

ORDER OF THE COURT OF FIRST INSTANCE  
(Fifth Chamber, Extended Composition)

1 February 1999 \*

In Case T-256/97,

**Bureau Européen des Unions de Consommateurs (BEUC)**, an international association constituted under Belgian law, established in Brussels, represented by Bernard O'Connor, Solicitor, and by Bonifacio García Porras, of the Bar of Salamanca, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Rue Marie-Adélaïde,

applicant,

supported by

**United Kingdom of Great Britain and Northern Ireland**, represented by Michelle Ewing, of the Treasury Solicitor's Department, acting as Agent, and by David Anderson, of the Bar of England and Wales, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

\* Language of the case: English.

**Commission of the European Communities**, represented by Viktor Kreuzschitz, Legal Adviser, and Nicholas Khan, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its legal service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission's decision of 18 July 1997 refusing to recognise the applicant as an interested party for the purposes of the anti-dumping proceeding leading to the adoption of Commission Regulation (EC) No 773/98 of 7 April 1998 imposing a provisional anti-dumping duty on imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey,

**THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES**  
(Fifth Chamber, Extended Composition),

composed of: J. D. Cooke, President, R. García-Valdecasas, P. Lindh, J. Pirrung and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

## Order

### Facts

- 1 The Bureau Européen des Unions de Consommateurs (hereinafter 'BEUC') is an international association constituted under Belgian law which represents at Community level the national consumer organisations established in the Member States and other European countries.
- 2 On 11 July 1997, the Commission gave notice of the initiation of an anti-dumping investigation (No 97/C 210/09) concerning importations of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1997 C 210, p. 12, hereinafter 'the initiation notice'), following a complaint lodged on 26 May 1997 pursuant to Article 5 of Council Regulation 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, hereinafter 'the basic regulation') by the Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton).
- 3 In accordance with Article 5(10) of the basic regulation, the initiation notice prescribed the period within which interested parties might make themselves known, present their views in writing and submit information to be taken into account during the investigation. It also fixed the time within which interested parties could apply to be heard by the Commission pursuant to Article 6(5) of the basic regulation.
- 4 By letter sent to the Commission on 15 July 1997, BEUC asked to be recognised as an interested party and to be furnished with the copy of the complaint and the information made available by all other parties concerned in the investigation to the extent that these were not confidential in the sense contemplated by Article 6(7) and Article 19 of the basic regulation.

- 5 By letter of 18 July 1997 from Directorate E (Anti-dumping IV (injury and community interest aspects and general policy)) of Directorate-General I (External Relations: commercial policy, relations with North America, the Far East, Australia and New Zealand — DG I) (hereinafter the 'contested decision'), the Commission replied as follows:

'In line with the general position of the Commission, which is well known to BEUC, I would ... point out that unbleached cotton fabrics cannot be considered as a product commonly sold at retail level, i. e. not a product for which BEUC would be considered an interested party under Articles 5(10), 6(7) and 21 of Council Regulation (EC) No 384/96 ... I must therefore inform you that we are unable to accommodate your requests for the transmission of the complaint and for access to the non-confidential files.'

- 6 On 7 April 1998 the Commission adopted Regulation (EC) No 773/98 imposing a provisional anti-dumping duty on importations of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1998 L 111, p. 19) (hereinafter 'the provisional regulation').
- 7 The provisional regulation entered into force on 10 April 1998 and, as provided by Article 4, it applied for a period of six months. As no regulation imposing a definitive anti-dumping duty was adopted by the Council within the period of 15 months following the initiation of the investigation, as provided for in Article 6(9) of the basic regulation, the provisional regulation lapsed on 10 October 1998.

## Procedure

- 8 By application lodged at the Registry of the Court of First Instance on 19 September 1997, the applicant brought the present action.
- 9 By application lodged at the Registry of the Court of First Instance on 8 April 1998, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in the case in support of the applicant. This application was granted by order of the President of the Fourth Chamber (Extended Composition) of the Court of 25 May 1998.
- 10 By separate document lodged at the Registry of the Court of First Instance on 4 November 1998, the Commission raised a preliminary plea under Article 114 of the Rules of Procedure of the Court of First Instance seeking a declaration to the effect that there was no need to adjudicate on the action.
- 11 By letter of 19 November 1998 the United Kingdom indicated that it had no observation to make on that request. The applicant lodged observations on this plea on 23 November 1998.

