# ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
30 April 2003 *

In Case T-155/02,

**VVG International Handelsgesellschaft mbH**, established in Salzburg (Austria),

**VVG (International) Ltd**, established in Gibraltar (United Kingdom),

**Metalsivas Metallwarenhandelsgesellschaft mbH**, established in Vienna (Austria),

represented by W. Schuler, lawyer,

applicants,

v

**Commission of the European Communities**, represented by G. zur Hausen and B. Eggers, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

APPLICATION for annulment of Commission Regulation (EC) No 560/2002 of 27 March 2002 imposing provisional safeguard measures against imports of certain steel products (OJ 2002 L 85, p. 1),

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

composed of B. Vesterdorf, President, R.M. Moura Ramos and H. Legal, Judges,

Registrar: H. Jung,

makes the following

## Order

### Legal context

1 On 27 March 2002 the Commission adopted Regulation (EC) No 560/2002 imposing provisional safeguard measures against imports of certain steel products (OJ 2002 L 85, p. 1; 'the contested regulation'), which lays down tariff quotas lasting six months for fifteen groups of steel products, calculated on the basis of the annual average level of imports into the Community during 1999, 2000 and

2001, plus 10%. As the tariff quotas were set up for six months, they were fixed at one half of the said average plus 10%. After the said quotas are used up, imported quantities are subject to the payment of additional duties fixed for each group of products. The contested regulation entered into force on 29 March 2002.

2 The contested regulation is based on Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94 (OJ 1994 L 349, p. 53; 'the basic regulation') and on Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89), as amended in particular by Council Regulation (EC) No 1138/98 of 28 May 1998 (OJ 1998 L 159, p. 1).

3 Article 8 of the basic regulation reads as follows:

'1. The provisions of this Title [Community investigation procedure] shall not preclude the use, at any time, of surveillance measures in accordance with Articles 11 to 15 or provisional safeguard measures in accordance with Articles 16, 17 and 18.

Provisional safeguard measures shall be applied:

— in critical circumstances where delay would cause damage which it would be difficult to repair, making immediate action necessary,

and

— where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury.

2. The duration of such measures shall not exceed 200 days.

...

4. The Commission shall immediately conduct whatever investigation measures are still necessary.

5 Should the provisional safeguard measures be repealed because no serious injury or threat of serious injury exists, the customs duties collected as a result of the provisional measures shall be automatically refunded as soon as possible. The procedure laid down in Article 235 et seq. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [OJ 1992 L 302, p. 1] shall apply.'

4 Pursuant to Article 16(3)(a) of the basic regulation:

'If establishing a quota, account shall be taken in particular of:

— the desirability of maintaining, as far as possible, traditional trade flows,

— the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure within the meaning of this Title, where such contracts have been notified to the Commission by the Member State concerned,

— the need to avoid jeopardising achievement of the aim pursued in establishing the quota.'

5 Article 1 of the contested regulation provides as follows:

'1. A tariff quota is hereby opened in relation to imports into the Community of each of the 15 products concerned specified in Annex 3 (defined by reference to the CN codes specified in relation to it) from the date on which this Regulation enters into force until the day before the corresponding date of the sixth month following.

2. The conventional rate of duty provided for these products in Council Regulation (EC) No 2658/97, or any preferential rate of duty, shall continue to apply.

3. Imports of those products which are in excess of the volume of the relevant tariff quota specified in Annex [2], or without a request for benefit, shall be subject to an additional duty at the rate specified in Annex 3 for that product. That additional duty shall apply to the customs value of the product being imported.

...'

6 The table in Annex 2 to the contested regulation shows the growth in imports of alloy hot rolled flat products (reference 4) in 1999, 2000 and 2001. It appears that in those three years the imports in question totalled 25 719 tonnes, 154 916 tonnes and 468 000 tonnes respectively.

7 Under reference 4 of Annex 3 to the contested regulation it is stated that the tariff quota for alloy hot rolled flat products is 23 778 tonnes net and the rate of additional duty for those products is fixed at 26%.

8 According to Article 3 of the contested regulation:

'The tariff quotas shall be managed by the Commission and the Member States in accordance with the management system for tariff quotas provided for in

Articles [308a, 308b and 308c] of Regulation (EEC) No 2454/93, as last amended by Regulation (EC) No 993/2001...'.

