JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
19 September 2001 *

In Case T-58/99,

Mukand Ltd, established in Mumbai (India),

Isibars Ltd, established in Mumbai,

Ferro Alloys Corporation Ltd, established in Nagpur (India),

Viraj Impoexpo Ltd, established in Mumbai,

represented by K. Adamantopoulos, Lawyer, and J. Branton, Solicitor, with an address for service in Luxembourg,

applicants,

v

Council of the European Union, represented by S. Marquardt, acting as Agent, H.-J. Rabe and G. Berrisch, Lawyers,

defendant,

* Language of the case: English.

supported by

Commission of the European Communities, represented by V. Kreuschitz, acting as Agent, and N. Khan, Barrister, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of Council Regulation (EC) No 2450/98 of 13 November 1998 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed (OJ 1998 L 304, p. 1),

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

composed of: B. Vesterdorf, President, A. Potocki, J. Pirrung, M. Vilaras and N.J. Forwood, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2001,

gives the following

Judgment

Facts

1 The applicants produce and export to the Community stainless steel bright bars (hereinafter 'SSBBs').

2 On 26 September 1997, the Commission received a complaint from Eurofer, the European confederation of iron and steel industries, alleging that imports of SSBBs originating in India were benefiting from subsidies and were thus causing material injury to the Community industry. A notice of initiation of anti-subsidy proceedings concerning the imports was published in the *Official Journal of the European Communities* of 30 October 1997 (OJ 1997 C 328, p. 16).

3 By Decision 98/247/ECSC of 21 January 1998 relating to a proceeding pursuant to Article 65 of the ECSC Treaty (Case IV/35.814 — Alloy surcharge, OJ 1998 L 100, p. 55), the Commission found that several Community undertakings producing stainless steel flat products had been infringing Article 65(1) of the ECSC Treaty from December 1993 to between November 1996 and January 1998, depending on the case, by modifying and applying in concerted fashion the

reference values for the formula for calculating an alloy surcharge, which is a price supplement calculated by reference to the market price of alloy inputs used in the manufacturing process and added to the basic price for stainless steel.

4 During a hearing which took place in Brussels on 27 January 1998 pursuant to Article 11(5) of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1, hereinafter 'the Basic Regulation'), the second and fourth applicants argued, *inter alia*, that the practices condemned in Decision 98/247 were also prevalent in the Community SSBB market and that the effect of this on the Community SSBB market was so significant that it was impossible to assess the injury purportedly sustained by the Community industry in this market as a result of the allegedly subsidised imports. That view was developed in a memorandum of supplementary observations dated 6 February 1998.

5 On 3 February 1998, the second and fourth applicants submitted a complaint to the Commission pursuant to Article 3 of EEC Council Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, 1959-1962, p. 87), in which they also took issue with the alleged concerted practice of imposing an alloy surcharge engaged in by Community producers of SSBBs.

6 On 17 July 1998, the Commission adopted Regulation (EC) No 1556/98 imposing a provisional countervailing duty on imports of stainless steel bars originating in India (OJ 1998 L 202, p. 40, hereinafter 'the Provisional Regulation').

7 The representatives of some of the applicants presented argument on the subject of the Provisional Regulation at a hearing on 27 July 1998. Following that

hearing, the parties in question submitted supplementary observations by memorandum dated 14 August 1998.

8 By letter of 14 September 1998, sent pursuant to Article 15 of the Basic Regulation, the Commission provided the applicants with definitive disclosure of the essential facts and considerations on the basis of which it intended to propose the imposition of definitive countervailing duties. The applicants replied by letter and facsimile of 23 September 1998.

9 On 28 October 1998, in response to their complaint of 3 February 1998, the Directorate-General of Competition of the Commission (DG IV) sent the second and fourth applicants a letter pursuant to Article 6 of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition, 1963-1964, p. 47). By letter of 29 October 1998, the applicants in question sent a copy of that letter to the department of the Commission responsible for the anti-subsidy proceedings then pending.

