JUDGMENT OF THE COURT (Sixth Chamber)
19 November 1998 *

In Case C-150/94,

United Kingdom of Great Britain and Northern Ireland, represented by John E. Collins, Assistant Treasury Solicitor, acting as Agent, and by Christopher Vajda, Barrister, with an address for service at the British Embassy, 14 Boulevard Roosevelt,

applicant,

supported by

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Gereon Thiele, Assessor in the same Ministry, acting as Agents, D-53107 Bonn,

intervener,

v

Council of the European Union, represented by Bjarne Hoff-Nielsen, Legal Adviser, and Guus Houttuin, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

* Language of the case: English.

defendant,

supported by

Kingdom of Spain, represented by Alberto Navarro González, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, of the State Legal Service, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

and by

Commission of the European Communities, represented by Eric L. White and Patrick Hetsch, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for annulment of Article 1(2) of Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89), in so far as it applies to toys falling within HS/CN Codes 9503 41, 9503 49 and 9503 90,

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. F. Mancini (Rapporteur) and J. L. Murray, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 26 September 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 June 1994, the United Kingdom of Great Britain and Northern Ireland brought an action under the first paragraph of Article 173 of the EC Treaty for annulment of Article 1(2) of Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89, 'the contested regulation'), in so far as it applies to toys falling within HS/CN Codes 9503 41, 9503 49 and 9503 90.

The situation before the contested regulation was adopted

2 Before the entry into force of the contested regulation, imports of products originating in State-trading countries were governed by several Council regulations.

With regard, in particular, to imports from the People's Republic of China ('China'), the Council had adopted Regulation (EEC) No 1766/82 of 30 June 1982 on common rules for imports from the People's Republic of China (OJ 1982 L 195, p. 21), which applied to imports which were not subject to any quantitative restrictions, and Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalised at Community level (OJ 1983 L 346, p. 6), which applied *inter alia* to imports from China which did not fall within the scope of Regulation No 1766/82.

3 Under Article 2(1) of Regulation No 3420/83, the putting into free circulation of the products listed in Annex III to that regulation was subject to quantitative restrictions in one or more Member States as indicated in that annex. Article 3 provided that before 1 December of each year the Council was to lay down, in accordance with Article 113 of the EEC Treaty, the import quotas to be opened by the Member States in respect of the various State-trading countries for those products. Article 3(2) provided that if no such decision was adopted, the existing import quotas were to be extended on a provisional basis for the following year.

4 Under Articles 7 to 10 of Regulation No 3420/83, any amendment to the import arrangements provided for in accordance with the regulation which a Member State considered necessary could be subject to a Community prior consultation procedure leading to a decision by the Commission or, where a Member State raised an objection, by the Council.

5 In addition, Article 4(1) of Regulation No 3420/83 provided that a Member State could exceed the amount of the quotas or open import facilities where no quota had been laid down. Under Article 4(2), when a Member State which was alone in maintaining a quantitative restriction on imports proposed to abolish or suspend that restriction, it was to inform the other Member States and the Commission,

which was to adopt the proposed measure within 10 working days, without initiating the procedure provided for by Articles 7 to 10 of the regulation.

6 Among the products covered by Annex III to Regulation No 3420/83 were toys, the importation of which was subject to quantitative restrictions in Germany, France and Greece. Those restrictions were applied not only to toys originating in China but also to toys from any State-trading country listed in Annex I to the regulation. Annex III was amended by Council Regulation (EEC) No 3784/85 of 20 December 1985 amending, on account of the accession of Spain and Portugal, Annexes I and III to Regulation (EEC) No 3420/83 on import arrangements for products originating in State-trading countries, not liberalised at Community level (OJ 1985 L 364, p. 1), in order to include, *inter alia*, the Spanish restrictions on imports of toys.

7 Regulation No 3420/83 was last amended by Council Regulation (EEC) No 2456/92 of 13 July 1992 fixing the import quotas to be opened by Member States in respect of State-trading countries in 1992 (OJ 1992 L 252, p. 1). Regulation No 2456/92 fixed the quotas to be opened for 1992 and provided in Article 5 that the system of automatic extension under Article 3(2) of Regulation No 3420/83 would not be applicable for 1993, on account of the need to replace the existing arrangements with a Community mechanism covering any restrictions remaining on 31 December 1992 (fifth recital in the preamble). With regard to toys from China, Annex VIII to Regulation No 2456/92 set quotas for Germany and Spain.

8 No new regulation setting import quotas was adopted for 1993. However, the Commission did authorise national measures, including quotas for the import of toys into Spain from China.

