JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
12 September 2002 *

In Case T-113/00,

DuPont Teijin Films Luxembourg SA, established in Luxembourg (Luxembourg),

Mitsubishi Polyester Film GmbH, established in Wiesbaden (Germany),

Toray Plastics Europe SA, established in Saint-Maurice-de-Beynost (France),

represented by I. Forrester QC and J. Killick, Barrister, with an address for service in Luxembourg,

applicants,

v

Commission of the European Communities, represented by C. Bury and R. Vidal, acting as Agents,

defendant,

* Language of the case: English.

APPLICATION for annulment of the Commission's decision of 28 February 2000 which rejected the applicants' request for the opening of an investigation with a view to withdrawal of the benefit of the general tariff preference system in respect of polyethylene terephthalate film originating in India,

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

composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 11 December 2001,

gives the following

Judgment

The relevant provisions

1 The European Community system of generalised tariff preferences ('GSP') operates over 10-year periods. The current period was established by Council

Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalised tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries (OJ 1994 L 348, p. 1). In accordance with the scheme established by that regulation, the products listed in Annex I originating in the countries mentioned in Annex III may be admitted to the preferential arrangements. Regulation No 3281/94 was replaced by Council Regulation (EC) No 2820/98 of 21 December 1998 applying a multi-annual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001 (OJ 1998 L 357, p. 1, 'the GSP regulation').

The provisions of the GSP Regulation

2 Title III of the GSP Regulation regulates the 'reintroduction of common customs tariff duties and related procedures'. Articles 22 to 26 cover the temporary withdrawal of the preferential arrangements and Article 27 contains a clause relating to the grant of preferential arrangements to products which are subject to anti-dumping or anti-subsidy measures.

3 Article 22(1) of the GSP Regulation provides that the scheme established by that regulation may at any time be temporarily withdrawn, in whole or in part, in the following circumstances:

'(a) practice of any form of slavery or forced labour as defined in the Geneva Conventions of 25 September 1926 and 7 September 1956 and International Labour Organisation Conventions No 29 and No 105;

(b) export of goods made by prison labour;

(c) manifest shortcomings in customs controls on export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on money-laundering;

(d) fraud or failure to provide administrative cooperation as required for the verification of certificates of origin form A;

(e) in manifest cases of unfair trading practices on the part of a beneficiary country. The withdrawal shall be in full compliance with the WTO rules;

(f) manifest cases of infringement of the objectives of international conventions such as NAFO, NEAFC, ICCAT and NASCO concerning the conservation and management of fishery resources'.

Temporary withdrawal of the arrangements is not automatic but follows the procedural requirements laid down in Articles 23 to 26 of the GSP Regulation.

4 Article 23(1) of that regulation provides:

'The circumstances referred to in Article 22(1) which might make it necessary to resort to temporary withdrawal of preferences may, as regards subparagraphs (d) and (f), be identified by the Commission and, as regards subparagraphs (a) to (f) be brought to the Commission's attention by a Member State, or by any natural or legal person, or association not endowed with legal personality, which can show an interest in such withdrawal. The Commission shall communicate the information immediately to all Member States.'

5 Pursuant to Article 23(2) to (4) of the GSP Regulation, consultations taking place within the Generalised Preferences Committee may be initiated at the request of a Member State or of the Commission with a view, *inter alia*, to analysing the circumstances referred to in Article 22 and the measures to be taken. Such consultations are to take place within eight working days of receipt by the Commission of the information referred to in Article 23(1) and, in any event, before adoption of any Community measures withdrawing preferences.

6 Article 25(1) of the GSP regulation provides that where the Commission finds, following the abovementioned consultations, that there is sufficient evidence to justify initiation of an investigation, it is to publish a notice in the *Official Journal of the European Communities* and commence the investigation, lasting up to one year, in cooperation with the Member States and in consultation with the Generalised Preferences Committee. During the investigation, the Commission is to seek all the information it deems necessary and may dispatch its own experts 'to establish on the spot the truth of the allegations made by the persons referred to in Article 23(1)' (Article 25(2) of the GSP Regulation). It is to 'provide the competent authorities of the beneficiary country concerned with every opportunity to cooperate as necessary in the conduct of these enquiries' (idem). According to Article 25(4), the interested parties must be heard if they have,

within the period prescribed in the abovementioned notice, made a written request for a hearing 'showing that they are likely to be affected by the result of the investigation and that there are particular reasons why they should be heard orally'.

7 When the investigation is complete, the Commission is to report the findings to the Generalised Preferences Committee (Article 26(1) of the GSP Regulation). If it considers temporary withdrawal of preference to be necessary, it is to submit an 'appropriate proposal' to the Council, which must decide upon it by qualified majority within 30 days (Article 26(3) of the GSP Regulation).

8 Article 27 of the GSP Regulation is worded as follows:

'Preferences shall normally be granted to products which are subject to anti-dumping or anti-subsidy measures under [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)] and [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)], unless it can be shown that those measures were based on injury caused and on prices which did not reflect the preferential tariff arrangements granted to the country concerned. To that end, the Commission shall publish in the *Official Journal of the European Communities* a list of products and countries to which preference is not granted.'

