JUDGMENT OF THE COURT (First Chamber)

27 January 2005 *

In Case C-422/02 P,

APPEAL under Article 49 of the EC Statute of the Court of Justice, brought on 21 November 2002,

Europe Chemi-Con (Deutschland) GmbH, established in Nuremberg (Germany), represented by K. Adamantopoulos, dikigoros, J. Branton, solicitor, and J. Gutiérrez Gisbert, abogado, with an address for service in Luxembourg,

applicant,

the other parties to the proceedings being:

Council of the European Union, represented by S. Marquardt, acting as Agent, and G. Berrisch, avocat,

defendant at first instance,

* Language of the case: English.

and

Commission of the European Communities, represented by T. Scharf and S. Meany, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 29 April 2004,

gives the following

Judgment

1 By its appeal, Europe Chemi-Con (Deutschland) GmbH ('Chemi-Con') seeks to have set aside the judgment of the Court of First Instance of the European Communities

in Case T-89/00 *Europe Chemi-Con (Deutschland)* v *Council* [2002] ECR II-3651 ('the judgment under appeal') dismissing its action for annulment of the second paragraph of Article 3 of Council Regulation (EC) No 173/2000 of 24 January 2000 terminating the anti-dumping proceedings concerning imports of certain large aluminium electrolytic capacitors originating in Japan, the Republic of Korea and Taiwan (OJ 2000 L 22, p. 1, 'the contested regulation').

Legal background

The Community legislation

2 Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended by Council Regulation (EC) No 905/98 of 27 April 1998 (OJ 1998 L 128, p. 18, 'the basic regulation'), regulates anti-dumping procedures. According to the second paragraph of Article 23 of the basic regulation, it was adopted without prejudice to the anti-dumping proceedings already initiated under Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ 1994 L 349, p. 1) which was applicable before the entry into force of the basic regulation.

3 Article 5 of the basic regulation governs the initiation of initial investigation proceedings to determine the existence, degree and effect of any dumping alleged in a complaint.

4 Article 7(1) of the basic regulation provides:

'Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings.'

5 Article 7(7) of that regulation provides:

'Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission.'

6 Article 9(4) and (5) of the basic regulation reads as follows:

'4. 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, a definitive anti-dumping duty shall be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after

consultation of the Advisory Committee. Where provisional duties are in force, a proposal for definitive action shall be submitted to the Council not later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Regulation have been accepted. ...'

7 Under Article 11(2) and (3) of the basic regulation:

'2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. ...

...

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

...'

The international legislation

8 Article 9.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the 1994 Anti-dumping Code'), which appears as Annex 1A to the Agreement establishing the World Trade Organisation, approved by Article 1 of Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), reads as follows:

'When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.'

Background to the dispute

9 Chemi-Con is a wholly-owned subsidiary of Nippon Chemi-Con Inc. ('NCC'), established in Tokyo (Japan). NCC manufactures large aluminium electrolytic capacitors (LAECs). Chemi-Con is the exclusive distributor and importer in the European Community of LAECs manufactured by NCC.

10 With effect from 4 December 1992 Council Regulation (EEC) No 3482/92 of 30 November 1992 (OJ 1992 L 353, p. 1) imposed a definitive anti-dumping duty on imports into the Community of LAECs originating in Japan and required the definitive collection of the provisional anti-dumping duty. That anti-dumping measure was to expire five years after its imposition, in other words, on 4 December 1997, pursuant to the first subparagraph of Article 11(2) of the basic regulation.

11 Council Regulation (EC) No 1384/94 of 13 June 1994 (OJ 1994 L 152, p. 1) also imposed, with effect from 19 June 1994, a definitive anti-dumping duty on imports of LAECs originating in Korea and Taiwan.

12 By a notice published in the *Official Journal of the European Communities* of 3 December 1997 (OJ 1997 C 365, p. 5), the Commission announced the initiation of a review of the anti-dumping measures applicable to imports of certain LAECs originating in Japan. The anti-dumping duties on those imports were collected while the review was conducted, in accordance with Article 11(2) of the basic regulation.

