JUDGMENT OF THE COURT
5 March 1986 *

In Case 59/84

Tezi Textiel BV, having its registered office at Woerden, the Netherlands, represented by P. M. Storm of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 rue Goethe,

applicant,

v

Commission of the European Communities, represented by A. Haagsma and P. Hartvig, members of the Commission's Legal Department, acting as Agents, with an address for service in Luxembourg at the office of M. Beschel, Jean Monnet Building, Kirchberg,

defendant,

supported by the

Kingdom of the Netherlands, represented by I. Verkade, Secretary General at the Ministry of Foreign Affairs, acting as Agent,

and by the

United Kingdom of Great Britain and Northern Ireland, represented by J. R. J. Braggins of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy, 28 boulevard Royal,

interveners,

APPLICATION for the annulment of the Commission's decision of 14 December 1983 authorizing the Benelux countries not to apply Community treatment to men's and boys' woven breeches, shorts and trousers (including slacks) or to women's, girls' and infants' woven trousers and slacks falling within subheadings ex 61.01 B V and ex 61.02 B II of the Common Customs Tariff (Category 6), originating in Macao and in free circulation in the other Member States (Official Journal 1983, C 340, p. 2) and for compensation for the damage suffered by the applicant as a result of that decision,

* Language of the Case: Dutch.

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, U. Everling and K. Bahlmann, Presidents of Chambers, G. Bosco, Y. Galmot and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 2 October 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application received at the Court Registry on 6 March 1984 Tezi Textiel BV (hereinafter referred to as 'Tezi') brought an action under the second paragraph of Article 173 and Article 178 of the EEC Treaty for the annulment of the Commission's decision of 14 December 1983 authorizing the Benelux countries not to apply Community treatment to men's and boys' woven breeches, shorts and trousers (including slacks) or to women's, girls' and infants' woven trousers and slacks falling within subheadings ex 61.01 B V and and ex 61.02 B II of the Common Customs Tariff (Category 6), originating in Macao and in free circulation in the other Member States, and, secondly, for compensation from the Commission for the damage suffered by Tezi as a result of that decision.

2 At the material time, trade in textiles between Macao and the Community was governed by the second Multi-Fibre Arrangement, concluded pursuant to the General Agreement on Tariffs and Trade (GATT). Although not yet officially approved by the Community, the Arrangement became applicable provisionally, in particular as regards relations between the Community and Macao, by virtue of Council Regulation No 3059/78 of 21 December 1978 (Official Journal 1978, L 365, p. 1), which was replaced by Council Regulation (EEC) No 3589/82 of

23 December 1982 on common rules for imports of certain textile products originating in third countries (Official Journal 1982, L 374, p. 106).

3 Regulation No 3589/82, which applies to the facts of this case, provides that imports into the Community of textile products falling within the various categories listed in Annex I are to be subject to the quantitative limits set out in Annex III. The quantitative limit for products in Category 6 originating in Macao was fixed at 10 114 000 items for 1983. That quantitative limit was divided between the Member States pursuant to Article 3 (2) and Annex IV, the Benelux countries being treated as a single unit.

4 As regards trade in those products between the Benelux countries and the rest of the Community, the Commission, acting under Article 115 of the Treaty and Commission Decision No 80/47/EEC of 20 December 1979 (Official Journal 1980, L 16, p. 14), had authorized the Benelux countries, by Decision No 82/205/EEC of 22 December 1981 (Official Journal 1982, L 97, p. 2), to exercise intra-Community surveillance of imports of the products in question by making them subject to the grant of a licence for the period ending on 30 June 1983. A further authorization was granted by virtue of Commission Decision No 83/326/EEC of 28 June 1983 (Official Journal 1983, L 175, p. 1) for the period ending on 30 June 1985. That system of intra-Community surveillance was in operation at the time of the facts of this case.

5 On 1 December 1983 Tezi submitted to the competent Dutch authorities several applications for licences to import from Italy 287 749 pairs of men's and boys' cotton trousers originating in Macao and falling within subheading 61.01 B V (e) 3 of the Common Customs Tariff.

6 However, those applications were refused pursuant to the aforementioned Commission decision of 14 December 1983, by which the Commission, acting on a request made by the Netherlands Government with the other Benelux countries' agreement, authorized the Benelux countries, pursuant to Article 115 of the EEC Treaty, to exclude from Community treatment, from 1 to 31 December 1983, products falling within subheadings ex 61.01 B V and ex 61.02 B II of the Common Customs Tariff, which originated in Macao and had been released into free circulation in other Member States, and for which applications for import licences had been lodged after 30 November 1983.

7 Tezi, taking the view that the aforementioned Commission decision of 14 December 1983 was illegal from several points of view and that the application of that decision was injurious to it, then brought this action.

8 By applications received at the Court on 2 and 6 August 1984 respectively, the United Kingdom and the Government of the Kingdom of the Netherlands sought leave under the first paragraph of Article 37 of the Statute of the Court of Justice of the European Communities to intervene in support of the Commission. By orders of the Court dated 26 September 1984 those requests were granted.

The application for annulment

Admissibility

9 The Commission claims, as a preliminary submission, that Tezi's application for annulment is inadmissible. It points out that the whole of the contested decision came to Tezi's knowledge, for the purposes of the third paragraph of Article 173 of the Treaty, on 15 December 1983, the day on which the Netherlands authorities notified it by telephone that its applications for import licences had been refused, or, at the latest, on 21 December 1983, the day on which Tezi is assumed to have received the letters of 20 December 1983 in which the Netherlands authorities confirmed the information given by telephone. The Commission claims therefore that Tezi's application should have been lodged no later than 28 February 1984, whereas it was not lodged until 6 March 1984.

10 It is sufficient to observe in this connection that, as Tezi has correctly contended, neither the telephone call of 15 December 1983 nor the letters of 20 December 1983, copies of which were appended to the application, nor the 'Commission's communication pursuant to Article 115 of the EEC Treaty' (published in Official Journal C 340 at page 2), which merely summarizes the three articles of the contested decision, enabled Tezi to acquire knowledge of the text of the contested decision or, in particular, of the reasons on which it was based.

11 In those circumstances, it was incumbent on Tezi to ask the Commission, within a reasonable period, for the whole text of the contested decision, which, as is clear from the documents before the Court, Tezi did in February 1984.

12 The objection of inadmissibility raised by the Commission must therefore be dismissed.

Substance

The primary submission: Article 115 is inapplicable to textile products covered by Regulation No 3589/82

13 Tezi argues that, when the Community has exercised its exclusive powers under Article 113 of the EEC Treaty in a specific sector of the common commercial policy, recourse to Article 115 in that sector is no longer possible, so that the Commission may no longer authorize the Member States pursuant to that article to take protective measures.

14 Tezi contends that there is a genuine common commercial policy within the meaning of Article 113 in the case of trade in textile products covered by the Multi-Fibre Arrangement. It points out that the Multi-Fibre Arrangement was negotiated by the Commission alone and that the import quotas agreed with non-member countries under that Arrangement were fixed following a comprehensive assessment of the interests of the Community's textile industry considered as a whole. The division into national subquotas was done for purely administrative reasons, as can be seen from the ninth recital in the preamble to Regulation No 3589/82, and in any event is not sufficient to make Article 115 applicable.

15 In Tezi's view, measures taken by the Member States to implement those national subquotas cannot be regarded as 'measures of commercial policy taken in accordance with this Treaty by any Member State', which alone can lead to the granting of authorization by the Commission under Article 115. In any event, national measures taken in order to implement national subquotas fixed by the Community do not exhibit any disparity likely to lead to economic difficulties warranting a decision under Article 115.

16 Tezi also points out that Article 7 (2) of Regulation No 3589/82 provides for the national subquotas to be adapted where this proves necessary, particularly in view of trends in patterns of trade.

17 Tezi therefore concludes that the Commission did not have the power to adopt the contested decision.

18 The Commission contests the view that the introduction of an import system such as is laid down in Regulation No 3589/82 for textile products from countries which are parties to the Multi-Fibre Arrangement can render Article 115 of the Treaty inapplicable.

19 In support of its view, the Commission cites the Court's judgment of 15 December 1976 in Case 41/76 (*Donckerwolcke* v *Procureur de la République* [1976] ECR 1921), in which the Court held that 'the fact that at the expiry of the transitional period the Community commercial policy was not fully achieved is one of a number of circumstances calculated to maintain in being between the Member States differences in commercial policy capable of bringing about deflections of trade or of causing economic difficulties in certain Member States'. In the same judgment, the Court stated that 'Article 115 allows difficulties of this kind to be avoided by giving to the Commission the power to authorize Member States to take protective measures particularly in the form of derogation from the principle of free circulation within the Community of products which originated in third countries and which were put into free circulation in one of the Member States'.

20 In the Commission's view, the system introduced by Regulation No 3589/82 still leaves disparities in the commercial policy pursued by the various Member States, since it provides for a national subquota for each Member State above which products from non-member countries which are signatories of the Multi-Fibre Arrangement may not be imported into that Member State. Contrary to Tezi's contention, that means that goods from non-member countries are not subject to the same conditions of importation, with regard to customs and commercial considerations, irrespective of the State in which they were released into free circulation.

21 In that connection, the Commission considers that there is no reason to distinguish between disparities caused by measures of commercial policy taken by a Member

State on its own account and disparities caused by measures of commercial policy adopted by the Community and subsequently implemented by a Member State.

22 Furthermore, the Commission argues that the existence of such disparities may not be disregarded by arguing, as Tezi does, that the division into national subquotas is justified on purely administrative grounds. On the contrary, as is clear from the 10th recital in the preamble to Regulation No 3589/82, that division is the inevitable result of the fact that the import system provided for in that regulation is still not uniform.

23 As regards the means of dealing with the difficulties which might stem from those disparities, the Commission considers that the only effective approach is to utilize the possibilities afforded by Article 115. In its view, the possibility provided for in Article 7 (2) of Regulation No 3589/82 of adapting the national subquotas cannot be utilized in a case of this kind since that procedure is intended to be applied solely to direct imports.

24 The Netherlands Government and the United Kingdom, intervening in support of the Commission, essentially share the views expressed by the Commission.

25 The Netherlands Government argues in particular that the application of Article 7 (2) of Regulation No 3589/82 would not have helped to resolve the difficulties encountered by the Benelux countries in this case, for that article merely enables national subquotas to be extended, which would be completely contrary to the Benelux countries' interests and would not in any case have stopped the influx of parallel imports of the textile products in question.

26 The Court must observe in the first place that, as it pointed out in its judgment in *Donckerwolcke* (cited above), according to Article 9 (2) of the Treaty, the provisions for the liberalization of intra-Community trade apply in identical fashion to products originating in Member States and to products from non-member countries which are in free circulation in the Community in accordance with the requirements laid down by Article 10. The Court also made it clear that,

as regards free circulation of goods within the Community, products in free circulation are definitively and wholly assimilated to products originating in Member States.

27 The existence of a system such as that laid down in Regulation No 3589/82 for textile products originating in non-member countries which are signatories of the Multi-Fibre Arrangement is not of such a nature as to reduce the scope of the principle described above, by reason of the fact that that regulation provides for the division of the Community quantitative limit into national subquotas.

28 Indeed, as the Court stated in its judgment of 13 December 1983 in Case 218/82 (*Commission* v *Council* [1983] ECR 4063), whilst a total Community quota may be divided into national subquotas, such a division cannot hinder the free movement of the goods subject to the quota once they have been released into free circulation in the territory of one of the Member States.

29 It follows that, once goods originating in countries which are parties to the Multi-Fibre Arrangement are imported and released into free circulation in one Member State, they must be able to circulate freely in any other Member State.

30 However, the Court held in its judgment in *Donckerwolcke*, that under the system of the Treaty the full application of the principle of free movement to goods imported from non-member countries is conditional upon the establishment of a common commercial policy.

31 The Court observed in that connection that the assimilation to goods originating within the Member States of goods originating in a non-member country but in free circulation in one of the Member States may only take full effect if those goods are subject to the same conditions of importation, with regard to customs and commercial considerations, irrespective of the State in which they were released into free circulation.

32 In the same judgment, after observing that, despite the expiry of the transitional period, a common commercial policy based, in accordance with Article 113 (1) of the Treaty, on uniform principles had not yet been fully achieved, the Court recognized that the incompleteness of the common commercial policy, together with other circumstances, was likely to maintain differences in commercial policy between the Member States capable of causing deflections of trade or economic difficulties in some Member States.

33 The Court stated that Article 115 enabled difficulties of this kind to be overcome by giving to the Commission the power to authorize Member States to take protective measures, particularly in the form of derogations from the principle that goods originating in non-member countries and released into free circulation in one of the Member States should circulate freely in the Community.

34 The question to be considered is therefore whether Regulation No 3589/82 introduced a genuine common commercial policy, within the meaning of Article 113, for products originating in non-member countries participating in the Multi-Fibre Arrangement, with the result that, in the sphere of application of that regulation, the Commission no longer has the power to grant Member States authorizations under Article 115.

35 An affirmative answer to that question, as suggested by Tezi, would be appropriate only if it could be shown that the system established by Regulation No 3589/82 led to the creation of uniform conditions of importation for textile products, irrespective of the State in which they were released into free circulation.

36 It must be observed first of all in this regard that, within its sphere of application, Regulation No 3589/82 is undoubtedly a step towards the establishment of a common commercial policy based, in accordance with Article 113 (1) of the Treaty, on uniform principles.

37 However, it does not appear that the system established by that regulation has brought about complete uniformity as regards conditions of importation. The second clause of the 10th recital in the preamble to the regulation states in fact that 'the extent of the disparities existing in the conditions for importation of these products into the Member States and the particularly sensitive position of the Community textiles industry mean that the said conditions can be standardized only gradually'.

38 Contrary to Tezi's contention, the disparities in question cannot therefore be attributed solely to Regulation No 3589/82; they are the result of measures taken by the Member States, on their own initiative, but in accordance with the relevant requirements laid down by Community law. As can be seen from the passage in the

10th recital quoted above, Regulation No 3589/82 merely maintains existing disparities to a certain extent, while proclaiming as its goal their gradual reduction and eventual elimination.

39 *A fortiori*, it cannot be maintained, as Tezi does, that the Community quantitative limits have been divided into national subquotas for purely administrative reasons.

40 It is true that the ninth recital in the preamble to Regulation No 3589/82 justifies the division into national quotas by the need to establish a decentralized 'special management procedure' for the Community quantitative limits. However, the ninth recital must be read together with the first sentence of the 10th recital, which states that 'in order to ensure the best possible utilization of the Community quantitative limits, they should be allocated in accordance with the requirements of the Member States and with the quantitative objectives established by the Council'.

41 Nor can Article 7 (2) of Regulation No 3589/82 serve as a basis for arguing that the Community legislature has provided therein for an instrument which makes the application of Article 115 of the Treaty unnecessary.

42 The fact that the allocation of the Community quantitative limits may be adapted 'where this proves necessary, particularly in view of trends in patterns of trade, in order to ensure their improved utilization' could in fact lead, in the event of a reduction of a Member State's national subquota, to a restriction of direct imports of textile products into that Member State — that is to say, imports from non-member producer countries — but can have no effect on the possibility of importing into that Member State products in free circulation in another Member State.

43 It must therefore be concluded that the Commission has retained the power to grant a Member State authorization under Article 115 to adopt protective measures with regard to textile products covered by Regulation No 3589/82 and in free circulation in other Member States, where the circumstances justify such action.

44 Therefore, the main submission advanced by Tezi to show that the contested decision is unlawful must be dismissed.

The alternative submission: the contested decision does not comply with the requirements laid down in Article 115

45 Tezi argues, in the alternative, that in adopting the contested decision the Commission failed in several respects to observe the requirements laid down in Article 115.

46 Firstly, the Commission authorized the Benelux countries to adopt protective measures in respect of a very wide category of products (Category 6 in Annex I to Regulation No 3589/82), whereas it should have asked the Netherlands Government to indicate more precisely and in accordance with Decision No 80/47 of 20 December 1979 the products for which it was seeking authorization to adopt protective measures. Tezi also points out that the import licences which it sought from the Netherlands authorities related to a much narrower group of products than Category 6 as a whole.

47 Secondly, Tezi contests the view that economic difficulties existed such as to justify the authorization of protective measures. It points out that the decline in employment in the sector of the textile industry producing men's and womens' outer garments, which was mentioned in the Netherlands Government's application, has clearly not occurred in the sector producing men's and boys' cotton trousers, which were amongst the products which Tezi intended to import into the Netherlands.

48 In Tezi's view, the Commission should satisfy itself that a real danger of competition exists between the products for which import licences have been requested and domestically produced products and that such competition is likely to aggravate the economic difficulties so much that protective measures are necessary. It claims that in the present case the Commission merely relied on the data provided by the Netherlands Government.

49 The Commission argues that it does not follow from either Article 115 or Decision No 80/47 that the scope of a decision taken under Article 115 must be confined to an analysis of the situation of the type of products indicated in the applications for import licences pending before the authorities of the Member State which has requested such a decision. It contends that there is nothing to prevent it from investigating whether a whole category of products satisfies the requirements for authorizing a protective measure under Article 115 and that, for that purpose, the submission of a number of applications for import licences is only one of the relevant factors.

50 As regards the economic difficulties which warranted the adoption of the contested decision, the Commission points out that production in the Benelux countries was falling at that time, imports from non-member countries were increasing, the Benelux quota for products originating in Macao was virtually exhausted and imports of goods in free circulation in other Member States exceeded that quota by 43%. Furthermore, the prices of the products originating in Macao were 50% lower than those of similar products manufactured in the Benelux countries and since 1980 a particularly large number of jobs had been lost in the Netherlands in the industry concerned.

51 Consequently, in the Commission's view the conditions for the application of Article 115 were fulfilled in this case.

52 As far as Tezi's first argument is concerned, it must be observed that Category 6 in Annex I to Regulation No 3589/82, for which protective measures were authorized by the contested decision, comprises only products falling within tariff subheadings ex 61.01 B V and ex 61.02 B II.

53 In those circumstances, the fact that the request submitted by the Netherlands Government to the Commission referred to Category 6 in general, without specifying the Common Customs Tariff and Nimexe code headings of the products in question, is of no significance.

54 As regards Tezi's argument that the contested decision authorized protective measures for a very wide category of products, it is sufficient to observe that neither Decision No 80/47 nor Article 115 exclude the possibility that such a decision may cover a large number of products falling within the same tariff

category, provided that the applicant Member State can show that there is a need for protective measures of such a scope, although it is not essential for evidence to be provided for each product.

55 Tezi's observation that the contested decision authorized protective measures for all products falling within Category 6 in Annex I to Regulation No 3589/82, whereas the applications for import licences submitted to the Netherlands authorities by Tezi related only to some of those products, is therefore irrelevant.

56 The link between the submission of applications for import licences to the authorities of the Member State which wishes to apply protective measures and the Commission's decision to authorize such measures is not so close that the measures authorized can never cover products for which no licences have been requested.

57 As regards the economic difficulties justifying the authorization of protective measures, the Court has held, in particular in its judgment of 15 December 1976 in *Donckerwolcke* (cited above) that, because the derogations allowed under Article 115 constitute not only an exception to the provisions of Articles 9 and 30 of the Treaty, which are fundamental to the operation of the common market, but also an obstacle to the implementation of the common commercial policy provided for in Article 113, they must be interpreted and applied strictly.

58 Moreover, since, as stated above, the system introduced by Regulation No 3589/82 constitutes, in its sphere of application, a step towards the establishment of a common commercial policy based, as Article 113 (1) provides, on uniform principles, the Commission must show great prudence and moderation in exercising the powers which it still has under Article 115 with regard to the products covered by Regulation No 3589/82.

59 It follows that, in the sector in question, the Commission may, solely for serious reasons and for a limited period, after a full examination of the situation in the Member State seeking a decision under Article 115 and having regard to the

general interests of the Community, authorize, pursuant to that article, the protective measures which cause the least disruption of intra-Community trade.

60 In this case, those conditions are satisfied.

61 The preamble to the contested decision, the data provided by the Netherlands authorities in their request to the Commission and the explanations provided by the Commission at the hearing show that the economic difficulties invoked by the Benelux countries were real and due, at least in part, to imports of textile products originating in non-member countries.

62 In this regard, it must be noted that since 1 January 1983 the Benelux countries had admitted into their territory textile products released into free circulation in other Member States amounting to approximately 43% of the subquota fixed for the Benelux countries.

63 It is true that that fact alone could not justify the grant of authorization pursuant to Article 115, since textile products covered by the subquotas allocated to each Member State under Regulation No 3589/82 may move freely between the Member States once they are in free circulation. However, that fact, considered together with other factors mentioned in the preamble to the contested decision, formed a sufficient ground for the Commission to grant the request made by the Netherlands.

64 It should be observed that in 1982 total imports into the Benelux countries of textile products from non-member countries had increased, as compared with imports in 1981, and were tending to increase further, according to the Commission's estimates, in 1983. Furthermore, the applications for import licences being processed at the time when the Netherlands submitted its request related to a quantity of products equivalent to 28% of the subquota for the Benelux countries.

65 Furthermore, according to information provided by the Commission and not contested by Tezi, the prices of the products in question originating in Macao were approximately 50% lower than the prices of similar products manufactured in the Benelux countries. In those circumstances, imports of those products were liable to create serious difficulties for domestic production, which had already fallen in recent years.

66 It therefore appears that the Commission did not exceed the limits of its powers under Article 115 by authorizing the Benelux countries, in the contested decision, to adopt protective measures with regard to the products in question.

67 Consequently, Tezi's alternative submission is unfounded.

68 The claim for the annulment of the Commission's decision of 14 December 1983 must therefore be dismissed.

The application for damages

69 Tezi contends that by adopting the contested decision the Commission caused it to suffer damage which the Commission must make good in accordance with the second paragraph of Article 215 of the Treaty.

70 In this connection, it should be borne in mind that, according to a consistent line of decisions of the Court (see, in particular, the judgment of 17 December 1981 in Joined Cases 197 to 200, 243, 245 and 247/80 *Ludwigshafener Walzmühle Erling KG and Others* v *Council and Commission of the European Communities* [1981] ECR 3211), the Community may incur liability under the second paragraph of Article 215 only if the institutions have acted unlawfully, actual damage has been sustained and a causal link exists between the action complained of and the alleged damage.

71 In the present case, as already stated, the Commission's action which allegedly caused the damage suffered by Tezi was not unlawful in any respect.

72 Consequently, the claim for damages must be dismissed, without its being necessary to consider whether the other conditions laid down in the aforesaid decision of the Court are met.

73 It follows from the foregoing that the whole of Tezi's action must be dismissed.

Costs

74 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs. Since the applicant has failed in all of its submissions, it must be ordered to pay the costs incurred by the Commission.

75 Since the Netherlands Government and the United Kingdom, which intervened in support of the Commission, have not made any claim as to costs, they must bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs incurred by the Commission;

(3) Declares that the interveners shall bear their own costs.

Mackenzie Stuart Koopmans Everling

Bahlmann Bosco Galmot Kakouris

Delivered in open court in Luxembourg on 5 March 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President