Background to the dispute

9 The applicants are the three largest producers of polyethylene terephthalate film ('PET film') in Europe. The product is a sophisticated plastic material used in a

wide range of applications such as high-technology ultra-thin film used in capacitators (for electronics) and commodity grade film used in packaging materials. Its manufacture requires expensive production lines and is therefore a capital-intensive business.

10 Imports of PET film classified under customs codes CN 3920 6219 and CN 3920 6290 from India enjoy preferential arrangements. Those products are listed in Annex I to Regulation No 3281/94 and the Republic of India is one of the countries mentioned in Annex III to that regulation.

11 In 1998 the Community producers of PET film experienced difficulties as a result, primarily, of a substantial increase in the volume of imports from India, the fall in prices and the severe undercutting of prices caused by those imports. By letter of 17 September 1998 certain Community manufacturers of PET film, including the applicants and the company Nuroll SpA, requested the Commission to open an investigation with a view to considering whether the preferential arrangements ought to be withdrawn in respect of PET film. That letter was worded as follows:

'We are writing to invite the Commission to withdraw the GSP preferences currently granted to Indian producers [of PET film] pursuant to Regulation No 3281/94. These producers have received and continue to receive export subsidies which constitute a manifest case of unfair trading practices being practised by the beneficiary country, with the result that, pursuant to Article 9 of Regulation 3281/94, consideration should be given to withdrawing the benefits accorded.'

12 In that letter the applicants pointed out that the practice of granting subsidies was endemic in India and they produced various items of evidence in that regard,

including a commercial advertisement using the existence of the subsidies as a marketing tool, together with other documents emanating from Indian manufacturers. In addition, they supplied information concerning the subsidy schemes, which appeared on the internet sites of the Indian Ministry of Industry and of a government agency.

13 In that letter, the applicants also stated that the undercutting of Community products by the inflow of PET film from India had caused them injury and claimed that, in those circumstances, the Republic of India ought not to continue to benefit from the GSP arrangements. They pointed out that the six principal exporters in India had benefited from subsidies in contravention of the General Agreement on Tariffs and Trade (GATT) 1994 and of Regulation No 2026/97. They concluded in the following terms:

'To continue to allow these producers, which (as a result of the subsidies) are now aggressively competitive in the European market, to benefit from the GSP scheme flies in the face of economic logic; it would be absurd for the Community to continue to grant additional GSP benefits to subsidised Indian importers [sic] which are busy causing serious injury to Community producers of PET film through their strategy of systematic undercutting those Community producers in order to meet the export targets on which the subsidies are conditional.

For these reasons we would urge you to commence the procedure to initiate an investigation to remove Indian PET film producers' GSP benefits.'

14 On 5 October 1999 the applicants had a meeting with Commission staff in which they set out their complaints. At the meeting, the Commission informed them that it could not take a position on their complaint of 17 September 1998 until the existence of subsidies had been conclusively established by a regulation imposing a definitive countervailing duty.

15 Following a complaint lodged by the Community industry, including the applicants, pursuant to Regulation No 2026/97, an anti-subsidy procedure was initiated, relating to imports into the Community of PET film originating in India. On 17 August 1999 the Commission adopted Regulation (EC) No 1810/1999 imposing a provisional countervailing duty on imports of PET film originating in India (OJ 1999 L 219, p. 14), and on 6 December 1999 the Council adopted Regulation (EC) No 2597/1999 imposing a definitive countervailing duty on imports of PET film originating in India and collecting definitively the provisional duty imposed (OJ 1999 L 316, p. 1).

16 By letter of 28 February 2000 the Commission rejected the complaint lodged by the applicants on 17 September 1998 (see paragraphs 11 to 13 above), in the following terms:

'On 17 September 1998 a complaint was lodged under Article 9, paragraph 1, subparagraph (e) of Regulation (EC) No 3281/94, which sought a withdrawal of benefits under the Generalised System of Preferences (GSP) for imports of PET film from India. In the meantime, the aforementioned regulation was replaced by Regulation (EC) No 2820/98, Article 22 of which gives a similar basis for your complaint.

After consideration of all legal aspects, it has been concluded that this complaint is not admissible. Specifically, letter (e) of Article 22 referred to in the complaint does not cover imports on which are imposed anti-dumping or anti-subsidies duties, which are expressly treated by Article 27 (Article 13 of Regulation No 3281/94).

Article 27 exhaustively settles the circumstances under which the benefit of the GSP can be withdrawn for imports on which anti-dumping or anti-subsidies

duties are imposed. It is *lex specialis* with respect to Article 22 and rules out the latter's application when the "unfair trade practice" consists in measures that have been the subject of anti-dumping or anti-subsidies duties. Specifically, if Article 22 was applicable to the same practices as Article 27, then the latter would be without purpose.

According to the principle set out in Article 27, the benefit of GSP should normally be maintained unless the calculation of anti-dumping and anti-subsidies duties has not taken account of the preferential treatment. This was not the case for the imports of PET film from India. Therefore what is stated as a rule in Article 27 should be followed, that is to say that the GSP benefits should be maintained for the imports in question.'

17 It is that letter ('the letter of 28 February 2000' or 'the contested decision') that is contested in the present case.

Procedure and forms of order sought

18 By application lodged at the Registry of the Court of First Instance on 2 May 2000 the applicants brought the present action for annulment of the decision contained in the letter of 28 February 2000.

