JUDGMENT OF THE COURT (Fourth Chamber)

18 March 2010 *

In Case C-419/08 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 23 September 2008,

Trubowest Handel GmbH, established in Cologne (Germany), represented by K. Adamantopoulos and E. Petritsi, dikigoroi,

Viktor Makarov, residing in Cologne, represented by K. Adamantopoulos and E. Petritsi, dikigoroi,

appellants,

the other parties to the proceedings being:

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

* Language of the case: English.

European Commission, represented by N. Khan and H. van Vliet, acting as Agents,

defendants at first instance,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting as President of the Fourth Chamber, R. Silva de Lapuerta, E. Juhász, G. Arestis (Rapporteur) and J. Malenovský, Judges,

Advocate General: P. Mengozzi,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 September 2009,

after hearing the Opinion of the Advocate General at the sitting on 29 October 2009,

gives the following

Judgment

1 By their appeal, Trubowest Handel GmbH ('Trubowest') and Mr Makarov seek to have set aside the judgment of the Court of First Instance of the European Communities (now 'the General Court') of 9 July 2008 in Case T-429/04 *Trubowest Handel and Makarov* v *Council and Commission* ('the judgment under appeal'), by which that court dismissed their action under Article 288 EC for compensation in respect of losses which they claimed to have suffered through the adoption of Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1; 'the definitive regulation').

Legal context

2 The basic Community legislation in the area of customs duties is Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the CCC'). Article 236 thereof provides:

'1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they shall repay or remit on their own initiative.'

3 The provisions governing the application of anti-dumping measures by the European Community are set out in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1; 'the basic regulation').

Background to the dispute

4 The General Court set out the factual background to the dispute in paragraphs 1 to 21 of the judgment under appeal as follows:

'1 By an unpublished decision of 25 November 1994 (Case IV/35.304), adopted, in particular, on the basis of Article 14(3) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81 EC] and [82 EC] (OJ, English Special Edition 1959-1962, p. 87), the Commission decided to initiate an investigation into the possible existence of anticompetitive practices in respect of carbon-steel tubes which might infringe Article 53 of the Agreement on the European Economic Area [of 2 May 1992 (OJ 1994 L 1, p. 3)] and Article 81 EC.

2 Following that investigation, the Commission decided, on 20 January 1999, to initiate administrative proceedings in Case IV/E-1/35.860-B-Seamless steel tubes, as a result of which it adopted, on 8 December 1999, Decision 2003/382/EC relating to a proceeding under Article 81 [EC] (Case IV/E-1/35.860-B-Seamless steel tubes) (OJ 2003 L 140, p. 1) ("the cartel decision").

3 According to Article 1(1) of the cartel decision, the eight undertakings to which it was addressed "have infringed the provisions of Article 81(1) [EC] by participating ... in an agreement providing, inter alia, for the observance of their respective domestic markets for seamless standard threaded [Oil Country Tubular Goods] pipes and tubes and project line pipe". Article 1(2) of the cartel decision states that the infringement lasted from 1990 to 1995 in the case of Mannesmannröhren-Werke AG, Vallourec SA, Dalmine SpA, Sumitomo Metal Industries Ltd, Nippon Steel Corp., Kawasaki Steel Corp. and NKK Corp. In the case of British Steel Ltd, the infringement is stated to have lasted from 1990 to February 1994. Those

undertakings were accordingly fined amounts ranging from EUR 8.1 million to EUR 13.5 million.

4 The cartel decision was the subject of Commission press release IP/99/957 of 8 December 1999 and was published in the *Official Journal of the European Union* of 6 June 2003.

5 On 8 July 2004, the Court, in its judgment in Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501, annulled Article 1(2) of the cartel decision in so far as the Commission had incorrectly stated that four of the undertakings mentioned in that article had participated in the cartel prior to 1 January 1991 and after 30 June 1994, and reduced the amounts of the fines which the Commission had imposed on those undertakings.

6 In addition, following a complaint lodged on 19 July 1996 by the Defence Committee of the Seamless Steel Tube Industry of the European Union, the Commission, pursuant to … Regulation … No 384/96 … , as amended by Council Regulation (EC) No 2331/96 of 2 December 1996 (OJ 1996 L 317, p. 1), published, on 31 August 1996, a notice of the initiation of an anti-dumping proceeding concerning imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Russia, the Czech Republic, Romania and the Slovak Republic (OJ 1996 C 253, p. 26).