13 Pursuant to Article 11(3) of the basic regulation the Commission also decided, on its own initiative, by a notice published in the *Official Journal of the European Communities* of 7 April 1998 (OJ 1998 C 107, p. 4) to initiate an interim review of the anti-dumping measures applicable to imports of certain LAECs originating in Korea and Taiwan.

14 In addition, by a notice published in the *Official Journal of the European Communities* of 29 November 1997 (OJ 1997 C 363, p. 2), the Commission had decided, pursuant to Article 5 of the basic regulation, to initiate an anti-dumping proceeding and open an investigation concerning certain LAECs originating in the United States and Thailand. By Commission Regulation (EC) No 1845/98 of 27 August 1998 (OJ 1998 L 240, p. 4) a provisional anti-dumping duty was imposed on imports of such LAECs. The Commission then proposed to the Council the imposition of definitive anti-dumping measures on those imports. However, the Council did not adopt the proposal within the period of 15 months prescribed by Article 6(9) of the basic regulation.

15 Consequently, no definitive measures were imposed on the imports from the United States and Thailand and the provisional measures, which entered into force on 29 August 1998, lapsed on 28 February 1999. As a result, the provisional anti-dumping duties were never definitively collected on those imports.

16 On 21 May 1999, the Commission sent Chemi-Con a disclosure document in accordance with Article 20 of the basic regulation, setting out the essential facts and considerations on the basis of which the Commission intended to propose the termination of the review of the anti-dumping measures applicable to imports of certain LAECs originating in Japan following the failure to impose definitive duties on imports of certain LAECs from the United States and Thailand.

17 Between 31 May and 2 November 1999, Chemi-Con and the Commission exchanged letters and there was a hearing on 15 June 1999. Throughout the proceedings, the applicant stressed that the termination of the review and hence of the anti-dumping proceedings should have retroactive effect as from 4 December 1997, the date of expiry of the anti-dumping duties imposed in 1992 on imports of LAECs originating in Japan.

18 By the contested regulation, the Council decided that, in the absence of measures against LAECs from the United States and Thailand, the imposition of any anti-dumping measures on imports of LAECs originating in Japan, Korea and Taiwan would be discriminatory.

19 The operative part of the contested regulation reads as follows:

'*Article 1*

The anti-dumping proceeding concerning imports of certain [LAECs] originating in Japan is hereby terminated.

Article 2

The anti-dumping proceeding concerning imports of certain [LAECs] originating in the Republic of Korea and Taiwan is hereby terminated.

Article 3

This regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from 28 February 1999.'

20 In the recitals of the contested regulation, the Council justified the termination of the anti-dumping proceedings as follows:

'132 As mentioned above in recital (6), a further proceeding, concerning LAECs originating in the United States of America and Thailand was initiated in November 1997, pursuant to Article 5 of the basic regulation. The Commission's investigation definitively established the existence of significant dumping and material injury on the Community industry resulting therefrom. No compelling reasons were found indicating that new definitive measures would be against the Community interest. Consequently, the Commission proposed to the Council the imposition of definitive anti-dumping measures on the imports of LAECs originating in the United States of America and Thailand. However, the Council did not adopt the proposal within the time limits laid down in the basic regulation. As a result, definitive measures were not imposed on imports from the United States of America and Thailand and the provisional measures, which entered into force in August 1998, lapsed on 28 February 1999.

133 The new investigation concerning the United States of America and Thailand and the two present reviews were conducted, to a large extent, simultaneously. As indicated above, basically the same conclusions in the present reviews have been reached as in the new proceeding concerning the United States of America and Thailand, for the same product concerned. These conclusions call in principle for amending the definitive measures on imports from Japan, the Republic of Korea and Taiwan.

However, Article 9(5) of the basic regulation provides that anti-dumping duties shall be imposed on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury.

134 Therefore, it is concluded that, in the absence of measures on the United States of America and Thailand, the imposition of any measures on imports originating in Japan, the Republic of Korea and Taiwan as a result of the present investigation would be discriminatory towards these latter three countries.

135 In consideration of the above, in order to ensure a coherent approach and to respect the principle of non-discrimination as set out in Article 9(5) of the basic regulation, it is necessary to terminate the proceedings concerning imports of LAECs originating in Japan, the Republic of Korea and Taiwan, without the imposition of anti-dumping measures.