## Facts and procedure

9 The applicants are companies whose business consists almost exclusively in importing into the Community steel products covered by the contested regulation, in particular 'alloy hot rolled flat products, cut into plates or coils' under reference 4 of Annex 3 to the contested regulation. They purchase these products in large quantities from various steel producers in non-member countries and resell them to wholesalers, retailers, factories and warehouse operators established in the European Union.

10 By application lodged at the Court Registry on 14 May 2002, the applicants brought an action under the fourth paragraph of Article 230 EC for annulment of the contested regulation.

11 By a separate document lodged at the Court Registry on 19 June 2002, they also applied for the suspension of the operation of the contested regulation or any other provisional measure likely to permit the applicants to import into the Community, in addition to the tariff quota and free of additional duties, 95 129 tonnes of alloy hot rolled flat products covered by reference 4 of the contested regulation.

12 On 12 July 2002 the Commission raised an objection of inadmissibility against the application for annulment pursuant to Article 114 of the Rules of Procedure of the Court of First Instance.

13 In view of the Commission's plea of inadmissibility in the present case, the parties were requested, in the framework of the proceedings for interim measures, to submit their observations on the conclusions to be drawn, for assessing the admissibility of the present application, from the judgment in Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677.

14 The applicants and the Commission replied on 30 and 31 July 2002 respectively.

15 By order of 8 August 2002 of the President of the Court of First Instance, the application for interim measures was dismissed as inadmissible and the costs were reserved.

**Forms of order sought by the parties**

16 The applicants claims that the Court should:

— declare the action admissible;

— annul the contested regulation on the basis of Article 230 EC;

— in the alternative, declare invalid the inclusion of the group of products under reference 4, 'alloy hot rolled flat products', in the fifteen groups of products referred to by the contested regulation:

— in the alternative, amend the quota fixed for the group of products 'alloy hot rolled flat products' by increasing it to 468 000 tonnes (the volume of imports in 2001);

— in the alternative, amend the quota fixed for the group of products 'alloy hot rolled flat products' by increasing it to 118 916 tonnes;

— order the Commission to pay the entire costs of the proceedings.

17 The Commission contends that the Court should:

— dismiss the action as manifestly inadmissible;

— order the applicants to pay the costs.

## Admissibility

18 Under Article 114(1) of the Rules of Procedure, where a party so requests, the Court may rule on admissibility without going into the substance of the case. Under Article 114(3), the remainder of the proceedings are to be oral unless the

Court decides otherwise. In the present case, the Court considers that the documents on the court file provide sufficient information to enable the Court to rule upon the application without opening the oral procedure.

*Arguments of the parties*

19 The Commission contends that the action is inadmissible.

20 First, the Commission observes that the action is not admissible because the contested regulation constitutes general rules of a legislative character which concerns none of the applicants individually and the specific application of which to them can produce legal effects only on the basis of other administrative measures originating from the customs authorities of the Member States.

21 Second, the Commission claims that the contested regulation has general application because it is addressed identically to all the future importers of certain products into the Community. By nature it is impossible to determine, at the time when any such measure is adopted, what imports will be carried out, what their volume will be and which importers will carry them out.

22 Third, in response to the applicants' arguments, the Commission adds that the circumstances leading to the judgments in Case 264/82 *Timex* v *Council and Commission* [1985] ECR 849, paragraphs 12 to 16, Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 17, Case T-2/93 *Air France* v

*Commission* [1994] ECR II-323, paragraphs 44 to 47, and Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole Télévision and Others* v *Commission* [1996] ECR II-649, paragraph 61, cited by the applicants, clearly do not exist in the present case.

23 Fourth, the Commission maintains that the applicants have not shown special circumstances distinguishing them from numerous other steel importers. It contends that the applicants have not even mentioned that they are the biggest importers of steel products and that they regard their own interests as being the same as those of other importers.

24 Fifth, the Commission observes that, even if it were accepted that the contested regulation damaged the applicants' economic situation, that would not be sufficient to distinguish them from other traders (order of the President of the Court of First Instance in Case T-339/00 R *Bactria* v *Commission* [2001] ECR II-1721, paragraphs 81 and 82).

25 Next, the Commission adds that, unlike the circumstances leading to the judgment in Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, in the circumstances of the present case the Commission had no obligation, when adopting the contested regulation, to take account of the interests of certain operators, in particular those of the applicants.

26 Finally, the Commission asserts that, unlike the applicant in Case T-177/01 *Jégo-Quéré* v *Commission* [2002] ECR II-2365, the applicants in the present case have themselves confirmed that they could challenge before the Austrian courts

the national recovery notices which could be issued on the basis of the contested regulation, by using all the available means under the Austrian tax code.