The contested regulation

9 The contested regulation, applicable from 15 March 1994, repealed Regulations Nos 1766/82 and 3420/83. The first recital in the preamble to the regulation states that while 'the common commercial policy should be based on uniform principles', Regulations Nos 1766/82 and 3420/83 still allowed exceptions and derogations enabling Member States to continue applying national measures to imports of products originating in State-trading countries. According to the fourth recital in the preamble, 'in order to achieve greater uniformity in the rules for imports, it is necessary to eliminate the exceptions and derogations resulting from the remaining national commercial policy measures, and in particular the quantitative restrictions maintained by Member States under Regulation (EEC) No 3420/83'. The fifth and sixth recitals state that the principle of liberalisation of imports must form the starting point for such harmonisation, except for 'a limited number of products originating in the People's Republic of China'. As explained in the sixth recital, 'owing to the sensitivity of certain sectors of Community industry', those products should be subject to quantitative quotas and surveillance measures applicable at Community level.

10 Article 1(2) of the contested regulation provides that imports into the Community of the products referred to are to take place freely and so are not to be subject to any quantitative restrictions, without prejudice to any safeguard measures or the Community quotas referred to in Annex II. Article 1(3) provides that imports of the products referred to in Annex III are to be subject to Community surveillance. Annexes II and III apply exclusively to products from China.

11 Annex II sets quotas for certain categories of toys originating in China. More specifically, annual quotas of ECU 200 798 000, ECU 83 851 000 and ECU 508 016 000 were fixed for toys falling within HS/CN Codes 9503 41 (stuffed toys representing animals or non-human creatures), 9503 49 (other toys representing animals or non-human creatures) and 9503 90 (certain miscellaneous toys) respectively.

12 Other products which were previously subject to national restrictions, including *inter alia* construction sets and toys, puzzles and playing cards, which fall within HS/CN Codes 9503 30, 9503 60 and 9504 40 respectively, are covered by Annex III to the contested regulation and are therefore subject to Community surveillance.

13 In support of its application, the United Kingdom Government puts forward five grounds of annulment alleging: first, failure to give correct or adequate reasons for the contested regulation; second, failure to carry out any appreciation of the facts or manifest error of appreciation; third, arbitrary nature of the contested quotas; fourth, breach of the principle of proportionality and, fifth, breach of the principle of equal treatment.

Failure to give correct or adequate reasons

14 In its first ground of annulment, the United Kingdom Government alleges that no adequate statement of reasons is given for Article 1(2) of the contested regulation in breach of the obligation under Article 190 of the EC Treaty.

15 The objectives of uniformity of the rules for imports and of liberalisation of imports, set out in the fourth and fifth recitals in the preamble to the contested regulation, should, it claims, have led to the abrogation of any national quantitative restrictions still in existence. The sixth recital, however, introduces for the products listed in Annex II, which include the toys at issue, an exception to the principle of liberalisation for which, as such, the Council ought to have given specific reasons.

16 In fact, the latter merely referred to 'the sensitivity of certain sectors of Community industry', without indicating the reasons for which the sectors in question were considered to be sensitive or why those sectors were sensitive only to imports originating in China and not from any other non-member country or why it was necessary in that respect to replace a national restriction with a Community-wide restriction.

17 On that last point, the United Kingdom Government observes in particular that, when the contested regulation entered into force, the Kingdom of Spain was the only Member State which imposed a restriction on the import of the toys at issue. That restriction was limited to direct imports into Spain and concerned less than 2% of Community imports of those products. Accordingly, the Council ought to have explained why it was necessary to replace a restrictive measure in one Member State which had minimal effect at Community level with a restriction which had, by contrast, a very significant impact at Community level. Furthermore, the Council cannot argue that the quotas in question are intended to protect the Community industry as a whole and not just the Spanish toy industry, since the contested regulation gives no reasons in that regard, the Council has not produced any evidence to show that the Community industry required such protection and, moreover, it failed to carry out an investigation to determine whether that was the case.

18 In any event, according to the United Kingdom Government, the introduction of the contested quotas is not a transitional measure inherent in the completion of the common commercial policy, but an exception to the general principle of liberalising imports.

19 Nor did the Council give any reasons, the United Kingdom Government claims, for opting to introduce quotas at Community level rather than resorting to a regional safeguard measure the adoption of which is, moreover, expressly provided for in Article 17 of the contested regulation. Furthermore, it did not explain how the contested quotas were calculated. Given that the Council had decided on a major change of policy, it was essential for it to give proper reasons to justify its decision.

