JUDGMENT OF THE COURT (Fifth Chamber)
7 May 1998 *

In Case C-401/96 P,

Somaco SARL, having its registered office in Fort-de-France (France), represented by Jean-Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 18 September 1996 in Case T-387/94 *Asia Motor France* v *Commission* [1996] ECR II-961, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Berend Jan Drijber, of its Legal Service, acting as Agent, assisted by Hervé Lehman, of the Paris Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

* Language of the case: French.

THE COURT (Fifth Chamber),

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

Advocate General: G. Tesauro,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 December 1997,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 19 December 1996, Somaco SARL (hereinafter 'Somaco') brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 18 September 1996 in Case T-387/94 *Asia Motor France* v *Commission* [1996] ECR II-961 (hereinafter 'the judgment under appeal'), by which it, first, refused to annul the decision of the Commission of 13 October 1994 (hereinafter 'the contested decision') rejecting a complaint made by Somaco on 5 June 1990 and, second, dismissed as inadmissible its claim for damages.

Facts and procedure before the Court of First Instance

2 According to the judgment under appeal, Asia Motor France and three other undertakings which import and market in metropolitan France vehicles of Japanese

makes cleared for free circulation in other Member States of the Community, believing themselves to be the victims of an unlawful agreement between five importers of Japanese cars into France (namely Sidat Toyota France, Mazda France Motors, Honda France, Mitsubishi Sonauto and Richard Nissan SA), lodged complaints with the Commission on 18 November 1985 and 29 November 1988 alleging *inter alia* that Article 85 of the EEC Treaty had been infringed.

3 Those undertakings maintained in essence that the five abovementioned importers had given the French administration an undertaking not to sell on the French domestic market any cars in excess of a number equal to 3% of the motor vehicles registered in the whole of France during the preceding calendar year. It was also alleged that those importers had agreed to divide that quota amongst themselves in accordance with pre-established rules, thereby excluding any other undertaking wishing to distribute in France vehicles of Japanese origin of makes other than the makes distributed by the parties to the alleged agreement.

4 Following those complaints, the Commission, by letter dated 9 June 1989, asked the importers in question for information. By letter dated 20 July 1989 the General Directorate for Industry of the French Ministry for Industry and Regional Development instructed the said importers not to reply to one of the Commission's questions asking them 'to provide information concerning the policy pursued by the French public authorities with regard to the importation of Japanese vehicles' since 'it [was] not for [them] to reply to the Commission in the place of those authorities'.

5 It was in those circumstances that the Commission's departments sought information from the French authorities. On 28 November 1989 the French authorities responded to that request for information by stating, in essence, that those undertakings had no autonomy in operating the regulatory system.

6 After the four applicants had brought, on 20 March 1990, an action for failure to act and for damages, the Commission notified them by letter dated 8 May 1990, in accordance with Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47), that it did not envisage taking any action on their complaints, and invited them to submit any observations in that regard. On 29 June 1990 the parties submitted their observations to the Commission, in which they reasserted that their complaints were well founded.

7 In the meantime, on 5 June 1990, Somaco lodged a similar complaint with the Commission, based on Article 85 of the Treaty, about, in particular, the practices of the CCIE, SIGAM, SAVA, SIDA and Auto GM companies, all based at Lamentin (Martinique), which are dealers for Toyota, Nissan, Mazda, Honda and Mitsubishi, respectively, and importers of those makes in Martinique.

8 By letter dated 9 August 1990, in which it referred to its letter of 8 May 1990 to the other four complainants, the Commission informed Somaco that it did not envisage taking any action on its complaint and asked it to submit its observations pursuant to Article 6 of Regulation No 99/63. By letter dated 28 September 1990, Somaco reasserted that its complaint was well founded.

9 By letter dated 5 December 1991, the Commission notified to the five undertakings in question (hereinafter 'the complainants') a decision rejecting their complaints. The complaints were rejected on two grounds. According to the first ground, the conduct of the five importers against which the complaints were made constituted an integral part of the policy followed by the French public authorities with regard to imports of Japanese cars into France. Under that policy, the public authorities not only set the total quantities of vehicles allowed into France each year, but also determined the rules for the allocation of those quantities. According to the second ground, there was no connection between the interest of the complainants and the alleged infringement in that any application of Article 85 would be unlikely to remedy the situation by which the complainants considered themselves to have been wronged.

