JUDGMENT OF THE COURT

30 September 2003 *

In Case C-76/01 P,

Committee of the Cotton Allied Textile Industries of the European Union (Eurocoton), established in Brussels (Belgium),

Ettlin Gesellschaft für Spinnerei und Weberei AG, established in Ettlingen (Germany),

Textil Hof Weberei GmbH & Co. KG, established in Hof (Germany),

H. Hecking Söhne GmbH & Co., established in Stadtlohn (Germany),

Spinnweberei Uhingen GmbH, established in Uhingen (Germany),

F.A. Kümpers Gmbh & Co., established in Rheine (Germany),

Tenthorey SA, established in Éloyes (France),

Les tissages des héritiers de G. Perrin — Groupe Alain Thirion (HPG-GAT Tissages), established in Cornimont (France),

Établissements des fils de Victor Perrin SARL, established in Thiéfosse (France),

* Language of the case: English.

Filatures & tissages de Saulxures-sur-Moselotte, established in Saulxures-sur-Moselotte (France),

Tissage Mouline Thillot, established in Thillot (France),

Filature Niggeler & Küpfer SpA, established in Capriolo (Italy),

Standardtela SpA, established in Milan (Italy),

represented by C. Stanbrook and P. Bentley QC, with an address for service in Luxembourg,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 29 November 2002 in Case T-213/97 *Eurocoton and Others* v *Council* [2000] ECR II-3727, seeking to have that judgment set aside,

the other parties to the proceedings being:

Council of the European Union, represented by S. Marquardt, acting as Agent, and by G.M. Berrisch and H.P. Nehl, Rechtsanwälte,

defendant at first instance,

United Kingdom of Great Britain and Northern Ireland, represented by K. Manji, acting as Agent,

intervener at first instance,

and

Tessival SpA, established in Azzano S. Paolo (Italy),

applicant at first instance,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, M. Wathelet and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, P. Jann, F. Macken, N. Colneric, S. von Bahr (Rapporteur), J.N. Cunha Rodrigues and A. Rosas, Judges,

Advocate General: F.G. Jacobs,

Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the appellants and the Council of the European Union at the hearing on 22 October 2002,

after hearing the Opinion of the Advocate General at the sitting on 16 January 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 February 2001, the Committee of the Cotton and Allied Textile Industries of the European Union ('Eurocoton') and the other applicants at first instance with the exception of Tessival SpA (together 'the appellants') brought an appeal, under Article 49 of the EC Statute of the Court of Justice, against the judgment of the Court of First Instance of 29 November 2000 in Case T-213/97 *Eurocoton and Others* v *Council* [2000] ECR II-3727 ('the contested judgment') in which the Court of First Instance dismissed the appellants' action at first instance for the annulment of the 'decision' of the Council of the European Union not to adopt the proposal for a Council regulation (EC) imposing a definitive anti-dumping duty on imports of unbleached (grey) cotton fabrics from the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (COM (97) 160 final), submitted by the Commission of the European Communities on 21 April 1997, and for compensation for the damage suffered as a result of that 'decision'.

Facts

2 The facts as they are set out in the contested judgment can be summarised as follows.

3 On 8 January 1996, Eurocoton, supported by several of its members, lodged a complaint with the Commission alleging that imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey were being dumped and were thereby causing material injury to the Community industry.

4 On 21 February 1996 the Commission published a notice of initiation of anti-dumping proceedings concerning imports of unbleached cotton fabrics from those countries (OJ 1996 C 50, p. 3).

5 On 18 November 1996 the Commission adopted Regulation (EC) No 2208/96 imposing a provisional anti-dumping duty on imports of unbleached (grey) cotton fabrics from the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1996 L 295, p. 3).

6 On 21 April 1997 the Commission submitted a proposal for a Council Regulation (EC) imposing a definitive anti-dumping duty on those imports (COM (97) 160 final).

7 Under Article 6(9) of 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, 'the basic regulation'), anti-dumping investigations 'shall in all cases be concluded within 15 months of initiation'. In the present case, therefore, the period allowed ended on 21 May 1997.

