JUDGMENT OF THE COURT (Fourth Chamber)

3 September 2009 *

In Case C-535/06 P,

APPEAL pursuant to Article 56 of the Statute of the Court of Justice, brought on 22 December 2006,

Moser Baer India Ltd, established in New Delhi (India), represented by K. Adamantopoulos, dikigoros, and R. MacLean, Solicitor,

appellant,

the other parties to the proceedings being

Council of the European Union, represented by J.-P. Hix, acting as Agent, and by G. Berrisch, Rechtsanwalt,

defendant at first instance,

* Language of the case: English.

supported by

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

and

Committee of European CD-R and DVD+/-R Manufacturers (CECMA), formerly the Committee of European CD-R Manufacturers (CECMA), established in Cologne (Germany),

interveners at first instance,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, T. von Danwitz, R. Silva de Lapuerta, E. Juhász and G. Arestis (Rapporteur), Judges,

Advocate General: V. Trstenjak,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 10 July 2008,

after hearing the Opinion of the Advocate General at the sitting on 2 October 2008,

gives the following

Judgment

1 By its appeal, Moser Baer India Ltd seeks to have set aside the judgment of the Court of First Instance of the European Communities of 4 October 2006 in Case T-300/03 *Moser Baer India* v *Council* [2006] ECR II-3911 ('the judgment under appeal'), by which the Court of First Instance dismissed the appellant's action for annulment of Council Regulation (EC) No 960/2003 of 2 June 2003 imposing a definitive countervailing duty on imports of recordable compact discs originating in India (OJ 2003 L 138, p. 1; 'the contested regulation') in so far as it applies to the appellant.

Legal context

2 Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1; 'the basic regulation'), governs countervailing proceedings.

3 Article 5 of the basic regulation provides:

‘Calculation of the amount of the countervailable subsidy

The amount of countervailable subsidies, for the purposes of this Regulation, shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation. …’

4 Article 7(3) of the basic regulation, which contains general provisions relating to that calculation, states:

‘Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. …’

5 Article 8 of the basic regulation provides:

‘Determination of injury

…

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both:

(a) the volume of the subsidised imports and the effect of the subsidised imports on prices in the Community market for like products; and

(b) the consequent impact of those imports on the Community industry.

3. With regard to the volume of the subsidised imports, consideration shall be given to whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the subsidised imports on prices, consideration shall be given to whether there has been significant price undercutting by the subsidised imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

…

5. The examination of the impact of the subsidised imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including: the fact that an industry is still in the process of recovering from the effects of past subsidisation or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the subsidised imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

7. Known factors other than the subsidised imports which are injuring the Community industry at the same time shall also be examined to ensure that injury caused by these other factors is not attributed to the subsidised imports pursuant to paragraph 6. Factors which may be considered in this respect include the volume and prices of non-subsidised imports, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.

…'

6 Under the third sentence of Article 15(1) of the basic regulation, the amount of the countervailing duty may not exceed the amount of countervailable subsidies, but should be less than the total amount of countervailable subsidies if such lesser duty is adequate to remove the injury to the Community industry.

7 Article 28 of the basic regulation provides:

‘Non-cooperation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available.

Interested parties should be made aware of the consequences of non-cooperation.

…

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time-limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

5. If determinations, including those regarding the amount of countervailable subsidies, are based on the provisions of paragraph 1, including the information supplied in the complaint, it shall, where practicable and with due regard to the time-limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.'

Background to the dispute

8 The background to the dispute is set out in paragraphs 8 to 14 of the judgment under appeal as follows:

'8 The applicant is a company established in India which manufactures various forms of storage media, including recordable compact discs ('CD-Rs').

9 After a complaint was filed by the Committee of European CD-R Manufacturers (CECMA), the Commission [of the European Communities] initiated an anti-subsidy investigation on 17 May 2002 into imports of CD-Rs from India (OJ 2002 C 116, p. 4).

10 By letter of 4 March 2003 the Commission provided the applicant with the essential facts and considerations on the basis of which it was intended to propose the imposition of definitive countervailing duties. The subsidy identified by the Commission consisted in a customs duty exemption for capital goods imported by the applicant. The amount of that subsidy was calculated by spreading it over a period of three years pursuant to Article 7(3) of the basic regulation. The statement envisaged the imposition of a countervailing duty of 10%.

11 The applicant replied to that statement by two letters of 19 March 2003, challenging both the method used in order to calculate the amount of the subsidy, and the existence and causation of the injury.

12 By two letters of 9 April 2003 the Commission rejected the applicant's arguments as to the existence of injury and of a causal link, and sent the applicant an additional statement containing a revised calculation of the amount of the subsidy, which was spread over a period of 4.2 years. The additional statement envisaged the imposition of a countervailing duty of 7.3%.

13 By letter of 14 April 2003 the applicant challenged the revised calculation of the amount of the subsidy. By letter of 5 May 2003 the Commission sent the applicant an additional explanation of that calculation. The applicant replied to that letter on 9 May 2003, putting forward additional observations.

14 Following the Commission's proposal of 20 May 2003, the Council [of the European Union] adopted [the contested regulation]. That regulation imposed a definitive countervailing duty of 7.3% on imports of CD-Rs from India.'

The action before the Court of First Instance and the judgment under appeal

9 By application lodged at the Registry of the Court of First Instance on 29 August 2003, the present appellant sought the annulment of the contested regulation, raising five pleas in law relating to, first, the determination of the normal depreciation period of the imported assets in relation to the calculation of the amount of the subsidy and, second, the assessment of injury and causation.

10 By order of the Court of First Instance of 23 January 2004, the Commission was granted leave to intervene in support of the form of order sought by the Council.

11 By order of the Court of First Instance of 18 April 2005, the Committee of European CD-R Manufacturers (CECMA), now the Committee of European CD-R and DVD+/- R Manufacturers (CECMA), was granted leave to intervene in support of the form of order sought by the Council.

