

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

26 September 2000 *

In Joined Cases T-74/97 and T-75/97,

Büchel & Co. Fahrzeugteilefabrik GmbH, established in Fulda (Germany), represented by W.A. Rehmann and U. Zinsmeister, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Bonn and Schmitt, 62 Avenue Guillaume,

applicant,

v

Council of the European Union, represented by R. Torrent, A. Tança and S. Marquardt, of its Legal Service, acting as Agents, and by H.-J. Rabe and G.M. Berrisch, Rechtsanwälte, Hamburg and Brussels, with an address for service in Luxembourg at the office of A. Morbilli, General Counsel, Directorate for Legal Affairs of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant in Case T-74/97,

and

Commission of the European Communities, represented by V. Kreuzschitz, Legal Adviser, and N. Khan, of its Legal Service, acting as Agents, assisted by M. Hilf,

* Language of the case: German.

Professor at the University of Hamburg, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant in Case T-75/97,

the Council being supported in Case T-74/97 by

Commission of the European Communities, represented by V. Kreuzsitz, Legal Adviser, and N. Khan, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

and by

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the International, Economic and Community Law Directorate of the Ministry of Foreign Affairs, and G. Mignot, Foreign Affairs Secretary in that same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

interveners,

APPLICATION for:

- in Case T-74/97, the annulment of Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by

Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 (OJ 1997 L 16, p. 55),

- in Case T-75/97, the annulment of Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ 1997 L 17, p. 17),

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

composed of: K. Lenaerts, President, V. Tiili, J. Azizi, M. Jaeger and P. Mengozzi, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 October 1999,

gives the following

Judgment

Facts and legal background

1 The applicant, Büchel & Co. Fahrzeugteilefabrik GmbH, is a company governed by German law which mainly produces, and as an ancillary activity markets, separate bicycle parts. Since 1982, it has also been importing them from the People's Republic of China. The sale of parts thus imported accounted for 20% of its turnover between 1992 and 1996. The applicant's imports represent less than 2.5% of all imports of bicycle parts from the People's Republic of China into the Community. The applicant is a shareholder in Hua De Plastics Corporation Ltd, which produces bicycle parts and has its registered office in Shanghai, in the People's Republic of China.

2 On 8 September 1993, the Council adopted Regulation (EEC) No 2474/93 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty (OJ 1993 L 228, p. 1; 'the initial regulation').

- 3 On 22 December 1995, the Council adopted Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1; ‘the basic regulation’). Article 13 of the basic regulation provides:

‘1. Anti-dumping duties imposed pursuant to this regulation may be extended to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like products and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

...

3. ... The relevant procedural provisions of this regulation with regard to initiations and the conduct of investigations shall apply pursuant to this article.

4. Products shall not be subject to registration pursuant to Article 14(5) or measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon written application following authorisation by decision of the Commission after consultation of the Advisory Committee or decision of the Council imposing measures...

5. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.’

- 4 Following a complaint by the European Bicycle Manufacturers' Association, the Commission adopted Regulation (EC) No 703/96 of 18 April 1996 initiating an investigation concerning the circumvention of anti-dumping measures imposed by [the initial regulation] on imports of bicycles originating in the People's Republic of China by assembly operations in the European Community (OJ 1996 L 98, p. 3; 'the regulation initiating the investigation'). That investigation covered the period from 1 April 1995 to 31 March 1996.
- 5 In accordance with Article 1 of the regulation initiating the investigation, that investigation, initiated pursuant to Article 13(3) of the basic regulation, concerned importations of bicycle parts under CN codes 8714 91 10 to 8714 99 90 originating in the People's Republic of China and used in assembly operations in the European Community.
- 6 Article 2 of the same regulation states that 'the customs authorities are hereby directed... to take the appropriate steps to register the imports of bicycle frames, forks, rims and hubs falling within CN codes 8714 91 10, 8714 91 30, 8714 92 10 and 8714 93 10 respectively, in order to ensure that, should the anti-dumping duties applicable to imports of bicycles originating in the People's Republic of China be extended to the former imports, they may be collected from the date of such registration'. It is also stated that 'imports shall not be subject to registration where they are accompanied by a customs certificate issued in accordance with Article 13(4) of [the basic regulation]'.
- 7 Article 3 of the regulation provides that 'interested parties must, if their representations are to be taken into account during the investigation, make themselves known, present their views in writing, submit information and apply to be heard by the Commission within 37 days from the date of transmission of this regulation to the authorities of the People's Republic of China. The transmission of this regulation to the authorities of the People's Republic of China shall be deemed to have taken place on the third day following its publication in

