# ORDER OF THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)
13 December 1999 *

In Case T-268/94,

**Tyco Toys (UK) Ltd, Matchbox Toys (UK) Ltd** and **Matchbox Collectibles Ltd**, companies incorporated under English law, established in Rugby (United Kingdom),

**Tyco Distribution Europe NV** and **Tyco Manufacturing Europe Inc.**, companies incorporated under Belgian law, established in Saint-Nicolas (Belgium),

**Matchbox Spielwaren** and **Matchbox Collectibles GmbH**, companies incorporated under German law, established in Hösbach (Germany),

**Tyco Toys France SA**, a company incorporated under French law, established in Saint-Germain-en-Laye (France),

**Tyco Toys España SA**, a company incorporated under Spanish law, established in Sant Just Desvern (Spain),

**Tyco Toys Deutschland GmbH**, a company incorporated under German law, established in Nuremberg (Germany),

**Playtime Toys (UK) Ltd**, a company incorporated under English law, established in Marlow (United Kingdom),

represented by Charles-Étienne Gudin, of the Hauts-de-Seine Bar, with an address for service in Luxembourg at the Chambers of Faltz et Associés, 6 Rue Heinrich Heine,

applicants,

* Language of the case: French.

supported by

**Toys Manufacturers of Europe**, a company incorporated under Belgian law, established in Brussels, represented by Hugues Calvet, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

and by

**Hasbro UK Ltd**, a company incorporated under English law, established in Uxbridge, Middlesex (United Kingdom), represented initially by Jacques H. J. Bourgeois and subsequently by Jacques Ghysbrecht, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of De Bandt, Van Hecke, Lagae and Loesch, 11 Rue Goethe,

interveners,

v

**Commission of the European Communities**, represented by Patrick Hetsch and Marc de Pauw, 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,

and

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

defendants,

supported by

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

intervener,

APPLICATION for, first, the annulment of Article 1 of each of Commission Regulation (EC) No 1012/94 of 29 April 1994 and Commission Regulation (EC) No 1225/94 of 30 May 1994 establishing the allocations to traditional and non-traditional importers respectively from the Community quantitative quotas on certain products originating in the People's Republic of China (OJ 1994 L 111, p. 100, and OJ 1994 L 136, p. 40) as well as for a declaration of illegality of Article 1(2) of Council Regulation (EC) No 519/94 of 7 March 1994 on common rules on imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89), and of Article 3(2) of Commission Regulation (EC) No 747/94 of 30 March 1994 establishing administration procedures for quantitative quotas on certain products originating in the People's Republic of China (OJ 1994 L 87, p. 83), and, second, compensation to make good the loss suffered by the applicants as a result of the contested provisions,

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

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

Registrar: H. Jung,

makes the following

## Order

### Legal background

1 In 1994 new instruments were adopted to restrict the importation into the Community of certain products from third countries, particularly from the People's Republic of China. The most important part of these Community rules is 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, hereinafter 'Regulation No 519/94'). Article 1(2) of the regulation provides that imports into the Community of the products to which the regulation refers are to take place freely and so are not to be subject to any quantitative restrictions, without prejudice to the safeguard measures which may be taken and the Community quotas referred to in Annex II, which lays down quotas for certain categories of toys coming from China.

2 The specific provisions relating to the administration of those quotas are defined in Commission Regulation (EC) No 747/94 of 30 March 1994 establishing administration procedures for quantitative quotas on certain products originating in the People's Republic of China (OJ 1994 L 87, p. 83, hereinafter 'Regulation No 747/94'). Each quota is divided between the traditional and non-traditional importers. Article 3(2) of Regulation No 747/94 provides that the reference period for the purposes of demonstrating status as a traditional importer 'shall comprise calendar years 1991 and 1992'; importers are to provide evidence that, during those two years, they imported from China products covered by the Community quotas referred to in Annex II to Regulation No 519/94.

