JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
12 September 2002 *

In Case T-89/00,

Europe Chemi-Con (Deutschland) GmbH, established in Nuremberg (Germany), represented by K. Adamantopoulos, J.J. Gutiérrez Gisbert and J. Branton, lawyers, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by S. Marquardt, acting as Agent, assisted by G.M. Berrisch, lawyer,

defendant,

* Language of the case: English.

supported by

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

intervener,

APPLICATION for annulment of the second paragraph of Article 3 of Council Regulation (EC) No 173/2000 of 24 January 2000 terminating the anti-dumping proceedings concerning imports of certain large aluminium electrolytic capacitors originating in Japan, the Republic of Korea and Taiwan (OJ 2000 L 22, p. 1),

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

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

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 7 February 2002,

gives the following

Judgment

Legal background

1 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'), as amended, governs anti-dumping proceedings. In accordance with the second paragraph of Article 23 of the basic regulation, it was adopted without prejudice to the anti-dumping proceedings initiated under the formerly applicable regulation, 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).

2 Article 7(1) of the basic regulation provides:

'Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings.'

3 Article 7(7) provides:

'Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission.'

4 Article 9(4) and (5) of the basic regulation provide:

'4. Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee. Where provisional duties are in force, a proposal for definitive action shall be submitted to the Council not later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Regulation have been accepted....'

5 Article 11(2) of the basic regulation states:

'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.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury....'

Facts of the dispute

6 The applicant, Europe Chemi-Con (Deutschland) GmbH, is a wholly-owned subsidiary of Nippon Chemi-Con Inc. ('NCC'), established in Tokyo (Japan). NCC manufactures large aluminium electrolytic capacitators ('LAECs'). The applicant is the exclusive distributor and importer in the European Community of LAECs manufactured by NCC.

7 The Council imposed a definitive anti-dumping duty on imports into the Community of LAECs originating in Japan by Regulation (EEC) No 3482/92 of

30 November 1992, also collecting definitively the provisional anti-dumping duty (OJ 1992 L 353, p. 1), as amended. On 13 June 1994 the Council also adopted Regulation (EC) No 1384/94 imposing a definitive anti-dumping duty on imports of LAECs originating in the Republic of Korea and Taiwan (OJ 1994 L 152, p. 1).

8 Following the publication on 3 June 1997 of a notice of impending expiry of the anti-dumping measures applicable on imports of certain LAECs originating in Japan (OJ 1997 C 168, p. 4), the Federation for Appropriate Remedial Anti-Dumping lodged a request for a review pursuant to Article 11(2) of the basic regulation.

9 The Commission also decided, on its own initiative, to initiate an interim review of the same anti-dumping measures, pursuant to Article 11(3) of the basic regulation, in order to consider the impact on dumping and injury of changed circumstances in relation to technical developments for the product and to market conditions.

10 Consequently, on 3 December 1997, the Commission announced (OJ 1997 C 365, p. 5) the initiation of a review of the anti-dumping measures applicable to imports of certain LAECs originating in Japan. The anti-dumping duties on imports of certain LAECs originating in Japan continued to be collected while the review was being carried out, in accordance with Article 11(2) of the basic regulation.

11 The Commission also decided to initiate a review of the anti-dumping measures applicable to imports of certain LAECs originating in the Republic of Korea and Taiwan (OJ 1998 C 107, p. 4), pursuant to Article 11(3) of the basic regulation.

12 A further proceeding concerning LAECs originating in the United States and Thailand was initiated on 27 November 1997 (OJ 1997 C 363, p. 2) pursuant to Article 5 of the basic regulation. The Commission imposed a provisional anti-dumping duty on imports of LAECs originating in the United States and in Thailand by Commission Regulation (EC) No 1845/98 of 27 August 1998 (OJ 1998 L 240, p. 4). The Commission then proposed to the Council the imposition of definitive anti-dumping measures on those imports. The Council did not adopt the proposal within the time-limit laid down by Article 6(9) of the basic regulation. Consequently, no definitive measures were imposed on imports from the United States and Thailand and the provisional measures, which entered into force on 29 August 1998, lapsed on 28 February 1999. As a result, the provisional anti-dumping duties were never definitively recovered on those imports.