10 The decision of the Commission of 5 December 1991 was the subject of an application for annulment lodged with the Registry of the Court of First Instance on 4 February 1992. By judgment of 29 June 1993 in Case T-7/92 *Asia Motor France and Others* v *Commission* [1993] ECR II-669 (hereinafter '*Asia Motor France II*'), the Court annulled that decision in so far as it related to Article 85 of the Treaty. On analysing *inter alia* the minutes of an interministerial meeting of 19 October 1987 attended by the car dealers called into question in Martinique and the draft agreement annexed thereto, the Court found that the first ground for rejecting the complaints was based on an incorrect factual and legal assessment of the evidence submitted for the Commission's appraisal. It found that the second ground for rejecting the complaints was vitiated by an error of law.

11 Following that judgment, on 25 August 1993, the Commission again requested the French authorities and the Martinique dealers who were the subject of Somaco's complaint of 5 June 1990 to provide information.

12 On 10 January 1994 the Commission sent to the complainants a notification pursuant to Article 6 of Regulation No 99/63. It also provided them with a copy of the replies to the aforesaid requests for information and offered them an opportunity to examine the documentary evidence which had been submitted to it. By letter dated 9 March 1994, the complainants submitted their observations on that notification.

13 By letter of 13 October 1994, the Commission sent the contested decision to the complainants. In that decision the Commission first reiterated the wording of its decision of 5 December 1991. It went on to point out that, in *Asia Motor France II*, the Court of First Instance had called into question the conclusions it had reached chiefly on the basis of documents from the *département* of Martinique. The further requests for information sent to the French authorities and the importers in Martinique therefore related to those documents.

14 The Commission then pointed out that examination of the replies to the further requests for information confirmed that the French authorities had introduced in

1977 a State import scheme for vehicles from third countries. The Ministry for Industry had thus authorised five importers to act as exclusive representatives of the five makes Honda, Toyota, Mazda, Mitsubishi and Nissan, respectively, and each of them was as such notified each year by the Ministry of the maximum total number of vehicles of its make authorised for importation (limited in the case of metropolitan France to 3% of the market and in the case of the *département* of Martinique to 15%).

15 The Commission explained that it was against that background that a meeting was held in Martinique on 19 October 1987, resulting in minutes accompanied by a draft agreement, which were produced to the Court of First Instance in the course of the proceedings in *Asia Motor France II*. However, the Commission stated that in actual fact that meeting had been called by the Prefect and its sole purpose was the allied question of the arrangements for the 'restitution', as required by the administration, by CCIE — the local Toyota representative — of 487 vehicles sold since 1982 over and above the number of imports assigned to it. The Commission therefore found that, placed in their proper context, those documents did not alter the exclusively State nature of the import scheme and the arrangements relating thereto.

16 The Commission added that the same was true of the other documents mentioned in the judgment in *Asia Motor France II*, so that it had been sufficiently made out that the importers challenged, in particular those from Martinique, had no freedom of action in implementing the import scheme in question. In those circumstances, the Commission upheld its rejection of the complaints in so far as they sought a finding that there was an agreement within the meaning of Article 85 of the Treaty.

17 Those were the circumstances in which the complainants brought a further action for annulment and for damages before the Court of First Instance. In particular, they sought the annulment of the contested decision and an order requiring the Community to compensate them for the damage caused. They relied on two pleas, the first alleging manifest error of assessment and the second alleging failure to state grounds.

The judgment under appeal

18 As regards the plea alleging manifest error of assessment, the Court of First Instance decided, at paragraph 58, to consider separately the conduct impugned in the complaints relating to imports into metropolitan France and that impugned in the complaint relating to imports into Martinique.

19 On the question of the complaints against the importers in metropolitan France, the Court cited, at paragraph 60, the case-law on the question whether the conduct of an undertaking may escape the application of Article 85(1) of the Treaty on account of a lack of autonomy on its part. It pointed out, in particular, at paragraph 61, that where a binding regulatory provision capable of affecting the free play of competition within the common market and of affecting trade between Member States had no link with conduct on the part of undertakings of the kind referred to in Article 85(1) of the Treaty, mere compliance by undertakings with such a regulatory provision fell outside the scope of Article 85(1). In such a case, the margin of autonomy on the part of economic operators implied by Article 85(1) of the Treaty was absent.