7 On 29 May 1997, the Commission adopted Regulation (EC) No 981/97 imposing provisional anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Russia, the Czech Republic, Romania and the Slovak Republic (OJ 1997 L 141, p. 36).

8 On 17 November 1997, the Council adopted … the definitive regulation …

9 On 16 July 2004, the Council adopted Regulation … No 1322/2004 … Under Article 1 of that regulation, an Article 8 was added to the definitive regulation, by virtue of which Article 1 of the definitive regulation, which imposes anti-dumping duties on the imports which it covers, was, from 21 July 2004, no longer to be applied.

10 Trubowest … is a German company which imported seamless pipes and tubes of Russian origin into the Community. Trubowest, of which Mr … Makarov has been the managing director since 1997, started to import those goods in January 1999 and ceased doing so in October 1999. …

11 In addition, from 1992 Mr Makarov was also the managing director of the company Truboimpex Handel GmbH ("Truboimpex"), the commercial activity of which consisted in importing from 1996, inter alia on its own behalf, seamless tubes and seamless pipes of Russian origin into the Community.

12 On 15 October 1999, the Amtsgericht Kleve (Local Court, Cleves, Germany) issued an arrest warrant against, inter alios, Mr Makarov on the ground that he was "strongly suspected of having provided the tax authorities in Cologne and Emmerich, in the period from 1997 to 1999, with incorrect and incomplete information concerning important tax matters, [the] returns constituting 36 separate infringements, and of having thereby reduced [his] taxes, in order to obtain for [himself] or for other persons unjustified tax advantages, thereby enabling [him] to a considerable extent to evade import duties". The arrest warrant further states that "[on] that occasion, the [tubes and pipes from Russia imported by

Truboimpex and Trubowest] were the subject of false declarations designed to circumvent the provisions [of the definitive regulation]".

13 Pursuant to that arrest warrant, Mr Makarov was placed in custody from 27 October 1999 until 12 November 1999. On his release, Mr Makarov was made subject to measures restricting his freedom of movement under which he was, inter alia, required to present himself at the relevant police station three times a week until 31 January 2000 and was unable to travel abroad without prior authorisation ("the measures in restraint of freedom").

14 As from 27 October 1999, the Hauptzollamt Emmerich (Principal Customs Office, Emmerich, Germany), now the Hauptzollamt Duisburg (Principal Customs Office, Duisburg, Germany) notified the applicants of post-clearance notices of assessment requiring payment of anti-dumping duties relating to the imports carried out by Truboimpex and Trubowest during the period from December 1997 to October 1999. The German customs authorities essentially took the view that the applicants' imports had, incorrectly, not been classified under the Community nomenclature codes for seamless pipes and tubes covered by the definitive regulation. In those circumstances, the bank accounts of Trubowest and Mr Makarov were seized.

15 According to the German customs authorities, Truboimpex and Trubowest were thus liable, in respect of the outstanding anti-dumping duties, to pay EUR 1 575 181,86 and EUR 729 538,78 respectively, that is to say, a total of EUR 2 304 720,64, in anti-dumping duties not paid by those two companies. Furthermore, Mr Makarov was held liable, in his capacity as managing director of Trubowest and Truboimpex, for payment of the total amount owed by those companies.

16 From 16 and 17 November 1999, the applicants challenged before the Hauptzollamt Emmerich the post-clearance assessment notices for anti-dumping duties issued against Trubowest and Mr Makarov in accordance with Article 243 of [the CCC] and the applicable national law. On 15 December 2000, the applicants brought an action before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) seeking suspension of the notices of assessment which were immediately enforceable. On 30 October 2001, the Finanzgericht Düsseldorf dismissed the applicants' action. On 29 August 2003, the applicants lodged submissions before the Hauptzollamt Duisburg in which they argued, essentially, that the customs authorities had erred in taking the view that their imports came within the scope of the definitive regulation.

17 On 19 June 2000, the Staatsanwaltschaft Kleve (Public Prosecutor's Office, Cleves, Germany) issued an indictment (Anklageschrift) against Mr Makarov on the basis of false customs returns relating to imports by Trubowest and Truboimpex. In that indictment, the Staatsanwaltschaft Kleve essentially took the view that a total amount of DEM 4 376 250,25, equivalent to EUR 2 237 541,22, was owed in respect of customs duties evaded in connection with the imports by Trubowest and Truboimpex.

18 On 14 November 2002, the Landgericht Kleve (Regional Court, Cleves, Germany) stayed the criminal proceedings against Mr Makarov pending the outcome of the fiscal proceedings concerning him.