19 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure and to put questions to the Commission to be answered at the hearing, seeking to ascertain whether the information contained in the applicants' letter of 17 September 1998 had been

communicated to the Member States in accordance with Article 23(1) of the GSP Regulation or Article 10(1) of Regulation No 3281/94 and, if so, whether any Member State had requested the initiation of consultations as provided for in Article 23(2) or Article 10(2) of those regulations respectively.

20 The parties presented oral argument and answered the questions put by the Court at the hearing on 11 December 2001.

21 In answer to the questions put by the Court, the Commission told the Court at the hearing that the information supplied to it by the applicants had been communicated to the Member States by letter of 10 October 1998, that it had then initiated the consultations provided for by Article 10(2) of Regulation No 3281/94 which was then applicable (to which Article 23(2) of the GSP Regulation corresponds), and that those consultations had taken place in the Committee for Management of Generalised Preferences (see Articles 17 of Regulation No 3281/94 and 31 of the GSP Regulation) on 10 November 1998.

22 The applicants claim that the Court should:

— annul the Commission's decision contained in the letter of 28 February 2000;

— order the Commission to pay the costs.

23 The Commission contends that the Court should:

— dismiss the action as inadmissible or, in any event, as unfounded;

— order the applicants to pay the costs.

Admissibility

24 The Commission objects that the action is inadmissible on two grounds, namely, that there is no challengeable decision and that the applicants do not have a sufficient legal interest to institute proceedings.

The Commission's arguments

25 The first ground of inadmissibility relies on three arguments.

26 In the first place, the Commission maintains that the applicants are not entitled to request it to withdraw the benefit of the preferential arrangements or to open an investigation under the GSP Regulation, with the result that the letter of 28 February 2000 cannot have any legal effect upon their position.

27 In its view, the letter contains no decision capable of being challenged under the fourth paragraph of Article 230 EC. It is settled case-law that only a measure which produces binding legal effects such as to affect the interests of an applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under that provision.

28 According to the Commission, the letter cannot be regarded as a challengeable decision because the GSP Regulation does not give the applicants the right to request the initiation of a procedure for withdrawal of the benefit of the preferential arrangements, but merely the opportunity of bringing information to the Commission's attention for the purposes of such a procedure. It states that it was not because the applicants were not entitled to submit documents that it rejected those which they produced, but because the countervailing duties had already taken the preferential treatment into account. The Commission submits that it could not, in accordance with the GSP Regulation, open an investigation that might have led to withdrawal of the tariff preferences.

29 It maintains that a decision to withdraw the benefit of preferential arrangements from a beneficiary country is not taken for the purpose of protecting the financial interests of the interested parties, such as the applicants, those interests being safeguarded by other measures of Community trade policy. A decision to withdraw preferential treatment is essentially political in nature.

30 The right of interested parties to submit evidence to the Commission and to make their views known in the course of a procedure capable of leading to withdrawal of preferential arrangements is limited and cannot be assimilated to the rights of a 'complainant'. According to the Commission, the requirement under Article 23(1) of the GSP Regulation to prove an interest is intended to ensure that the Commission is not faced with an indiscriminate and undetermined number of individuals and associations who are entitled to submit information. The Commission compares the provisions of the GSP Regulation with other

instruments of commercial policy under which a right of action for complainants has been recognised. In that regard, it refers to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation ('WTO') (OJ 1994 L 349, p. 71), and Regulations Nos 384/96 and 2026/97.

31 The Commission also disputes the analogy drawn by the applicants between the rights of complainants in competition law matters and those of interested parties under Article 23 of the GSP Regulation. It observes that Article 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) refers to an 'application', whereas the GSP Regulation simply refers to interested parties being able to 'bring evidence' to the Commission's attention.

32 The Commission submits that the fact that the GSP Regulation contains no substantive or procedural provisions regulating the submission of complaints by interested parties clearly shows that the Community legislature did not intend to grant those parties the right to request the opening of an investigation. In its view, the situation of such parties is closer to that of 'users and consumers' within the meaning of Regulation No 384/96, who enjoy certain procedural rights to submit information but are not entitled to challenge the measures adopted by the Commission at the end of an anti-dumping investigation.

33 In the second place, the Commission argues that the GSP Regulation confers on the Community institutions a broad discretion, both in deciding to grant special arrangements and in deciding to withdraw preferential treatment where they consider such action necessary, as is clearly demonstrated by, in particular, the wording of Articles 22, 24 and 25 of that regulation. The applicants cannot require the Commission to adopt a particular course of action and are not directly and individually concerned by its decision or by that of the Council.

34 The Commission adds that the terms in which those articles are couched, together with the political nature of the final decision which requires a careful weighing up of the interests of the Community, confirm that a decision to initiate a procedure and to withdraw the benefit of the preferential arrangements is one which involves the relationship between the Community and the beneficiary non-member country and that any impact on traders is, at most, indirect. The Commission refers, by way of analogy, to a decision taken under Article 226 EC concerning the institution of infringement proceedings. Complainants are not entitled to request the Commission to adopt any specific position. They are merely informed by letter of the Commission's decision, since that decision concerns only the relationship between the Commission and the Member State in question.

