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

27 January 2000 *

In Case T-256/97,

Bureau Européen des Unions de Consommateurs (BEUC), an international association constituted under Belgian law, established in Brussels, represented by Bernard O'Connor, Solicitor, and Bonifacio García Porras, of the Bar of Salamanca, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Rue Marie-Adélaïde,

applicant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by Michelle Ewing, of the Treasury Solicitor's Department, acting as Agent, and David Anderson, of the Bar of England and Wales, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

* Language of the case: English.

Commission of the European Communities, represented by Viktor Kreuschitz, Legal Adviser, and Nicholas Khan, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission's decision of 18 July 1997 refusing to recognise the applicant as an interested party, within the meaning 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), for the purposes of the antidumping proceeding leading to the adoption of Commission Regulation (EC) No 773/98 of 7 April 1998 imposing a provisional antidumping duty on imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1998 L 111, p. 19),

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

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

Registrar: A. Mair,

having regard to the written procedure and further to the hearing on 23 March 1999,

gives the following

Judgment

Legislative context

1 Article 5(10) of Council Regulation 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, hereinafter 'the Basic Regulation') provides:

'The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(5).'

2 Article 6(6) of the Basic Regulation states:

'Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with Article 5(10), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.'

3 Under Article 6(7):

'The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with Article 5(10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and that it is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.'

4 Article 21(1) and (2) provides:

'1. A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organisations may, within the time-limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.'

5 The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (OJ 1994 L 336, p. 103, hereinafter 'the Antidumping Code') — appearing in Annex 1A to the Agreement establishing the World Trade Organisation (WTO), the successor to the GATT (OJ 1994 L 336, p. 3, hereinafter 'the WTO Agreement'), approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the

European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1) — provides, in Article 6.11 and 6.12:

'6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting Member; and

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organisations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.'

Facts

6 The Bureau Européen des Unions de Consommateurs (hereinafter 'BEUC') is an international association established under Belgian law which represents at Community level the national consumer organisations established in the Member States and other European countries.

7 On 11 July 1997, the Commission gave notice of the initiation of an antidumping proceeding (No 97/C 210/09) concerning importations of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1997 C 210, p. 12, hereinafter 'the initiation notice'), following a complaint lodged on 26 May 1997 pursuant to Article 5 of the Basic Regulation by the Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton).

8 In accordance with Article 5(10) of the Basic Regulation, the initiation notice prescribed the period within which interested parties might make themselves known, present their views in writing and submit information to be taken into account during the investigation. It also fixed the time within which interested parties could apply to be heard by the Commission pursuant to Article 6(5) of the Basic Regulation.

9 By letter sent to the Commission on 15 July 1997, BEUC asked to be recognised as an interested party and to be furnished with the copy of the complaint and the information made available by all other parties concerned in the investigation to the extent that these were not confidential in the sense contemplated by Article 6(7) and Article 19 of the Basic Regulation.

10 By letter of 18 July 1997 from Directorate E (Antidumping strategy; Injury and Community interest aspects; other instruments of external economic policy and

general questions) of the Directorate-General for External Relations: commercial policy, relations with North America, the Far East, Australia and New Zealand (DG I) (hereinafter 'the contested decision'), the Commission replied as follows:

'In line with the general position of the Commission, which is well known to BEUC, I would [...] point out that unbleached cotton fabrics cannot be considered as a product commonly sold at retail level, i.e. not a product for which BEUC would be considered as an interested party under Articles 5(10), 6(7) and 21 of... Regulation No 384/96...

Therefore I must inform you that we are unable to accommodate your requests for the transmission of the complaint and for access to the non-confidential files.'

11 In referring to its 'general position... which is well known to BEUC', the Commission was alluding to a previous exchange of correspondence, in particular to a decision contained in a letter of 3 February 1997 which was the subject of an action for annulment brought by the applicant (see the order of the Court of First Instance of 4 May 1998 in Case T-84/97 *BEUC* v *Commission* [1998] ECR II-795, paragraphs 53 to 55).