20 The Court went on to find, at paragraph 62, that in their reply to the Commission's request for further information, the French authorities confirmed that they had decided in 1977 to take measures in order to limit sales of Japanese vehicles to 3% of the market in metropolitan France, and that, in that context, they had decided to divide up the amount of authorised imports among the five authorised importers then operating on the market having regard to their market shares at that time. The French authorities also stated that, in order to implement that policy, they informed each importer every year of the precise quantity of vehicles corresponding to its quota, while instructing it not to import vehicles in excess of those quantities.

21 Accordingly the Court examined, at paragraph 63, whether the contested decision supported the conclusion that the French authorities had imposed that import scheme on the undertakings mentioned in the complaints in such a way that they eliminated any margin of autonomy on the part of those undertakings. It concluded, at paragraph 64, first, that the French authorities themselves had confirmed that no provision of French law imposed on the importers of Japanese cars into metropolitan France the conduct with which issue was taken in the complaints. In the absence of any binding regulatory provision imposing the conduct at issue, the Court took the view, at paragraph 65, that the Commission was entitled to reject the complaints for want of autonomy on the part of the undertakings in question only if it appeared on the basis of objective, relevant and consistent evidence that that conduct was unilaterally imposed upon them by the national authorities through the exercise of irresistible pressure, such as the threat to adopt State measures likely to cause them to sustain substantial losses.

22 In that connection, the Court found, at paragraph 66, that the Commission had based the contested decision, in so far as it related to the complaints calling in question imports of Japanese cars into metropolitan France, on the same evidence used to support the conclusion reached in its earlier decision of 5 December 1991 that the economic operators in question had no autonomy or freedom of action. Accordingly, the evidence described by the Commission as 'new evidence' related only to the situation in Martinique. In addition, the replies given by the French authorities in response to the new request for information afforded no evidence capable of supporting or substantiating the statement that no reproach could be made against the importers in question, who merely applied measures resulting from decisions taken by the public authorities and did not have any freedom of action.

23 In those circumstances, the Court found, at paragraph 68, that no item in the case-file enabled it to be concluded that pressure had in fact been brought to bear on the importers and that the matter had not been checked with the French authorities or the importers in metropolitan France during the administrative procedure.

24 The Court therefore held, at paragraph 70, that, in the light of the findings made in the judgment in *Asia Motor France II*, the contested decision was not based, in the absence of new evidence relating to the import scheme applicable in metropolitan France, on objective, relevant and consistent evidence such as to show that the French authorities had unilaterally brought irresistible pressure to bear on the undertakings in question to adopt the conduct criticised in the complaints. Accordingly, it found, at paragraph 71, that the Commission had made a manifest error in assessing the facts, with the result that, at paragraph 72, it annulled the contested decision in so far as it rejected the complaints relating to metropolitan France.

25 Furthermore, as regards the complaint by Somaco of 5 June 1990 calling in question the dealers in Martinique, the Court pointed out, at paragraph 73, that, according to its complaint, Somaco had been incorporated in June 1988 with a view to importing into Martinique Japanese and Korean vehicles of the makes Daihatsu, Isuzu, Hyundai, Suzuki and Subaru. In its complaint, Somaco claimed that it was the victim of an unlawful agreement between the dealers in the Japanese makes Toyota, Honda, Mazda, Mitsubishi and Nissan, and that those same dealers 'share (the) market, which is fixed by the administration at 15% of registrations, to the detriment of the Somaco company, which is excluded from the market'. In support of its complaint, it had produced two documents, namely the minutes of an interministerial meeting held on 19 October 1987 and the draft agreement annexed to those minutes.

26 So far as concerned imports of Japanese vehicles into France, of which Martinique is a *département*, the Court observed, at paragraph 75, that the French authorities had explained in their reply of 11 November 1993 to the Commission's request for information of 25 August 1993 that only five importers representing the Toyota, Honda, Mitsubishi, Mazda and Nissan makes had been authorised in France. Moreover, the Court pointed out, at paragraph 76, that it was common ground that those authorised importers were the only ones empowered to issue certificates of conformity to the Martinique dealers, and that obtaining a certificate of conformity was a necessary condition in order to register an imported vehicle in Martinique.