136 One Japanese exporting producer claimed that the proceeding concerning Japan should be retroactively terminated as from the date of initiation of the present review, i.e. 3 December 1997, on the grounds that, while the review on Japan was pending, imports originating in that country were still subject to measures and were therefore discriminated against compared to the imports originating in the United States of America and Thailand, for which no duties were collected.

137 However, as noted above in recital (132) above, between December 1997 and 28 February 1999 imports originating in the United States of America and Thailand were subject to investigation, as were the imports originating in Japan. The fact that measures were in force against Japan but not against the United States of America and Thailand over that period of time is merely a reflection of the fact that the proceeding concerning the United States of America and Thailand was at a different stage, the investigation being the initial investigation, whereas as regards Japan, the measures in force were those imposed by Regulation (EEC) No 3482/92. In these circumstances, no discrimination occurred because the situation of each proceeding was different.

138 Nevertheless, it is accepted that, from 28 February 1999 onwards, given the considerations set out in recitals 132 to 135 above, imports originating in Japan should be treated in the same way as those originating in the United States of America and Thailand. The same is true for the Republic of Korea and Taiwan. The investigation concerning the United States of America and Thailand had to be concluded by 28 February 1999, either by the imposition of measures or the termination of the proceeding. The present investigation has reached similar conclusions to the investigation concerning the United States of America and Thailand, and thus the same treatment must be applied to the present proceeding.'

Procedure before the Court of First Instance and the judgment under appeal

21 By application lodged at the Registry of the Court of First Instance on 14 April 2000, Chemi-Con brought an action for annulment of the second paragraph of Article 3 of the contested regulation in so far as it does not state that the regulation is to apply retroactively from 4 December 1997 onwards.

22 By order of 17 November 2000, the President of the Fourth Chamber (Extended Composition) of the Court of First Instance granted the Commission leave to intervene in support of the form of order sought by the Council. The Council, supported by the Commission, contended that the Court should dismiss the action, as its main claim, as inadmissible and, in the alternative, as unfounded.

23 By the judgment under appeal, the Court of First Instance dismissed the action.

24 Having declared the application admissible, the Court of First Instance rejected the first plea relied on by Chemi-Con alleging a manifest error of assessment. It found that the applicant was essentially alleging an error in law with respect to the application of the principle of equal treatment in the contested regulation, not a manifest error in the assessment of the facts by the Council. The Court of First Instance held, in paragraphs 53 to 59 of the judgment under appeal, that the regulation does not infringe the principle of equal treatment set out in Article 9(5) of the basic regulation as regards the period from 4 December 1997 to 28 February 1999.

25 According to the Court of First Instance, the two proceedings at issue, that is to say, the review concerning imports originating in Japan and the initial investigation into imports from the United States and Thailand, were governed by different provisions of the basic regulation which had different consequences as regards the collection of the anti-dumping duties (paragraph 53). The Court of First Instance takes the view that, if proceedings are terminated at the stage of the initial investigation, governed by Article 5 of that regulation, without the imposition of anti-dumping measures, no definitive duty is levied and the provisional duties are not collected definitively (paragraph 54). However, Article 11(2) of the regulation states, in respect of review proceedings, that an anti-dumping measure expires five years after its imposition and that, in the case of an expiry review of such a measure, the measure is to remain in force pending the outcome of such review (paragraph 56).

26 The Court of First Instance held as follows in paragraphs 57 and 58 of the judgment under appeal:

> '57 Consequently, even if the investigations were carried out simultaneously on similar products originating in different countries for the same period of investigation and similar conclusions were reached as to dumping, injury and the Community interest, the difference in treatment as regards the collection of anti-dumping duties between imports from Japan and those from the United States and Thailand has a legislative basis in the basic regulation and therefore cannot be regarded as constituting an infringement

of the principle of equal treatment (see, to that effect, Case C-323/88 *Sermes* [1990] ECR I-3027, paragraphs 45 to 48).