13 On 21 May 1999, the Commission sent the applicant a disclosure document in accordance with Article 20 of the basic regulation, setting out the essential facts and considerations on the basis of which the Commission intended to propose the termination of the review of anti-dumping measures applicable to imports of LAECs originating in Japan following the failure to impose definitive duties on imports of LAECs from the United States and Thailand.

14 Between 31 May and 2 November 1999, the applicant and the Commission exchanged letters and there was a hearing on 15 June 1999. Throughout the proceedings, the applicant stressed that the termination of the review and hence of the anti-dumping proceedings should have retroactive effect as from 4 December 1997, the date of expiry of the anti-dumping duties imposed in 1992 on imports of LAECs originating in Japan.

15 By Regulation (EC) No 173/2000 of 24 January 2000 terminating the anti-dumping proceedings concerning imports of certain LAECs originating in Japan, the Republic of Korea and Taiwan (OJ 2000 L 22, p. 1, 'the contested

regulation'), the Council decided that, in the absence of measures against the United States of America and the Kingdom of Thailand, the imposition of any anti-dumping measures on imports of LAECs originating in Japan, the Republic of Korea and Taiwan was discriminatory. The contested regulation states that:

'*Article 1*

The anti-dumping proceeding concerning imports of certain large aluminium electrolytic capacitors originating in Japan is hereby terminated.

Article 2

The anti-dumping proceeding concerning imports of certain large aluminium electrolytic capacitors originating in the Republic of Korea and Taiwan is hereby terminated.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from 28 February 1999.'

16 The Council gave its reasons for the termination of the anti-dumping proceedings in the contested regulation, in particular in the following paragraphs:

'132. As mentioned above in recital (6), a further proceeding concerning LAECs originating in the United States of America and Thailand was initiated in November 1997, pursuant to Article 5 of the Basic Regulation. The Commission's investigation definitively established the existence of significant dumping and material injury on the Community industry resulting therefrom. No compelling reasons were found indicating that new definitive measures would be against the Community interest. Consequently, the Commission proposed to the Council the imposition of the definitive anti-dumping measures on the imports of LAECs originating in the United States of America and Thailand. However, the Council did not adopt the proposal within the time-limits laid down in the Basic Regulation. As a result, definitive measures were not imposed on imports from the United States of America and Thailand and the provisional measures, which entered into force in August 1998, lapsed on 28 February 1999.

133. The new investigation concerning the United States of America and Thailand and the two present reviews were conducted, to a large extent, simultaneously. As indicated above, basically the same conclusions in the present reviews have been reached as in the new proceeding concerning the United States of America and Thailand, for the same product concerned. These conclusions call in principle for amending the definitive measures on imports from Japan, the Republic of Korea and Taiwan. However, Article 9(5) of the basic regulation provides that anti-dumping duties shall be imposed on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury.

134. Therefore, it is concluded that, in the absence of measures on the United States of America and Thailand, the imposition of any measures on imports

originating in Japan, the Republic of Korea and Taiwan as a result of the present investigation would be discriminatory towards these latter three countries.

135. In consideration of the above, in order to ensure a coherent approach and to respect the principle of non-discrimination as set out in Article 9(5) of the Basic Regulation, it is necessary to terminate the proceedings concerning imports of LAECs originating in Japan, the Republic of Korea and Taiwan, without the imposition of anti-dumping measures.

136. One Japanese exporting producer claimed that the proceeding concerning Japan should be retroactively terminated as from the date of initiation of the present review, i.e. 3 December 1997, on the grounds that, while the review on Japan was pending, imports originating in that country were still subject to measures and were therefore discriminated against compared to the imports originating in the United States of America and Thailand, for which no duties were collected.

137. However, as noted above in recital (132), between December 1997 and 28 February 1999 imports originating in the United States of America and Thailand were subject to investigation, as were the imports originating in Japan. The fact that measures were in force against Japan but not against the United States of America and Thailand over that period of time is merely a reflection of the fact that the proceeding concerning the United States of America and Thailand was at a different stage, the investigation being the initial investigation, whereas as regards Japan, the measures in force were those imposed by Regulation (EEC) No 3482/92. In these circumstances, no discrimination occurred because the situation of each proceeding was different.