10 On 13 November 1998, the Council adopted Regulation (EC) No 2450/98 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed (OJ 1998 L 304, p. 1, hereinafter 'the Contested Regulation').

11 By decision of 21 April 1999, the Commission rejected the second and fourth applicants' complaint of 3 February 1998 (Case IV/E-1/36.930), concluding that there was insufficient evidence that the imposition of the alloy surcharge by Community producers of SSBBs amounted to a concerted practice.

Procedure

12 By application lodged at the Registry of the Court of First Instance on 1 March 1999, the applicants brought the present action.

13 By order of the President of the Second Chamber, Extended Composition, of the Court of First Instance of 11 June 1999, the Commission was granted leave to intervene in support of the form of order sought by the Council. However, it has not filed pleadings.

14 The composition of the Chambers of the Court of First Instance changed at the beginning of the new judicial year and the Judge-Rapporteur was assigned to the First Chamber, Extended Composition, to which this case was itself accordingly assigned. Due to a further change in the composition of the Court on 15 December 1999, the case was assigned to a new Judge-Rapporteur of the same Chamber.

15 In light of the report of the Juge-Rapporteur, the Court, First Chamber, Extended Composition, decided to open the oral procedure and, by way of measures of organisation of procedure, called on the Council and the Commission to answer certain questions at the hearing.

16 The parties presented oral argument and replied to the questions put by the Court at the hearing on 15 May 2001. By facsimile received at the Registry of the Court of First Instance on 23 May 2001, the Council also provided the Court, at its request, with a written version of some of the answers given orally at the hearing.

Forms of order sought by the parties

17 The applicants claim that the Court should:

— declare, in accordance with Article 173 of the EC Treaty (now, after amendment, Article 230 EC) and Article 174 of the EC Treaty (now Article 231 EC) that the Contested Regulation is null and void;

— order the defendant to pay the costs;

— order the Commission, as intervener, to bear its own costs.

18 The Council contends that the Court should:

— dismiss the application;

— order the applicants to bear the costs.

Admissibility

19 Under Article 113 of its Rules of Procedure, the Court of First Instance may at any time, even of its own motion, consider whether there exists any absolute bar to proceeding with a case, such as, according to settled case-law, any bar in connection with the conditions for the admissibility of an action set out in the fourth paragraph of Article 173 of the Treaty (see, *inter alia*, Case C-313/90 *CIRFS and Others* v *Commission* [1993] I-1125, paragraph 23, and Joined Cases T-121/96 and T-151/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1355, paragraph 39).

20 Under the fourth paragraph of Article 173 of the Treaty, a natural or legal person may institute proceedings against an act of the Commission or of the Council only if it is a decision addressed to it, or a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to it.

21 It follows that the present action is admissible only in so far as it seeks annulment of the provisions of the Contested Regulation which directly and individually concern the applicants. That is true of the provisions which establish a definitive countervailing duty or collect definitively the provisional duty imposed on imports of SSBBs produced by the applicants and establish the rates of those duties. On the other hand, the applicants do not have *locus standi* to apply for annulment of the provisions of the Contested Regulation that concern other companies. To the extent that it seeks to do that, the present action must be dismissed as inadmissible.

