JUDGMENT OF THE COURT OF FIRST INSTANCE (Eighth Chamber)

24 September 2008 *

In Case T-45/06,

Reliance Industries Ltd, established in Mumbai (India), represented by I. MacVay, S. Ahmed, Solicitors, R. Thompson QC, and K. Beal, Barrister,

applicant,

v

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

and

Commission of the European Communities, represented by N. Khan and P. Stancanelli, acting as Agents,

defendants,

* Language of the case: English.

APPLICATION for annulment of:

— Commission Notice of 1 December 2005 of initiation of an expiry review of the countervailing measures applicable to imports of certain polyethylene terephthalate originating in inter alia India (OJ 2005 C 304, p. 4),

— Commission Notice of 1 December 2005 of initiation of an expiry review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in India, Indonesia, the Republic of Korea, Malaysia, Taiwan and Thailand and a partial interim review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in the Republic of Korea and Taiwan (OJ 2005 C 304, p. 9),

— Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan (OJ 2000 L 301, p. 1), Council Regulation (EC) No 2604/2000 of 27 November 2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 301, p. 21), and Commission Decision 2000/745/EC of 29 November 2000 accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 301, p. 88), in so far as those measures may purport to apply to the applicant in the period after 1 December 2005,

— in the alternative, Article 11(2) of 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) and Article 18(1) of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Eighth Chamber),

composed of M.E. Martins Ribeiro (Rapporteur), President, N. Wahl and A. Dittrich, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 13 December 2007,

gives the following

Judgment

Legal framework

World Trade Organisation anti-dumping and anti-subsidy agreements

1 Article 11.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103; 'the WTO Anti-Dumping

Agreement'), which is contained in Annex 1A to the Agreement establishing the World Trade Organisation (WTO), provides:

'[A]ny definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition …, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.'

2 Similarly, Article 21.3 of the Agreement on Subsidies and Countervailing Measures of 1994, also contained in Annex 1A to the Agreement establishing the WTO (OJ 1994 L 336, p. 156; 'the WTO Anti-Subsidy Agreement') provides:

'[A]ny definitive countervailing duty shall be terminated on a date not later than five years from its imposition …, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidisation and injury. The duty may remain in force pending the outcome of such a review.'

Basic Anti-Dumping Regulation

3 Article 8(1) of 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 Anti-Dumping Regulation'), in the version applicable at the material time, states:

'Investigations may be terminated without the imposition of provisional or definitive duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices, so that the Commission, after consultation, is satisfied that the injurious effect of the dumping is eliminated…'

4 Article 11(2) of the Basic Anti-Dumping Regulation provides:

'A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury…

…

A notice of impending expiry shall be published in the *Official Journal of the European Communities* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Community producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.'

5 Under Article 11(6) of the Basic Anti-Dumping Regulation, '[r]eviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee'.

6 Recital 18 in the preamble to the Basic Anti-Dumping Regulation states that 'it is necessary to provide that [anti-dumping] measures are to lapse after five years unless a review indicates that they should be maintained'.

Basic Anti-Subsidy Regulation

7 Article 13(1) of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1; 'the Basic Anti-Subsidy Regulation), provides:

'[Anti-Subsidy] investigations may be terminated without the imposition of provisional or definitive duties upon receipt of satisfactory voluntary undertakings under which:

(a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, so that the Commission, after consultation, is satisfied that the injurious effect of the subsidies is eliminated. Price increases under such undertakings shall not be higher than is necessary to offset the amount of countervailable subsidies, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the Community industry.'

8 Article 18 of the Basic Anti-Subsidy Regulation provides:

'1. A definitive countervailing measure shall expire five years from its imposition or five years from the date of the most recent review which has covered both subsidisation and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of subsidisation and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon a request made

by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

2. An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of subsidisation and injury…

…

4. A notice of impending expiry shall be published in the *Official Journal of the European Communities* at an appropriate time in the final year of the period of application of the measures as defined in this Article. Thereafter, the Community producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with paragraph 2. A notice announcing the actual expiry of measures under this Article shall also be published.'

9 Under Article 22(2) of the Basic Anti-Subsidy Regulation, '[r]eviews pursuant to [Article] 18 … shall be initiated by the Commission after consultation of the Advisory Committee'.

10 Recital 22 in the preamble to the Basic Anti-Subsidy Regulation states that 'it is necessary to provide that [anti-subsidy] measures are to lapse after five years unless a review indicates that they should be maintained'.

Background to the dispute

11 The applicant — Reliance Industries Ltd — is a company incorporated under the laws of India which produces inter alia polyethylene terephthalate (PET).

12 On 27 November 2000, the Council adopted Regulation (EC) No 2603/2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain PET originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain PET originating in Indonesia, the Republic of Korea and Taiwan (OJ 2000 L 301, p. 1).

13 On 27 November 2000, the Council also adopted Regulation (EC) No 2604/2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 301, p. 21).

14 During the procedure which preceded the adoption of Regulations No 2603/2000 and No 2604/2000, the applicant gave the Commission an undertaking to revise its prices, in accordance with Article 8(1) of the Basic Anti-Dumping Regulation and Article 13(1) of the Basic Anti-Subsidy Regulation. It also agreed that its undertaking would be 'subject to the provisions of [Article] 11(2)… of the Basic [Anti-Dumping] Regulation and Article 18(1) and 18(2) of the Basic [Anti-Subsidy] Regulation'.

15 On 29 November 2000, the Commission adopted Decision 2000/745/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 301, p. 88).

16 Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745 were published in the *Official Journal of the European Communities* on 30 November 2000. In accordance with Article 6 of Regulation No 2603/2000, Article 4 of Regulation No 2604/2000, and Article 2 of Decision 2000/745, those measures entered into force on 1 December 2000, that is to say, on the day following that of their publication.

17 On 2 March 2005, the Commission, acting in accordance with Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(4) of the Basic Anti-Subsidy Regulation, published in the *Official Journal of the European Union* a Notice of the impending expiry of certain anti-dumping and countervailing measures (OJ 2005 C 52, p. 2). The Notice related inter alia to Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745. The Commission pointed out in that Notice that those measures would expire on 1 December 2005 unless a review was initiated. Requests for a review were required to reach the Commission at least three months before the date of expiry of the measures concerned.

18 A request for a review was lodged on 30 August 2005 by the PET Committee of Plastics Europe on behalf of producers representing a major proportion (said to be in excess of 90%) of the total Community production of certain PET.