8 On that date the Council of the European Union issued a press release (Press Release on 2007th Council meeting — Internal Market, 8134/97 — Press 156) stating:

'Following the written procedure concerning the introduction of definitive anti-dumping duties on cotton fabrics originating in certain third countries which had expired on 16 May [1997], with a negative result, the French delegation once again insisted on the need for such measures to be taken'.

9 By fax of 23 June 1997 Eurocoton asked the General Secretariat of the Council to confirm that the Council had decided to reject the Commission proposal and to send it a copy of the decision or minutes incorporating such a decision.

10 On 24 June 1997 Eurocoton received a reply stating that 'by written procedure which ended on 16 May 1997 the Council found there was no simple majority necessary for the adoption of the regulation [in question]'.

11 By application lodged at the Registry of the Court of First Instance on 18 July 1997, the appellants brought an action requesting the Court of First Instance to annul the Council's decision to reject the Commission's proposal for a regulation and to order the Council to make good any damage caused to them by the decision.

12 The Council requested the Court of First Instance to dismiss the application as inadmissible or, in the alternative, as unfounded.

13 The United Kingdom of Great Britain and Northern Ireland, which was given leave to intervene in support of the Council, did not lodge any written observations and did not attend the hearing.

The contested judgment

14 As regards, first, the action for annulment, the Court of First Instance stated, first of all, in paragraph 39 of the contested judgment, that where a regulation imposing definitive anti-dumping duties is adopted by the Council it is an act open to challenge within the meaning of Article 173 of the EC Treaty (now, after amendment, Article 230 EC). In paragraph 40 of the contested judgment, the Court pointed out that it could not be inferred from that finding that where, conversely, the Council does not adopt a proposal for a regulation imposing definitive anti-dumping duties, there is necessarily a reviewable act within the meaning of Article 173 of the Treaty. The Court held, in paragraph 41 of the contested judgment, that whether there is a reviewable act for the purposes of that article could only be ascertained on a case-by-case basis. It added, in paragraph 42, that in the present case the applicants at first instance were seeking the annulment of the 'decision' by the Council not to adopt definitive anti-dumping duties, that decision consisting in 'the outcome of the written procedure of 16 May 1997'.

15 Before deciding whether the Council's failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission could be regarded as a reviewable act, the Court of First Instance examined to what extent the applicants had a right to the adoption by the Council of a regulation imposing definitive anti-dumping duties. It held, first of all, in paragraph 44 of the contested judgment, that no provision of the Treaty requires the Council to adopt, on a proposal submitted by the Commission, a regulation imposing definitive anti-dumping duties. Next it held, in paragraphs 46 to 49, that the basic regulation did not confer on the appellants a right to the adoption by the Council of such a proposal for a regulation. Lastly, it observed, in paragraphs 50 and 51, that it could not be inferred from the Agreement on

Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the Anti-Dumping Code') that the Council was obliged to adopt definitive anti-dumping duties. The Court of First Instance concluded, in paragraph 52 of the contested judgment, that the applicants could not rely on a right to the adoption by the Council of a proposal for a regulation imposing definitive anti-dumping duties submitted to it by the Commission.

16 The Court of First Instance stated, in paragraph 53 of the contested judgment, that the question whether the applicants at first instance had a right in this case to bring an action for annulment had to be answered in the light of those findings, which followed both from the Treaty and from the basic regulation. In that regard, it held, in paragraph 56 of the contested judgment, that as the vote taken in the Council on 16 May 1997 by written procedure did not result in a simple majority in favour of the proposal submitted to it by the Commission for a regulation imposing a definitive anti-dumping duty, it followed that the Council had not adopted any measure. In paragraphs 57 and 58 the Court added that the mere statement that the vote did not result in the majority required for the adoption of such a proposal for a regulation was not in itself a reviewable act within the meaning of Article 173 of the Treaty because, if a positive vote is the legal means by which the act is adopted, a negative vote merely indicates the absence of any decision.