138. Nevertheless, it is accepted that, from 28 February 1999 onwards, given the considerations set out in recitals (132) to (135) above, imports originating in Japan should be treated in the same way as those originating in the United States

of America and Thailand. The same is true for the Republic of Korea and Taiwan. The investigation concerning the United States of America and Thailand had to be concluded by 28 February 1999, either by the imposition of measures or the termination of the proceeding. The present investigation has reached similar conclusions to the investigation concerning the United States of America and Thailand, and thus the same treatment must be applied to the present proceeding.'

Procedure and forms of order sought by the parties

17 The applicant brought the present action by application lodged at the Registry of the Court of First Instance on 14 April 2000.

18 By application lodged at the Registry of the Court of First Instance on 6 September 2000, the Commission sought leave to intervene in the matter in support of the form of order sought by the Council. By order of 17 November 2000, the President of the Fourth Chamber (Extended Composition) of the Court of First Instance granted leave to intervene.

19 The intervener having waived the right to submit a statement in intervention, the Fourth Chamber (Extended Composition), upon hearing the report of the Judge-Rapporteur, decided to open the oral procedure.

20 The Court heard oral argument from the parties and their answers to its questions at the hearing on 7 February 2002.

21 In its application, the applicant claims that the Court of First Instance should:

— annul the second paragraph of Article 3 of the contested regulation in so far as it does not state that the retroactive effect of the regulation is to apply from 4 December 1997 onwards; and

— order the defendant to pay the costs.

22 In its reply, the applicant claims that the Court should:

— declare the application admissible; and

— annul the second paragraph of Article 3 of the contested regulation.

23 The Council, supported by the Commission, contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss the action as unfounded; and

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

24 The Council submits that the real aim of the applicant is to oblige it to adopt a positive course of action, namely to grant retroactivity as from 4 December 1997. However, the Community judicature cannot issue directions to the Community institutions. Inadmissibility of the first form of order sought by the applicant automatically entails inadmissibility of the application as a whole, as the applicant merely disagrees as to the date from which retroactivity is to be effective.

25 The Council states that in the reply the applicant changed the form of order sought by omitting the words 'in so far as it does not state that the retroactive effect of the Regulation shall apply from 4 December 1997 onwards'. The Council considers that the amendment to the form of order sought is inadmissible and that, consequently, the Court of First Instance may only consider the applicant's form of order seeking annulment in the wording set forth in the application.

26 It submits that even if the Court of First Instance were prepared to consider the amended form of order sought, that would not render the application admissible. If the second paragraph of Article 3 were annulled, the contested regulation would be applicable from the day following its publication in the Official Journal. However, the applicant has no interest in such a judgment.

27 Alternatively, the Council considers that the application is inadmissible in that it requests the annulment of the second paragraph of Article 3 of the contested regulation to the extent that it covers imports originating in Korea and Taiwan. Since the applicant paid anti-dumping duties for imports of LAECs originating in Japan only, it is not individually concerned with imports from Korea and Taiwan.

28 The applicant states that its sole interest is the annulment of the second paragraph of Article 3 of the contested regulation. It adds that the wording of its application and the form of order sought by it is clear. Should the Court of First Instance annul that paragraph, it will be for the Council to adopt the appropriate measures in response. The application itself does not request the Court of First Instance to impose a positive duty on the Council to act in a specific manner.

29 The applicant submits that the question whether retroactivity should apply to Korea and to Taiwan or to exports of LAECs manufactured by other Japanese manufacturers in the same way as the applicant has requested for itself is wholly irrelevant because it does not affect its direct and individual interest in the annulment of the second paragraph of Article 3 of the contested regulation.

Findings of the Court

30 First of all, it is clear, both from the application and from the forms of order sought by the applicant, that it is seeking annulment of the second paragraph of Article 3 of the contested regulation to the extent that that provision concerns it; in other words, in so far as it relates to imports of LAECs originating in Japan.

31 It is therefore unnecessary to consider the Council's argument that the applicant is not individually concerned with imports from Korea and Taiwan. Likewise, it is unnecessary to consider the argument that the applicant modified the form of order sought in its reply.