## On the preliminary plea

### *Arguments of the parties*

- 12 The Commission claims that the action has ceased to have any purpose and that there is accordingly no longer any need to adjudicate on it. It points out that Article 6(9) of the basic regulation provides that investigation proceedings initiated under Article 5(9) of that regulation are in all cases to be concluded within the

period of 15 months following their initiation. The Commission's proposal for the imposition of definitive anti-dumping duties pursuant to Article 9(4) of the basic regulation not having been adopted by the Council within this period, it follows that the anti-dumping proceeding in the course of which the contested decision was taken has concluded and that no further measure could now be adopted.

- 13 Even if the applicant were entitled to be considered as an interested party for the purposes of the investigation proceedings in question, it is no longer in a position to exercise its rights given that the proceedings in question, having been closed, no longer exist.
- 14 The applicant alleges that, notwithstanding the expiry of the time allowed for adoption by the Council of a regulation imposing a definitive duty, it nevertheless retains an interest in continuing its claim in order to obtain the judgment of the Court on the substance of the matter, namely, its right in the future to participate as an interested party in an anti-dumping proceeding relating to products not sold at retail level and thus ensure that the Commission does not adopt a similar decision in the future.
- 15 According to the applicant, the Commission's decision to refuse to recognise it as an interested party for the purpose of the investigation is based upon a mistaken interpretation of the provisions of the basic regulation cited in the letter of 18 July 1997 (see above, paragraph 5). The fact that the Commission, in the contested decision, makes reference to its 'general position' as being 'well known to BEUC' shows that the Commission has every intention of adopting the same construction in the future. The applicant also points out that the Commission's agent, in a letter sent to the Court on 6 October 1997 for the purpose of obtaining an extension of time for the delivery of the defence, had said that 'the case raises an issue of considerable practical importance to the Commission in the conduct of all anti-dumping investigations'.
- 16 In these circumstances, the applicant maintains that it retains an interest in having the contested decision annulled on the ground that the Commission is mistaken in its construction of the relevant provisions of the basic regulation, and thus in ensuring that decisions adopted in similar cases in the future will not be tainted by the same illegality.

*Finding of the Court*

- 17 In accordance with Article 114(3) of the Rules of Procedure of the Court, the remainder of the proceedings on a preliminary plea is oral unless the Court otherwise decides. In the present case, the Court considers that it has sufficient information from the contents of the file and that it is unnecessary to open the oral procedure.
- 18 The Court would point out that the legal interest of an applicant in maintaining an action for annulment can continue to exist even when the contested decision has already been implemented. The annulment of such a decision is capable, of itself, of having legal consequences and particularly that of preventing a repetition of the Commission's practice (see, to this effect, the judgments of the Court of Justice in Case 53/85 *AKZO Chemie v Commission* [1986] ECR 1965, paragraph 21 and in Case 207/86 *Apesco v Commission* [1988] ECR 2151, paragraph 16, and the judgment of the Court of First Instance in Case T-46/92 *The Scottish Football Association v Commission* [1994] ECR II-1051, paragraph 14). This is particularly true in the present case.
- 19 In the present case the question as to the lawfulness of the Commission's decision not to regard the applicant as an interested party for the purpose of an anti-dumping proceeding relating to products not sold at retail level is one which turns upon the construction to be given to the relevant provisions of the basic regulation, and in particular to Articles 5(10), 6(7) and 21, as the terms of the contested decision themselves make clear.
- 20 The possibility cannot be ruled out that at some time in the future, the applicant will again seek to make itself known for the purpose of presenting its observations and seeking access to the non-confidential files in the course of a similar anti-dumping proceeding concerning products not generally sold at retail level. Furthermore, it is clear from the terms of the contested decision that the Commission's response to the request made by the applicant in this case derived from its particular interpretation of the provisions in question. The Court has noted that the Commission has not sought to suggest otherwise in that regard.

- 21 It is therefore clear that the applicant does retain a legitimate interest in having the Community judicature define the legal conditions in which the Commission is entitled to refuse to regard it as an interested party for the purpose of such a proceeding.
- 22 In these circumstances, the preliminary plea for a ruling that there is no need to adjudicate on the action must be refused and the proceeding will be continued.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber, Extended Composition)

hereby orders:

1. **The request for a ruling that there is no need to adjudicate on the action is refused.**
2. **Costs are reserved.**

Luxembourg, 1 February 1999.

H. Jung

J. D. Cooke

Registrar

President