JUDGMENT OF THE COURT

14 September 1999 *

In Case C-310/97 P,

Commission of the European Communities, represented by W. Wils, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 10 July 1997 in Case T-227/95 *AssiDomän Kraft Products and Others* v *Commission* [1997] ECR II-1185, seeking to have that judgment set aside,

the other parties to the proceedings being:

AssiDomän Kraft Products AB, a company having its registered office in Stockholm, Sweden,

Iggesunds Bruk AB, a company having its registered office in Örnsköldsvik, Sweden,

Korsnäs AB, a company having its registered office in Gävle, Sweden,

MoDo Paper AB, a company having its registered office in Örnsköldsvik, Sweden,

* Language of the case: English.

Södra Cell AB, a company having its registered office in Växjö, Sweden,

Stora Kopparbergs Bergslags AB, a company having its registered office in Falun, Sweden,

Svenska Cellulosa AB, a company having its registered office in Sundsvall, Sweden,

represented by J.E. Pheasant, Solicitor, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe,

applicants at first instance,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet (Rapporteur) and R. Schintgen, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 8 December 1998, at which the Commission was represented by W. Wils and AssiDomän Kraft Products AB and the other respondents were represented by J.E. Pheasant and M. Levitt, Solicitor,

after hearing the Opinion of the Advocate General at the sitting on 28 January 1999,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 4 September 1997, the Commission of the European Communities brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 10 July 1997 in Case T-227/95 *AssiDomän Kraft Products and Others* v *Commission* ([1997] ECR II-1185, hereinafter 'the contested judgment'), by which the Court of First Instance annulled the Commission decision contained in a letter of 4 October 1995 (hereinafter 'the decision of 4 October 1995') rejecting the request made on 24 November 1993 by AssiDomän Kraft Products and the other applicants that it review, in the light of the judgment of the Court of Justice of 31 March 1993 in Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* ([1993] ECR I-1307, hereinafter 'the *Wood pulp* judgment'), the legality of Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty (IV/29.725 — Wood pulp) (OJ 1985 L 85, p. 1, hereinafter 'the Wood pulp decision').

The facts before the Court of First Instance

2 The facts underlying the appeal, as set out in the contested judgment, are as follows.

3 By the Wood pulp decision, the Commission found that some of the 43 addressees of that decision had infringed Article 85(1) of the EEC Treaty [which became Article 85(1) of the EC Treaty (now Article 81(1)EC)], in particular by concerting on prices for bleached sulphate wood pulp.

4 Article 1 of the Wood pulp decision listed the infringements of Article 85 found by the Commission, the addressees concerned and the relevant periods.

5 In Article 1(1) of the decision, the Commission stated that the Swedish addressees, with the exception of Billerud-Uddeholm and Uddeholm AB, and other Finnish, American, Canadian and Norwegian producers had concerted 'on prices for bleached sulphate wood pulp announced for deliveries to the European Economic Community' during the whole or part of the period from 1975 to 1981. According to Article 1(2), all the Swedish addressees had infringed Article 85 of the Treaty by concerting on actual transaction prices charged in the Community, at least to customers in Belgium, France, the Federal Republic of Germany, the Netherlands and the United Kingdom, for bleached sulphate wood pulp.

6 In Article 3 of the Wood pulp decision, the Commission imposed fines ranging from ECU 50 000 to ECU 500 000 on almost all the addressees. Fines were imposed on nine of the Swedish addressees.

7 Those latter undertakings decided not to lodge applications for the annulment of the Wood pulp decision and paid the fines which had been imposed upon them. However, 26 of the original 43 addressees of that decision or successors in law brought actions for its annulment under Article 173 of the EEC Treaty [which became, after amendment, Article 173 of the EC Treaty (now, after amendment, Article 230 EC)].

8 By the *Wood pulp* judgment, the Court of Justice annulled Article 1(1) and (2) of the Wood pulp decision, finding infringements of Article 85(1) of the Treaty. The Court then annulled or reduced the fines imposed on the undertakings which had instituted proceedings.