19 On 1 December 2005, the Commission published in the *Official Journal of the European Union* the Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain PET originating in inter alia India (OJ 2005 C 304, p. 4) and the Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain PET originating in India, Indonesia, the Republic of Korea, Malaysia, Taiwan and Thailand and a partial interim review of the anti-dumping measures applicable to imports of certain PET originating in the Republic of Korea and Taiwan (OJ 2005 C 304, p. 9) (collectively 'the contested Notices of Initiation'). The contested Notices of Initiation related to Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745.

20 By letter of 31 January 2006, the applicant raised with the Commission its concerns in respect of the date on which the contested Notices of Initiation had been published, in the following terms:

'Under WTO rules,… anti-dumping and countervailing duty measures shall expire no later than five years from the date of their imposition unless they are extended by the initiation of an expiry review before the expiry date. The relevant provisions of Community law must be construed in accordance with and subject to WTO rules. However, the EU has purported to initiate the PET anti-dumping and anti-subsidy expiry reviews on the expiry date (i.e., 1 December 2005) and not before that date (i.e., latest 30 November), as required by the WTO provisions, with the further purported effect of extending the validity of the relevant Regulations beyond the period permitted under the WTO rules.'

21 By letter of 3 February 2006, the Commission replied that the relevant reviews had been initiated 'in full compliance with Article 11(2) of the [Basic Anti-Dumping Regulation] and Article 18 of the [Basic Anti-Subsidy Regulation]'.

Procedure and forms of order sought

22 By application lodged at the Court Registry on 13 February 2006, the applicant brought the present action.

23 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure. None of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure were adopted.

24 By letter of 15 November 2007, the applicant sent the Court the report of the WTO Appeal Body of 12 April 2007 concerning Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (WT/DS268/AB/RW). That document was placed in the file and sent to the Council and the Commission.

25 The parties presented oral argument and replied to questions put by the Court at the hearing on 13 December 2007.

26 The applicant claims that the Court should:

— annul the contested Notices of Initiation;

— if the Court considers it to be necessary or appropriate, annul Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745, in so far as they may purport to extend to the applicant in the period after 1 December 2005;

— if, but only if, and only to the extent that the Court may find, contrary to the applicant's case, that they differ in their true construction from the terms of Article 11.3 of the WTO Anti-Dumping Agreement and/or Article 21.3 of the WTO Anti-Subsidy Agreement, annul Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation;

— order the Council and the Commission to bear the costs.

27 The Council contends that the Court should:

— declare the action inadmissible in so far as it is directed against the Council;

— dismiss the subsidiary plea of illegality of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation and the applicant's request to have those provisions annulled;

— order the applicant to bear the costs.

28 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Admissibility

Admissibility of the action is so far as it seeks annulment of the contested Notices of Initiation and in so far as it is directed against the Council

Arguments of the parties

29 The Council and the Commission do not dispute that the contested Notices of Initiation are acts susceptible to review for the purposes of Article 230 EC. However, since the contested Notices of Initiation are measures adopted by the Commission, they submit that the action is inadmissible in so far as it is directed against the Council.

30 In addition, the Council stated at the hearing that, on 22 February 2007, it adopted Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain PET originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review pursuant to Article 11(2) and Article 11(3) of the Basic Anti-Dumping Regulation (OJ 2007 L 59, p. 1) and Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of PET originating in India following an expiry review pursuant to

Article 18 of the Basic Anti-Subsidy Regulation (OJ 2007 L 59, p. 34). According to the Council, the applicant lost its interest in bringing proceedings for annulment of the contested Notices of Initiation since it failed to bring an action for the annulment of those regulations, which have meanwhile become final.

31 The applicant claims that it has *locus standi* as the addressee of the contested measures or as an operator directly and individually concerned by those measures (Case T-598/97 *BSC Footwear Supplies and Others* v *Council* [2002] ECR II-1155, paragraph 45).

32 As regards the alleged loss of legal interest in bringing proceedings, the applicant states that the Council did not raise that plea of inadmissibility until the hearing and that, in any event, the applicant retains an interest in seeking the annulment of the contested Notices of Initiation.

Findings of the Court

— The applicant's legal interest in bringing proceedings

33 It should be borne in mind that the lack of legal interest in bringing proceedings constitutes an absolute bar to proceedings, which the Community judicature may raise of its own motion (see Case T-310/00 *MCI* v *Commission* [2004] ECR II-3253, paragraph 45 and the case-law cited).

34 It should also be borne in mind that, according to settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the contested measure being annulled (see *MCI* v *Commission*, cited in paragraph 33 above, paragraph 44 and the case-law cited).

35 An applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which it will be inadmissible. That objective of the dispute must continue, like the interest in bringing proceedings, until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage to the party bringing it (Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 42; see also, to that effect, the order in Case T-28/02 *First Data and Others* v *Commission* [2005] ECR II-4119, paragraphs 35 to 38).

36 If the applicant's interest in bringing proceedings disappears in the course of proceedings, a decision of the Court of First Instance on the merits cannot bring him any benefit (*Wunenburger* v *Commission*, cited in paragraph 35 above, paragraph 43).

37 In the present case, it should be pointed out, first, that the contested Notices of Initiation relate to the measures imposed by Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745 and, second, that the applicant is an undertaking which produces and exports goods covered by those acts. The adoption of the contested Notices of Initiation had the effect, in accordance with Article 11(2) of the Basic Anti-dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, that the measures concerned by the review and which affect the applicant's exports remained in force until the conclusion of that review, whereas they would have expired five years after their introduction had that review not taken place.

38 It follows that, at the time of lodging its action, the applicant had an interest in bringing proceedings, since the contested Notices of Initiation adversely affected it (see, to that effect, *Wunenburger* v *Commission*, cited in paragraph 35 above, paragraph 44 and the case-law cited).

39 It is also necessary to determine whether Regulations No 192/2007 and No 193/2007, which concluded the review and which were not challenged by the applicant within

the time-limits laid down in the fifth paragraph of Article 230 EC, caused the applicant to lose its interest in seeking annulment of the contested Notices of Initiation.

40 It must first be noted, in that regard, that the purpose of the dispute endures since the contested Notices of Initiation have not been formally withdrawn by Regulations No 192/2007 and No 193/2007 (see, to that effect, *Wunenburger* v *Commission*, cited in paragraph 35 above, paragraph 48).

