JUDGMENT OF THE COURT
30 January 1985 *

In Case 35/83

BAT Cigaretten-Fabriken GmbH, a company engaged in the manufacture and marketing of tobacco products, whose registered office is in Hamburg, represented by Walter Klosterfelde, Rechtsanwalt of Hamburg, with an address for service in Luxembourg at the Chambers of Ernest T. Freylinger, 46 rue du Cimetière,

applicant,

supported by

Federal Republic of Germany, represented by Martin Seidel, Ministerialrat at the Ministry of Economic Affairs, acting as Agent, assisted by Ralf Vieregge, Rechtsanwalt of Cologne, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany,

intervener,

v

Commission of the European Communities, represented by its Legal Adviser, Norbert Koch, and by Ingolf Pernice, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, also a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

supported by

Antonius I.C.M. Segers, an industrialist, residing in Essen (Belgium), represented by Willy Alexander, of The Hague Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B rue Philippe-II,

intervener,

APPLICATION for a declaration that Commission Decision No 82/897 of 16 December 1982 relating to a proceeding under Article 85 of the Treaty (IV/C-30.128 Toltecs/Dorcet) is void,

* Language of the Case: German.

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

*

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 3 March 1983, BAT Cigaretten-Fabriken GmbH, whose registered office is in Hamburg, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the Commission Decision of 16 December 1982 relating to a proceeding under Article 85 of the EEC Treaty (IV/C-30.128 Toltecs/Dorcet), published in Official Journal 1982 L 379, p. 19, was void. The Federal Republic of Germany intervened in support of the applicant's conclusions, in view of the questions of principle raised by the case concerning trade mark law under both national law and Community law. The Commission, the defendant, was supported by Mr A.I.C.M. Segers, a tobacco manufacturer, whose undertaking is established in the Netherlands. It should be noted that a complaint by Segers gave rise to the contested decision.

2 The Commission decision relates essentially to an agreement concluded on 16 January 1975 between BAT and Segers, in the following terms:

'Article 1

BAT is the owner of the German trade mark 865 058 "Dorcet".

* after hearing the Opinion of the Advocate General delivered at the sitting on 16 October 1984,

Article 2

Mr Segers is the owner of the internationally registered trade mark 395 536 (word/device mark) "Toltecs Special".

Article 3

Mr Segers undertakes to restrict the products listed under the IR mark 395 536 in the Federal Republic of Germany to "curly cut tobacco (shag)" and, after protection is granted in the Federal Republic of Germany, to use the word/device mark "Toltecs Special" for this special product only, to claim no right as against BAT arising from registration and use of the mark Toltecs Special, not even if the latter does not use its 865 058 "Dorcet" mark for more than five years or if it applies again for registration of the mark or a mark other than Toltecs Special that could be confused with it within the meaning of Section 31 of the German trade mark law.

Article 4

Mr Segers further undertakes to refrain from publicizing in any description of the tobacco sold under the IR mark 395 536 that it is suitable or recommended for rolling cigarettes. Mr Segers may use the designation "fine cut tobacco" or "Dutch shag".

Article 5

BAT undertakes on signature by Mr Segers of the agreement, to withdraw its opposition to the grant of protection for the IR mark 395 536 and to raise no objection to use of the IR mark 395 536 for "curly cut tobacco" in the Federal Republic of Germany.'

3 The Commission takes the view that that agreement, as applied by the parties, has as its object or effect the restriction of competition within the common market (paragraph II (3) of the statement of reasons for the decision), and that it is apt to affect trade between Member States because it impedes free import and export of the goods covered by the agreement from the Netherlands to the Federal Republic of Germany to such an extent that since 1978 exports by Segers to the German market have fallen to almost nil (paragraph II (4)).

4 The Commission also considered whether it was appropriate to apply Article 85 (3) of the Treaty. It states that the agreement was not notified to it and does

not contribute in any way to improving the production or distribution of goods — in fact it has the effect of hindering or preventing the distribution of Segers's production in Germany (part III). Consequently, it decided that Article 85 (3) was not applicable.

5 Finally, the Commission stated the reasons for its finding that the imposition of a fine on BAT was justified by one particularly serious aspect of the infringement established (part IV).

