

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

5 April 2001 \*

In Case T-82/00,

BIC SA, established in Clichy (France),

Flamagas SA, established in Barcelona (Spain),

Swedish Match SA, established in Nyon (Switzerland),

represented by A. Vianello, avocat, with an address for service in Luxembourg,

applicants,

v

Council of the European Union, represented by S. Marquardt and F.P. Ruggeri Laderchi, acting as Agents, assisted by G.M. Berrisch, avocat, with an address for service in Luxembourg,

defendant,

\* Language of the case: Italian.

APPLICATION for annulment of Council Regulation (EC) No 174/2000 of 24 January 2000 repealing Council Regulation (EEC) No 3433/91 in so far as it imposes a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan (OJ 2000 L 22, p. 16),

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

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

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 24 January 2001,

gives the following

## Judgment

### Legal background

#### *The basic regulation*

- 1 By virtue of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1 ‘the basic regulation’), an anti-dumping duty may be applied to any dumped product the release of which for free circulation in the Community causes injury (Article 1(1)); it is made clear that the term ‘injury’ is, unless otherwise specified, to be taken to mean material injury to the Community industry or threat of material injury to the Community industry (Article 3(1)).
  
- 2 Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention, a definitive anti-dumping duty is to be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee (Article 9(4) of the basic regulation).
  
- 3 Article 11 of the basic regulation concerns, *inter alia*, the duration and review of anti-dumping measures. It provides as follows:

‘(1) An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

(2) A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

...

(5) ... review[s] shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

(6) Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph 2... by the Community institution responsible for their introduction...’.

*The contested anti-dumping measure*

- 4 By Regulation (EEC) No 3433/91 of 25 November 1991 (OJ 1991 L 326, p. 1, ‘the original regulation’), the Council imposed a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan, the People’s Republic of China, the Republic of Korea and Thailand. Since that measure would in the normal course of events expire five years after it was introduced, in accordance with Article 11(2) of the basic regulation, the

Commission, in response to a review request lodged by the applicants in connection with imports of lighters originating in Japan, reviewed the measure, the anti-dumping duties originally imposed remaining in force pending the outcome of the review, in accordance with the second sentence of the first paragraph of Article 11(2) of that regulation.

5 The review investigation was initiated on 30 November 1996. It exceeded the period laid down in Article 11(5) of the basic regulation on account, in particular, of lengthy deliberations within the Council.

6 At the close of the review, after establishing that:

- imports from Japan had fallen to very low levels because the original anti-dumping measure had been effective in restricting dumping,
  
- none the less, the low level of imports from Japan was also the result of an apparent strategy by the Japanese export group which, after the anti-dumping measure which was the subject of the review was imposed in 1991, transferred its production of lighters for export onto the Community market to Mexico, imports from Mexico thus simply replacing imports from Japan after 1991,
  
- since 1997, anti-dumping duties had been imposed on imports of lighters from Mexico,

— the Mexican exporter subject to those anti-dumping duties belonged to the Japanese export group which possesses plant in Japan giving it sufficient unused production capacity to restart substantial exports from Japan on the expiry of the present measure directed against Japanese lighter imports, which would enable that group to charge lower prices on the Community market than those permitted for products imported from Mexico,

the Commission considered that it was likely that injurious dumping would recur if the original regulation were to be repealed. In particular, it judged that there was a serious risk that the Community industry, which had made great efforts to rationalise in recent years, would be forced to close down plants if the anti-dumping measure lapsed.

7 However, the simple majority required in the Council for the adoption of a regulation maintaining the anti-dumping measure on the basis of proposals presented by the Commission in October 1998 and April 1999 could not be achieved. In those circumstances, and having regard to the fact that the anti-dumping measures introduced by the original regulation were still in force, the Commission and Council, awaiting the results of the review which ought in the normal course of events to have been concluded within 12 months of the date of its initiation, which was 30 November 1996, considered at the end of 1999 that the situation was unacceptable because it maintained the current anti-dumping measure in force indefinitely.

8 Consequently, the Commission presented the Council with a proposal for the repeal of the anti-dumping duties imposed by the original regulation.

9 In response to that proposal, on 24 January 2000 the Council adopted Regulation (EC) No 174/2000 repealing Council Regulation (EEC)

No 3433/91 in so far as it imposes a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan (OJ 2000 L 22, p. 16, 'the contested regulation').

## Procedure

- 10 Those were the circumstances in which, by application lodged at the Registry of the Court of First Instance on 5 April 2000, the applicants, Community producers of pocket lighters who had requested the Commission to initiate the abovementioned review, brought this action.
- 11 After the defence was filed, the applicants did not submit a reply within the period prescribed for them to do so, with the result that the written procedure was closed on 13 October 2000.
- 12 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure.
- 13 The parties presented oral argument and their replies to the Court's questions at the hearing in open court on 24 January 2001.

## Forms of order sought by the parties

14 The applicants claim that the Court should:

— annul the contested regulation; and

— order the Council to pay the costs.

15 The Council contends that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

## Law

16 In response to a question put by the Court, the applicants stated at the hearing that their action is based on a single plea in law, alleging breach of the obligation to state reasons imposed on the Council by Article 253 EC. In particular, they declared that, aware as they are of the broad discretion enjoyed by the Council in the sphere of anti-dumping duties, they were not alleging any manifest error of assessment by the Council.

- 17 The single plea alleging breach of the obligation to state reasons must therefore be considered.

*Arguments of the parties*

- 18 The applicants claim that the contested regulation must be annulled for infringement of Article 253 EC, the statement of reasons being insufficient, inconsistent and plainly illogical in relation to the provisions it contains. They state that the statement of reasons given for the contested regulation is insufficient because there is not the slightest evidence of reasoning explaining why it was expedient to remove the anti-dumping duties imposed on Japanese lighters. The repeal of those duties is not warranted by any statistical data or any other evidence, the Commission's entire investigation having led it to find, on the contrary, that there existed a serious risk to the very survival of the Community industry in the sector concerned.
- 19 In actual fact, according to the applicants, the objective pursued by the Council by means of the contested repeal of the anti-dumping duties was that of bringing the review to a swift end. For that reason, the Council preferred to have recourse to a regulation which was illegal since it contained no reasons, rather than acknowledge the institutions' responsibility for the delay in adopting a final measure. There were, however, factual circumstances revealed during the investigation which cannot be disregarded, namely, that abolition of the duties in question would cause the Community industry extremely serious damage. In the contested regulation there is no reference to the reasons for which the Council repeatedly refused to approve the Commission's first two proposals. It follows that the Council's adoption of the contested regulation ran counter to all the results of the investigation carried out by the Commission.

- 20 Referring to the case-law of the Court of Justice and of the Court of First Instance in this area, the applicants point out that the statement of reasons must show clearly and unequivocally the reasoning of the administrative authority adopting the contested measure, so as to inform the persons concerned of the reasons for the measure adopted and thus enable them to defend their rights. The applicants were not given that opportunity, given that in the entire text of the contested regulation there is not one single fact to support repeal of the anti-dumping measures. On the contrary, all the recitals in the preamble to the regulation clearly demonstrate the permanent nature of the serious peril threatening the Community industry. When the Council repeals an anti-dumping duty, it may base its decision only on the situation as it appears from the definitive finding of the facts and on the results of the investigation available at the time when the act in issue was adopted.
- 21 At the hearing the applicants added that the preparatory act finally presented to the Council by the Commission was also vitiated by insufficient and inconsistent reasoning, since the Commission did not explain why it was proposing that the Council should repeal the original anti-dumping measure despite the fact that the Commission had concluded, at the end of the review, that that measure should be maintained. That procedural defect necessarily affects the contested regulation.
- 22 Referring to the relevant case-law of the Court of Justice and of the Court of First Instance, in particular Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, the Council contends that the obligation to provide a sufficient statement of reasons is a purely formal and procedural requirement. Whether or not the reasoning is correct or the Community institutions have sufficiently examined the documents in the file are quite different questions, which may be considered only if separate pleas have been raised to that end, which is not the case in this instance.
- 23 Next, the Council considers that it gave a sufficient statement of the reasons for the contested regulation. In any event, the Commission informed the applicants

by letter of 20 September 1999 (annexed to the application) that, in the course of discussions in the Council concerning its proposals, it became apparent that the absence of a sufficient majority was due to the doubts felt by members of the Council regarding a situation notable for the combination of a fairly high profitability level in the Community industry and the extremely small market share represented by imports from Japan during the period of the investigation and uncertainty about the transfer of the exporters' production from Mexico to Japan with a view to supplying the Community market. For those reasons, and having regard to the rather long duration of the investigation, a majority of the members of the Council concluded that it would be more appropriate to close the review investigation then in progress.

### *Findings of the Court*

- 24 It is settled case-law that the statement of reasons required by Article 253 EC, which is an essential procedural requirement within the meaning of Article 230 EC, must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community court to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, *inter alia*, *Commission v Sytraval and Brink's France*, cited above, paragraph 63).
- 25 In the circumstances it must be held that a proper statement of reasons has been given for the contested regulation. In recitals 1 to 37 of that regulation, the

Council gives an account first of all of the conduct of the review initiated by the Commission and the conclusions drawn by the latter concerning the products in question. The Council then notes the Commission's findings according to which the imports in issue were dumped, and that institution's calculations to determine to what extent the prices charged by the exporter on the Community market undercut the prices charged by the Community industry.

- 26 Admittedly, in recitals 38 to 84 of the contested regulation, concerning injury, the likelihood of a recurrence of injurious dumping and the Community interest, the Council does no more than set out the Commission's findings and considerations. The wording of those recitals, taken in isolation, might give the impression that the Council could not but endorse the conclusions which the Commission had put forward in its proposal of April 1999 and according to which recurrence of injurious dumping was considered likely if the original regulation were to be repealed.
- 27 However, recitals 85 to 89 of the contested regulation in section H headed 'Repeal of anti-dumping measures' plainly demonstrate that the Council, as author of the contested regulation, did not endorse the assessment previously made by the Commission.
- 28 Referring to the previous recitals, the Council states in recital 85 of the contested regulation that, '[o]n the basis of these facts, the Commission [initially] concluded that there was likelihood of recurrence of injurious dumping and in April 1999, made the second of two proposals to impose a definitive anti-dumping duty', adding that, '[h]owever, the appropriate majority in the Council was not achieved to adopt a Regulation on the basis of either Commission proposal.'

- 29 That recital therefore clearly indicates the reason — namely, the failure to achieve a majority in the Council — for which the Commission’s proposals for maintaining the anti-dumping duties introduced by the original regulation were not followed by the Council.
- 30 In recitals 86, 87 and 88 of the contested regulation, the Council states that the fact that it decided in the present case ‘not to adopt a regulation on the basis of a Commission proposal would have the consequence [pursuant to Article 11(2) of the basic regulation] [of] the review proceeding remaining open and the existing measure remaining in force for an unlimited period of time’, although Article 11(5) of the basic regulation provides that reviews should normally be concluded within 12 months of their initiation.
- 31 Finally, it is stated in recital 89 of the contested regulation that ‘[i]n these circumstances’, the Commission considers that the anti-dumping duty on the products in question should be repealed in order to avoid both an undue duration of the review and the remaining in force of the anti-dumping measure for an indefinite period of time.
- 32 It must be added that, as pointed out in recital 90 of the contested regulation, the applicants were informed by letter of the Commission of 20 September 1999 (see paragraph 23 above) of the reasons why a majority could not be obtained within the Council in favour of maintaining the anti-dumping duties in issue — reasons which were not denied by the Council at the hearing — and of the fact that, having regard to that position adopted by the Council, the Commission was to submit a new proposal, this time for the repeal of the original regulation.

33 It follows that the statement of reasons in the contested regulation, in light of its content and the circumstances of its adoption, was neither insufficient nor inconsistent, and neither the Council nor the Commission can be held to have infringed Article 253 EC. Rather, that statement of reasons enabled the applicants to understand both the factual and procedural background to the case and the basis of the legal conclusions which the Commission and Council drew therefrom. Accordingly, the applicants could, on the basis of that statement of reasons, have argued their case properly before the Court and have challenged the legality of the contested regulation on grounds other than breach of the obligation to state reasons.

34 In consequence, the plea in law cannot be upheld.

35 The application must therefore be dismissed.

### Costs

36 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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, in accordance with the form of order sought by the Council.

On those grounds,

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

hereby:

1. Dismisses the application.
2. Orders the applicants to pay the costs.

Meij

Lenaerts

Potocki

Jaeger

Pirrung

Delivered in open court in Luxembourg on 5 April 2001.

H. Jung

Registrar

A.W.H. Meij

President