58 Furthermore, the Council is not obliged to refrain from applying Article 11 (2) of the basic regulation on the basis of Article 9(5) of that regulation. The latter provision relates only to the imposition of anti-dumping duties. In this case, the anti-dumping duties which the applicant had to pay during the period from 4 December 1997 to 28 February 1999 were imposed by Regulation No 3482/92 and continued to be collected on the basis of Article 11(2) of the basic regulation, which is a specific provision. Thus, the applicant had to continue paying anti-dumping duties on the basis of Article 11(2) of the basic regulation irrespective of the initiation of the initial investigation on imports from the United States and Thailand.'

27 Furthermore, the Court of First Instance rejected the arguments of Chemi-Con that the situation in the present case was comparable to that which led to Council Regulation (EEC) No 2553/93 of 13 September 1993 amending Regulation (EEC) No 2089/84 imposing a definitive anti-dumping duty on imports of certain ball bearings originating in Japan and Singapore (OJ 1993 L 235, p. 3), which fixed the retroactive effect of the expiry of a definitive anti-dumping duty, imposed prior to that regulation, at the date of the initiation of the review procedure. It pointed out that the circumstances leading to that regulation were, in many respects, different from those which lay behind the contested regulation (paragraph 59) of the judgment under appeal.

28 As regards the second plea raised by Chemi-Con, alleging that there was no adequate statement of reasons for the contested regulation, the Court of First Instance recalled the settled case-law of the Court of Justice regarding the statement of reasons required by Article 253 EC and, in particular, that relating to measures of general application (paragraphs 65 and 66 of the judgment under appeal). It concluded that the statement of reasons in that regulation, in light of its content and the circumstances of its adoption, was adequate (paragraphs 67 and 68 of the judgment under appeal).

Forms of order sought

29 Chemi-Con claims that the Court should:

— set aside the judgment under appeal;

— order the Council to bear the costs of both sets of proceedings; and

— as its principal claim, annul the second paragraph of Article 3 of the contested regulation in so far as it does not state that the regulation is to apply retroactively from 4 December 1997 onwards; or, in the alternative, refer the case back to the Court of First Instance so that it may give final judgment on the claim for annulment of that provision.

30 The Council and Commission contend that the appeal should be dismissed and Chemi-Con ordered to bear the costs.

The appeal

31 In support of its appeal Chemi-Con relies on three grounds of appeal which challenge the rejection by the Court of First Instance of the first plea raised before it. The first ground of appeal alleges an error of law by the Court of First Instance

consisting in the fact that, in paragraph 48 of the judgment under appeal, it incorrectly reclassified the plea relied on by Chemi-Con, which concerned the infringement by the Council of the principle of non-discrimination in Article 9(5) of the basic regulation and not the infringement of the general principle of equal treatment. The second ground alleges an error of law by the Court of First Instance, in paragraph 58 of the judgment, in relation to the interpretation of that provision of the basic regulation. The third ground concerns an error of law the Court of First Instance is alleged to have committed in paragraph 57 of the judgment as regards the application of the principle of equal treatment. Moreover, inadequate or ambiguous reasons were given for the application of that principle.

32 As the Council and the Commission rightly pointed out, the three grounds of appeal essentially raise a single substantive issue relating to the interpretation and application of the principle of equal treatment or non-discrimination set out in Article 9(5) of the basic regulation. The question is essentially whether, where imports into the Community of similar products from several sources are subject to separate anti-dumping proceedings, which are at different stages governed by distinct provisions of that regulation, that principle none the less requires all the imports concerned to be given the same treatment as regards the collection of anti-dumping duties, so that such duties cannot be charged on imports from some sources if they have not been charged on similar imports from other sources.

The first ground of appeal

33 As regards the first ground of appeal, as the Advocate General observed in paragraphs 36 to 38 of his Opinion, it matters little whether the principle set out in Article 9(5) of the basic regulation is described as the 'principle of equal treatment' or the 'principle of non-discrimination'. They are simply two labels for a single general principle of Community law, which prohibits both treating similar situations

differently and treating different situations in the same way unless there are objective reasons for such treatment (see, inter alia, Case C-442/00 *Rodríguez Caballero* [2002] ECR I-11915, paragraph 32 and the case-law cited). It is clear from paragraphs 50, 51 and 57 of the judgment under appeal that the Court of First Instance examined the treatment given to imports of LAECs from Japan, the United States and Thailand in the light of that principle, as set out, in particular, in Article 9 (5). Accordingly, Chemi-Con cannot claim that, in paragraph 48 of the judgment under appeal, the Court of First Instance failed to have regard to the principle whose infringement Chemi-Con was pleading before it.