3 Commission Regulations (EC) No 1012/94 of 29 April 1994 and No 1225/94 of 30 May 1994 establish the quantities allocated to traditional and non-traditional importers respectively from the Community quantitative quotas on certain products originating in the People's Republic of China (OJ 1994 L 111, p. 100, hereinafter 'Regulation No 1012/94', and OJ 1994 L 136, p. 40, hereinafter 'Regulation No 1225/94').

**Proceedings and arguments of the parties**

4 The applicants brought this action by application lodged at the Court Registry on 20 July 1994. They claim that the Court should:

— declare the application admissible;

— annul:

— Article 1 of Regulation No 1012/94;

— Article 1 of Regulation No 1225/94;

in so far as those regulations concern the applicants;

— uphold the plea of illegality raised against:

— Article 1(2) of Regulation No 519/94;

— Article 3(2) of Regulation No 747/94;

in so far as those measures concern the applicants;

— order the payment of compensation for any damage caused to the applicants through the application of all the abovementioned provisions;

— take all additional measures which the Court deems necessary in order to establish the loss caused to the applicants;

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

5 The Council contends that the Court should:

— dismiss the claim for compensation as manifestly inadmissible and, in the alternative, dismiss it as unfounded;

— dismiss the plea of illegality as inadmissible;

— order the applicants to pay the costs.

6 The Commission contends that the Court should:

— declare the action for annulment to be inadmissible or, alternatively, dismiss it as unfounded;

— dismiss the action for damages as unfounded;

— order the applicants to pay the costs.

7 By order of 24 February 1995 of the President of the Fourth Chamber, Extended Composition, of the Court, the Kingdom of Spain was granted leave to intervene in support of the form of order sought by Council and the Commission.

8 By order of 29 March 1995 of the President of the Fourth Chamber, Extended Composition, of the Court, the Council was granted leave to submit a statement maintaining the validity of Article 1(2) of Regulation No 519/94.

9 In that statement, contained in the rejoinder registered at the Court Registry on 13 April 1995, the Council adds a further point to the form of order it seeks, requesting the Court, in the alternative, to dismiss the plea of illegality as unfounded.

10 By order of 18 October 1995 of the President of the Fifth Chamber, Extended Composition, of the Court, Hasbro UK Ltd and Toys Manufacturers of Europe were granted leave to intervene in support of the form of order sought by the applicants and the Court granted the request for certain documents in the case to be treated as confidential.

11 The United Kingdom of Great Britain and Northern Ireland, by application lodged at the Registry of the Court of Justice on 6 June 1994, and the Kingdom of

Spain, by application lodged on 20 October 1994, brought actions for the annulment of Article 1(2) of Council Regulation (EC) No 519/94 (Case C-150/94) and Council Regulation (EC) No 1921/94 of 25 July 1994 amending Regulation No 519/94 (OJ 1994 L 198, p. 1) (Case C-284/94) respectively, by order of the Court (Fifth Chamber, Extended Composition) on 26 May 1996. The present proceedings were stayed until judgment was given by the Court of Justice in those two cases.

12 On 19 November 1998 the Court of Justice gave judgment in Case C-150/94 *United Kingdom* v *Council* [1998] ECR I-7235 and Case C-284/94 *Spain* v *Council* [1998] ECR I-7309, dismissing both actions.

13 By letter from the Registry of 23 December 1998, the Court invited the parties to submit their observations on the conclusions to be drawn from the judgment in *United Kingdom* v *Council.*

14 By letter lodged at the Court Registry on 15 January 1999, the Kingdom of Spain asked the Court, first, to declare that the action brought against Regulations No 1012/94 and No 1225/94 was inadmissible and, in the alternative, to dismiss the plea of illegality raised against Regulations No 519/94 and 747/94, and, second, to hold the claim for compensation to be inadmissible or, alternatively, unfounded.

15 By letters lodged at the Court Registry on 17 February 1999, the Commission and the Council requested the Court to declare that, following the judgments in *United Kingdom* v *Council* and *Spain* v *Council*, it was no longer necessary to

adjudicate on the present action or, in the alternative, to dismiss as unfounded the action for annulment and the claim for compensation, and to order the applicants to pay the costs.