35 In the third place, the Commission maintains that the letter of 28 February 2000 cannot be regarded as a 'decision', because it was signed by an official to whom decision-making power had not been delegated pursuant to the Commission's Rules of Procedure, so as to authorise that official to adopt a decision in the name of the College of Commissioners or of the competent Member of the Commission. In support of that argument it refers to the order of the Court of Justice in Case C-25/92 *Miethke* v *Parliament* [1993] ECR I-473, paragraph 10, and the judgment of the Court of First Instance in Case T-277/94 *AITEC* v *Commission* [1996] ECR II-351, paragraph 50. It submits that the letter of 28 February 2000 was of a purely informative nature and cannot therefore be qualified as a 'decision' rejecting a 'complaint'.

36 As regards its second ground of objection, the Commission argues that applicants must demonstrate that they have a legal interest in obtaining the relief sought in the action. In that connection, it refers to the judgment of the Court of Justice in Case 88/76 *Exportation des Sucres* v *Commission* [1977] ECR 709, paragraph 19. It argues that, since the letter of 28 February 2000 is purely informative, its annulment would serve no purpose. The applicants have no interest in seeking the relief claimed, as their legal position cannot be affected by annulment of that letter.

The applicants' arguments

37 The applicants contend that this action is admissible. The letter of 28 February 2000 in which the Commission refused to examine their complaint of 17 September 1998 did affect their legal position. They state that they were competing against Indian exporters who benefited from the system established by the GSP Regulation and that in their complaint they had given a detailed account of manifest cases of unfair trading practices. The Commission rejected their complaint as inadmissible without inquiring into its merits and in disregard of the specific provisions of the GSP Regulation, in particular Article 23 thereof which confers on interested parties the right to bring to the Commission's attention circumstances which might warrant the withdrawal of preferential arrangements. They maintain that they are in the position of a complainant, relying in particular on the fact that Article 23 requires interested parties to 'show an interest in such withdrawal'. They dispute the Commission's argument that that provision serves to ensure that it is not faced with an indiscriminate and unconsidered number of individuals or associations who are entitled to submit information to it pursuant to the GSP Regulation. The applicants accept that the Commission enjoys a broad discretion in deciding to reject their complaint after examining all the evidence adduced, but maintain that a decision by the Commission refusing to examine that evidence on the ground that the complaint is inadmissible is a very different matter. They submit that the Commission's decision contained in the letter of 28 February 2000 refusing, for legal reasons, to examine their complaint is mistaken and clearly capable of being challenged by means of an action for annulment as it is vitiated by an error of law.

38 In that regard, the applicants consider that the distinction drawn by the Commission between the right of interested parties to 'bring evidence to the attention of the Commission' and the right to 'request [it to] withdraw the benefits of the GSP' is artificial, illogical and contrary to the Commission's previous practice in the GSP field. They maintain that bringing evidence to the Commission's attention, indicating that the preferential arrangements must be temporarily withdrawn, necessarily implies a request that those arrangements be withdrawn. In their submission, if, as the Commission acknowledges, an interested party is entitled to challenge a decision refusing to recognise its right to submit evidence, then that party must of necessity be able to challenge a refusal by the Commission actually to consider the evidence communicated to it.

39 The applicants observe that, in the only regulation withdrawing preferential arrangements, namely, Council Regulation (EC) No 552/97 of 24 March 1997 temporarily withdrawing access to generalised tariff preferences from the Union of Myanmar (OJ 1997 L 85, p. 8), the information brought to the Commission's attention by the interested party was described as a 'complaint'.

40 The applicants reject as irrelevant the comparisons which the Commission makes between the GSP arrangements and Regulations Nos 3286/94 and 2026/97. Under those regulations, the Commission has only a limited discretion as whether to open a procedure and is subject to strict procedural time-limits. By contrast, under the GSP Regulation the Commission has a wide discretion and is not subject to strict time-limits. There is not therefore any need for the same formality in the GSP Regulation, in respect of either procedural rules or the identity of the complainant and the subject-matter of the complaint. The applicants also contest the comparison made by the Commission between the rights of an interested party in an anti-dumping case and the rights of a complainant under the GSP regulation. They observe that the information submitted by users and consumers is only one of the factors involved in deciding where the Community interest lies. The position of the applicants, who submitted a detailed complaint and supporting evidence, is more akin to that of a complainant under the anti-dumping regulation than to that of a user or consumer. Lastly, they dispute the relevance of the analogy made with Article 226 EC.

41 The applicants observe that, if analogy is needed, it is with the rights of a complainant in the sphere of competition law that a comparison may appropriately be made. Under Article 3(1) of Regulation No 17, the Commission may, but need not, take a decision requiring an infringement of the competition rules to be brought to an end. Nevertheless, it is obliged to take complaints under that regulation seriously. In support of that argument, the applicants cite Case 125/78 *GEMA* v *Commission* [1979] ECR 3173, Case 210/81 *Demo-Studio Schmidt* v *Commission* [1983] ECR 3045, and Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223.

42 The applicants recognise that the Community institutions enjoy a broad discretion in the GSP field when it comes to deciding whether or not to withdraw preferential treatment. However, that discretion must be exercised in accordance with the applicable law and cannot be so wide as to preclude review by the Community judicature of an error of law. In that regard they refer to the judgment of the Court of Justice in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 23.