Substance

22 The applicants put forward three pleas in law in support of their action. By their first plea, they allege infringement of Article 1(1), Article 8(1), (6) and (7) and Article 15(1) of the Basic Regulation and Articles 15 and 19 of the Agreement on Subsidies and Countervailing Measures concluded within the World Trade Organisation in the context of the Uruguay Round of Negotiations (OJ 1994 L 336, p. 156, hereinafter 'the ASCM'), and a manifest error of assessment, in that the Contested Regulation imposes a countervailing duty without there being any proper and substantiated finding that imports of the product in question have caused significant damage to Community undertakings producing similar products. By their second plea, the applicants allege infringement of an essential procedural requirement in relation to Article 10(9) of the Basic Regulation and Article 13(1) of the ASCM, in that no proposal was made to the Indian Government to enter into the consultations required by those provisions. By their third plea, the applicants allege infringement of Article 1(1), Article 2(1)(a)(ii) and Article 15(2) of the Basic Regulation and Article 1(1.1)(a)(1)(ii) and Article 19(3) of the ASCM, breach of the principle of proportionality as well as a manifest error of assessment of fact and a manifest error of procedure in that the Contested Regulation imposes countervailing duties of a disproportionate amount in connection with the Indian 'Passbook Scheme'.

The first plea alleging infringement of Article 1(1), Article 8(1), (6) and (7) and Article 15(1) of the Basic Regulation and Articles 15 and 19 of the ASCM and a manifest error of assessment

Arguments of the parties

23 The applicants argue that, in accordance with Article 1(1), Article 8(1), (6) and (7) and Article 15(1) of the Basic Regulation and Articles 15 and 19 of the

ASCM, countervailing duties may be imposed only if it has been concluded, through proper investigation, that the subsidised imports cause material injury to a Community industry. Any harm caused by other factors, in particular by anti-competitive conduct on the part of Community industry itself, must not be attributed to the imports in question.

24 The applicants refer to paragraph 16 of the judgment of the Court of Justice in Case C-358/89 *Extramet Industrie* v *Council* [1992] ECR I-3813 (hereinafter '*Extramet II*') and submit that, in the present case, the Community institutions similarly failed in their duty properly to assess what injury might have been caused. As a result, the institutions made a manifest error of assessment of both the injury caused and the question of causation.

25 In their pleadings, the applicants argue that Community producers of SSBBs engaged in the same anti-competitive practices as those imputed in Decision 98/247 to Community producers of flat products. They also argue, in the alternative, that, whether or not Community producers of SSBBs did engage in such practices, the practices of Community producers of flat products necessarily influenced the price of SSBBs. Whichever is the case, the Community institutions neglected to take these factors into account in their assessment of the injury.

26 The applicants explain, with particular reference to the evidence contained in their letter to the Commission of 6 February 1998 and in their complaint of 3 February 1998 and also in the letter of notification of 28 October 1998 sent pursuant to Article 6 of Regulation 99/63, that, throughout the period under consideration in the anti-subsidy investigation, Community producers of SSBBs systematically applied, in respect of their European sales, a surcharge system that was identical, *mutatis mutandis*, to the alloy surcharge system censured in

Decision 98/247, the surcharge applied to SSBBs simply being the product of multiplying the surcharge applicable to flat products by a 'yield factor' of 1.35. The fact that all Community producers of SSBBs uniformly applied that factor was confirmed by the Commission in the 36th recital in the preamble to its decision of 21 April 1999.

27 The applicants conclude that, from February 1994 onwards, SSBBs produced within the Community were also being sold at inflated prices. They emphasise that, according to the 49th recital in the preamble to Decision 98/247, following the imposition of the alloy surcharge, the price of stainless steel increased almost two-fold between January 1994 and March 1995. They also point out that the price of SSBBs changed in much the same way as did the price of flat products over the course of the years in question and maintain that such significant price distortion could not have been overlooked in the anti-subsidy proceedings, particularly in establishing price undercutting, the appropriate level of profitability in the Community industry and loss of market share.

28 At the hearing, the applicants withdrew their principal argument, summarised in paragraph 25 of the present judgment. They nevertheless insist that, for the purposes of assessing, in the anti-subsidy proceedings, the injury caused, it is immaterial whether Community producers of SSBBs themselves engaged in anti-competitive conduct, or whether they were simply affected by the anti-competitive activity of Community producers of flat products. In any event, the SSBB market was affected by this activity, given the automatic link created by application of the yield factor of 1.35. Thus, other than the worsening results of the Community industry, the Commission had no adequate, reliable information from which it could reach a firm view of any injury caused.

