JUDGMENT OF THE COURT

23 November 1999 (1)

(Commercial policy - Access to the market in textile products - Products originating in India and Pakistan)

In Case C-149/96,

Portuguese Republic, represented by L. Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and C. Botelho Moniz, assistant in the Faculty of Law of the Portuguese Catholic University, acting as Agents, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer,

applicant,

v

Council of the European Union, represented by S. Kyriakopoulou, Legal Adviser, and I. Lopes Cardoso, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, General Counsel in the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

French Republic, represented by C. de Salins, Deputy Director for International Economic Law and Community Law in the Department of Legal Affairs at the Ministry of Foreign Affairs, and G. Mignot, Secretary for Foreign Affairs in the same Department, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

and

Commission of the European Communities, represented by M. de Pauw and F. de Sousa Fialho, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, of the same Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for annulment of Council Decision 96/386/EC of 26 February 1996 concerning the conclusion of Memoranda of Understanding between the European Community and the Islamic Republic of Pakistan and between the European Community and the Republic of India on arrangements in the area of market access for textile products (OJ 1996 L 153, p. 47),

THE COURT,

composed of: J.C. Moitinho de Almeida, President of the Third and Sixth Chambers, acting for the President, D.A.O. Edward, L. Sevón and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn (Rapporteur), C. Gulman, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: A. Saggio,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 30 June 1998,

after hearing the Opinion of the Advocate General at the sitting on 25 February 1999,

gives the following

Judgment

1. By application lodged at the Court Registry on 3 May 1996, the Portuguese Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the annulment of Council Decision 96/386/EC of 26 February 1996 concerning the conclusion of Memoranda of Understanding between the European Community and the Islamic Republic of Pakistan and between the European Community and the Republic of India on arrangements in the area of market access for textile products (OJ 1996 L 153, p. 47, 'the contested decision').

Legal and factual background

International multilateral agreements in the Uruguay Round

2. On 15 December 1993 the Council unanimously approved the terms of the global commitment on the basis of which the Community and the Member States agreed to end the multilateral trade agreements of the Uruguay Round ('the agreement of principle').

3. On the same day, the Director General of the General Agreement on Tariffs and Trade ('GATT'), Mr Sutherland, announced in Geneva to the committee for multilateral negotiations the closure of the negotiations of the Uruguay Round. In doing so he invited some of the participants to pursue their negotiations on access to the market, with a view to reaching a more complete and better balanced 'market access' package.

4. Following the closure of those negotiations the negotiations on market access for textile and clothing products ('textile products') with, *inter alia*, the Republic of India and the Islamic Republic of Pakistan were pursued by the Commission, with the assistance of the 'textile committee 113' of the Council ('the textilecommittee') designated by the Council to represent it in matters concerning the common commercial policy of the Community in the textile sector.

5. On 15 April 1994, at the Marrakesh meeting in Morocco, although the negotiations on access to the market in textiles had not yet been completed with Pakistan and India, the President of the Council and the Member of the Commission responsible for external relations signed the Final Act concluding the multilateral trade agreements of the Uruguay Round ('the Final Act'), the Agreement establishing the World Trade Organisation ('the WTO') and all the agreements and memoranda in Annexes 1 to 4 to the agreement establishing the WTO ('the WTO agreements') on behalf of the European Union, subject to subsequent approval.

6. Among those agreements, included in Annex 1 A to the agreement establishing the WTO, are the Agreement on Textiles and Clothing ('the ATC') and the Agreement on Import Licensing Procedures.

7. Following the signature of those measures the Council adopted 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).

The agreements concluded with Pakistan and India

8. Following the signature of the WTO agreements negotiations with India and Pakistan continued; they were conducted by the Commission with the assistance of the textiles committee.

9. On 15 October and 31 December 1994 the Commission, and India and Pakistan respectively, signed two 'Memoranda of Understanding' between the European Community and India and Pakistan on arrangements in the area of market access for textile products.