43 According to the applicants, the Commission's argument that no formal letter was signed by an official authorised to act on behalf of the Commission is founded on a misinterpretation of the GSP Regulation, namely, the proposition that the applicants do not have the status of complainants and that a formal decision is not therefore necessary. They add that the fact that the contested decision was not signed by a Member of the Commission is immaterial, given that it accurately informed them of the Commission's position. In support of their arguments they refer to the order of the Court of First Instance in Case T-84/97 *BEUC* v *Commission* [1998] ECR II-795, paragraph 48.

44 Finally, with regard to their legal interest in bringing proceedings, the applicants observe that, if the decision contained in the letter of 28 February 2000 were to be annulled, the Commission would have to examine the merits of the complaint lodged on 17 September 1998 and decide whether it would be appropriate to open a procedure with a view to possible withdrawal of preferential arrangements from the Republic of India. That would have significant effects for Community producers who are in direct competition with Indian producers benefiting from the preferential arrangements. It follows that the applicants' legal position is capable of being affected by annulment of the decision in question.

Findings of the Court

45 The Commission's argument that its letter of 28 February 2000 is not a 'decision', because it was signed by an official and was not a formal act

authorised by the College of Commissioners, must be rejected. It is settled case-law that the form in which acts or decisions are cast is, in principle, immaterial as regards the question whether they are open to challenge by means of an action for annulment. It is necessary to look to their substance in order to ascertain whether they constitute acts within the meaning of Article 230 EC (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9, and *BEUC* v *Commission*, cited above, paragraph 48).

46 In substance, the Commission asserts that the present action is inadmissible because its letter of 28 February 2000 is not a challengeable decision for the purposes of Article 230 EC inasmuch as the applicants, although entitled to bring information to the Commission's attention under Article 23(1) of the GSP Regulation, have no right to request it to withdraw the benefit of the preferential arrangements from a beneficiary country or to open an investigation for that purpose. In its view, the contested decision was therefore of a purely informative nature and had no binding legal effects capable of affecting the applicants' interests.

47 It has consistently been held that only a measure the legal effects of which are binding on and capable of affecting the interests of an applicant by bringing about a distinct change in his legal position is an act or decision against which an action for annulment may be brought under Article 230 EC. More specifically, in the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, an act is open to review only if it is a measure definitively laying down the position of the institution on the conclusion of that procedure, and not a provisional measure intended to pave the way for the final decision (*IBM* v *Commission*, cited above, paragraphs 8 to 10, and Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraph 42).

48 Article 23(1) of the GSP Regulation extends to the Member States and certain third parties the possibility of drawing to the Commission's attention the existence of circumstances which might make it necessary to resort to temporary withdrawal of preferences. Those circumstances are listed in Article 22(1) of that regulation. However, as regards third parties, that opportunity is not extended to

the public in general but to 'any natural or legal person, or association not endowed with legal personality, which can show an interest' in such a measure.

49 It must also be observed that Article 23(1) of the GSP Regulation obliges the Commission to communicate immediately to all the Member States the information it receives. The purpose of that obligation is clearly to enable the Member States to determine, in the light of that information, whether they should request the initiation of consultations under Article 23(2) to (4) of that regulation.

50 It follows that, even though the Commission does enjoy broad discretion in evaluating the information submitted to it and in deciding whether to initiate consultations, it is not wholly without obligations as regards the answer to be given to third persons who have communicated information to it pursuant to Article 23(1) of the GSP Regulation. Once such a person has demonstrated his interest in the temporary withdrawal of preferential arrangements and shown that the information relates to one of the cases set out in Article 22(1) of the GSP Regulation, the Commission is obliged to communicate the information to all the Member States so as to permit them, if they so wish, to request the initiation of consultations.

51 A third party demonstrating an interest in a temporary withdrawal measure is, accordingly, entitled to expect that the Commission will examine the information supplied to it in order to ascertain whether that information falls within one of the abovementioned cases and, if it does, that the Commission will forward it to the Member States. The right thus created by Article 23(1) of the GSP Regulation in favour of third parties showing such an interest, however limited it may be, would clearly be denied if, for example, the Commission were to refuse to examine the information or to refrain, negligently or unlawfully, from communicating it to the Member States, thereby preventing any of them from requesting the initiation of consultations.

52 It should be noted that in the contested decision the Commission described the applicants' letter of 17 September 1998 as a complaint and acknowledged that it had a statutory basis in Article 9(1) of Regulation No 3281/94 and Article 22 of the GSP Regulation. The Commission then expressly rejected that complaint as inadmissible, before setting forth its interpretation of Articles 22 and 27 of the GSP Regulation as the justification for that finding of inadmissibility. The contested decision does not suggest that the information supplied by the applicants did not relate to one of the cases referred to in Article 22(1), or cast doubt on their having shown an interest in the withdrawal of preferential arrangements for PET film originating in India. Furthermore, the decision makes no mention of the information having been communicated to the Member States or of any further step having been taken pursuant to Article 23 of the GSP Regulation.

