ORDER OF THE COURT (First Chamber)
6 October 1997 *

In Case C-55/97 P,

Association Internationale des Utilisateurs de Fils de Filaments Artificiels et Synthétiques et de Soie Naturelle (AIUFFASS), an association constituted under the laws of Belgium, established at Ghent (Belgium),

Apparel, Knitting & Textiles Alliance (AKT), a company incorporated under the laws of England, established in London,

represented by Michel Waelbroeck, Jules Stuyck and Olivier Spletdoorn, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber, Extended Composition) in Case T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169, seeking to have that judgment set aside

* Language of the case: French.

the other party to the proceedings being:

Commission of the European Communities, represented by Xavier Lewis, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, assisted by Richard Plender QC and Stephen Morris of the Bar of England and Wales, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, D. A. O. Edward and M. Wathelet (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 10 February 1997, the Association Internationale des Utilisateurs de Fils de Filaments Artificiels et Synthétiques et de Soie Naturelle (AIUFFASS) and the Apparel, Knitting & Textiles Alliance (AKT) brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of 12 December 1996 in Case T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169 (hereinafter 'the judgment appealed against') in which the Court of First Instance dismissed their application for the annulment of the Commission decision of 31 May 1994 reproduced in Commission Notice 94/C 271/06 (OJ 1994 C 271, p. 5, hereinafter 'the Decision') authorizing the Government of the United Kingdom under Article 92(3)(a) and (c) of the EC Treaty to grant aid of £61 million in favour of Hualon Corporation (hereinafter 'Hualon') for the setting up of a textile producing plant in Northern Ireland.

2 Under Article 92(3) of the Treaty, 'the following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

...

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest...'.

3 The Court of First Instance made the following findings:

'7. On 21 December 1992 the United Kingdom Government notified to the Commission a proposal to grant aid to the Hualon Corporation, ... a newly established textile undertaking, for its plant at Belfast in Northern Ireland. Hualon is owned by the Taiwanese Hualon Group, which operates in the synthetic fibres sector, mainly producing polyamide.

8. The proposed aid, of an intensity of 38%, was to amount to £61 million, for a total investment of £157 million.

9. It was proposed that the investment should be carried out in four phases, phased over seven years, with the aim of producing approximately 23 000 or 23 500 tonnes of finished polyester, polyamide and polycotton fabrics, representing between 140 million and 200 million metres, a year...

10. By notice published in the *Official Journal of the European Communities* of 5 October 1993, the defendant gave Member States and interested parties notice to submit their observations on the proposed measures in accordance with Article 93(2) of the Treaty (Commission Notice 93/C 269/06 pursuant to Article 93(2) of the EEC Treaty to other Member States and interested parties regarding aid which the United Kingdom plans to grant to Hualon Corporation, OJ 1993 C 269, p. 8).

11. All the observations submitted by interested parties and Member States other than the United Kingdom mainly raised problems of excess capacity and widespread stagnating demand for textiles in the Community.

12. Apparel, Knitting & Textiles Alliance (AKT), a private limited company incorporated under English law which through its sole member, British Apparel

& Textile Confederation (BATC), represents 80% of the United Kingdom's clothing and textile industry, submitted its observations on 3 September 1993. Association Internationale des Utilisateurs de Fils de Filaments Artificiels et Synthétiques et de Soie Naturelle (International Association of Users of Yarns of Man-made Fibres and of Natural Silk (AIUFFASS)), representing through its member associations 90% of European weavers of yarns of artificial and synthetic fibres, submitted its observations on 21 October 1993.

13. The defendant authorized the project under Article 92(3)(a) and (c) of the Treaty and Article 61(3) of the EEA Agreement by decision of 31 May 1994 ("the decision")...

14. The decision states that the proposed aid qualifies for the derogation provided for in Article 92(3)(a) of the Treaty in that it will benefit a very disadvantaged region of the Community suffering from serious problems of unemployment (Objective 1 Community region). The region concerned is to gain by the creation of 1 800 direct jobs, corresponding to 10.8% of the unemployed in the north and west Belfast areas, from which much of the workforce is to be drawn, and 1.7% of total unemployment in Northern Ireland. Apart from those direct jobs, the project should cause a further 500 jobs to be generated indirectly in the local economy. Lastly, if the undertaking is successful it will be liable to have an encouraging effect for an area which is facing very serious problems in attracting investment (28th to 31st paragraphs of the notice).