20 Finally, the applicant maintains that the explanation provided by the Council in its defence, based on the growth of Chinese imports, is insufficient to justify the introduction of contested quotas in the absence of any examination of the effects of those imports on the Community toy industry. Furthermore, since that explanation was provided in the course of an action based *inter alia* on lack of reasoning, it cannot remedy the defective reasoning vitiating the contested act. In its defence, the Council also sought to explain why it was necessary to reduce the imports authorised for 1994 to the 1991 level; that attempt was to no avail, however, since the contested regulation is silent on that point too.

21 The German Government endorses the arguments of the United Kingdom Government in all essential respects, adding that the Council failed to give reasons for the contested regulation with regard to the principle of proportionality laid down in the third paragraph of Article 3b of the EC Treaty. That provision imposes on Community institutions a special duty to state reasons and requires them in particular to take into account the interests of the Member States.

22 The Council, supported by the Spanish Government and the Commission, maintains that the first six recitals in the preamble to the contested regulation do not merely describe the general situation and the general objectives of the regulation, in particular that of replacing, as a necessary complement to the completion of the internal market, all the former rules applicable to imports, whether liberalised or not, with a single common system. It contends that those recitals also explain the reason why the quota was fixed at Community level, namely 'the sensitivity of certain sectors of Community industry'. In addition, the third recital specifically explains why a solution had to be sought at Community level.

23 The Council adds that, contrary to the argument of the United Kingdom Government, the disputed quotas do not constitute an exception to the principle of trade liberalisation, but form an integral part of the system introduced by the contested regulation. The general principle established by the latter is not that of liberalisation of trade but rather that of uniformity in the rules for imports. It follows that, in

contrast to the view taken by the applicant, there is no need to give separate reasons for those quotas.

24 With regard to the German Government's argument as to the lack of reasons with respect to the principle of proportionality embodied in Article 3b of the Treaty, the Council states that the intervener, although claiming merely to make supplementary observations on the grounds of annulment put forward by the applicant, has in fact introduced a new ground of annulment, contrary to Article 37(4) of the EC Statute of the Court of Justice. In its view, the plea in question should consequently be rejected as inadmissible. In any event, the Council points out that Article 3b of the Treaty does not require the acts of the Community institutions to provide specific reasons with respect to the principle of proportionality.

25 Before the various complaints made by the United Kingdom Government and by the German Government, which has intervened in its support, are examined, it should be noted that, as the Council has correctly observed, since its judgment of 13 March 1968 in Case 5/67 *Beus* v *Hauptzollamt München* [1968] ECR 83, the Court has consistently held that the scope of the obligation to provide reasons depends on the nature of the measure in question and that, in the case of measures of general application, the statement of reasons may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other.

26 Furthermore, the Court has repeatedly held that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, *inter alia*, Case 250/84 *Eridania and Others* v *Cassa Conguaglio Zucchero* [1986] ECR 117, paragraph 38).

27 In the present case, the Council first describes the general situation and the objectives it proposed to attain, explaining that completion of the common commercial policy as it pertains to rules for imports was a necessary complement to the completion of the internal market (third recital in the preamble to the regulation).

28 It then explained that, in order to attain those objectives, it was necessary to eliminate the exceptions and derogations resulting from the remaining national commercial policy measures (fourth recital), and that liberalisation of imports had to form the starting point for the Community rules (fifth recital).

29 Finally, the Council took particular account of the objectives pursued by the introduction of the contested quotas, stating that the quotas were necessary owing to the sensitivity of certain sectors of Community industry (sixth recital).

30 It must be stated that, taken as a whole, that statement of reasons contains a clear description of the factual situation and of the objectives pursued which, having regard to the circumstances of this case, would seem to be sufficient.

31 That finding is not undermined by the arguments put forward by the United Kingdom Government.

32 First, as the act was of general application, the Council was not bound to set out in the statement of reasons for the contested regulation the information which it took into account when concluding that certain sectors of Community industry were sensitive to imports from China. In particular, it did not have to describe the development of the imports concerned or supply an economic analysis of the sectors of Community industry affected by those imports.

33 Second, given that the act was intended to abolish national restrictions and exceptions in order to complete the common commercial policy, the Council was not required to explain why some restrictions were imposed at Community level. In

fact, it is where exceptional circumstances require the imposition of restrictive measures confined to one or more regions of the Community, thereby derogating from the uniform nature of the common commercial policy, that the Council is required to provide specific reasons.

34 Third, although the introduction of the contested quotas constitutes an exception to the liberalisation of imports which, according to the fifth recital in the preamble to the regulation, must form the starting point for the Community rules, it should be noted that the abolition of all quantitative restrictions for imports from non-member countries is not a rule of law which the Council is required in principle to observe, but the result of a decision made by that institution in the exercise of its discretion. Besides, the Council explained the reasons which led it to set quotas for certain specific products.