the *Official Journal of the European Communities*'. That regulation having been published in the Official Journal on 19 April 1996, the time-limit expired on 29 May 1996.

- 8 Recitals 8 and 9 in the preamble to Regulation No 703/96, under the heading 'Questionnaires', state that 'in order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the bicycle assemblers in the Community' named in the complaint and that 'information, as appropriate, may be sought from Community producers' (Recital 8). Recital 9 states that 'other interested parties which can show that they are likely to be affected by the outcome of the investigation should ask for a copy of the questionnaire as soon as possible, as they are also subject to the time-limit set out in this regulation'.
- 9 On 5 July 1996, after the expiry of the 37-day time-limit laid down by Article 3 of the regulation initiating the investigation, the Commission received a fax message from the applicant, stating that its imports did not constitute a circumvention of the anti-dumping duty and requesting the issue of a certificate of non-circumvention in accordance with Article 13(4) of the basic regulation.
- 10 The Commission replied on 2 August 1996, sending the applicant a specially-designed questionnaire for importers not themselves carrying out the assembly of bicycles ('intermediary importers'), stating that this was being sent to businesses in order to obtain information which it considered necessary for the issue of non-circumvention certificates. The applicant was informed, however, that its application might not be examined because it was late.

- 11 On 6 September 1996, the applicant sent the completed questionnaire back to the Commission.
- 12 By letter of 20 December 1996, the Commission informed the applicant that the anti-dumping duty in force would be extended to essential parts of bicycles which were listed, which originated in or came from the People's Republic of China, and annexed the draft regulation making that extension. In that letter, the Commission also stated that, according to that draft regulation, only importers themselves carrying out the assembly operations for bicycles ('assembling importers') could be directly exempted from that anti-dumping duty, and that intermediary importers should apply for an authorisation to that end from the national customs authorities in the context of the procedure for admitting certain goods to favourable tariff treatment by reason of their end-use ('the end-use procedure'), laid down by Article 82 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Article 291 et seq. of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1).
- 13 On 9 January 1997, the applicant submitted its observations on the draft regulation referred to above. It asked why it could not be directly exempted by the Commission as envisaged in the regulation initiating the investigation and as the Commission staff responsible for the investigation had confirmed on the telephone. It also criticised the choice of the bicycle parts for which the extension was provided on the ground, in particular, that for some of them it was practically impossible to demonstrate their end-use where they were resold rather than being assembled directly after importation.
- 14 On 10 January 1997, the Council adopted Regulation (EC) No 71/97 extending the definitive anti-dumping duty imposed by [the initial regulation] on bicycles originating in the People's Republic of China to imports of certain bicycle parts

from the People's Republic of China, and levying the extended duty on such imports registered under [the regulation initiating the investigation] (OJ 1997 L 16, p. 55; 'the extension regulation')