10. The Memorandum of Understanding with Pakistan contains a number of commitments on the part

of both the Community and Pakistan. In particular, Pakistan undertakes to eliminate all quantitative restrictions applicable to a series of textile products listed specifically in Annex II to the Memorandum of Understanding. The Commission undertakes 'to give favourable consideration to requests which the Government of Pakistan might introduce in respect of the management of existing [tariff] restrictions for exceptional flexibility (including carry-over, carry-forward and inter-category transfers)' (point 6) and to initiate immediately the necessary internal procedures in order to ensure 'that all restrictions currently affecting the importation of products of the handloom and cottage industries of Pakistan are removed before entry into force of the WTO' (point 7).

11. The Memorandum of Understanding with India provides that the Indian Government is to bind the tariffs which it applies to the textiles and clothing items expressly listed in the Attachment to the Memorandum of Understanding and that '[t]hese rates will be notified to the WTO Secretariat within 60 days of the date of entry into force of the WTO'. It is also provided that the Indian Government may 'introduce alternative specific duties for particular products' and that these duties will be indicated 'as a percentage *ad valorem* or an amount in Rs per item/square metre/kg, whichever is higher' (point 2). The European Community agrees to 'remove with effect from 1 January 1995 all restrictions currently applicable to India's exports of handloom products and cottage industry products as referred to in Article 5 of the EC-India agreement on trade in textile products' (point 5). The Community undertakes to give favourable consideration to 'exceptional flexibilities, in addition to the flexibilities applicable under the bilateral textiles agreement, for any or all of the categories under restraint', up to the amounts for each quota year indicated in the Memorandum of Understanding for 1995 to 2004 (point 6).

12. On a proposal from the Commission dated 7 December 1995, the Council adopted on 26 February 1996 the contested decision, which was approved by a qualified majority; the Kingdom of Spain, the Hellenic Republic and the Portuguese Republic voted against it.

13. The understandings with India and Pakistan were signed on 8 and 27 March 1996 respectively.

14. The contested decision was published in the Official Journal of the European Communities on 27 June 1996.

Community legislation

15. Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries (OJ 1993 L 275, p. 1), as amended by Council Regulation (EC) No 3289/94 of 22 December 1994 (OJ 1994 L 349, p. 85), lays down rules governing imports into the Community of textile products originating in third countries which are linked to the Community by agreements, protocols or arrangements, or which are members of the WTO.

16. Thus, according to Article 1(1) thereof, the Regulation applies to imports of textile products listed in Annex I originating in third countries with which the Community has concluded bilateral agreements, protocols or other arrangements as listed in Annex II.

17. Article 2(1) of the regulation provides that the importation into the Community of the textile products listed in Annex V originating in one of the supplier countries listed in that annex is to be subject to the annual quantitative limits laid down in that annex. Under Article 2(2), the release into free circulation in the Community of imports subject to the quantitative limits referred to in Annex V is to be subjectto the presentation of an import authorisation issued by the Member States' authorities in accordance with Article 12.

18. Article 3(1) provides that the quantitative limits referred to in Annex V are not to apply to the cottage industry and folklore products specified in Annexes VI and VIa which are accompanied on importation by a certificate issued in accordance with the provisions of Annexes VI and VIa and which fulfil the other conditions laid down therein.

19. On 10 April 1995, pursuant to what had been agreed in the agreement of principle (paragraph 2 of this judgment) the Council, on a proposal from the Commission, adopted Regulation (EC) No 852/95 on the grant of financial assistance to Portugal for a specific programme for the modernisation of the Portuguese textile and clothing industry (OJ 1995 L 86, p. 10).

