ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)

5 February 2007 *

In Case T-91/05,

Sinara Handel GmbH, established in Cologne (Germany), represented by K. Adamantopoulos and E. Petritsi, lawyers,

applicant,

v

Council of the European Union, represented by J.-P. Hix, acting as Agent, assisted by G. Berrisch, lawyer,

and

Commission of the European Communities, represented by N. Khan and T. Scharf, acting as Agents,

defendants,

* Language of the case: English.

APPLICATION for compensation under Article 288 EC for the damage allegedly suffered because of the adoption of Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1),

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

composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts

1 By unpublished decision of 25 November 1994 (Case IV/35.304), adopted, in particular, on the basis of Article 14(3) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87), the Commission decided to initiate an

investigation into the possible existence of anticompetitive practices in respect of carbon-steel tubes which might infringe Article 53 of the Agreement on the European Economic Area and Article 81 EC.

2 Following that investigation, the Commission decided, on 20 January 1999, to initiate the proceeding in Case IV/E-1/35.860-B seamless steel tubes, as a result of which it adopted, on 8 December 1999, Decision 2003/382/EC relating to a proceeding under Article 81 [EC] (Case IV/E-1/35.860-B seamless steel tubes) (OJ 2003 L 140, p. 1; 'the decision on the agreement'). According to Article 1(1) of that decision, the eight undertakings to which it was addressed '... have infringed the provisions of Article 81(1) [EC] by participating ... in an agreement providing, inter alia, for the observance of their respective domestic markets for seamless standard threaded [Oil Country Tubular Goods] pipes and tubes and project line pipe'.

3 Article 1(2) of the decision on the agreement states that the infringement lasted from 1990 to 1995 in the case of Mannesmannröhren-Werke AG, Vallourec SA, Dalmine SpA, Sumitomo Metal Industries Ltd, Nippon Steel Corp., Kawasaki Steel Corp. and NKK Corp. In the case of British Steel Limited, the infringement is said to have lasted from 1990 to February 1994. Those undertakings were therefore fined amounts ranging from EUR 8.1 to 13.5 million.

4 The decision on the agreement was published in the *Official Journal of the European Union* of 6 June 2003.

5 In addition, following a complaint lodged on 19 July 1996 by the Defence Committee of the Seamless Steel Tube Industry of the European Union, the Commission, pursuant to 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), as amended by Council Regulation (EC) No 2331/96 of

2 December 1996 (OJ 1996 L 317, p. 1), published, on 31 August 1996, a notice of the initiation of an anti-dumping proceeding concerning imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Russia, the Czech Republic, Romania and the Slovak Republic (OJ 1996 C 253, p. 26).

6 On 29 May 1997, the Commission adopted Regulation (EC) No 981/97 imposing provisional anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Russia, the Czech Republic, Romania and the Slovak Republic (OJ 1997 L 141, p. 36).

7 On 17 November 1997, the Council adopted Regulation (EC) No 2320/97 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1; 'the definitive regulation').

8 On 16 July 2004, the Council adopted Regulation (EC) No 1322/2004 amending the definitive regulation (OJ 2004 L 246, p. 10). Under Article 1 of that regulation, an Article 8 is added to the definitive regulation, by virtue of which Article 1 of the definitive regulation, which imposes anti-dumping duties on the imports it covers, is, from 21 July 2004, no longer to be applied.

9 The applicant, Sinara Handel GmbH, is a German company which imports seamless pipes and tubes of Russian origin into the Community. Since 2000 it has distributed the products of Sinarsky Pipe Works and, since the end of 2001, those of Pipe

Metallurgical Co. During the period covered by this action, that is between June 2000 and December 2002, it pursued no other activity.

10 From June 2000 to December 2002, the applicant imported into the Community tubes of Russian origin which, in order to comply with the instructions of the German customs authorities, it declared as coming within the CN Codes referred to in Article 1(1) of the definitive regulation. Consequently those authorities collected anti-dumping duties relating to those imports in a total amount of EUR 2 818 163.09 (EUR 420 810.52 in respect of 2000, EUR 1 385 602.36 in respect of 2001 and EUR 1 011 750.21 in respect of 2002).

11 The applicant also imported, during the same period, other tubes which it did not declare as being subject to the definitive regulation. The German customs authorities, having nevertheless decided that certain of those imports were covered by that regulation, issued notices of post-clearance assessment of duties, which were challenged by the applicant. Currently, seven complaints are thus pending before the customs authorities, while a legal action is pending before the Finanzgericht des Landes Brandenburg (Finance Court of the Land Brandenburg, Germany).

12 In addition, since it took the view that, having regard particularly to how they were manufactured, certain tubes declared to be subject to the definitive regulation were not covered by it, the applicant challenged their final classification before the German customs authorities. Two cases concerning the imports declared to be subject to the definitive regulation are thus still pending before the customs authorities of Frankfurt an der Oder.

13 First, on 18 November 2003, the applicant applied to those authorities, on the basis of Article 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the CCC'), for repayment of the duties levied on account of imports which it considers were classified, wrongly, as being covered by the definitive regulation. That application was rejected as regards 31 of the various contested customs receipts. Those rejection decisions are currently the subject of an appeal.

14 Secondly, on 22 September 2004, the applicant reapplied, on the basis of Article 236 of the CCC, for repayment of all the duties which it had paid in respect of imports declared to be subject to the definitive regulation, including as regards imports the customs classification of which is not disputed, claiming that the definitive regulation was illegal. The total amount of the duties repayment of which is thus sought on that ground at the national level is EUR 4 346 558.09.

Procedure and forms of order sought by the parties

15 The applicant brought this action by application lodged at the Court Registry on 25 February 2002.

16 By separate documents lodged at the Court Registry respectively on 3 and 7 June 2005, the Commission and the Council raised pleas of inadmissibility in accordance with Article 114(1) of the Rules of Procedure of the Court of First Instance.

17 The applicant lodged its observations on those pleas of inadmissibility on 25 July 2005.

18 By way of measures of organisation of procedure provided for in Article 64 of its Rules of Procedure, the Court requested the applicant to reply to certain written questions. That request was complied with.

19 The applicant claims that the Court should:

— order the Community to pay it, as compensation for the loss of profit suffered because of the adoption of the definitive regulation for the period from June 2000 to December 2002, the sum of EUR 1 633 344.33, with default interest thereon at an annual rate of 8%;

— in the alternative, following an interlocutory judgment, to order the Community to pay it, in the same respect, a sum to be assessed by agreement between the parties or, in default thereof, by a final judgment of the Court;

— order the Council and the Commission to pay the costs.

20 In their pleas of inadmissibility, the Council and Commission claim that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

21 In its observations on the pleas of inadmissibility, the applicant contends that the Court should:

— dismiss the pleas of inadmissibility raised by the Council and the Commission;

— order the Council and the Commission to pay the costs.