9 The operative part of the *Wood pulp* judgment reads as follows:

'The Court... hereby:

1. Annuls Article 1(1) of Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty;

2. Annuls Article 1(2) of the aforesaid decision;

...

7. Annuls the fines imposed on the applicants, with the exception of that imposed on Finncell and with the further exception of those imposed on Canfor, MacMillan, St Anne and Westar, which are reduced to ECU 20 000;

...'

10 By letter of 24 November 1993, AssiDomän Kraft Products and the other respondents in these proceedings, which had not brought proceedings for the annulment of the Wood pulp decision, asked the Commission to reconsider their legal position in the light of the *Wood pulp* judgment, even though they were not addressees of that judgment, and to refund to each of them the fines which they had paid, to the extent that they exceeded the sum of ECU 20 000 upheld by the Court in relation to certain applicants for findings of infringement which it had not annulled. They contended in particular that they were in the same position as

the other producers in relation to paragraphs 1 and 2 of the operative part of the *Wood pulp* judgment and that the annulment by the Court of Justice of the Commission's finding that addressees of the Wood pulp decision had concerted on prices for bleached sulphate wood pulp and on transaction prices in the Community should also have been applied to them.

11 After an exchange of correspondence in which the Swedish undertakings and the Commission set out in detail their positions on the possibility of extending the *Wood pulp* judgment to the addressees of the Wood pulp decision which had not challenged it within the time-limit prescribed, the Member of the Commission responsible for competition, by letter of 4 October 1995, refused in the following terms to grant the undertakings' request for repayment:

'I do not see any possibility to accept your request. Article 3 of the decision imposed a fine on each of the producers on an individual basis. Consequently, in point 7 of the operative part of its judgment, the Court annulled or reduced the fines imposed on each of the undertakings who were applicants before it. In the absence of an application of annulment on behalf of your clients, the Court did not and indeed could not annul the parts of Article 3 imposing a fine on them. It follows that the obligation of the Commission to comply with the judgment of the Court has been fulfilled in its entirety by the Commission reimbursing the fines paid by the successful applicants. As the judgment does not affect the decision with regard to your clients, the Commission was neither obliged nor indeed entitled to reimburse the fines paid by your clients.

As your clients' payment is based on a decision which still stands with regard to them, and which is binding not only on your clients but also on the Commission, your request for reimbursement cannot be granted.'

12 By application lodged at the Registry of the Court of First Instance on 15 December 1995, the respondents to the appeal lodged an application for annulment of the Commission's decision of 4 October 1995.

The proceedings before the Court of First Instance

13 The respondents raised a single plea alleging that, by its decision of 4 October 1995, the Commission disregarded the legal consequences of the *Wood pulp* judgment.

14 By the first limb, they claimed that the Commission had disregarded the principle of Community law according to which the effect of a judgment annulling an act is to render that act null and void *erga omnes* and *ex tunc*.

15 By the second limb of this plea, the respondents claimed that the Commission had infringed Article 176(1) of the EC Treaty (now Article 233(1)EC), which provides: 'The institution whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the measures necessary to comply with the judgment of the Court of Justice.'

16 According to the respondents, that provision required the Commission to take measures in regard not only to the parties to the proceedings but also to other parties. Consequently, the Commission was under a duty to re-examine similar cases in the light of the *Wood pulp* judgment and in particular the grounds given therein. In this regard, the respondents relied on the judgment of the Court of Justice in Joined Cases 97/86, 193/86, 99/86 and 215/86 *Asteris and Others* v *Commission* [1988] ECR 2181.

The contested judgment

17 The Court of First Instance dismissed the first limb of the plea.

18 It held first of all, in paragraphs 56 and 57, that, although drafted and published in the form of a single decision, the Wood pulp decision had to be treated as a bundle of individual decisions making a finding or findings of infringement against each of the undertakings to which it was addressed and, where appropriate, imposing a fine, as this was also supported by the wording of its operative part and in particular Articles 1 and 3.