6 Accordingly, the Commission adopted the following Decision (extract):

Article 1

The provisions of the agreement of 16 January 1975 between the undertakings named in Article 5 and the application thereof constitute infringements of Article 85 (1) of the Treaty establishing the European Economic Community in so far as:

(1) Mr Segers is under an obligation not to market fine cut under the Toltecs Special mark (IR mark 395 536) in the Federal Republic of Germany or not to undertake such marketing except through importers approved by BAT or on the fulfilment of certain other conditions;

(2) Mr Segers is under an obligation to claim no rights as against BAT arising from his registration and use of the mark Toltecs Special, even where BAT does not use its Dorcet mark for more than five years or where it applies again for registration of this mark or a mark capable of being confused with it within the meaning of Section 31 of the German trade mark law (other than Toltecs Special).

Article 2

The undertakings named...shall terminate forthwith the infringements referred to in Article 1. In particular, BAT shall refrain from exercising any economic pressure on Mr Segers or on importers aimed at preventing or impeding the import and marketing of Toltecs tobacco in the Federal Republic of Germany.

Article 3

A fine of 50 000 (fifty thousand) ECU or DM 115 635 (one hundred and fifteen thousand six hundred and thirty five German marks) is hereby imposed on BAT Cigaretten-Fabriken GmbH for the infringement referred to at Article 1 (2) in

respect of the extension of the no-challenge clause to the case where the Dorcet mark remains unused for more than five years.

Background to the dispute

7 It is apparent from the contested decision and from the information furnished in the course of these proceedings that Segers lawfully uses the trade mark Toltecs Special in the Netherlands for the sale of his tobacco, which is a fine cut tobacco used to make cigarettes. On 31 January 1973, Segers applied to have his trade mark registered internationally in class 34 (raw tobacco and tobacco products), including Germany among the countries in which he sought protection.

8 On 25 July 1973, BAT opposed the registration of Segers's trade mark for the German market on the ground that its own trade mark, Dorcet, which had been registered on 15 January 1970, had priority. It should be noted that the latter is a 'dormant' trade mark, in other words one which has been registered but is not used commercially.

9 Segers did not commence legal proceedings in Germany to challenge BAT's opposition. His explanation for this is that he did not wish to become involved in litigation with an undertaking as powerful as BAT. Instead, he entered into negotiations with BAT with a view to reaching a settlement; for that purpose he offered to restrict the use of the trade mark Toltecs to the sale of 'a specific tobacco product', by which he apparently meant the fine cut tobacco which he manufactured. The negotiations were conducted on behalf of Segers by trade mark specialists.

10 It should be borne in mind that, as the Commission points out in its decision, from 15 January 1975 onwards any interested party would have had the right under German law to apply to have the Dorcet mark removed from the register since it had not been used for five years. Segers did not avail himself of that right.

11 On the following day, 16 January 1975, Segers signed the agreement with BAT described above. It is clear from the Commission decision and from the other documents before the Court that the terms of the agreement were for the most part proposed by Segers and accepted without amendment by BAT. It is also apparent from the decision and from other documents before the Court that the

agreement contains a drafting error, since the tobacco for which Segers reserved the right to use his trade-mark was described both as 'curly cut tobacco' and as 'shag', and, in Netherlands usage, these terms refer respectively to coarse cut and to fine cut tobacco.

12 Segers states that he did not notice that mistake until after the agreement had been signed. It should be noted that he did not exercise his right to apply to a German court to have the mistake and its legal consequences rectified. In that connection, the Commission explains, in the statement of reasons for its decision, that Segers was not in a position to run the risk 'of becoming involved in costly litigation — which he could not afford — with a firm in a strong financial position like BAT' (third indent of subparagraph II (3)(A)(a)).

13 It appears from documents before the Court that after the agreement was concluded Segers once again began to market his products in the Federal Republic of Germany through an exclusive distributor, Müller-Broders. BAT gave Müller-Broders permission to use the name Toltecs to market fine cut products.