17 As regards the applicants' argument that they would have no legal protection if their application for annulment were inadmissible, the Court of First Instance pointed out, in paragraph 59 of the contested judgment, that the review by the Court to which the applicants were entitled had to be appropriate to the nature of the powers reserved to the Community institutions as regards anti-dumping measures (Case 191/82 *Fediol* v *Commission* [1983] ECR 2913, paragraph 29). The Court added that the position in which the Commission is placed, particularly as regards consideration of a complaint and the action to be taken on it, is not comparable to that of the Council. It stated that while the Council has to place any proposal referred to it for a regulation imposing definitive anti-dumping duties on the agenda for its meetings, it is not obliged to adopt that proposal.

18 The Court of First Instance noted, in paragraph 60 of the contested judgment, that in the event that the Council's failure to adopt a regulation imposing definitive anti-dumping duties was wrongful, for example because it was vitiated by a serious procedural error, the applicants still had the option of bringing an action for damages on the basis of Articles 178 and 215 of the EC Treaty (now Articles 235 EC and 288 EC).

19 Accordingly, the Court held, in paragraph 61 of the contested judgment, that the action for annulment had to be dismissed as inadmissible.

20 Moreover, in paragraph 62 of the contested judgment, the Court of First Instance stated that in their observations on the objection of inadmissibility raised by the Council, the applicants had also called into question the legality of the negative act which they claimed resulted from the expiry of the period of 15 months provided for in Article 6(9) of the basic regulation. In paragraph 63, the Court pointed out that, in so doing, the applicants had submitted a new claim, in breach of Article 19 of the EC Statute of the Court of Justice and Article 44 of the Rules of Procedure of the Court of First Instance, which, therefore, had to be held inadmissible. The Court added, in paragraph 64, that, in any event, mere expiry of the 15-month period provided for in Article 6(9) of the basic regulation did not constitute a decision by the Council which could be the subject of an action for annulment on the basis of Article 173 of the Treaty.

21 As regards, second, the action for damages, the Court of First Instance held, in paragraph 86 of the contested judgment, that the principal submission of the applicants, according to which the Council was under an obligation to adopt a proposal for a regulation imposing definitive anti-dumping duties submitted by the Commission and that it had committed a wrongful act by rejecting the proposal, had to be dismissed for the reasons set out in paragraphs 43 to 52 of the contested judgment.

22 The Court of First Instance also considered, in paragraph 87 of the contested judgment, that the wrongful acts relied on by the applicants in the alternative were also based on the mistaken premiss that they were entitled to the adoption of such a regulation by the Council.

23 The Court of First Instance therefore first of all rejected, in paragraphs 88 and 89 of the contested judgment, the applicants' arguments based on the alleged disregard by the Council of the facts found by the Commission and the alleged breach of the principle of protection of legitimate expectations.

24 The Court of First Instance then held, in paragraph 90 of the contested judgment, that the argument that the measure was unlawful as a result of the alleged failure to state reasons could not be upheld. After noting that Article 190 of the EC Treaty (now Article 253 EC) provides that regulations, directives and decisions adopted by *inter alia* the Council are to state the reasons on which they are based, the Court found that, in the present case, it was clear from examination of the admissibility of the application for annulment that no act had been adopted by the Council.

25 Finally, in paragraph 91 of the contested judgment, the Court of First Instance dismissed the arguments relating to the denial of procedural guarantees. In that regard, the Court held that those arguments were in fact part of the applicants' principal plea, which sought to establish that there was an obligation incumbent on the Council to adopt a proposal for a regulation imposing definitive anti-dumping duties. The Court noted that the applicants did not dispute that all their procedural rights under the basic regulation had been respected but argued that if the Council could omit to adopt a proposal for a regulation, as in the present case, a mockery was made of those rights. The Court held, however, that the fact that the Council had the option not to adopt a proposal for a regulation imposing definitive anti-dumping duties was inherent both in the system of the Treaty and the basic regulation itself.

26 In paragraph 92 of the contested judgment, the Court of First Instance held that in the absence of fault on the part of the Council the action for damages had to be dismissed.

The appeal

27 The appellants claim that the Court should:

— set aside the contested judgment;

— annul the Council's decision not to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission;

— declare the application for damages well founded and refer the case back to the Court of First Instance for determination of the amount of damages;

— order the Council to pay the costs both at first instance and on appeal.