16 By letter lodged at the Court Registry on 8 April 1999, the intervening party Hasbro UK Ltd discontinued its intervention.

17 The applicants did not submit any observations in response to the letter from the Court Registry.

**Substance**

18 Under Article 111 of the Rules of Procedure, where an action is manifestly inadmissible or manifestly unfounded in law, the Court may, without taking further steps in the proceedings, give judgment in the form of a reasoned order.

19 In this instance, the Court considers it has sufficient information from the documents in the case and decides, pursuant to the aforesaid Article 111, to give judgment without taking further steps in the proceedings.

20 In support of their claim for annulment, the applicants raise only a plea of illegality against Article 1(2) of Regulation No 519/94 and Article 3(2) of Regulation 747/94.

*The plea of illegality raised against Article 1(2) of Regulation No 519/94*

21 The Council and the Commission contend that the Court of Justice, by rejecting, in its judgment in *United Kingdom* v *Council*, all the grounds for annulment put forward by the United Kingdom, confirmed the legality of Regulation No 519/94 as regards the toys imported from China, on the basis of a full and comprehensive analysis of the grounds which were pleaded by the Member State in that case and have been repeated by the applicants in the present case.

22 The Kingdom of Spain points out that the grounds put forward by the applicants in support of their plea of illegality are worded in almost exactly the same terms as those put forward by the United Kingdom in its direct action. In its judgment in *United Kingdom* v *Council*, the Court of Justice rejected those grounds as unfounded and, in so far as they are concerned, that judgment has the authority of *res judicata*.

23 The Court finds that the pleas in law and arguments put forward by the applicants, alleging infringement of the duty to provide a statement of reasons, failure to assess the facts or a manifest error of assessment, and breach of the principles of proportionality and equal treatment have already been invoked, in essence, in the case leading to the judgment in *United Kingdom* v *Council*.

24 Accordingly, by rejecting all the grounds of annulment put forward by the United Kingdom and repeated by the applicants in this action, the Court of Justice has confirmed, to that extent, the legality of Article 1(2) of Regulation No 519/94 so far as concerns the toys imported from China.

25 The applicants also plead lack of legal basis, infringement of the Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China of 21 May 1985 (OJ 1985 L 250, p. 2) and infringement of the right of the importers concerned to a hearing. In addition, they allege breach of the principles of *patere legem quam ipse fecisti*, legal certainty, protection of legitimate expectations and good administration, and also misuse of powers and abuse of process.

26 As regards the lack of legal basis, the applicants themselves acknowledge, on page 16 of their reply, that the omission of an express reference to Article 113 of the EC Treaty (now, after amendment, Article 133 EC) in Regulation No 519/94 is only a clerical error in the French version of the regulation. As regards the infringement of the Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, it need merely be observed, first, that, as the applicants acknowledge on page 26 of their reply, nothing in the Agreement precluded the Council from adopting the quotas included in Annex II to Regulation No 519/94 and, second, that, contrary to what the applicants contend, it is apparent from the 20th recital of the regulation that, when the Council adopted the quotas, it did carry out the consultations specified in the Agreement. As for infringement of the right of the importers concerned to a hearing and breach of the principle *patere legem quam ipse fecisti*, it must be pointed out that, as this is a parent regulation and, therefore, a measure of a general nature, the Council was not required to hear the views of the importers concerned before fixing the quotas laid down in Regulation No 519/94. Moreover, at no point in the procedure did the applicants ask for the opportunity to be heard by the Community institutions. Finally, as regards breach of the principles of legal certainty, protection of legitimate expectations and good administration, and as regards, also, misuse of powers and abuse of process, suffice it to state that the applicants have not adduced the slightest evidence of such irregularities.

27 In those circumstances, it must be held that the plea of illegality raised against Article 1(2) of Regulation No 519/94 is manifestly unfounded.

*The plea of illegality raised against Article 3(2) of Regulation No 747/94*

28 Article 3(2) of Regulation No 747/94 provides that the reference period for the purposes of demonstrating status as a traditional importer of products originating in China and subject to the Community quotas laid down in Annex II to Regulation No 519/94 'shall comprise calendar years 1991 and 1992'.

29 In this connection, the applicants point out in the application that, contrary to what is indicated in the sixth recital of Regulation No 747/94, the years 1991 and 1992 did not constitute an appropriate reference period since the Commission had full details of the imports for 1993, with which it could have established a later reference period which better reflected trade flows.

30 The Commission maintains that the Court of Justice, in its judgment in *United Kingdom* v *Council*, rejected the plea, raised by the United Kingdom, to the effect that the fixing of the 1994 quotas at the import levels for 1991 infringed the principle of proportionality in so far as the quotas were designed to cause a reduction in imports of approximately 50% in relation to 1993. The Commission states, in this regard, that 1993 was not a typical year owing, amongst other things, to the significant rate of increase in imports revealed by the first available statistics. For that reason, the Commission had excluded 1993 from the reference period to be taken into consideration for determining the traditional imports. Since the Court of Justice considered that the 1994 quotas could be fixed at the level of imports achieved in 1991, the Commission cannot be criticised for not taking 1993 into account as a reference period. The plea raised by the applicants is therefore rendered devoid of substance.

31 The Court notes that the Court of Justice, in paragraph 88 of its judgment in *United Kingdom* v *Council*, held that the level of protection afforded by the quotas fixed in Annex II to Regulation No 519/94 did not exceed what was necessary in order to attain the objectives pursued by the Council. In paragraph 89 of the judgment, the Court of Justice held that 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. In paragraph 90 the Court of Justice added that, by fixing the import quotas at the level of the 1991 imports, 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 was not open to criticism by the Court of Justice.

32 It is therefore clear, from paragraphs 88 to 90 of the judgment in *United Kingdom* v *Council*, that it was reasonable for the Council to fix the quotas contained in Annex II to Regulation No 519/94, at the level of the 1991 imports. Consequently, the Commission cannot be criticised for not having taken the year 1993 into account in Article 3(2) of Regulation no 747/94, which defines the reference period for the purposes of demonstrating status as a traditional importer of products originating in China and subject to the Community quotas laid down in Annex II to Regulation No 519/94.

33 The plea of illegality raised against Article 3(2) of Regulation No 747/94 is therefore manifestly unfounded.

34 It follows from all the foregoing that the claims for the annulment of Article 1 of Regulation No 1012/94 and Article 1 of Regulation No 1225/94, since they are based solely on the plea of illegality raised against Article 1(2) of Regulation

No 519/94 and Article 3(2) of Regulation No 747/94, must be dismissed as manifestly unfounded in law.

35 The claims for compensation are also manifestly unfounded in law because the contested regulations are not vitiated by any illegality of a nature such as to cause the Community to incur liability.

## Costs

36 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 applicants have been unsuccessful, they must be ordered to bear their own costs and, jointly and severally, to pay those of the Commission and the Council, which have applied for costs.

37 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which have intervened in the proceedings shall bear their own costs. The Kingdom of Spain shall therefore bear its own costs.

38 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the Court may order an intervener other than a Member State or an institution to

bear its own costs. In this case it is ordered that the interveners Toys Manufacturers of Europe and Hasbro UK Ltd shall bear their own costs.

On those grounds,

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

hereby orders:

1. **The application is dismissed as manifestly unfounded in law.**

2. **The applicants are ordered to bear their own costs and, jointly and severally, to pay the costs incurred by the Commission and the Council.**

3. **The Kingdom of Spain, Toys Manufacturers of Europe and Hasbro UK Ltd, interveners, shall bear their own costs.**

Luxembourg, 13 December 1999.

H. Jung

Registrar

R. García-Valdecasas

President