12 The Council, supported by the Commission and CECMA, sought the dismissal of the application and an order for costs against the present appellant.

13 In paragraphs 27 to 116 of the judgment under appeal, the Court of First Instance rejected the first plea, alleging infringement of Articles 5, 7(3) and 11(1) of the basic regulation, and a manifest error in the assessment of the normal depreciation period of assets. That plea had two limbs concerning, first, assessment of the factors relating to the depreciation period and, second, assessment of the normal depreciation period for assets, this second limb being itself divided into five complaints relating to the classification of the assets as moulds; failure to take account of the information in the present appellant's accounting records; the taking into account of the present appellant's profitability and investments; use of the declining balance depreciation method, and the allegedly arbitrary nature of the calculations.

14 The Court of First Instance held, in particular, in paragraphs 73 to 79 of the judgment under appeal — concerning the failure to take account of the information in the present appellant's accounting records, which is the second complaint under the second limb of the first plea — as follows:

'73 Finally, the applicant alleges that the classification of the assets as moulds did not affect all of the assets in question, a fact which it pointed out to the Commission by letter of 14 April 2003.

74 The Council's reply to that contention is that the information put forward to support it was inconsistent with other information obtained during the investigation and that it cannot therefore be taken into account.

75 It is apparent from the information submitted by the parties in reply to the written question put by the Court that, in support of the contention at issue, the applicant referred to the information in its tax return in respect of the investigation period. It is common ground that the value of the assets entered in that return does not correspond to the value used to calculate the subsidy. The Council states that the institutions were not able, on the basis of those elements alone, to compare the contention at issue with other information verified in the investigation.

76 Nevertheless, the applicant submits that the different values which resulted, which may be explained by the addition of transport and installation costs, did not prevent the Community institutions from seeing that the reclassification did not affect all of the imported assets.

77 The Council stated, in this respect, that the Community institutions had not been able to ascertain the precise value of the assets classified as moulds because, first, the applicant did not explain the classification criteria of its assets in the tax return and, secondly, it had not provided a complete and verifiable list of those assets. In the absence of that information, the Community institutions had not been able to verify the figures submitted by the applicant in support of its contention.

78 In the light of the latter information, which was not called in question by the applicant before the Court, it must be considered that the applicant did not put forward any evidence to enable the Community institutions to verify the accuracy of its contention and, if necessary, to take account of the proportion of the assets in

question which had not been classified as moulds. Accordingly, solely by that contention, it cannot challenge the determination in the contested regulation.

79 Consequently, without infringing Article 7(3) of the basic regulation the Council was able to take the view that the assets in question, classified as moulds for taxation purposes, should also have been taken into account as such for the purposes of determining their depreciation period for accounting purposes and that it was not therefore appropriate to base that determination on information shown in the applicant's accounting records. Furthermore, the applicant has not shown that a statement of reasons is lacking in that respect.'

15 The Court of First Instance also rejected the third plea, alleging a manifest error of assessment and infringement of Article 8(2) and (6) of the basic regulation, with regard to the analysis of the factors relating to the determination of injury and the causal link.

16 With regard to the assessment of stock levels, the Court of First Instance held as follows in paragraphs 193 to 196 of the judgment under appeal:

'193 Under this complaint, the applicant maintains that the assessment of the development of stocks of the Community industry is manifestly incorrect. It does not dispute the detailed figures in that regard in recital 80 of the contested regulation. Nevertheless it observes that the Council was not able to conclude in recital 103 of the contested regulation, on the basis of that data, that the indicator of stocks had dramatically worsened during the period considered.

194 It should be noted that the period considered in this case was from 1998 to the end of the investigation period. The data undisputed by the applicant shows that

during the whole of that period the stocks of the Community industry increased significantly.

195 The applicant has not shown that the improvement in the indicator relating to the stocks expressed as a percentage of production from 2000 was such as to reverse the negative trend observed over the entire period considered. It is apparent from recital 80 of the contested regulation that stocks remained at high levels throughout the whole of the period considered, increasing in absolute terms towards the end of 2001, which therefore coincided with the increase in the volume of imports, and representing, in relative terms, a high level of production — 15% — during the investigation period.

196 The present complaint is therefore without substance.'

17 In paragraphs 201 to 207 of the judgment under appeal, the Court of First Instance found as follows with regard to the assessment of import prices:

'201 The assessment of the price levels of imports was, in this case, the main factor on which the finding of undercutting of Community prices and thus of injury was based. The Community institutions analysed that indicator in recitals 58 to 64 of the contested regulation on the basis of the Eurostat data and the figures provided by the applicant.

202 As regards the Eurostat data, the institutions concluded, primarily, that there was a significant price fall — 59% — between 2000 and the end of the investigation

period. The applicant challenges the taking into account of the data for 2000, arguing that imports were still negligible. That argument has already been examined and rejected in paragraphs 170 to 175 above.

203 Concerning the analysis of the figures provided by the applicant, it should be noted that that led to results very similar to those based on the Eurostat data, that is to say a price fall of 54%. The applicant submits nevertheless that the presentation of those figures is inaccurate.

204 The table in recital 62 of the contested regulation shows that the 54% relates to price development between the two financial years of the applicant. Even if recital 63 is not sufficiently precise when it states that that percentage concerns development between 2000 and the investigation period, that lack of precision is also not an error. The table preceding the recital in question shows clearly that the development is that between the 2000 financial year and the investigation period. The applicant has not therefore shown that the figures which it provided were presented inaccurately.

205 In addition, even if the data provided by the applicant relate to the period beginning on 1 April 1999, whereas the Eurostat data concern the period commencing on 1 January 2000, that fact alone does not mean that the Council's finding that the Eurostat figures and those of the applicant show similar trends is inaccurate. The applicant does not state that the taking into account of another starting date for its data could have resulted in different conclusions regarding import prices.