28 The appellants put forward four grounds of appeal. By their first three grounds of appeal, they claim that the Court of First Instance infringed Article 173 of the Treaty and the general principle of coherence in holding that the Council's rejection of the proposal submitted by the Commission for a regulation imposing

a definitive anti-dumping duty did not constitute a reviewable act and accordingly dismissing the action for annulment as inadmissible. By their fourth ground of appeal, the appellants claim that the Court of First Instance infringed Articles 190 and 215 of the Treaty and also the general principle of coherence in dismissing the action for damages.

29 The Council contends that the Court should dismiss the appeal and order the appellants to pay the costs.

30 The United Kingdom has not lodged any written submissions and was not represented at the hearing.

The first three pleas

Arguments of the parties

31 By their first ground of appeal, the appellants argue that the Court of First Instance infringed Article 173 of the Treaty, in the light of the Anti-Dumping Code and the general principle of coherence, in holding that the Council's failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission was not a reviewable act.

32 According to the appellants, where an institution is acting in the context of a procedure governed by a regulation which confers procedural rights on the parties concerned, any action by the institution which amounts, in effect, to

closing the file without action is an act subject to review pursuant to Article 173 of the Treaty (*Fediol* v *Commission*, cited above, paragraphs 28 to 31; Case 210/81 *Demo-Studio Schmidt* [1983] ECR 3045; Case 298/83 *CICCE* v *Commission* [1985] ECR 1105; Joined Cases 142/84 and 156/84 *BAT and Reynolds* v *Commission* [1987] ECR 4487; all cited in Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223, paragraph 78).

33 In the same way, the case-law of the Community judicature shows that, where an institution rejects an applicant's request in the final stage of a procedure initiated on the basis of a regulation, such rejection produces binding legal effects such as to affect the interests of the applicant and brings about a distinct change in its legal position (Case T-120/96 *Lilly Industries* v *Commission* [1998] ECR II-2571, paragraph 55).

34 The appellants assert that when the Council considered the Commission's proposal it was acting in the context of the basic regulation, which confers procedural rights on the individuals concerned, including complainants. The contested decision effectively closed the case in the final stage of the procedure and rejected the request for anti-dumping measures made by the complainants, including the appellants. Even if the Council claims that that decision was not definitive, it has to be admitted that it became definitive through the expiry of the 15-month period prescribed by Article 6(9) of the basic regulation.

35 By their second ground of appeal, the appellants argue that the Court of First Instance infringed Article 19 of the EC Statute of the Court of Justice and Article 44 of its Rules of Procedure, in holding that they had submitted a new claim when they referred, in their observations on the objection of admissibility raised by the Council, to the expiry of the 15-month period laid down in Article 6(9) of the basic regulation.

36 The appellants submit that they sought the annulment only of the decision taken, that is, the Council's decision not to adopt a definitive anti-dumping duty, as constituted by the failure to achieve a simple majority in favour of the Commission's proposal. The appellants state that they referred to the expiry of the 15-month period not as a new argument but as evidence of the fact that the case could not remain open indefinitely and that a final decision had to be taken one way or another.

37 By their third ground of appeal, the appellants argue that the Court of First Instance infringed Article 173 of the Treaty, in the light of the Anti-Dumping Code, in holding that the mere expiry of the 15-month period provided for in Article 6(9) of the basic regulation did not constitute a decision by the Council which could be the subject of an action for annulment.

38 As regards the first ground of appeal, the Council contends principally that the criticisms made by the appellants in this plea are inadmissible. The appellants do not raise precise objections concerning errors of law allegedly committed by the Court of First Instance, but rather seek to repeat the legal arguments already put forward at first instance.

39 In the alternative, the Council submits that the appellants' claims with respect to the existence of a reviewable act are also unfounded. It disputes their assertion that the conclusion of an administrative procedure, whether in respect of anti-dumping duties or other matters, must result in the adoption of a reviewable act. That assertion does not take account of the peculiarities of the decision-making process in anti-dumping matters introduced by the basic regulation.