35 Fourth, since the Council had indicated the objectives to be pursued, it did not need to justify the technical choices made, including that concerning the contested quotas. It is therefore irrelevant in this respect that it was only in the proceedings before the Court that the Council explained that it was necessary to reduce the imports authorised for 1994 to the 1991 level.

36 With regard to the German Government's arguments concerning the lack of specific reasons pertaining to the principle of proportionality, the first point to note is that, contrary to the view taken by the Council, those arguments do not contravene Article 37(4) of the EC Statute of the Court of Justice. That provision does not prevent an intervener from using arguments other than those used by the party it supports, provided the intervener seeks to support that party's submissions or seeks the rejection of the opposing party's submissions (Case 30/59 *De Gezamenlijke Steenkolenmijnen* v *High Authority* [1961] ECR 1). In this case, the argument in question concerns the ground of annulment alleging lack of reasoning, put forward by the applicant government, and is meant to support the form of order sought by the latter. It must therefore be examined by the Court.

37 The German Government's argument is not, however, well founded. While the principle of proportionality, as set forth in the third paragraph of Article 3b of the EC Treaty, constitutes a general principle of the Community legal system, an express reference to that principle in the preamble cannot be required (see, with regard to the principle of subsidiarity, laid down in the second paragraph of Article 3b, Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraph 28).

38 In any event, by stating in the sixth recital in the preamble to the contested regulation that quantitative quotas had to be imposed 'for a limited number of products originating in the People's Republic of China', owing to the sensitivity of certain sectors of Community industry, the Council explained that such measures were taken only where they proved necessary in order to attain the objectives pursued, in accordance with the principle of proportionality.

39 For those reasons, the ground of annulment alleging breach of the obligation to state reasons has no factual basis and must therefore be rejected.

Failure to carry out any appreciation of the facts or manifest error of appreciation

40 In its second ground of annulment, the United Kingdom Government alleges that when adopting Article 1 of the contested regulation, the Council failed to make a proper assessment of the relevant facts or else made a manifest error in its assessment such as to render that provision unlawful.

41 It points out in this regard that before the contested regulation was adopted the only restriction applied to the toys at issue was the Spanish quota, and maintains that the disputed quotas introduced restrictions applicable in all the Member States, which reduced the level of Community trade by almost 50% for some of the toys at issue. The Council is, admittedly, entitled to make such a dramatic change if the circumstances should warrant it. However, in this case, the fact is that it did not have sufficient information to enable it to assess the relevant facts correctly.

42 Such an assessment, it submits, would have had to take into account factors such as:

— the position and state of the toy industry in Spain and in the other Member States;

— the balance of interests between the various sectors of the Community toy industry, consumers, retailers and distributors;

— the effects of the measures adopted and of other measures that might have been contemplated, such as national safeguard measures;

— the balancing of the Community's interest in free trade against protectionism.

43 The United Kingdom Government claims that, instead of taking all those factors into consideration, the Council merely examined the growth in Chinese exports without investigating its effects on the Community industry. It failed to assess the potential damage caused to the Community industry and neglected to examine the size, structure, production, production capacity and profitability of the sector concerned. In its view, the Council has produced no evidence, other than the growth

of Chinese exports, to show that the Community toy industry stood in need of the protection afforded by the contested quotas. Nor has the Council demonstrated that it had available to it any facts relevant to its assessment of the Chinese industry's export potential or of the effects of the import restrictions then in existence.

44 The lack of any proper assessment of the facts is all the more surprising, the United Kingdom Government submits, since, under Article 5 et seq. of the contested regulation, a case-by-case investigation must be carried out before any restriction is imposed on imports. In addition, such an inquiry was necessary in the circumstances given that over 98% of the imports in issue were liberalised before the contested regulation was adopted. Even in the absence of an express provision, the institutions were bound by the fundamental principles of Community law to carry out a thorough assessment of the relevant facts before imposing restrictions on a trade that had previously been liberalised.

45 The applicant also argues that, since the starting point of the contested regulation was, in accordance with the objective laid down in Article 110 of the EC Treaty, the liberalisation of imports, the disputed quotas introducing restrictions at Community level should be regarded as exceptions to the principle of liberalisation and thus be interpreted strictly. That cannot be invalidated by the consideration that those quotas form an integral part of the contested regulation. Drawing an analogy between the new trading arrangements introduced by the latter and the system of freedom of movement for goods within the Community, the United Kingdom Government points out that Article 36 of the EC Treaty also forms an integral part of the rules on the free movement of goods within the Community, even though it constitutes an exception to the fundamental principle enshrined in Article 30 and must therefore be interpreted strictly.