- 15 Under Article 2 of that regulation, the anti-dumping duty was extended to imports of essential bicycle parts originating in the People's Republic of China which had been concerned by the investigation (Article 1 of the regulation initiating the investigation, see paragraph 5 above).
- 16 Article 3(1) of the extension regulation provides that 'the Commission shall... adopt by regulation the necessary measures to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty imposed by [the initial regulation] from the duty extended by Article 2'. Under Article 3(2), that Commission regulation was to provide, in accordance with the relevant customs provisions, for authorisation of the exemption and control of imports of essential bicycle parts used, on the one hand, by assembling importers, and, on the other, by intermediary importers. Regarding imports carried out by that latter category of importers, recitals 36 to 39 in the preamble to that regulation show that the Commission is to establish a procedure to determine whether their activities constitute a circumvention of the anti-dumping duty. For that purpose, the Commission is to have recourse to the mechanism of monitoring the end-use, provided for in Article 82 of Regulation No 2913/92 and Article 291 et seq. of Regulation No 2454/93.
- 17 On 16 January 1997, the Commission replied to the applicant's letter of 9 January 1997, confirming, in particular, that under the extension regulation it could not directly exempt intermediary importers from the extended anti-dumping duty.

- 18 On 20 January 1997, the Commission adopted Regulation (EC) No 88/97 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ 1997 L 17, p. 17; 'the exemption regulation'). That regulation contains conditions and procedural provisions concerning exemption from the extended duty for imports carried out by assembling importers or by other importers, subject to monitoring of the end-use of the imported goods by the national customs authorities under the legislation cited in paragraph 12 above.

Procedure

- 19 By applications lodged at the Registry of the Court of First Instance on 28 March 1997, the applicant brought the present actions.
- 20 By separate documents lodged at the Registry of the Court of First Instance on 6 and 9 June 1997, the Commission and the Council raised objections of inadmissibility against those actions under Article 114 of the Rules of Procedure of the Court of First Instance.
- 21 In Case T-74/97, the President of the Third Chamber, Extended Composition, of the Court of First Instance gave the Commission and the French Republic leave to intervene in support of the forms of order sought by the Council by order of 21 June 1999. Those interveners decided, however, not to submit observations as to the admissibility of the action. In addition, the President partially allowed the applicant's application for confidential treatment *vis-à-vis* the French Republic of some of the information contained in the application.

- 22 By order of 20 September 1999, the President of the Third Chamber, Extended Composition, of the Court of First Instance joined Cases T-74/97 and T-75/97 for the purposes of the oral procedure and the judgment, in accordance with Article 50 of the Rules of Procedure.
- 23 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber, Extended Composition) decided to open the oral procedure.
- 24 The parties presented oral argument and replied to the questions of the Court of First Instance at the hearing on 12 October 1999.

Forms of order sought

- 25 In Case T-74/97, the applicant claims that the Court should:
- annul the extension regulation;

 - declare Article 13 of the basic regulation inapplicable, pursuant to Article 184 of the EC Treaty (now Article 241 EC), in so far as it serves as the legal basis for the extension regulation;

 - order the Council to pay the costs.

- 26 In Case T-75/97, the applicant claims that the Court should:
- annul the exemption regulation;
 - declare the extension regulation inapplicable, pursuant to Article 184 of the EC Treaty, in so far as it serves as the legal basis for the exemption regulation;
 - declare Article 13 of the basic regulation inapplicable, pursuant to Article 184 of the EC Treaty, in so far as it serves as the legal basis for the exemption and extension regulations;
 - order the Commission to pay the costs.
- 27 In Cases T-74/97 and T-75/97, the Council and the Commission contend, respectively, that the Court should:
- rule on inadmissibility without hearing argument on the substance of the case, in accordance with Article 114(1) of the Rules of Procedure;
 - dismiss the objections of illegality based on Article 184 of the Treaty as inadmissible;

- order the applicant to pay the costs.
- 28 In its observations on the objections of inadmissibility, the applicant claims that the Court should:
- dismiss the application of the Council and the Commission for a ruling to be given on the admissibility of the actions without hearing argument on the substance, and rule jointly on the admissibility and the substance of the actions;
 - in the alternative, enable the applicant to submit observations on the objections of inadmissibility in a special oral procedure.