27 The Court took the view, at paragraph 77, that this system — irrespective of whether it was imposed unilaterally by the French authorities or whether it was based on an agreement concluded between the five authorised importers and the French authorities — prevented companies wishing to import into France (metropolitan France and Martinique) Japanese cars other than those makes from having access to the market. Consequently and in any event, the fact that it was impossible for Somaco to market Daihatsu, Isuzu, Suzuki and Subaru cars in Martinique did not stem from any agreement between the Martinique dealers referred to in the complaint.

28 The Court went on to find, at paragraph 78, that, in the contested decision, the Commission had examined the issues raised in the complaint, even though it could have questioned Somaco's interest in having a finding made as to the alleged infringement. Thus, following the annulment of the decision of 5 December 1991, the Commission had begun a new inquiry and, after considering the replies to the further requests for information, it had rejected that complaint also on the ground that the dealers had no autonomy in implementing the import scheme in question.

29 In that connection, the Court pointed out, at paragraph 79, that, at paragraph 55 of its judgment in *Asia Motor France II*, it had held that that ground for rejecting the complaint was based on a manifest error in assessing the facts. It therefore decided to consider whether new evidence collected during the inquiry conducted following that judgment was capable of casting a new light on the documents to which, following an initial analysis, the Court had attached strong probative force in relation to the probable existence of a consensus.

30 The Court found, at paragraph 80, that no regulatory provision had imposed the conduct taken issue with in the complaint on the Japanese car dealers in Martinique, and stated, at paragraph 81, that it was necessary to consider whether it appeared, on the basis of objective, relevant and consistent evidence that the national authorities had unilaterally exerted irresistible pressure on the dealers in question to adopt the conduct which was the subject of the complaint.

31 The Court therefore examined, at paragraph 84, the documents described by the Commission as 'new evidence' and found that it appeared from the documents in the case-file, in particular from the letter of 19 August 1982 from the State Secretary of the Minister responsible for the Overseas Departments and Territories, that the aggregate quota of 15% of vehicles registered in Martinique had been imposed unilaterally on local importers by the French authorities, that the lack of autonomy on the part of the dealers was further corroborated by the fact that the limitation of imports of Japanese cars to 15% of the Martinique market deprived the dealers of 50% of their market and that it was undisputed that the market share of Japanese cars in Martinique was approaching 30% before the import scheme complained of was introduced.

32 Moreover, the Court found, at paragraph 85, that it appeared from the documents produced by the Commission that, during the same period, the public authorities had divided up the aggregate quota of 15% among the makes represented by the five dealers against which the complaint was made and that the fact that individual quotas were fixed for each dealer by the public authorities was further borne out by the letter of 3 September 1986 from the Nissan car dealer to the Prefect of Martinique, according to which that dealer complained that 'the quota allocated [to it] is much too small and does not enable [its] undertaking to develop normally, especially since it is constantly declining'.

33 The Court then found, at paragraph 86, that the watertight nature of the system put in place in this way by the public authorities was ensured by the fact that the five authorised importers of Japanese cars in metropolitan France, acting in compliance with instructions from the national authorities, had sent the dealer for 'their' makes in Martinique only the number of certificates of conformity which corresponded precisely with the quota fixed for the dealer in question. The Court pointed out, at paragraph 87, that, in view of the fact that only the authorised importers of the five Japanese makes were competent to issue certificates of conformity to the Martinique dealers, on the one hand, and that obtaining a certificate of conformity was a necessary condition for registering an imported vehicle in Martinique, on the other, the Martinique dealers were bound to accept the consequences of the arrangement put in place as between the authorised importers and the French authorities.

34 The Court therefore found, at paragraph 88, that the Commission's conclusion that the Martinique dealers against whom Somaco's complaint was brought 'had no autonomy in implementing the import scheme in question' was based, prima facie, on objective, relevant and consistent evidence.

35 The Court indicated, at paragraph 89, that it was necessary to consider whether the complainants had produced any 'conflicting' evidence capable of showing that the Japanese car dealers had a margin of autonomy with regard to the distribution of the overall quota fixed at 15% by the French authorities for imports of Japanese cars into Martinique.