19 On 15 December 2004, the applicants concluded a settlement agreement with the Hauptzollamt Duisburg, which brought to an end the dispute between them and the German customs authorities.

20 The settlement agreement provides, in particular, as follows:

"Preamble

…

By means of this Statement the parties wish to bring to a definitive end the dispute existing between them regarding the legality of the assessments at issue. There is agreement between the parties that this Statement leaves open the dispute between the parties as to which steel pipes are or are not subject to the anti-dumping duty.

…

Having regard to the foregoing, the parties agree as follows:

(1.) The … tax and liability assessment notices regarding anti-dumping duties in the amount of EUR 2 304 734.45 shall be settled by payment of a total of EUR 460 000 by [the appellants in particular]. There is agreement between the parties that, of the sum of EUR 435 125.21 thus far collected by the Duisburg Main Customs Office, only part thereof, to an amount of EUR 343 644.15 shall be used to offset the payable amount of EUR 460 000.

…

(3.) Upon the signing of this agreement, all enforcement measures against Trubowest as well as [inter alios, Mr Makarov] shall be immediately discontinued.

…

(5.) [The appellants] hereby waive the raising of any further claims, e.g. claims for damages, relating to the circumstances on which this Statement is based, against the Customs Authority. They also waive further legal remedies in proceedings directed against the Customs authority.

The ability to assert claims of this kind against others, particularly the compensation claims referred to … against the Commission and the Council … under Article 288 [EC], shall remain unaffected hereby."

21 On 2 May 2005, the Landgericht Kleve … issued an order (Beschluss) bringing an end, in accordance with Paragraph 153a of the Strafprozessordnung-StPO (German Code of Criminal Procedure), to the criminal proceedings pending against Mr Makarov on condition of payment by him of a fine amounting to EUR 18 000. The Landgericht Kleve states in that order that it took into account the fact that "[Mr Makarov] declares that his agreement [that the criminal proceedings are to be discontinued] does not imply any admission of guilt, but is given on grounds of procedural and economic interest".'

Procedure before the General Court and the judgment under appeal

5 By application lodged on 25 October 2004 at the Registry of the General Court, the appellants brought an action against the Council and the Commission for damages under Article 288 EC, seeking an order for payment of the following amounts:

— EUR 118 058.46 to Trubowest, together with default interest at the rate of 8% annually, corresponding to the amount actually paid by Trubowest following the various notices of assessment for anti-dumping duties raised by the German customs authorities against the appellants and constituting a loss of profit for Trubowest;

— EUR 397 916.91 to Mr Makarov, together with default interest at the rate of 8% annually, corresponding as to EUR 277 939.37 to the total sum actually paid by Mr Makarov following the various notices of assessment for anti-dumping duties, as to EUR 63 448.54, corresponding to the non-payment of wages by Trubowest and, as to EUR 56 529, corresponding to lawyers' fees in respect of proceedings between the appellants and the German customs authorities;

— EUR 128 000 to Trubowest, together with default interest at the rate of 8% annually, in respect of loss of profit or, in the alternative, a sum to be agreed by the parties following an interlocutory judgment of the General Court; and

— EUR 150 000 to Mr Makarov, together with default interest at the rate of 8% annually, for non-material damage.

6 By the judgment under appeal, the General Court rejected all the pleas in law in support of the action for damages and ordered the appellants to pay the Council's and the Commission's costs.

7 In paragraphs 41 to 74 and 77 to 82 of the judgment under appeal, the General Court dismissed as inadmissible certain heads of claim in the action for damages, holding that it had no jurisdiction, under Article 288 EC, in respect of them. As regards, first, the claims for compensation the amounts of which corresponded to sums paid by the appellants in respect of anti-dumping duties, the General Court took the view that those claims fell within the exclusive jurisdiction of the national courts, in accordance with the procedures established by the CCC. Secondly, as regards the claim for repayment of lawyers' fees, the General Court held that it concerned an aspect of the dispute between the appellants and the German customs authorities which fell exclusively within the jurisdiction of the national courts.

8 As to the remainder, in evaluating the condition for incurring the Community's non-contractual liability concerning the existence of a direct causal link between the unlawfulness alleged and the other damage allegedly suffered, namely Trubowest's loss of profit and Mr Makarov's loss of wages and non-material damage, the General Court took the view that the alleged damage did not flow sufficiently directly from the unlawfulness alleged.

