of the Ankara Agreement. However, the programmatic nature and, accordingly, the lack of direct effect of that provision were set out in paragraph 42 above.

50 Regardless of the foregoing, the Court considers that the Community cannot be held liable for an alleged inadequacy of the financial support allocated to Turkey, since, according to the applicant, that deficit was the result of opposition from a Member State.

51 With regard to the applicant's complaint that the Community did not take action against that Member State regarding the position it adopted, it should be noted that, even if that position can be considered to constitute a failure on the part of that Member State to fulfil its obligations under the Treaty, the Commission was not obliged to bring an action for failure to fulfil obligations in accordance with Article 226 EC. Accordingly, the Commission's failure to bring such an action does not, in any event, constitute an unlawful act, so that it cannot involve the non-contractual liability of the Community (see order in Case T-202/02 *Makedoniko Metro and Mikhaniki* v *Commission* [2004] ECR II-181, paragraph 43, and the case-law cited).

52 The applicant also suggests that it suffered a loss following the agreements which the Community concluded with third countries. Since, on the one hand, it stated at the hearing (see paragraph 21 above) that it did not contest official acts of the Community and, on the other hand, it continued to object to those agreements, the view must be taken either that it has adopted a contradictory position on which the Court cannot rule, or that it is complaining that the Community failed sufficiently to take into consideration the interests of the Turkish State when concluding those agreements. With regard to the second hypothesis, the Court considers that the application is imprecise and finds that it does not state the Community's failures which affected its activities in a concrete manner. An application seeking compensation for damage caused by a Community institution must, in order to comply with the requirements of Article 44(1)(c) of the Rules of Procedure, as interpreted by the case-law referred to in paragraph 32 above, state the evidence from which the conduct alleged against the institution concerned by the applicant can be identified. It follows that the present complaint is not admissible.

53 The same incoherence or imprecision affects the argument, reiterated at the hearing, that Turkey was excluded from the discussions on the common policies on trade, inter alia in areas directly connected to the Customs Union. The criticism that Turkey was excluded from the special committee instituted by Article 133 EC is the only one sufficiently precise to be admissible. Assuming that that criticism is to be interpreted as a complaint of a failure to invite Turkey to take part in that committee, it must be observed that participation by Turkey in that committee does not correspond to any right of which the applicant may avail itself.

54 Finally, the applicant argues that the Commission failed in its task of advising Turkey and of supervising the manner in which the Customs Union is applied, in order to take action against all practices hindering the development of fair competition. However, this complaint is also too imprecise to form the basis of an action for compensation. The applicant merely sets out a list of the Community's attitudes in different economic sectors but fails to support its recital with any precise fact relating to its activities.

55 Also with regard to the condition relating to the unlawfulness of the conduct complained of, the Court observes, finally, that, except in the case of a considerably reduced, or even no, discretion, the requirement that a breach of law be sufficiently serious is met only where the Community institution concerned manifestly and gravely disregarded the limits on its discretion (*Commission* v *Camar and Tico*, paragraph 54; Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975, paragraph 134; and *EnBW Kernkraft* v *Commission*, paragraph 87).

56 In the present case, the applicant has not established that the Community exceeded the limits of the wide discretionary powers which it has in granting financial aid. It is even less so since Yedaş Tarim itself admitted that the Community allocated various packages of aid to Turkey and the Council referred to the existence of a number of financial instruments in favour of Turkey. Nor has it been proved that the Community exceeded those limits when concluding agreements with third States by failing to involve Turkey in the definition of policies or in the assessment of the requirements of the Customs Union and the development of competition.

— The causal link

57 With regard to the third condition referred to in paragraph 34 above, it is settled case-law that, in order for the Community to incur non-contractual liability, the applicant seeking damages must prove, inter alia, the existence of a causal link between the unlawful conduct and the alleged damage (*Brasserie du Pêcheur and Factortame*, paragraph 51; *Bergaderm and Goupil* v *Commission*, paragraphs 41 and 42; and *Commission* v *Camar and Tico*, paragraph 53). Furthermore, it is the applicant who has the burden of proving a direct link of that kind (Case T-168/94 *Blackspur and Others* v *Council and Commission* [1995] ECR II-2627, paragraph 40, and Case T-146/01 *DLD Trading* v *Council* [2003] ECR II-6005, paragraph 73).

58 In the present case, the alleged macroeconomic imbalance resulting from the inadequacy of the financial aid granted to the Turkish State in the context of the Customs Union cannot constitute proof of such a direct link of cause and effect between that inadequacy and the individual situation of the applicant. Nor does the applicant show a direct causal link between, on the one hand, the losses which it alleges and, on the other, the Commission's failure to include Turkey in the discussions on the measures to be taken in connection with the Customs Union, its alleged lack of advice and lack of supervision of competition. In the same way, the explanations which the applicant gives with regard to the sectors of hand-made carpets and of export of television sets, the agricultural sector, in particular that of figs, hazelnuts and pistachios, and the textile and clothing sector appear to have no direct link to its corporate objects (see paragraph 11 above).

59 Nor is the fact that the entry into force of the Customs Union coincided approximately with the reduction in the applicant's profits sufficient to establish a direct link between the facts complained of and the damage alleged. It was possible for other determining factors to intervene, such as the structure of the Turkish market, the adaptation of Yedaş Tarim's competitors to the different markets in question, fluctuations of the national currency and the conclusion of other trade agreements by Turkey.

60 Furthermore, the applicant submits that the difficulties suffered by its ball bearing production division were so serious that only the results of its ball bearing, housings and belts import division saved it from closure. However, the applicant states that it began manufacture of ball bearings in 1993, speculating on the maintenance of the protection of customs barriers and public aid, whereas the creation of a Customs Union had been provided for since 12 September 1963, the date of signature of the Ankara Agreement. Moreover, the 1970 Additional Protocol had established a calendar of action to be taken during a transitional period of 22 years which was to precede the entry into force of the Customs Union. Despite the delay to which passage to the Customs Union gave rise, the difficulties suffered by the applicant's ball bearing production unit are therefore the result of the risk which it believed it

could take in counting on the continuation of a situation which Turkey itself wished to see change. By so doing, the applicant is the author of its own misfortune, thus breaking the causal link between the unlawful act and its losses.

61 It follows from the foregoing that in the present case there is no causal link between the conduct complained of and the loss claimed.

Conclusions

62 According to case-law, if any one of the conditions for non-contractual liability of the Community set out in paragraph 34 above is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for that liability (Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 81; Case T-170/00 *Förde-Reederei* v *Council and Commission* [2002] ECR II-515, paragraph 37; Case T-273/01 *Innova Privat-Akademie* v *Commission* [2003] ECR II-1093, paragraph 23; and *EnBW Kernkraft* v *Commission*, paragraph 85). In the present case, it has been established that the application fails to satisfy two of those conditions.

63 It follows that the present action must be dismissed without its being necessary to rule on the defendants' plea of inadmissibility based on Article 46 of the Statute of the Court of Justice or to order the measure of inquiry sought by the applicant.

Costs

64 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 applicant has been unsuccessful, it must be ordered to pay the costs, as applied for in the defendants' pleadings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the action;

2. Orders the applicant to pay the costs.

Vilaras Dehousse Šváby

Delivered in open court in Luxembourg on 30 March 2006.

E. Coulon M. Vilaras

Registrar President