40 In competition law it is always the Commission which is to adopt decisions terminating the proceedings. Moreover, it thereby acts as an administrative institution and under completely different constraints from those imposed on the Council when it acts as a legislator, on a proposal from the Commission, in anti-dumping matters. Therefore, the comparison made by the appellants with the case-law on competition law proceedings is irrelevant.

41 Moreover, in the cases which gave rise to the judgments in *Fediol* v *Commission*, *Automec* v *Commission* and *Lilly Industries* v *Commission*, cited above, the Commission adopted formal decisions, while in this case the Council has not adopted any decision.

42 Next, as regards the arguments based on the Anti-Dumping Code in the first and third grounds of appeal, the Council contends that they must be rejected as inadmissible in so far as they have been raised for the first time on appeal and were not presented before the Court of First Instance.

43 In the alternative, the Council takes the view that the appellants' allegations are unfounded. First, it submits that it follows from settled case-law that the appellants cannot rely directly on the provisions of the Anti-Dumping Code. Second, the appellants, as representatives of the Community industry, cannot in any case rely on the relevant provisions of the Anti-Dumping Code as they are not intended to protect that industry. Third, the appellants' reading of the provisions of that Code is completely mistaken.

44 Finally, the Council argues that the second ground of appeal raised by the appellants is inadmissible, since it refers to findings of the Court of First Instance which, overall, were irrelevant to the outcome of the case.

45 It adds that the second ground of appeal is, in any event, unfounded. Until they lodged their observations on the objection of inadmissibility before the Court of First Instance, the appellants had claimed that it was 'the outcome of the written procedure of 16 May 1997', and not the expiry of the 15-month period, that constituted the contested act.

Findings of the Court

— Admissibility

46 First of all, as regards the objection of inadmissibility raised against the first ground of appeal by the Council, it follows from Article 168a of the EC Treaty (now Article 225 EC), the first paragraph of Article 51 of the EC Statute of the Court of Justice and Article 112(1), first subparagraph, (c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 34).

47 That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested judgment, confines itself to reproducing the pleas in law and arguments previously submitted to the Court of First Instance. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the Court of First Instance, which the Court of Justice does not have jurisdiction to undertake (*Bergaderm and Goupil* v *Commission*, cited above, paragraph 35).

48 In the present case, however, the appellants' first ground of appeal specifically challenges precise paragraphs in the contested judgment and includes an argument intended to show that the Court of First Instance erred in law in holding that the Council's failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission could not be regarded as a reviewable act.

49 The first objection of inadmissibility alleging that the appellants are merely repeating arguments already submitted to the Court of First Instance must, therefore, be dismissed.

50 Next, as regards the objection of inadmissibility raised against the arguments founded on the Anti-Dumping Code put forward by the appellants in their first and third grounds of appeal, it appears, as the Advocate General states in paragraph 56 of his Opinion, that the appellants are requesting only that the provisions of the basic regulation be interpreted in accordance with the Anti-Dumping Code. That reference to the Anti-Dumping Code, which is not such as to change the subject-matter of the dispute before the Court of First Instance, does not infringe Article 113(2) of the Rules of Procedure of the Court of Justice.

51 In those circumstances the second objection of inadmissibility must also be dismissed.

52 Finally, as regards the objection of inadmissibility raised against the second ground of appeal, it must be pointed out that the Council is in fact maintaining that that ground of appeal is invalid. However, the validity of a ground of appeal concerns its ability to found the appeal and does not affect its admissibility.

53 This last plea of inadmissibility must therefore also be dismissed.

— Substance

54 As regards the question whether the Council's failure to adopt a proposal for a regulation imposing a definitive anti-dumping duty constitutes a reviewable act within the meaning of Article 173 of the Treaty, according to settled case-law, only a measure whose legal effects are binding on the applicant and are capable of affecting his interests is an act or decision which may be the subject of an action for annulment under that article (see, in particular, Case C-147/96 *Netherlands* v *Commission* [2000] ECR I-4723, paragraph 25).