Admissibility

1. *Case T-74/97*

- 29 In accordance with Article 114 of the Rules of Procedure, the Council submits pleas of inadmissibility to the effect (i) that the scope of the action too wide and (ii) the applicant is not individually concerned by the extension regulation in so far as it provides, first, for the extension of the anti-dumping duty, and, second, for the system of exemption from the extended anti-dumping duty.

The plea of inadmissibility to the effect that the excessive scope of the action is too wide

Arguments of the parties

- 30 The Council submits that the action is inadmissible in so far as it seeks the annulment of the extension regulation as a whole, whereas the line of argument set out in the application shows that the latter seeks solely the annulment of Article 2 of that regulation, read in conjunction with Article 1, in so far as it extends the anti-dumping duty, and of the second and third indents of Article 3(2), providing for the application of the end-use procedure to the commercial activities of intermediary importers.
- 31 Referring to the judgment of the Court of Justice in Case C-174/87 *Ricoh v Council* [1992] ECR I-1335, paragraph 7, the Council argues that the applicant has not demonstrated any interest in bringing an action in relation to the other provisions of the extension regulation, and has not put forward any argument in that respect.
- 32 The applicant argues that the extension regulation should be annulled in its entirety.

Findings of the Court

- 33 According to the consistent case-law relied upon by the Council in support of this plea of inadmissibility, a regulation imposing different anti-dumping duties on a series of traders is of individual concern to any one of them only in respect of those provisions which impose on that trader a specific anti-dumping duty and determine the amount thereof, and not in respect of those provisions which

impose an anti-dumping duty on other undertakings (see, for example, Case 240/84 *NTN Toyo Bearing v Council* [1987] ECR 1809, paragraph 7; *Ricoh*, cited in paragraph 31 above, paragraph 7).

34 In that respect, it should be noted, first, that this case differs from those which led to the case-law relied upon by the Council, cited above, in that the extension regulation concerns a single anti-dumping duty, whereas in those cases different duties had been imposed on the various undertakings.

35 Secondly, a declaration of annulment limited solely to the provision concerning the extension of the anti-dumping duty would make the extension regulation a dead letter. The remainder of the operative part of that regulation concerns only the implementation of that provision, particularly as regards the possibility of obtaining exemption from the extended duty, and cannot therefore be detached from it.

36 This plea of inadmissibility must therefore be dismissed.

The plea of inadmissibility to the effect that the applicant is not individually concerned by the extension regulation

Arguments of the parties

37 The Council argues that the applicant is not individually concerned by the extension regulation either in so far as it provides, in Article 2 in conjunction with Article 1, that the anti-dumping duty is to be extended to certain essential

bicycle parts coming from the People's Republic of China, or in so far as, in the second and third indents of Article 3(2), it establishes a system of exemption in favour of intermediary importers.

- 38 The applicant prefaces his argument with the observation that the position of an independent importer in an investigation into the circumvention of anti-dumping measures is not comparable to that of an independent importer in an anti-dumping proceeding.
- 39 It maintains that, unlike the latter proceeding, the investigation carried out in the context of a regulation extending an anti-dumping duty is designed to establish not the existence of dumping in a non-member country, but the circumvention of a regulation establishing an anti-dumping duty by undertakings established in the European Union. It concerns the importers of the products in question, and not producers or exporters situated in a non-member country. The applicant therefore considers that the Council cannot rely on a line of decisions which concern the admissibility of actions brought by independent importers challenging regulations establishing a definitive anti-dumping duty. The position of traders in the context of investigations leading to the establishment of a definitive anti-dumping duty cannot be the same as it is in the context of a procedure extending such a duty.
- 40 The applicant considers that, in so far as the extension regulation extends the application of the anti-dumping duty, it concerns it individually. Taking into account the role of importers in a procedure concerning circumvention, their position is comparable to that of exporters and producers of non-member countries in the procedures leading to the initial establishment of an anti-dumping duty. The principles to be applied in that respect are therefore those developed by the consistent line of decisions to the effect that producers and exporters who are able to establish that they were identified by the measures adopted by the Commission or the Council or were involved in the preliminary investigations may be regarded as individually concerned by a measure

establishing an anti-dumping duty (Joined Cases 239/82 and 275/82 *Allied Corporation and Others v Commission* [1984] ECR 1005).