41 Second, it must be noted that the legal effects produced by the contested Notices of Initiation were not eradicated by the adoption of Regulations No 192/2007 and No 193/2007. The contested Notices of Initiation maintained in force until the conclusion of the review the measures imposed by Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745. The autonomous legal effects produced by the contested Notices of Initiation until the entry into force on 28 February 2007 of Regulations No 192/2007 and No 193/2007 are not affected by the new anti-dumping and countervailing measures imposed by those regulations (see, to that effect, Case C-400/99 *Italy* v *Commission* [2005] ECR I-3657, paragraph 17).

42 Accordingly, the annulment of the contested Notices of Initiation might have legal consequences to the advantage of the applicant, because any illegality found by the Court could provide the basis for an action for damages (see, to that effect, Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraph 74).

43 Third, the applicant also retains an interest in seeking the annulment of the contested Notices of Initiation in order to prevent the alleged unlawfulness of those measures from recurring in the future (see, to that effect, *Wunenburger* v *Commission*, cited in

paragraph 35 above, paragraph 50 and the case-law cited, and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 60). It should be pointed out in that regard that the alleged unlawfulness is liable to recur in the future independently of the circumstances which gave rise to the action brought by the applicant since it relates to an error of law allegedly committed by the Commission in the interpretation of the provisions of the Basic Anti-Dumping and Anti-Subsidy Regulations in the light of the relevant provisions of the WTO agreements (see, to that effect, *Wunenburger* v *Commission*, cited in paragraph 35 above, paragraph 52).

44 It follows from all of the foregoing that the applicant has retained its interest in seeking the annulment of the contested Notices of Initiation.

— The applicant's *locus standi*

45 Since the contested Notices of Initiation are not addressed to the applicant, it is necessary to determine whether the applicant is directly and individually concerned by those notices for the purposes of the fourth paragraph of Article 230 EC.

46 First, it must be noted that the applicant is directly concerned for the purposes of the fourth paragraph of Article 230 EC. The contested Notices of Initiation directly affect the applicant's legal situation and leave no discretion to the national authorities entrusted with the task of implementing them (see, to that effect, Case T-80/97 *Starway* v *Council* [2000] ECR II-3099, paragraph 61).

47 Second, the applicant is also individually concerned for the purposes of that provision since it was identified in Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745 — which form the subject-matter of the contested Notices of Initiation — as a producer and exporter which had offered an undertaking during the administrative proceeding which was subsequently accepted by the Commission (see, to that effect, *BSC Footwear Supplies and Others* v *Council*, cited in paragraph 31 above, paragraph 45 and the case-law cited).

48 In consequence, the applicant has *locus standi* for the purposes of the fourth paragraph of Article 230 EC.

49 It follows from the above that the applicant is entitled to seek annulment of the contested Notices of Initiation.

— The admissibility of the action in so far as it is directed against the Council

50 It should be noted that, since — pursuant to Article 11(6) of the Basic Anti-Dumping Regulation and Article 22(2) of the Basic Anti-Subsidy Regulation — the contested Notices of Initiation were adopted by the Commission, the present action, in so far as it seeks the annulment of those Notices of Initiation, is admissible only in so far as it is directed against that institution (see, to that effect, the order in Case T-209/00 *Lamberts* v *Ombudsman and Parliament* [2001] ECR II-765, paragraphs 13 to 19).

51 It follows that the action for annulment of the contested Notices of Initiation is inadmissible in so far as it is directed against the Council.

The admissibility of the action in so far as it seeks the annulment of Regulation No 2603/2000, Regulation No 2604/2000, Decision 2000/745, Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation

Arguments of the parties

52 The Council and the Commission contend that the action is inadmissible in so far as it seeks the annulment of Regulation No 2603/2000, Regulation No 2604/2000, Decision 2000/745, Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation. It was brought outside the time-limits laid down in the fifth paragraph of Article 230 EC. Furthermore, the applicant is not individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by Article 11(2) of the Basic Anti-Dumping Regulation or by Article 18(1) of the Basic Anti-Subsidy Regulation.

53 The applicant states first that Regulations No 2603/2000 and No 2604/2000 should have expired on 1 December 2005. The contested Notices of Initiation extended the period of validity of those regulations, so that the applicant had no choice but also to challenge the maintenance in force of those regulations (see, by analogy, Case T-253/02 *Ayadi* v *Council* [2006] ECR II-2139, paragraph 77, and the judgment of 12 July 2006 in Case T-49/04 *Hassan* v *Council and Commission*, paragraphs 53 to 59). Thus the applicant is not seeking the annulment of Regulations No 2603/2000

and No 2604/2000 *per se* but only in so far as they produce effects vis-à-vis the applicant after 1 December 2005. Accordingly, the action could not have been brought before the contested Notices of Initiation were published.

54 The applicant then submits that it has *locus standi* either as the addressee of the contested measures or as an operator directly and individually concerned by all or any of those measures (*BSC Footwear Supplies and Others* v *Council*, cited in paragraph 31 above, paragraph 45).

55 Lastly, in so far as the action seeks the annulment of certain provisions of the Basic Anti-Dumping and Anti-Subsidy Regulations, the applicant states that it seeks that form of order by way of an alternative, in case the first two limbs of its substantive plea are rejected.

Findings of the Court

56 According to settled case-law, the time-limits for bringing an action for annulment are a matter of public policy and are not subject to the discretion of the parties or of the Court, since they were established in order to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice (Case C-246/95 *Coen* [1997] ECR I-403, paragraph 21, and Joined

Cases T-121/96 and T-151/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1355, paragraphs 38 and 39).

57 Under the fifth paragraph of Article 230 EC, the applicant had two months within which to bring an action for annulment, and that period was extended, pursuant to Article 102(2) of the Rules of Procedure of the Court of First Instance, by a single period of 10 days. Since the acts concerned by the present action have all been published in the Official Journal, time for the purposes of bringing the action starts to run, in accordance with Article 102(1) of the Rules of Procedure, from the end of the 14th day after that of the publication of the acts concerned.

58 In the light of the date of publication of the acts concerned (see paragraphs 3, 7 and 16 above), the action — which was brought on 13 February 2006 — is manifestly out of time and thus inadmissible in so far as it seeks annulment of Regulation No 2603/2000, Regulation No 2604/2000, Decision 2000/745, Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation.