20. On 20 December 1995 the Commission adopted Regulation (EC) No 3053/95 amending Annexes I, II, III, V, VI, VII, VIII, IX and XI of Regulation No 3030/93 (OJ 1995 L 323, p. 1). According to the fourteenth and sixteenth recitals in the preamble to that regulation, the fact that the

arrangement with India as regards access to the market envisaged the abolition of quantitative restrictions on the importation of certain folklore and cottage industry products originating in India was one of the factors which led to the amendment of those annexes as from 1 January 1995.

21. The fifth and sixth indents of Article 1 of Regulation No 3053/95 replace Annex VI to Regulation No 3030/93 by a new Annex V to Regulation No 3053/95, and repeal Annex VIa to that regulation as from 1 January 1995.

22. As Regulation No 3053/95 was vitiated by a procedural defect, the fifth and sixth indents of Article 1 were withdrawn with retroactive effect from 1 January 1995 byCommission Regulation (EC) No 1410/96 of 19 July 1996 concerning the partial withdrawal of Regulation No 3053/95 (OJ 1996 L 181, p. 15, hereinafter 'the withdrawal regulation'). According to the first recital in the preamble to the withdrawal regulation, the amendments provided for in the fifth and sixth indents of Article 1 of Regulation No 3053/95 had been adopted at a time when, by virtue of Article 19 of Regulation (EEC) No 3030/93, the Commission was not yet entitled to adopt them, the Council not yet having decided to conclude or apply provisionally the arrangements negotiated by the Commission with India and Pakistan concerning access to the market in textile products.

23. By Regulation (EC) No 2231/96 of 22 November 1996 amending Annexes I, II, III, IV, V, VI, VII, VIII, IX and XI of Regulation No 3030/93 (OJ 1996 L 307, p. 1), the Commission adapted Regulation No 3030/93 to the Memoranda of Understanding.

Substance

24. In support of its application, the Portuguese Republic relies, first, on breach of certain rules and fundamental principles of the WTO and, second, on breach of certain rules and fundamental principles of the Community legal order.

Breach of rules and fundamental principles of the WTO

25. The Portuguese Government claims that the contested decision constitutes a breach of certain rules and fundamental principles of the WTO, in particular those of GATT 1994, the ATC and the Agreement on Import Licensing Procedures.

26. It claims that according to case-law it is entitled to rely on those rules and fundamental principles before the Court.

27. Although the Court held in Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 103 to 112, that the GATT rules do not have direct effect and that individuals cannot rely on them before the courts, it held in the same judgment that that does not apply where the adoption of the measures implementing obligations assumed within the context of the GATT is in issue or where a Community measure refers expressly to specific provisions of the general agreement. In such cases, as the Court held in paragraph 111 of that judgment, the Court must review the legality of the Community measure in the light of the GATT rules.

28. The Portuguese Government claims that that is precisely the position in this case, which concerns the adoption of a measure - the contested decision - approving the Memoranda of Understanding negotiated with India and Pakistan following the conclusion of the Uruguay Round for the specific purpose of applying the rules in GATT 1994 and the ATC.

29. The Council, supported by the French Government and by the Commission, relies rather on the special characteristics of the WTO agreements, which in their view provide grounds for applying to those agreements the decisions in which the Court held that the provisions of GATT 1947 do not have direct effect and cannot be relied upon.

30. They claim that the contested decision is of a special kind and is thus not comparable to the regulations at issue in Case 70/87 *Fediol* v *Commission* [1989] ECR 1781 and Case C-69/89 *Nakajima All Precision* v *Council* [1991] ECR I-2069. The decision is not a Community measure intended to 'transpose' certain provisions of the ATC into Community law.

31. The Portuguese Government replies that it is not GATT 1947 that is in issue in the present case but the WTO agreements, which include GATT 1994, the ATC and the Agreement on Import Licensing Procedures. The WTO agreements are significantly different from GATT 1947, in particular

in so far as they radically alter the dispute settlement procedure.

32. Nor, according to the Portuguese Government, does the case raise the problem of direct effect: it concerns the circumstances in which a Member State may rely on the WTO agreements before the Court for the purpose of reviewing the legality of a Council measure.