- 41 In that respect, the applicant argues that it is expressly mentioned in recital 8 in the preamble to the extension regulation as an undertaking which applied for a certificate of non-circumvention. The fact that the application was not submitted within the time-limit laid down by Article 3 of the regulation initiating the investigation is, it argues, not material. Article 13(4) of the basic regulation does not prescribe a time-limit for making such an application. Moreover, the Commission did in fact send the applicant a questionnaire and heard it during the investigation. In addition, Article 6(2) of the basic regulation fixes a time-limit of 30 days for submitting observations in an anti-dumping investigation. The time-limit may be extended if the party concerned show due course. According to the applicant, the Commission impliedly granted such an extension by its letter of 2 August 1996, cited in paragraph 10 above, since it sent it the questionnaire despite the expiry of the time-limit.
- 42 The applicant further argues that it could not have known that it was authorised to participate in the investigation since, according to the regulation initiating the investigation, the latter concerned the operations of assembling importers and, in appropriate cases, Community producers of certain bicycle parts. It points out that its business as an intermediary importer relates to separate bicycle parts and not parts of bicycles already assembled. It was for that reason that it did not adopt a position within the prescribed period.
- 43 The applicant also maintains that the judgment in Case T-161/94 *Sinochem Heilongjiang v Council* [1996] ECR II-695, paragraph 47, shows that an undertaking which took part in the investigation does not cease to be individually concerned by reason of the fact that the information which it supplied was ultimately not accepted by the Commission. Moreover, the fact that the information which it sent to the Commission was not taken into account by the latter also had a direct adverse effect upon the applicant.

- 44 Finally, the applicant considers that the Council's argument that it held a relatively small market share in relation to imports into the Community of bicycle parts from the People's Republic of China, and could not therefore claim to occupy a special position in that market, is irrelevant in the context of the procedure in dispute, which concerned only importers of such bicycle parts established in the European Union.
- 45 The applicant also considers itself to be individually concerned by the extension regulation in so far as it establishes a system for exemption.
- 46 First, it states that it took part in the investigation and submitted observations concerning the system for exemption envisaged by the Commission. In addition, by sending the questionnaire, the Commission impliedly recognised the applicant as a party with an interest in the investigation. The Commission thus made clear that it wished to question intermediary importers for the purposes of their possible exemption.
- 47 Moreover, the applicant challenges the Council's objection that the system for exempting intermediary importers was based on abstract criteria. The fact that the Commission sent it a questionnaire intended specifically for intermediary importers shows that that institution did not assume that this was a general matter. By sending the applicant that questionnaire, the Commission envisaged the possibility of itself exempting intermediary importers. That possibility was also confirmed to the applicant by Commission officials in several telephone conversations. It was only at a later stage of the procedure that the Commission

changed its opinion by referring intermediary importers back to the end-use procedure. By adopting the extension regulation the defendant therefore rejected by implication the applicant's request for a certificate of non-circumvention.

Findings of the Court

- 48 It needs to be ascertained whether the applicant is directly and individually concerned by the extension regulation in so far as, first, it extends the application of the anti-dumping duty established by the initial regulation and, secondly, it provides for the establishment, by way of Commission regulation, of a system for exemption from the extended duty.