36 On that point, the Court examined in the first place the minutes of the interministerial meeting of 19 October 1987 and the draft agreement annexed thereto. It pointed out, at paragraph 91, that the very wording used in those documents tended to suggest that the Japanese car dealers against whom the complaint was brought had concluded an agreement sharing out the 15% quota fixed by the French administration and that, on the basis of the wording of those documents, it had held in its judgment in *Asia Motor France II* that 'prima facie, those [documents] constitute serious evidence of genuinely independent action' on the part of the traders in question.

37 However, the Court observed, at paragraph 92, that, in the contested decision, the Commission had explained that, in the light of new evidence which was brought to its attention in the inquiry which it had carried out following delivery of the judgment in *Asia Motor France II*, if the minutes of the interministerial meeting of 19 October 1987 and the draft agreement annexed thereto were placed in their proper context, they did not alter the exclusively State nature of the import scheme.

38 The Court found, at paragraph 93, that, between 1982 and 1986, the Toyota dealer in Martinique had considerably exceeded the annual quota allocated to it by registering the excess vehicles under provisional number plates ('WW' plates). The Court also noted, at paragraph 94, that it also appeared from the documents in the case-file that, after finding abuses of the provisional registration system by the

Toyota dealer, the French authorities had decided at the latest in March 1987 to count the issue of provisional (WW) logbooks against the quota allocated to each make.

39 In those circumstances, the Court took the view, at paragraph 95, that the Commission had been reasonably entitled to conclude that the meeting of 19 October 1987 called by the Prefect of Martinique also constituted a manifestation by the public authority of its intention to enforce the import system which it had unilaterally imposed. Whilst the draft agreement admittedly referred to a 15% ceiling and to a formula for sharing out that 15%, that did not necessarily mean that the dealers had concluded an agreement caught by Article 85(1) of the Treaty. The documents produced during the new inquiry were capable of supporting the view that the dealers had considered it necessary to 'codify' the unwritten import policy unilaterally imposed by the public authorities since 1982, with a view to avoiding similar problems to those which had been experienced with the Toyota dealer in the future.

40 Accordingly, the Court considered, at paragraph 96, that the complainants had not established that there was a manifest error in assessing the facts on the part of the Commission. The Court also examined, at paragraph 97, certain other documents relied on by the complainants and concluded that none of them was capable of displacing the Commission's view that the Martinique dealers 'had no autonomy in implementing the import scheme in question'. The Court therefore concluded, at paragraph 100, that the plea alleging manifest error in assessing the facts was unfounded in so far as it related to the Commission's decision to reject Somaco's complaint of 5 June 1990.

41 Finally, as regards the claims for damages, the Court pointed out in particular, at paragraph 107, that it appeared from the case-law that, in order to be admissible, an application seeking compensation for damage caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers there is a causal

link between the conduct, the damage it claims to have suffered, and the nature and extent of that damage.

42 On that point the Court noted, at paragraph 109, that, in this case, the argument set out by the complainants in their application in support of their claims for damages read in its entirety as follows:

'The complainant undertakings draw a distinction between the damage imputable to the attitude of the undertakings party to the agreement and the French Government and the damage for which the Commission is directly responsible.

The total loss sustained by the undertakings to date as a result of the agreement may be quantified at:

Asia Motor France:	ECU 259 552 000
Mr Cesbron:	ECU 244 292 000
Monin Automobiles:	ECU 82 231 000
EAS:	ECU 76 177 000
Somaco:	ECU 2 153 500

The loss, together with interest recoverable in law, for which the Commission is responsible as a result of the delays and unlawful decisions taken, may be reasonably assessed at the usual interest applied to such sums by the Community (9.75%) between the decision on 5 December 1991 not to pursue the case and the date of the delivery of the judgment.'

43 The Court considered, at paragraph 110, that neither that argument put forward by the complainants nor the application considered as a whole enabled the wrongful conduct imputed to the Commission or the nature of the damage allegedly

sustained to be identified with the requisite degree of clarity and precision. Accordingly, at paragraph 111, the Court rejected the claims for damages as inadmissible.

The appeal

44 In its appeal, Somaco claims that the Court of Justice should:

(1) set aside the part of the judgment dismissing its claim for annulment and its claim for damages;

(2) pursuant to Article 54 of the EC Statute of the Court of Justice:

— annul the contested decision in so far as it rejects Somaco's complaint; and

— order the Commission, under Articles 178 and 215 of the EC Treaty, to make good the damage caused to Somaco by that institution, and, consequently, to fix the quantum of damages at the amount of interest calculated at the rate of 9.75% on the sums at which the main damage is evaluated since the decision of 5 December 1991 not to pursue the case up to the date of the judgment;

(3) order the Commission to pay the whole of the costs, both of these proceedings and of the proceedings which led to the judgment under appeal.