53 In those circumstances, by its letter of 28 February 2000 the Commission clearly gave the applicants to understand that, on the basis of its interpretation of Articles 22 and 27 of the GSP Regulation, it considered itself to be under no obligation to examine the information communicated to it or to take, on foot of that information, any steps either to forward the information to the Member States or to initiate consultations pursuant to Article 23(1) or (2) of the GSP Regulation.

54 It follows that the letter of 28 February 2000 can be read only as giving the Commission's definitive reply to the information received by it pursuant to Article 23 of the GSP Regulation and as bringing to a close, in its first stage, a procedure which might otherwise have led to the initiation of consultations in the Generalised Preferences Committee referred to in Articles 23(3) and 31 of the GSP Regulation and, consequently, to the investigation requested by the applicants.

55 It follows from the foregoing that, having regard to its terms and to the circumstances in which it was written, the letter of 28 February 2000 had legal effects capable of affecting the applicants' interests since, by that letter, the Commission definitively rejected, without examination, the information submitted by the applicants, thus altering their legal position as persons with an interest in the temporary withdrawal of preferential arrangements who had

brought to the attention of that institution a case of the kind referred to in Article 22(1)(e) of the GSP Regulation.

56 The action is therefore admissible.

Substance

57 The applicants put forward two pleas in law in support of their claim, alleging an error of law in the interpretation of Articles 22 and 27 of the GSP Regulation and infringement of the duty to state reasons imposed by Article 253 EC.

58 Since the purpose of the duty under Article 253 EC to state the reasons for a decision of a Community institution is to enable the persons concerned to ascertain the reasons for the measure in order to protect their rights and to enable the Community judicature to exercise its power of review (Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231, paragraph 53), it is appropriate to consider the second plea first. If that plea were to prove to be well founded, the Court would not be in a position to review the substance of the contested decision.

The second plea: lack of reasoning

Arguments of the parties

59 The applicants maintain that the Commission failed to supply adequate reasons for rejecting the complaint, having regard more particularly to the nature of the

detailed evidence put before it. They argue that the failure to give adequate reasons amounts to infringement of an essential procedural requirement within the meaning of Article 230 EC.

60 The Commission contends that the letter of 28 February 2000 explained that the alleged practices did not come within the scope of Article 22(1)(e) of the GSP Regulation, so that there was no need to address the arguments and evidence concerning those practices submitted by the applicants. In any event, according to the Commission, that letter contained a sufficiently clear and complete statement of the reasons for which Article 22(1)(e) of that regulation was not applicable. That is confirmed by the fact that the applicants correctly anticipated, in the application, the position explained in greater detail by the Commission in its defence.

Findings of the Court

61 As has already been pointed out in paragraph 52, above, the letter of 28 February 2000 contains an express declaration by the Commission that it regarded the complaint as inadmissible because of its interpretation of Articles 22 and 27 of the GSP Regulation. As the applicants' written pleadings in the present case amply demonstrate, that explanation was sufficiently clear to enable them to understand why the Commission had rejected their request. Whether or not the stated reason is valid is an issue relating to the substance of the matter which must be considered separately (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67).

62 The second plea must therefore be rejected.

The first plea: misinterpretation of the GSP Regulation

Arguments of the parties

63 In support of their first plea the applicants allege errors of interpretation on the part of the Commission in relation to the adverb 'normally' in Article 27 of the GSP Regulation and the relationship between Articles 22 and 27 of that regulation.

64 First, they claim that the letter of 28 February 2000 is drafted as though the adverb 'always' had replaced the adverb 'normally'. In so doing, the Commission ignores the possibility that circumstances might arise, for example where subsidisation is manifest, in which the benefit of the preferential arrangements could be withdrawn despite the existence of anti-subsidy measures intended more or less to counteract the subsidies. The Commission's interpretation would thus seem to suggest that, once anti-subsidy measures taking account of the preferential treatment have been put in place, there are no further circumstances in which access to preferential arrangements can be withdrawn. That is plainly incorrect. If the Community legislature had so intended, it would have used the adverb 'always' and not 'normally'.

65 Second, the applicants maintain that the Commission misinterpreted the relationship between Articles 22 and 27. Article 27 is not *lex specialis* with respect to Article 22. Nor would Article 27 be without purpose if Article 22(1)(e) were applicable to subsidisation or dumping. On the contrary, Article 27 confirms the general principle contained in Article 22(1)(e) that the preferential arrangements are not to be withdrawn in most normal cases, but only in manifest cases. There is therefore no contradiction between those provisions. Where anti-subsidy duties are in place the GSP arrangements may be withdrawn provided that the subsidisation is manifest.

66 The applicants argue that the Commission's interpretation of the relationship between Articles 27 and 22(1)(e) of the GSP Regulation accords a reduced meaning to the word 'manifest' and is incompatible with the effectiveness of the GSP Regulation. They recognise that subsidisation is not in itself capable of constituting a manifest case of unfair trading practices. None the less, export subsidies that have more serious consequences for the Community than normal and therefore involve 'adverse effects' do constitute a 'manifest case of unfair trading practices'. The applicants therefore claim that the Commission is clearly mistaken in its view that anti-subsidy measures remove all the injurious effects caused by subsidies.

67 The Commission contests the validity of the applicants' reading of the term 'normally'. That adverb serves merely to emphasise that, under Article 27 of the GSP Regulation, granting of GSP benefits to imports which are subject to anti-subsidy measures is the norm, whereas not granting such benefits, where the measures in question were based on injury caused and on prices which did not reflect the preferential tariff arrangements granted to the country concerned, is the exception.