9 The General Court considered it appropriate, in paragraph 86 of the judgment under appeal, to examine at the outset the question whether the appellants had established the existence of a causal link between the alleged wrongful conduct of the Council and the Commission and the material and non-material damage alleged. In paragraphs 98 to 137 of the judgment under appeal, it held that there was no sufficiently direct causal link between the imposition of the anti-dumping duties by the definitive regulation and that damage. In those circumstances, the General Court did not consider whether the definitive regulation was vitiated by illegality or whether the appellants had actually suffered the damage relied upon.

10 In particular, the General Court examined whether there was a sufficiently direct causal link between the conduct alleged against the Council and Commission and the alleged damage both on the assumption that the definitive regulation did not cover the goods imported by the appellants and on the contrary assumption. In that regard, it held, in paragraph 110 of the judgment under appeal, that on the first assumption, the Community could not incur liability in so far as the alleged damage was attributable exclusively to the German customs and prosecuting authorities and not to the alleged unlawful conduct on the part of the Council and the Commission. On the second assumption, it decided, in paragraph 116 of the judgment under appeal, that it was the appellants' own conduct in classifying their imports incorrectly which was the determinant cause of the damage concerned.

11 Finally, the General Court rejected the appellants' request for certain measures of organisation of procedure, holding, in paragraphs 138 to 141 of the judgment under appeal, that it was not necessary to order the Commission to produce either the evidence of its participation in the negotiations relating to the dispute over the classification of the goods imported by the appellants which led to the settlement agreement between them and the German customs authorities or all the correspondence that it had exchanged with those authorities and the Russian Government.

Procedure before the Court of Justice and the forms of order sought by the parties

12 The appellants claim that the Court should:

— set aside, in its entirety, the judgment under appeal;

— allow, by giving final judgment itself, the action for compensation brought before the General Court and order the Council and the Commission to pay the costs at first instance or, in the alternative, refer the case back to the General Court, and

— order the Council and the Commission to pay the costs of the present proceedings.

13 The Council contends that the Court should:

— dismiss the appeal;

— in the alternative, refer the case back to the General Court;

— in the further alternative, dismiss the appellants' action for compensation; and

— order the appellants to pay the costs.

14 The Commission contends that the Court should dismiss the appeal and order the appellants to pay the costs.

The appeal

15 The General Court examined the condition relating to the existence of a direct causal link between the unlawfulness complained of and the losses alleged by the appellants only as regards the claims which it held to be admissible. The first ground of appeal, which concerns the judgment under appeal in so far as it ruled on that condition, therefore concerns only those claims. Accordingly, for the purposes of the appeal, it is expedient to examine first the second ground of appeal, which concerns the judgment under appeal in so far as it declared certain other claims for compensation inadmissible.

The second ground of appeal

Arguments of the parties

16 By their second ground of appeal, which is in two parts, the appellants maintain, first, that the General Court infringed the second paragraph of Article 288 EC and erred in law in deciding, in paragraphs 41 to 74, 77 to 82 and 138 to 141 of the judgment under appeal, that it had no jurisdiction to entertain their claims for compensation covering amounts equivalent to sums paid in respect of anti-dumping duties and lawyers' fees incurred in the proceedings between the appellants and the German customs authorities, in the light of the exceptional circumstances of the case, characterised by the fact that the national proceedings were exhausted as a result of a settlement. Secondly, the appellants claim that, in paragraph 68 of the judgment under appeal, the General Court distorted the facts and clear evidence by holding that they had not produced any evidence in support of their assertions about the effect on the conclusion of the settlement, first, of the role played by the Community and the Russian authorities, and, secondly, of the criminal proceedings pursued by the German authorities.

17 The Council and the Commission submit that the General Court held, correctly, that anti-dumping duties are collected by national customs authorities and that therefore, according to established case-law, national courts alone have jurisdiction to order the recovery of duties wrongfully charged on the basis of Community rules which are subsequently declared invalid. The Community Courts do not have jurisdiction over the recovery of such duties or lawyers' fees incurred in respect of national proceedings concerning such duties. Furthermore, the settlement concluded between the appellants and the German customs authorities cannot create jurisdiction for the Community Courts that did not exist prior to that settlement. Their jurisdiction covers only damages that go beyond the mere repayment of unlawful duties.

18 The Council also submits that both parts of this ground of appeal are inadmissible. The first part fails to set out precisely the legal arguments which support the assertion that the appellants did not voluntarily enter into the settlement agreement between them and the German customs authorities. As regards the second part, the appellants do not indicate precisely the evidence which was allegedly distorted by the General Court and do not particularise the errors of analysis that led, in their submission, to such distortion.