45 The Commission contends that the Court of Justice should dismiss the appeal and all the claims made by Somaco and order the latter to pay the costs. It also raises an objection of inadmissibility against Somaco's claim for annulment.

Findings of the Court of Justice

Admissibility

46 In its defence, the Commission argues that Somaco's claim for annulment is inadmissible in that it does not meet the conditions for admissibility laid down by the case-law of the Court of Justice.

47 It maintains, first, that this part of the appeal does not clearly set out the grounds relied on and merely refers to the pleas raised in the proceedings before the Court of First Instance. Secondly, it notes that the arguments put forward by Somaco tend to dispute the assessment of the facts made by the Court of First Instance. It points out *inter alia* that, according to Somaco's appeal, the Court of First Instance did not cite, in the grounds of the judgment under appeal, any circumstances amounting to irresistible pressure such as to justify different treatment of the conduct of undertakings on the Martinique market from that accorded to metropolitan undertakings. The Commission also considers that, in arguing that the Court of First Instance distorted the evidence put before it, Somaco is asking the Court of Justice to assess the evidence submitted at first instance.

48 It should be borne in mind that, according to the first paragraph of Article 51 of the EC Statute of the Court of Justice, appeals are limited to points of law and must lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant or infringement of Community law by the Court of First Instance (see, in particular, the order of 5 December 1997 in Case C-218/97 P *Council* v *Leite Mateus* [1997] ECR I-6945, paragraph 20). Moreover, under Article 112(1)(c) of the Rules of Procedure of the Court of Justice, an appeal must contain the pleas in law and legal arguments relied on.

49 According to consistent case-law, it follows from those provisions that an appeal must specify the alleged flaws in the judgment which the appellant seeks to have set aside and the legal arguments which specifically support that application. That requirement is not satisfied by an appeal which confines itself to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that court (see *inter alia* Case C-244/92 P *Kupka-Floridi* v *Economic and Social Committee* [1993] ECR I-2041, paragraphs 9 and 10; Case C-73/95 P *Viho* v *Commission* [1996] ECR I-5457, paragraphs 25 and 26, and Case C-59/96 P *Koelman* v *Commission* [1997] ECR I-4809, paragraph 52).

50 It should be noted, first, that the claim for annulment made by Somaco in this case is not confined to repeating the pleas in law and arguments previously submitted at first instance, but shows instead sufficiently clearly what criticisms are levelled at the judgment under appeal and the legal arguments advanced in support of the claim. As the Advocate General pointed out at paragraph 16 of his Opinion, the appeal allows two distinct grounds to be identified, even if they are not specifically put forward as such.

51 Thus, the first concerns the grounds of the judgment under appeal which are alleged to be contradictory or inadequate in that the Court of First Instance held, first, that no irresistible pressure was exerted on authorised importers in metropolitan France and, second, that the reasons stated for the contested decision were correct in that they identified such pressure on dealers in Martinique who were dependent on those same importers. The second alleges distortion of evidence by the Court of First Instance in finding that there was irresistible pressure on dealers in Martinique.

52 Accordingly, the Commission's first contention, to the effect that Somaco's appeal does not set out with a sufficient degree of clarity the grounds relied upon, cannot be upheld.

53 As regards the question whether the two grounds of appeal put forward by Somaco call into question findings of fact made by the Court of First Instance, it should be noted to begin with that the question whether the grounds of a judgment of the Court of First Instance are contradictory or inadequate is a question of law which is amenable, as such, to judicial review on appeal (see *inter alia* Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 29, and Case C-188/96 P *Commission* v *V* [1997] ECR I-6561, paragraph 24).