34 It follows from the foregoing that the first ground of the appeal, alleging the incorrect categorisation of the plea relied on by Chemi-Con before the Court of First Instance, is unfounded and must be rejected.

The second ground of appeal

The first part of the second ground

35 By the first part of its second ground of appeal Chemi-Con takes issue with the finding, in paragraph 58 of the judgment under appeal, that Article 9(5) of the basic regulation relates only to the imposition of anti-dumping duties. It infers from that finding that the Court of First Instance rules out the possibility that the prohibition on discrimination laid down by that provision might apply to situations in which anti-dumping duties continue to be collected on the basis of Article 11(2) of that regulation.

36 According to Chemi-Con, Article 9(5) of the basic regulation must be applied in all circumstances giving rise to the collection of anti-dumping duties. In the present case, that provision precludes importers of LAECs from Japan from being required, on the basis of Article 11(2) of that regulation, to pay an anti-dumping duty pending the results of an expiry review of anti-dumping measures, while imports of similar products from the United States and Thailand which have been subject to an initial investigation conducted at the same time, the outcome of which was the same as that of the review, were not subject to the definitive collection of that type of duty. It is for that reason that Chemi-Con takes the view that the contested regulation should have applied retroactively from 4 December 1997 onwards, that is to say, from the first day on which it was required to pay an anti-dumping duty on the basis of Article 11(2). Until 3 December 1997, the date mentioned in the 136th recital of the preamble to the contested regulation, such a duty had to be paid on the basis of Regulation No 3482/92.

37 The Council and the Commission contend that in finding that Article 9(5) of the basic regulation relates only to the imposition of anti-dumping duties the Court of First Instance made no error of law in the interpretation of that provision. They point out that, unlike Article 9.2 of the 1994 Anti-dumping Code, cited by Chemi-Con, Article 9(5) refers expressly to the imposition of an anti-dumping duty and not to the collection of such a duty.

38 According to the Council, since Article 9(5) of the basic regulation prohibits discriminatory treatment in the imposition of anti-dumping duties, it lays down a strict rule which goes beyond the obligations arising for the Community from the 1994 Anti-dumping Code. Article 9.2 of that code merely requires that, once anti-dumping duties have been imposed, they must be collected in a non-discriminatory manner. In support of that interpretation, the Council cites the report of 4 July 1997 of the Panel set up under the General Agreement on Tariffs and Trade (GATT)

entitled 'EC Imposition of Anti-Dumping Duties on imports of cotton yarn from Brazil' which was drawn up in connection with Article 8.2 of the 1979 Agreement on Implementation of Article VI of the GATT (GATT Anti-dumping Code, OJ 1980 L 71, p. 90), which corresponds to Article 9.2 of the 1994 Anti-dumping Code. However, it takes the view that the fact that Article 9(5) relates only to the imposition of anti-dumping duties does not mean that the collection of those duties is not itself subject to the prohibition on discrimination.

39 Although both Chemi-Con and the Council and Commission have devoted a considerable part of their arguments to the distinction between the imposition and the collection of anti-dumping duties, it must be said that any difference between their views is, as the Advocate General pertinently observed in point 65 of his Opinion, more apparent than real. None of the parties to the proceedings disputes the fact that Article 9(5) of the basic regulation also applies to a review proceeding such as that at issue in the present case, in which the collection of an anti-dumping duty on certain imports continued beyond the date of expiry of the definitive duty imposed by the initial imposition decision.

40 According to the judgment under appeal, and paragraphs 50, 51 and 57 in particular, the treatment given to imports of LAECs from different States during the period from 4 December 1997 to 28 February 1999 was examined in the light of the principle set out in Article 9(5) of the basic regulation. Accordingly, it cannot be inferred from paragraph 58 of that judgment, and specifically from the use of the adverb 'only' in the second sentence of that paragraph, that the Court of First Instance thereby accepted that the collection of anti-dumping duties could be undertaken in a discriminatory manner and that it held that that provision was not applicable to the facts of the case before it. The argument relied on by Chemi-Con is therefore unfounded and must be rejected.

The second part of the second ground of appeal

41 By the second part of its second ground of appeal, Chemi-Con also alleges that, in paragraph 58 of the judgment under appeal, the Court of First Instance held that the Council has a discretion which allows it to refrain from applying Article 9(5) of the basic regulation to the proceedings governed by Article 11(2) of that regulation.

42 However, in holding that the Council is not obliged to refrain from applying Article 11(2) of the basic regulation and that that article constitutes a specific provision in relation to Article 9(5) of that regulation, the Court of First Instance in no way held that the Council may, at its discretion, choose not to apply that provision to the review proceedings. As the Council and the Commission have pointed out, the Court of First Instance is in no doubt about the applicability of Article 9(5) of the basic regulation to situations such as that in this case and the argument raised by Chemi-Con is unfounded and must be rejected.

43 Furthermore, if this argument had to be understood as a criticism of the fact that, in the view of the Court of First Instance, Article 9(5) of the basic regulation did not preclude the application in the present case of Article 11(2) of that regulation, it would have to be held that such an argument merges with the reasoning relied on in the third ground of appeal which alleges an error of law by the Court of First Instance in the application of the principle of equal treatment. In that event, there would be no call for the Court of Justice, in any event, to undertake a more thorough examination of that argument in the light of the ground alleging an error of law in the interpretation of Article 9(5).

44 Having regard to the foregoing considerations, the second ground of the appeal, alleging an error of law by the Court of First Instance in the interpretation of Article 9(5) of the basic regulation, must be rejected.

The third ground of appeal

45 By the first part of the third ground of appeal, Chemi-Con argues that the reasoning given in paragraph 57 of the judgment under appeal does not explain why the Court of First Instance concluded that the difference between the treatment of imports from Japan and those from the United States and Thailand does not constitute a breach of the principle of equal treatment. In its view, the reasoning in the judgment does not make sufficiently clear whether the Court of First Instance considered that the situation of imports from Japan was not comparable to that of imports from the United States or Thailand or whether, rather, it considered that the situations were comparable, but that the difference in treatment was justified by the existence of 'substantial objective differences'. Chemi-Con points out that this criterion is the one used by the case-law cited in paragraph 52 of the judgment under appeal.

46 In that connection, suffice it to note that, as Chemi-Con itself acknowledges in its appeal, paragraph 57 of the judgment under appeal implies that the Court of First Instance takes the view that imports from the three abovementioned States are comparable as regards their situation but that their different treatment is justified. Although the Court of First Instance did not expressly state that the situations were comparable, it listed several facts which were common to the situations in question, such as the similarity of the imported products, the fact that the imports at issue were subject to investigations conducted at the same time and in respect of the same period, and the fact that the investigations resulted in similar findings as to the existence of dumping, damage and the Community interest. It was only after having pointed out those common factors that the Court of First Instance identified the reason why it was justifiable to treat those situations differently. The reasons given in paragraph 57 are therefore neither ambiguous nor inadequate.

47 By the second part of its third ground of appeal, Chemi-Con argues that the mere fact that the initial investigation into imports from the United States and Thailand was governed by a provision of the basic regulation different from that concerning the expiry review of measures does not constitute a 'substantial, objective difference' justifying the difference in treatment at issue. In particular, it criticises the reliance by the Court of First Instance on the judgment in *Sermes*, cited above, given that the difference in the legislative basis taken into account in that judgment was much more substantial than that between two provisions of the same Council regulation. In that regard, Chemi-Con observes that, in the case leading to that judgment, the difference in treatment had a legislative basis in a provision of primary Community law. In the present case, the legislative basis for the difference in treatment is found only in Article 11(2) of the basic regulation, which cannot be considered to be a higher-ranking rule of law than Article 9(5) of the same regulation.

48 It must be observed at the outset that the argument put forward by Chemi-Con is based on too superficial a reading of the judgment under appeal. It is true that, in paragraphs 57 and 58 of the judgment, the Court of First Instance confines itself to indicating, essentially, that the difference in treatment to the disadvantage of imports from Japan has a legislative basis in Article 11(2) of the basic regulation, which is a specific rule providing for the collection of anti-dumping duties pending the results of the expiry review of a measure. However, consideration should also be given to paragraphs 54 to 56 of the judgment, in which the Court of First Instance describes the essential characteristics of the initial investigation and those of an expiry review of a measure, which are two anti-dumping proceedings subject to different rules under that regulation. By describing the essential characteristics, the Court of First Instance thus made reference not only to the fact that the two proceedings are governed by different provisions, but also more generally to the reasons which led the Community legislature to lay down, in that regulation, specific rules for each of those proceedings.

49 It follows that the reference made by the Court of First Instance to Article 11(2) of the basic regulation as the legislative basis for the difference in treatment between imports subject to a review and those giving rise to an initial investigation cannot be seen as relating to a purely formal aspect of the existence of that specific provision. That reference necessarily presupposes that, since that regulation provides expressly that an anti-dumping measure about to expire remains in force pending the results of the review, if one is conducted, it can be inferred that a review procedure is, as a rule, objectively different from that of an initial investigation, which is governed by other provisions of the same regulation.

50 The objective difference between the two proceedings lies in the fact that imports subject to a review proceeding are those on which definitive anti-dumping duties have already been imposed and in respect of which sufficient evidence has generally been adduced to establish that the expiry of those measures would be likely to result in a continuation or recurrence of dumping and injury. On the other hand, where imports are subject to an initial investigation, the purpose of that investigation is precisely to determine the existence, degree and effect of any alleged dumping even if the initiation of such an investigation presupposes the existence of sufficient evidence to justify the initiation of that procedure/proceeding. It must therefore be held that, quite apart from the formal aspect noted by the Court of First Instance in paragraph 57 of the judgment under appeal, the difference in treatment recorded in this case was justified in substantive terms because, in the light of the relevant provisions of the basic regulation, the imports which gave rise to the imposition of a definitive anti-dumping duty by the Council, because of their source, were not in the same situation as similar imports from other sources which were merely subject to an initial investigation.

51 Accordingly, the Court of First Instance was right to hold that the difference in treatment between imports from Japan and those from the United States and Thailand did not constitute an infringement of the principle of equal treatment

52 Moreover, the Court of First Instance was also right to hold, in paragraph 58 of the judgment under appeal, that the Council is not obliged to refrain from applying Article 11(2) of the basic regulation on the basis of Article 9(5) of that regulation. The principle set out in Article 9(5) does not require the Council, where it decides to terminate a review proceeding on the ground that no definitive anti-dumping duty was imposed on imports in a comparable situation to those subject to review but coming from other sources and having been subject to an initial investigation, to restore absolute equality of treatment as regards the collection of duties on imports in those different situations.

53 In the present case, the Council took the view that the retroactive effect of the decision terminating the review proceeding for imports of LAECs from Japan should be fixed at 28 February 1999, the date on/from which it was accepted that definitive anti-dumping duties would not be imposed on similar imports from the United States and Thailand. In view of the objective reasons allowing specific treatment of imports subject to a review proceeding, it must be held that the Council did not thereby exceed its discretion in that matter.

54 In the light of the foregoing considerations, the third ground of the appeal, alleging an error of law by the Court of First Instance in the application of the principle of equal treatment, should be rejected.

55 As none of the grounds of appeal raised by Chemi-Con has been upheld, the appeal must be dismissed.

Costs

56 Under Article 69(2) of the Rules of Procedure, applicable to the procedure on appeal 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 Council has asked for an order that Chemi-Con pay the costs and Chemi-Con has been unsuccessful, it must be ordered to bear its own costs and pay those incurred by the Council in the appeal. Under Article 69(4), the Commission is to bear its own costs.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeal.**

2. **Orders Europe Chemi-Con (Deutschland) GmbH to bear its own costs and to pay those incurred by the Council of the European Union in these proceedings.**

Orders the Commission of the European Communities to bear its own costs.

[Signatures]