JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
28 February 2002 *

In Case T-598/97,

British Shoe Corporation Footwear Supplies Ltd, established in Leicester (United Kingdom),

Clarks International Ltd, established in Somerset (United Kingdom),

Deichmann-Schuhe GmbH & Co. Vertriebs KG, established in Essen (Germany),

Groupe André SA, established in Paris (France),

Reno Versandhandel GmbH, established in Thaleischweiler-Froschen (Germany),

Leder & Schuh AG, established in Graz (Austria),

represented by A. Bell and M. Powell, Solicitors, with an address for service in Luxembourg,

applicants,

* Language of the case: English.

supported by

Foreign Trade Association (FTA), represented by B. Sheridan, Barrister, with an address for service in Luxembourg,

interveners,

v

Council of the European Union, represented by S. Marquardt, acting as Agent, assisted by H.-J. Rabe and G. Berrisch, lawyers,

defendant,

supported by

Commission of the European Communities, represented by V. Kreuschitz and S. Meany, acting as Agents, assisted by N. Khan, Barrister, with an address for service in Luxembourg,

and by

Confédération européenne de l'industrie de la chaussure (CEC), represented by P. Vlaemminck, J. Holmens and L. Van Den Hende, lawyers, with an address for service in Luxembourg,

intervener,

APPLICATION for the annulment of Council Regulation (EC) No 2155/97 of 29 October 1997 imposing a definitive anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia and collecting definitively the provisional duty imposed (OJ 1997 L 298, p. 1),

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

composed of: P. Mengozzi, President, R. García-Valdecasas, V. Tiili, R.M. Moura Ramos and J.D. Cooke, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 7 March 2001,

gives the following

Judgment

Facts

1 On 22 February 1995, the Commission published a notice of initiation of an anti-dumping proceeding concerning certain footwear originating in the People's Republic of China and Indonesia (OJ 1995 C 45, p. 2).

2 That notice of initiation stated that interested parties should make themselves known in writing and submit all relevant information to the Commission.

3 The applicant companies, which are importers and distributors of shoes in the European Union, decided to make themselves known by coming together in an *ad hoc* grouping known as the 'European Shoe Retail Organisation'.

4 During the course of the proceedings, they transmitted — in the name of the abovementioned organisation — their written observations on the interpretation of the concepts of 'injury', 'interest of the Community' and 'reference country' for

the People's Republic of China and completed importers' questionnaires. They also presented their views at a hearing with the Commission's officials.

5 The investigation led to the adoption of Commission Regulation (EC) No 165/97 of 28 January 1997 imposing a provisional anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia (hereinafter referred to as 'the provisional regulation', OJ 1997 L 29, p. 3) amounting to 94.1% and 36.5% respectively.

6 On 27 March 1997 the applicant companies brought an action before the Court of First Instance against the provisional regulation (Case T-73/97).

7 On 30 June 1997 the Commission lodged an objection as to the admissibility of the action mentioned in the preceding paragraph.

8 On 29 October 1997 the Council adopted Regulation (EC) No 2155/97 imposing a definitive anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia and collecting definitively the provisional duty imposed (OJ 1997 L 298, p. 1; 'Regulation No 2155/97' or 'the definitive regulation').

9 On 13 November 1997 the Commission raised a preliminary plea in Case T-73/97 under Article 114 of the Rules of Procedure of the Court of First Instance, claiming that, following adoption of Regulation No 2155/97, the action had become devoid of purpose.

10 By order of 30 June 1998 in Case T-73/97 *British Shoe and Others* v *Commission* [1998] ECR II-2619, the Court held that there was no need to adjudicate on the action, given that the adoption of Regulation No 2155/97 manifestly removed any interest of the applicants in continuing with the proceedings.

Procedure

11 By application lodged at the Court Registry on 19 December 1997, the applicants brought the present action.

12 On 30 March 1998, by separate document, the Council lodged an objection as to admissibility pursuant to Article 114(1) of the Rules of Procedure, on which the applicants submitted their observations on 25 May 1998.

13 The Commission, on 7 April 1998, and the Confédération Européenne de l'Industrie de la Chaussure ('the CEC'), on 13 May 1998, applied for leave to intervene in support of the form of order sought by the Council. On 20 April 1998 the Foreign Trade Association ('the FTA') also applied for leave to intervene but in support of the form of order sought by the applicants.

14 Although the main parties did not object to either the CEC's or the FTA's intervention, they requested that certain data in the file should be treated as confidential *vis-à-vis* those interveners.

15 By order of 9 July 1999 the Court of First Instance decided to reserve its decision on the objection of inadmissibility for the final judgment.