55 Moreover, it follows from the same case-law that in the case of acts adopted by a procedure involving several stages, and particularly where they are the culmination of an internal procedure, it is in principle only those measures which definitively determine the position of the Commission or the Council upon the conclusion of that procedure which are open to challenge and not intermediate measures whose purpose is to prepare for the final decision (*Netherlands* v *Commission*, cited above, paragraph 26).

56 Furthermore, an act which is neither capable of producing nor intended to produce any legal effects cannot form the basis of an action for annulment. In order to ascertain whether or not a measure which has been challenged produces such effects it is necessary to look to its substance (see, in particular, *Netherlands* v *Commission*, cited above, paragraphs 26 and 27).

57 In this case the file shows that the Council published a press release on 21 May 1997 stating that the written procedure regarding the imposition of a definitive anti-dumping duty had been concluded on 16 May 1997 with a negative result.

58 Furthermore, on 24 June 1997, the Secretary-General of the Council replied to Eurocoton's request for information that 'by written procedure which ended on 16 May 1997 the Council found there was no simple majority necessary for the adoption of the regulation [in question]'.

59 In the light of those circumstances, it appears that on 16 May 1997, at the end of the voting procedure, the Council adopted a position on the Commission's proposal.

60 The maximum period of 15 months allowed to the institutions to conclude the investigation and, where necessary, to impose definitive anti-dumping duties in accordance with Article 6(9) of the basic regulation expired several days later on 21 May 1997.

61 The Court of First Instance held, in paragraphs 62 to 64 of the contested judgment, that the appellants' reference to the expiry of that period in their observations on the Council's objection to admissibility was a new claim which could not be submitted at that stage of the proceedings and that, in any event, expiry of that period could not be considered a reviewable act.

62 It appears that, in referring to the expiry of the 15-month period, the appellants were not requesting the annulment of any act other than that referred to in their application, but simply stating that, even if the rejection of the Commission's proposal on 16 May 1997 did not constitute a definitive position, it had become definitive on 21 May 1997 on the expiry of the 15-month period.

63 In those circumstances, the expiry of that period is a factor to take into consideration in order to determine whether the Council's failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission constituted a reviewable act.

64 In that regard, it must be pointed out that once the 15-month period laid down in Article 6(9) of the basic regulation had expired the Council could no longer adopt that proposal for a regulation. It follows that the Council's position on the proposal for a regulation which constituted an implied rejection of that proposal became definitive on the expiry of the 15-month period, that is, on 21 May 1997.

65 It must, therefore, be noted that the failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission, together

with the expiry of the 15-month period, determined definitively the Council's position in the final phase of the anti-dumping proceedings.

66 Moreover, that failure to adopt the proposal affected the interests of Eurocoton and the other appellants who had instigated the anti-dumping investigation. It follows from Regulation No 2208/96 and the appellants' arguments that the complaint was lodged by Eurocoton on behalf of the Community industry and that it was supported by the other appellants.

67 In the light of the foregoing, it appears that the Council's failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission has all the characteristics of a reviewable act within the meaning of Article 173 of the Treaty, in that it produced binding legal effects capable of affecting the appellants' interests.

68 The legislative nature of the procedure in the context of which the Council adopted its definitive position is not such as to alter that conclusion in this case.

69 As the Advocate General stated in paragraph 84 of his Opinion, anti-dumping proceedings are similar in several respects to an administrative procedure.

70 In such matters, the Council acts under rules — the basic regulation — which set well-defined limits to the powers of the institutions and offer procedural

safeguards to the economic operators concerned and to their professional associations.

71 In so doing, the Council acts within a regulatory framework which it has imposed on itself, specifying the conditions in which an anti-dumping regulation may be adopted as well as the Council's room for manœuvre as to whether or not to adopt such measures.

72 In that context it must be added that not only regulations imposing definitive anti-dumping duties adopted at the end of anti-dumping proceedings, but also decisions of the Commission or the Council to close anti-dumping proceedings without imposing anti-dumping duties may be the subject of actions before the Community Courts (Case C-121/86 *Epicheiriseon Metalleftikon Viomichanikon kai Natfiliakon and Others* v *Council* [1989] ECR 3919 and Case C-315/90 *Gimelec and Others* v *Commission* [1991] ECR I-5589).