46 Finally, the applicant maintains, the new restrictions on the trade in toys between the Community and China are so far-reaching and have such a marked effect on

the level of trade that they are quasi-penal in nature and should be subjected to particularly close scrutiny.

47 The German Government endorses the arguments set out by the United Kingdom Government concerning the ground of annulment alleging an error of assessment, adding that the Council omitted to take into consideration Article 110 of the Treaty which is intended to contribute to the progressive abolition of restrictions on international trade. Although that provision does not prohibit the Community from enacting any measure liable to affect trade with non-member countries, such a measure must still be required and be legally justified by Community law. In the present case, the Council has not specified the provisions capable of justifying the quota.

48 The Council, supported by the Spanish Government and the Commission, observes that the contested regulation covers all sectors of the economy and replaces all previous rules for both liberalised and non-liberalised imports with a single Community system. When it introduced the disputed quotas, the Council was obliged to reconcile the conflicting interests of different sectors of the Community toy industry and to make complex political decisions.

49 In accordance with the case-law of the Court, where complex economic situations are to be evaluated, the Community institutions enjoy a wide margin of discretion, particularly where they are acting within the framework of Article 113 of the Treaty. Consequently, the lawfulness of a common commercial policy measure can be challenged on account of an error of assessment only if that measure appears manifestly inappropriate in relation to the objective pursued. In particular, where the Council is called upon to evaluate the future effects of the provisions it enacts, which cannot be foreseen with any degree of certainty, that assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the provisions in question. Moreover, the Council's discretion in assessing a complex economic situation also extends, to a certain extent, to the establishment of the basic facts.

50 The Council points out that, in this instance, the fact that national restrictions were already in existence is just one of the matters which it had to take into consideration when adopting the contested regulation. It took into account the level of imports from China, their effects on the Community industry, the Chinese industry's export potential and price levels, as well as the import restrictions then in existence at Community or national level. The comparison drawn by the applicant between the effects of the Spanish restrictions existing before the contested regulation was adopted and the effects of that regulation is based on a misinterpretation. The disputed quotas, far from constituting an extension of the national restrictions, are intended to protect the Community industry as a whole.

51 The Council contends that, since the German Government's argument concerning Article 110 of the Treaty was not put forward by the United Kingdom Government and was unsupported by any evidence, it must be rejected. In any event, that provision cannot prevent the Council from introducing quotas applying to trade with non-member countries on the basis of Article 113 of the Treaty.

52 Finally, the Council considers that neither the applicant nor the intervener has established that the defendant had insufficient data, that it had acted in the absence of any information, that its assessment of the facts was manifestly incorrect or that it had misused its powers.

53 First of all, as the Council and the parties intervening in support of the form of order sought by it have observed, the Court has consistently held that the Community institutions enjoy a margin of discretion in their choice of the means needed to achieve the common commercial policy (Case 245/81 *Edeka Zentrale* v *Germany* [1982] ECR 2745, paragraph 27; Case 52/81 *Faust* v *Commission* [1982] ECR 3745, paragraph 27; Case 256/84 *Koyo Seiko* v *Council* [1987] ECR 1899, paragraph 20; Case 258/84 *Nippon Seiko* v *Council* [1987] ECR 1923, paragraph 34, and Case 260/84 *Minebea* v *Council* [1987] ECR 1975, paragraph 28).

54 In a situation of that kind, which involves an appraisal of complex economic situations, judicial review must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see, *inter alia*, Case C-156/87 *Gestetner Holdings* v *Council and Commission* [1990] ECR I-781, paragraph 63). That is *a fortiori* the case where, as in this instance, the act concerned is of general application.

55 In addition, the Court has considered that the discretion which the Council has when assessing a complex economic situation can be exercised not only in relation to the nature and scope of the provisions which are to be adopted but also, to a certain extent, to the findings as to the basic facts, especially in the sense that the Council is free to base its assessment, if necessary, on findings of a general nature (Case 166/78 *Italy* v *Council* [1979] ECR 2575, paragraph 14). While the Council is required to take into consideration all the facts available to it, it cannot be required to examine in detail all the economic sectors concerned before it adopts an act of general application.

56 Moreover, it is not possible to claim, as the United Kingdom Government does, that the contested measures are quasi-penal in nature and should therefore be the subject of particularly close scrutiny. Suffice it to note, in this regard, that the imposition of import quotas is unrelated to any conduct specifically attributable to particular individuals, its purpose is in no way penal and it is not of a retributive nature.