59 The applicant cannot rely on the judgment in *Hassan* v *Council and Commission*, cited in paragraph 53 above. By contrast with the present case, in the case which gave rise to that judgment, the Commission had amended a Council regulation on the basis of a specific power. The Court of First Instance held that the action which had been brought against the Commission regulation within the time-limits laid down in the fifth paragraph of Article 230 EC was also admissible in so far as it sought annulment of the Council regulation, not in its original version since such an action would have been out of time, but in the version resulting from the Commission regulation (*Hassan* v *Council and Commission*, cited in paragraph 53 above, paragraph 56). In the present case, however, the contested Notices of Initiation did not amend Regulation No 2603/2000, Regulation No 2604/2000 or Decision 2000/745; nor did they

amend Article 11(2) of the Basic Anti-Dumping Regulation or Article 18(1) of the Basic Anti-Subsidy Regulation.

60 The reference to *Ayadi* v *Council*, cited in paragraph 53 above, is also irrelevant. In that case, the applicant sought partial annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9). The Court of First Instance determined the circumstances in which Regulation No 881/2002, which maintained the freezing of funds already provided for in Regulation No 467/2001, fell to be categorised merely as a non-challengeable confirmatory act and those in which it fell to be categorised as a 'new' act which could be challenged by an applicant who had not brought an action against Regulation No 467/2001 within the time-limits (*Ayadi* v *Council*, cited in paragraph 53 above, paragraphs 70 and 71). The Court declared that the action brought against Regulation No 881/2002 was admissible, after finding that that act had brought about a distinct change in the applicant's legal position. By means, in particular, of Regulation No 881/2002, the applicant's funds remained frozen whereas, in the absence of that act, the measures imposed by Regulation No 467/2001 would have lapsed (*Ayadi* v *Council*, cited in paragraph 53 above, paragraph 77). It can thus be inferred from *Ayadi* v *Council*, cited in paragraph 53 above, that the action brought in the present case must be declared admissible in so far as it seeks the annulment of the contested Notices of Initiation, which maintain in force the measures imposed by Regulation No 2603/2000, Regulation No 2604/2000 and Decision 745/2000. By contrast, that judgment does not lend any support to the submission that the adoption of acts which maintain in force measures put in place by earlier acts — in this case, Regulation No 2603/2000, Regulation No 2604/2000 and Decision 745/2000 — re-opens the time-limits for the bringing of an action against those acts, which, in the absence of an action brought within the time-limits laid down in the fifth paragraph of Article 230 EC, have become final.

61 It follows from all the above that the action is admissible only in so far as it seeks the annulment of the contested Notices of Initiation and in so far as it is directed against the Commission.

The plea of illegality

Arguments of the parties

62 The applicant maintains, in its reply, that its claims for the annulment of Regulation No 2603/2000, Regulation No 2604/2000, Decision 2000/745, Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation could equally have been framed as an action under Article 241 EC for a declaration that those measures are unlawful.

63 In its rejoinder, the Commission contends that the plea of illegality under Article 241 EC, which was raised for the first time in the reply, should be dismissed as inadmissible pursuant to Article 48(2) of the Rules of Procedure. The application relies exclusively on Article 230 EC.

Findings of the Court

64 It should be pointed out that the applicant did not explicitly raise a plea of illegality in its application. However, in so far as the plea of illegality formulated in the reply relates to the lawfulness of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, it must be regarded as expanding upon the third limb of the single plea raised in the application, which calls into question inter alia the lawfulness of those provisions (see, to that effect, Case T-176/01 *Ferriere Nord* v *Commission* [2004] ECR II-3931, paragraph 136).

65 On the other hand, the application does not contain any arguments concerning the lawfulness of Regulation No 2603/2000, Regulation No 2604/2000 or Decision 2000/745. Accordingly, in so far as the plea of illegality relates to the lawfulness of those acts, it cannot be regarded as an expansion of a line of argument already put forward in the application. In addition, that plea of illegality is not based on any matter of law or of fact which came to light in the course of the procedure within the meaning of Article 48(2) of the Rules of Procedure (Joined Cases T-134/03 and T-135/03 *Common Market Fertilizers* v *Commission* [2005] ECR II-3923, paragraph 51).

66 It follows from the above that the plea of illegality is admissible only in so far as it relates to the lawfulness of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation.

Fulfilment of the requirements of Article 44(1)(c) of the Rules of Procedure

Arguments of the parties

67 The Commission maintains that the application lacks clarity and fails to satisfy the requirements of Article 44(1)(c) of the Rules of Procedure. No substantiated argument is offered to support the assertion on which the entire application rests, that is, that WTO agreements require an expiry review to be initiated at the latest the day before the day on which the five-year time-limit expires. Furthermore, that assertion relates only to the alleged unlawfulness of the contested Notices of Initiation. The application contains no arguments concerning the lawfulness of Regulation No 2603/2000, Regulation No 2604/2000 or Decision 2000/745.

68 The applicant counters by saying that the arguments put forward in its application are sufficiently clear to enable the Council and the Commission to defend themselves and the Court to exercise its power of review (Case T-19/01 *Chiquita Brands and Others* v *Commission* [2005] ECR II-315).

Findings of the Court

69 In the light of the finding in paragraph 61 above, the contention relating to the lack of clarity of the application must be examined only in so far as the application seeks annulment of the contested Notices of Initiation.

70 It should be pointed out that, under the first paragraph of Article 21 of the Statute of the Court of Justice, applicable to the procedure before the Court of First Instance by virtue of the first paragraph of Article 53 thereof, and Article 44(1)(c) and (d) of the Rules of Procedure of the Court of First Instance, the application must state, inter alia, the subject-matter of the proceedings, the form of order sought and a summary of the pleas in law on which it is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to ensure legal certainty and the sound administration of justice it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (*Chiquita Brands and Others* v *Commission*, cited in paragraph 68 above, paragraph 64; see the order of 8 March 2006 in Case T-238/99 *Service station Veger* v *Commission*, paragraph 28 and the case-law cited).

71 In the present case, the application satisfies the requirements set out above. It identifies in a sufficiently clear manner the subject-matter of the proceedings, the form of order sought and the plea in law on which it is based. Apart from the claims relating to the unlawfulness of Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745, the inadequacy of which has led the plea of illegality to be partially inadmissible (see paragraph 69 above), the application also indicates the essential legal and factual particulars upon which the applicant relies in order to show that the contested Notices of Initiation are unlawful.

72 The contentions of inadmissibility put forward by the Commission on the basis of Article 44 of the Rules of Procedure must therefore be rejected to that extent.