16 On 26 July 1999, the Court invited the parties to reply, in their pleadings, to a number of questions.

17 By order of 27 September 1999, the Commission and the CEC were granted leave to intervene in support of the form of order sought by the Council and the FTA was granted leave to intervene in support of the form of order sought by the applicants. In the same order, the Court also granted the request for confidential treatment, *vis-à-vis* the FTA and the CEC, as regards certain data included in Annex 1 to the document containing the objection of inadmissibility raised by the Council.

18 On 13 October 1999 the defendant lodged a non-confidential version of Annex 1 to the abovementioned document.

19 The FTA and the CEC lodged statements in intervention on 25 and 26 November 1999 respectively, in respect of which the main parties submitted their observations.

20 As the applicants waived their right to submit a reply and the Commission waived its right to submit a statement in intervention, the written procedure concluded on 27 January 2000.

21 At the hearing on 7 March 2001 the parties presented oral argument and replied to the questions put by the Court.

Forms of order sought by the parties

22 The applicants claim that the Court should:

— declare the application admissible;

— annul the contested regulation in its entirety;

— take such other steps as justice may require;

— order the Council to pay the costs.

23 The Council contends that the Court should:

— declare the application inadmissible or, in the alternative, unfounded;

— order the applicants to pay the costs;

— order the FTA to pay the costs of its intervention.

24 The FTA claims that the Court should:

— declare the application admissible;

— annul the contested regulation;

— order the Council to pay the costs.

25 The CEC contends that the Court should:

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

— order the applicants to pay the costs relating to its intervention.

Admissibility

Arguments of the parties

26 The applicants base their main arguments on an alleged development of the case-law on the admissibility of direct actions brought by individuals under Article 173 of the EC Treaty (now Article 230 EC) against a regulation imposing anti-dumping duties, a development which they claim is evidenced by the judgment of the Court of Justice in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, hereinafter '*Extramet*').

27 In particular, they submit that, whilst it is true that in some previous anti-dumping cases, such as Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463 and Joined Cases 239/82 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, the Court of Justice held that private parties had to demonstrate that a contested regulation was really a 'decision' in order to be able to challenge it under Article 173 of the Treaty, in *Extramet* it confined itself to examining whether the applicant was 'directly and individually concerned' by the measure in question. According to the applicants, the key consideration, in the light of the judgment in *Extramet*, is not the nature of the contested measure but the impact which that measure has on certain categories of traders, by reference to their own particular circumstances.

28 It follows, according to the applicants, that despite the legislative nature of the contested measure, it is sufficient for them to establish that that measure is of direct and individual concern to them in order to have standing to challenge it.

29 So far as concerns the requirement of direct concern, the applicants argue that the contested regulation is the 'direct cause' of their obligation to pay anti-dumping duty when they import certain categories of textile upper footwear from China or Indonesia.

30 As regards the requirement of individual concern, they state that, in accordance with what was held by the Court of Justice in *Extramet*, that requirement is satisfied if it is established that there is in the present case a set of factors capable of distinguishing them from all other traders.

31 In that regard, the applicants submit, first, that they were active participants in the administrative procedure which led to the adoption of the contested regulation, making full use of the procedural guarantees to which they were entitled. According to the applicants, there exists in the case-law, both in the field of competition law and in that of anti-dumping law, a principle that participation in an administrative procedure culminating in a quasi-judicial determination of the rights of a private person may give rise to a presumption, in favour of that person, of entitlement to challenge that determination. In that regard, the applicants refer in particular, with regard to anti-dumping law, to the judgment of the Court of Justice in Case 264/82 *Timex* v *Council and Commission* [1985] ECR 849, and to the judgment of the Court of First Instance in Case T-161/94 *Sinochem Heilongjiang* v *Council* [1996] ECR II-695. The applicants point out that Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ 1994 L 349, p. 1), on which the procedure at issue is based, contains numerous procedural guarantees for the importers who come forward and participate in an anti-dumping procedure, guarantees of which they have made full use.

32 Secondly, the applicants state that the information which they provided was received and evaluated by the Commission and that it very probably influenced the provisional determination of the duties.

33 Thirdly, the applicants argue that the imposition of the anti-dumping duties in issue entailed substantial adverse consequences for their economic activities. In particular, they point out that they are all shoe importers and retailers in the European Union and that, during the investigation period, they imported from the People's Republic of China and from Indonesia, in total, more than 12 million pairs of shoe with textile uppers. Furthermore, they state that they encountered considerable difficulties in obtaining supplies within the Community of goods corresponding to those which form the subject-matter of the contested regulation and, in particular, of footwear with vulcanised soles, of which, they claim, there is practically no Community production. At the hearing, the applicants stated that, as a result of the adoption of the contested measures, a number of them had to reduce their staff and sell a narrower range of footwear.