29 As regards causation, the applicants argue, similarly, that the adverse effects allegedly sustained by the Community industry are attributable not to imports of

SSBBs from India but to 'other factors', namely the conduct of producers of flat products and its effect on the price of SSBBs.

30 The Council maintains that, in the present case, it complied both with the conditions laid down in the Basic Regulation for establishing whether or not injury has been caused and with the procedural obligations which, in *Extramet II*, the Court inferred in relation to those conditions. According to the Council, the institutions properly considered and took into account the applicants' arguments, raised during the administrative procedure, concerning the alleged anti-competitive conduct of Community producers, and weighed the relevance of those arguments in the context of that procedure.

31 The Council submits that the only question that remains, therefore, is whether the institutions made a manifest error in their assessment of the established facts, which, it submits, they did not.

32 In this connection, the Council begins by pointing out that it took as the basis of its assessment of price undercutting in the case of Indian products the final sale price charged by the Community industry for SSBBs (see the 36th recital in the preamble to the Contested Regulation). The essential question was thus whether that final sale price — rather than any one component of it, such as the alloy surcharge — had been artificially increased, or whether it was the result of market forces, bearing in mind that, according to Decision 98/247 (see the 48th recital), the alloy surcharge accounted for no more than 25% of the final sale price of flat products. The Council found that the final sale prices charged by Community SSBB producers for sales of identical products to comparable customers in identical periods varied (see the 47th recital in the preamble to the Contested Regulation).

33 In response to the argument advanced by the applicants, the Council contends that the prices charged on the SSBB market could not be regarded as artificially high given that Community SSBB producers had not acted in concert to fix those prices. The application of the yield factor and the fixing of its level, as well as the fixing of the final price of SSBBs, was a matter of free choice for each SSBB producer and was not the inevitable result of decisions taken in concert by producers of flat products. The Council submits that these are distinct products which are not substitutable for SSBBs and that there are therefore no grounds for concluding that anti-competitive conduct of the part of producers of flat products had any effect on the prices charged on the market for SSBBs.

Findings of the Court

34 According to Article 1(1) of the Basic Regulation, a countervailing duty may be imposed for the purpose of offsetting any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Community causes injury.

35 Article 8 of the Basic Regulation provides:

'1. For the purposes of this regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Community industry....

...

6. It must be demonstrated, from all the relevant evidence..., that the subsidised imports are causing injury within the meaning of this regulation....

7. Known factors other than the subsidised imports which are injuring the Community industry at the same time shall also be examined to ensure that injury caused by these other factors is not attributed to the subsidised imports pursuant to paragraph 6. Factors which may be considered in this respect include... restrictive trade practices of... third country and Community producers....'

36 Under Article 15(1) of the Basic Regulation,

'[w]here the facts as finally established show the existence of countervailable subsidies and injury caused thereby, and the Community interest calls for intervention..., a definitive countervailing duty shall be imposed by the Council ...'.

37 Articles 15 and 19 of the ASCM, headed 'Determination of Injury' and 'Imposition and Collection of Countervailing Duties' respectively, contain substantially the same provisions as those cited in paragraphs 34 to 36 of the present judgment.

38 As regards the implementation of those provisions by the Community institutions, it must be remembered that the question whether a Community industry has suffered injury and, if so, whether that injury is attributable to dumped or

subsidised imports involves the assessment of complex economic matters in respect of which, according to settled case-law, the institutions enjoy a wide discretion. Consequently, judicial review of any such assessment must be confined to ascertaining whether the procedural rules have been complied with, whether the facts on which the contested decision is based have been accurately stated and whether there has been any manifest error of assessment of the facts or any misuse of powers (see, *inter alia*, Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraphs 76 and 86, Case C-174/87 *Ricoh* v *Council* [1992] ECR I-1335, paragraph 68, Case T-164/94 *Ferchimex* v *Council* [1995] ECR II-2681, paragraph 131, Case T-155/94 *Climax Paper Converters* v *Council* [1996] ECR II-873, paragraph 98, and Case T-51/96 *Miwon* v *Council* [2000] ECR I-1841, paragraph 94).