Substance

73 The single plea relied upon by the applicant relates to the belated initiation of the review of Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745. The plea has three limbs. The first alleges infringement of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in accordance with the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements. The second limb alleges breach of the principle of legal certainty. The third limb, formulated in the alternative, alleges that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation are unlawful.

The first limb, alleging infringement of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in accordance with the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements

Arguments of the parties

74 The applicant, after pointing out that the Community must respect international law in the exercise of its powers (Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019, paragraph 9, and Case C-405/92 *Mondiet* [1993] ECR I-6133, paragraph 12; Opinion of Advocate General Léger in Case C-341/95 *Bettati* [1998] ECR I-4355, I-4358, point 33), maintains that it is apparent from the judgment in *Bettati*, cited in paragraph 20, that Community legislation must, so far as possible, be interpreted in a manner consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the Community. The applicant refers to this as 'the Bettati obligation'. The primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as possible, be interpreted in a manner consistent with those agreements (Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52).

75 It follows, according to the applicant, that the provisions of the Basic Anti-Dumping and Anti-Subsidy Regulations must be interpreted in accordance with the WTO Anti-Dumping and Anti-Subsidy Agreements. Moreover, the Court has explicitly recognised that Article 11(2) of the Basic Anti-Dumping Regulation has to be interpreted in the light of Article 11.3 of the WTO Anti-Dumping Agreement (Case T-188/99 *Euroalliages* v *Commission* [2001] ECR II-1757, paragraph 44; see also Case T-256/97 *BEUC* v *Commission* [2000] ECR II-101, paragraphs 66 and 67).

76 In the present case, Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation do not specify the final date for initiating a review of the anti-dumping and countervailing measures. However, since the express aim of the Basic Regulations is to transpose the WTO Agreements into Community law (Case C-76/00 P *Petrotub and Republica* v *Council* [2003] ECR I-79, paragraphs 53 to 57), those provisions of the Basic Regulations must be regarded as bearing the same meaning as the corresponding provisions in the WTO Anti-Dumping and Anti-Subsidy Agreements.

77 It is apparent from Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement that any review of measures approaching expiry had to be initiated before the end of the five-year period following the imposition of anti-dumping or countervailing duties. In the present case, the review should therefore have been initiated on 30 November 2005 at the latest. Furthermore, Article 12.3 of the WTO Anti-Dumping Agreement and Article 22.7 of the WTO Anti-Subsidy Agreement require any decision to initiate a review to be the subject of a public notice. Since the contested Notices of Initiation were published on 1 December 2005, they were not published, as the WTO Anti-Dumping and Anti-Subsidy Agreements require, before the date of expiry of the measures to which they related. It follows, according to the applicant, that the contested Notices of Initiation infringe the provisions of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in the light of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement. The duties and undertakings under Regulation No 2603/2000, Regulation No 2604/2000 and Decision 2000/745 therefore expired on 1 December 2005.

78 In its reply, the applicant maintains, first, on the basis of the case-law of the Court and the reports of the Dispute Settlement Body and the Appellate Body of the WTO, that the meaning of 'before that date' must be determined by considering the general context of that phrase and its usual meaning in everyday language, by reference to the date on which the WTO Anti-Dumping and Anti-Subsidy Agreements were concluded in 1994.

79 Various dictionaries published at and after the time of the conclusion of the WTO Anti-Dumping and Anti-Subsidies Agreements confirm that the consistent and primary meaning of the word 'date' in the period from 1994 to the present day is that of a calendar date.

80 Similarly, the other authentic versions (namely the French and Spanish versions), which need to be taken into account when interpreting the WTO Agreements (Case C-89/99 *Schieving-Nijstad and Others* [2001] ECR I-5851), confirm that position. Those versions use the words 'date' and 'fecha' which, in the light of the meaning given to those terms in the French and Spanish dictionaries, envisage a calendar date, rather than a specific point in time.

81 In support of its argument that the word 'date' in Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement must be understood as referring to a calendar date, the applicant also relies on the judgment of the Court of Appeal (England and Wales) in *Trow* v *IND Coope* [1967] 2 All ER 900.

82 Moreover, the Commission itself, in its Notice of the impending expiry of the measures imposed by Regulations No 2603/2000 and No 2604/2000 and Decision 2000/745, of 2 March 2005, invited producers to submit a written request for a review 'at any time from the date of the publication of the present notice but no later than three months before the date mentioned in the table below'. The date given in that Notice was 1 December 2005, not a particular moment on 1 December 2005.

83 The use of the word 'date' to mean 'calendar date', rather than a specific point or moment in time, is also consistent with the terms of Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ, English Special Edition, 1971 (II), p. 354) and, in particular, with Article 4(2) and (3) and Article 5(2) thereof. Generally speaking, Community law treats the word 'date' as a reference to a calendar date rather than to any particular moment within a calendar date (Case 139/73 *Münch* [1973] ECR 1287, paragraph 10; Case C-200/91 *Coloroll Pension Trustees* [1994] ECR I-4389, paragraphs 48 and 59; Case C-398/00 *Spain* v *Commission* [2002] ECR I-5643; the order in Case T-126/00 *Confindustria and Others* v *Commission* [2001] ECR II-85, paragraphs 12 and 14; and Case T-187/94 *Rudolph* v *Council and Commission* [2002] ECR II-367, paragraph 65). Where an act can be undertaken 'on' a particular calendar date, the relevant legislative provision uses the expression 'by … at the latest', whereas the expression 'before …' connotes the requirement to perform the act before the end of the preceding calendar day (see Article 102(2) EC, Article 116(1) to (3) EC, and Article 121(3) and (4) EC; see also Joined Cases C-442/03 P and C-471/03 P *P & O European Ferries (Vizcaya)* and *Diputación Foral de Vizcaya* v *Commission* [2006] ECR I-4845, paragraph 28).

84 Secondly, the applicant submits that its interpretation of the word 'date' is consistent with the legislative context of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement, which are designed to allow a specific derogation from the general rule that the measures concerned expire after a maximum period of five years. Indeed, a strict approach is always adopted by the Community when construing derogations from its own rules. The applicant's interpretation is also consistent with the object and purpose of those provisions of the agreements concerned. The effect of an expiry review being initiated is to prolong the legal effect of trade defence measures that would otherwise expire five years from their imposition. The applicant submits that its construction of the expression 'before that date' promotes legal certainty and sound administration, inasmuch as importers will know before the date of anticipated expiry that the anti-dumping or countervailing measures are in fact being maintained in force and will be able to conduct themselves accordingly. If the argument of the Commission is accepted, the publication of the Notices of initiation at 23.59 hrs on 1 December 2005 would have sufficed to let traders know that imported products being cleared through national customs minutes later on the next day would continue to bear anti-dumping duty, contrary

to their expectations that the measures would expire with the end of their five-year term. The WTO Anti-Dumping and Anti-Subsidy Agreements are intended to avoid the confusion and uncertainty that such a situation would bring about by requiring Notices of Initiation to be published, at a minimum, before the date on which the relevant antidumping measures would expire.