Law

22 Under Article 114(1) of the Rules of Procedure, the Court of First Instance may, on the application of a party, decide on admissibility, on lack of competence or other preliminary plea not going to the substance of the case. Under Article 114(3), unless the Court otherwise decides, the remainder of the proceedings is to be oral.

23 Here, the Court considers itself to be sufficiently informed by the contents of the case-file to decide the matter without further procedure.

The main claim

Arguments of the parties

24 The Council and the Commission submit that the Court of First Instance has no jurisdiction to hear this action on the ground that it is in reality claiming repayment of anti-dumping duties allegedly paid.

25 The loss of profit claimed equals the amount of those duties, less hypothetical taxes. That is clear from the accountant's letter of 7 January 2005 produced by the applicant, which states:

'Because of the anti-dumping duties paid in the years 2000 through 2002 in a total amount of EUR 2 818 163.09, the profits during the years 2000 through 2002 were reduced by the same amount with the consequence that, as a result of the lower profits, a lower amount of taxes had to be paid.

Assuming that the anti-dumping duties of EUR 2 818 163.09 would not have had to be paid, the profit for these years would have been EUR 2 818 163.09 higher.

Since the profits would have been EUR 2 818 163.09, higher taxes would consequently have had to be paid.

... If the anti-dumping duties in an amount of EUR 2 818 163.09 would not have had to be paid in the years 2000-2002, an additional amount of EUR 1 184 818.76 would have had to be paid as taxes. Thus the real damage amounts to EUR 1 633 344.33.'

26 The Commission thus argues that the damage pleaded by the applicant is no more than the bookkeeping consequence of having paid anti-dumping duties allegedly due, which cannot be regarded as loss of profit. It notes that the Court of First Instance held in Case T-178/98 *Fresh Marine* v *Commission* [2000] ECR II-3331, paragraph 50, that an action for damages must be declared inadmissible, where it is actually aimed at securing withdrawal of a measure which has become definitive and would, if upheld, nullify the effects of that measure (see Case T-514/93 *Cobrecaf and*

Others v *Commission* [1995] ECR II-621, paragraph 59; Case T-93/95 *Laga* v *Commission* [1998] ECR II-195, paragraph 48; and Case T-94/95 *Landuyt* v *Commission* [1998] ECR II-213, paragraph 48), which is, for example, the case where it seeks the payment of an amount precisely equal to the duty paid by the applicant pursuant to the measure which has become definitive (Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraph 33).

27 The Commission submits that the facts of this case match that situation, since the applicant seeks the nullification of the legal effects of the definitive regulation as it was applied to the applicant, by claiming damages in the form of a sum equal to the duty actually paid pursuant to that regulation.

28 The Council argues further that the proper remedy against a tax order collecting anti-dumping duties is an appeal pursuant to Articles 243 and 245 of the CCC, as implemented by the relevant provisions of the national law of the Member State, or an application for remission pursuant to Article 236 of the CCC. The applicant has, indeed, challenged the payment orders issued by the German customs authorities alleging, in particular, that the definitive regulation was invalid. Thus, if the competent court has doubts as to the validity of that regulation, it can refer a question to the Court of Justice for a preliminary ruling pursuant to Article 234 EC. If the Court of Justice declares that regulation to be invalid, the national court would annul the payment orders with the result that the applicant would be repaid the total amount of anti-dumping duties allegedly paid, plus interest thereon at the rate of 0.5% per month in accordance with Paragraphs 236 and 238 of the Abgabeordnung (German Tax Code).

29 It follows from established case-law that the applicant cannot seek repayment of the duties in an action for damages brought pursuant to the second paragraph of Article 288 EC. Indeed, the Court of Justice held in Case C-282/90 *Vreugdenhil* v

Commission [1992] ECR I-1937, paragraph 12, that only the national courts have jurisdiction to entertain an action for the recovery of amounts wrongfully charged by a national administration on the basis of Community rules which are subsequently declared invalid. Likewise, in Case T-167/94 *Nölle* v *Council and Commission* [1995] ECR II-2589, paragraph 35, the Court of First Instance stated that in the case where an individual feels that he has been adversely affected by the application of a measure of Community law which he considers to be illegal, he has the possibility, when the implementation of the measure is entrusted to national authorities, to contest, at the time of such implementation, the validity of the measure before a national court in proceedings between himself and the national authority.

30 The applicant's arguments that it could not have brought an action for annulment against the definitive regulation in time are irrelevant in that regard. First, the question concerns, in this case, the relationship between the action for damages and a reference for a preliminary ruling to determine validity, and not that between an action for damages and an action for annulment. Second, the reason why the applicant could not have mounted an admissible attack on the definitive regulation is not that it learned too late about the decision on the agreement, but the fact that it was not individually concerned by that regulation, for the purposes of the fourth paragraph of Article 230 EC. Finally, an action for damages cannot be used to circumvent the mandatory time-limit under the fifth paragraph of Article 230 EC (Case 4/67 *Collignon* v *Commission* [1967] ECR 365).

31 As regards *Krohn* v *Commission*, which was cited by the applicant, the Council maintains that the passages quoted by the applicant dealt with the question of the correct defendant in actions for damages in situations where national authorities have applied Community law, but not the question of what can be recovered by way of damages in an action under the second paragraph of Article 288 EEC.

32 Moreover, contrary to the applicant's argument, in view of the fact that the national court to which it applied can refer the question of the validity of the definitive regulation to the Court of Justice for a preliminary ruling, the national legal remedies provide an effective means of protection of the parties concerned.

33 The Council points out also that, in any event, directly applicable Community law provides, in Article 236 of the CCC, a special remedy in cases where duties have allegedly been wrongfully collected. Under Community law, a debtor of the customs authorities must therefore apply, in the first place, for the protection of the national courts instead of bringing an action for damages before the Community Courts.

34 Finally, the Council and the Commission argue that, if this action were to be upheld, the action brought by the applicant before the national court against the payment orders would also have to be upheld, which would result in double compensation for the applicant.

35 The applicant submits that those arguments are unfounded.

36 It argues that its action is intended to obtain compensation for the loss of profits suffered as a result of the unlawful definitive regulation, and not the repayment of duties paid. The pleas of inadmissibility relate, in reality, only to the method of calculation of that loss of profit, which is a question of substance, and not to the actual nature of the action.

37 As regards that method, the applicant states that the paid anti-dumping duties were used only as a 'yardstick' of its damage, in order to determine what would have been its situation if it had not paid those duties. The loss is thus calculated by comparing the profits achieved after payment of the anti-dumping duties while the definitive regulation was in force and those which would have been achieved if those duties had not been paid. Therefore, the sum claimed as damages, EUR 1 633 344.33, is different from the sum of EUR 2 818 163.09 paid in respect of anti-dumping duties. That method has, moreover, been recognised by the case-law (Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 13).