12 In that letter, which concerned an antidumping proceeding initiated on 21 February 1996, the Commission had refused to recognise BEUC as an interested party and to allow it access to non-confidential documents on two grounds. According to the Commission:

(i) BEUC could not be considered an interested party on the basis of the GATT Antidumping Code. In particular the Commission pointed out that in Article 6.12 of the Code 'it is clearly stated that representative consumer

organisations can have opportunities to provide information on dumping, injury and causality in cases where the product is commonly sold at the retail level. This is not the case in the present proceeding, because grey cotton fabrics are not normally sold at the retail level'; and

(ii) BEUC could not be considered an interested party on the basis of Regulation No 384/96. In particular, the Commission stated: 'Furthermore, you point out that the Community legislation allows for representative consumer organisations to participate in antidumping proceedings as described in Article 21(2) of Regulation... No 384/96... However, in this case, the like product is an intermediate semi-processed product which is not commonly sold at the retail level and consumers are not the users of this product.'

13 On 7 April 1998 the Commission adopted Regulation No 773/98 imposing a provisional antidumping duty on imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (OJ 1998 L 111, p. 19) (hereinafter 'the Provisional Regulation').

14 As provided by Article 4, the Provisional Regulation entered into force on 10 April 1998 and was to apply for a period of six months. Since no regulation imposing a definitive antidumping duty was adopted by the Council within the period of 15 months following the initiation of the investigation, as provided for in Article 6(9) of the Basic Regulation, the Provisional Regulation lapsed on 10 October 1998.

Procedure and forms of order sought

15 By application lodged at the Registry of the Court of First Instance on 19 September 1997, the applicant brought the present action.

16 By order of the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of 25 May 1998, the United Kingdom of Great Britain and Northern Ireland was given leave to intervene in the case in support of the applicant.

17 By separate document lodged at the Registry of the Court of First Instance on 4 November 1998, the Commission sought a ruling, pursuant to Article 114 of the Rules of Procedure of the Court of First Instance, that there was no need to adjudicate on the action.

18 The applicant lodged observations on that request on 20 November 1998. By letter of 19 November 1998 the United Kingdom indicated that it had no observation to make on that request.

19 By order of 1 February 1999 in Case T-256/97 *BEUC* v *Commission* [1999] ECR II-169, the Court of First Instance (Fifth Chamber, Extended Composition) refused that request and reserved the costs.

20 Upon hearing the report of the Judge Rapporteur, the Court of First Instance (Fifth Chamber, Extended Composition) decided to open the oral procedure without any preparatory inquiry.

21 The parties presented oral argument and replied to the Court's questions at the hearing on 23 March 1999.

22 BEUC claims that the Court should:

— declare the application admissible;

— declare the contested decision void in so far as it refuses to consider the applicant an interested party;

— declare the contested decision void in so far as it also refuses to allow the applicant and other consumer organisations to have access to the non-confidential information made available in antidumping proceedings dealing with products not commonly sold at retail level;

— make any additional orders which the Court considers necessary; and

— order the Commission to pay the costs.

23 The United Kingdom requests the Court to declare the contested decision void.

24 The Commission claims that the Court should:

— dismiss the application as inadmissible as regards the applicant's claim for the annulment of the contested decision in so far as it refuses the applicant and other consumer organisations access to the non-confidential information made available in antidumping proceedings dealing with products not commonly sold at retail level;

— dismiss the remainder of the application as unfounded; and

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

25 The Commission contends that BEUC's application for the annulment of the contested decision in so far as it refuses to allow the applicant and other consumer organisations to have access to the non-confidential information made available in antidumping proceedings dealing with products not commonly sold at retail level is inadmissible. It states that, under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the Court of First Instance has jurisdiction to review the legality of acts of the institutions but may not examine

the legality of situations which may only hypothetically arise. It also follows from the rules governing the *locus standi* of natural and legal persons that such a claim put forward by the applicant on behalf of other parties is inadmissible.

26 BEUC claims that the contested decision raises the question whether consumer organisations may, generally, be regarded as interested parties. The contested decision directly affects both its interests and those of other consumer organisations, not only in the context of the antidumping proceeding in question but also in the context of any proceeding concerning products which are not commonly sold at the retail level which might be initiated in the future. As the representative of the main consumer associations in all the Member States it has a special interest in the protection of their rights. It does not seek to claim relief on behalf of others but to draw the Court's attention to a situation which could materialise in the future and which could be avoided if the contested decision were annulled to the extent requested.