85 Thirdly, the applicant explained at the hearing that its interpretation of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement was confirmed by the Appellate Body of the WTO itself in its report of 12 April 2007 relating to Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (WT/DS268/AB/RW). The applicant refers, in that regard, to paragraph 163 of that report, which states the following, inter alia:

'Article 11.3 provides that an anti-dumping duty must be *terminated* "five years from its imposition" *unless* there is a determination that "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury". According to the Appellate Body, this provision thus operates as "a mandatory rule with an exception" [footnote reference to the Appellate Body Report, *US — Corrosion-Resistant Steel Sunset Review*, paragraph 104]. There is the additional requirement that the sunset review be *initiated* by the investigating authority on its own initiative or upon a request by the domestic industry "before that date", that is, before the fifth anniversary of the imposition of the anti-dumping duty order.'

86 The Commission contends that it is not apparent from Article 11(2) of the Basic Anti-Dumping Regulation or from Article 18(1) of the Basic Anti-Subsidy Regulation interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement, that an expiry

review of the anti-dumping or countervailing measures must be initiated at the latest on the day before the day on which the measures concerned expire. Those provisions require merely that the review be initiated before midnight on the last day of the normal period of applicability of the measures subject to the review.

Findings of the Court

— Preliminary observations

87 It is apparent from settled case-law that, in view of their nature and structure, the WTO agreements are not in principle among the rules in the light of which the Community judicature is to review the legality of measures adopted by the Community institutions under the first paragraph of Article 230 EC (Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraph 47, and *Petrotub and Republica* v *Council*, cited in paragraph 76 above, paragraph 53).

88 However, where the Community has intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to precise provisions of WTO agreements, it is for the Community judicature to review the legality of the Community measure in question in the light of the WTO rules (*Portugal* v *Council*, cited in paragraph 87 above, paragraph 49; *Petrotub and Republica* v *Council*, cited in paragraph 76 above, paragraph 54; and Case C-351/04 *Ikea Wholesale* [2007] ECR I-7723, paragraph 30).

89 In that regard, it is clear from the preambles to the Basic Anti-Dumping Regulation (recital 5) and to the Basic Anti-Subsidy Regulation (recitals 6 and 7), that the purpose of those regulations is, inter alia, to transpose into Community law as far as possible the new and detailed rules contained in the WTO Anti-Dumping and Anti-Subsidy Agreements, which include, in particular, those relating to the duration and review of anti-dumping and countervailing measures, with a view to ensuring a proper and transparent application of those rules (see, to that effect, *Petrotub and Republica* v *Council*, cited in paragraph 76 above, paragraph 55, and *BEUC* v *Commission*, cited in paragraph 75 above, paragraph 66).

90 The Community therefore adopted the Basic Anti-Dumping and Anti-Subsidy Regulations in order to satisfy its international obligations under the WTO Anti-Dumping and Anti-Subsidy Agreements. Thus, by Article 11(2) of the Basic Anti-Dumping Regulation, it intended to implement the specific obligations laid down in Article 11.3 of the WTO Anti-Dumping Agreement, and by Article 18(1) of the Basic Anti-Subsidy Regulation, it intended to implement the particular obligations laid down in Article 21.3 of the WTO Anti-Subsidy Agreement (see, to that effect, *Petrotub and Republica* v *Council*, cited in paragraph 76 above, paragraph 56).

91 It follows that the above provisions of the Basic Anti-Dumping and Anti-Subsidy Regulations must be interpreted, in so far as is possible, in the light of the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements (see, to that effect, *Bettati*, cited in paragraph 74 above, paragraph 20, and *Petrotub and Republica* v *Council*, cited in paragraph 76 above, paragraph 57; *BEUC* v *Commission*, cited in paragraph 75 above, paragraph 67; *Euroalliages* v *Commission*, cited in paragraph 75 above, paragraph 44; and Case T-35/01 *Shanghai Teraoka Electronic* v *Council* [2004] ECR II-3663, paragraph 138).

— The interpretation of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement

92 In the context of the present limb, the applicant submits that it is apparent from Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement, that the contested Notices of Initiation were adopted out of time.

93 In that regard, it should first be noted that the Basic Anti-Dumping and Anti-Subsidy Regulations do not contain any provision which states explicitly the latest point in time at which an expiry review of anti-dumping or countervailing measures must be initiated. However, it is quite clear from the broad logic of the first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation that such a review must be initiated, at the latest, before the measure to which it relates expires.

94 The first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation state that an anti-dumping or countervailing measure is to expire 'five years from its imposition … unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence' of the dumping or of subsidisation and injury. Those provisions also state that the measures are to remain in force pending the outcome of the review. In addition, recital 18 in the preamble to the Basic Anti-Dumping Regulation and recital 22 in the preamble to the Basic Anti-Subsidy Regulation explain that the anti-dumping and anti-subsidies measures are to lapse after five years 'unless a review indicates that they should be maintained'. Under the first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regula-

tion, a review thus concerns measures 'in force' which are, where appropriate, to be 'maintained', which necessarily implies that such a review must be initiated before those measures expire.

95 Second, it is necessary to determine whether an interpretation of the first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation in the light of the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements requires an expiry review of anti-dumping or countervailing measures to be initiated at the latest — as submitted by the applicant — the day before the expiry of the measures to which the review relates.

96 It should be pointed out that Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement state that any definitive anti-dumping or countervailing duty 'shall be terminated on a date not later than five years from its imposition …, unless the authorities determine, in a review initiated before that date' that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. Those provisions also state that '[t]he duty may remain in force pending the outcome of such a review'.

97 First, it is not disputed between the parties that the measures concerned by the contested Notices of Initiation should have expired, in the absence of a review, on 1 December 2005 at midnight. According to the applicant, the review in the present case should have been initiated 'before that date', and thus on 30 November 2005 at the latest.