39 As regards, more specifically, review of compliance with the procedural rules, the Court of Justice held, in paragraph 16 of its judgment in *Extramet II*, a case involving dumping, that, in determining the injury, the Council and the Commission are under an obligation to consider whether the injury on which they intend to base their conclusions actually derives from dumped imports and must disregard any injury deriving from other factors, particularly from the conduct of Community producers themselves. In that case, having found nothing in the preamble to the regulation at issue to show that the institutions had actually considered whether the Community industry might itself have contributed, by its refusal to sell, to the damage sustained or that the institutions had established that the injury found did not derive from the factors mentioned by Extramet, the Court held that the Community institutions had not followed the proper procedure in establishing the injury (paragraph 19).

40 In the present case, however, it is clear from both the 66th recital in the preamble to the Provisional Regulation and from the 42nd to 49th recitals in the preamble to the Contested Regulation that the institutions did consider whether the Community industry might not itself have contributed, by its anti-competitive conduct, to the injury suffered, as the applicants alleged during the administrative procedure. So, as regards the procedural requirement laid down by the Court of Justice in *Extramet II*, the institutions did, formally at least, set about determining the injury in the proper way.

41 It nevertheless remains to be established whether the institutions made a manifest error of assessment in as much as, when deciding whether or not injury had been caused and whether or not there was any causal link between any such injury and the subsidised imports, they overlooked all factors other than the imports in question, including the matters which the applicants alleged were damaging the Community industry at the same time. It is for the applicants to adduce evidence to enable the Court of First Instance to find that such an error was made (see Case T-121/95 *EFMA* v *Council* [1997] ECR II-2391, paragraph 106, and Case T-210/95 *EFMA* v *Council* [1999] ECR II-3291, paragraph 58).

42 In this connection, the applicants have argued that SSBB prices had been artificially inflated either by concerted application of the alloy surcharge by SSBB producers themselves, this being the applicants' principal argument, abandoned at the hearing, or by concerted application by producers of flat products of the alloy surcharge in conjunction with uniform application by SSBB producers of the yield factor, this being the applicants' alternative argument, maintained at the hearing. SSBB prices could not, therefore, provide a reliable basis on which to establish price undercutting in respect of Indian products.

43 In the present proceedings the Council does not dispute the fact that, as a matter of practice in the Community iron and steel industry, SSBB prices are calculated by adding together a base price and an alloy surcharge calculated by multiplying the alloy surcharge applied by producers of flat products by a yield factor of 1.35. Moreover, in its decision of 21 April 1999, the Commission acknowledged that Community producers of SSBBs had been applying this factor of 1.35 for at least 10 years. It also emerged from information provided by the institutions at the hearing that the Commission discovered in the course of its investigations that producers of hot-rolled bars (a product falling within the scope of the ECSC Treaty and constituting the main input in the manufacture of SSBBs to the extent of making up approximately 85% of their final sale price) also calculated the alloy surcharge applicable to their own products by multiplying the alloy

surcharge for flat products by a factor of 1.2. The Council does not take issue with the transparency for buyers of this mechanism, especially in view of the mandatory publication of the price lists of ECSC producers and dealers.

44 Nevertheless, the institutions emphasise that they have no evidence that the implementation and application of this formula for calculating the alloy surcharge for SSBBs amounts to a concerted practice by SSBB producers. In its pleadings, the Council argues, more specifically, that each SSBB producer freely exercised its own discretion in fixing the level of, and applying, the yield factor and in fixing the final price of SSBBs, and was not constrained by decisions taken in concert by producers of flat products. Given that these are distinct, non-substitutable products, there are no grounds for concluding that anti-competitive conduct on the part of producers of flat products had any effect on the market prices of SSBBs.

