basing themselves on a subsequent certificate issued by Dafse which requires the application of criteria of accounting procedure and sound financial administration which were not made known beforehand, at the relevant time or afterwards,

— the decisions breach the applicant's rights of defence.

Action brought on 28 March 1997 by British Shoe Corporation and others against the Commission of the European Communities

(Case T-73/97)

(97/C 166/36)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 March 1997 by British Shoe Corporation and others, represented by Alasdair Bell, Solicitor, Society of Scotland, and Mark Powell, Solicitor, England, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 rue Goethe, Luxembourg.

The applicant claims that the Court should:

— annul Commission Regulation (EC) No 165/97 imposing provisional anti-dumping duties on imports of textile upper footwear originating in the People's Republic of China and Indonesia,

— take such other steps as justice may require,

— order the Commission to pay the costs of the applicant companies in the present proceedings.

Pleas in law and main arguments adduced in support:

The applicant companies in the present case are all major importers and retailers of footwear in the European Union. They import substantial quantities of footwear from China and Indonesia, countries that have been the subject of an antidumping investigation resulted in the adoption of Commission Regulation (EC) No 165/97 [1], imposing provisional antidumping duties of 94,1 % and 36,5 % respectively on textile footwear from China and Indonesia. It is that Regulation which the applicants seek to have annulled.

The applicants plead infringements of Article 1 (4) of Regulation (EC) No 3283/94 [2] in that the Commission is mistaken, both in fact and in law, in its treatment of the issue of 'like product' within the meaning of that provision. According to them, vulcanized footwear cannot be regarded as a 'like product' to injection-moulded footwear. There are significant differences, notably in manufacturing materials, production processes, technical and physical characteristics, price, packaging and marketing. The Commission's decision to impose an antidumping duty 94,1 % on vulcanized footwear is therefore unlawful.

The applicants also plead infringement of Article 190 of the Treaty. They submit that the inadequate reasoning contained in Regulation (EC) No 165/97 prevents the Court of First Instance from discharging its duty to review the question whether the defendant has determined the correct level of antidumping duty. The first objection to the Commission's approach is its failure to take into account the difference between vulcanized and injection-moulded footwear. Furthermore, the arithmetical basis underlying the level of provisional duty is neither sound nor adequately reasoned.

They further submit that the Commission has committed a manifest error of appraisal in its assessment of the 'Community interest'. The contested measure implies that the distribution system can and will absorb much of the antidumping duty. However, the Commission adduces no evidence for this at all, other than identifying the level of gross margin between import and resale as 100 %. There is no consideration of the cost structure covered by this margin, the profit level in it, or the capacity of the distribution system to absorb a significant part of the duty. As retail prices of imported footwear have already increased substantially, the Commission's assessment of the situation is contradicted by the facts.

The applicants next claim that, in breach of Article 3 (1) of Regulation (EC) No 3283/94, read in conjunction with Article 5 (4) thereof, the Commission has, in the present case, ignored the fact that before it may lawfully impose antidumping duties it must establish material injury in relation to a group of EU producers collectively representing 25 % of EU production of the like product.

They plead, finally, breach of the principle of proportionality as regards the level of antidumping duties fixed in the contested Regulation. On this point they lay particular stress on the fact that it is practically impossible to obtain supplies of vulcanized footwear in the Community.

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[1] Regulation (EC) No 165/97 of 28 January 1997 imposing a provisional anti-dumping duty on imports of footwear which textile uppers originating in the People's Republic of China and Indonesia (OJ No L 29, 31. 1. 1997, p. 3).

[2] Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ No L 349, 31. 12. 1994, p. 1).