98 It must be held that Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement specify only the time-limits within which the review must be 'initiated'. They do not contain any obligation concerning the publication of the Notices of Initiation. Where a measure of the Commission is published in the *Official Journal of the European Union* on a particular date, it

may legitimately be considered that the measure itself was adopted at the latest the day before that of its publication. Since, in the present case, the contested Notices of Initiation were published on 1 December 2005, the Commission necessarily took the decision to initiate the review on 30 November 2005 at the latest and thus, in any event, within the time-limits laid down in Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

99 Second, even supposing that the date of initiation of the review under Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement is the same as the date of publication of the Notice of Initiation, it must be determined whether the construction placed by the applicant on those provisions — according to which the initiation of a review should took place, at the latest, the day before the day on which the measures to which it relates expire — is really dictated by the provisions of those agreements (see, to that effect, *BEUC* v *Commission*, cited in paragraph 75 above, paragraph 68).

100 It should be pointed out, in that regard, that a treaty under international law, such as the WTO Anti-Dumping and Anti-Subsidy Agreements, must, in accordance with Article 31(1) of the Vienna Convention on the Laws of Treaties of 23 May 1969, 'be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

101 That rule of interpretation corresponds to the rule applied by the Community judicature when called upon to interpret a provision of Community law. Thus, the Court of Justice has repeatedly held that, in interpreting a provision of Community law, it is necessary to consider its wording, its context and its aims (Case 337/82 *Kniepf-Melde* [1984] ECR 1051, paragraph 10; Case C-83/94 *Leifer and Others* [1995] ECR I-3231, paragraph 22; and Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 11).

102 First, as is apparent from the dictionaries referred to by the applicant in its reply, the word 'date' has many different meanings, including 'a day of the month' (*New Shorter Oxford Dictionary*, 1993) but also 'the time at which something is to happen' (*New Shorter Oxford Dictionary*, 1993). By way of literal meaning, the word 'date' thus does not necessarily refer to a calendar date, since that word may also be used to indicate a precise moment in time.

103 Next, as regards the context of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement and the aim pursued by those provisions, it must be borne in mind, first, that the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, which preceded the WTO Anti-Dumping Agreement and which was approved, on behalf of the Community, by Council Decision 80/271/EEC of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations (OJ 1980 L 71, p. 1) did not set a specific period for the application of anti-dumping duties. Article 9 thereof provides merely that '[a]n anti-dumping duty shall remain in force only as long as, and to the extent, necessary to counteract [the] dumping which [caused] injury'. Article 4(9) of the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, approved on behalf of the Community by Decision 80/271, contained a similar provision for countervailing duties.

104 The aim of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement is to provide for the automatic lapse of the duties concerned five years after their imposition unless a review is initiated. As was rightly pointed out by the Commission in its pleadings, in Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement, the clause which provides for the possibility of maintaining existing duties in force following the initiation of an expiry review of anti-dumping and countervailing measures was introduced during the negotiations for the Uruguay round in order to compensate for the introduction of the 'sunset clause' triggering the automatic expiry of anti-dumping and countervailing measures five years after their imposition.

105 In that context and regard being had to the aim of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement, it is necessary for the review to be initiated, at the latest, before the automatic expiry of the anti-dumping and countervailing measures. In so far as those provisions lay down an absolute deadline for the initiation of a review, they refer to the time at which the duties concerned expire. The duties to which the review relates must still be in force at the time the review is initiated.

106 It follows that the phrase 'before that date' in Article 11.3 of the WTO Anti-Dumping Agreement and in Article 21.3 of the WTO Anti-Subsidy Agreement cannot be interpreted as imposing an obligation on the contracting parties to undertake a review of the anti-dumping or countervailing measures concerned at the latest the day before the day on which those measures expire. On the contrary, in the light of the findings in paragraphs 102 to 105 above, legislation of a contracting party which permits a review to be initiated right up until the last minute of the period of validity of the measures to which it relates must be regarded as being in conformity with Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

107 The argument which the applicant draws from the report of the WTO Appellate Body of 12 April 2007 concerning Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (WT/DS268/AB/RW) cannot be upheld.

108 First, that report did not concern the interpretation of the phrase 'before that date' in Article 11.3 of the WTO Anti-Dumping Agreement. In accordance with paragraph 160 of that report, the question raised related to the 'determination of likelihood of dumping, for the purpose of implementing the recommendations and rulings of the [Dispute Settlement Body]'.

109 Second, in so far as paragraph 163 states *obiter dictum* that a review must be initiated 'before that date', that is, before the fifth anniversary of the imposition of the anti-dumping duty order', it must be pointed out that that extract does nothing more than paraphrase a paragraph in another report of the Appellate Body to which reference is made in a footnote, namely paragraph 104 of the Appellate Body report of 9 January 2004 concerning a Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (WT/DS244/AB/R), which states that 'a review [must] be initiated before the expiry of five years from the date of the imposition of the duty'. It is thus in no way stated in paragraph 163 that a review must be initiated at the latest the day before the day on which the measures in force expire. In referring to the need to initiate the review before the expiry of five years from the date of the imposition of the duty, it confirms, on the contrary, that legislation of a contracting party which permits a review to be initiated right up until the last minute of the period of validity of the measures to which it relates must be regarded as being in conformity with Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

110 It is apparent from the foregoing that a review which is initiated before midnight on the last day of the normal period for the application of measures must be regarded as being in conformity with Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

111 Bearing in mind that, in the present case, it is common ground that the anti-dumping and countervailing duties concerned by the review should, in the absence of that review, have expired on 1 December 2005 at midnight, it must be held that the review — of which the parties concerned were informed through the publication of the contested Notices of Initiation in the Official Journal on 1 December 2005 — was initiated within the time-limits prescribed for that purpose in the first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and in Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

112 That conclusion cannot be invalidated by the applicant's argument that the review should have been initiated, at the latest, the day before the expiry of the measures concerned for reasons related to legal certainty and sound administration.

113 It should be borne in mind that, according to settled case-law, the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraph 30).

114 It is apparent from the preceding analysis that the first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation — even if those provisions are interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement — state clearly and precisely that a review of anti-dumping and countervailing duties must be undertaken before the expiry of those duties.

115 Furthermore, the applicant does not put forward any concrete evidence in support of its claim that observance of the principle of legal certainty requires a Notice of Initiation to be published, at the latest, on the day before the expiry of the measures to which the review relates. It has also failed to show, or even to claim, that on 30 November 2005 it had made export sales to the Community because, after seeing the Official Journal for that day, it had believed that the measures concerned were going to expire on 1 December 2005 at midnight.

116 The argument alleging breach of the principle of legal certainty must therefore be rejected.

117 Finally, as regards the argument alleging breach of the principle of sound administration, it must be held that, where a Community institution is allowed a set length of time in which to take certain action, it does not infringe the principle of sound administration if it does not act until the last day of the period of time allowed.

118 As it is, in the present case, the contested Notices of Initiation were published on the last day of the period prescribed in the first subparagraph of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement (see paragraphs 110 and 111 above). No breach of the principle of sound administration can therefore be imputed to the Commission.

119 It follows from the above that the first limb of the single plea is unfounded.

The second limb, alleging breach of the principle of legal certainty

Arguments of the parties

120 The applicant states that, where Community legislation imposes obligations on the individual in ambiguous terms, the principle of legal certainty requires that any ambiguity be resolved in favour of the individual (Case 169/80 *Gondrand* [1981] ECR 1931, paragraph 17; Joined Cases 92/87 and 93/87 *Commission* v *France and United Kingdom* [1989] ECR 405, paragraph 22; and *Van Es Douane Agenten*, cited

in paragraph 113 above, paragraph 27). That requirement of legal certainty must be observed all the more strictly in the case of a measure liable to have financial consequences in order that those concerned may know precisely the extent of the obligations which it imposes on them (see Case T-115/94 *Opel Austria* v *Council* [1997] ECR II-39, paragraph 124 and the case-law cited).

121 The applicant maintains that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in the light of the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements, are not ambiguous. The applicant argues, however, that if the Court were to consider that the relevant provisions of the Basic Anti-Dumping and Anti-Subsidy Regulations are ambiguous or uncertain in their meaning, the general principle of legal certainty requires that any such ambiguity or uncertainty should be resolved in favour of the construction which is most favourable to the applicant out of those which may be identified (see, to that effect, *Petrotub and Republica*, cited in paragraph 76 above, paragraphs 56 to 60, and Case C-78/01 *BGL* [2003] ECR I-9543, paragraphs 71 and 72).

122 It follows, according to the applicant, that the final date for initiating a review in the present case was 30 November 2005. The contested Notices of Initiation, which were published on 1 December 2005, are therefore unlawful.

123 The Commission replies that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation reveal no ambiguity to be resolved in favour of the applicant.

Findings of the Court

124 It is apparent from the analysis made in relation to the first limb that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation clearly show that a review of anti-dumping and countervailing duties may be initiated up until the expiry of those duties. The same is true where those provisions are interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

125 Accordingly, the second limb also cannot be upheld.

The third limb, alleging that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation are unlawful

Arguments of the parties

126 The applicant refers to the judgment in Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, from which it emerges that the Community judicature reviews the legality of the Basic Anti-Dumping and Anti-Subsidy Regulations in the light of the provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements, since, by adopting the Basic Anti-Dumping and Anti-Subsidy Regulations, the Community

intended to implement a particular obligation entered into within the framework of the WTO (see *Petrotub and Republica* v *Council*, cited in paragraph 76 above, paragraphs 53 to 57; Case C-377/02 *Van Parys* [2005] ECR I-1465, paragraphs 39 and 40; and *Shanghai Teraoka Electronic* v *Council*, cited in paragraph 91 above, paragraph 138). In that regard, the applicant refers in its pleadings to 'the Nakajima obligation'.

127 According to the applicant, it is clear from the WTO Anti-Dumping and Anti-Subsidy Agreements that an expiry review of anti-dumping and countervailing measures must be initiated 'before that date', that is to say, on a date falling before the date of expiry, not at a certain time on the day of expiry. By merely confirming, in its letter of 3 February 2006, that in the present case the date of expiry of the measures at issue and the date of initiation of the review were the same, the Commission has failed to give due effect to the WTO agreements on that point.

128 Even if it were not possible to interpret Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation in a manner consistent with the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements, and the interpretation of the Basic Regulations proposed by the Commission in its letter of 3 February 2006 were the one which ought normally to have been used — which the applicant disputes — it would have to be held that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation are unlawful because they are incompatible with the corresponding provisions of the WTO Anti-Dumping and Anti-Subsidy Agreements.

129 In its reply, the applicant argues that the Nakajima obligation is not limited to an obligation to construe Community law in a manner compatible with the WTO

Agreements. In fact, the Court of First Instance has held on a number of occasions that the legality of Community measures can be reviewed by reference to the WTO Agreements (*Euroalliages* v *Commission*, cited in paragraph 75 above, paragraph 57, and *Chiquita Brands and Others* v *Commission*, cited in paragraph 68 above, paragraphs 117 to 126).

130 The Commission contends that review by the Community judicature of the legality of a Community anti-dumping measure in the light of the WTO rules is based on the principle of consistent interpretation 'so far as possible' (*Petrotub and Republica*, cited in paragraph 76 above, paragraph 57). There is therefore no difference between what the applicant calls 'the Bettati obligation' and 'the Nakajima obligation'. In the present case, if the relevant provisions of the Basic Anti-Dumping and Anti-Subsidy Regulations do not permit an interpretation consistent with the WTO Anti-Dumping and Anti-Subsidy Agreements, the applicant cannot rely on the conflict between Community law and the WTO rules as grounds for the annulment of those provisions of the Basic Regulations.

Findings of the Court

131 It is apparent from the analysis made in relation to the first limb that the contested Notices of Initiation, which were published in the Official Journal on the day on which the measures to which they relate expired, satisfy the requirements of Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation, interpreted in the light, respectively, of Article 11.3 of the WTO Anti-Dumping Agreement and Article 21.3 of the WTO Anti-Subsidy Agreement.

132 The present limb, which takes the form of a plea of illegality, cannot be upheld. It is based on an assumption which is not confirmed in the present case, namely that Article 11(2) of the Basic Anti-Dumping Regulation and Article 18(1) of the Basic Anti-Subsidy Regulation do not permit an interpretation consistent with the corresponding provisions of the WTO Anti-Dumping and the Anti-Subsidy Agreements.

133 It follows that the last limb also is unfounded.

134 In the light of all of the foregoing, the action must be dismissed.

Costs

135 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must, in accordance with the forms of order sought by the Council and the Commission, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Eighth Chamber)

hereby:

1. Dismisses the action;

2. Orders Reliance Industries Ltd to pay the costs.

Martins Ribeiro Wahl Dittrich

Delivered in open court in Luxembourg on 24 September 2008.

Registrar President

E. Coulon M.E. Martins Ribeiro

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