to the procedure laid down in Article 14 of Regulation No 802/68, the national customs authorities, applying the criteria laid down in that regulation, determine the origin of the imported products which may give rise to the application of anti-dumping duties.

2. In a field in which no particular provision in the Treaty nor any binding act adopted by the institutions imposes obligations on the Member States, a suggestion that the Member States should take action made by the Commission in a memorandum cannot create an obligation upon them to adopt specific measures. In such a context, the Member States' general obligation to facilitate the achievement of the Community's tasks laid down in Article 5 of the Treaty cannot be relied on.

ORDER OF THE COURT
30 September 1987 *

In Case 229/86

Brother Industries Limited, having its registered office in Nagoya, Japan,

Taiwan Brother Industries Limited, having its registered office in Kaohsiung, Taiwan, and

Brother International Europe Limited, having its registered office in Audenshaw, Manchester, United Kingdom,

represented by Clare Tritton, Barrister, and Taylor Garrett, Solicitor, London, with an address for service in Luxembourg at the Chambers of Ernest Arendt of Arendt & Harles, 4 avenue Marie-Thérèse,

applicants,

v

* Language of the Case: English.

Commission of the European Communities, represented by its Legal Adviser, John Temple Lang, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

supported by

Committee of European Typewriter Manufacturers (CETMA), having its registered office in Cologne, represented by Dr Dietrich Ehle, U. C. Feldmann, Dr Volker Schiller, Dr Peter C. Reszel and Burkhard Heim, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Elvinger and Hoss, 15 côte d'Eich,

intervener,

APPLICATION for a declaration that Commission Decision 86/193/EEC of 23 May 1986 terminating the anti-dumping proceeding concerning imports into the Community of electronic typewriters originating in Taiwan (Official Journal 1986, L 140, p. 52) and a memorandum dated 5 June 1986 addressed to all the Member States by the Director-General for External Relations of the Community are void,

THE COURT

composed of: Y. Galmot (President of Chamber), acting as President, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet and J. C. Moitinho de Almeida, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

ORDER

Facts

By an application lodged at the Court Registry on 21 August 1986, Brother Industries Limited, Taiwan Brother Industries Limited and Brother International Europe Limited brought an action for a declaration that Decision 86/193/EEC (Official Journal 1986, L 140, p. 52) by which the Commission terminated an anti-dumping proceeding concerning exports to the Community of electronic typewriters originating in Taiwan and a memorandum dated 5 June 1986 sent to all the Member States and signed on behalf of the Director-General for External Relations of the Commission of the European Communities are void.

In paragraphs (8) and (9) of the preamble to Decision 86/193 it is stated that the electronic typewriters subject to the anti-dumping proceeding cannot, on the basis of the results of the investigation, be regarded as originating in Taiwan within the meaning of Regulation (EEC) No 802/68 of the Council on the common definition of the concept of the origin of goods (Official Journal, English Special Edition 1968 (I) p. 165) and that consequently the proceeding should be terminated.

In paragraph (1) the memorandum states that the anti-dumping proceeding concerning imports of electronic typewriters originating in Taiwan was terminated on the basis of the fact that the imported products actually originated in Japan and in paragraph (3) (c) that there are reasons to assume that the imports from Taiwan were a deliberate attempt to evade the anti-dumping duties imposed on electronic typewriters originating in Japan. In paragraph (5) the memorandum suggests that the national authorities should investigate the case and take the necessary measures in accordance with their own customs legislation and after six months report to the Commission on the results of their investigations.

The applicants have challenged Decision 86/193 for lack of competence, infringement of essential procedural requirements and infringement of the Treaty and the memorandum of 5 June 1986 for lack of competence, infringement of an essential procedural requirement, infringement of the Treaty and misuse of powers.

By a document lodged at the Court Registry on 24 October 1986 the Commission raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure.

By an order made on 11 March 1987 the Court granted leave to the Committee of European Typewriter Manufacturers (Cetma) to intervene in support of the Commission's conclusions.

In its objection the Commission contends that the application is inadmissible since the conditions needed for a measure to be susceptible of legal challenge are not fulfilled in this case.

The Commission contends in particular that the decision and the memorandum do not alter the applicants' legal position. In the absence of provisions adopted by the Council or the Commission in accordance with the procedure laid down in Article 14 of Regulation No 802/68 and based on an

opinion of the Committee on Origin, only a formal demand by a national administration to pay anti-dumping duties would have binding legal effects on the applicants and be open to challenge by them before the national courts. The Commission's opinion as to the country of origin of goods merely confirms the existence of an obligation (to pay the anti-dumping duty) which the exporters already have, if that opinion is correct, but it does not create any new obligation for the applicants.