Findings of the Court

27 Under the main claim in the form of order sought (see the second indent of paragraph 22 above), the applicant seeks the annulment of the contested decision in so far as it refuses to consider the applicant an interested party within the meaning of Article 5(10) of the Basic Regulation.

28 The object of the second part of its claim for annulment (see the third indent of paragraph 22 above) is twofold.

29 First, the applicant seeks to have the decision annulled by the Court in so far as it refuses to allow the applicant itself to inspect non-confidential information made available in antidumping proceedings dealing with products not commonly sold at retail level.

30 Secondly, by means of a broader interpretation of the contested decision it also seeks to obtain from the Court a decision of wider import, aimed at requiring the Commission to alter its policy on the matter for the future, so that any consumer association could have access to non-confidential documents available in any antidumping proceeding dealing with products not commonly sold at retail level.

31 That second part of the claim for annulment must be dismissed as inadmissible.

32 In so far as it concerns the alleged refusal to allow the applicant itself to inspect non-confidential information, that part of the claim adds nothing to the main claim. The right of access to non-confidential information pursuant to Article 6(7) of the Basic Regulation is linked to the status of an interested party which has made itself known in accordance with Article 5(10) of that regulation.

33 As regards the second aspect of that part of the claim, it is settled case-law that the admissibility of an action for annulment must be assessed having regard to the applicant's interest in bringing proceedings at the time when the application was lodged. That interest cannot be assessed on the basis of a future, hypothetical event (Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 30). Moreover, the admissibility of an action for annulment brought by a natural or legal person is dependent upon the condition that the person concerned demonstrate a personal interest in the annulment of the contested

decision (see order in Case T-78/98 *Unione Provinciale degli Agricoltori di Firenze and Others* v *Commission* [1999] ECR II-1377, paragraph 30).

34 On the one hand, this second aspect of the form of order sought, in so far as it seeks a ruling from the Court of First Instance on the rights of consumer associations other than BEUC, involves the interest of unidentified third parties rather than the applicant's own interest in bringing proceedings. On the other hand, in so far as it seeks a ruling from the Court on rights in relation to antidumping proceedings that have not yet been commenced, it is based on future and hypothetical events.

35 Moreover, that second aspect of that part of the claim is, in any event, superfluous. It is settled case-law that the institution concerned is obliged to take the necessary measures, pursuant to Article 176 of the EC Treaty (now Article 233 EC), to comply with a judgment given in an action for annulment (Case T-43/92 *Dunlop Slazenger* v *Commission* [1994] ECR II-441, paragraph 18, and Case T-548/93 *Ladbroke Racing* v *Commission* [1995] ECR II-2565, paragraph 54).

36 It follows from the foregoing observations that the second part of the claim for annulment must be dismissed as inadmissible.

Substance

37 In support of its application BEUC raises a single plea in law, alleging breach of Articles 6(7) and 21 of the Basic Regulation. It claims that the Commission on the

one hand misinterpreted the relevant provisions of the Basic Regulation and, on the other hand, wrongly relied on the Antidumping Code.

Arguments of the parties

Interpretation of Articles 6(7) and 21 of the Basic Regulation

38 BEUC points out that the Commission refused to recognise it as an interested party in the antidumping proceeding in question on the sole ground that the proceeding concerned products not commonly sold at retail level.

39 The Commission's approach manifestly disregards the wording of the relevant provisions of the Basic Regulation and is therefore unlawful.

40 The provisions of the Basic Regulation, in particular Articles 6(7) and 21(1) and (2) are clear and precise. They are cumulative and not exclusive. As the 13th recital in the preamble to the Basic Regulation makes clear, the purpose of those provisions is to define the persons who must be regarded as interested parties in antidumping proceedings and to set out the conditions under which they may intervene/participate in the proceeding. Those provisions recognise consumer organisations as having the right to make themselves known, inspect all non-confidential information presented by other interested parties in an antidumping proceeding and to submit information, making no distinction in respect of the nature or type of product which is the subject-matter of the investigation.

41 BEUC emphasises the fact that the Court of Justice itself has recognised the importance of express recognition of a right by a Community measure of general scope. In its judgment in Case C-170/89 *BEUC* v *Commission* [1991] ECR I-5709, paragraph 30, it refused to uphold BEUC's application for access to a non-confidential file in an antidumping proceeding, on the ground that there was no express provision in the basic regulation applicable at the time (Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1, hereinafter 'Regulation No 2423/88')) granting such a right of access to consumer organisations. The Court of Justice did, however, state that it was for 'the Community legislature to consider whether the basic antidumping regulation should grant an association representing the interests of consumers the right to consult the non-confidential file.'

42 In adopting the Basic Regulation, the Community legislature changed the previous position in this regard and expressly acknowledged the right of consumer organisations to make themselves known and to participate in the proceeding. The legislature could have added a restriction to the right of consumer organisations, by confining their entitlement to participate in the proceedings 'to cases where the product is commonly sold at the retail level' for example. However, in so far as no such restriction was provided for in the Basic Regulation, consumer organisations have the right to make themselves known, to inspect all non-confidential information presented by other interested parties in an antidumping investigation and to submit information.

43 BEUC also claims that, contrary to the argument put forward by the Commision that the interests of consumers do not form part of the Community interest since BEUC is not in a position to provide information that is quantifiable and sufficiently in the Community interest as required by Article 21 of the Basic Regulation (see paragraph 52 below), consumers can have a substantial interest in participating in any proceeding concerning products not commonly sold at retail level.

44 The alleged unreliability of the information that consumer associations may provide is not, in any event, an impediment to their right to be considered interested parties. If the information or comments they submit in a given proceeding are neither relevant nor reliable the Commission can always disregard them.

45 The United Kingdom Government supports BEUC's interpretation of Articles 6(7) and 21 of the Basic Regulation. Since there is no ambiguity in the wording of Article 6(7) of the Basic Regulation, consumer associations which have made themselves known are entitled to the rights which are there set out. The fact that the rights are given both to users and to consumer associations demonstrates that the legislative intention was to accord the rights to the latter, even in circumstances where consumers are not the users of the product concerned. The same is true of the wording of Article 21, which also employs the terms 'users and consumers' in paragraph 1 and 'representative users and representative consumer organisations' in paragraph 2. That terminology makes it clear that the legislature envisaged situations in which consumers would not be users of the product concerned but would nevertheless have interests to defend.

46 It denies that the price of unbleached cotton fabrics can only interest the applicant '*in abstracto*' or that its interests relate only to 'other products'. Although the interest of consumers is admittedly indirect, in the sense that unbleached cotton fabric normally has to undergo further processes before being sold to the consumer, that interest is nevertheless entirely real and not abstract or philosophical as the Commission contends. The bearing of raw material costs on the price paid by the consumer is a recognised phenomenon, as the Commission has itself accepted in other contexts. The ultimate purpose of

antidumping duties is to protect not only the interests of Community industry but also those of consumers.

47 The Commission points out, first, that the range of interested parties, whether representative of Community industry, of exporters or of importers, is circumscribed by the scope of the proceeding. Accordingly, Article 4(1) of the Basic Regulation defines 'Community industry' as referring to 'the Community producers as a whole of the like products'. It does not therefore recognise as interested parties producers or importers of products other than the like product. Therefore, in refusing to recognise the applicant as representing consumers of unbleached cotton fabric it is treating it no differently from other categories of interested parties.

48 Consumer organisations are simply one of the categories enumerated in Article 6(7) of the Basic Regulation. Each of those categories is to be interpreted *ejusdem generis*. Only organisations representing consumers of the product involved in the antidumping proceeding can be regarded as 'consumer organisations' for the purposes of that proceeding.

49 It is a fundamental characteristic of administrative investigations conducted by the Commission in various areas that the right to participate in the investigation depends on there being an objective link with the matter under investigation. The scope of an antidumping investigation is defined by the nature of the products under investigation and, in the case of unbleached cotton fabric, there are no consumers, only users.

50 The Commission observes that the term 'representative' in Article 21(2) of the Basic Regulation prefaces the references to associations of importers and users' and consumer organisations. It is common practice in those investigations that associations of importers and users' organisations represent the interests of their

members, even if such parties constitute ad hoc associations whose sole purpose is to represent them in an antidumping investigation. Such associations do not have the status of officially approved 'representative' associations, but are accepted as interlocutors by the Commission where they represent the interest in question in relation to the product under investigation.