32 It must be borne in mind at the outset that, when the Court of First Instance annuls an act of an institution, that institution is required, under Article 233 EC, to take the measures necessary to comply with the Court's judgment. In order to comply with the judgment and to implement it fully, the institution is required to observe not only the operative part of the judgment but also the grounds which led to that judgment and constitute its essential basis, inasmuch as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure (Case T-206/99 *Métropole télévision* v *Commission* [2001] ECR II-1057, paragraph 35 and the case-law cited).

33 In the light of that case-law, the Council's submission that the application is asking the Court to issue a direction to the Council cannot be accepted in this case. It is clear, both from the application and the form of order sought, that the applicant is seeking annulment of the second paragraph of Article 3 of the contested regulation.

34 Furthermore, with respect to the argument that the applicant has no interest in a decision annulling the second paragraph of Article 3 of the contested regulation, it should be observed that, although the contested regulation is retroactively applicable from 28 February 1999, the applicant has every interest in the application of retroactive effect from an earlier date. It is undisputed that the contested regulation contains an implied refusal of the applicant's request that the regulation should apply from an earlier date.

35 In those circumstances, the applicant has a legal interest in the annulment of the contested regulation in that the Council did not grant its request for retroactive application from 4 December 1997. The fact that the contested regulation is favourable to the applicant in no way diminishes its interest in the annulment of the part of the regulation unfavourable to it, namely the provision relating to the entry into force of the amendment of the duties as they apply to it (Case T-7/99 *Medici Grimm* v *Council* [2000] ECR II-2671, paragraph 55 and the case-law cited).

36 Accordingly, the action is admissible.

Substance

37 The applicant raises two pleas in law in support of its application for annulment. The first alleges a manifest error of assessment in determining the date from which the retroactive effect of the termination of proceedings was to apply. The second alleges a failure to state adequate reasons.

The first plea: manifest error of assessment

Arguments of the parties

38 The applicant considers that the contested regulation fails to take into account all the effects of the discrimination suffered by it. It submits that the choice of

28 February 1999, the date on which the provisional measures imposed on the United States of America and the Kingdom of Thailand lapsed, as the date from which the retroactive effect was to apply does not eliminate the discriminatory effects. It submits that there was discrimination from 4 December 1997 until 28 February 1999. During that period, imports of LAECs from Japan were subject to anti-dumping duties whereas those coming from the United States and from Thailand were unaffected by such duties. It submits that the discrimination goes back to the date on which the definitive duties imposed against Japan would normally have expired, namely 4 December 1997. That situation constituted discrimination because comparable situations were treated differently.

39 In that regard, the applicant observes that investigations, covering the same period, were carried out simultaneously on LAECs originating in different countries and that similar conclusions on dumping, injury and the Community interest were reached. However, the choice of 28 February 1999 as the starting date for the retroactive application of the contested regulation to imports from Japan, Korea and Taiwan resulted in discrimination. The applicant submits that those imports were subjected to anti-dumping duties from 4 December 1997 to 28 February 1999 whereas no measures were in force against imports from the United States and Thailand.

40 The applicant submits that, until 23 December 1998, the Commission dealt with imports into the Community of LAECs originating in all the countries concerned in the framework of a single analysis of injury and the Community interest. Only on 23 December 1998, more than one year after the initiation of the two proceedings, did the Commission decide to examine them separately. Even after that separation, the Commission's 'revised' analysis of injury and the Community interest remained identical. The applicant observes that the sole reason for the termination of the proceeding concerning imports from Japan, Korea and Taiwan was the termination of the proceeding concerning imports from the United States of America and the Kingdom of Thailand. Thus, according to the applicant, in

order to avoid discrimination against Japan, the Republic of Korea and Taiwan, the Commission terminated the proceedings with regard to them even though it had established both dumping and injury in connection with imports from those countries.

41 In the applicant's view, the only difference between the two proceedings is the provision of the basic regulation which was used as the legal basis for their initiation. Furthermore, it is clear from recital 134 of the contested regulation that the sole reason put forward by the Council itself for granting retroactivity was to avoid discrimination against Japan, the Republic of Korea and Taiwan.

42 The applicant does not dispute the fact that the anti-dumping duties are collected during review proceedings. However, it submits that the duty to remove the effects of discrimination is a principle of superior law which must prevail over the collection of such duties. It adds that, in the specific circumstances of this case, the application of the overriding principle of equal treatment requires retroactive effect from 4 December 1997.