19 The Commission also submits that the appeal does not question the correctness of the General Court's analysis, in paragraphs 61 to 66 of the judgment under appeal, according to which it would have been possible for the appellants to challenge the legality of the definitive regulation in the national proceedings in order to obtain a reference for a preliminary ruling pursuant to Article 234 EC and, thereby, a possible declaration by the Court of Justice of that regulation's invalidity. According to the Commission, to claim that, notwithstanding the settlement which they concluded with the German authorities, the appellants 'never waived their right to compensation' and settled 'without prejudice to the illegality of the [definitive] regulation' is irreconcilable with the facts and law. Furthermore, it argues, the institutions' alleged role and the pressure of the criminal proceedings against one of the appellants have

no bearing on the correctness of the General Court's finding that it had no jurisdiction to entertain certain heads of claim.

Findings of the Court

20 In the first part of their second ground of appeal, the appellants observe, first, that two heads of claim in respect of which the General Court held that it had no jurisdiction relate to amounts that form part of the sum which they paid under the settlement with the German customs authorities, despite the alleged illegality of the definitive regulation. Even though the appellants do not specifically state in their appeal that it was anti-dumping duties that they paid to those authorities, the General Court found, in paragraph 46 of the judgment under appeal, that the amounts concerned corresponded to the sums the appellants respectively paid in that respect and held, in paragraph 47 of that judgment, which the appellants do not challenge in this appeal, that their claims in that regard were in fact claims for repayment of those duties paid but allegedly not owed.

21 Moreover, the appellants argue that, after that settlement, a significant loss subsists resulting from the existence of the definitive regulation which they submit is illegal and gives rise to the Community's liability to compensate them under the second paragraph of Article 288 EC.

22 The General Court held, in paragraph 63 of the judgment under appeal, that the settlement between the German customs authorities and the appellants was not such as to confer jurisdiction upon that Court to adjudicate on the latter's claims for compensation in respect of the anti-dumping duties paid. Next, it held, in paragraph 67 of that judgment, that the appellants themselves acknowledged that, in the national proceedings they had instituted, an effective remedy was available to them to challenge the payment of the anti-dumping duties by raising the illegality of the definitive

regulation, but that they brought an end to those proceedings by concluding that settlement.

23 In that regard, it must be observed, first of all, that the national courts alone have jurisdiction to entertain actions for recovery of amounts wrongly levied by a national body on the basis of Community legislation declared subsequently to be invalid (see, to that effect, Case 20/88 *Roquette frères* v *Commission* [1989] ECR 1553, paragraph 14; Case C-282/90 *Vreugdenhil* v *Commission* [1992] ECR I-1937, paragraph 12; and Case C-351/04 *Ikea Wholesale* [2007] ECR I-7723, paragraph 68).

24 In that context, in a case where an individual feels that he has been adversely affected by the application of an anti-dumping regulation which he considers to be illegal, he has the possibility to contest, before the competent national court, the validity of the regulation applied by the national customs authorities. That court may, indeed must, then, under the conditions of Article 234 EC, refer a question to the Court of Justice concerning the validity of the regulation in question.

25 It must also be observed that it is for the national authorities to draw the consequences, in their legal system, of a declaration of invalidity, which has the consequence that anti-dumping duties paid under the regulation concerned are not legally owed within the meaning of Article 236(1) of the CCC and should, in principle, be repaid by the customs authorities in accordance with that provision, provided that the conditions to which such repayment is subject, including that set out in Article 236(2), are satisfied (see *Ikea Wholesale*, paragraph 67).

26 Consequently, despite the settlement concluded, in this case, between the appellants and the German customs authorities, the Community legislation implies that a claim for repayment of anti-dumping duties paid when not owed comes within the

jurisdiction of the national courts concerned. The settlement cannot create for the Community Courts jurisdiction that did not exist prior to that settlement.

27 By the first part of this ground of appeal, the appellants criticise, secondly, the judgment under appeal in respect of the General Court's decision that it had no jurisdiction to entertain their claim relating to lawyers' fees incurred in connection with the proceedings at national level. They put forward, however, no argument which casts doubt on the fact that those fees were ancillary to the national proceedings. Yet it is clear from the case-law correctly cited by the General Court in paragraph 78 of the judgment under appeal that the question of the reimbursement of costs incurred in national proceedings, which is an issue ancillary to the dispute which gave rise to those proceedings comes within the exclusive jurisdiction of the national court.