73 Although regulations imposing anti-dumping duties are legislative in nature and scope, in that they apply to all economic operators, they may nevertheless be of individual concern not only to Community producers, as complainants (*Fediol* v *Commission*, paragraphs 27 to 30), but also, in certain circumstances, to the producers and exporters of the product in question who are alleged to be dumping, and, in certain circumstances, to importers of that product (Joined Cases C-133/87 and C-150/87 *Nashua Corporation and Others* v *Commission and Council* [1990] ECR I-719, paragraphs 14 to 20).

74 It is clear from the foregoing that, in holding, in paragraphs 61, 63 and 64 of the contested judgment, that the annulment action was inadmissible in the absence of a reviewable act, the Court of First Instance infringed Article 173 of the Treaty.

75 It follows that the contested judgment must be set aside in so far as it dismissed the action for annulment which had been brought by the appellants.

The fourth ground of appeal

76 By their fourth ground of appeal, the appellants claim that the Court of First Instance infringed Articles 190 and 215 of the Treaty and the general principle of coherence by dismissing their action for damages.

77 They maintain that if the Court were to conclude that the Court of First Instance had committed an error in holding that there was no reviewable act, it should also conclude that the Court of First Instance committed an error in dismissing, in paragraph 90 of the contested judgment, the arguments alleging failure to state reasons for that act.

78 The Council contends that the appellants' criticisms must be declared inadmissible since they do not satisfy the requirements of precision under Article 112(1), first subparagraph, (c) of the Rules of Procedure of the Court.

79 In that regard, contrary to the Council's submission, the appellants' arguments appear sufficiently clear to satisfy the requirements laid down by Article 112(1), first subparagraph, (c) of the Rules of Procedure of the Court of Justice and to allow the latter to review the legality of the statement in paragraph 90 of the contested judgment.

80 As to the substance, since the Court of First Instance wrongly held that the failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission was not a reviewable act, the statement in paragraph 90 of the contested judgment that the argument alleging failure to state reasons could not be entertained in the absence of a reviewable act is also not founded.

81 Therefore, the contested judgment must be set aside in respect of the appellants, in so far as it dismissed their action for damages.

The applications at first instance

82 Pursuant to Article 61 of the Statute of the Court of Justice, if the appeal is well founded and the Court of Justice quashes the decision of the Court of First Instance, it may itself give final judgment in the matter, where the state of the proceedings so permits. It appears to do so in this case.

The action for annulment

Admissibility

83 It should be pointed out that at first instance the Council had raised, in addition to the objection of inadmissibility alleging the absence of a reviewable act, two other objections. First, that the applicants had no legal interest in seeking the annulment of the Council's rejection of the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission, given that, after the expiry of the 15-month period laid down in Article 6(9) of the basic regulation, that proposal could no longer be adopted. Second, with the exception of Eurocoton, none of the applicants was individually concerned by that rejection.

84 As regards the first objection, while it is true that after the expiry of the 15-month period the Council could no longer adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission, the fact remains that it would none the less have to take account of the annulment of its decision not to adopt the proposal ('the decision in question') if it had to take a position on a new proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission, in particular if that proposal was the consequence of a complaint lodged by the appellants. It is clear that the appellants do have a legal interest in bringing the action for annulment.

85 With regard to the second objection, the Council does not dispute, on the one hand, that the decision in question is of individual concern to Eurocoton, as a complainant. On the other hand, though the complaint was lodged by Eurocoton, it follows from Regulation No 2208/96 and the appellants' arguments before the Court of First Instance, as has already been pointed out in paragraph 66 of this judgment, that it was brought in the name of the Community industry and was supported by numerous Community producers representing a significant proportion of the Community production of a similar product, and in particular by the other appellants. In those circumstances, it appears justified also to regard the other appellants who instigated the complaint as individually concerned by the decision in question.