57 In the light of the arguments put forward by the United Kingdom Government and the German Government, intervening in its support, it must be stated, as regards the alleged failure to assess the facts, that, in the first place, it is not disputed that the Council took into consideration the substantial share of the Community market held by imports originating in China and the significant increase in those imports.

58 Second, contrary to the view taken by the United Kingdom Government, the Council was not bound to make a separate assessment of the state of the sectors concerned in the various Member States, since its decision had to be based on the interests of the Community as a whole and not on those of the individual Member States.

59 Third, it is clear from the case-law referred to in paragraph 55 above that, since the regulation applied to all Community imports from certain non-member countries, the Council was under no obligation, when adopting it, to undertake an in-depth analysis of the various aspects of the economic sectors concerned in the Community, or in particular of the interests of the various operators in the Community toy industry.

60 It follows that the Council's adoption of the contested measures was based on an adequate appraisal of the relevant information.

61 In addition, with a view to ascertaining whether, in the circumstances of the case, the Council overstepped the bounds of its discretion or exercised it in a manifestly incorrect manner, it must be stated first of all that the applicant's argument rests on incorrect premisses.

62 It is true that, before the contested regulation was adopted, the rules on imports of the products at issue were principally the result of decisions taken by the individual Member States. However, when adopting new uniform rules at Community level, the Council was required to take account not of the special interests of the various Member States, but of the general interest of the Community as a whole.

63 In particular, the decisions taken in the past by individual Member States were not binding on the Council in the exercise of its discretion; had it been otherwise, the role to be played by that institution in carrying out the tasks entrusted to the Community under Article 4 of the EC Treaty would have been disregarded.

64 It follows that the Council was entitled, when making a fresh assessment of the situation in terms of the interests of the Community, to take decisions different from those made by the Member States and that no error of assessment can be inferred from the fact that the new rules depart significantly from the previous rules.

65 Second, as the Advocate General has shown at points 132 to 139 of his Opinion, in introducing the contested quotas the Council was not required to establish that the Community toy industry had already suffered damage as a result of imports originating in China. On the contrary, the Council was entitled to consider that such disturbances had to be prevented and to base its evaluation on the mere risk of disturbance, which could correctly be deduced from the increase in imports of toys originating in China.

66 Third, it is necessary to examine the arguments relating to Article 110 of the Treaty, which have been put forward not only by the intervener, the German Government, but also by the applicant.

67 According to settled case-law, that provision cannot be interpreted as prohibiting the Community from enacting any measure liable to affect trade with non-member countries (Case 112/80 *Dürbeck* v *Hauptzollamt Frankfurt am Main-Flughafen* [1981] ECR 1095, paragraph 44, and Case 245/81 *Edeka Zentrale* v *Germany*, cited above, paragraph 24). As is clear from the actual wording of the provision, its objective of contributing to the progressive abolition of restrictions on international trade

cannot compel the institutions to liberalise imports from non-member countries where to do so would be contrary to the interests of the Community. The Council was entitled, therefore, to consider that the actual circumstances warranted the imposition of quotas on the products at issue.

68 Fourth, the Council's discretion was in no way limited by the fact that it had itself decided that the starting point for the new rules was to be the liberalisation of imports. In that connection, the analogy drawn by the United Kingdom Government between Articles 30 and 36 of the Treaty, on the one hand, and the liberalisation of imports and the exceptions thereto, on the other, is irrelevant. As explained in paragraph 34 above, and by contrast with the principle of free movement of goods within the Community, the abolition of all quantitative restrictions on imports from non-member countries is not a rule of law which the Council was required in principle to observe, but is the result of a choice made by that institution in the exercise of its discretion.

69 Fifth and last, in so far as the second ground of annulment relied upon by the United Kingdom Government is based on the complaint that, before adopting the disputed measures, the Council failed to carry out an investigation of the kind which the contested regulation provides for where safeguard or surveillance measures are imposed, it overlaps with the ground alleging breach of the principle of equal treatment that is to be considered below.

70 It follows that, subject to that last reservation, the ground alleging failure to carry out any appreciation of the facts or manifest error of appreciation cannot be upheld.

Arbitrary nature of the contested quotas

71 In its third ground of annulment, the United Kingdom Government maintains that in the absence of an adequate statement of reasons and a proper assessment of the facts, the quotas established by the contested regulation are arbitrary, having regard to the magnitude of their restrictive effects on imports.

72 It is sufficient to note in this regard, as the Council and the Commission have done, that the arbitrary nature of the quotas in dispute is deduced by the United Kingdom Government from the Council's failure to state adequate reasons for the contested regulation and its failure to carry out a proper assessment of the facts, which form the subject-matter of the first two grounds.