19 In paragraph 58, the Court of First Instance stated that, where an addressee did not bring an action under Article 173 of the EC Treaty for annulment of the Wood pulp decision in so far as that decision related to it, that decision continued

to be valid and binding on it in all its aspects (see, to the same effect, Case C-188/92 *TWD Textilwerke Deggendorf* v *Germany* [1994] ECR I-833, paragraph 13).

20 In paragraph 60 of the contested judgment, the Court of First Instance accordingly concluded that the Community judicature can give judgment only on the subject-matter of the dispute referred to it by the parties, so that a decision such as the Wood pulp decision could be annulled only as regards the addressees who had brought an action before the Community judicature.

21 In paragraph 61, the Court of First Instance accordingly interpreted paragraphs 1 and 2 of the operative part of the *Wood pulp* judgment as annulling Article 1(1) and (2) of the Wood pulp decision only in so far as those provisions concerned the parties who had been successful in their actions before the Court of Justice. It considered that this assessment was borne out by paragraph 7 of the operative part of the judgment, according to which only the 'fines imposed on the applicants' were annulled or reduced.

22 However, the Court of First Instance upheld the second limb of the plea.

23 First of all, it held in paragraph 69 that the wording of Article 176 of the Treaty did not rule out the possibility that the consequences to be drawn from a judgment annulling a measure could go beyond the group of persons who had brought the action.

24 The Court of First Instance relied here on paragraph 70 of the judgment in Joined Cases 42/59 and 49/59 *Snupat* v *High Authority* [1961] ECR 53, at pages 86 to 88.

25 In paragraphs 71 and 72, the Court of First Instance held that that case-law was capable of being transposed to the case before it, given the existence of three circumstances.

26 First, the individual decisions annulled by the Court of Justice and the decisions which were not challenged in law were adopted at the end of the same administrative procedure.

27 Second, the respondents had been fined for alleged infringements of Article 85 of the Treaty which the *Wood pulp* judgment set aside in relation to other addressees of the act who had brought an action under Article 173 of the Treaty.

28 Third, the individual decisions adopted in relation to the respondents were based on the same findings of fact and the same economic and legal analyses as those declared invalid by the judgment.

29 Referring to the principle of legality, the Court of First Instance held, in paragraph 72, that in such circumstances the institution concerned might be required under Article 176 of the Treaty to consider, pursuant to a request made within a reasonable period, whether it needed to take measures in relation also to the addressees of the annulled act who had not brought an action for annulment.

30 The Court of First Instance went on to state, in paragraph 73, that it was appropriate to determine the obligations which followed from the *Wood pulp* judgment and to establish, in the light of the principles set out previously, the extent to which that judgment required the Commission to review the legal position of the Swedish addressees in relation to the Wood pulp decision, so that both the operative part and the grounds of the judgment had to be examined.

31 In this regard, it pointed out, in paragraph 74, that the Commission had to have regard not only to the operative part of the judgment but also to the grounds on which it was based, since these identified the precise provision held to be illegal and disclosed the specific reasons underlying the finding of illegality contained in the operative part (*Asteris and Others* v *Commission*, cited above, paragraph 27).

32 After pointing out that, even if certain documents 'might constitute the basis for establishing, as against some of the Swedish addressees, the whole or part of the findings in the operative part of the Wood pulp decision (see, in that regard, the Opinion of Advocate General Darmon in the case, points 464 to 476), the fact remains that the Court rejected the main evidence relied on by the Commission against all the addressees of the decision to prove that there had been concertation on prices and, therefore, that Article 85 of the Treaty had been infringed', the Court of First Instance concluded, in paragraph 84, that on this point the *Wood pulp* judgment clearly had the potential to affect the Commission's findings relating to the Swedish addressees.

33 The Court of First Instance therefore held, in paragraph 85, that the Commission was required, in accordance with Article 176 of the Treaty and the principle of good administration, to review, in the light of the grounds of the *Wood pulp* judgment, the legality of the Wood pulp decision in so far as it related to the Swedish addressees and to determine on the basis of such an examination whether it was appropriate to repay the fines.