Cetma states that neither the reasoning of the decision nor the memorandum has any direct and concrete legal effects on the applicants since the definitive decision concerning the origin of goods will be taken by the national authorities. It is for the applicants to prove that the electronic typewriters from Taiwan are actually of Taiwanese origin in accordance with Article 5 of Regulation No 802/68, even if this appears difficult owing to the anti-circumvention provision in Article 6 of the same regulation.

In their observations on the objection of inadmissibility the applicants (hereinafter collectively referred to as 'Brother') submit that for the purposes of admissibility it is only necessary to prove that an act may alter a person's legal position, even if it is binding only on third parties. In the present case, the contested acts extinguished immunity from the obligation to pay anti-dumping duties which Brother had previously enjoyed and are therefore the cause of an adverse change in Brother's legal rights and obligations. It is not sufficient to maintain, as the Commission does, that the contested acts are not decisions but merely 'opinions on existing legal obligations'. In reality, the possibility that the national authorities might disregard the finding of origin made by the Commission in the contested acts was entirely theoretical given the role played by the Commission in dumping matters. The Commission's decision to terminate a dumping investigation on the ground that the country of origin is different from the declared country of origin affects Brother's legitimate interests in so far as, because of that finding, the anti-dumping duties attributable to a different country of origin become payable. Finally, the action taken by the national authorities following the issue of the memorandum of 5 June 1986 shows that the memorandum did generate legal effects of such a nature as to alter the applicants' position to their disadvantage.

Decision

According to Article 91 (3) of the Rules of Procedure, the remainder of the proceedings concerning a preliminary objection is to be oral unless the Court decides otherwise. In the present case, the Court considers that it has sufficient information and that it is not necessary to open the oral procedure.

The admissibility of this application depends on the question whether Commission Decision 86/193, on its own or in conjunction with the memorandum dated 5 June 1986 sent by the Commission to the Member States, could adversely affect the applicants' legal position.

It must be stated in this regard that, in so far as it brings to an end the anti-dumping proceeding opened with regard to products exported from Taiwan, Decision 86/193 cannot adversely affect the producer/exporter concerned.

The statement in the preamble to that decision to the effect that the proceeding was terminated because in view of the results of the investigation the electronic typewriters shipped from Taiwan could not be regarded as originating in that country cannot, any more than the aforesaid decision, produce legal effects, even indirect effects, *vis-à-vis* that producer/exporter. The national customs authorities who are required to establish the origin of imported goods for the purposes of applying anti-dumping duties if this is found necessary are in fact bound as to the conclusions which they must reach only where the origin of the goods was determined by the Commission on the basis of the criteria laid down in Regulation No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods and pursuant to the procedure laid down in Article 14 of that regulation. The finding which the Commission reaches in the course of an anti-dumping proceeding cannot therefore prejudge the conclusions of the national customs authorities who in such a case retain their power to assess independently the determining factors for establishing the origin of a product.

In those circumstances, the possibility that Decision 86/193 might adversely affect the legal position of the producer/exporter in so far as it is stated in the decision that the electronic typewriters shipped from Taiwan are not Taiwanese in origin must be excluded.

In view of the foregoing considerations, it also cannot be accepted that Decision 86/193, if considered in conjunction with the memorandum sent by the Commission to the Member States on 5 June 1986 and not in isolation, might adversely affect the producer/exporter concerned.

In that memorandum it was stated that the anti-dumping proceeding was terminated because it was considered that the products to which it related did not originate in Taiwan but in Japan and it was suggested that the authorities in the Member States should investigate the case and take the necessary measures in accordance with their own customs legislation.

Whilst drawing the attention of the Member States to the seriousness of the matter, the memorandum does not, however, ask the national authorities to make any specific decision on the origin of the products in question but merely asks them to reach a decision on the basis of their own national legislation. Indeed, the position could not be otherwise having regard to the fact that an obligation on the Member States to adopt specific measures cannot be created by a Commission memorandum in the absence of a particular provision in the Treaty or in binding acts adopted by the institutions. The Member States' general obligation to 'facilitate the achievement of the Community's tasks' laid down in Article 5 of the EEC Treaty cannot be relied on in this case because no common definition of the origin of the goods has been provided under Regulation No 802/78 and consequently the interests of the Community continue to be protected through independent assessments made by the national customs authorities for which the Commission's findings may be a source of guidance but have no binding force.

It follows that, even when considered in conjunction with the memorandum of 5 June 1986, Decision 86/193 does not constitute an act which may adversely affect the legal position of the producer/exporter concerned.

The application must therefore be declared inadmissible without there being any need to examine its admissibility in relation to each of the applicant companies.

In accordance with Article 69 (2) of the Rules of Procedure, the applicants must be ordered to pay the costs, including those of the intervener, Cetma, which has asked for them.

On those grounds,

THE COURT

hereby orders as follows:

(1) The application is dismissed as inadmissible;

(2) The applicants are ordered to pay the costs, including those of the intervener.

Luxembourg, 30 September 1987.

P. Heim
Registrar

Acting as President
Y. Galmot
President of Chamber