43 It submits that the Council's reasoning is inconsistent. On the one hand, according to recital 132 of the contested regulation, the termination of the proceedings against Japan, the Republic of Korea and Taiwan was the direct result of the termination of the proceedings against the United States of America and the Kingdom of Thailand. On the other hand, in recital 137, the Council stated that the situation of each proceeding was different. The applicant disputes that at a particular moment in the review proceedings (for example, as the Council contends, 28 February 1999) the imposition of a duty, initially decided in 1992, ceased to be non-discriminatory and became discriminatory. It submits that either discrimination existed throughout the period of review or there was no discrimination at all.

44 Finally, the applicant refers to Council Regulation (EEC) No 2553/93 of 13 September 1993 amending Regulation (EEC) No 2089/84 imposing a definitive anti-dumping duty on imports of certain ball bearings originating in Japan and Singapore (OJ 1993 L 235, p. 3), the retroactive effect of which was fixed as starting from the date of the initiation of the review proceedings in order to avoid any discrimination among the exporters of the countries concerned.

45 The Council submits, first, that the Community legislature enjoys a broad discretion in matters of common commercial policy.

46 The Council also submits that the contested regulation does not discriminate against the applicant. It explains that there were three types of proceedings in this case.

47 The Council submits that the case concerning ball bearings supports its position and that there is no similarity between that case and this one. In that case, retroactive effect was granted for totally different reasons from those in the present case.

Findings of the Court

48 Firstly, it must be stated that the applicant is essentially alleging an error in law with respect to the application of the principle of equal treatment in the contested regulation, not a manifest error in the assessment of the facts in that the Council wrongly considered that the discrimination dated only from 28 February 1999 and not from 4 December 1997. The applicant takes the view that the Council

should have given the principle of equal treatment, which is one of the fundamental principles of Community law and is stated in Article 9(5) of the basic regulation, priority over the application of Article 11(2) of the basic regulation which gave rise to discrimination.

49 It must be observed that only the period from 4 December 1997 to 28 February 1999 is at issue in this case.

50 It must therefore be examined whether the contested regulation infringes the principle of equal treatment with respect to the period from 4 December 1997 to 28 February 1999.

51 The principle of equal treatment is expressly stated in the basic regulation. The first sentence of Article 9(5) states that '[a]n anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Regulation have been accepted'.

52 It should be observed that, in order to establish discrimination by an institution, the institution must have treated like cases differently, thereby creating a disadvantage for some operators in relation to others, without that difference in treatment being justified by the existence of substantial objective differences (see, in particular, Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 35).

53 In this case, it is undisputed that the review concerning imports originating in Japan and the initial investigation on imports from the United States and Thailand were governed by different provisions of the basic regulation which had different consequences as regards the collection of the anti-dumping duties.

54 The anti-dumping proceedings relating to imports from the United States and Thailand were at the initial investigation stage and were therefore governed by Article 5 of the basic regulation. If such proceedings are terminated at that stage without the imposition of anti-dumping measures, no definitive duty is levied and the provisional duties are not collected definitively.

55 In that regard, it must 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. 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. 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 if its release for free circulation in the Community causes injury.

56 The anti-dumping proceedings relating to imports from Japan were governed by Article 11(2) of the basic regulation. That provision states that an anti-dumping measure expires five years after its imposition and that, in the case of a review of the expiry of a measure, the measure shall remain in force pending the outcome of such review.

57 Consequently, even if the investigations were carried out simultaneously on similar products originating in different countries for the same period of investigation and similar conclusions were reached as to dumping, injury and the Community interest, the difference in treatment as regards the collection of anti-dumping duties between imports from Japan and those from the United States and Thailand has a legislative basis in the basic regulation and therefore cannot be regarded as constituting an infringement of the principle of equal treatment (see, to that effect, Case C-323/88 *Sermes* [1990] ECR I-3027, paragraphs 45 to 48).

58 Furthermore, the Council is not obliged to refrain from applying Article 11(2) of the basic regulation on the basis of Article 9(5) of that regulation. The latter provision relates only to the imposition of anti-dumping duties. In this case, the anti-dumping duties which the applicant had to pay during the period from 4 December 1997 to 28 February 1999 were imposed by Regulation No 3482/92 and continued to be collected on the basis of Article 11(2) of the basic regulation, which is a specific provision. Thus, the applicant had to continue paying anti-dumping duties on the basis of Article 11(2) of the basic regulation irrespective of the initiation of the initial investigation on imports from the United States and Thailand.