86 Therefore, the action for annulment, in so far as it was brought by the appellants, must be held to be admissible.

Substance

87 As the Advocate General stated in paragraphs 112 and 113 of his Opinion, the appellants now only argue in support of their action for annulment that the Council disregarded the obligation to state reasons by not indicating why it had rejected the Commission's proposal for a regulation imposing a definitive anti-dumping duty.

88 According to settled case-law, the statement of reasons required by Article 190 of the Treaty must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in particular, Case C-76/00 P *Petrotub and Republica* v *Council* [2003] ECR I-79, paragraph 81, and the case-law cited).

89 When the Council decides not to adopt a proposal for a regulation imposing definitive anti-dumping duties, it should provide an adequate statement of reasons which shows clearly and unambiguously why, in the light of the provisions of the basic regulation, there is no need to adopt the proposal.

90 Under Article 9(4) of the basic regulation, where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21 of that regulation, 'a definitive anti-dumping duty shall be imposed by the Council'.

91 Compliance with the obligation to state reasons therefore requires the act in question to indicate the absence of dumping or corresponding injury or that the Community interest does not call for intervention on its part.

92 Under Article 21(1) of the basic regulation, 'measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures'.

93 In the event, as is clear from the Council press release and its reply to a request for information from Eurocoton, the only reason put forward for the failure to adopt the proposal for a regulation imposing a definitive anti-dumping duty submitted by the Commission was the lack of a majority in favour of that proposal.

94 It follows from the foregoing that such information as to the result of the voting in the Council cannot satisfy the obligation to state reasons laid down by Article 190 of the Treaty.

95 Therefore the decision in question must be annulled in so far as it concerns the appellants.

The action for damages

96 It should be noted that the appellants now plead in support of their action for damages only that the statement of reasons for the decision in question was inadequate.

97 According to settled case-law, Community law confers a right to reparation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (see, in particular, Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 53, and Case C-472/00 P *Commission* v *Fresh Marine* [2003] ECR I-7541, paragraph 25).

98 The Court has consistently held that any inadequacy in the statement of reasons for a legislative measure is not sufficient to cause the Community to incur liability (Case 106/81 *Kind* v *EEC* [1982] ECR 2885, paragraph 14; Case C-119/88 *AERPO and Others* v *Commission* [1990] ECR I-2189, paragraph 20).

99 Although proceedings in respect of anti-dumping duties are similar in several respects to an administrative procedure, as was stated in paragraph 69 of this judgment, an inadequate statement of reasons for an act bringing such proceedings to an end is also not of itself sufficient to cause the Community to incur liability.

100 Therefore, the action for damages must be dismissed as unfounded.

Costs

101 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, it is to make a decision as to costs.

102 As regards the costs relating to the proceedings at first instance, under Article 69(3) of the Rules of Procedure where each party succeeds on some or fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs. Since the Council and the appellants have each failed on one head, they must be ordered to bear their own costs at first instance.

103 As regards the costs relating to the appeal, under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the appellants applied for costs and the Council has been unsuccessful, it must be ordered to pay the costs of the appeal.

104 Under Article 69(4) of the Rules of Procedure, which is also rendered applicable to appeals by Article 118, Member States which intervene in the proceedings are to bear their own costs. In application of that provision, the United Kingdom must bear its own costs both at first instance and on appeal.

On those grounds,

THE COURT

hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 29 November 2000 in Case T-213/97 *Eurocoton and Others* v *Council* in so far as it concerns the appellants;

2. Sets aside the decision of the Council of the European Union of 16 May 1997, which became final on 21 May 1997, not to adopt the proposal for a Council regulation (EC) imposing a definitive anti-dumping duty on the import of unbleached cotton fabric from the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (COM (97) 160 final), submitted by the Commission of the European Communities on 21 April 1997, in so far as it concerns the appellants;

3. Dismisses the action for damages;

4. Orders the Council of the European Union and the appellants to bear their own costs at first instance;

5. **Orders the Council of the European Union to pay the costs of the appeal;**

6. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs both at first instance and on appeal.**

Rodríguez Iglesias	Wathelet	Timmermans
Gulmann	Edward	Jann
Macken	Colneric	von Bahr
Cunha Rodrigues		Rosas

Delivered in open court in Luxembourg on 30 September 2003.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President