28 Therefore, the General Court correctly held that it had no jurisdiction to entertain some of the heads of claim concerned, so that the first part of the second ground of appeal is unfounded.

29 By the second part of that ground of appeal, regarding the settlement of the dispute at national level, the appellants submit that the General Court distorted the facts and evidence submitted to it by finding, in paragraph 68 of the judgment under appeal, that they had not produced any evidence in support of their assertions about the effect on the conclusion of the settlement, first, of the role played by the Community and the Russian authorities, and, secondly, of the criminal proceedings pursued by the German authorities. They also argue that the General Court erred in refusing, in paragraphs 138 to 141 of the judgment under appeal, to order the Commission to produce, first, the evidence of its participation in the negotiations relating to the dispute over the classification of the goods imported by the appellants which led to that settlement and, second, all the correspondence that it had exchanged with the German customs authorities and the Russian Government. That evidence concerning the

conduct of the Community institutions could, in the appellants' submission, be relevant for the purposes of an action based on the second paragraph of Article 288 EC.

30 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 General Court 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 General Court 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 General Court and the legal conclusions it has drawn from them (see, among others, 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; Joined Cases C-101/07 P and C-110/07 P *Coop de France bétail et viande and Others* v *Commission* [2008] ECR I-10193, paragraph 58; and Case C-535/06 P *Moser Baer India* v *Council* [2009] ECR I-7051, paragraph 31).

31 The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court 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 General Court 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, among others, *General Motors* v *Commission*, paragraph 52; *Evonik Degussa* v *Commission*, paragraph 73; *Coop de France bétail et viande and Others* v *Commission*, paragraph 59; and *Moser Baer India* v *Council*, paragraph 32).

32 In addition, it is important to note that the 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, among others, *General Motors* v *Commission*,

paragraph 54; *Evonik Degussa* v *Commission*, paragraph 74; *Coop de France de bétail et viande and Others* v *Commission*, paragraph 60; and *Moser Baer India* v *Council*, paragraph 33).

33 In this case, as regards the complaint relating to the evidence adduced by the appellants regarding the conditions under which the parties concluded the settlement in question, the alleged distortion of the facts has not been established with sufficient precision in the appeal. In addition, the appellants have not shown that any order requiring the Commission to produce the documents sought could have affected the consequences in law which the General Court held, in paragraph 139 of the judgment under appeal, to mean that it lacked the jurisdiction to adjudicate on the claims for compensation for anti-dumping duties and lawyers' fees incurred in connection with proceedings which took place at national level.

34 The appellants seek to obtain, by this means, a review of the findings of fact made by the General Court, for which the Court of Justice has no jurisdiction on appeal, so that this complaint must be declared to be inadmissible.

35 It follows that the second plea in law must be dismissed in its entirety as being in part unfounded and in part inadmissible.

The first ground of appeal

36 The appellants submit that the General Court erred in law in interpreting and applying the second paragraph of Article 288 EC as regards the conditions under which the Community may incur its non-contractual liability. By that ground of appeal, which

is in two parts, the appellants complain that the General Court, first, did not investigate the unlawful conduct capable of causing the damage and, in particular, failed to consider the illegal conduct complained of in its legal context and when determining whether there was a causal link, and, second, of having held that the causal link between the conduct complained of against the Community institutions and the various elements of the damage alleged could not be regarded as being sufficiently direct.

The first part

— Arguments of the parties

37 The appellants submit that when it comes to examining the causal link between the alleged wrongful conduct and the alleged damage, both must somehow be considered before reaching a finding that there is no sufficiently direct link between the two, or that the link has been broken. In other words, according to the appellants, whereas, in the realm of the Community's non-contractual liability, examining at the outset the illegality or the damage alleged does not presuppose the examination of the other conditions governing that liability, examining at the outset the causal link presupposes that the two other conditions will, somehow or other, be taken into consideration.

38 The Council argues that there is no basis for the assertion that the General Court had to take 'the two other conditions … somehow … into consideration' or to 'investigate the legal setting surrounding the causal link and in particular the wrongful conduct'.

The technique used by the General Court consisting in an analysis of the causal link by taking as established facts the alleged wrongful act and the alleged damage is standard. It is not required to examine the conditions governing the liability of an institution in any particular order and, if any one of the three conditions is not satisfied, the claim for compensation must be dismissed without it being necessary to consider the other conditions.