38 The action is not designed to nullify the legal effects of the definitive regulation. Moreover, in situations where, as in this case, the act giving rise to the loss cannot be challenged by an action under Article 230 EC, an action for damages such as this one is admissible. If the action were upheld, the invalidity of the definitive regulation would be only an indirect result and concern only the parties to the proceedings. The damage for which compensation is claimed is unconnected to the intrinsic legal effects of that regulation and could not have been nullified by means of an action for annulment, as was held in paragraphs 47 to 51 of the judgment in *Fresh Marine* v *Commission*.

39 The applicant observes that the case-law cited by the Council and the Commission concerns the exceptional situation where the action for damages is aimed indirectly to circumvent the inadmissibility of an action for annulment. That is not the case here, in view of the fact that the illegality of the definitive regulation was not obvious at the time when an action for annulment could have been brought, with the result that that possibility was never contemplated by the applicant. The applicant's arguments relating to the illegality of the definitive regulation are thus intended only to demonstrate the liability of the Council and the Commission and not to nullify the effects of that regulation, as was held by the Court of First Instance in Case T-146/01 *DLD Trading* v *Council* [2003] ECR II-6005, paragraph 52. The Council's arguments thus disregard the independent nature of the action for damages and fail

to take account of the fact that nobody, whether individually concerned or not, could have pleaded the illegality of the definitive regulation on the legal basis pleaded in this action, namely the failure to take account of the decision on the agreement, which could not have been known about when the action for annulment should have been brought.

40 In addition, contrary to the situation which prevailed in the cases cited by the Council and Commission in paragraph 26 above, the applicant is not seeking to secure payment of a sum which has been denied it. Since it never failed in an action for annulment, the applicant cannot be considered to be trying indirectly to achieve the same result through an action for damages. In addition, the Council and Commission take no account of the context of the statement in paragraph 50 of the judgment in *Fresh Marine* v *Commission*, and reproduced in the case-law there cited, and which applies only subject to the specific circumstances of each case.

41 Finally, the applicant submits that this action cannot lead to a double repayment of the anti-dumping duties paid since the action seeks to obtain compensation for the loss of profits suffered, which is of a different legal nature from that of the repayment of sums wrongly paid. National courts, moreover, have no jurisdiction to award damages and interest when the loss is caused by the conduct of the Community institutions.

42 In that regard, the applicant observes that, since the German customs authorities enforced the valid definitive regulation without having any discretion, the damage alleged was caused by the wrongful conduct of the Community institutions. Therefore, the Community judicature has exclusive jurisdiction to entertain the action without the applicant having to satisfy the requirement of exhausting national remedies (*Krohn* v *Commission*, paragraph 19). In addition, the reference made by the Council to *Vreugdenhil* v *Commission* is misleading since, in this case and contrary to the situation covered by that judgment, the definitive regulation has never been declared invalid. Moreover, to require the applicant to exhaust, prior to

bringing its action for damages, the national remedies available to it would be contrary to the proper administration of justice and the requirements of procedural efficiency (Case 43/72 *Merkur* v *Commission* [1973] ECR 1055, paragraphs 5 to 7). Since the applicant has pleaded the illegality of the definitive regulation as an additional plea in law in the national proceedings relating to the classification of its imports, the final national decision on its application for repayment may not be reached for a considerable length of time.

43 In any event, the applicant submits that, contrary to the requirements of the case-law, the national remedies available to it cannot effectively guarantee its protection in view of the fact that it could not have known of the decision on the agreement, and therefore of the illegality of the definitive regulation, before it was too late. Thus, it did not submit its application, under Article 236 of the CCC, for repayment of all the duties paid alleging that the definitive regulation was illegal until 22 September 2004, following the publication of the decision on the agreement on 6 June 2003 and the adoption of Regulation No 1322/2004 on 16 July 2004.

44 Therefore, at the time of the implementation of the definitive regulation, the applicant had no possibility of contesting its validity before the national courts. In addition, Article 236 of the CCC provides that duties are to be repaid in so far as it is established that, when they were paid, the amount of such duties was not legally owed. The applicant submits that, at the period in question, the definitive regulation was valid and that, as a result, the anti-dumping duties were legally owed. In addition, it maintains that, having regard to the limitation period, under Article 236 of the CCC, of three-years from the date on which the amount of those duties was communicated to the debtor, it could have applied for repayment of the duties on the ground that the definitive regulation was illegal only for the three-year period preceding the submission of its application dated 22 September 2004. It could not therefore obtain the repayment of the duties paid between June 2000 and September or October 2001.

Findings of the Court

45 The Council and the Commission submit, in essence, that this action is, really, an application for repayment of the anti-dumping duties which the applicant paid to the national customs authorities pursuant to the definitive regulation. They maintain that the Court of First Instance has no jurisdiction to entertain such an application.

46 In that regard, it is appropriate to note that, under Article 236(2) of the CCC, '[i]mport duties ... shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor'. In addition, the first subparagraph of Article 243(1) of the CCC provides that '[a]ny person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually'. The third subparagraph of that provision states that '[t]he appeal must be lodged in the Member State where the decision has been taken ...'. Finally, under Article 245 of the CCC, '[t]he provisions for the implementation of the appeals procedure shall be determined by the Member States'.

47 The secondary Community law which applies has, therefore, expressly prescribed the remedy available to debtors of import duties who consider that they have had such duties wrongly imposed on them by the customs authorities. That remedy is exercisable at the national level, in accordance with the appeals procedure implemented by the Member State in question in compliance with the principles set out in Articles 243 to 246 of the CCC. On such an appeal, such a debtor may, in addition, request the competent court seised of the proceedings to make a reference, in accordance with subparagraph (b) of the first paragraph of Article 234 EC, for a preliminary ruling on the validity of the Community provision on the basis of which the decision to impose duties was adopted.

48 In an action for damages brought following a judgment delivered on such a reference for a preliminary ruling on validity, the Court also held that only the national courts have jurisdiction to entertain an action for the recovery of amounts wrongfully charged by a national administration on the basis of Community rules which are subsequently declared invalid (*Vreugdenhil* v *Commission*, paragraph 12).

49 In this case, it is true that, formally, the applicant classifies the damage for which it seeks compensation as loss of profit. However, the Court of First Instance has already held that an applicant's action seeking compensation for loss or damage to its business, equal to the loss of profit resulting from the suspension of its exports to the Community as well as the cost of re-establishing itself on the Community market, as a result of a wrongful act by the Commission which led to the imposition of provisional measures against imports of its products, is distinguishable from a claim seeking the repeal of the provisional anti-dumping and countervailing measures imposed on imports of its products into the Community and the release of the amounts already lodged, if any, by way of provisional duties, and that, accordingly, such an action had to be declared to be admissible (see, to that effect, *Fresh Marine* v *Commission*, paragraph 46).

50 However, the applicant states expressly, in the application, that this action is for damage to be made good for loss of profit due to the sums improperly paid by way of anti-dumping duties. In addition, as the Council and Commission observe, it is clear from the applicant's explanations and from Annexes 12 and 13 to the application, as well as from Annex 2 to its observations on the pleas of inadmissibility, that the applicant quantifies its loss of profit at the amount of the anti-dumping duties paid during the period in question, less the tax which it would have had to pay on that sum if those duties had not been paid.

51 It follows that, beyond the purely formal description as loss of profit ascribed to the pleaded damage, that damage, as identified and quantified by the applicant, must, in reality, be regarded as arising directly, necessarily and exclusively from the payment

of the sum owed in respect of the anti-dumping duties imposed, with the result that this action is, in fact, a claim for repayment, net of tax, of the duties which the applicant paid allegedly wrongfully. The only aspect of the damage, compensation for which is sought, which does not correspond exactly to the sum of the duties actually paid, makes no difference in that regard, since it is the result of the simple deduction, applied to that sum, of taxes which the applicant would allegedly have had to pay if the anti-dumping duties had not been imposed on it. It cannot therefore affect the basic nature of this application.

52 In accordance with the case-law cited in paragraph 48 above, such an application for repayment comes within the exclusive jurisdiction of the national courts. Contrary to the applicant's arguments, it makes no difference, in that regard, that, in this case, the definitive regulation has not been declared invalid by the Court of Justice on a reference for a preliminary ruling on its validity.

53 Even were the Court of First Instance, as part of the examination of the requirements for incurring the non-contractual liability of the Community, to declare that the definitive regulation is vitiated by illegality, that could not confer on the Court of First Instance jurisdiction to entertain an application for repayment of the sums collected by the customs authorities on the basis of that regulation.

54 First, it must be recalled, in that regard, that under Article 2(1)(b) of each of the two decisions on the system of the European Communities' own resources successively applicable to the facts of this case, namely Council Decision 94/728/EC of 31 October 1994 (OJ 1994 L 293, p. 9), then, with effect from 1 January 2002, Council Decision 2000/597/EC, Euratom of 29 September 2000 (OJ 2000 L 253, p. 42), the following shall constitute own resources entered in the budget of the Communities: 'Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries'.

55 Article 8(1) of those decisions provides further, in particular, that the Communities' own resources referred to in Article 2(1)(a) and (b) thereof are to be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules.

56 Thus the fact that the powers relating to the collection of the Communities' own resources, among which are anti-dumping duties, are those of the national authorities justifies disputes in connection with import duties collected for the Community falling within the jurisdiction of the national courts and having to be determined by them under the appeals procedure implemented by the Member State concerned in compliance with the principles laid down in Articles 243 to 246 of the CCC (see, to that effect, Case 26/74 *Roquette Frères* v *Commission* [1976] ECR 677, paragraph 11).

57 In that regard, it must also be noted that, as part of the procedure under Article 11(8) of Regulation No 384/96, which enables an importer to request reimbursement of duties collected where it is shown that the dumping margin, on which the duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force, although the claim for reimbursement in question is to be submitted by the importer to the Commission via the Member State of the territory in which the products were released for free circulation, if the Commission decides that the application should be granted, the payment of the refund so authorised should normally be made by the Member States within 90 days of the Commission's decision, in accordance with the last subparagraph of that provision.

58 Also, as the Council and Commission have observed, according to the applicant's own evidence, it submitted, on 18 November 2003, on the basis of Article 236 of the CCC, an application for repayment of the anti-dumping duties collected on account of imports declared to be subject to the definitive regulation, but which it considered to have been, wrongfully, classified as such. That application was rejected in part and

is the subject of a pending appeal. In addition, the applicant submitted, on the same basis, on 22 September 2004, an application for repayment of all the anti-dumping duties which it had paid alleging that the definitive regulation was illegal.

59 Thus, not only is the amount of the anti-dumping duties which the applicant finally paid liable to be reduced, since the classification of some of the imports in question is still the subject of proceedings at the national level, but it is also foreseeable that, following a reference for a preliminary ruling on the definitive regulation's validity, the applicant will obtain, from the national customs authorities, the repayment of the anti-dumping duties paid.

60 In view of the fact that, by this action, the applicant is seeking, in the final analysis, to obtain repayment of the anti-dumping duties which were imposed on it on the ground that they were based on an illegal regulation, it must be noted that, according to the case-law, where an individual feels that he has been adversely affected by the application of a measure of Community law which he considers to be illegal, he may, when the implementation of the measure is entrusted to the national authorities, contest the validity of the measure, when it is implemented, before a national court in proceedings between himself and the national authority. Under the conditions set out in Article 234 EC, that court may, or even must, refer to the Court of Justice a question on the validity of the Community measure in question (Case 281/82 *Unifrex* v *Council and Commission* [1984] ECR 1969, paragraph 11; *Nölle* v *Council and Commission*, paragraph 35).

61 It is true that, as stated in paragraphs 35 to 37 of the judgment in Case C-239/99 *Nachi Europe* [2001] ECR I-1197, the Court held that the general principle under which an applicant must, in proceedings brought under national law against the rejection of his application, be able to plead the illegality of a Community measure on which the national decision adopted in his regard is based, does not in any way

preclude a regulation from becoming definitive as against an individual, in regard to whom it must be considered to be an individual decision and who could undoubtedly have sought its annulment under Article 230 EC, a fact which prevents that individual from pleading the illegality of that regulation before the national court (see, in regard to a Commission decision, Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraphs 24 and 25). According to the Court of Justice, such a conclusion applies to regulations imposing anti-dumping duties by virtue of their dual nature, which follows from the fact that regulations imposing an anti-dumping duty, although by their nature and scope of a legislative nature, are liable to be of direct and individual concern, particularly, to those producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations (Joined Cases 239/82 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, paragraph 12), or, again, to those importers whose retail prices for the products in question form the basis of the constructed export price, where exporter and importer are associated (Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport* v *Commission and Council* [1990] ECR I-2945, paragraph 19).

62 However, in this case, the applicant does not appear to come within any of those situations. First, the applicant is nowhere identified in Regulation No 981/97 or the definitive regulation as a producer or exporter and, as an importer, cannot have been concerned by the preliminary investigations in that respect. Second, it is not clear from those regulations that the applicant's retail prices formed the basis of the constructed export price, even if it was associated with an exporter. In any event, since the definitive regulation was adopted on 17 November 1997, it would have been chronologically impossible to take them into account having regard to the date of the applicant's incorporation, whether one relies on the applicant's statement that it was incorporated, under German law in June 2000 or on the extract from the commercial register of the Amtsgericht Köln (District Court, Cologne, Germany) produced in Annex 2 to the application, from which it appears that the applicant was registered for the first time on 11 December 1997.

63 Therefore, without there even being any need to determine whether the fact that the applicant cannot admissibly allege the illegality of the definitive regulation might enable it admissibly to bring the present action, the Court finds that the applicant cannot be regarded as directly and individually concerned by the definitive regulation, with the result that it cannot be regarded as acting inadmissibly in alleging the illegality of that regulation in a national dispute, pursuant to the case-law emanating from the judgment in *Nachi Europe*.

64 Thus, it is by no means impossible that, if it has doubts as to the definitive regulation's validity for the reasons relied upon by the applicant, that is to say the definitive regulation's alleged failure to take into account the effect of the decision on the agreement, the national court seised of the proceedings would make a reference to the Court of Justice for a preliminary ruling on that regulation's validity and that, if appropriate, the latter would declare it invalid.

65 In that situation, it is appropriate to recall that a judgment of the Court of Justice declaring a Community enactment void constrains all the courts of the Member States to regard that act as void (Case 66/80 *International Chemical Corporation* [1981] ECR 1191, paragraphs 12 and 13), and obliges the author of the invalidated act to amend or repeal it (Joined Cases 117/76 and 16/77 *Ruckdeschel and Others* [1977] ECR 1753). Moreover, it is first of all for the national authorities to draw the consequences in their legal system of the declaration of such invalidity (Case 23/75 *Rey Soda* [1975] ECR 1279, paragraph 51), which would mean that the anti-dumping duties paid would no longer be legally due and ought, in principle, to be repaid by the customs authorities.

66 Apart from the fact that it follows from the foregoing that the applicant has a remedy enabling it properly to challenge the definitive regulation's validity in order to obtain the repayment of the anti-dumping duties based upon it to which the applicant was subjected, it is appropriate to observe that, if the Court of First Instance were to uphold this application by the applicant, it could be compensated twice for the same loss.

67 It follows from all the foregoing that since this action must be regarded, in essence, as an application for repayment of the anti-dumping duties which the applicant paid to the national customs authorities, the Court of First Instance has no jurisdiction to entertain it.

68 None of the applicant's arguments can undermine that conclusion.

69 First, it is true that, as the applicant observes, the Court of Justice stated, in paragraphs 5 and 6 of the judgment in *Merkur* v *Commission*, in response to the Commission's argument that it was appropriate to refer the applicant to the national administrative and judicial authorities, which would be constrained to refer the question of the validity of the regulations in issue to the Court of Justice, that it would not be in keeping with the proper administration of Justice and the requirements of procedural efficiency to compel the applicant to have recourse to national remedies and thus to wait for a considerable length of time before a final decision on his claim is made.

70 However, that case is distinguishable from this action because its subject-matter was a claim for compensation for the damage suffered by the applicant as a result of the failure, by the Commission, to fix compensatory amounts for exports of products processed from barley. In that situation, any declaration of invalidity of the regulation in question because of the Commission's unlawful omission to fix such amounts could not have resulted in the award to the applicant of the compensation it was claiming on the basis of its action for damages, with the result that, having obtained such declaration of invalidity, it would, in any event, have had to apply to the Court of Justice to obtain compensation for its loss, since the national authorities had no power to fix such amounts.

71 Furthermore, as has been explained above, the CCC expressly provided for a special procedure at national level in the situation where a debtor considers that import duties have been wrongfully imposed upon it.

72 Secondly, the applicant argues that the effect of the three-year limitation period laid down in Article 236 of the CCC is to deprive it of the right to repayment of the anti-dumping duties paid in respect of the period more than three years before the bringing of its action of 22 September 2004, when it would, for the first time, have been able to rely on the definitive regulation's illegality. Before that date, the applicant could not have known of that illegality. Thus, the national remedies cannot guarantee it effective protection of its rights, contrary to the requirements of the case-law.

73 That argument cannot be accepted. First, it must be recalled that Article 236(2) of the CCC provides that import duties are to be repaid upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor. Under the second subparagraph of that provision, 'that period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or force majeure'. Therefore, Article 236 of the CCC itself provides for the possible extension of the period in the circumstances to which it refers. It is therefore within the framework of the CCC that the applicant should be able to obtain such an extension if the facts which it alleges justify it. It cannot, once again, circumvent the special procedure for the repayment of duties provided for by the CCC on the sole ground that its action might possibly be time-barred in part.

74 Secondly, the decision on the agreement, adopted on 8 December 1999, was published on 6 June 2003, with the result that from that date at the latest, the applicant must be regarded as having become aware of the event giving rise to its damage, on the assumption that the definitive regulation's alleged illegality constitutes such an event.

75 Although the applicant asserts that the duties were imposed on it on the basis of the definitive regulation from the month of June 2000, the evidence adduced to that effect does not establish the truth of that assertion. Annex 3 to the applicant's observations on the pleas of inadmissibility which the applicant adduces as proof of the payments made shows that the applicant received, from the forwarding and transport company Wesotra (for whose involvement the applicant offers no explanation whatever), monthly demands for payment of import duties to be made to the Hauptzollamt Frankfurt an der Oder (Main Customs Office, Frankfurt an der Oder, Germany). While the banking records accompanying them seem to attest that the applicant complied with those demands to pay the main customs office, it cannot be determined, from those documents, on what account the applicant paid the import duties in question and particularly whether it was pursuant to the definitive regulation. In any event, the first of those demands for payment, relating to the month of June 2000, is dated 6 July 2000. It follows that, on the day of publication of the decision on the agreement, 6 June 2003, the prescription period of three years from the date of communication of the duties to the debtor, laid down in Article 236(2) of the CCC, had not expired and that the applicant had a reasonable period of one month, from the publication of the decision on the agreement, to submit an application for repayment in reliance upon the definitive regulation's illegality without recovery of any of the duties paid being time-barred.

76 Thirdly, the applicant argues that the plea of inadmissibility alleging abuse of process cannot apply in a situation where the act giving rise to the damage cannot be made the subject-matter of an action under Article 230 EC.

77 In that regard, it is sufficient to point out that, as the Council observes, this action should be regarded as inadmissible on the ground that it amounts to an application for repayment of anti-dumping duties paid by the applicant which does not come within the Court's jurisdiction, and not because it is an abuse of the procedure provided for in Article 230 EC.

78 Fourthly, the applicant argues that, in view of the fact that the alleged damage was caused by the wrongful conduct of the Community institutions, the Community judicature has exclusive jurisdiction to entertain this action, without the applicant having to satisfy the requirement of exhausting national remedies.

79 It is true, according to settled case-law, that the combined provisions of Articles 235 EC and 288 EC give the Community Courts exclusive jurisdiction to hear actions seeking compensation for damage attributable to the Communities (*Vreugdenhil* v *Commission*, paragraph 14, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 72). That principle governs the division, between the national courts and the Community Courts, of jurisdiction to award compensation for the damage suffered by subjects because of the conduct of national and Community authorities. However, the Community Courts cannot be absolved from scrutinising the true nature of actions brought before them on the sole ground that the alleged wrongdoing is attributable to the Community institutions. In this case, as explained previously, the applicant's action seeks to obtain the repayment, net of tax, of anti-dumping duties paid to the national customs authorities. While it is correct that the wrongdoing alleged by the applicant is attributable to the Community, the fact remains that, in accordance with the case-law cited in paragraphs 48 and 60 above, such an application comes within the jurisdiction of the national courts, which have the power and even the obligation, in the circumstances set out in the third paragraph of Article 234 EC, to refer a question to the Court of Justice for a preliminary ruling in order to obtain a decision as to the definitive regulation's validity.