54 Finally, as regards the ground concerning distortion of evidence, it should be noted that, whilst it is for the Court of First Instance alone to assess the value which should be attached to the items of evidence produced to it (see, in particular, Case C-136/92 P *Commission* v *Brazzelli Lualdi* [1994] ECR I-1981, paragraph 66), the Court of Justice has none the less held that such a ground is admissible (see Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42, Case C-362/95 P *Blackspur DIY and Others* v *Council and Commission* [1997] ECR I-4775, paragraph 29, Case C-55/97 P *AIUFFASS and AKT* v *Commission* [1997] ECR I-5383, paragraph 25, and Case C-140/96 P *Dimitriadis* v *Court of Auditors* [1997] ECR I-5635, paragraph 35).

55 It follows from the foregoing that the objection of inadmissibility raised by the Commission must be rejected.

Substance

The claim for annulment

56 In its first ground of appeal, Somaco alleges that the Court of First Instance drew a distinction between the situation in metropolitan France and that in Martinique. The Court was not entitled to hold, on the one hand, that there was an agreement within the meaning of Article 85 of the Treaty between authorised importers relating to the territory of metropolitan France, while holding, on the other, that irresistible pressure was exerted by the State on the dealers in Martinique who were dependent on those importers. The Court did not refer in the grounds to any circumstances amounting to irresistible pressure such as to justify different treatment of the conduct of undertakings on the Martinique market from that accorded to the undertakings in metropolitan France on which they were dependent. If there was any pressure, it was exerted in relations between undertakings, that is to say, between the dealers and the metropolitan importers.

57 In that connection, it should be noted that, at paragraph 70 of the judgment under appeal, the Court of First Instance found that, as regards the complaints against the importers in metropolitan France, the contested decision was not based, in the absence of new evidence relating to the applicable import scheme other than that underlying the Commission's first decision rejecting the complaint, on objective, relevant and consistent evidence such as to show that the French authorities had unilaterally brought irresistible pressure to bear on the undertakings in question to adopt the conduct criticised in the complaints. It was in the light of the absence of evidence pointing to the existence of such pressure that the Court found, at paragraph 71, that the importers' conduct in complying with the wishes of the French administration had to be regarded as the exercise of a commercial choice, having regard to all the relevant risks and advantages, and, at paragraph 72, that the contested decision should be annulled.

58 On the other hand, as regards Somaco's complaint against the dealers in Martinique, the Court found, at paragraph 88, on the basis of the new evidence collected

during the inquiry conducted by the Commission following the annulment by the Court of its first decision, that the Commission's conclusion that the Martinique dealers had no autonomy in implementing the import scheme in question was based on objective, relevant and consistent evidence and, at paragraph 97, that no other document relied on by the complainants was capable of displacing that view.

59 Accordingly, the grounds of the judgment under appeal are neither contradictory nor inadequate. Contrary to Somaco's assertion, the Court did not establish the existence of an agreement prohibited by Article 85 between the authorised importers in metropolitan France, but merely found that the reason given by the Commission for rejecting the complaints, namely that the importers called in question did not have any autonomy or 'freedom of action', was not supported by sufficient evidence. The Court found that the evidence described by the Commission as 'new evidence' in relation to the documents produced before it in *Asia Motor France II* concerned only the situation in Martinique, and it was precisely consideration of that evidence which led the Court to reach a different conclusion regarding the situation in Martinique from that which it reached as regards metropolitan France, that is to say, that the dealers in Martinique had no autonomy in the implementation of the import scheme in question.

60 In those circumstances, the fact that the dealers in Martinique were dependent on authorised importers in metropolitan France, which the Court established at paragraph 87 of the judgment under appeal, is not such as to undermine the finding, made by the Court on the basis of the evidence put before it, that the import scheme applicable in Martinique was exclusively a State scheme.

61 The first ground of appeal must therefore be rejected.

62 In its second ground of appeal, Somaco argues that the Court of First Instance distorted the evidence which it had submitted, in particular the minutes of the meeting of 19 October 1987 and the draft agreement signed by the undertakings on the same day.

63 According to Somaco, the meeting of 19 October was not called solely to discuss the restitution by Toyota of sales in excess of its quota. Other matters were also discussed. On that point, Somaco quotes the terms used in the minutes, according to which, the dealers present decided, 'following a discussion between all the participants, to agree to a voluntary limitation, all makes taken together, to 15% of the total market and to abide imperatively by that voluntary limitation, if need be by monitoring it themselves ...'.