45 This argument of the institutions cannot be accepted and it must be held that their assessment of the injury and of the causal link between the injury and the subsidised imports set out in the Contested Regulation is vitiated by a manifest error.

46 Indeed, in circumstances such as those of the present case, the simple fact that it could not be proved that the final sale prices of SSBBs were fixed by Community producers acting in concert does not mean that those prices were to be regarded as reliable and consistent with normal market conditions in the determination of the injury sustained by those producers as a result of subsidised Indian imports. On the contrary, given that changes in the price of flat products were closely mirrored by changes in the price of hot-rolled bars and SSBBs, because producers of hot-rolled bars and SSBBs uniformly and consistently applied to the alloy surcharge for flat products a yield factor of 1.2 and 1.35 respectively, the

institutions ought to have accepted that the anti-competitive conduct of producers of flat products could have had significant repercussions on SSBB prices, most likely increasing them artificially, even though SSBB prices themselves were not directly the subject of any unlawful concerted practice on the part of producers.

47 That is all the more true in a context in which the Commission found, in its decision of 21 April 1999, that 'flat products represent about 85% of the ECSC finished products, delivered by EU producers' and that, 'due to the importance of flat products, price developments in the stainless steel markets are very often driven by pricing decisions of flat products producers'.

48 Thus, by failing to take account of the uniform, consistent industrial practice of Community producers of SSBBs and hot-rolled bars, the objective effect of which was automatically to mirror, in the markets for those products, the artificial price increases achieved through concertation by producers of flat products, the institutions disregarded a known factor, other than the subsidised imports, which might have been a concurrent cause of the injury sustained by the Community industry.

49 That conclusion is not called into question by the points made by the Council and the Commission in their assessment of the extent and cause of the injury sustained by the Community iron and steel industry, which focused on the fall in final sale prices achieved by that industry from 1995 onwards (see the 75th recital in the preamble to the Provisional Regulation and the 53rd recital in the preamble to the Contested Regulation), that coincided with an increase in the volume of Indian imports.

50 Indeed, according to the Commission's own observations (see the 75th recital in the preamble to the Provisional Regulation), the average sale prices of SSBBs achieved on the Community market between 1994 and 1997, expressed as an index, were as follows:

1994 = 100

1995 = 134

1996 = 126

1.7.96 to 30.6.97 = 106

51 It must be admitted that that price change pattern is, on first sight, consistent with the applicants' contention that the 1995 price increase was, to some degree at least, artificial, in as much as it was brought about by the agreement on the amount of alloy surcharge applied to flat products, that surcharge also being applied, either as a matter of industry practice or as a result of unlawful concertation, multiplied by the yield factor of 1.35, to SSBBs. The pattern is also consistent with the applicants' contention that the subsequent reduction in prices, particularly towards the end of 1996 and in early 1997, was due, at least in part, to the fact that, following action by the Commission, the agreed method of calculating the alloy surcharge for flat products was gradually abandoned. On this last point, it should be noted that, according to the 68th and 70th recitals in the preamble to Decision 98/247, whilst the statement of objections in that case was sent to the undertakings concerned at the end of 1995, it was not until late 1996 that the first of the addressees of the decision, Avesta Sheffield AB, abandoned the agreed formula for calculating the alloy surcharge.

52 Moreover, contrary to the Council's submission, the incontrovertible fact that one component of the final sale price of SSBBs (namely the amount of alloy surcharge applied to flat products, before application of the yield factor of 1.35) was artificially increased as a result of unlawful concerted practices on the part of producers of flat products was bound to affect the final sale prices of SSBBs, rendering them unreliable.