80 The applicant's argument must therefore be rejected.

81 Fifthly, the applicant argues that the Court of Justice validated, in *Ireks-Arkady* v *Council and Commission*, and in Joined Cases 64/76 and 113/76, 167/78 and 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091, the method consisting in assessing the loss suffered as equalling the duties wrongly paid.

82 That argument is, however, irrelevant in this case. In that regard, it is appropriate to point out that, in the judgments cited by the applicant (*Ireks-Arkady* v *Council and Commission*, paragraph 13, and *Dumortier Frères and Others* v *Council*, paragraph 14), the Court actually held that the amount of the refunds which would have been paid to the quellmehl and gritz producers if equality of treatment with the producers of maize starch had been observed must provide a yardstick for the assessment of the damage suffered.

83 In fact, in those judgments (paragraph 6), any declaration of invalidity, by the Court, of the regulation at issue abolishing the production refunds for quellmehl and gritz, on the basis of a breach of the principle of equal treatment because such refunds had been maintained for pre-gelatinised starch, could not have led, by itself, to compensation for the damage pleaded by the applicant, namely the failure to grant refunds, in view of the fact that the national authorities had no power to grant such refunds.

84 On the contrary, in this case, a judgment of the Court of Justice, on a reference for a preliminary ruling by the competent national court, invalidating the definitive regulation would lead, by itself, to the German customs authorities being obliged to repay the sums wrongfully paid by the applicant on the basis of that regulation, with the result that the damage alleged would be made good in full, as has been previously explained.

85 Furthermore, it is appropriate to observe that, in *Ireks-Arkady* v *Council and Commission*, paragraph 14, and in *Dumortier Frères and Others* v *Council*, paragraph 15, the Court of Justice stated only that the amount of the refunds which would have been paid to the producers in question if the principle of equal treatment had been observed provided a yardstick for the assessment of the damage suffered, whilst however adding that it had to be admitted that if the loss from the

abolition of the refunds had actually been passed on, or could have been, in the prices, the damage could not be measured by reference to the unpaid refunds. In the Court of Justice's view, the price increase would take the place, in that case, of the refunds, thus compensating the producer.

86 Sixthly and finally, the applicant's argument that the requirements of the proper administration of justice and procedural efficiency lead to the conclusion that its application is admissible cannot justify an attack on the coherence of the system of procedural remedies provided for by the Treaty and the CCC. Furthermore, there must be doubt as to whether, in circumstances like these where an applicant seeks simply to obtain the repayment of the anti-dumping duties which it claims to have paid wrongly, the remedy for non-contractual liability is the most effective and the most favourable, having regard, in particular, to the requirements relating to the sufficiently serious nature of the wrongdoing attributable to the Community institutions to give rise to a right to compensation for individuals when their action involves choices of economic policy, and when, in accordance with what has been explained above, the declaration alone of the definitive regulation's invalidity is sufficient, as a rule, to deprive the anti-dumping duties of their legal basis and, thus, to justify their repayment by the national customs authorities.

87 For the sake of completeness, as regards the applicant's argument that its application correctly seeks the making good of the loss of profit and that the Council's and Commission's pleas of inadmissibility are in reality challenging only the suggested method of assessing that loss of profit, which is a question of substance, it must be recalled that, according to Article 19 of the Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must state, inter alia, the subject-matter of the dispute and must contain a brief statement of the grounds on which the application is based. In order to fulfil those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct that the applicant alleges against the institution may be identified, the reasons for which the applicant considers there to be a causal link between the conduct and the damage which it claims to have

suffered and the nature and extent of that damage. However, a claim for an unspecified form of damage is not sufficiently concrete and must therefore be regarded as inadmissible (Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 9; Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraph 73; Joined Cases T-79/96, T-260/97 and T-117/98 *Camar and Tico* v *Commission and Council* [2000] ECR II-2193, paragraph 181).

88 In this case, even supposing that the method of assessment suggested by the applicant does not justify the claim for compensation for the alleged loss of profit being reclassified as an application for repayment of the anti-dumping duties, the applicant does not show at all how that method could give an indication of the extent of its loss of profit or of what such loss of profit consists. At the most, the applicant indicates, in the application, that it was engaged in acquiring the Romanian mill, Artrom SA, and was investing in it both technically and organisationally, with the result that, since it was constantly expanding the assortment of tube and pipe products it offered to its clients, it could be argued that its profitability could have been even higher, had the loss of profit been used for and invested in purposes described above. Apart from the fact that the applicant neither gives any indication of the way in which the suggested assessment reflects the loss of profit resulting from the impossibility of investing in Artrom, nor demonstrates the reality of that impossibility, in paragraph 28 of the application the applicant itself states that it did acquire Artrom. In addition, it seems clear from the applicant's later explanations that it intends, in the same way, not to particularise how the alleged loss of profit quantified at EUR 1 633 344.33 is made up, but to show that such loss of profit could, in reality, be greater than that assessment, without however giving any estimate of that additional loss of profit.

89 Therefore, even had it to be held that the main claim is not, on a true analysis, an application for repayment of the anti-dumping duties, it must held that it does not satisfy the formal requirements of an application laid down in Article 44(1)(c) of the Rules of Procedure.

90 It follows from all the foregoing that the main claim must be dismissed as inadmissible, without it being necessary to rule on the plea of inadmissibility, raised by the Commission, alleging non-observance of the formal requirements laid down in Article 44(1)(c) of the Rules of Procedure on the ground that the application does not demonstrate the existence of damage.

The alternative claim

Arguments of the parties

91 In the terms of the form of order sought in the application, the applicant claims 'in the alternative, a sum ... by way of compensation for damage for loss of profit for the period between June 2000 and December 2002, to be assessed during the proceedings, following an interlocutory judgment of the Court, by agreement between the parties, and if no agreement is reached, by a final judgment of the Court'.

92 The Council and the Commission submit that the claim for the delivery, by the Court, of an interlocutory judgment declaring the Community's liability should also be dismissed as inadmissible.

93 The Council maintains that the application discloses that the claim is made either in the event that the damage pleaded in the main claim, that is the loss of profit suffered because of the payment of anti-dumping duties, is not quantifiable, or in order to obtain compensation for further loss arising from the fact that the applicant was prevented from investing and therefore from further increasing its profitability.

94 As regards the first situation, the Council submits that the claim is inadmissible for the same reasons as the main claim. As regards the second situation, the claim does not satisfy the requirements of Article 44(1)(c) of the Rules of Procedure. The applicant confines itself to stating that it could be argued that its profitability could have been even higher had the loss of profit been used for and invested in the purposes of Artrom, which it was engaged in acquiring and that its profitability could have been even greater, without providing any evidence in support of those allegations.

95 The facts of this claim are therefore not the same as those which gave rise to the judgment in Case T-149/96 *Coldiretti and Others* v *Council and Commission* [1998] ECR II-3841, paragraphs 49 and 50, in which the Court of First Instance held that 'detailed estimates of the losses allegedly sustained' justified considering the application to be sufficiently precise.

96 Thus, in actions for damages, the Community Courts decide by interlocutory judgment only where all substantial conditions for an action pursuant to the second paragraph of Article 288 EC are met, but practical difficulties prevent the exact calculation of the damage. The occurrence of the damage must none the less be certain and the application must furnish the evidence which enables its nature and type to be identified, as is confirmed by *Coldiretti and Others* v *Council and Commission* and Case 74/74 *CNTA* v *Commission* [1975] ECR 533, paragraphs 42 and 45 to 47, which were cited by the applicant.

97 The Commission submits that an alternative claim is, inherently, a lesser claim than a principal claim, with the result that this alternative claim can add nothing to the main claim, and is therefore inadmissible.

98 In any event, the alternative claim is subordinate to the principal claim with the result that the latter's inadmissibility entails the inadmissibility of the former. In that regard, the Court cannot restate the alternative claim as an additional claim without ruling *ultra petita*.

99 If the Court decided, none the less, to recast the application in this way, the Commission submits that the claim would be inadmissible because it fails to satisfy the requirements of Article 44(1)(c) of the Rules of Procedure. The application comprises, in that regard, nothing more than a series of tentative speculations that do not even constitute precise and specific pleadings. The Commission, finally, repeats its argument that the applicant fails to demonstrate that any loss arises from the correct application of the definitive regulation by the national customs authorities rather than from an erroneous application of that regulation. Therefore, the applicant has failed to provide, in connection with its alternative claim, any evidence that its loss was caused by a fault wholly attributable to the Community institutions. Since the applicant's pleading is inadequate, the claim is accordingly inadmissible.

100 The applicant states that its claim, as is evident from the application, is to be regarded as alternative. It is raised only in the event that the Court does not award the specific sum required, either because the method of calculation of the loss of the profit is disputed or because of particular difficulties which the Court may face when assessing that loss.

101 Moreover, the Commission's submission that an alternative claim is, inherently, a lesser claim than a principal claim is unfounded. In fact, in this case, the only difference between the applicant's two claims resides in the fact that one claims a specific amount, whereas the other requests the Court to assess that amount under an interlocutory judgment. The applicant thus makes clear that it is not relying, in its alternative claim, on any damage additional to its loss of profit.

102 The applicant submits finally that all the conditions for the Court of First Instance to decide by way of an interlocutory judgment are met in this case. First, it has been clearly stated why the Community institutions should be held liable under the second paragraph of Article 288 EC. Second, it has been proven that specific damage has been suffered and precise information has been provided of the parameters used to arrive at the quantification of its amount. Finally, it has been explained why it is difficult to determine that amount. The Court could therefore rule on the substantive issue while reserving the assessment of damages to a later stage. The applicant is therefore asking the Court to give a decision at an early stage whilst reserving for a later stage the consideration of damage and the chain of causation between the conduct alleged against the Community and that damage, as was done in *Krohn* v *Commission* and in Case 101/78 *Granaria* [1979] ECR 623.

Findings of the Court

103 As a preliminary point, it must be observed that the applicant states, at the end of paragraph 149 of the application, that, if it had had available a sum corresponding to the duties paid, 'it may be argued that [its] profitability could have been even higher, had the loss of profit been used for and invested in' Artrom. Therefore, the loss arising from its alleged inability to invest in that company is regarded by the applicant itself as distinct from the loss of profit previously quantified, contrary to what it seems to assert in its observations on the pleas of inadmissibility.

104 The applicant adds, in the application, that, 'taking into account [its] profitability, within the first years of its operations, in the normal course of events, it would have continued to realise even more profits' and that 'the actual damage sustained by [it] could perhaps exceed the amount of EUR 1 633 344.33, since further profitability of the firm cannot be ruled out'.

105 Finally, after an analysis of the case-law, the applicant concludes its claim for an interlocutory judgment by declaring that, '[s]ince there is sufficient evidence of certain damage and since difficulties exist in providing a definitive estimate of further loss of profit, [it] requests the Court to order the European Community to make good the damage suffered by awarding the amount of EUR 1 633 344.33 for loss of profit, or in the alternative to grant the opportunity to settle the amount of damages through an agreement between the parties following an interlocutory judgment on damages to be ordered by the Court'.

106 It follows that, in the application, the applicant justifies its difficulties in particularising its damage only on the ground that it could turn out to be greater than the loss of profit initially calculated on the basis of the anti-dumping duties paid, particularly considering the investment that it could have made and the greater profitability that it could probably have obtained. Contrary to its statement in its observations on the Council's and Commission's pleas of inadmissibility, the applicant therefore in no way suggested, in the application, that the difficulties in quantifying the loss concerned the amount of EUR 1 633 344.33 under the heading of loss of profit claimed in the main claim or the method used to arrive at it.

107 That argument, put forward at the stage of observations on the pleas of inadmissibility, is therefore not admissible and reinterprets the application, at a late stage, in such a way as to distort its essential terms.

108 As regards the admissibility of the alternative claim itself, it must be recalled that, in order to guarantee legal certainty and sound administration of justice it is necessary,

for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 28; Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraph 17 et seq.; Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 21; Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 106; Case T-53/96 *Syndicat des producteurs de viande bovine and Others* v *Commission* [1996] ECR II-1579, paragraph 21; and Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraph 29).

109 In order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which, inter alia, the damage allegedly sustained by the applicant and, in particular, the nature and extent of that damage can be identified (*Exporteurs in Levende Varkens and Others* v *Commission*, paragraph 75; see also, to that effect, *Koelman* v *Commission*, paragraphs 22 to 24).

110 It is only exceptionally that the Court has accepted that, in special circumstances (see *Automec* v *Commission*, paragraphs 75 to 77), it is not essential to specify the exact extent of the damage in the application and to state the amount of compensation sought. In that regard, it has also held that the applicant must establish, or at least indicate, the existence of any such circumstances in the application (Case T-262/97 *Goldstein* v *Commission* [1998] ECR II-2175, paragraph 25).

111 Thus, the fact the Court of Justice and the Court of First Instance have already had occasion to decide, by way of interlocutory judgment, on the principle of the

Community's non-contractual liability whilst reserving the precise determination of the compensation to a later decision, cannot absolve the applicant from observance of the minimum formal requirements laid down in Article 44(1)(c) of the Rules of Procedure. It follows also that an applicant who seeks such a judgment from the Court of First Instance not only continues to be bound to provide the evidence necessary to identify the conduct of which the Community is accused, of the nature and type of its loss and of the causal link between the conduct and that loss, but must, in addition, state the reasons justifying dispensation from the requirement that the application must contain a detailed quantification of the loss claimed.

112 The Court of First Instance thus accepted, in the judgment relied upon by the applicant, *Coldiretti and Others* v *Council and Commission*, that, although not definitively quantifying the losses suffered by each farmer, the action had to be regarded as admissible, after holding that the application stated, in pages 18 and 19, the various categories of damage suffered by the beef farmers, namely, first, actual damage resulting from sales of live animals for less than their production cost, at a price which the applicants claim to be 40% lower than that which the farmers expected to obtain; second, actual damage arising from the cost of keeping animals which remained unsold at the end of their fattening cycle; third, loss of the profits which they would otherwise have made on the sale of animals during the current year; and fourth, loss of income resulting from the persistent decline in beef consumption in subsequent years. In addition, the Court of First Instance noted that the annexes to the application contained detailed estimates of the losses allegedly sustained by the Italian beef industry generally, and that the criteria and parameters applied in arriving at those estimates were set out in those annexes. Finally, the Court of First Instance observed that, notwithstanding the provision of those estimates, the applicants had stressed the very great difficulties encountered by them in attempting correctly to evaluate and quantify the damage suffered by each farmer, stating that it was for that very reason that they had requested that that complex computation be carried out by a group of experts. The Court of First Instance concluded that, in those circumstances, it had to be accepted that the application, supplemented by the information contained in the annexes, was sufficiently precise as regards the nature and character of the damage pleaded, and that details of the approximate extent of the alleged damage had been made available both to the defendants and to the Court.

113 However, in this case, the application does not satisfy those requirements.

114 If one considers, in accordance with a strict reading of the application, that the alternative claim seeks an interlocutory judgment on the ground that the damage could be greater than the loss of profit suffered because of the loss of the profits pleaded in the main claim, it must immediately be rejected as inadmissible in respect of the part of the damage concerning the latter loss of profit for the same reasons as the main claim. As regards the part of the damage relating to the loss of profit which the applicant claims to have suffered in excess of the loss of profit in the main claim (hereinafter 'the additional loss of profit'), the applicant confines itself to asserting that its profitability could have been greater if the anti-dumping duties had not been imposed on it. To support that assertion, the applicant states simply that, at the time of the facts, it was engaged in acquiring a Romanian mill, which was both a technical and organisational investment. Moreover, account should be taken of the fact that it was constantly expanding the assortment of tube and pipe products it offered to its clients, especially after it began distributing for TMK. Accordingly, the applicant concludes that 'it may be argued that [its] profitability could have been higher, had the loss of profit been used for and invested in purposes described above'.

115 Apart from the fact that the applicant provides no detailed estimate of the additional loss of profit, the statements cited above, which are moreover unclear, are only vague assertions devoid of any argument or evidence which the applicant itself presents as pure conjecture. Thus in no way do they enable the Court or the defendants to identify with certainty and the requisite detail the nature and type of the damage pleaded, nor to establish its existence or assess its amount, if only approximately, nor even to determine the method which the applicant suggests should form the basis for its assessment. The mere statement, in paragraph 151 of the application,

that, 'the loss of earnings is to be calculated as the difference between what could have been earned but for the breach of law and the sum actually earned, including that earned from replacement activities' is inadequate in that regard, in view of the fact that the applicant adduces no concrete evidence which enables that proposition to be applied to this case.

116 In addition, the applicant does not adequately explain the reasons which could justify it in not quantifying, even approximately, the additional loss of profit. At the highest it states that 'it is not easy to establish precisely what the sums corresponding to the amount of duties paid could have been used for, if duties were not imposed' and that 'it is difficult to calculate certain elements of damage in accuracy'. Such assertions, without the least explanation, cannot, obviously, be regarded as a sufficient statement of the reasons for the total failure to quantify the additional loss of profit.

117 Likewise, if the applicant's argument were to be accepted, as set out in its observations on the pleas of inadmissibility, that its alternative claim does not seek compensation for additional loss of profit, but is only raised in the event that the Court does not award the specific sum required, either because the amount or the method of calculation of the loss of profit is disputed, or because of the particular difficulties which the Court could face when assessing the exact quantum of damages, that claim cannot be held to be admissible either.

118 If the applicant intends thereby to maintain that using the method set out in the main claim could, in reality, after correction of certain errors lead to a greater amount of compensation than that initially calculated, in that the duties paid are, definitively, of a greater amount than those mentioned in the application, as it

asserts in its observations on the pleas of inadmissibility, the alternative claim would amount, like the main claim, to a roundabout application for repayment of the duties. If the applicant itself envisages that its method of calculating the loss of profit is irrelevant and requests the Court to define another method to enable that loss of profit to be calculated, the claim for damages cannot then be restated as an application for repayment of duties, in view of the fact that such recasting of the main claim rests precisely on the analysis of that method of calculation. However, in the latter situation, it must be emphasised that it cannot be accepted that the Court should make good the inadequacies of the application on the sole ground that the applicant expressly asks it to do so.

119 Furthermore, even if the Court disregards the method of calculating the loss of profits suggested by the applicant, namely that by which the loss would equal the purely bookkeeping profits which it would have made if the anti-dumping duties had not been paid, it is impossible to determine with the requisite precision the nature of the damage which the applicant claims. Apart from the vague evidence relating to the investments which the applicant could allegedly have made if the anti-dumping duties had not been imposed, which have been held above not to satisfy the minimum requirements of Article 44(1)(c) of the Rules of Procedure, and which seem, furthermore, to relate only to separate damage exceeding the main claim, the applicant confines itself to describing that damage as loss of profit without explaining in what it consists. It is not for the Court to make a theoretically abstract ruling on the appropriate method of calculation to determine the loss of profit suffered by an undertaking in a situation such as the applicant's. It is for the applicant to particularise sufficiently the various elements of such a loss of profit.

120 That cannot be put in doubt by the fact that the Community Courts have, in certain cases, declared admissible actions for damages in which the exact amount of the loss was not particularised, by ruling on the liability of the Community in an interlocutory judgment and referring the assessment of the damages to the

agreement of the parties, or, in default, to a later judgment (see, to that effect, *Ireks-Arkady* v *Council and Commission*, paragraph 18; *Dumortier Frères and Others* v *Council and Commission*, paragraph 23; Joined Cases 256/80, 257/80, 265/80, 267/80, 5/81, 51/81 and 282/82 *Birra Wührer and Others* v *Council and Commission* [1984] ECR 3693, paragraph 35; and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 30).

121 In those cases, the damage pleaded was particularised in sufficient detail to enable the Court to identify its exact nature and to indicate the method to be followed by the parties to determine the amount of the compensation, which, for the reasons set forth above, cannot be the case here.

122 It follows from the foregoing that the alternative claim must be dismissed as inadmissible.

123 Therefore, the application must be dismissed as inadmissible in its entirety.

Costs

124 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 parties' pleadings. As the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the forms of order sought by the Council and by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicant, Sinara Handel GmbH, to bear the costs.

Luxembourg, 5 February 2007.

E. Coulon — Registrar

M. Jaeger — President