14 On 16 August 1978 Segers informed BAT of his intention to use a different importer and asked it to state in writing that the new importer would be allowed to use the Toltecs trade mark in the same way as Müller-Broders. BAT replied on 23 August 1978 that under the terms of the agreement, Segers was entitled to sell only curly cut tobacco; that right was freely transferable to another importer. But the right to use the Toltecs trade mark for fine cut tobacco had been granted by BAT to Müller-Broders and as far as BAT was concerned that undertaking remained the importer of the product.

15 Müller-Broders subsequently ceased trading and its business was taken over by Peter Grassmann GmbH. For his part, Segers began negotiations with another potential importer, Planta. However, those negotiations produced no positive result because of the uncertainties surrounding the use of the trade mark. After working with Grassmann for a short period, Segers once again contacted Planta. Segers then requested BAT to approve Planta as his new wholesale distributor on the same terms as Grassmann. BAT replied in a letter of 14 August 1979 that it was willing to extend the agreement to cover fine cut tobacco, subject to the condition that Segers would be required to buy up the stock of Toltecs tobacco remaining with Grassmann. In the absence of an answer from Segers regarding that requirement, BAT informed him by letter of 14 December 1979 that it was going to bring to an end the distribution through third parties of Toltecs fine cut

on the German market and that it had sent a copy of its letter to Planta. That communication was confirmed in a letter of 14 January 1980, in which BAT expressed its intention to prevent all future sales of Toltecs tobacco on the German market.

16 Because of his difficulties with BAT, Segers had stopped selling Toltecs tobacco in Germany before the end of 1978. On 12 June 1980, he applied to the Commission under Article 3 of Regulation No 17 of the Council of 6 February 1962 (Official Journal, English Special Edition 1959-62, p. 87) for a finding that BAT had infringed Article 85 or 86 of the EEC Treaty.

17 The Commission decided to initiate a proceeding and sent BAT a written statement of objections dated 16 December 1981. The outcome of that proceeding is set out in the decision at issue.

Substance

18 In its application, BAT sets out four submissions, relating to: the Commission's failure to apprehend the true meaning of the agreement of 16 January 1975; the Commission's legal classification of the agreement and of the terms contained in it, which BAT considers to be erroneous; the Commission's refusal to exempt the agreement under Article 85 (3); and finally, the illegality of the fine imposed on BAT.

The submission that the Commission failed to apprehend the true meaning of the agreement at issue

19 In the first place, BAT states that it has in the meantime waived its rights under the agreement, which it no longer considers to be of any advantage to it, and that it signified its intention to waive its rights under the agreement at the Commission hearing; and secondly, it states that the Commission misconstrued the content of the disputed agreement inasmuch as that agreement never contained a provision prohibiting Segers from marketing fine cut tobacco under the Toltecs trade mark, despite the drafting error in the agreement when it was concluded.

20 As far as the first point is concerned, the Commission does not deny that the statement was made at the hearing but maintains that, in order to cancel the agreement, BAT should have made a formal statement to the other party to the

agreement and also provided it with evidence that it had informed at least the last dealer approached by Segers, namely Planta, that it no longer had any objections to the marketing of Toltecs fine cut tobacco. In the absence of any indication to that effect, the agreement must be regarded as being still in force.

21 As regards the second point, the Commission appears to take the view that the reference to 'curly cut tobacco' in the agreement was consciously intended by BAT, which was aware of the fact that Segers did not manufacture that product, its aim being to gain complete control over imports of fine cut tobacco under the Toltecs trade mark.

22 The Commission's view with regard to the first point appears justified. A declaration of intent by BAT at the Commission hearing was not sufficient to terminate an agreement with another party. The agreement of 16 January 1975 must therefore be presumed to have been in existence at the time of the Commission's decision.

23 As to the question whether the disputed agreement covered fine cut tobacco, it is sufficient to note that the agreement is objectively ambiguous and open to contradictory interpretations. Although it is true that the ambiguity is attributable in the first place to Segers, who suggested the relevant wording himself, the fact remains that BAT took advantage of that ambiguity because it served its own purpose, which was to prevent Segers from selling the only kind of tobacco which his undertaking actually produced.

24 BAT cannot therefore criticize the Commission for attributing to the agreement the meaning which BAT had itself given to it by virtue of its conduct.