206 Consequently, the applicant has not shown that there is a factual error or a manifest error of assessment in respect of the analysis of import prices.

207 The present complaint must therefore be rejected as unfounded.'

18 Lastly, the Court of First Instance, in paragraphs 260 to 279 of the judgment under appeal, rejected the fifth plea, alleging infringement of Article 8(6) and (7) of the basic regulation with regard to the analysis of the effects of anti-competitive behaviour by a patent holder. The Court of First Instance there held as follows:

'260 It is settled case-law that in determining injury, the Community institutions are under an obligation to consider whether the injury on which they intend to base their conclusions actually derives from dumped imports and must disregard any injury deriving from other factors, particularly from anti-competitive behaviour involving Community producers themselves ([Case C-358/89] *Extramet Industrie* v *Council* [[1992] ECR I-3813], paragraph 16, and [Case T-58/99] *Mukand and Others* v *Council* [[2001] ECR II-2521], paragraphs 39 and 40).

261 In this case, according to the case-file the Community industry making the allegation stated, in a submission of 7 January 2003, that a company holding CD-R patents was abusing its dominant position by charging excessively high royalties and that a European producer had withdrawn from the market following a dispute with that company. The industry made that observation to counter the applicant's allegation that the degree of support for the complaint within the meaning of Article 10(8) of the basic regulation had fallen below the threshold required to proceed with the case. The applicant made the same observation during the investigation, claiming that the effects of the alleged anti-competitive behaviour, involving the excessive pricing of royalties, was a factor to be examined in the determination of the injury.

262 Under the present plea, the applicant submits that the Council failed to examine that factor, simply stating in recital 135 of the contested regulation that the

allegation in question had not been confirmed by any formal decision further to an investigation led by the competition authorities.

263 It should be pointed out in that respect that it is not apparent from recital 135 of the contested regulation that the Community institutions in fact examined the question whether the injury on which they base their conclusions derived from the anti-competitive behaviour alleged.

264 Although that recital does not suffice to dismiss the effects of the factor pleaded by the applicant, it should be pointed out that the question whether the Council failed to take into account those effects must nevertheless be considered by reference to the whole of the reasoning adopted in the contested regulation (see, to that effect, [Case T-166/94] *Koyo Seiko* v *Council* [[1995] ECR II-2129], paragraph 79).

265 The Council contends that it took that factor into account in recital 134 of the contested regulation. It is apparent from that recital that the Council examined in general the effects of royalty payments in respect of patents, finding that that factor was not such as to break the causal link in this case. The Council contends that by making that finding it also dealt with the allegation that those royalties were excessive and constituted anti-competitive conduct.

266 In that respect, although recitals 134 and 135 appear under different subheadings, namely "Royalties" and "Other factors", the arguments of the parties show that nevertheless they both concern the same material in the file relating to the payment of royalties. Moreover, those two recitals follow each other, so that the structure of the contested regulation demands they be read in conjunction.

267 Account should therefore be taken of the findings made in recital 134 to examine whether the Council disregarded any injury resulting from the anti-competitive behaviour pleaded by the applicant.

268 First, the applicant disputes the relevance of those findings, claiming that the institutions should have assessed the effects of the royalties specifically and thus should have concluded that even in the absence of excessive royalties the Community industry would have suffered injury.

269 In that regard, in order to disregard the effects resulting from an external factor, the Community institutions are required to examine whether those effects were such as to break the causal link between the imports at issue and the injury caused to the Community industry … That examination does not necessarily entail a determination of the precise effects of the factor at issue. It suffices for the Community institutions to find that, despite such an external factor, the injury caused by the imports in question was material.

270 In this case, the Council maintained that the Indian imports had caused material injury to the Community industry, resulting in particular in undercutting of Community prices. It explained that, even if the royalties had had a negative influence on the profits of the Community industry, that factor, which affected all the producers on the market, was already present in 1999, before the imports became significant. The negative development in the situation of Community producers from 1999 was not therefore attributable to that factor. In the light of those elements, it was not unreasonable for the Council to take the view that the payment of royalties could not have had an effect on the injury caused by the subsidised imports.

271 The Council rightly states that the examination of the question whether the royalties were excessive owing to anti-competitive behaviour on the part of a

patent holder cannot, in any event, call in question its conclusion referred to in the preceding paragraph.

272 It should also be observed that, unlike the situations obtaining in the cases giving rise to the judgments in *Extramet* [*Industrie* v *Council*] and *Mukand* [*and Others* v *Council*], the anti-competitive practice alleged is not attributable to the behaviour of Community producers. In order to assess the effects of that factor in this case, the Community institutions were not therefore required to examine whether or not the Community industry had itself contributed to the injury suffered.

273 Secondly, the applicant submits, in reliance on *Mukand* [*and Others* v *Council*], cited above, that the injury determined by the undercutting of prices was not accurately assessed if Community prices were artificially high due to the excessive royalties.

274 The facts of the case which gave rise to the judgment in *Mukand* [*and Others* v *Council*] concerned conduct affecting Community prices, not import prices. In this case, the Council found that the royalties in question had to be paid by all producers, including the applicant. The applicant did not dispute that fact.

275 Accordingly, the Council was able to take the view in recital 134 of the contested regulation that the external factor at issue could not explain the difference between the Community prices and the Indian prices and that it therefore had no bearing on the factors taken into account to calculate the level of undercutting. Even if the royalties were excessive owing to anti-competitive behaviour, that factor cannot affect that assessment.

276 In the light of those factors, the view must be taken that the applicant has not shown that, in the determination of injury, the Council failed to disregard the effects resulting from alleged anti-competitive behaviour.