— The extension of the anti-dumping duty

- 49 Under Article 14(1) of the basic regulation, 'provisional or definitive anti-dumping duties shall be imposed by regulation'. The same applies to the extension of anti-dumping duties, established by virtue of that provision, to imports from non-member countries of similar products or parts of those products, in accordance with Article 13(1) and (3) of the basic regulation. Even if, having regard to the criteria laid down in the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), those regulations are effectively general in character on account of their nature and scope, in that they apply to the generality of economic operators concerned, they may nevertheless concern certain economic operators directly and individually (see *Allied Corporation v Commission*, cited in paragraph 40 above, paragraph 11, and Case T-170/94 *Shanghai Bicycle v Council* [1997] ECR II-1383, paragraph 35).

- 50 The applicant is directly concerned by the extension regulation. The Member States' customs authorities are obliged to levy the anti-dumping duty extended by that regulation to imports of certain products, having no discretion in the matter (see *Shanghai Bicycle*, cited in paragraph 49 above, paragraph 41).
- 51 As for the requirement that it be individually concerned, the applicant maintains, first, that its position as an importer in a procedure leading to the extension of an anti-dumping duty is fundamentally different from the position of an importer in a procedure leading to the establishment of a definitive anti-dumping duty. Having regard to that fact, the applicant maintains that it should be compared, as regards the admissibility of its action, to producers and exporters which, if they establish that they have been identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations, may, in accordance with the consistent case-law, be regarded as individually concerned by a measure establishing an anti-dumping duty (*Allied Corporation*, cited in paragraph 40 above, paragraph 12; *Sinochem Heilongjiang*, cited in paragraph 43 above, paragraph 46; *Shanghai Bicycle*, cited in paragraph 49 above, paragraph 36).
- 52 However, Article 13(1) of the basic regulation shows that the effect of the extension regulation is only to enlarge the scope of the initial regulation to include imports of similar products or parts of those products. A regulation extending an anti-dumping duty therefore has the same legal effects on undertakings subject to the duty thus extended as a regulation establishing a definitive duty has on undertakings subject to such a duty.
- 53 It follows that the mere fact that the applicant must in this case pay a duty by reason of a regulation extending an anti-dumping duty does not, as regards the admissibility of its action for annulment, place it in a different legal position from

that of importers subject to a regulation establishing a definitive anti-dumping duty.

- 54 Moreover, the applicant's position in this case is not comparable to that of importers, in the context of a procedure leading to the establishment of a definitive anti-dumping duty, whose resale prices for the goods in question are used as the basis either for the construction of the export price and thus the finding that a dumping practice exists, or for the calculation of the anti-dumping duty itself (Joined Cases C-133/87 and C-150/87 *Nashua Corporation and Others v Commission and Council* [1990] ECR I-719, paragraph 15; Case C-156/87 *Gestetner Holdings v Council and Commission* [1990] ECR I-781, paragraph 18; Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport v Commission and Council* [1990] ECR I-2945, paragraph 20).
- 55 It is apparent from the extension regulation that during the investigation the Commission considered whether the initial regulation had been circumvented by assembly operations within the meaning of Article 13(2) of the basic regulation. For that purpose, the Commission analysed the commercial activities of a number of assembling importers. Those companies are cited, as assembling importers having made themselves known within the period set by Article 3 of the regulation initiating the investigation, in the fifth recital in the preamble to the extension regulation. The applicant, which does not carry out such operations but merely acts as an intermediary, does not appear amongst those companies. It has not established that the extension regulation, in so far as it extends the application of the anti-dumping duty, was determined in any way whatsoever by information concerning its commercial activity.
- 56 The applicant goes on to argue, replying on *Sinochem Heilongjiang* (cited in paragraph 43 above), that it participated as far as was possible in the preliminary investigation, with the result that it was individually concerned by the extension regulation.