39 The Commission submits that there is no rule which prevented the General Court from examining the issue of causation without determining the issue of the definitive regulation's alleged illegality. Although it may indeed be correct that 'causation does not exist in a vacuum', the appeal completely overlooks the fact that causation is not determined, on the one hand, by the illegal conduct and, on the other, by the damage suffered, but simply by whether the conduct complained of caused the damage alleged.

— Findings of the Court

40 The Court has consistently interpreted the second paragraph of Article 288 EC as meaning that the non-contractual liability of the Community and the exercise of the right to compensation for damage suffered depend on the satisfaction of a number of conditions, relating to the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of (see, among others, Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 19; and Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 106).

41 In so far as the three conditions giving rise to liability laid down in the second paragraph of Article 288 EC must be satisfied cumulatively, the fact that one of them has not been satisfied is a sufficient basis on which to dismiss an action for damages (Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251, paragraph 14).

42 Moreover, there is no requirement that those conditions be examined in any particular order (see, to that effect, *Lucaccioni* v *Commission*, paragraph 13).

43 Given the rejection of the second ground of appeal, this ground of appeal covers only claims for compensation relating, first, to material damage, consisting of Trubowest's loss of profit and Mr Makarov's loss of wages, quantified respectively at EUR 128 000 and EUR 63 448.54, and, second, non-material damage suffered by Mr Makarov, quantified at EUR 150 000.

44 The General Court concluded, in paragraph 134 of the judgment under appeal, that, on any assumption, that is to say whether or not Trubowest's imports came within the scope of the definitive regulation and whether or not the appellants made an error in their classification, the causal link between the wrongful conduct alleged against the Council and the Commission and the damage alleged could not be regarded as having been sufficiently direct.

45 The appellants emphasised at the hearing that the General Court did not examine the legal event which caused the damage. They submitted that the issue of causation cannot be treated as part of a comprehensive review of the legal context of the act in question, namely the definitive regulation which they claim to be illegal.

46 The Council and the Commission submit that there is no requirement for the General Court to rule on the alleged illegality before examining the existence of a causal link between that illegality and the damage alleged.

47 As the Advocate General stated in paragraph 68 of his Opinion, the appellants have not explained what was supposed to have been the influence of the examination by the General Court of the conduct alleged against the institutions on the assessment of the condition concerning the causal link in the judgment under appeal. The General Court could examine the causal link starting from the assumption that, as alleged by the appellants, the act impugned was actually illegal and the damage was real (see, by analogy, *Lucaccioni* v *Commission*, paragraphs 12, 15 and 16, and the order of 12 April 2005 in Case C-80/04 P *DLD Trading Company Import-Export* v *Council*, paragraph 50).

48 In an action for damages on the basis of the second paragraph of Article 288 EC the condition relating to the causal link is independent of that relating to the illegality of the act in question. Therefore, in this case, the question of whether the imposition of anti-dumping duties by the definitive regulation was illegal is irrelevant for the purposes of examining the condition relating to the causal link.

49 The General Court therefore correctly decided that it could examine, first, the issue of the causal link between the conduct alleged against the Council and Commission and the losses alleged.

50 It follows from the above that the first part of the first ground of appeal must be rejected as unfounded.

The second part

— Arguments of the parties

51 The appellants submit that the General Court erred in law in holding that the causal link between the Community institutions' unlawful conduct and the losses alleged could not be regarded as being sufficiently direct since it is based on two hypothetical scenarios which constitute unfounded assertions. The General Court disregarded the fact that they were claiming compensation for losses suffered as a result of the imposition of illegal duties. It erroneously took into account unsubstantiated hypothetical errors in the classification of the imported goods supposedly constituting faults by the German authorities or the appellants. The appellants submit that the General Court applied the condition of causation wrongly in that it considered whether the causal link had been broken without first determining whether there was a direct link between the alleged unlawful conduct and the damage alleged.

52 The Council and the Commission contend that, because it was never conclusively determined whether or not the tubes and pipes for which the German customs authorities had claimed anti-dumping duties pursuant to the definitive regulation were covered by that regulation, the General Court examined the causal link on both assumptions.

— Findings of the Court

53 The principles common to the laws of the Member States to which the second paragraph of Article 288 EC refers cannot be relied upon to found an obligation on the Community to make good every harmful consequence, even a remote one, of

conduct of its institutions (see, to that effect, Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier and Others* v *Council* [1979] ECR 3091, paragraph 21, and Joined Cases C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359, paragraph 25). The condition under the second paragraph of Article 288 EC relating to a causal link concerns a sufficiently direct causal nexus between the conduct of the institutions and the damage (see, to that effect, *Dumortier and Others* v *Council*, paragraph 21).