15. In considering the project from the point of view of Article 92(3)(a) and (c) of the Treaty, the Commission states that it balanced the positive regional effects of the proposed investment against its potential negative effects on overall productive capacity and competition (64th paragraph). It considers that the positive regional effects of the assisted project (described in the preceding paragraph of this judgment) outweigh its negative effects on capacity and competition in view of the probable change in the economic context for Hualon's new capacity when it places its products on the market. According to the decision, Hualon will produce mass-produced fabrics with low value added, "a niche that otherwise would be covered by imports, without notably affecting the evolution of installed capacities" (59th paragraph of the notice).

16. The project should even have a "positive reversing effect on the delocalization of the European textile industry towards low factor cost countries" outside the Community (64th paragraph). The defendant considers that, although it is likely to affect trading conditions in the European Community, the aid is not expected to do so to an extent contrary to the common interest (64th paragraph). After comparing the expected effects of the proposed investment on competition in the Community and its paramount effect on the economic development of the area concerned, the Commission concluded that the conditions to benefit from the exemptions provided for in Article 92(3)(a) and (c) of the Treaty and Article 61(3) of the EEA Agreement were fulfilled (65th paragraph).'

The application before the Court of First Instance

4 On 29 November 1994 the applicants brought an action before the Court of First Instance for annulment of the Decision under Article 173 of the EC Treaty.

5 By order of 14 September 1995 the Court of First Instance granted the United Kingdom Government leave to intervene in support of the form of order sought by the defendant.

6 In their application, the applicants maintained that the Commission had committed a number of manifest errors in assessing, first, the number of jobs likely to be created by the investment at issue and, secondly, the impact of the investment on the excess capacity from which the sector is suffering (paragraph 58 of the judgment appealed against).

7 As regards, in particular, the Commission's claim that the future production of Hualon would not affect the production capacity of Community textile producers

and would not make for further excess capacity, the applicants accused the Commission, *inter alia*, of not taking account of the effects of the investment in the high range products sector, in which Community producers specialized, according to the Decision. First, they took issue with the Commission's assertion that Hualon would confine itself to manufacturing low range fabrics (paragraph 123 of the judgment appealed against) and, second, they complained that the Commission did not take account of the fact that air-jet or water-jet looms (such as those used by Hualon) could be — and actually were — currently used profitably to manufacture high range fabrics or of the fact that Hualon was, therefore, likely to produce such fabrics (paragraphs 143 and 144).

The judgment of the Court of First Instance

8 The Court of First Instance dismissed the application on the ground that the applicants had not proved the existence of manifest errors of assessment such as to require the annulment of the Decision.

9 In particular, as regards the complaints relating to the effects of the investment at issue in the high range products sector, the Court of First Instance stated:

'On the distinction between low range and high range

...

95. The decision states that Hualon's "[p]roduction will be specifically oriented to the lower segment of the textile market (high volume/low value added fabrics of up to 200 gm/m density)" (21st paragraph of the notice). Reporting the United Kingdom Government's observations, the decision states that the textiles in ques-

tion will be "low cost/high volume" (11th and 16th paragraphs of the notice) at the "fiercely price competitive end of the market" (16th paragraph).

96. In order to distinguish that production from that of Community manufacturers, the decision points out that Community manufacturers have opted for "high quality and less price sensitive niches" (42nd paragraph of the notice), especially "higher performance closer weave fabrics offering superior handle, drape and textures" (43rd paragraph), that is to say "specialized and high value added products" (45th paragraph).

97. The criteria listed by the defendant are sufficiently relevant to serve as the basis of its assessment for the purposes of the application of Article 92(3) of the Treaty. The distinction between low range and high range fabrics seems moreover to be recognized in the sector as being sufficiently relevant for the purposes of market analysis...

98. Consequently, the defendant cannot be accused of failing to define the criteria distinguishing low range from high range products.

...

Hualon's production

— Arguments of the parties

123. The applicants take issue with the assertion contained in the 21st and 43rd paragraphs of the notice that Hualon will confine itself to manufacturing low range fabrics. Hualon's President allegedly stated in an interview given to the BBC on 13 November 1994 that Hualon's aim was to produce fabrics with high value added.

124. The defendant, supported by the intervener, maintains that Hualon officially disassociated itself from that statement.

125. The intervener states that Hualon will produce only high volume, low range products.

— Findings of the Court

126. The contested decision authorizes the grant of an aid for the setting up of a factory for the production of low range fabrics as previously defined by the decision (see paragraphs 95 and 96 of this judgment).

127. The complaint stems from the supposition that Hualon will not produce only low range fabrics. That supposition is mainly based on a statement made by Hualon's President after the decision was taken.

128. A mere statement that one of the conditions on which a decision authorizing the grant of aid was based will not be complied with cannot cast doubt on the legality of the decision. If the recipient undertaking were to fail to observe the conditions of authorization, it would be for the Member State to make sure that the decision was properly carried out and for the Commission to assess whether it was appropriate to demand that the aid be repaid (Case C-294/90 *British Aerospace and Rover* v *Commission* [1992] ECR I-493, paragraph 11).

...

Use of the different types of loom

...

148. The applicants' arguments, which chiefly seek to show that it is common and viable to produce high range articles on jet looms, do not invalidate the defendant's proposition that it is more viable to produce low range fabrics on jet looms rather than on rapier or projectile looms. Nor do those arguments weaken the considerations relating to the tendency for Community producers to abandon the low range market.

149. The applicants merely go on to assert that there is no clear correlation between the type of loom used and the type of fabric manufactured, without adducing any evidence of this. In particular, they have not contested or undermined the technical and economic explanations of the various looms set out in the report by Kurt Salmon Associates which was produced by the intervener.

150. Consequently, the applicants have not proved that the defendant made a manifestly erroneous assessment of the facts in finding that low range products manufactured on rapier looms cannot compete with products imported from third countries which are manufactured on air-jet or water-jet looms, owing to the characteristics of those types of loom, and in using that finding as the basis for analysing the expected development of competitive conditions.'

The appeal

10 In their appeal the appellants ask the Court to set aside the judgment appealed against and itself to give final judgment on the dispute by annulling the Commission's decision.

11 In support of their appeal the appellants put forward two pleas in law, alleging, first, erroneous interpretation of the decision and, second, failure to state reasons.

Findings of the Court

12 Under Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may, at any time, dismiss the appeal by reasoned order without opening the oral procedure.

13 Before the pleas raised by the appellants are considered, it should be noted that the Court has consistently held that, under Article 168a of the EC Treaty and the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts (see, in particular, Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 12, and the order of 17 September 1996 in Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraph 39).

On the erroneous interpretation of the decision

14 Under their first plea the appellants complain that the Court of First Instance rejected the claim that there was no guarantee that Hualon would exclusively produce low range fabrics and thus not enter into direct competition with Community textile producers in the high range fabrics sector solely on the ground that the fact that the company would produce only low range fabrics was one of the conditions for authorization of the aid by the Commission. According to the appellants, who refer to a letter the Commission sent to them on 17 January 1997, the decision contained no such condition. The Court of First Instance thus misinterpreted the decision and thereby infringed Community law.

15 In that connection, it should be observed that the Court of First Instance noted in paragraph 95 of the judgment appealed against, that the decision stated that Hua-

lon's '[p]roduction will be specifically oriented to the lower segment of the textile market (high volume/low value added fabrics of up to 200 gm/m density)' (21st paragraph of the notice). It is also clear from paragraphs 15 and 16 of the judgment that this was a determining factor in the Commission's authorization to grant the aid in issue. Thus the Court of First Instance rightly found, in paragraph 126 of the judgment appealed against, that the decision authorized the grant of aid for the setting up of a factory for the production of low range fabrics.

16 Contrary to the appellants' assertion, paragraph 128 of the judgment appealed against does not call into question the scope of the decision as defined in paragraph 126. Since the fact that Hualon's production would concentrate on the market for low range fabrics was a determining factor in the Commission's authorization to grant the aid in issue, the Court of First instance could validly characterize the case as 'a decision authorizing the grant of aid' ... 'one of the conditions' of which was not complied with by the recipient undertaking. In that case, as in the case of Hualon's production not corresponding to that taken into account in the grounds of the decision, it would, as stated in paragraph 128 of the judgment appealed against, be for the Member State to make sure that the decision was properly carried out and for the Commission to assess whether it was appropriate to demand that the aid be repaid.

17 It follows that the Court of First Instance interpreted the scope of the decision correctly. The first plea must therefore be dismissed as clearly unfounded.

Inadequate statement of reasons

18 In their second plea the appellants claim that the Court of First Instance did not give sufficient reasons for rejecting their complaint that the Commission did not consider the question whether air-jet and water-jet looms were suitable for the manufacture of both low range and high range products.

19 The appellants point out that they had argued before the Court of First Instance, citing several examples, that there was a widespread practice of manufacturing high range products on jet looms, as the choice of equipment depended essentially on an undertaking's policy. Hualon was thus in a position to switch at any time to the production of high range fabrics and thereby enter into direct competition with Community producers in this sub-sector. The appellants drew the conclusion that it was not proven that Hualon's future production would not affect the production capacity of Community textile producers as the Commission maintained in its decision.

20 On that point, the Court of First Instance found, in paragraph 148 of the judgment appealed against, that the appellants arguments had not invalidated 'the defendant's proposition that it is more viable to produce low range fabrics on jet looms rather than on rapier or projectile looms' or weaken the considerations relating to 'the tendency for Community producers to abandon the low range market'.

21 The Court of First Instance found, in paragraph 149 of the judgment appealed against, that the appellants had merely asserted 'that there is no clear correlation between the type of loom used and the type of fabric manufactured, without adducing any evidence of this', without contradicting the conclusions of the report by Kurt Salmon Associates which, however, confirm the Commission's analysis to the effect that it is less viable to produce high range fabrics on water-jet or air-jet looms.

22 The Court of First Instance concluded, in paragraph 150 of the judgment appealed against, that 'the applicants have not proved that the defendant made a manifestly erroneous assessment of the facts in finding that low range products manufactured on rapier looms cannot compete with products imported from third countries which are manufactured on air-jet or water-jet looms, owing to the characteristics of those types of loom, and in using that finding as the basis for analysing the expected development of competitive conditions'.

23 It follows that, contrary to what is claimed by the appellants, the Court of First Instance did address the complaint relating to the possibility of producing high range fabrics on jet looms and the consequent possibility that Hualon may compete with Community textile producers in this sub-sector, and therefore did give reasons for its conclusion that the appellants had not proved that there had been a manifest error of assessment which vitiated the Commission's case.

24 The substance of those reasons is based on questions of fact which are not subject to review by this Court, since, as pointed out in paragraph 13 of this order, the Court of First Instance alone has jurisdiction, first, to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents before it and, second, to assess those facts.

25 Moreover, as this Court has repeatedly held, provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it (see, in particular, the order in *San Marco* v *Commission*, cited above, paragraph 40). That assessment does not, therefore, constitute, save where the clear sense of that evidence has been distorted, a point of law which is subject, as such, to review by the Court of Justice (Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42).

26 The second plea must, therefore, be rejected as clearly unfounded to the extent that it relates to the very existence of reasons, and clearly inadmissible to the extent that it relates to the substance of the reasons.

27 It follows that the appeal must be dismissed in its entirety.

Costs

28 Under Article 69(2) of the Rules of Procedure, applicable to the appeals procedure by virtue of Article 118, 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 appellants have been unsuccessful, they must be ordered to pay the costs of the appeal.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellants to pay the costs.

Luxembourg, 6 October 1997.

R. Grass

Registrar

L. Sevón

President of the First Chamber