- 57 It should be noted in that respect that it was not until 5 July 1996, and thus after expiry of the period set by Article 3 of the regulation initiating the investigation, that the applicant intervened in the procedure for the first time in order to apply for a non-circumvention certificate.
- 58 As a result, the applicant failed to exercise the right of participation provided for in the regulation initiating the investigation, with the result that it cannot rely on the principles laid down in *Sinochem Heilongjiang* (paragraph 47).
- 59 The applicant cannot justify its failure to meet the deadline referred to above on the ground that, as an intermediary importer of unassembled bicycle parts, it might legitimately believe that it was not concerned by the investigation into the circumvention and that it was not therefore authorised to participate. Although recital 8 in the preamble to the regulation initiating the investigation indicates that the Commission sought to obtain the necessary information from assembling importers and Community producers (see paragraph 55 above), Article 1 of the regulation makes it clear that the investigation had been opened in respect of imports of certain bicycle parts whether assembled or not, and in that context the Commission had invited all other interested parties, so long as they were able to show that they were capable of being affected by the results of the investigation, to participate in it within the notified period, as is shown by Article 3 of the regulation and recital 9 of the preamble. The applicant, which imported bicycle parts covered by the investigation and does not deny being an interested party, should therefore have participated in that investigation within the notified period in order to allow the Commission to examine the information it had. In any event, the applicant has not established that, in the informal contacts it maintains that it had with the relevant Commission departments during the investigation, the latter gave it inaccurate information.
- 60 If that were not enough, the fact that, following the applicant's application for a certificate of non-circumvention by fax of 5 July 1996, the Commission allowed

it to complete a questionnaire specially designed for intermediary importers cannot support the applicant's argument that its action is admissible. As the applicant and the Commission confirmed at the hearing, the aim of that questionnaire sent to a number of intermediary importers was solely to obtain general information about the market in question. Therefore, that information, even if it had been examined by the Commission, could not be at the root of the latter's assessment concerning the existence of circumvention of the initial regulation or, therefore, determine the action taken by the Community institutions.

61 The observations which the applicant sent to the Commission's departments on 9 January 1997 (see paragraph 13 above) were sent the day before the extension regulation was adopted, so clearly they cannot have been taken into account by the Commission or the Council at that advanced stage of the procedure.

62 Consequently, the applicant is also not individually concerned by the provisions of the extension regulation by reason of its participation in the investigation.

63 Finally, the applicant also has failed to establish the existence of a series of factors constituting a particular situation differentiating it from any other person. In particular, it has not shown that it is in a situation comparable to that of the applicant in Case C-358/89 *Extramet Industrie v Council* [1991] I-2501. With a market share of less than 2.5% of all imports of bicycle parts from the People's Republic of China, it is obviously not the largest Community importer of the products concerned. Similarly, by merely stating that the sale of parts from China represented 20% of its turnover between 1992 and 1996, it has not adduced sufficient evidence to support the conclusion that its activities depend to a large extent upon imports affected by the extension regulation.

64 It must therefore be held that the applicant is not individually concerned by the extension regulation in so far as it extends the application of the anti-dumping duty.

— The provisions in the regulation for establishing, by Commission regulation, a system for exemption from the extended duty

65 Under Article 3 of the extension regulation, the Council empowered the Commission to adopt by regulation the necessary measures for securing the exemption from the extended duty of imports of bicycle parts not constituting circumvention of the anti-dumping duty, and also laid down certain guidelines for the Commission to follow. Article 3 provides that the Commission must, in accordance with the relevant customs provisions, lay down rules governing the functioning of exemptions from the extended duty for assembling importers and intermediary importers.

66 It is apparent from the extension regulation, and in particular from recitals 30 to 44 in the preamble, that the Council did not determine the procedure to be followed for exempting those categories of importers by reference to their particular situation. In that regulation, the Council defined the procedure instead in relation to the purpose of Article 13 of the basic regulation, which was to make arrangements to ensure that the anti-dumping duty was not circumvented, while allowing intermediary importers to produce evidence of the end-use of the bicycle parts imported by them in order to be exempted from the extended duty.

67 Thus, in so far as it provides for the establishment of a system for exemption from the extended duty, the extension regulation concerns the applicant not by reason of certain attributes which are peculiar to it or by reason of circumstances which

differentiate it from any other person, but by reason only of the applicant's objective capacity as an intermediary importer of bicycle parts from the People's Republic of China, in the same way as any other operator finding himself, currently or potentially, in an identical situation.