54 Moreover, according to the Court's settled case-law, by virtue of Article 225 EC and the first paragraph of Article 58 of the Statute of the Court of Justice, an appeal may be based only on grounds relating to points of law, to the exclusion of any appraisal of the facts (see to that effect, among others, Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 12, and Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraph 39).

55 The appellants have not explained how the alleged illegality of the definitive regulation could affect the existence of a sufficiently direct link between the losses allegedly suffered and the unlawful conduct alleged. Indeed, the legality of that regulation has no effect on the validity of the appraisal of the factual assumptions made by the General Court, which led it to conclude that the causal link had been broken.

56 The appellants submit, furthermore, that the General Court erred in law in concluding, in paragraph 134 of the judgment under appeal, that the causal link between the institutions' wrongful conduct and the damage alleged could not be regarded as sufficiently direct.

57 It is clear from the judgment under appeal that the General Court did not examine first and in a general way whether the damage alleged would have occurred without the wrongful conduct of the institutions. The reasoning in that judgment is focused on the issue of whether the causal link between these two elements was broken. In paragraphs 112 and 113 of that judgment, the General Court decided, for the purposes of the first assumption, that the determination as to the existence of a causal link does not depend on whether, if the unlawful act had not existed, the outcome of events would have been different. Likewise, according to the case-law cited in paragraphs 99 and 102 of the judgment under appeal, the alleged harm must be a sufficiently direct consequence of the conduct complained of without a break in the causal link.

58 In that regard, it must be held that a causal link is established, for the purposes of the second paragraph of Article 288 EC, if there is a direct link of cause and effect between the unlawful conduct of the institutions concerned and the damage alleged.

59 It is necessary that such damage was actually caused by the conduct alleged against the institutions. This approach is confirmed by the established case-law referred to in paragraph 53 of the present judgment that, even in the case of a possible contribution by the institutions to the damage for which compensation is sought, that contribution might be too remote because of some responsibility resting on others, possibly the appellants.

60 First, the General Court decided, correctly, that if the definitive regulation did not cover the goods imported by the appellants and that they therefore did not make an error in their classification, it would have held that the losses alleged by the appellants were attributable to the German customs authorities alone, since they subjected

those goods to anti-dumping duties although they were outside the scope of the definitive regulation.

61 Secondly, the General Court decided, correctly, that if the definitive regulation covered the goods imported by the appellants and that they had not, therefore, correctly classified the goods, the determinant cause of the losses they alleged was their own conduct, and not the alleged unlawful conduct of the Council and Commission. As regards that assumption, the General Court also noted, correctly, in paragraphs 100 and 101 of the judgment under appeal, that it is necessary to verify whether, at the risk of having to bear the damage himself, the person adversely affected had demonstrated, as a prudent person, reasonable diligence in avoiding or limiting the extent of the damage. The causal link may be broken by negligence on the part of the person adversely affected, where that negligence proves to be the determinant cause of the damage.

62 The appellants submit that the General Court failed to take into consideration the fact that they were seeking compensation for damage suffered as a result of the imposition of illegal duties and focused, wrongly, on hypothetical errors in the classification of the imported goods. According to the appellants, the question is not whether the definitive regulation does or does not cover those goods. The sums which were levied as anti-dumping duties and retained by the German customs authorities under the settlement concluded by the appellants and those authorities imply that the duties were owed on the basis of a regulation which was alleged to be illegal.

63 The General Court, in its examination of the alleged losses resulting directly or indirectly from the imposition of anti-dumping duties by the definitive regulation, made no reference to the legality or otherwise of that regulation. Indeed, as regards the question of whether the imposition of those duties by the definitive regulation was the direct cause of the losses allegedly suffered by the appellants, it examined their

situation successively on the two factual assumptions it identified, which cover all possible cases. Their alternative examination then led to the same solution.

64 Consequently, the appellants have not shown that the General Court erred in law in finding that there was no sufficiently direct causal link between the conduct they complained of against the institutions and the damage they alleged.

65 The first ground of appeal must accordingly be rejected as unfounded.

66 It follows that the appeal must be dismissed in its entirety.

Costs

67 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful parties' pleadings. As the Council and the Commission have applied for costs against Trubowest and Mr Makarov and the latter have been unsuccessful, they must be ordered to pay the costs of the appeal.

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

1. Dismisses the appeal;

2. Orders Trubowest Handel GmbH and Mr Makarov to pay the costs.

[Signatures]