25 That submission must therefore be rejected.

The submissions relating to the Commission's alleged incorrect legal classification of the disputed agreement

26 The applicant considers that the Commission's legal appraisal of the agreement of 16 January 1975 is incorrect and inconsistent with the present state of development of Community law. According to the applicant, the agreement is a 'delimitation'

agreement on the use of different trade marks, containing a so-called 'no-challenge' clause, intended to consolidate the position of the Dorcet mark even after it had ceased to be legally protected. It argues that the validity of such agreements is a matter governed by national law, and adds that recourse to such clauses is common practice and that they are regarded as perfectly legal under German law. Hence it challenges the Commission's right to assess the risk of confusion between two trade marks. More specifically, it criticizes the Commission for purporting to lay down a criterion of appraisal, in the name of Community law, which differs from that applied by the national legislation, in so far as it states in subparagraph II (3)(A)(f) of the preamble to its decision that it cannot find any 'serious' risk of confusion between the two trade marks. BAT contends that the assessment of that risk cannot be subject to two sets of criteria, one laid down by national law and the other by Community law. It states that according to the principles of German law there was a real risk of confusion between the names Toltecs and Dorcet, as was indeed conceded by Segers himself, since otherwise he would not have offered to enter into a delimitation agreement with BAT on his own initiative.

27 The Government of the Federal Republic of Germany supports the applicant's submission on that point. It stresses the great practical importance of 'delimitation agreements' in the field of trade mark law. It states that in view of the number of existing trade marks, such agreements play an important part in preventing legal disputes by enabling trade mark proprietors to define the extent of their respective rights by amicable agreement. A delimitation based on the goods involved is the foundation of nearly all such agreements. The same applies to so-called 'no-challenge' or 'priority' clauses, which are also typically included in such agreements.

28 The German Government emphasizes that the validity of such agreements falls to be determined under national law. In this instance, it takes the view that according to the criteria of appraisal applied in Germany the possibility of confusion between the two marks could not be ruled out. The Commission itself conceded at the hearing that the risk of phonetic confusion had to be acknowledged. The German Government argues that the Commission cannot substitute its own appraisal for that of the parties to such an agreement.

29 Thus the German Government's view is that, in principle, 'delimitation agreements' do not constitute a restriction of competition within the meaning of Article 85. Nevertheless it admits that if such an agreement did not really have the function of

settling a dispute regarding conflicting trade marks but was intended to restrict competition, it might constitute an infringement of Article 85; one example it cites in particular is where the agreement is intended to operate as a market-sharing agreement.

30 The Commission argues as follows in defence of its decision: It concedes that appraisal of the risk of confusion between different marks is a matter governed by national law. However, it adds that the extent of the exclusive rights conferred by a trade mark is restricted by the effect of the relevant Community rules. According to the Commission, those restrictions derive both from the rules of competition law and from Article 36 of the Treaty, which allows restrictions on imports only in so far as they are 'justified' for the protection of industrial and commercial property. That twofold limitation was reflected in the Commission's reference to the requirement of a 'serious' risk of confusion, which was intended to ensure that a liberal interpretation of what constitutes a risk of confusion, either by national courts or in the context of delimitation agreements between trade mark proprietors, would not give rise to restrictions on the free movement of goods which were not justified by the specific subject-matter of the trade mark. In the Commission's view, a comparison of the visual designs of the two trade marks, which are reproduced in the statement of the reasons on which the contested decision is based, shows that there is no risk of confusion.

31 The Commission does not deny that 'delimitation agreements' may be both useful and lawful but points out the danger represented by such agreements from the standpoint of competition law, specifically in the case of purely fictitious agreements where the proprietor of a prior trade mark opposes the registration of a new mark on clearly untenable grounds in order to induce an applicant for registration, who may be poorly advised and in many cases weaker economically, to settle the artificial conflict thereby produced by means of a delimitation agreement. The Commission points out that that view was expressed in sub-paragraph IV (2) (a) of its decision where it refers to so-called delimitation agreements ['*angebliche Abgrenzungsvereinbarungen*'].