68 The Commission maintains that the grant of the preferential arrangements to imports subject to countervailing duty measures is specifically governed by Article 27 of the GSP Regulation. That provision lays down the general rule that the benefit of the preferential arrangements is to be granted to imported products which are subject to anti-subsidy measures. By way of exception, the preferential arrangements will not be granted where, in accordance with the so-called 'lesser duty rule', the anti-subsidy measures are based on the level of injury caused to the Community industry rather than on the level of subsidy, and where that injury is itself determined on the basis of prices for the imported goods which do not reflect the benefits of the preferential arrangements. In practice, the latter case can arise only where the benefit of those arrangements was not granted during the period covered by an anti-subsidy investigation, for example because the exporting country was added to the list of GSP beneficiaries after that period. The scope of the exception provided for by the 'unless' clause in Article 27 is therefore very limited.

69 The Commission contends that the applicants' interpretation of the relationship between Articles 22(1)(e) and 27 of the GSP Regulation adds to the former a further condition for withdrawal of preferential arrangements. The true meaning of the word 'manifest' is 'clear', 'evident' or 'certain', and not 'serious' or 'persistent' as the applicants maintain. Accordingly, the effect of their claim that Article 27 does not cover 'manifest cases' within the meaning of Article 22(1)(e) would be that, following the imposition of anti-subsidy measures under Regulation No 2026/97, the Community institutions could *ipso jure* withdraw the preferential arrangements because, in order to establish the existence of a subsidy liable to attract countervailing measures, it would be necessary for that subsidy to be 'manifest'. Article 27 would then be superfluous and devoid of purpose.

70 The Commission asserts that its own interpretation of Article 22(1)(e) is borne out by the procedural guarantees for which that regulation provides. It refers to Article 25 of the regulation, which provides that preferential arrangements may be withdrawn only at the end of an investigation to establish whether or not the alleged practice exists. Such an investigation would be superfluous if the institutions had already conducted an investigation to the same end under Regulation No 2026/97.

71 Lastly, in support of its interpretation, the Commission argues that the effects injurious to the Community industry of imports of PET film originating in India have been removed as a result of the imposition of anti-subsidy measures based on the amount of the subsidies and on prices reflecting the preferential treatment. Consequently, withdrawal of the benefit of the preferential arrangements pursuant to Article 22(1)(e) of the GSP Regulation is not justifiable and would entail a twofold penalty for one injury, which would be disproportionate and unjust.

72 The Commission adds that only subsidies which cause injury to the Community industry may be regarded as 'unfair'. It follows that, if the damaging effects of the subsidies have been eliminated by means of the imposition of countervailing

measures, the subsidies in question cannot constitute 'unfair trading practices' within the meaning of Article 22(1)(e) of the GSP Regulation.

Findings of the Court

73 The applicants concede that under the GSP Regulation the Commission enjoys broad discretion in deciding whether or not to initiate the procedures provided for by Articles 23 to 26 of that regulation, which might entail the withdrawal of the benefit of the preferential arrangements. Furthermore, they recognise that a decision by the Commission (on the merits) not to open an investigation under Article 25(1) of that regulation could be challenged only with difficulty. Nevertheless, they argue that the Commission's refusal to exercise that discretion by taking into consideration the weight of the information communicated to it by third parties is open to challenge and must be annulled by the Court if it is shown to have been based upon an incorrect interpretation of Community law.

74 The Commission denies that it failed to consider the weight of the information supplied by the applicants. The Court none the less finds that, contrary to the Commission's statement in paragraph 15 of its defence that it had found the evidence 'insufficient, in particular in the light of the provisions of Article 27 of the GSP Regulation, to justify the initiation of a procedure which might eventually have led to the suspension of GSP preferences to India', it has not been proved that the information communicated by the applicants was in fact assessed by the Commission when adopting the contested decision.

75 The contested decision simply states that the Commission had considered all the legal aspects of the 'complaint' and, more particularly, the interpretation and effect of Articles 22 and 27 of the GSP Regulation. In its rejoinder the Commission observes that the evidence submitted to it was rejected on the ground that, because the countervailing duties imposed had already taken account of the preferential treatment, the Commission was precluded by the

terms of the GSP Regulation from opening an investigation which might possibly have led to withdrawal of tariff preferences.

76 The decision adopted by the Commission in the act under challenge was therefore based on its opinion that Articles 22 and 27 prevented it from opening an investigation and not on its view that the evidence supplied was insufficient.

77 It is therefore necessary to consider whether the Commission's interpretation of Article 27 of the GSP Regulation is correct.

78 That article falls into two parts: the first lays down a general rule and the second defines an exception to that rule. In the present case it is not disputed that the exception has no application. The applicants accept that when the anti-subsidy measures mentioned in paragraph 15 above were imposed on PET film coming from India, those measures were adopted not on the basis of the injury caused to the Community industry but on the basis of the amount of the subsidies and on prices reflecting the existence of the GSP benefits granted to the Republic of India.