34 Fourthly, the applicants point out that two of their number are specifically named in the contested regulation.

35 The FTA invites the Court to consider the development of Community law since the judgment in *Extramet*, which recognises the importance and potentially decisive role that unrelated importers may play in the resolution of an anti-dumping proceeding. That development was brought about by the amendment in 1996 of the Community anti-dumping legislation following the Uruguay Round. Following that amendment, the final outcome of anti-dumping proceedings is no longer exclusively determined by the data from the complainant Community producers and foreign producers/exporters concerning injury and dumping margins. The Community institutions are now also required to examine the economic impact of potential anti-dumping measures on other interested traders, including independent importers, as provided in Article 21 of Regulation No 3283/94. Moreover, the importers whose interests must be taken into account under Article 21 are not only those meeting the *Extramet* criteria but also all importers who have deemed the proceeding important enough to make an active contribution to the investigation. Consequently, the FTA argues that, where, as in the present case, unrelated importers have been actively involved in the

proceeding and have been covered by the Community-interest analysis, the development of anti-dumping law means that independent importers can no longer be excluded from the categories of private persons who may bring an action against an anti-dumping regulation.

36 The Council argues that, in *Extramet*, the Court of Justice did not introduce a new test as regards *locus standi* in actions against anti-dumping measures. Indeed, in earlier cases, the Court of Justice, notwithstanding the reference to the distinction between 'decision' and 'regulation', essentially ascertained whether the regulation at issue was of direct and individual concern to the applicants. Thus, the case-law prior to *Extramet* still applies. The Council does not dispute that the applicants are directly concerned by the contested regulation, but objects to their being held to be individually concerned by it.

37 According to the Council, the criteria set out in the case-law governing the admissibility of actions brought by individuals against anti-dumping regulations may be summarised as follows:

— producer-exporters are normally individually concerned if they were charged with practising dumping if they were identified in the contested regulations or if they were concerned by the preliminary investigations;

— related importers are normally individually concerned if the findings of dumping or findings as regards the amount of duty were based on their resale prices;

— non-producing exporters are to be treated as related importers or unrelated importers depending on whether or not the dumping margin has been established by reference to their prices;

— the complainant Community industry is normally individually concerned because it has certain specific rights under the applicable basic regulation;

— single Community producers belonging to the complainant Community industry are individually concerned only if they can show the existence of certain attributes peculiar to them or factual circumstances distinguishing them from all other Community producers;

— unrelated importers are normally not individually concerned but may be individually concerned if they can identify certain attributes which are peculiar to them or factual circumstances which distinguish them from all other unrelated importers.

38 With regard to the applicants' participation in the administrative procedure, the Council contends that, although participation in the administrative procedure is a necessary prerequisite which any party claiming *locus standi* must fulfil, such participation is in itself not sufficient. That conclusion is confirmed, according to the Council, by the well-established case-law on the admissibility of actions by independent importers against anti-dumping regulations (judgment of the Court of Justice in *Allied Corporation and Others* v *Commission*, cited above, paragraph 15; orders of the Court of Justice in Case 279/86 *Sermes* v *Commission* [1987] ECR 3109, paragraphs 18 and 19, Case 301/86 *Frimodt Pedersen* v *Commission* [1987] ECR 3123, paragraphs 18 and 19, and Case 205/87 *Nuova Ceam* v *Commission* [1987] ECR 4427, paragraph 15).

39 Furthermore, the Council submits that the situation of the applicants is different from that of the applicant in *Timex*, cited above. In the present case, the dumping margin was not calculated on the basis of the transactions reported by the applicants and the arguments put forward by them were rejected by the Commission.

40 Moreover, the Council contends that the applicants have not shown that they were affected by the contested regulation in such a way as to distinguish them from all other traders. Even on the basis that the impact of the contested regulation is to be assessed by reference to the collective situation of the applicants, rather than the individual situation of each of them, the Council calculates the applicants' collective share of the market as being only 9.4%. In those circumstances, the applicants have only demonstrated that they are affected in their objective capacity as importers of shoes with textile uppers.

41 Finally, the Council maintains that identification of an importer in a regulation is relevant to establishing *locus standi* only if the importer was directly concerned by the findings of dumping, since the export prices have been determined by reference to that importer's resale prices. Since that is not the case here, the Council contends that the identification, in the contested regulation, of a number of the applicants does not suffice to confer *locus standi* to any of the applicants.

42 The CEC supports the position taken by the Council and agrees, in particular, with the Council's analysis of the Community case-law regarding admissibility in anti-dumping cases.

Findings of the Court

43 In deciding whether the objection of inadmissibility raised by the Council is well founded, it should be borne in mind that, although it is true that, in the light of the criteria set out in the fourth paragraph of Article 173 of the Treaty, regulations imposing anti-dumping duty are, by virtue of their nature and scope, of a general nature in that they apply generally to the economic operators concerned, their provisions may none the less be of individual concern to particular traders (*Allied Corporation and Others* v *Commission*, cited above, paragraph 11, and Case C-75/92 *Gao Yao* v *Council* [1994] ECR I-3141, paragraph 26, and the case-law cited therein; Case T-597/97 *Euromin* v *Council* [2000] ECR II-2419, paragraph 43, and Joined Cases T-74/97 and T-75/97 *Büchel* v *Council and Commission* [2000] ECR II-3067, paragraph 49).

44 In particular, measures imposing anti-dumping duties may, without losing their legislative nature, be of individual concern to traders who prove the existence of certain attributes which are peculiar to them and which distinguish them from all other traders (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; *Extramet*, paragraph 13; and *Euromin*, cited above, paragraph 44).

45 Thus, the Community judicature has held that particular provisions of regulations imposing anti-dumping duties may be of individual concern to those of the producers and exporters of the product in question who are charged with practising dumping on the basis of data relating to their commercial activities. That is generally the case where producers or exporters are able to demonstrate that they were identified in the measures adopted by the Commission or the Council, or were concerned by the preliminary investigations (*Sermes*, cited above, paragraph 15; judgments of the Court of Justice in Joined Cases C-133/87

and C-150/87 *Nashua Corporation and Others* v *Commission* [1990] ECR I-719, paragraph 14, and Case C-156/87 *Gestetner Holdings* v *Council and Commission* [1990] ECR I-781, paragraph 17; *Euromin*, cited above, paragraph 45).

46 Certain provisions of regulations imposing anti-dumping duties are also of individual concern to those of the importers whose resale prices were taken into account for the construction of export prices (see *Nashua Corporation*, cited above, paragraph 15, and *Gestetner Holdings*, cited above, paragraph 18).

47 The Court of Justice has also held that importers associated with exporters in non-member countries on whose products anti-dumping duties are imposed may challenge the regulations imposing such duties, particularly where the export price has been calculated on the basis of their selling prices on the Community market (Joined Cases 277/85 and 300/85 *Canon* v *Council* [1988] ECR 5731, paragraph 8).

48 Finally, the Court of Justice has also held an action brought by an unrelated importer against such a regulation to be admissible where there were exceptional circumstances, in particular where that regulation seriously affected that importer's business activities (see *Extramet*, cited above, paragraph 17).

49 In the present case, it must be observed, first of all, that the applicants do not belong to any of the three categories referred to in paragraphs 45 to 47 above which are recognised in the case-law as having a direct right of action against regulations imposing an anti-dumping duty. On the one hand, the applicants, as they themselves acknowledge, are unrelated importers. On the other hand it is clear from the contested regulation that the existence of dumping was established

not by reference to their resale prices but by reference to the prices actually paid or to be paid on export.

50 Next, as regards the question whether the judgment in *Extramet* may provide a basis for the applicants' case, it must be recalled that in that judgment the Court of Justice accepted that the applicant had established the existence of a set of factors constituting a situation peculiar to the applicant and distinguishing it, as regards the measure in question, from all other traders. In particular, the applicant had proved, firstly, that it was the largest importer of the product which was the subject of the anti-dumping measure and, at the same time, the end-user of the product, secondly, that its business activities depended to a very large extent on those imports, and, thirdly, that it was seriously affected by the contested regulation in view of the limited number of manufacturers of the product concerned and of the difficulties which it encountered in obtaining supplies from the sole Community producer, who, moreover, was its main competitor for the processed product (*Extramet*, paragraph 17).

51 In the present case, the Court would point out, first, that the applicants, even when taken collectively, account for only approximately 9.5% of all imports of the product at issue.

52 Moreover, the applicants, although they were expressly invited to do so by the Court in written questions and also at the hearing, have not proved that they were affected to any substantial degree by the contested regulation. In point of fact, other than the volume of the collective imports of the product concerned during the investigation period, the applicants have not provided, either individually or collectively, any figures which would enable the Court to determine the scale of the injury which their business activities allegedly suffered as a result of the adoption of the measures in question.

53 Moreover, no evidence has been adduced to substantiate the statements made at the hearing by the applicants to the effect that, as a result of the imposition of the contested anti-dumping duties, a number of them had to reduce their staff and sell a narrower range of footwear.

54 Finally, the applicants' claim that for one of the products concerned, namely shoes with vulcanised soles, there does not exist any Community production, has been supported by incomplete documentary evidence, as the Commission points out in recital 19 of the preamble to the provisional regulation. In that connection, the Council produced letters from various Spanish producers who offered to supply one of the applicants with shoes of that type.

55 It follows that the applicants have not proved that the contested regulation affected them other than in their objective capacity as importers of the products in question, just as it did any other trader finding himself in the same situation.

56 Admittedly, *Extramet* did not lay down an exhaustive list of the conditions which an unrelated importer must meet in order to be regarded as individually concerned by a regulation introducing anti-dumping duties. It is therefore possible that other factors might, to that end, be taken into consideration by the Community judicature.

57 In the present case, the applicants contend that they are individually concerned by the contested regulation by virtue of the fact that they were actively involved in the administrative procedure and that they provided information which the institutions received and evaluated specifically in the context of the examination of the Community interest in adopting the contested measures. In support of their contention, they rely, in particular, on the judgments in *Timex* and *Sinochem Heilongjiang*, cited above.

58 In that respect, it must be pointed out that in the judgment in *Timex*, cited above, the Court of Justice stated that, in order to establish whether the regulation in question was of individual concern to the applicant, it was necessary to consider in particular the part played by it in the anti-dumping proceeding and its position on the market to which the contested legislation applied (paragraph 12). As regards the second aspect, the Court of Justice found that the applicant was the leading manufacturer of mechanical watches and watch movements in the Community and the only remaining manufacturer of those products in the United Kingdom. It added that the anti-dumping duty had been fixed in the light of the consequences which the dumping found to exist had entailed for the applicant, and concluded that the contested regulation was based on the applicant's own situation (paragraph 15).

59 As regards the judgment in *Sinochem Heilongjiang*, cited above, the Court notes that the applicant in that case was an exporter of the product in question, that it had intensively involved itself in the preliminary investigation, that all the information and arguments were received and evaluated by the Commission (paragraph 47) and that, furthermore, it was the only Chinese undertaking to have participated in the investigation (paragraph 48).

60 In those circumstances, the applicants cannot validly claim that in *Timex* and *Sinochem Heilongjiang*, cited above, the right of the undertakings in question to bring an action for annulment against the regulation introducing the contested anti-dumping measure was recognised by the Community judicature solely on the basis of their participation in the administrative procedure leading to the adoption of such measures.

61 Although participation by an undertaking in an anti-dumping proceeding may be taken into account, amongst other factors, in order to establish whether that undertaking is individually concerned by the regulation introducing anti-dumping duties adopted at the conclusion of that proceeding, if there are no other factors giving rise to a particular situation which distinguishes that undertaking from all other traders, with respect to the measure in question, such participation does

not, of itself, give rise to a right enabling the undertaking to bring a direct action against that regulation.

62 Since the applicants have not proved the existence of other factors capable of distinguishing them from all other traders, with respect to the contested regulation, they cannot base their right to bring an action against that regulation exclusively on the fact that they actively participated in the administrative procedure leading to its adoption. For that purpose, the mere fact that a number of the applicant undertakings were specifically named in the contested regulation cannot lead to a different conclusion.

63 It follows from all the foregoing considerations that the contested regulation is not of individual concern to the applicants within the meaning of the fourth paragraph of Article 173 of the Treaty.

64 The action must therefore be declared inadmissible.

Costs

65 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 bear their own costs and pay, jointly and severally, the costs incurred by the Council, with the exception of those relating to the intervention of the FTA, and by the CEC, as applied for by those parties. The FTA shall bear its own costs and pay the costs incurred, as a result of its intervention, by the Council, as applied for by the latter. The Commission shall bear its own costs, in accordance with the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

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

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants to bear their own costs and pay, jointly and severally, the costs incurred by the Council, with the exception of those relating to the intervention of the Foreign Trade Association, and by the Confédération européenne de l'industrie de la chaussure;**

3. **Orders the Foreign Trade Association to bear its own costs and pay those incurred, as a result of its intervention, by the Council;**

4. **Orders the Commission to bear its own costs.**

Mengozzi García-Valdecasas Tiili

Moura Ramos Cooke

Delivered in open court in Luxembourg on 28 February 2002.

H. Jung

Registrar

P. Mengozzi

President