32 In this context the Commission attaches special significance to the so-called 'no-challenge' clause, although it emphasizes that its view relates only to cases where the clause is agreed upon at a time when the period of protection for a 'dormant trade mark' has already expired. The Commission takes the view that a reduction in the number of unused trade marks on the register would promote the opening up of the markets and increase competition. Hence it considers that the fact that

Segers acknowledged the priority of a trade mark which was already liable to be removed from the register, together with a right on BAT's part to register other similar marks even if they were still closer to the Toltecs mark, represents a very considerable curtailment of freedom of competition.

33 The Court acknowledges that, as the applicant and the Government of the Federal Republic of Germany submit and the Commission also concedes, agreements known as 'delimitation agreements' are lawful and useful if they serve to delimit, in the mutual interest of the parties, the spheres within which their respective trade marks may be used, and are intended to avoid confusion or conflict between them. That is not to say, however, that such agreements are excluded from the application of Article 85 of the Treaty if they also have the aim of dividing up the market or restricting competition in other ways. As the Court has already stated in its judgment of 13 July 1966 (Joined Cases 56 and 58/64, *Consten and Grundig* v *Commission*, [1966] ECR 299, p.346), the Community system of competition 'does not allow the improper use of rights under any national trade mark law in order to frustrate the Community's law on cartels.'

34 In that respect, it is clear from an analysis of the agreement of 16 January 1975 that it is confined to imposing obligations and disadvantages on Segers, namely:

the restriction of the use of the Toltecs mark to the sale of a certain kind of tobacco, which, as has been shown above, cannot be clearly identified;

the waiver by Segers of his right to claim priority for his trade mark as against the Dorcet mark even after the expiry of the legal protection period of five years;

the abandonment by Segers of the right to advertise the fact that his tobacco is suitable or recommended for cigarette rolling.

It should be noted that that last clause does not bear even the semblance of a connection with the question of the use of the trade mark as such.

35 In exchange, BAT assumes a single obligation which proves, upon examination, to be purely fictitious. It agrees to withdraw its opposition to the grant of protection

for the Toltecs trade mark for the German market. Without its being necessary to resolve the question of which criteria must be used for assessing the risk of confusion between the two trade marks, it is sufficient to state that since, on the one hand, Segers is the proprietor of a trade mark legally acquired and used in a Member State and BAT, on the other, is the proprietor of an unused, dormant, trade mark which is liable to be removed from the register upon application by any interested party, BAT's opposition, as part of its efforts to control the distribution of Segers's products, constitutes an abuse of the rights conferred upon it by its trade mark ownership.

36 Confirmation of that conduct on the part of BAT is to be found in the undisputed statements contained in the decision and in the other documents before the Court relating to the manner in which BAT applied its agreement with Segers. Even if the difficulties experienced by Segers with his distributors may be attributed in part to circumstances unconnected with his relations with BAT, it is also true that BAT interfered on several occasions with Segers's relations with the distributors chosen by him. Furthermore, it is an established fact that BAT exploited the ambiguity in the drafting of the agreement to its own advantage. BAT's letter to Segers dated 14 January 1980, confirming an identical communication of 14 December 1979, leaves no room for doubt as to BAT's real purpose; this was not by any means to protect its interest in the dormant trade mark, which had no economic significance whatsoever, but to prevent the marketing of Segers's product on the German market.

37 Hence it is clear that the agreement of 16 January 1975 enabled BAT, on the basis of a contrived conflict involving trade mark law, to interfere with the conditions of competition. It is indisputable that in the case of imports into Germany from the Netherlands, intra-Community trade was affected. The facts recited by the Commission in its decision also show that that agreement served no purpose other than that of enabling BAT to control and, in the last analysis, prevent the marketing of tobacco produced by Segers on the German market.

38 It follows that the applicant's submissions alleging an incorrect classification of the disputed agreement by the Commission must be rejected.

The submission relating to the non-application of Article 85 (3)

39 In part III of its decision, the Commission sets out the reasons for which it did not entertain the possibility of exempting the disputed agreement from the scope of Article 85. It states that the agreement was not notified to it, that it does not fall within the derogation provided for in subparagraph (2) (b) of Article 4 (2) of Regulation No 17 and that it does not in any way contribute to improving the production or distribution of the products in question.