59 That conclusion remains unaffected by the assertion that the situation in this case is comparable to that which led to Regulation No 2553/93, to which the applicant refers (see paragraph 44 above). The circumstances leading to that regulation were different to those in this case. The retroactive effect of that regulation was applied from the date on which Council Regulation (EEC) No 2685/90 of 17 September 1990 amending Regulation (EEC) No 2089/84 imposing a definitive anti-dumping duty on imports of certain ball bearings originating in Japan and Singapore (OJ 1990 L 256, p. 1) entered into force. Regulation No 2685/90 amended the definitive anti-dumping duty imposed by Regulation No (EEC) 2089/84 (OJ 1984 L 193, p. 1), following a review. Imports of ball bearings originating in Japan and Singapore were initially

subjected to definitive anti-dumping duties by the latter regulation and were the subject of a review pursuant to Article 11(2) of the basic regulation. Therefore, the proceedings relating to those imports were governed by the same provisions of the basic regulation. Furthermore, as the Commission rightly submits on the basis of recital 29 of Regulation No 2553/93, no definitive conclusions were reached as to dumping and injury to the Community industry. Likewise, as is confirmed in recitals 30 and 31 of the same regulation, the principal reason for the grant of retroactive effect was that the producers concerned had been affected by the unusual length of the review proceedings. Finally, the anti-dumping proceedings were not terminated with retroactive effect from the date of initiation of the expiry review but only from the entry into force of a regulation amending anti-dumping duties in a parallel case concerning imports of ball bearings originating in Japan.

60 The first plea must therefore be dismissed.

The second plea: no adequate statement of reasons

Arguments of the parties

61 According to the applicant, the Council does not state sufficient reasons in the contested regulation to explain its choice of 28 February 1999 as the date on which the discrimination began.

62 It submits that the purely formal argument that there was no discrimination because the situation of each proceeding was different is insufficient. The Council does not provide any argument explaining why the proceedings ceased to be different after 28 February 1999. In recital 134 of the contested regulation, the Council excluded any alleged difference between the two procedures by linking them directly and granting retroactive effect to avoid any discrimination. Thus, the reasoning provided in the Regulation is contradictory, incomprehensible and insufficient.

63 Finally, the applicant considers that the Council failed entirely to respond to its submission that the retroactive effect should be applied from 4 December 1997.

64 The Council submits that it explained the choice of the date for the beginning of the retroactive effect in recitals 136 and 137 of the contested regulation.

Findings of the Court

65 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, in particular, Case T-82/00 *BIC and Others* v *Council* [2001] ECR II-1241, paragraph 24 and the case-law cited).

66 The statement of the reasons on which regulations, which are measures of general application, are based does not have to specify the often very numerous and complex matters of fact or law dealt with in the regulations. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be unreasonable to require a specific statement of reasons for each of the technical choices made by the institution (Case T-171/97 *Swedish Match Philippines* v *Council* [1999] ECR II-3241, paragraph 82 and the case-law cited).

67 In recitals 132 to 135 of the regulation, the Council justified its choice of 28 February 1999 as the date on which the discrimination began and, in recitals 136 to 138, it responded to the applicant's submission described in paragraph 38 above. Consequently, the requirements established by the case-law as to the statement of reasons have been complied with in this case.

68 It follows that the statement of reasons in the contested regulation, in light of its content and the circumstances of its adoption, was adequate.

69 In the light of the foregoing, the second plea must be dismissed and, therefore, the application must be dismissed in its entirety.

Costs

70 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 and the Council has applied for costs, the applicant must be ordered to pay the costs of the Council.

71 The Commission, which intervened in the proceedings, must bear its own costs, pursuant to 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 action;**

2. **Orders the applicant to bear its own costs and pay those of the defendant;**

3. **Orders the intervener to bear its own costs.**

Vilaras Tiili Pirrung

Mengozzi Meij

Delivered in open court in Luxembourg on 12 September 2002.

H. Jung

Registrar

M. Vilaras

President