51 The Basic Regulation applies to proceedings in respect of all types of product whether sold at retail level or otherwise and in referring to 'users' and 'consumers' it is simply taking account of the fact that, for example, although the applicant may represent the interests of the private users of, say, audio cassettes, it is usual to describe such users as consumers. The use of different terms in the regulation for different types of users does not require that in every antidumping proceeding the interested parties must necessarily include both users and consumers.

52 The Commission considers that its interpretation of the Basic Regulation is more consistent with the purpose of an antidumping investigation than that of the applicant. The investigation is conducted within very strict deadlines and can only reach an informed conclusion if the Commission has at its disposal information from reliable sources, that is to say, economic operators who are in a position to substantiate their arguments. Since the applicant does not represent consumers of unbleached cotton fabric, it is not in a position to provide the Commission with quantifiable information that sufficiently reflects the Community interest as required by Article 21, nor is it in a position to add to the information which the Commission receives from other interested parties.

53 To accept the applicant's arguments would considerably expand the scope of any antidumping investigation concerning a raw material. The grant of procedural rights to the applicant would only make sense if the Commission was also obliged to take its submissions into account as required by Article 21(5) of the Basic Regulation. The Commission claims that, in introducing references to consumer

organisations in the Basic Regulation, the Community legislature's intention was not to impose on it an obligation, in the context of an investigation concerning a raw material, to take into consideration the possible effects of the measures on consumers of a vast range of consumer goods manufactured from that raw material.

Interpretation of the Basic Regulation in the light of the Antidumping Code

54 BEUC considers that the Commission has wrongly relied on the provisions of the Antidumping Code. It raises two arguments in this connection.

55 First, according to well-established case-law, GATT Agreements do not have direct effect in Community law (Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 103 to 111). The particular features of GATT preclude the Commission from relying on the GATT rules to justify the lawfulness of a Community measure.

56 In any event, even supposing that the validity of the decision could be examined in the light of the GATT rules, it nevertheless remains manifestly unlawful.

57 Article 6.11 of the Antidumping Code sets out a non-exhaustive list of interested parties for the purposes of that agreement. The second paragraph clearly provides that the list is not to preclude the contracting parties from allowing other parties to be included as interested parties. If a Member were to exercise that prerogative, the newly defined parties would be interested parties and would

have all the rights and possibilities recognised in Article 6 of the Code with regard to all the aspects of an antidumping proceeding (dumping, injury, causality) and not only the possibilities provided in Article 6.12.

58 In adopting Articles 5(10), 6(7) and 21 of the Basic Regulation, the Community legislature has made use of the possibility open to Members of the WTO to recognise consumer organisations as interested parties. Those articles correctly implement GATT rules, which allow consumer organisations access to non-confidential information in relation to all elements of the proceeding, including dumping, injury and causality.

59 The United Kingdom Government endorses the applicant's arguments in this connection. It sees no inconsistency between the Antidumping Code and the Basic Regulation. The broad permission accorded to contracting parties by Article 6.11 of the Antidumping Code is in no sense limited by Article 6.12. The latter requires the authorities to provide opportunities for the furnishing of certain information to industrial users of the product under investigation, and for representative consumer organisations in cases where the product is sold at the retail level. That obligation to recognise consumer organisations as having certain rights when a product is sold at the retail level is perfectly consistent with the fact that they may be accorded particular rights even when a product is not sold by retail. That is precisely what the legislature has done in Articles 6(7) and 21 of the Basic Regulation.

60 The Commission accepts that the Antidumping Code does not prevent more extensive rights being granted by the Members. However, it points out that, in the words of the fifth recital in the preamble to the Basic Regulation, the Antidumping Code 'contains new and detailed rules, relating in particular to... procedures for initiating and pursuing an investigation...; in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible'. By signalling that the legislation has adopted the

language of the Antidumping Code, the Community legislature has also signalled that where words are carried over from the GATT agreement into the Regulation, they should have the same meaning in Community law as they do in the agreement.

61 The Commission considers that the omission of the words 'in cases where the product is commonly sold at the retail level' is insufficient reason to conclude that the Community intended that the definition of 'consumer organisations' should be different from that used in the Antidumping Code. That wording was unnecessary because the same restriction is achieved by the fact that only consumers of the like product can consider themselves interested parties to a proceeding.

62 The Commission notes that Article 6.12 of the Antidumping Code refers to 'representative consumer organisations', as does Article 21 of the Basic Regulation. It submits that the applicant cannot be regarded as 'representative' in this case, because the interests it represents are not those of consumers of unbleached cotton fabric but are those of consumers of finished products derived from unbleached cotton fabric.

Findings of the Court

63 It is clear from the wording of the contested decision that the Commission considers that BEUC cannot be regarded as being, in general terms, an interested party within the meaning of Articles 5(10), 6(7) and 21 of the Basic Regulation in antidumping proceedings concerning products not sold at the retail level.

64 It is common ground that the origin of the distinction thus established by the Commission between products not sold at the retail level and other products is to be found in the provisions of Article 6.12 of the Antidumping Code. The applicant claims, nevertheless, that the provisions of the Basic Regulation cannot be interpreted in the light of the provisions of that Code.

65 It should first be noted, however, that in its judgment in Joined Cases 21/72 to 24/72 *International Fruit Company and Others* v *Produktschap voor Groenten en Fruit* [1972] ECR 1219, at paragraph 18, the Court of Justice ruled that the provisions of the General Agreement on Tariffs and Trade had the effect of binding the Community. The same conclusion must be reached both in the case of GATT 1994 (OJ 1994 L 336, p. 11) and in the case of the 1994 Anti-Dumping Code (Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 29).

66 Secondly, it is worth emphasising that the third point in the recital in the preamble to the Basic Regulation states that the latter was adopted 'to amend the Community rules in the light of' the new Agreements concluded at the end of the multilateral trade negotiations of the Uruguay Round (1986-1994), including the Antidumping Code. Furthermore, the fifth recital in the preamble to that regulation states that the Antidumping Code 'contains new and detailed rules', relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations, and that 'in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible'.

67 It follows that the Commission is right to interpret the Basic Regulation in the light of the Antidumping Code.

68 In those circumstances, it is necessary to decide whether the Commission has correctly interpreted the provisions of international law, or indeed whether the way the Regulation was interpreted in this case was really dictated by the provisions of the Code.

69 Although it is true that Article 6.11 of the Antidumping Code does not include organisations representing consumers among 'interested parties', nevertheless that provision states that Members may also allow domestic or foreign parties other than those expressly mentioned to be included as interested parties. That option is not subject to any restriction.

70 Article 6.12 of the Antidumping Code states that the authorities are to provide opportunities for, *inter alia*, representative consumer organisations in cases where the product is commonly sold at the retail level to provide information which is relevant to the investigation regarding dumping, injury and causality.

71 As the Commission has recognised in its pleadings, the fact that it is not compulsory for that opportunity to be provided for representative consumer organisations, except where the product is commonly sold at retail level, in no way requires the Community legislature to impose that condition if it decides to extend the circle of 'interested parties' to persons other than those expressly mentioned in Article 6.11 of the Antidumping Code, in particular to representative consumer organisations.

72 It follows in effect from the wording of the fifth recital in the preamble to the Basic Regulation that it was decided to transpose so far as possible the language of the Antidumping Code to the Community legislation in order to ensure a proper and transparent application of the new rules. In that regard, it is clear that

the Community legislature expressly decided not to adopt that distinction in connection with the rights granted to such organisations because the Community provisions make no distinction between products commonly sold at retail level and other products.

73 It does not therefore follow from the provisions of the Antidumping Code that the Commission was entitled to interpret the provisions of the Basic Regulation so as to confine the applicant's right to be considered an interested party solely to antidumping proceedings concerning products commonly sold at the retail level.

74 The Commission contends, however, that the various interested parties are determined on the basis of the purpose of the proceeding and the products in question. It would not therefore recognise as interested parties, in an antidumping proceeding concerning a specific product, producers or importers of products that were not like products.

75 It must be noted that the Basic Regulation provides in Article 6(5) that, within the time-limit specified in the notice of initiation of the anti-dumping investigation, interested parties may make themselves known, present their views in writing and submit information, if such views and information are to be taken into account in the course of the investigation. In that regard the Court of First Instance considers that, in order to be considered an interested party for the purposes of an antidumping proceeding, it is necessary to prove that there is an objective link between the party's activities, on the one hand, and the product under investigation, on the other.

76 It follows from the foregoing that the Commission does not have grounds for automatically excluding consumer organisations from the circle of interested parties by applying a general criterion such as the distinction between products sold at the retail level and other products. The Commission must decide on a case-by-case basis whether a party should be considered an interested party in the light of the particular circumstances of each case.