73 Since this ground overlaps with the first two grounds and they are not well founded, it must also be rejected.

Breach of the principle of proportionality

74 In its fourth ground of annulment, the United Kingdom Government, supported by the German Government, considers that the contested regulation is contrary to the principle of proportionality. This principle requires that, where a measure is taken to prohibit or restrict economic activity, it must be appropriate and necessary in order to attain the objectives pursued, that where a choice must be made between several measures, recourse must be had to the least onerous, and finally, that the disadvantages caused should not be disproportionate to the aims pursued. In the case of the exercise of a discretionary power by legislative means, the measure adopted should not be manifestly inappropriate having regard to the objectives pursued.

75 In the present case, the objective pursued is said to be the protection of the Spanish toy industry, since the only restrictive measure that was in existence when the contested regulation was adopted was that applied by the Kingdom of Spain.

76 According to the United Kingdom Government, the disputed quotas were not necessary for the attainment of that objective and were not the least restrictive measure amongst those which the Council could have adopted. In that connection, the United Kingdom Government sets out a threefold argument.

77 First, it claims that it is inappropriate to substitute a Community quota for a regional quota, as such a step cannot be justified even by the aim of creating greater uniformity. Furthermore, the contested regulation does not state that safeguard measures can only be temporary or that they are confined solely to future threats to the Community industry. For its part, the German Government claims that at the time when it adopted the contested regulation, the Council could in any event have laid down measures which were both regional in scope and of indefinite duration.

78 Second, the applicant claims that the level at which the quotas were set was such as to cause imports of the products in question to fall by around 50% compared with the previous year, which is excessive having regard to the need of the Spanish industry for protection.

79 Third, application of the restrictions at Community level is alleged to be contrary to the provisions of the contested regulation which call for case-by-case investigation before the introduction of new surveillance or protection measures.

80 The Council, supported by the Spanish Government and the Commission, considers for its part that it acted in accordance with the principle of proportionality by setting itself the aim of ensuring that the rules applying to Community trade with non-member countries should reflect the completion of the internal market, while having regard to the sensitivity of Community industry in the relevant sector.

81 The Council notes, in particular, that, when faced with an alarming increase in imports originating in China of the toys concerned and in their share of the Community market that was likely to threaten the Community industry, it strove to find a balance between adequate protection for that industry and maintaining an acceptable level of trade with China, by setting the quotas at the level of imports for 1991.

82 According to the Council, the same degree of protection could not have been achieved by having recourse to surveillance or safeguard measures at regional level, since the aim was to protect the interests of the Community toy industry and not those of the industry of just one Member State. Furthermore, the regional safeguard measures provided for by Article 17 of the contested regulation are of a purely temporary and exceptional nature, and their sole purpose is to counter future increases in imports harmful to the Community industry. Although the disputed quotas are necessary for the transition from the old to the new import rules, they are not necessarily temporary, inasmuch as it is not possible to foresee their limitation in time.

83 Finally, even if less onerous or less restrictive means might have been envisaged for achieving the desired result, the Court cannot substitute its assessment for that of the Council as to the appropriateness or otherwise of the measures adopted by the Community legislature if the measures have not been shown to be manifestly inappropriate for achieving the objective pursued (Case C-280/93 *Germany* v *Council* [1994] ECR I-4973).

84 The three limbs of the fourth ground of annulment put forward by the United Kingdom Government must be considered in turn.

85 As regards the first limb, the sixth recital in the preamble to the contested regulation expressly states that in fixing the disputed quotas, the Council intended to take into account the sensitivity of certain sectors of the Community industry as a whole and not the industry of one particular Member State.

86 Furthermore, and in any event, under the system set up by the contested regulation which is intended to establish uniform rules throughout the Community, measures limited to one or more regions can be authorised, as stated in the tenth recital in the preamble, only exceptionally and where no alternative exists and they must be temporary. The Council may not therefore be criticised for failing to choose measures which, in the light of the aims of the contested regulation, must so far as possible be avoided and which, being temporary, would not have constituted an effective response to the threat to the relevant sectors of the Community industry.

87 With regard to the second limb of the fourth ground, it should be pointed out that in spheres such as this, in which the Community institutions have a broad discretion, the lawfulness of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective pursued. More specifically, where the Community legislature is obliged, in connection with the adoption of rules, to assess their future effects, which cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of those rules. The Court's review must be limited in that way in particular if the Council has to reconcile divergent interests and thus select options within the context of the policy choices which are its own responsibility (*Germany* v *Council*, cited above, paragraphs 90 and 91).