40 On that point, the applicant argues that the Commission did not adequately state its reasons for refusing to apply Article 85 (3) of the Treaty. In so far as the agreement was concerned solely with restricting the exercise of trade mark rights, it was exempt from notification by virtue of the above-mentioned provision of Regulation No 17. It adds that the agreement contributed to an improvement in tobacco distribution on the German market and that without the agreement Segers would have found it impossible to market his product under the Toltecs brand.

41 That line of argument is clearly contradicted both by the content of the agreement of 16 January 1975 as analysed above and by the conduct of BAT, the sole purpose of which was to prevent Segers's tobacco from being sold on the German market. It is therefore clear that the agreement did not fulfil the conditions laid down in Article 85 (3).

42 That submission must therefore also be rejected.

The fine

43 By Article 3 of the decision a fine of 50 000 ECU was imposed on BAT on account of the so-called 'no-challenge' clause contained in the disputed agreement. The reasons for the imposition of that fine are set out as follows in the second and third paragraphs of part IV (2) (b) of the preamble to the decision:

'When the user requirement was introduced in the Federal Republic of Germany by the Law of 4 December 1967 it was plain to BAT that the agreement, which prohibited Mr Segers from relying on his acquired rights even if the Dorcet mark is unused for more than five years, was contrary to the meaning and purpose of

the statutory requirement, which was to remove unused marks from the register and facilitate entry by new applicants.

In this connection, it is particularly serious that the Dorcet mark was registered on 15 January 1970 and that BAT signed the agreement on 16 January 1975, one day after expiry of the period of protection accorded by German trade mark law. BAT was aware that by the agreement it has secured a legal position which by then could not be defended in law.'

44 In the sixth paragraph of part IV (2) (b) of the preamble the Commission states its reasons for not imposing a fine upon Segers although the latter was a party to the agreement which had been found to be incompatible with Article 85. Its different treatment of Segers is explained as follows:

'However, the Commission is not imposing a fine on Mr Segers despite the fact that he has also committed an infringement of Article 85 (1). Mr Segers is the owner of a small Dutch firm, who at the beginning of his dispute with BAT was not adequately informed about the German legal position and Community law. Mr Segers's lack of legal experience is also clear from the course his dispute with BAT took, since he apparently let an erroneously worded agreement be used against him.'

45 The applicant's complaint on that point is essentially that the Commission treated two parties to the same agreement unequally. It takes the view that the agreement was concluded on the same terms by the two parties and that they must therefore bear equal responsibility for it. It adds that the fact that the agreement in question was concluded one day after the expiry of the legal protection period for the dormant Dorcet trade mark, which the Commission regards as an aggravating circumstance, was wholly fortuitous and was due to Segers's slowness in dealing with correspondence relating to the conclusion of the agreement. Finally, BAT denies that it was in any way at fault, since when the disputed agreement was concluded there was no indication that it was contrary to either German law or Community law.

46 Without its being necessary to examine the seriousness of the infringements committed by the two undertakings or the question of the degree to which each was at fault, it is sufficient to state that the fine was not imposed because of the obligation imposed upon Segers not to sell his products or to sell them through importers approved by BAT (Article 1 (1) of the decision) but because of Segers's obligations as regards the use of the trade mark of which he was the proprietor (Article 1 (2) of the decision). Those obligations, however, are material in regard to Community competition law only when taken in conjunction with those relating to the marketing of Segers's products.

47 For that reason Articles 3 and 4 of the disputed decision, which impose a fine on BAT, must be declared void.

Costs

48 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is required to pay the costs. Nevertheless, under the first subparagraph of Article 69 (3) the Court may order that the parties bear their own costs in whole or in part where each party succeeds on some and fails on other heads. Since these proceedings have led to the decision being declared void in part it is appropriate that all the parties, including the interveners, should bear their own costs.

On those grounds,

THE COURT

hereby:

1. Declares void Articles 3 and 4 of Commission Decision No 82/897/EEC of 16 December 1982 relating to a proceeding under Article 85 of the EEC Treaty (IV/C-30.128 — Toltecs/Dorcet);

2. For the rest, dismisses the application;

3. Orders the parties to bear their own costs.

Mackenzie Stuart Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Galmot

Delivered in open court in Luxembourg on 30 January 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President