77 Consequently the Commission cannot exclude consumer organisations from an antidumping proceeding without giving them an opportunity to show their interest in the product in question.

78 That conclusion is reinforced by the fact that Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ 1994 L 349, p. 1), which replaced Regulation No 2423/88, expressly introduced, for the first time, the possibility for consumer organisations to make themselves known as interested parties in the same terms as were employed in the Basic Regulation. It can therefore be stated that the Community legislature intended to allow the Commission to take into consideration the information provided by such organisations. To that end Article 21(2) of the Basic Regulation provides that representative consumer organisations *inter alia* may make themselves known and provide information, in order to provide a sound basis on which the authorities can take account of all views and information in the decision on whether or not the imposition of measures is in the Community interest. It should, however, be emphasised that the potential role of consumer organisations is not restricted to that aspect of an antidumping proceeding but, under the terms of Article 6(7), also extends to all the other aspects of such a proceeding.

79 In this case it is not disputed that the applicant is an association which represents at Community level the national consumer associations established in all the Member States and in other European countries. Thus it does not represent the interests of a particular category of consumers but all consumers of goods and services.

80 The sole fact that those products are processed before being offered for sale to the public cannot, in itself, warrant the Commission's concluding that associations representing consumers who purchase processed products cannot have an interest in the results of the proceeding. Furthermore, if the adoption of antidumping

measures was to have an impact on the price of those processed products or on the range of products available, the observations of consumer associations in that respect could well be useful to the authorities.

81 It is revealing, in this connection, that the Community authorities have already taken the interests of the ultimate consumer into consideration in the context of proceedings concerning intermediate products. Thus, in Regulation (EC) No 2352/95 of 6 October 1995 imposing a provisional anti-dumping duty on imports of coumarin originating in the People's Republic of China (OJ 1995 L 239, p. 4), the Commission considered the possible consequences of a price increase of coumarin following the imposition of an anti-dumping duty on the price of fragrance compounds. It stated that 'the cost incidence of coumarin in relation to the production cost of a fragrance compound... [did] not exceed a few percentage points at the most' and that '[a]ccordingly, the effect of an increase in the price of coumarin due to an anti-dumping duty on the production cost of most fragrance compounds would be minimal'. It concluded that 'the impact on the price of the end product, namely detergents, cosmetics and fine fragrances in which the fragrance compound is incorporated, would be entirely negligible'. It follows that, even in the case of an intermediate product, it is quite possible that consumer organisations could produce useful information concerning the impact of an antidumping duty on end products.

82 The Commission's argument to the effect that a consumer organisation is not in a position to provide useful information concerning products which are not commonly sold at the retail level cannot therefore be accepted. In any event, it is evident that, if the information provided in a specific case is not appropriate or useful, the Commission can always disregard it.

83 The Court of First Instance considers that the Commission's argument that the term 'consumer' means simply a type of 'user' is belied by the language of

Articles 6(7) and 21(2), which shows clearly that the legislature was envisaging situations in which consumers would not be users of the product in question but would nevertheless have interests that should be taken into consideration, as the United Kingdom Government points out.

84 It follows from the foregoing that the Commission erred in its interpretation of the Basic Regulation when it decided that the applicant could not be considered an interested party in an antidumping proceeding because the latter concerned a product not currently sold at the retail level.

85 The contested decision must, in consequence, be annulled.

Costs

86 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs, including those incurred by its request for a ruling that there was no need to

adjudicate. Under Article 87(4) of those Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. Consequently, the United Kingdom, which has intervened in support of the form of order sought by the applicant, must bear its own costs.

On those grounds,

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

hereby:

1. Annuls the Commission's decision of 18 July 1997 refusing to recognise the applicant as an interested party in the context of the antidumping proceeding leading to the adoption of Commission Regulation (EC) No 773/98 of 7 April 1998 imposing a provisional antidumping duty on imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey;

2. Dismisses the remainder of the application;

3. **Orders the Commission to pay the costs, including those incurred by its request for a ruling that there was no need to adjudicate;**

4. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Cooke García-Valdecasas Lindh

Pirrung Vilaras

Delivered in open court in Luxembourg on 27 January 2000.

H. Jung

Registrar

R. García-Valdecasas

President