277 In those circumstances, it is not necessary to rule on the admissibility of the factual evidence put forward by the applicant in its reply, namely the Commission's press release of 3 August 2003 referring to an investigation on the application of Articles 81 EC and 82 EC to a standard agreement concerning patents for certain types of CD. It is apparent from the applicant's arguments that that element was put forward to substantiate its contention that the factor in question was known to the Community institutions. On the other hand, it did not explain how that press release could support the argument that that factor was such as to break the causal link in this case.

278 Accordingly, the fifth plea cannot be accepted.

279 It follows from all the foregoing that the action must be dismissed in its entirety. Consequently, there is no need to rule on the Council's alternative claims.'

19 In the judgment under appeal, the Court of First Instance dismissed the action.

Forms of order sought

20 In its appeal, Moser Baer India Ltd claims that the Court should:

— set aside the judgment under appeal;

— grant the form of order sought by it at first instance, namely annulment of the contested regulation in so far as it applies to the appellant; and

— order the Council to pay its costs in respect of the present appeal and of the proceedings at first instance.

21 The Council and the Commission contend that the Court should:

— dismiss the appeal, and

— order the appellant to pay the costs of the proceedings at both instances.

The appeal

22 In support of its appeal, the appellant submits three pleas alleging, first, infringement of the principles of coherence and diligent investigation as regards the reasoning in paragraphs 73 to 79 of the judgment under appeal, second, a manifest error of assessment by the Court of First Instance in respect of those aspects of the investigation relating to injury, referred to in paragraphs 193 to 196 and 201 to 206 of the judgment under appeal, and, third, failure to take into account, in assessing the injury, the impact of other factors within the meaning of Article 8(7) of the basic regulation in relation to the finding of the existence of injury in paragraphs 260 to 278 of the judgment under appeal.

Admissibility of the appeal

23 By letter of 6 June 2008, the Council informed the Court of Justice of the adoption of Council Regulation (EC) No 1293/2007 of 30 October 2007 repealing the anti-dumping duties imposed by Regulation (EC) No 1050/2002 on imports of recordable compact discs originating in Taiwan and allowing for their repayment or remission and repealing the countervailing duties imposed by Regulation (EC) No 960/2003 on imports of recordable compact discs originating in India, allowing for their repayment or remission and terminating the proceeding in their respect (OJ 2007 L 288, p. 17). In the light of the adoption of Regulation No 1293/2007, the Council submits that it is no longer necessary to give judgment in the present case.

24 It must be borne in mind that the Court may, of its own motion, raise the objection that a party has no interest in bringing or in maintaining an appeal on the ground that an event subsequent to the judgment of the Court of First Instance removes the prejudicial effect thereof as regards the appellant, and declare the appeal inadmissible or devoid of purpose for that reason. For an appellant to have an interest in bringing proceedings the appeal must be likely, if successful, to procure an advantage to the party bringing it (see Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319, paragraph 13, and order in Case C-503/07 P *Saint-Gobain Glass Deutschland* v *Commission* [2008] ECR I-2217, paragraph 48).

25 In the present case, however, it should be noted that the appellant's interest in seeking to have the judgment under appeal set aside and, indirectly, the annulment of the contested regulation, cannot be denied on the ground that that regulation no longer has any effect for the future. Such a setting aside and annulment is of itself capable of having legal consequences, in particular by preventing a repetition by the Community institutions of the practice complained of (see, to that effect, Case 53/85 *AKZO Chemie and AKZO Chemie UK* v *Commission* [1986] ECR 1965, paragraph 21).

26 Furthermore, as the Advocate General observes in point 37 of her Opinion, the contested regulation has not been entirely repealed and continues to apply to countervailing duties levied up to 4 November 2006.

27 In those circumstances, the Court is not in a position to find that the appeal has become devoid of purpose.

Substance

The first plea

28 By its first plea, the appellant claims that the Court of First Instance did not respect, as it is obliged to, the principles of coherence and diligent investigation when it held that the Community institutions had acted lawfully by treating all the appellant's assets as assets reclassified as moulds, benefiting from the subsidy in question spread over a depreciation period of 4.2 years.

29 The Council contends that that plea is inadmissible by reason of the fact that the appellant is seeking to call into question findings of fact made by the Court of First Instance, and to raise before the Court of Justice a new plea which was not submitted at first instance, that is to say, infringement of the principles of coherence and sound administration in relation to the classification of assets as moulds.

30 The Commission submits that that plea is inadmissible because it seeks to have the Court carry out a re-examination of the findings of fact made by the Court of First Instance, without any indication that the Court of Fist Instance distorted the clear sense of the evidence.

31 In that regard, it should be recalled that, according to settled case-law, it is clear from Article 225 EC and the first paragraph of Article 58 of the Statute of the Court of Justice that the Court of First Instance has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. When the Court of First Instance has found or assessed the facts, the Court of Justice has jurisdiction under Article 225 EC to review the legal characterisation of those facts by the Court of First Instance and the legal conclusions it has drawn from them (see, inter alia, Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraph 51; judgment of 22 May 2008 in Case C-266/06 P *Evonik Degussa* v *Commission*, paragraph 72; and judgment of 18 December 2008 in Joined Cases C-101/07 P and C-110/07 P *Coop de France bétail et viande and Others* v *Commission* [2008] ECR I-0000, paragraph 58).

32 The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the Court of First Instance accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (see, inter alia, *General Motors* v *Commission*, paragraph 52; *Evonik Degussa* v *Commission*; paragraph 73, and *Coop de France bétail et viande and Others* v *Commission*, paragraph 59).

33 It should, in addition, be noted that a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (see, inter alia, *General Motors* v *Commission*, paragraph 54; *Evonik Degussa* v *Commission*, paragraph 74; and *Coop de France de bétail et viande*, paragraph 60).

34 By contrast, the question whether the Court of First Instance could, properly in law, conclude from those facts that the Community institutions had failed neither in their duty to act diligently nor in their duty to state reasons is a question of law subject to the review of the Court of Justice on appeal (see Case C-188/96 P *Commission* v *V* [1997] ECR I-6561, paragraph 24; Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 453; and Case C-405/07 P *Netherlands* v *Commission* [2008] ECR I-8301, paragraph 44).

35 In the present case, the appellant, first, criticises the Court of First Instance for having infringed the principles of coherence and diligent investigation by not identifying any rule of law or procedural rule which would have confirmed that the Council was entitled to take into account all the assets classified as moulds for the purpose of applying the depreciation period of 4.2 years. In so doing, the appellant seeks to call into question the way in which the Court of First Instance assessed its contention, referred to in paragraph 73 of the judgment under appeal, that the classification of assets as moulds did not affect all of the assets in question.

36 In that regard, it is clear from the judgment under appeal, in particular from paragraphs 75 and 78 thereof, that the Court of First Instance did take account of the appellant's contention and of the information submitted by the parties in reply to the written question concerning the classification of assets as moulds, and concluded that the appellant had not submitted any evidence to the Community institutions which would have enabled them to verify the accuracy of its contention and that, consequently, the assessment carried out in the contested regulation could not be challenged.

37 The argument that the Court of First Instance failed to adhere to the principles of coherence and diligent investigation must therefore be rejected as unfounded.

38 To the extent to which the appellant also seeks to call into question the assessment of the facts carried out by the Court of First Instance by challenging, in essence, the finding that the evidence accepted in paragraphs 75, 77 and 78 of the judgment under appeal is sufficient to show that the Community institutions could not have assessed the exact value of the assets classified as moulds, that argument must be declared inadmissible, since such a step seeks to secure a re-examination of factual assessments with regard to which the Court has no jurisdiction in the context of an appeal.

39 In addition, the appellant claims, first, that in the absence of the necessary elements for calculating the amount of the countervailable subsidy, the Community institutions ought to have relied explicitly on Article 28 of the basic regulation. It asserts, second, that in reply to a written question from the Court of First Instance, it demonstrated that, on the basis of the information submitted by the Community institutions and the figures in the annex to the tax return setting out the calculation of depreciation, the Community institutions knew, or ought easily to have known, that the proportion of assets which had not been classified or reclassified as moulds amounted to at least 23% of all imported assets.

40 In that regard, it must be pointed out that, as follows from Articles 113(2) and 116(1) of the Rules of Procedure, fresh submissions not contained in the original application may not be raised in an appeal (see Case C-18/91 P *V* v *Parliament* [1992] ECR I-3997, paragraph 21, and Case C-1/98 P *British Steel* v *Commission* [2000] ECR I-10349, paragraph 47).

41 In the present case, it is only before the Court that the appellant, for the first time, has pleaded infringement of Article 28 of the basic regulation on the basis of the fact that the information gleaned from its tax return had not been taken into account sufficiently for the purpose of establishing that not all of the subsidised assets had been reclassified as

moulds. It must, therefore, be held that this constitutes a fresh submission and is, accordingly, inadmissible in the context of the present appeal.

42 As regards the argument relating to the evidence submitted by the appellant concerning the knowledge which the Community institutions are alleged to have had of the proportion of subsidised assets not reclassified as moulds, it must be held that that argument seeks a fresh assessment of the facts, which, in the absence of an allegation that those facts have been distorted, falls outside the Court's jurisdiction in the context of an appeal.

43 It follows therefore that the first plea must be rejected in its entirety.

The second plea

44 The appellant claims that the Court of First Instance committed a manifest error in its appraisal of the facts relied on in the determination of the injury. That second plea has two limbs concerning, first, an incorrect assessment of the level of imports of CD-Rs originating in India and, second, an incorrect assessment of the Community industry's level of stocks as an indication of injury.

The first limb

45 As regards the incorrect assessment of the level of imports of CD-Rs originating in India, the appellant raises three arguments. First, it challenges the finding of the Court of First Instance that the Community institutions were correct to reject its claim that the statistical formula applied to the figures from Eurostat was unreliable for small

quantities. Those data consisted of a 'CN code' that covers CD-R and other similar types of product and were compiled on the basis of a formula developed by the Community CD-R industry. Furthermore, as the appellant is the sole Indian exporter of CD-Rs to the European Union, its own data constituted the only reliable source for establishing import volumes and values.

46 Second, the appellant submits that the assertion — made by the Community institutions and confirmed by the Court of First Instance — that the Eurostat data and its own financial data led to very similar results is incorrect. The appellant's data for the year 2000 suggest that its export prices rose until the end of the investigation period. By contrast, the data from Eurostat show a price decrease of 59%.

47 Third, the appellant claims that it has always taken issue with the alleged fact that, in regard to the levels of import prices, the Council made relevant comparisons, and asserts that another starting date for the investigation period would clearly have led the Community institutions to a different conclusion. The conclusion reached by the Court of First Instance — that the appellant did not state that the taking into account of a different starting date for its data could have resulted in different conclusions regarding the price of Indian imports of CD-Rs — is therefore inaccurate.

48 According to the Council, supported by the Commission, in the first limb of its second plea the appellant challenges the findings in which the Court of First Instance confirmed the accuracy of the facts set out in the contested regulation. It follows that that limb of the second plea should be declared inadmissible.

49 According to settled case-law, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(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 (see, inter alia, Case

C-499/03 P *Biegi Nahrungsmittel and Commonfood* v *Commission* [2005] ECR I-1751, paragraph 37; Case C-68/05 P *Koninklijke Coöperatie Cosun* v *Commission* [2006] ECR I-10367, paragraph 54; and order of 15 May 2007 in Case C-420/05 P *Ricosmos* v *Commission*, paragraph 64).

50 Accordingly, an appeal which merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, does not satisfy the requirements to state reasons under the provisions referred to in the preceding paragraph (see, inter alia, *Biegi Nahrungsmittel and Commonfood* v *Commission*, paragraph 38; *Koninklijke Coöperatie Cosun* v *Commission*, paragraph 54; and order in *Ricosmos* v *Commission*, paragraph 71). 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 (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 35, and Case C-76/01 P *Eurocoton and Others* v *Council* [2003] ECR I-10091, paragraph 47).

51 In the course of examining the first complaint of the third plea, the Court of First Instance ruled, in paragraphs 142 to 190 of the judgment under appeal, on the appellant's argument — mentioned in paragraph 145 of the judgment under appeal — that the Eurostat data for the years 1998 to 2000 were unreliable because the 'CN Code' included several products other than CD-Rs. The quantity of those other products was given in tonnes, with the result that, according to the appellant, a mathematical formula had to be applied to the Eurostat data in order to estimate the number of imported CD-Rs. However, the appellant continued, as the quantities were very small, such a formula was statistically unreliable. In that regard, the Court of First Instance concluded in paragraph 171 of the judgment under appeal that the appellant had not adduced any evidence in support of its contention that the statistical formula applied to Eurostat's data to compile the data at issue was unreliable for small quantities.

52 In paragraphs 201 to 206 of the judgment under appeal, the Court of First Instance limits itself to assessing the price levels of imports in the context of the third complaint of the third plea raised before it. By that third complaint, at first instance, the appellant

claimed, first, that in finding that the import prices had decreased, the Community institutions relied on data for 1998 to 2000 which were neither relevant nor reliable. Second, the appellant asserted that the fact that import prices had been analysed also on the basis of figures which it had provided added nothing in that regard, because the data in question were not properly presented by the Community institutions.

53 The Court of First Instance held, in paragraph 203 of the judgment under appeal, that the analysis of the figures provided by the appellant led to results very similar to those based on the Eurostat data, that is to say, a price fall of 54%. In support of that finding, and rejecting the appellant's contention that the data were not properly presented, the Court of First Instance referred to recitals 62 and 63 of the contested regulation, in which the Community institutions compared the Eurostat data with the figures supplied by the appellant and reached similar conclusions for the investigation period.

54 In those circumstances, the first and second arguments of the first limb of the second plea must be declared inadmissible, as they seek, in reality, a re-examination of factual assessments, without indicating any alleged error in law in the judgment under appeal.

55 As regards the third argument of the first limb of the second plea, the appellant claims that it has always asserted that another starting date for the investigation period would clearly have led the Community institutions to a different conclusion. Thus, in paragraph 101 of its application at first instance, the appellant asserted that the fact that, in the contested regulation, the Council made irrelevant comparisons with regard to the level of import prices evidenced lack of objectivity on the part of the Community institutions or, alternatively, a manifest error in the assessment of the trends in prices of Indian imports.

56 The Council contends that that paragraph of the application at first instance refers, not to the appellant's figures, but to those which were collected by the Community institutions. Therefore, even if the appellant's reference to its application at first instance contained an argument supporting the contention that taking another starting date for the data furnished by the appellant would have led to different conclusions, that factor does not prove the appellant's point, since the term 'its data' appearing in paragraph 205 of the judgment under appeal does not refer to the appellant's figures.

57 The Court of First Instance held, in paragraph 205 of the judgment under appeal, that even if the data provided by the appellant related to the period beginning on 1 April 1999, whereas the Eurostat data concerned the period commencing on 1 January 2000, that fact alone did not mean that the Council's finding that the Eurostat figures and those of the appellant showed similar trends was inaccurate. The Court of First Instance concluded that the appellant had not stated that the taking into account of another starting date for its data could have resulted in different conclusions with regard to import prices. Accordingly, the Court of First Instance took the view that the appellant had not shown that there was a factual error or a manifest error of assessment in respect of the analysis of the import prices.

58 In relation to that analysis, the appellant challenged, at first instance, the date chosen for the investigation period and the comparisons made regarding the levels of import prices. The Court of First Instance's findings in that regard are contained respectively in paragraphs 170 to 178 and 201 to 207 of the judgment under appeal. By contrast, the appellant did not raise, at first instance, the argument concerning the starting point in time for the consideration of data which it had itself supplied to the Community institutions. As the Advocate General notes in point 110 of her Opinion, that argument is, therefore, new and, accordingly, inadmissible in the context of an appeal, and the Court of First Instance cannot be criticised for failing to rule on that point in the judgment under appeal.

59 The third argument of the first limb of the second plea must therefore be rejected as inadmissible.

The second limb

60 By the second limb of the second plea, the appellant claims that the Court of First Instance committed an error by confirming the Council's finding, in recital 103 of the contested regulation, that the Community industry stocks had dramatically worsened. The appellant points out that it did not dispute the stock figures in the contested regulation, on the basis that those figures were derived from confidential information provided by the Community producers. It maintains, on the other hand, that it had always contested the conclusions of the contested regulation, according to which the evolution of the stock levels indicated injury caused to the Community industry.

61 The appellant submits that, between 1998 and the investigation period, Community industry production had increased by 432%, and that the stock levels had nevertheless declined between 2000 and the investigation period. The Court of First Instance's finding that the stocks had increased in absolute terms towards the end of 2001 is, it argues, vitiated by a manifest error of assessment, as it disregarded the tremendous increase in Community industry production and the fact that the temporary increase in the stock levels coincided with the entry onto the market of Indian imports.

62 In that regard the Council, supported by the Commission, contends that the appellant restricts itself to disputing the factual findings in the judgment under appeal regarding the accuracy of the data set out in the contested regulation. The Council adds that the Court of First Instance's finding concerning the increase in stock in absolute terms is factually correct. According to the Council, the increase in stock in absolute terms was so large that it also led to an increase of almost 60% in relative terms between 1998 and the end of the investigation period (9.2% to 14.6%), notwithstanding the increase in Community industry production.

63 It is apparent from paragraphs 193 to 195 of the judgment under appeal that the Court of First Instance concluded, first, that the appellant does not dispute the detailed figures in recital 80 of the contested regulation. Second, it confirmed that, according to data

undisputed by the appellant, for all of the period from 1998 to the end of the investigation period, the stocks of the Community industry increased significantly. Thirdly, it found that the appellant had not shown that the improvement in the indicator relating to the stocks expressed as a percentage of production from 2000 had been such as to reverse the negative trend observed over the entire period under consideration.

64 In so far as the appellant seeks to call into question those factual assessments made by the Court of First Instance, it should be borne in mind that, in accordance with the case-law cited in paragraph 33 of this judgment, distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence. In the present case, the appellant alleges that the Court of First Instance's interpretation of various data, which the appellant cites, is vitiated by substantive inaccuracy and a distortion of the evidence by referring to the stocks in absolute terms.

65 However, as the Advocate General states in point 127 of her Opinion, the fact that the Court of First Instance makes mention of stock increase in absolute figures in its reasoning cannot be regarded as a distortion of the evidence. As is apparent from paragraph 195 of the judgment under appeal, the Court of First Instance also took into account the fact that, as set out in the contested regulation, the Council's assessment was based also on an evaluation of the evolution of stocks in relative terms. As regards the appellant's argument that the temporary improvement in the level of stocks coincided with the entry onto the market of Indian imports, that constitutes a new factual argument which is inadmissible in the context of an appeal.

66 It is also necessary to reject the appellant's argument that the Court of First Instance's finding in paragraph 195 of the judgment under appeal, relating to the stock levels, is a creative interpretation which is not supported by the contested regulation. It is clear from recital 80 of the contested regulation that the stocks, expressed as a percentage of production of CD-Rs, were as high as 15% during the investigation period.

67 Having regard to the foregoing, the second limb of the second plea is inadmissible.

68 In those circumstances, the second plea must be rejected in its entirety as inadmissible.

The third plea

69 The appellant claims that the assessment of injury, which is distinct from the question of causation, concerns the Community industry's results per se and that Article 8(7) of the basic regulation requires that that assessment of injury should not be influenced by the effects of other factors. In that regard, the appellant considers that the Court of First Instance committed an error of appraisal in holding that the assessment of injury concerned only the difference between Community prices and import prices. That issue, however, is relevant to the analysis for the purposes of establishing a causal link.

70 According to the appellant, the Court of First Instance did not take into account the effect of the excessive royalties when determining the injury suffered by the Community industry. The appellant points out that those excessive royalties — which constitute an abuse of a dominant position — had a negative impact on performance. The Community institutions failed to prove that, in the absence of those excessive royalties, injury would still have been suffered and that the injury margin calculations would still have been the same.

71 The appellant claims that, in paragraph 272 of the judgment under appeal, the Court of First Instance wrongly states that the judgments in *Extramet Industrie* v *Council* and *Mukand and Others* v *Council* concerned anti-competitive activity on the part of the Community producers themselves, whereas in the present case the anti-competitive practice cannot be attributed to the Community producers.

72 According to the appellant, the relevance of the anti-competitive practice, such as that established in *Mukand and Others* v *Council*, is not due to the fact that the Community CD-R industry itself was involved in anti-competitive activity, but is attributable to the fact that that industry's performance was affected by that activity, and the effects of that anti-competitive activity must therefore be negated in order for the conditions of Article 8(7) of the basic regulations to be met.

73 The Council contends that the third plea is inadmissible and, in any event, unfounded. It argues that the appellant has failed to identify which finding of the judgment under appeal it challenges, nor does it identify the rule of Community law which the Court of First Instance is alleged to have breached.

74 According to the Council, it is clear from the settled case-law of the Court that there may be a causal link between the subsidised imports and the injury suffered by the Community industry, even where the losses caused by the imports are merely part of a wider set of injurious factors. The causation analysis requires the Community institutions to ensure that other factors known to be injurious have not broken the established causal link between the subsidised imports and the injury found. Accordingly, the impact of the subsidised imports has to be so marginalised that the injury caused by those imports can no longer be considered material.

75 In addition, the appellant's criticism of the Court of First Instance's interpretation of *Mukand and Others* v *Council,* in paragraph 272 of the judgment under appeal, is misleading. The appellant, it is argued, distorts the meaning of that paragraph by suggesting that the Court of First Instance failed to address the claim of excessive royalties. However, the Court of First Instance did examine that claim, in particular in paragraph 270 of the judgment under appeal.

76 Moreover, the appellant has not demonstrated how the Court of First Instance wrongly assessed the impact which the royalties had on the Community Industry. The Council points out that, in paragraphs 260 to 279 of the judgment under appeal, the Court of

First Instance rejected the argument that the Council had failed to examine that impact, and did not consider it necessary to determine the precise effects of that impact.

77 The Commission also contends that this plea is inadmissible. The appellant, it submits, seeks a reassessment of the facts by the Court, while not challenging the principal finding of the Court of First Instance that the anti-competitive practice was not attributable to Community producers.

78 As regards the plea of inadmissibility raised by the Community institutions, it is clear from the provisions referred to and from the case-law cited in paragraph 49 of the present judgment 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.

79 In the present case, the appellant challenges specifically paragraph 272 of the judgment under appeal, according to which the anti-competitive practice alleged was not attributable to the conduct of the Community producers. In this plea, the appellant indicates clearly the elements of the judgment under appeal which it challenges and develops a legal argument which seeks to demonstrate that the Court of First Instance erred when assessing the application, by the Community institutions, of Article 8(7) of the basic regulation.

80 The plea of inadmissibility, alleging a failure to indicate precisely the contested elements of the judgment under appeal, must therefore be rejected.

81 The Court of First Instance held, correctly, in paragraph 260 of the judgment under appeal, that in determining injury the Community institutions are under an obligation to consider whether the injury actually derives from the subsidised imports and must disregard injury deriving from other factors, particularly from anti-competitive

conduct involving Community producers. It goes on to state, in paragraph 263 of the judgment under appeal, that it is not apparent from recital 135 of the contested regulation that the Community institutions in fact examined the question whether the injury on which they based their conclusions derived from the anti-competitive conduct alleged.

82 Accordingly, the Court of First Instance examined, in paragraphs 264 to 272 of the judgment under appeal, whether the Council had disregarded the possible injury caused by the anti-competitive conduct alleged by the appellant.

83 As regards the effects of the royalties on the causal link, the Court of First Instance, in paragraph 269 of the judgment under appeal, correctly pointed out that the Community institutions are required to examine whether the effects resulting from an external factor were such as to break the causal link between the imports in question and the injury caused to the Community industry, referring to paragraph 232 of the judgment under appeal which cited the settled case-law to that effect. It considered that that examination did not necessarily entail a determination of the precise effects of the factor at issue.

84 The Court of First Instance then went on to confirm, in paragraph 270 of the judgment under appeal, the Council's finding that the payment of royalties could not have had an effect on the injury caused by the subsidised imports, since those royalties were already present before the imports in question became significant.

85 It must be recalled that, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the Community institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see Case C-351/04 *Ikea Wholesale* [2007] ECR I-7723, paragraph 40 and the case-law cited, and Case C-398/05 *AGST Draht- und Biegetechnik* [2008] ECR I-1057, paragraph 33).

86 It is settled case-law that the determination of the existence of harm to the Community industry requires an appraisal of complex economic situations and the judicial review of such an appraisal must therefore be limited to verifying whether relevant procedural rules have been complied with, whether the facts have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers. That is, particularly, the case as regards the determination of the factors injuring the Community industry in an anti-subsidy proceeding (see *AGST Draht- und Biegetechnik*, paragraph 34).

87 In determining injury, the Council and the Commission are under an obligation to consider whether the injury on which they intend to base their conclusions actually derives from the subsidised imports and must disregard any injury deriving from other factors, particularly from the conduct of Community producers themselves (see *Extramet Industrie* v *Council*, paragraph 16, and *AGST Draht- und Biegetechnik*, paragraph 35).

88 In that regard, it is for the Community institutions to ascertain whether the effects of those other factors were not such as to break the causal link between, on the one hand, the imports in question and, on the other, the injury suffered by the Community industry. It is also for them to verify that the injury attributable to those other factors is not taken into account in the determination of injury within the meaning of Article 8(7) of the basic regulation and, consequently, that the countervailing duty imposed does not go beyond what is necessary to offset the injury caused by the subsidised imports.

89 It is clear that conduct which directly affects the prices of products manufactured in the Community — in the present case, the payment of royalties — may be capable of casting doubt, first, on the causal link between the subsidised imports and the injury (see, to that effect, *AGST Draht- und Biegetechnik*, paragraphs 45 to 54) and, second, on the assessment of the injury suffered by the Community industry by reason of the undercutting prices of those imports.

90 According to Article 8(7) of the basic regulation, known factors other than the subsidised imports are also to be examined in order to ensure that injury caused by those other factors is not attributed to those imports. Thus, the objective of that rule is to avoid granting the Community industry protection beyond that which is necessary.

91 However, if the Community institutions find that, despite those factors, the injury caused by the subsidised imports is material pursuant to Article 8(1) of the basic regulation, the causal link between the subsidised imports and the injury suffered by the Community industry can accordingly be established. In the present case, as the Court of First Instance held in paragraph 269 of the judgment under appeal, to establish that the causal link between the subsidised imports and the injury suffered by the Community institutions remains intact, it suffices for the Community institutions to find that, despite an external factor, the injury to the Community producers was material.

92 In that regard, first, the Court of First Instance, in paragraph 270 of the judgment under appeal, held that the payment of royalties could not have had an effect on the injury caused by the subsidised imports, since that factor was present before those imports became significant.

93 Second, the Court of First Instance took account, in paragraph 274 of the judgment under appeal, of the fact that all CD-R producers, including the appellant, had to pay the allegedly anti-competitive royalties. That alleged anti-competitive practice was therefore not such as to cast doubt on the finding that the payment of royalties did not affect the injury suffered by the Community industry by reason of the subsidised imports, given that that practice affected both the Community prices and the import prices. That external factor was also not capable of having any bearing on the difference between Community prices and the import prices at issue. Consequently, the Court of First Instance was right to conclude, in paragraph 275 of the judgment under appeal,

that the Council was able to take the view that even the allegedly excessive royalties had no bearing on the calculation of the level of undercutting, and that the conclusion in recital 134 of the contested regulation was therefore not unreasonable.

94 It follows that the Court of First Instance demonstrated adequately that, for the determination of injury, the effects of those external factors were separate and were not attributable to the harmful effects caused by the subsidised imports.

95 The third plea must accordingly also be rejected in its entirety as unfounded.

96 As none of the pleas raised by Moser Baer India Ltd has been upheld, the appeal must be dismissed.

Costs

97 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Council has asked that costs be awarded against Moser Baer India Ltd, and as the latter has been unsuccessful, Moser Baer India Ltd must be ordered to pay the costs of the present appeal. In accordance with Article 69(4) of the Rules of Procedure, which applies also to appeal proceedings by virtue of Article 118 thereof, the Commission shall bear its own costs.

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

1. Dismisses the appeal;

2. Orders Moser Baer India Ltd to pay the costs;

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

[Signatures]