53 First of all, in a market where it is industry practice to calculate the final sale price of a product by adding together a number of distinct items, it is clear that external factors affecting the amount of one or other of those items will, in the absence of exceptional circumstances, necessarily have an effect on the final sales price. That effect is likely to be even more marked in a market such as the market in SSBBs, where the prices of the principal manufacturing input, which represented approximately 85% of their final sale price (see paragraph 43 of the present judgment), will also have been affected by the same external factors and where the mechanism determining the prices of that input is transparent and understood by purchasers and vendors alike, in particular, by virtue of ECSC price lists.

54 Secondly, the Council's reasoning stands in contradiction to the Commission's own finding in Decision 98/247. There, the Commission found that the concerted amendment of the reference values for the formula for calculating the alloy surcharge applicable to flat products, whilst not being the sole cause of the near doubling of prices of stainless steel flat products between January 1994 and March 1995, had nevertheless 'greatly contributed to it through the mechanical price increase that it caused' (see the 49th recital). Admittedly, according to the explanations proffered by the institutions at the hearing, the alloy surcharge represents at most 15% of the final sale price of SSBBs, whereas, according to the 48th recital in the preamble to Decision 98/247, it can represent up to 25% of the final sale price of flat products. It is also true that, between 1994 and 1995, SSBB prices did not double, but merely increased by some 34% (see paragraph 50 of the present judgment). Be that as it may, those discrepancies do not mean that the institutions were justified in dismissing out of hand the possibility of an effect

being wrought in the SSBB market similar to that found in the market for flat products.

55 In response to observations made by the applicants in the course of the administrative procedure, the Council also noted, in the 47th recital in the preamble to the Contested Regulation, that the prices charged by Community producers of SSBBs for sales of identical products to comparable customers in the same periods had been found to vary, resulting in different levels of profitability for the Community industry. Nevertheless, quite irrespective of the fact that no indication has been given of the amount by which those prices varied, although the Council states in its defence that the prices charged for SSBBs by Community producers 'usually do not diverge significantly', the fact that the final sale prices of SSBBs could vary, to an unspecified degree, is not sufficient, for the reasons already set out, to rule out the possibility that the unlawful concertation between producers of flat products on the formula for calculating the alloy surcharge also led to an artificial, though variable, increase in those prices, so that the fall in those prices after 1995 could not be regarded as a reliable indicator for the purpose of establishing what injury was sustained by the Community industry. The decisive question in this regard is whether the unlawful concertation in the flat products market caused an increase in the overall level of SSBB prices, and not whether that increase was the same for all Community producers.

56 In view of the foregoing, the Court finds that the argument which the applicants put forward in the alternative is well founded.

57 Consequently, the first plea put forward as a ground of annulment of the Contested Regulation alleging infringement of Article 1(1), Article 8(1), (6) and (7) and Article 15(1) of the Basic Regulation and Articles 15 and 19 of the ASCM and a manifest error of assessment, must be upheld, and the Contested Regulation, in so far as it concerns products made by the applicants and imported into the European Community, must be annulled, without it being necessary to consider the other pleas in law submitted.

Costs

58 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, as applied for by the applicants. The Commission shall, however, bear its own costs pursuant to Article 87(4) of those Rules of Procedure, which provides that institutions which intervene in proceedings are to bear their own costs.

On those grounds,

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

hereby:

1. **Annuls Council Regulation (EC) No 2450/98 of 13 November 1998 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed, in so far as it concerns imports into the European Community of products manufactured by Mukand Ltd, Isibars Ltd, Ferro Alloys Corporation Ltd and Viraj Impoexpo Ltd;**

2. **The remainder of the application is dismissed as inadmissible;**

3. **The Council shall bear its own costs together with those incurred by the applicants. The Commission shall bear its own costs.**

Vesterdorf Potocki Pirrung

Vilaras Forwood

Delivered in open court in Luxembourg on 19 September 2001.

H. Jung

Registrar

B. Vesterdorf

President