- 68 The applicant's argument that its participation in the investigation and the observations it submitted concerning the draft system for examination make its action admissible cannot be accepted either. Even if the applicant was entitled to participate in the process leading to the adoption of the extension regulation, in so far as it provides for the establishment of a system for exemption from the extended duty, it should be remembered that the applicant failed to make its views known within the time-limit (see paragraph 57 above).
- 69 In the light of the above, the extension regulation, in so far as it provides for the establishment of a system of exemption from the extended duty, must be regarded as constituting in respect of the applicant not a decision within the meaning of the fourth paragraph of Article 173 of the Treaty but a measure of general scope.
- 70 It follows from all those considerations as a whole that the application in Case T-74/97 is inadmissible.

2. *Case T-75/97*

- 71 The Commission raises two pleas of inadmissibility against this action, which seeks the annulment of the exemption regulation. First, it maintains that the

applicant does not have an interest in bringing an action. Secondly, it maintains that the applicant is not individually concerned by the regulation. The Court considers it appropriate to examine the second plea of inadmissibility first.

Arguments of the parties

- 72 The Commission claims that the applicant is not individually concerned by the exemption regulation.
- 73 The applicant contends that it is directly and individually concerned by the exemption regulation.
- 74 It argues, first, that the authorisation which the customs authorities may issue to intermediary importers in the context of the end-use procedure is accompanied by conditions which are more restrictive than that laid down for assembling importers.
- 75 Secondly, it observes that the exemption regulation, and in particular Article 14, concerning the procedure applicable to intermediary importers, also contains substantive provisions, since it sets quantitative thresholds beyond which an import is not *per se* to be regarded as a circumvention.

- 76 The applicant also reiterates the arguments submitted in response to the objection of inadmissibility raised in Case T-74/97.

Findings of the Court of First Instance

- 77 In accordance with Article 3 of the extension regulation, the exemption regulation contains detailed rules regarding exemption from the extended anti-dumping duty for certain imports of bicycle parts from the People's Republic of China. It provides, in particular, that only assembling importers may be exempted directly by the Commission, other importers being required to declare their imports in the context of the end-use procedure.
- 78 It is clear from the exemption regulation that its content was determined not by reference to the particular situation of one given economic operator, but, on the contrary, solely with reference having regard to the extension regulation empowering the Commission to adopt it. Therefore, just like the provisions of the extension regulation establishing a system for exemption from the extended duty, the exemption regulation concerns the applicant not by reason of certain attributes which are peculiar to it or by reason of circumstances which differentiate it from any other person, but by reason only of the applicant's objective capacity as an intermediary importer of bicycle parts from the People's Republic of China, in the same way as any other operator finding himself, currently or potentially, in an identical situation.

79 It follows that, without there being any need to consider whether the applicant may claim an interest in bringing an action to challenge the exemption regulation or whether it is directly concerned by that measure, it is not individually concerned by the regulation, and its action is therefore inadmissible.

80 Accordingly, the application in Case T-75/97 must also be dismissed as inadmissible.

Costs

81 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, in accordance with the forms of order sought by the defendants.

82 Under Article 87(4) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs. The French Republic and the Commission must therefore bear their own costs, in relation to the proceedings in Case T-74/97.

On those grounds,

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

hereby:

1. Dismisses the applications in Case T-74/97 and T-75/97 as inadmissible;
2. Orders the applicant to bear its own costs, and to pay the costs incurred by the Council in Case T-74/97 and by the Commission in Case T-75/97;
3. Orders the French Republic and the Commission to bear their own costs in relation to the proceedings in Case T-74/97.

Lenaerts

Tiili

Azizi

Jaeger

Mengozzi

Delivered in open court in Luxembourg on 26 September 2000.

H. Jung

K. Lenaerts

Registrar

President