79 The difference in the parties' interpretations of Article 27 of the GSP Regulation therefore turns on the meaning to be given to the adverb 'normally' used in the first part of that article. The Court considers that that article cannot be construed in the sense proposed by the Commission.

80 In the first place, the adverb 'normally' clearly has the effect of qualifying the applicability of the rule laid down in Article 27 in relation to cases where anti-dumping or anti-subsidy measures have been imposed and where the situation contemplated by that article in the 'unless' clause does not exist. The

word 'normally' implies that that rule must therefore generally be applied. If the rule were to apply, not only generally but in all cases, it would be unnecessary and, indeed, contradictory to add the word 'normally'.

81 Where the exception is inapplicable, use of the word 'normally' therefore has the effect of reserving to the Community a discretion to decide, in a particular case, whether it is appropriate to grant or to continue to grant the benefit of the preferential arrangements despite the imposition of the anti-dumping or anti-subsidy measures. In other words, the Community is entitled, but not obliged, to grant or to continue to grant the benefit of the GSP arrangements in those circumstances.

82 Article 22 of the GSP Regulation confirms that this interpretation is correct.

83 It is to be noted that the benefit of the preferential arrangements provided for by the GSP Regulation may be withdrawn in any one or more of the six cases listed in Article 22(1)(a) to (f) of that regulation, either in full or in part. For example, where anti-subsidy measures have been imposed on certain goods and the Article 27 exception is inapplicable, the benefit of the preferential arrangements can be withdrawn, either under Article 22(1)(b), if those goods should be found to have been made by prison labour, or under Article 22(1)(a), if it should become apparent that the country of origin practises a form of slavery or forced labour. Withdrawal may be total or may apply to particular products.

84 Moreover, because the circumstances referred to in Article 22(1)(e) of the GSP Regulation relate to manifest cases of unfair trading practices on the part of a beneficiary country, they are not necessarily confined to practices in the trade in particular goods but may involve more general practices in relation to that country's trade as a whole or to sectors of its industry. In such a case, goods subject to anti-dumping or anti-subsidy measures already in existence would not

be saved from the effects of a total withdrawal of the benefit of the preferential arrangements from a beneficiary country by virtue solely of the fact that those measures satisfied the terms of Article 27 of the GSP Regulation and did not therefore fall within the exception, referred to in paragraph 78 above, to the general rule laid down in Article 27.

85 As the Commission has stressed, the decision to withdraw the benefit of the preferential arrangements is pre-eminently a political issue concerning the Community and the beneficiary countries. There is no necessary link between those goods which may lose the benefit of the preferential arrangements and the basis in law on which such withdrawal may be effected. Accordingly, the use of the word 'normally' in Article 27 of the GSP Regulation serves to ensure that, although the existence of anti-dumping or anti-subsidy measures is not a bar to the grant or continued grant of the benefit of preferential arrangements, the Community nevertheless retains the right to withdraw that benefit in appropriate cases on one or more of the grounds set out in Article 22(1) of the GSP Regulation.

86 In that regard, no distinction of principle can be drawn between the various grounds for withdrawal provided for by Article 22(1) of the GSP Regulation, in particular between that relating to unfair trading practices on the part of a beneficiary country and the other cases contemplated by that provision. It may happen that, where the existence of subsidies in favour of specific goods is the only unfair trading practice alleged, there will be no ground on which to withdraw the benefit of the arrangements from those goods if all the effects injurious to trade in those goods have been eliminated by the imposition of anti-subsidy measures. However, while that may be the 'normal' situation, it is not inconceivable that other cases may arise in which the grant of subsidies by the beneficiary country produces abnormal consequences which extend beyond the purely financial effects countered by the anti-subsidy measures.

87 In short, the adverb 'normally' used in Article 27 of the GSP Regulation covers at least two possible situations in which the benefit of the preferential arrangements

may be withdrawn from goods which are the subject of anti-dumping or anti-subsidy measures. In the first of those situations, the benefit of the arrangements is withdrawn from a product as part of the total withdrawal of the preferential arrangements from a country in one or more of the cases set out in Article 22(1)(a) to (f) of the GSP Regulation. In the second, withdrawal occurs when the manifest cases of unfair trading practices referred to in Article 22(1)(e), although relating to specific goods only, produce injurious effects which extend beyond the financial effects that can be offset by the imposition of anti-dumping or anti-subsidy measures.

88 It is clear, therefore, that Article 27 of the GSP Regulation cannot be construed as precluding the Commission from requesting the opening of consultations under Article 23 of the GSP Regulation and then if necessary from opening an investigation under Article 25 into the existence of the case envisaged by Article 22(1)(e) merely because anti-subsidy measures have been imposed on the goods forming the subject-matter of the complaint and the exception provided for by Article 27 is not applicable.

89 It follows that the Commission's interpretation of Article 27 of the GSP Regulation is incorrect and that the decision contained in its letter of 28 February 2000, being based on that interpretation, must be annulled.

Costs

90 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 other party's pleadings. Since the Commission has been unsuccessful and the applicants have applied for costs, the Commission must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Annuls the Commission's decision of 28 February 2000;**

2. **Orders the Commission to bear its own costs and to pay those of the applicants.**

Cooke García-Valdecasas Lindh

Delivered in open court in Luxembourg on 12 September 2002.

H. Jung
Registrar

J.D. Cooke
President