27 The applicants maintain that the action is admissible.

28 First, they claim that the contested regulation is of individual concern to them by reason of the damage to their position in the market, which has brought them to ruin. According to the applicants, their delivery and purchase contracts have been cancelled by their customers. They add that most of their business consists in the importation of steel products covered by the contested regulation, in particular products covered by reference 4 of Annex 3, which are subject to additional duty of 26%. The applicants refer in particular to the judgments in *Timex* v *Council and Commission* (paragraphs 12 to 16), *Extramet Industrie* v *Council* (paragraph 17), *Air France* v *Commission* (paragraphs 44 to 47) and *Métropole Télévision and Others* v *Commission* (paragraph 61). According to the applicants, a Community measure must be deemed to be of individual concern to a person, within the meaning of the fourth paragraph of Article 230 EC, if, by reason of his personal circumstances, that measure has or will probably have serious negative consequences for his interests. In support of this argument the applicants cite the Opinion of Advocate General Jacobs in *Unión de Pequeños Agricultores* v *Council*.

29 Second, the applicants add that the contested regulation is in breach of the legal obligation to take account of the interests of certain operators, in particular the specific interests of the applicants. In this connection they refer in particular to paragraph 67 of the judgment in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305.

30 Third, they note that the Court of First Instance is the only judicial institution in a position to give them complete and effective judicial protection against the contested regulation because the procedure for obtaining protection against the national recovery notice, by way of a reference for a preliminary ruling, is too long and cumbersome. In support of this submission they cite the judgment in *Jégo-Quéré and Others* v *Commission*.

31 Fourth, the applicants consider that the contested regulation is of direct concern to them because it does not call for any implementation measure on the part of the national authorities, which are required to give it immediate effect. The applicants observe that the contested regulation provides that it 'is binding in its entirety and directly applicable in all Member States'. On this point they refer in particular to the judgment in Case 113/77 *NTN Toyo Bearing* v *Council* [1979] ECR 1185, paragraph 11.

*Findings of the Court*

32 The fourth paragraph of Article 230 EC entitles individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them. According to settled case-law, the objective of that provision is in particular to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually and thus to make it clear that the nature of a measure cannot be changed by the form chosen (Joined Cases 789/79 and 790/79 *Calpak* v *Commission* [1980] ECR 1949, paragraph 7, and the order in Case T-476/93 *FRSEA and FNSEA* v *Council* [1993] ECR II-1187, paragraph 19).

33 It is also settled case-law that the test for distinguishing between a regulation and a decision is whether or not the measure in question has general application (see Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 8, and the order in Case T-107/94 *Kik* v *Council and Commission* [1995] II-1717, paragraph 35).

34 Therefore it is necessary in the present case to determine the nature of the contested regulation and, in particular, the legal effects which it aims to produce or does in fact produce.

35 Regulation No 560/2002 imposes provisional safeguard measures against imports of certain steel products. It opens a tariff quota in relation to imports into the Community of each of the 15 groups of products in question for a period of six months from the date on which the Regulation enters into force. Imports of those products which are in excess of the relevant tariff quota or without a request for the benefit of the quota, are subject to an additional duty which applies to the customs value of the product in question.

36 Such measures have general application within the meaning of Article 249 EC. They apply to objectively determined situations and produce legal effects vis-à-vis classes of persons envisaged in a general and abstract manner, namely the importers of the 15 groups of products in question, which are specified in Annex 3 to the contested regulation.

37 It has consistently been held that the general scope and hence the legislative nature of a measure are not called into question by the fact that it is possible to

determine the number or even the identity of the persons to whom it applies at a given moment with a greater or lesser degree of precision as long as it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 595, 605 and 606; Case 64/69 *Compagnie Française Commerciale* v *Commission* [1970] ECR 221, paragraph 11; Case 101/76 *Koninklijke Scholten Honig* v *Council and Commission* [1977] ECR 797, paragraph 23, and the order in Case T-183/94 *Cantina cooperativa fra produttori vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48).

38 In the present case, irrespective of the more or less limited number of importers of the 15 groups of steel products specified in Annex 3 to the contested regulation at the date of its adoption, it must be observed that it provides for additional duty on the basis of an objective situation, namely if the importers of one or more of the 15 groups of products in question exceed the corresponding tariff quota specified in Annex 2 to the regulation or if no request is made for the benefit of the quota, as laid down in Article 1(3) of the contested regulation. In addition, the number of undertakings affected by the contested regulation may always vary.

39 It follows that the contested regulation is, by virtue of its nature and scope, legislative in nature and does not constitute a decision within the meaning of Article 249 EC.

40 According to the case-law, in certain circumstances, even a legislative measure applying to the traders concerned in general may concern some of them individually (*Extramet Industrie* v *Council*, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19). In such circumstances, a Community measure could be of a legislative nature and, at the same time, in the nature of a decision *vis-à-vis* some of the traders concerned (Joined Cases

T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50).

41 However, natural and legal persons can claim to be individually concerned by a measure only where it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons (Case 25/62 *Plaumann* v *Commission* [1963] ECR 197, 223; *Codorniu* v *Council*, paragraph 20, and *Unión de Pequeños Agricultores,* cited above, paragraph 36).

42 Consequently it is necessary to ascertain whether the contested regulation is of concern to the applicants in the present case by reason of certain attributes peculiar to them, or whether there is a factual situation which differentiates them, by reference to that regulation, from all other persons.

43 The applicants consider that the regulation is of individual concern to them in so far as the greater part of their business consists in the importation of the steel products referred to by the regulation, which has particularly adverse consequences for their interests.

44 Even if the entry into force of the contested regulation particularly affects the applicants' economic situation, that circumstance is not sufficient to differentiate them from all other persons. The contested regulation is of concern to them by reason only of their objective status as importers of the steel products referred to by the regulation, in the same way as any other trader in the same position in the European Community (*Unión de Pequeños Agricultores,* paragraph 36).

45 The applicants go on to submit that, by adopting the contested regulation, the Commission failed in its legal obligation to take account of the interests of all operators, in particular the specific interests of the applicants.

46 It is true that where the Commission is, by virtue of specific provisions, under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals, that fact can distinguish them individually (*Piraiki-Patraiki and Others* v *Commission*, paragraphs 21 and 28; Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 11; Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 25 to 30; *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 67, and Case T-47/00 *Rica Foods* v *Commission* [2002] ECR II-113, paragraph 41).

47 It must be observed that the contested regulation was adopted on the basis of the basic regulation and of Regulation No 519/94. Article 16(3)(a) of the basic regulation requires the Commission, when establishing a quota, to take account of the particular situation of individual undertakings such as the applicants, in particular with regard to the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure, where such contracts have been notified to the Commission by the Member State concerned.

48 In the present case the applicants have however produced nothing to show that the Member State concerned notified the Commission of the contracts concluded by the applicants for the importation of the products specified in Annex 3 to the contested regulation within the meaning of Article 16(3)(a) of the basic regulation.

49 In those circumstances, in contrast to the situation in *Piraiki-Patraiki and Others* v *Commission* and *Antillean Rice Mills and Others* v *Commission*, cited above, in the present case there is no provision requiring the Commission to take account of the consequences of the measure which it envisages adopting for the applicants' situation because the Member State concerned did not take advantage of the procedural safeguards offered by the basic regulation.

50 Finally, with regard to the applicants' argument that in practice there is no protection for their individual rights because the judicial remedy provided by Article 234 EC does not afford complete and effective judicial protection, it must be observed that the Court of Justice has held that the requirement that an applicant be distinguished individually by reference to a regulation cannot be set aside by an interpretation of case-law based on the principle of effective judicial protection without going beyond the jurisdiction conferred by the Treaty on the Community Courts (*Unión de Pequeños Agricultores*, paragraph 44). Furthermore, in the present case it is common ground that a remedy is available before the national courts whereby the validity of the contested regulation may be reviewed.

51 It is clear from all the considerations set out above that the contested regulation cannot be regarded as being of individual concern to the applicants. As they do not satisfy one of the conditions of admissibility laid down by the fourth paragraph of Article 230 EC, it is unnecessary to examine the question of whether the contested regulation is of direct concern to them.

52 It follows that the action must be dismissed as inadmissible.

## Costs

53 Pursuant to Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have failed in their pleadings, they must be ordered to pay the costs, including those of the proceedings for interim measures, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**

2. **The applicants shall bear their own costs and pay those of the Commission, including the costs of the proceedings for interim measures.**

Luxembourg, 30 April 2003.

H. Jung — Registrar

B. Vesterdorf — President