88 In those circumstances, the level of protection afforded by the quotas in issue cannot be considered to have gone beyond what was necessary in order to attain the objectives pursued by the Council.

89 First, the Council was right to consider that, faced with the pressure exerted by imports of toys from China, mere surveillance measures would be insufficient to protect the interests of the Community industry.

90 Second, by fixing the import quotas at the 1991 level, which was considerably higher than that of the previous years, the Council sought to balance the need to protect the Community industry with maintaining an acceptable level of trade with China in a manner that is not open to criticism by the Court.

91 Finally, while other means for achieving the desired result were indeed conceivable, the Court cannot substitute its assessment for that of the Council as to the appropriateness or otherwise of the measures adopted, if those measures have not been shown to be manifestly inappropriate for achieving the objective pursued (*Germany* v *Council*, cited above, paragraph 94). In this case, the United Kingdom Government has failed to adduce any evidence that the disputed quotas were set at a manifestly inappropriate level.

92 The third limb in substance concerns the difference between the general scope of the disputed quotas and the investigation procedures laid down for the application of surveillance and safeguard measures. It will therefore be considered together with the fifth ground of annulment.

93 It follows from the foregoing that, subject to the latter reservation, the ground alleging breach of the principle of proportionality cannot be upheld.

Breach of the principle of equal treatment

94 In its fifth and final ground of annulment, the United Kingdom Government maintains that the contested regulation is contrary to the principle of equal treatment in so far as it treats two categories of products differently. On the one hand, products which were already the subject of national restrictions are subject to safeguard or surveillance measures, without any formal investigation procedure or any right for the interested parties to be heard. On the other hand, all the other products covered by the contested regulation can be subject to such measures only where a Community investigation has been carried out and interested third parties have been given the right to a fair hearing.

95 According to the United Kingdom Government, that difference in treatment is not justified since both cases involve the introduction of a new restriction. A hitherto national restriction applied at Community level cannot be treated as anything other than a new restriction. In addition, the products in question had been liberalised *de facto* since at the time when the contested regulation entered into force the only restriction in existence, that applied by the Kingdom of Spain, affected only 2% of total imports of those products into the Community. Breach of the principle of equal treatment cannot therefore be excluded on the basis of a purely formal distinction drawn between products already liberalised and those which were not liberalised at the time when the contested regulation was adopted.

96 The Council, the Spanish Government and the Commission dispute that allegation, arguing that the contested regulation simply treats different situations differently.

97 In that respect, it should be noted that the general principle of equality which is one of the fundamental principles of Community law precludes comparable situations from being treated in a different manner unless the difference in treatment is objectively justified (see, in particular, Joined Cases C-267/88 to C-285/88 *Wuidart and Others* [1990] ECR I-435, paragraph 13).

98 In the present case, the Council has adopted new uniform rules at Community level aimed at bringing the remaining national exceptions and derogations to an end. As explained when the second ground of annulment was under consideration, the Council was free to determine, in the interests of the Community, whether it was necessary to provide for restrictions on the importation of certain products, and it was not bound by the decisions previously made by the various Member States.

99 By contrast, the surveillance and safeguard measures which may be introduced after the adoption of the contested regulation and on the basis of its provisions constitute a modification of the system established by the Council and may therefore be subject to such investigation procedures as it considers appropriate.

100 In any event, the detailed procedural rules laid down in the contested regulation in respect of future changes to the system established by it cannot be required to apply to the actual definition of that system by the Council. First, setting the disputed quotas could not be made subject to detailed rules which had not yet been laid down. Second, that decision had already been evaluated by the Council when it adopted the new rules.

101 It follows that the disputed quotas are not comparable to the surveillance or safeguard measures subsequently to be adopted pursuant to the contested regulation. Since they treat different situations differently, the provisions in issue are not contrary to the principle of equal treatment, with the result that this ground of annulment cannot be upheld.

102 Since the grounds of annulment put forward by the United Kingdom Government are not well founded, the application must be dismissed in its entirety.

Costs

103 Under Article 69(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 United Kingdom has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Council. Under the first subparagraph of Article 69(4) of those Rules, the Member States and institutions which intervene in the proceedings are to bear their own costs. The Federal Republic of Germany, the Kingdom of Spain and the Commission must accordingly bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) Dismisses the application;

2) Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs;

3) Orders the Federal Republic of Germany, the Kingdom of Spain and the Commission of the European Communities to bear their own costs.

Kapteyn Mancini Murray

Delivered in open court in Luxembourg on 19 November 1998.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Sixth Chamber