34 The Court of First Instance further held, in paragraphs 86 and 87, that the judgment in *TWD Textilwerke Deggendorf* did not stand in the way of that outcome, since the latter did not allow the respondents to circumvent the time-limit for bringing an action or, consequently, the definitive nature of the Wood pulp decision for them. In contrast to *TWD Textilwerke Deggendorf*, in which the undertaking in question sought to plead, in proceedings for a preliminary ruling, the unlawfulness of a decision which it had not challenged within the time-limit laid down by Article 173 of the Treaty, in this case the Court was not reviewing the initial decision, that is to say the Wood pulp decision, but a new decision adopted pursuant to Article 176 of the Treaty. The action brought against that decision was therefore admissible.

35 The Court of First Instance held, in paragraph 92, that if the Commission were to conclude, on the basis of a re-examination of the Wood pulp decision in the light of the grounds of the *Wood pulp* judgment, that certain findings to the effect that the Swedish addressees had infringed Article 85 of the Treaty were unlawful, it would be authorised to refund the fines paid in accordance with those findings. In that case, if Article 176 of the Treaty were not to be deprived of all its practical effect, the Commission would also be required, in accordance with the principles of legality and of good administration, to repay those fines, as they would have no legal basis.

36 Having found that the Commission's decision of 4 October 1995 was vitiated by an error of law in so far as it indicated that the Commission was neither obliged nor entitled to refund the fines paid by the respondents, the Court of First Instance annulled it.

The appeal

37 The Commission bases its appeal on three pleas: infringement of Article 176 of the Treaty, disregard of Articles 173 and 189 of the EC Treaty (now Article 249 EC) and contradictory reasoning in the contested judgment.

38 By its first plea the Commission contends that the Court of First Instance took too wide a view of measures necessary to comply with a judgment of the Court of Justice within the meaning of Article 176 of the Treaty in requiring the Commission to review the situation and refund the fines paid by the addressees of a decision who had not challenged it in law within the period prescribed.

39 As the Court of First Instance itself stated in paragraph 56 of the contested judgment, a decision such as the Wood pulp decision, 'although drafted and

published in the form of a single decision, must be treated as a bundle of individual decisions making a finding or findings of infringement against each of the undertakings to which it is addressed and, where appropriate, imposing a fine'. According to paragraph 60 of the contested judgment, such a decision 'can be annulled only as regards the addressees who have been successful in their actions before the Court' and, according to paragraph 58, it continues to be valid and binding on the addressees who have not brought an action for annulment.

40 In the Commission's view, it must follow that 'the necessary measures to comply with the judgment of the Court of Justice', referred to in Article 176 of the Treaty, consist in refunding only the fines imposed on the addressees who were successful in their actions before the Court. The Commission was not under any further obligation to review the decisions in regard to addressees who had not brought an action for annulment since those decisions were not concerned by the judgment of the Court.

41 Any other interpretation of Article 176 would be contrary to the principle of equality, since the respondents would then receive an unfair advantage in relation to the undertakings which, unlike them, had taken the risk, in particular the financial risk, of bringing an action for annulment. The Commission points out that 'if they had lost their case, the applicants would certainly not have offered to share their legal expenses; now that they have won their case, the applicants want to free-ride on the efforts of the other undertakings'.

42 By its second plea the Commission contends that the Court of First Instance infringed Article 173 of the Treaty in two respects and also Article 189 of the Treaty.

43 Referring to the judgment in *TWD Textilwerke Deggendorf*, cited above, it points out that a decision which has not been challenged by the addressee within the time-limit laid down by Article 173 of the Treaty becomes definitive as against him.

44 The contested judgment, however, allows the addressee of a decision which adversely affects him and which he has not challenged within the prescribed period to call it into question years later, following delivery of a judgment annulling a similar decision which had been adopted at the end of a common procedure. This, the Commission says, makes a mockery of the two-month time-limit laid down in Article 173.

45 Secondly, the contested judgment also disregards the basic legal principle that no one can sue in the name of another, which is implicitly enshrined in Article 173 of the Treaty. This provision provides that a natural or legal person can only institute proceedings against decisions which are either addressed to that person or of direct and individual concern to that person.

46 Finally, the contested judgment disregards Article 189 of the Treaty in so far as it contradicts the individual nature of decisions. Whereas a regulation produces legal effects in relation not only to the parties before the Court but also in relation to all persons to which the regulation is applicable, the same is not true of a decision, which is an individual administrative act. If an addressee challenges a decision addressed to him and obtains its annulment, only the legal position of that addressee is affected.

47 By its third plea the Commission contends that the reasoning in paragraphs 55 to 63 of the contested judgment is contradicted by the reasoning set out in paragraphs 64 to 95.

48 According to the Commission, it is plainly contradictory to maintain that the decisions imposing fines on the Swedish addressees were not annulled by the *Wood pulp* judgment so that they continued to be valid and binding and at the same time to maintain that, following pronouncement of that judgment, those decisions have no legal basis so that their addressees must be repaid.

Findings of the Court

49 Essentially, the appeal raises the question whether, where several similar individual decisions imposing fines have been adopted pursuant to a common procedure and only some addressees have taken legal action and obtained annulment, the institution which adopted them must, at the request of other addressees, re-examine the legality of the unchallenged decisions in the light of the grounds of the annulling judgment and determine whether, following such a re-examination, the fines paid must be refunded.

50 Article 176 of the Treaty, which was the only provision relied on before the Court of First Instance by the respondents and on which the contested decision is founded, requires the institution which adopted the annulled measure only to take the necessary measures to comply with the judgment annulling its measure.

51 The scope of that provision is limited in two respects.

52 First, since it would be *ultra vires* for the Community judicature to rule *ultra petita* (see the judgments in Joined Cases 46/59 and 47/59 *Meroni* v *High Authority* [1962] ECR 411, at page 419, and the judgment in Case 37/71 *Jamet* v *Commission* [1972] ECR 483, paragraph 12), the scope of the annulment which it pronounces may not go further than that sought by the applicant.

53 Consequently, if an addressee of a decision decides to bring an action for annulment, the matter to be tried by the Community judicature relates only to those aspects of the decision which concern that addressee. Unchallenged aspects concerning other addressees, on the other hand, do not form part of the matter to be tried by the Community judicature.

54 Furthermore, although the authority *erga omnes* exerted by an annulling judgment of a court of the Community judicature (see, in particular, the judgments in Case 1/54 *France* v *High Authority* [1954-1956] ECR 1, at page 17; Case 2/54 *Italy* v *High Authority* [1954 to 1956] ECR 37, at page 55; and in Case 3/54 *Assider* v *High Authority* [1954 to 1956] ECR 63) attaches to both the operative part and the *ratio decidendi* of the judgment, it cannot entail annulment of an act not challenged before the Community judicature but alleged to be vitiated by the same illegality.

55 The only purpose of considering the grounds of the judgment which set out the precise reasons for the illegality found by the Community Court (see, in particular, the judgment of the Court of Justice in Case C-415/96 *Spain* v *Commission* [1998] ECR I-6993, paragraph 31) is to determine the exact meaning of the ruling made in the operative part of the judgment. The authority of a ground of a judgment annulling a measure cannot apply to the situation of persons who were not parties to the proceedings and with regard to whom the judgment cannot therefore have decided anything whatever.

56 So, although Article 176 of the Treaty requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in the judgment annulling the original act, that article, contrary to what the Court of First Instance held in paragraphs 69, 72 and 85, does not mean that the Commission must, at the request of interested parties, re-examine identical or similar decisions allegedly affected by the same irregularity, addressed to addressees other than the applicant.

57 It is settled case-law that a decision which has not been challenged by the addressee within the time-limit laid down by Article 173 of the Treaty becomes definitive as against him (see, in particular, the judgment in Case 20/65 *Collotti* v *Court of Justice* [1965] ECR 847 and the judgment in *TWD Textilwerke Deggendorf*, cited above, at paragraph 13).

58 In view of that principle, the Court of Justice has repeatedly held that a Member State was no longer entitled, when defending infringement proceedings brought by the Commission, to challenge on the basis of Article 184 of the EC Treaty

(now Article 241 EC) the validity of a decision which had been addressed to it pursuant to Article 93(2) of the Treaty (now Article 88(2) EC) when it had allowed the period within which it could bring an action for annulment to expire (see, to this effect, Case 156/77 *Commission* v *Belgium* [1978] ECR 1881, paragraph 20, and Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, paragraph 10).

59 Similarly, the Court has held that, although a party may bring suit by means of an action for damages without being obliged by any provision of law to seek annulment of the unlawful measure which caused him damage, that party may not by those means circumvent the inadmissibility of an application for annulment concerning the same instance of illegality and having the same financial end in view (see, in particular, Case 543/79 *Birke* v *Commission and Council* [1981] ECR 2669, paragraph 28; Case 799/79 *Bruckner* v *Commission and Council* [1981] ECR 2697, paragraph 19; and Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraph 33).

60 Furthermore, in *TWD Textilwerke Deggendorf*, cited above, the Court held that Article 173 of the Treaty precluded the recipient of State aid who could have challenged the Commission decision declaring the aid unlawful and incompatible with the common market by bringing an action for annulment within the time-limit laid down in the fifth paragraph of Article 173 of the Treaty and who did not bring such an action from challenging before the national court the measures implementing the Commission decision by seeking to rely on the illegality of that decision. A ruling to the opposite effect would give such a party the power to overcome the definitive nature which the decision has in relation to him once the time-limit for bringing legal proceedings has expired.

61 Such a rule is based in particular on the consideration that the purpose of having time-limits for bringing legal proceedings is to ensure legal certainty by preventing Community measures which produce legal effects from being called in question indefinitely as well as on the requirements of good administration of justice and procedural economy.

62 Finally, it is settled case-law that a judgment given by the Court of Justice or by the Court of First Instance annulling a measure can constitute a new fact causing

time to start running again only with regard to the parties to the proceedings and to other persons directly affected by the measure which was annulled (Case 43/64 *Müller* v *Councils of the EEC, EAEC and ECSC* [1965] ECR 385, at page 397; Case 52/64 *Pfloeschner* v *Commission* [1965] ECR 981, at page 986; Joined Cases 15/73 to 33/73, 52/73, 53/73, 57/73 to 109/73, 116/73, 117/73, 123/73, 132/73 and 135/73 to 137/73 *Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177, paragraph 38; and Case 125/87 *Brown* v *Court of Justice* [1988] ECR 1619, paragraph 13).

63 Where a number of similar individual decisions imposing fines have been adopted pursuant to a common procedure and only some addressees have taken legal action against the decisions concerning them and obtained their annulment, the principle of legal certainty underlying the explanations set forth in paragraphs 57 to 62 above therefore precludes any necessity for the institution which adopted the decisions to re-examine, at the request of other addressees, in the light of the grounds of the annulling judgment, the legality of the unchallenged decisions and to determine, on the basis of that examination, whether the fines paid must be refunded.

64 In the respondents' submission, however, the Court of First Instance correctly applied the principles established in *Snupat* and *Asteris,* cited above.

65 Those two cases, however, concerned situations different from that which gave rise to these proceedings.

66 In Joined Cases 42/59 and 49/59 *Snupat* v *High Authority,* cited above, very particular circumstances led the Court to place an extensive interpretation on the obligations incumbent on the High Authority following the judgment it had given in Joined Cases 32/58 and 33/58 *Snupat* v *High Authority* [1959] ECR 127.

67 First of all, Snupat had systematically used the means of redress open to it, unlike the respondents in this case, who allowed the two-month time-limit laid down in the fifth paragraph of Article 173 of the Treaty to expire. Snupat had initially asked to be exonerated from the obligation to contribute to an equalisation fund, relying on exemptions which had been granted by the High Authority to two other producers and then brought an action for the annulment of its decision refusing to grant it an exemption. After the Court had dismissed that action by a judgment, cited above, which it gave on 17 July 1959, Snupat then asked the High Authority to revoke, with retroactive effect, the exemptions granted to the two other producers before finally bringing a new action, which was eventually upheld, before the Court against the High Authority's decision to refuse to accede to the second request.

68 Secondly, the exemptions granted to the two other producers were directly prejudicial to Snupat owing to the nature of the equalisation system which had been established, since they reduced the other two producers' production costs and increased Snupat's because the exemptions led to its own contribution being re-evaluated. This did not happen to the fines imposed on the various addressees of the Wood pulp decision, since the annulment of some of the fines did not affect the amount of the fines which had not been challenged.

69 Nor can the respondents effectively rely on the judgment in *Asteris*, cited above, in which the Court held that, following the annulment, by a previous judgment, of an agricultural regulation applicable to a specific marketing year, the institution concerned was under an obligation to eliminate from the regulations already adopted when that latter judgment was delivered and governing subsequent marketing years any provisions with the same effect as the provision held to be illegal.

70 That case concerned the annulment of consecutive regulations so that the annulment of an earlier regulation necessarily obliged the enacting institution to take account of the judgment of the Court of Justice when drawing up the regulations subsequent to the annulled regulation.

71 The Court of First Instance therefore erred in law in holding that Article 176 of the Treaty placed the Commission under a duty to re-examine, at the request of those concerned, the legality of the Wood pulp decision in so far as it concerned them, in the light of the grounds of the *Wood pulp* judgment, and to determine whether, on the basis of such an examination, it was necessary to refund the fines paid. The contested judgment must therefore be set aside.

72 In accordance with the second sentence of the first paragraph of Article 54 of the EC Statute of the Court of Justice, where the Court sets aside the decision of the Court of First Instance, it may itself give final judgment in the matter, where the state of the proceedings so permits. The Court considers that this is the case.

The application for annulment lodged at the Court of First Instance against the decision of 4 October 1995

73 In their action for annulment, the respondents raised a single plea alleging that, by its decision of 4 October 1995, the Commission had disregarded the legal consequences of the *Wood pulp* judgment.

74 In the first limb, they contended that the Commission infringed the principle of Community law according to which a judgment annulling a measure has the effect of rendering the contested measure null and void, *erga omnes* and *ex tunc*.

75 In the second limb, the respondents contended that the Commission had infringed the first paragraph of Article 176 of the Treaty.

76 Since the first limb of the plea is unfounded for the reasons set out in paragraphs 19, 20, 54 and 55 above and the second limb is unfounded for the reasons set out in paragraphs 50 to 56 above, the application for annulment lodged at the Court of First Instance by the respondents on 15 December 1995 against the Commission's decision of 4 October 1995 rejecting their request for a re-examination in the light of the *Wood pulp* judgment must be dismissed as unfounded.

Costs

77 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which apply to appeal proceedings by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

78 Since the appeal is well founded and the action brought by the respondents unfounded, the respondents should bear all the costs incurred before the Court of First Instance and the Court of Justice.

On those grounds,

THE COURT,

hereby:

1. **Sets aside the judgment of the Court of First Instance of 10 July 1997 in Case T-227/95 AssiDomän Kraft Products and Others v Commission;**

2. **Dismisses the application for annulment lodged on 15 December 1995 by AssiDomän Kraft Products AB and Others before the Court of First Instance;**

3. **Orders AssiDomän Kraft Products AB and the other respondents to bear all the costs incurred before the Court of First Instance and the Court of Justice.**

Rodríguez Iglesias Kapteyn Puissochet Hirsch

Jann Moitinho de Almeida Gulmann

Murray Edward Ragnemalm

Sevón Wathelet Schintgen

Delivered in open court in Luxembourg on 14 September 1999.

R. Grass G.C. Rodríguez Iglesias

Registrar President