64 Somaco also states that it is clear from the minutes that the participants 'treat disputes between them as a matter for them personally' and that the intention to draw up a draft agreement between the dealers was recorded therein. That agreement was clear and unequivocal, stipulating that 'the signatories binding their dealerships ... agree' and that 'in the event of non-compliance with one of the aforementioned clauses by one or other of the parties, this agreement shall lapse'. Thus, the very wording of the minutes and the draft agreement does not bear out the interpretation of the Court that the sole purpose of the meeting was the restitution by Toyota of sales in excess of its quota.

65 In that connection, it should be noted that, in the judgment under appeal, the Court examined the two documents relied on by Somaco in order to establish whether it had produced any 'conflicting' evidence capable of showing that the Japanese car dealers had a margin of autonomy with regard to the distribution of the overall quota fixed at 15% by the French authorities for imports of Japanese cars into Martinique.

66 On that point, the Court noted that the very wording used in the minutes of the interministerial meeting of 19 October 1987 and the draft agreement annexed thereto tended to suggest that the dealers had concluded an agreement and it was precisely on the basis of the wording of those documents that the Court had held in its judgment in *Asia Motor France II* that, prima facie, there was serious evidence of genuinely independent action on the part of the traders in question.

67 However, the Court found, in the judgment under appeal, that the documents produced during the Commission's new inquiry were such as to throw light on the expressions used in the minutes and the draft agreement without confirming the existence of an agreement.

68 Accordingly, the Court did not distort the two documents relied on by Somaco. It expressly acknowledged that the terms used in the two documents pointed to the existence of an agreement, as argued in the complaint, but none the less held that those two documents, set in a wider context, could be explained otherwise and, in the light of the other evidence produced by the Commission, could not undermine the case for the existence of import quotas fixed by the administration with no active part played by the dealers.

69 It follows that the Court did not distort the meaning of the two documents relied on by Somaco and that the ground of appeal put forward in that respect must be rejected.

The claim for damages

70 As regards the claim for damages, Somaco argues that the Court of First Instance made a manifest error of law in finding that the application did not allow the conduct complained of to be identified or that such wrongful conduct could not be clearly and precisely identified. It maintains that those two statements are contradictory and, in any event, that it should be ascertained whether the Commission's conduct, which had been the subject of several sets of proceedings before the Court of First Instance, thus holding up progress on the case for 11 years, might constitute a wrongful act for which it is liable, requiring it to make good the damage quantified which clearly derives from the actual conduct complained of.

71 On that point, it should be noted that, according to consistent case-law, it is first and foremost for the party seeking to establish the Community's liability to adduce conclusive proof as to the existence or extent of the damage he alleges and to establish the causal link between that damage and the conduct complained of on the part of the Community institutions (see, in particular, Case 26/74 *Roquette Frères* v *Commission* [1976] ECR 677, paragraphs 22 and 23, and *Blackspur DIY and Others* v *Council and Commission*, cited above, paragraph 31).

72 The Court considered, at paragraph 110 of the judgment under appeal, that neither the argument put forward by the complainants nor the application considered as a whole enabled the wrongful conduct imputed to the Commission or the nature of the damage allegedly sustained to be identified with the requisite degree of clarity and precision.

73 The Court was therefore right to hold that the application did not meet the conditions laid down. It is clear from paragraph 109 of the judgment under appeal that the complainants' line of argument consisted merely in reproducing the figures purportedly showing 'the total loss sustained by the undertakings to date as a result of the agreement' and stating that 'the loss, together with interest recoverable in law, for which the Commission is responsible as a result of the delays and unlawful decisions taken, may be reasonably assessed at the usual interest applied to such sums by the Community (9.75%) between the decision of 5 December 1991 not to pursue the case and the date of the delivery of the judgment'. Somaco has thus neither explained the allegation of wrongful conduct imputed to the Commission nor documented the damage allegedly sustained.

74 This ground of appeal must therefore be rejected.

75 It follows from all the foregoing considerations that, as all the grounds relied upon by Somaco are unfounded, the appeal must be dismissed.

Costs

76 Under Article 69(2) of the Rules of Procedure, applicable to the appeal procedure by virtue of Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since Somaco has been unsuccessful in its appeal, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. Dismisses the appeal;

2. Orders Somaco SARL to pay the costs.

Gulmann Wathelet Edward

Jann Sevón

Delivered in open court in Luxembourg on 7 May 1998.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber