JUDGMENT OF THE COURT OF FIRST INSTANCE (Sixth Chamber)

29 January 2008 *

In Case T-206/07,

Foshan Shunde Yongjian Housewares & Hardware Co. Ltd, established in Foshan (China), represented by J.-F. Bellis, lawyer, and G. Vallera, Barrister,

applicant,

v

Council of the European Union, represented by J.-P. Hix, acting as Agent, assisted initially by B. O'Connor, Solicitor, and P. Vergano, lawyer, and subsequently by B. O'Connor and E. McGovern, Barrister,

defendant,

supported by

Commission of the European Communities, represented by H. van Vliet and K. Talabér-Ricz, acting as Agents,

* Language of the case: French.

by

Vale Mill (Rochdale) Ltd, established in Rochdale (United Kingdom),

Pirola SpA, established in Mapello (Italy),

and

Colombo New Scal SpA, established in Rovagnate (Italy),

represented by G. Berrisch and G. Wolf, lawyers,

and by

Italian Republic, represented by I. Braguglia, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

interveners,

ACTION for annulment of Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12), inasmuch as it imposes an anti-dumping duty on imports of ironing boards produced by the applicant,

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

composed of M. Jaeger, acting President, A.W.H. Meij (Rapporteur) and V. Vadapalas, Judges,

Registrar: K. Pocheć, Administrator,

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

gives the following

Judgment

Legal context

1 The second indent of the first subparagraph of Article 2(7)(c) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) as amended ('the basic regulation'), provides that a claim for market economy treatment (MET) must contain sufficient evidence that the producer has 'one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes'.

2 The second subparagraph of Article 2(7)(c) of the basic regulation provides:

'A determination whether the producer meets the abovementioned criteria shall be made within three months of the initiation of the investigation, after specific consultation of the Advisory Committee and after the Community industry has been given an opportunity to comment. This determination shall remain in force throughout the investigation.'

3 Moreover, Article 20(4) and (5) of the basic regulation provides:

'4. Final disclosure shall be given in writing. It shall be made … as soon as possible and, normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Article 9. … Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.'

Background to the case

4 Foshan Shunde Yongjian Housewares & Hardware Co. Ltd ('the applicant') is a company established in Foshan (China), which manufactures and exports ironing boards inter alia to the European Union.

5 On 4 February 2006 the Commission published a notice of initiation of an anti-dumping proceeding concerning imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2006 C 29, p. 2).

6 On 23 February 2006 the applicant submitted a claim for MET under Article 2(7)(b) of the basic regulation. On 3 April 2006 the applicant sent the Commission its answers to the anti-dumping questionnaire.

7 Investigations for the purposes of establishing whether the applicant could be granted MET and determining the normal value of the products in question on the Chinese market were carried out by the Commission from 20 to 23 June 2006 at the applicant's registered office and on 26 June 2006 at the registered office of a company linked to the applicant established in Hong Kong.

8 By letter of 11 August 2006 the Commission informed the applicant that it did not consider that it met the criterion laid down in the second indent of the first sub-paragraph of Article 2(7)(c) of the basic regulation and that it could not therefore be granted MET. In the Commission's view, the applicant's accounting records and the audit reports were not in line with International Accounting Standards ('IAS').

9 The applicant submitted its observations in reply on 1 September 2006. By letter of 15 September 2006 the Commission responded to the observations made by the applicant and informed the latter of its decision not to grant it MET.

10 On 30 October 2006 the Commission adopted Regulation (EC) No 1620/2006 imposing a provisional anti-dumping duty on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2006 L 300, p. 13) ('the provisional regulation'). That regulation confirmed rejection of the applicant's claim for MET and imposed a provisional duty of 18.1% on imports of ironing boards manufactured by it.

11 On 1 December 2006 the applicant submitted observations on the provisional regulation. On 18 January 2007 it submitted further observations focusing solely on the MET determination issue.

12 On 19 January 2007 the applicant submitted oral observations during a hearing at the Commission's headquarters. Subsequently it sent official statistics to the Commission concerning Chinese monthly imports of steel products during 2004 and 2005.

13 By letter of 20 February 2007, the Commission sent the applicant a final general disclosure document and a specific disclosure document. In the first document the Commission stated its intention to grant the applicant MET. The Commission stated, on the one hand, that the flaws in the company's accounting practices noted at the provisional measures stage had no significant impact on the financial results entered in the accounts and, on the other hand, that the incompleteness of the accounts, first, did not raise any problem as regards information on export sales since the Commission had already approved those data when it was in a position to check their reliability and, second, was not decisive as regards domestic sales, since they were not sufficiently significant to be representative. The Commission therefore stated that, in those circumstances, the normal value should be established on

the basis of production costs and that the cost of steel was an essential element of these. In that regard, the Commission considered that the Chinese official statistics relating to steel imports submitted during the administrative procedure confirmed the reliability of the company's accounting data with regard to the cost of steel and thus enabled the normal value to be calculated on the basis of the value established in China.

14 By letter of 2 March 2007, the complainants who instigated the anti-dumping proceeding submitted their observations on the final general disclosure document of 20 February 2007. They maintained, on the one hand, that the applicant did not meet the criterion set out in the second indent of the first subparagraph of Article 2(7)(c) of the basic regulation and, on the other hand, that in any event the last sentence of Article 2(7)(c) of the basic regulation precluded the institutions from amending the MET during the proceeding.

15 On 6 March 2007 the Advisory Committee set up under Article 15 of the basic regulation ('the Advisory Committee') examined the working document that had been submitted to it by the Commission on 20 February 2007. A number of the members of the Advisory Committee protested the granting of MET to the applicant.

16 By fax of 23 March 2007 the Commission sent the applicant the revised final general disclosure document and the revised specific disclosure document, in which it announced that it had reversed its position of 20 February 2007 with regard to granting the applicant MET. The Commission considered, inter alia, that the applicant's practice of offsetting and grouping sales transactions together in its accounts on a summary basis, contrary to the accrual basis, constituted an infringement of the IAS, which was incompatible with the requirements laid down in Article 2(7)(c) of the basic regulation.

17 On 23 March 2007 the Commission also sent the members of the Advisory Committee the revised final working document for consultation. That document was approved by the Advisory Committee on 27 March 2007 upon conclusion of a written procedure.

18 The time-limit set for the applicant to submit its observations on the revised final general disclosure document and the revised specific disclosure document was 29 March 2007. By letter of 29 March 2007, the Commission extended that time-limit to 2 April 2007, at the applicant's request, and told the applicant that it had granted it access to the non-confidential file with effect from 27 March 2007, adding that no new information had been added to that file during the preceding two weeks.

19 On 29 March 2007 the Commission submitted to the Council the proposal for definitive measures based on the revised final general disclosure document. The statement of reasons at the beginning of that proposal mentioned that the Member States had been consulted within the Advisory Committee at the meeting held on 6 March 2007.

20 On 2 April 2007 the applicant submitted its observations on the documents sent on 23 March 2007 containing the Commission's revised assessment. In that context the applicant challenged the Commission's finding that it did not meet the conditions for MET and requested it not to accept the complainants' submission that the last sentence of Article 2(7)(c) of the basic regulation precluded the Commission from reversing its original decision not to recognise that status.

21 The Commission replied by letter of 4 April 2007, reaffirming its findings as regards non-fulfilment of the conditions required for MET. It pointed out, moreover, that the case-law concerning assessment of claims for MET did not permit a new assessment of old facts.

22 By letter of 5 April 2007 the applicant asked the Commission to propose to the Council definitive measures based on the final general disclosure document of 20 February 2007, since the MET determination was, in the applicant's view, based on an error of law.

23 On 23 April 2007 the Council adopted Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12) ('the contested regulation'). The contested regulation imposed a definitive anti-dumping duty of 18.1 % on imports of ironing boards manufactured by the applicant.

Procedure and forms of order sought

24 By application lodged at the Registry of the Court of First Instance on 12 June 2007, the applicant brought the present action.

25 By a separate document lodged on the same date, the applicant applied for the proceedings to be expedited pursuant to Article 76a(1) of the Rules of Procedure of the Court of First Instance.

26 On 10 July 2007, after receiving observations from the Council, the Second Chamber of the Court of First Instance decided to grant the application for an expedited procedure.

27 By way of measures of organisation of procedure under Article 64 of the Rules of Procedure, the applicant and the Council were requested to attend an informal meeting with the Judge-Rapporteur on 19 July 2007 in order to discuss the detailed arrangements for the expedited procedure.

28 By documents lodged at the Registry on 28 August, 5 September and 6 September 2007, respectively, first the Commission, then Vale Mill (Rochdale) Ltd, Pirola SpA and Colombo New Scal SpA ('the intervening companies') and, lastly, the Italian Republic sought leave to intervene in support of the forms of order sought by the Council.

29 The composition of the Chambers of the Court of First Instance changed and the Judge-Rapporteur was assigned, as President, to the Sixth Chamber, to which this case was accordingly assigned.

30 By three orders of 3 October 2007 the President of the Sixth Chamber of the Court of First Instance allowed the applications for intervention. Also, by way of measures of organisation of procedure under Article 64 of the Rules of Procedure, the interveners were requested to lodge their statements in intervention, which they did within the time-limits set.

31 By decision of 6 December 2007, the President of the Court of First Instance, Mr Jaeger, was appointed acting President of Chamber under the third paragraph of Article 8 and Article 32(3) of the Rules of Procedure, replacing Judge Tchipev, who was unable to sit in this case.

32 The applicant claims that the Court should:

— annul the contested regulation in so far as it imposes an anti-dumping duty on imports of ironing boards manufactured by the applicant;

— order the Council to pay the costs.

33 The Council, supported by the Commission and the intervening companies, contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

34 The Italian Republic contends that the Court should dismiss the action.

Law

35 The applicant puts forward two pleas, alleging, first, an error of law in the application of Article 2(7)(c) of the basic regulation and, second, infringement of the rights of the defence and of Article 20(5) of the basic regulation.

First plea: an error of law in the application of Article 2(7)(c) of the basic regulation

Arguments of the parties

36 The applicant claims that the only explanation supplied to justify the Commission's sudden change of position regarding the grant of MET is contained in the letter of 4 April 2007, in which the Commission stated that the case-law concerning consideration of claims for such status did not permit a new assessment of old facts. The applicant notes that the Commission did not explain in what way the findings contained in the general final disclosure document are unfounded and implies that the proposal for definitive measures submitted to the Council did not therefore state the reasons on which it was based, in breach of Article 253 EC.

37 The applicant points out that the question whether the institutions are entitled to alter the determination of the status of an undertaking for the purposes of Article 2(7)(c) of the basic regulation was covered in Case T-138/02 *Nanjing Metalink* v *Council* [2006] ECR II-4347. It states that, in that judgment, the Court held that the *ratio legis* of the last sentence of Article 2(7)(c) of the basic regulation was to preserve the objectivity of the MET determination and to ensure that the question would not be decided on the basis of its effect on the calculation of the dumping margin. It was thus argued that that provision prohibited the institutions from reassessing information which was already available to them at the time of the initial determination as to MET. The Court held, however, that the institutions could revoke MET if it appeared that, following changes in the factual situation or the discovery of new evidence, the company concerned did not fulfil the criteria for recognition of such status.

38 The applicant maintains that the rule whereby the last sentence of Article 2(7)(c) of the basic regulation precludes the institutions from reassessing information which was already available to them at the time of the initial MET determination requires a preliminary decision on that issue to have been adopted before the determination of the normal value. In the applicant's view, that rule would otherwise be meaningless. In the present case, the Commission carried out at one and the same time an examination as to whether the applicant should be granted MET and also determination of the normal value.

39 In those circumstances, according to the applicant, there are no grounds for dealing differently with the question of the applicant's status under Article 2(7)(c) of the basic regulation and the other aspects of the provisional determination of the dumping margin that might be reviewed during the investigation. The Commission's interpretation of that provision also conflicts with the principle of sound administration in that it requires the Council and the Commission to impose definitive duties on an incorrect basis. Since the Commission reached the conclusion that the initial determination of the applicant's status was unjustified for the reasons contained in the final general disclosure document of 20 February 2007, it had not only the right but also the obligation to correct the determination of that status.

40 Consequently, the proposal for definitive measures is based on an infringement of Article 2(7)(c) of the basic regulation. That infringement also invalidates the contested regulation.

41 The Council and the parties granted leave to intervene in support of the forms of order sought by it dispute the merits of this plea.

Findings of the Court

42 First, it is appropriate to ascertain whether the Commission reversed its proposal contained in the final disclosure document of 20 February 2007 on the ground that it was not permitted to reassess old facts.

43 In that regard, it should be pointed out first of all that, in recitals 12 to 14 in the preamble to the contested regulation, the Council stated:

'(12) Following the imposition of provisional measures, one Chinese cooperating exporting producer claimed that it should have been granted MET. The company reiterated that the accounting practices set out in recital 25 of the provisional Regulation, which led to the rejection of MET of five Chinese exporting producers (three were rejected only for this reason), were not sufficiently material to affect the reliability of the accounts, which were in fact complete, and do not impact on the determination of the dumping margin.

(13) In this respect, it is noted that the aforesaid accounting practices used by the company were found during the on-the-spot verification visit to be in clear breach of the International Accounting Standards (IAS), namely IAS No 1, and could not be considered immaterial. No new evidence which could alter the findings set out in recital 25 of the provisional regulation was submitted.

(14) In the absence of any other relevant and substantiated comment, recitals 15 to 28 of the provisional regulation are hereby confirmed.'

44 It follows from the foregoing that in the contested regulation the reason for the refusal to alter the MET determination made in the provisional regulation was not the prohibition on the reassessment of old facts contained in the last sentence of Article 2(7)(c) of the basic regulation, but rather the fact that the applicant's accounts were not in line with the IAS and the absence of any new evidence likely to affect that finding. The refusal therefore arose from application of the substantive criteria of the second indent of the first subparagraph of Article 2(7)(c) of that regulation.

45 Nor is it clear from the revised final general disclosure document and the revised specific disclosure document that the reason for the Commission's refusal to grant the applicant MET was the prohibition on reassessment of old facts, since the Commission's arguments on that point related only to the fact that the applicant's accounting practices were not in line with the IAS.

46 The only document in which the Commission states that the case-law concerning the MET determination does not permit a reassessment of old facts is, as the applicant itself states, the Commission's letter of 4 April 2007. In that letter the Commission states in particular:

'Your client with its submission of 2 April 2007 continues to repeat the same arguments, already submitted before the Definitive Disclosure, on the accounting discrepancies and their compliance or not with IAS but as you are well aware jurisprudence in the assessment of MET claims does not allow a reassessment of old facts.'

47 As is clear from that letter, the Commission was referring to the case-law prohibiting the reassessment of old facts for the purposes of rejecting arguments which the applicant had put forward before the final disclosure document was sent. In reply to a question put by the Court during the hearing, the Commission stated, and was not contradicted by the applicant on this point, that the arguments to which that observation related were contained in the letter of 1 September 2006, sent by the applicant before the initial MET determination on 15 September 2006 and put into effect in the provisional regulation.

48 It should be noted, however, that in its letter of 4 April 2007, the Commission based its refusal to grant MET on the ground that, in breach of the IAS, the applicant's accounts disregarded the accrual basis of accounting, performed offsetting and grouped transactions together instead of representing them separately. The Commission pointed out in that regard that the auditors had not commented on those points. The Court of First Instance notes that the Commission also stated that the information on steel prices did not allow for a new assessment to be made of the shortcomings discovered in the applicant's accounts.

49 It is therefore clear from that letter as a whole that the Commission's observation that it was not permissible to reassess old facts is incidental, as the institution based its refusal to grant MET on an assessment of whether the applicant complied with the relevant substantive criteria.

50 It is clear therefore that the applicant's assertion that the Commission based its arguments in this case on a prohibition on the reassessment of old facts has no basis in fact. Since the first plea cannot be accepted on that ground, any discussion concerning the interpretation of the last sentence of Article 2(7)(c) of the basic regulation and of paragraph 44 of the judgment in *Nanjing Metalink* v *Council* is irrelevant.

51 Moreover, it should be pointed out that the applicant's calling in question at the hearing of the decision-making process leading up to the Commission's proposal and the assessment by the institutions of whether the company fulfilled the condition laid down in the second indent of the first subparagraph of Article 2(7)(c) of the basic regulation does not amount to putting forward a separate ground for annulment, since that ground would be new and hence inadmissible, as submitted by the Council and the parties granted leave to intervene in support of the forms of order sought by it. As the applicant confirmed at the hearing, those arguments are intended merely to complete the background to the first plea.

52 In addition, as regards the applicant's argument that the Commission did not explain in what way its findings in the final general disclosure document are unfounded, it should be pointed out that, under the obligation laid down in Article 253 EC, the final act must state the reasons on which it was based only as regards all the elements of fact and of law that are relevant for the purposes of the findings made in it. The purpose of the obligation to state reasons is not to explain the way in which the institution's position has evolved during the administrative procedure and is not therefore intended to justify any differences between the outcome reached in the final act in relation to a provisional position set out in the documents sent to interested parties during that procedure in order to enable them to submit their observations (see, to that effect, Case T-464/04 *Impala* v *Commission* [2006] ECR II-2289, paragraph 285). Nor, therefore, does that obligation require the institution to explain in what way a position envisaged at a particular stage in the administrative procedure may have been unfounded.

53 It should also be pointed out that the final disclosure document does not constitute an act adversely affecting a person concerned or conferring rights. As is clear from Article 20 of the basic regulation, the purpose of that document is disclosure, during the administrative procedure, of the essential facts and considerations on the basis of which the Commission intends to recommend the imposition of definitive measures, in order to inform all interested parties of the proposed guidelines and to obtain observations from them in that regard. As it is open to amendment in the light of the

observations received, the position set out by the Commission is, as the Council and the Commission contend, necessarily provisional, as is clear from the last sentence of Article 20(4) of the basic regulation.

54 Therefore, the fact that the statement of reasons of the contested regulation does not explain in what way the findings contained in the final general disclosure document of 20 February 2007 are unfounded and the fact, assuming it is established, that the Commission has provided no explanation in that regard, are not in themselves sufficient to render the contested regulation unlawful.

55 In the light of the foregoing, the first plea must be rejected.

Second plea: infringement of the rights of the defence and of Article 20(5) of the basic regulation

Arguments of the parties

56 The applicant states that it is clear from Article 20(4) and (5) of the basic regulation that the Commission must make final disclosure to interested parties of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures not less than 10 days before submission to the Council of the proposal for definitive measures, in order to enable the parties to submit observations within that minimum period and the Commission to take them into consideration.

57 The Commission submitted to the Council the proposal for definitive measures based on the revised final disclosure document barely six days after that document was sent to the applicant, without waiting until the ten-day time-limit laid down in Article 20(5) of the basic regulation had expired, and four days before the date set for the applicant to submit its observations.

58 The Council and the parties granted leave to intervene in support of the forms of order sought by it deny that the applicant's rights of defence have been infringed. After sending the applicant the revised general disclosure document, the Commission set it a time-limit of six days, subsequently extended to ten days, within which to submit its observations. The time-limit of ten days provided for in Article 20(5) of the basic regulation was therefore met. The Council contends, moreover, that the timetable for submitting the Commission proposal to the Council is a procedural matter which is not covered by the requirements of Article 20(5) of the basic regulation. The Commission was not therefore in breach of a procedural requirement.

59 Furthermore, the applicant did not show that its observations were not considered by the Commission. The Council states that the applicant was in a position to deal with questions relating to the shortcomings discovered in the accounts during verification visits, and it did so. It adds, with the support of the Italian Republic and the intervening companies, that the fact that the Commission proposal was submitted before the expiry of the time-limit set for receipt of the applicant's observations does not prove that those observations were not taken into consideration, since the Commission was in a position to alter its proposal before it was adopted by the Council if it considered that was necessary.

60 Lastly, the Council, supported by the Italian Republic and the intervening companies, considers that the applicant does not specify what arguments it could have put forward that were not considered by the Commission. The intervening companies state that, in its letter of 2 April 2007, the applicant merely repeats its earlier

arguments, to which the Commission had already replied. They therefore consider that the applicant did not show that sending the proposal to the Council before the time-limit set had expired had any impact on its capacity to defend itself.

61 The Commission adds that in any event the applicant had the opportunity to put its views on the question of the shortcomings in its accounts and to prove that it met the criterion contained in the second indent of the first subparagraph of Article 2(7)(c) of the basic regulation. Its observations were considered and dismissed in the Commission's letter of 15 September 2006, and that finding was subsequently confirmed in the provisional regulation and reiterated in the letter of 4 April 2007, and then further confirmed in the contested regulation.

62 According to the Commission and the intervening companies, it was not necessary to send the fax of 23 March 2007 informing the applicant that the Commission services intended to submit to the College of Commissioners a proposal different from that envisaged in the letter of 20 February 2007, since Article 20(4) *in fine* of the basic regulation does not lay down any requirement to inform the parties concerned unless the decision taken is based on different facts and considerations from those contained in the final disclosure document. The revised final general disclosure document and revised specific disclosure document did not contain any new facts or considerations.

Findings of the Court

63 The principle of respect for the rights of the defence is a fundamental principle of Community law, whereby the undertakings affected by an investigation preceding

the adoption of an anti-dumping regulation must be placed in such a position during the administrative procedure that they can effectively make known their views on the correctness and relevance of the facts and circumstances alleged (see Case T-35/01 *Shanghai Teraoka Electronic* v *Council* [2004] ECR II-3663, paragraphs 288 and 289, and case-law cited).

64 Those requirements are implemented through Article 20(4), which provides that final disclosure must be given in writing. Under that provision, where the decision finally adopted is based on different facts and considerations from those contained in the final disclosure document 'these shall be disclosed as soon as possible'. Article 20(5) of the basic regulation states that '[r]epresentations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter'.

65 In the present case the Council contends that submission of the proposal of definitive measures to the Council by the Commission before the expiry of the 10-day time-limit provided for in Article 20(5) of the basic regulation does not infringe that provision. In that regard, it should be noted that it is expressly stated in Article 20(4) of the basic regulation that the Commission is required to give final disclosure to interested parties not later than one month prior to the submission to the Council of any proposal for final action. Although Article 20(5) of the basic regulation does not state whether the Commission must wait for the expiry of the 10-day time-limit before submitting its proposal to the Council, that provision, which comes immediately after paragraph 4, cannot be interpreted in a way that is inconsistent with the latter. Clearly, therefore, submission by the Commission of its proposal to the Council cannot take place before expiry of the 10-day time-limit provided for in that provision (see, to that effect, Case T-147/97 *Champion Stationery and Others* v *Council* [1998] ECR II-4137, paragraphs 81 to 83).

66 That is necessary also in order to ensure that any representations made by interested parties are actually taken into account by the Commission before submission of the proposal to the Council. In that regard, the Council's argument that the Commission may take those representations into account by subsequently amending its proposal to the Council cannot be accepted. It should be pointed out that Article 250(2) EC gives the Commission the power to amend its proposal to the Council in order to facilitate, in a manner consistent with the Community's interest, which it defines, a convergence of views within the institution or, where appropriate, between the various institutions involved in the decision-making process (see, to that effect, Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 36). Hence, exercice of that power is inappropriate for taking adequate consideration of representations by the parties.

67 It should be noted, moreover, that the representations by the interested parties are likely to have significant consequences for the content of the final act. The very fact that a proposal for definitive measures has already been submitted to the Council is in itself likely to influence the conclusions that may be drawn from those representations. Thus it cannot be ruled out that the fact that the Commission may submit its proposal to the Council even before it has received representations from interested parties may have an adverse effect on whether they can effectively be taken into account.

68 In the present case, it must be stated first of all that, contrary to what the intervening companies and the Commission contend, the latter was required to inform the parties concerned that it had adopted a new position, as set out in the revised final general disclosure document and the revised specific disclosure document of 23 March 2007, since they contained a new or different consideration within the meaning of Article 20(4) of the basic regulation, namely that the information on the price of steel imports did not alter the inferences to be drawn for MET purposes from the applicant's failure to comply with the IAS.

69 It should be noted in that regard that, since it makes express reference to 'different facts and considerations', Article 20(4) of the basic regulation does not support the view put forward by the Commission at the hearing that mere alteration of the assessment of factual information that remains unchanged does not require any communication to the interested parties. Where an assessment of the relevant factual information is envisaged for the first time, it must be sent to the interested parties so that they can submit their observations in that regard.

70 The Court also observes that it is common ground that the revised final general disclosure document and the revised specific disclosure document were sent to the applicant on 23 March 2007, whilst the proposal for definitive measures was submitted to the Council on 29 March 2007, six days later. It is clear therefore that the Commission did not comply with the requirements of Article 20(5) of the basic regulation.

71 However, failure to comply with the 10-day time-limit provided for in Article 20(5) of the basic regulation can result in annulment of the contested regulation only where there is a possibility that, due to that irregularity, the administrative procedure could have resulted in a different outcome actually affecting the applicant's rights of defence (see, to that effect, Case 30/78 *Distillers Company* v *Commission* [1980] ECR 2229, paragraph 26, and *Shanghai Teraoka Electronic* v *Council*, paragraph 331).

72 In that regard, so far as the question of MET determination is concerned, the case file does not show that the revised final general disclosure document and the revised specific disclosure document sent on 23 March 2007 contained new factual information that had not yet been brought to the attention of the applicant. In those documents, the Commission merely informed the applicant of its intention to reverse its earlier position and thus maintain the decision initially adopted on 15 September 2006 and implemented in the provisional regulation.

73 As the Commission contends, the applicant was placed in a position to submit its observations on the initial MET determination (see paragraphs 9 to 12 above). The applicant's observations, which supplied inter alia information on the price of steel imports, even led the Commission to contemplate reversing its initial MET determination. It is clear therefore that the applicant had already had the opportunity, at an earlier stage in the administrative procedure, to give its view on the position set out again in the revised final general disclosure document and the revised specific disclosure document of 23 March 2007.

74 Moreover, as the Council states, the applicant does not specify what arguments not already considered by the Commission it could have put forward had the procedural irregularity raised not occurred. In that regard, it must be concluded that, apart from the arguments concerning alleged application of the last sentence of Article 2(7)(c) of the basic regulation, it is not apparent from the letter of 2 April 2007 that the applicant put forward any new arguments in response to the Commission's new position. The applicant's observations focused on the significance to be attached to the accounting shortcomings discovered and the inferences to be drawn from the information on the price of steel imports, which are issues on which it had already made its view fully known.

75 The observations made in that same letter concerning application of the last sentence of Article 2(7)(c) of the basic regulation and the judgment in *Nanjing Metalink* v *Council* did not, in any event, influence the content of the contested regulation since, as was found in the context of the first plea, the refusal to grant MET was based on application of the substantive criteria contained in the second indent of the first subparagraph of Article 2(7)(c) of the basic regulation (see paragraphs 48 and 49 above).

76 The Court accordingly finds that the infringement of Article 20(5) of the basic regulation did not affect the content of the contested regulation and hence the applicant's rights of defence. That irregularity cannot therefore result in unlawfulness and annulment of the contested regulation. The second plea must therefore be rejected.

77 The present action in its entirety should therefore be dismissed as unfounded.

Costs

78 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. Under Article 87(4) of those rules, the Member States and institutions which intervened in the proceedings are to bear their own costs.

79 Since the Council and the intervening companies have applied for costs and the applicant has been unsuccessful, the applicant must be ordered to bear its own costs and to pay those incurred by the Council and the intervening companies. The Commission and the Italian Republic shall bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Sixth Chamber)

Hereby:

1. **Dismisses the action;**

2. **Orders Foshan Shunde Yongjian Housewares & Hardware Co. Ltd to bear its own costs and to pay the costs incurred by the Council, Vale Mill (Rochdale) Ltd, Pirola SpA and Colombo New Scal SpA;**

3. **Orders the Commission and the Italian Republic to bear their own costs.**

Jaeger Meij Vadapalas

Delivered in open court in Luxembourg on 29 January 2008.

E. Coulon M. Jaeger

Registrar Acting President