33. The Portuguese Government maintains that such a review is justified in the case of measures such as the contested decision which approve bilateral agreements governing, in relations between the Community and non-member countries, matters to which the WTO rules apply.

34. It should be noted at the outset that in conformity with the principles of public international law Community institutions which have power to negotiate and conclude an agreement with a non-member country are free to agree with that country what effect the provisions of the agreement are to have in the internal legal order of the contracting parties. Only if that question has not been settled by the agreement does it fall to be decided by the courts having jurisdiction in the matter, and in particular by the Court of Justice within the framework of its jurisdiction under the EC Treaty, in the same manner as any question of interpretation relating to the application of the agreement in the Community (see Case 104/81 *Hauptzollamt Mainz* v *Kupferberg* [1982] ECR 3641, paragraph 17).

35. It should also be remembered that according to the general rules of international law there must be *bona fide* performance of every agreement. Although each contracting party is responsible for executing fully the commitments which it has undertaken it is nevertheless free to determine the legal means appropriate for attaining that end in its legal system, unless the agreement, interpreted in the light of its subject-matter and purpose, itself specifies those means (*Kupferberg*, paragraph 18).

36. While it is true that the WTO agreements, as the Portuguese Government observes, differ significantly from the provisions of GATT 1947, in particular by reason of the strengthening of the system of safeguards and the mechanism for resolving disputes, the system resulting from those agreements nevertheless accords considerable importance to negotiation between the parties.

37. Although the main purpose of the mechanism for resolving disputes is in principle, according to Article 3(7) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 to the WTO), to secure the withdrawal of the measures in question if they are found to be inconsistent with the WTO rules, that understanding provides that where the immediate withdrawal of the measures is impracticable compensation may be granted on an interim basis pending the withdrawal of the inconsistent measure.

38. According to Article 22(1) of that Understanding, compensation is a temporary measure available in the event that the recommendations and rulings of the dispute settlement body provided for in Article 2(1) of that Understanding are not implemented within a reasonable period of time, and Article 22(1) shows a preference for full implementation of a recommendation to bring a measure into conformity with the WTO agreements in question.

39. However, Article 22(2) provides that if the member concerned fails to fulfil its obligation to implement the said recommendations and rulings within a reasonable period of time, it is, if so requested, and on the expiry of a reasonable period at the latest, to enter into negotiations with any party having invoked the dispute settlement procedures, with a view to finding mutually acceptable compensation.

40. Consequently, to require the judicial organs to refrain from applying the rules of domestic law which are inconsistent with the WTO agreements would have the consequence of depriving the legislative or executive organs of the contractingparties of the possibility afforded by Article 22 of that memorandum of entering into negotiated arrangements even on a temporary basis.

41. It follows that the WTO agreements, interpreted in the light of their subject-matter and purpose, do not determine the appropriate legal means of ensuring that they are applied in good faith in the legal order of the contracting parties.

42. As regards, more particularly, the application of the WTO agreements in the Community legal order, it must be noted that, according to its preamble, the agreement establishing the WTO, including the annexes, is still founded, like GATT 1947, on the principle of negotiations with a view to 'entering into reciprocal and mutually advantageous arrangements' and is thus distinguished,

from the viewpoint of the Community, from the agreements concluded between the Community and non-member countries which introduce a certain asymmetry of obligations, or create special relations of integration with the Community, such as the agreement which the Court was required to interpret in *Kupferberg*.

43. It is common ground, moreover, that some of the contracting parties, which are among the most important commercial partners of the Community, have concluded from the subject-matter and purpose of the WTO agreements that they are not among the rules applicable by their judicial organs when reviewing the legality of their rules of domestic law.

44. Admittedly, the fact that the courts of one of the parties consider that some of the provisions of the agreement concluded by the Community are of direct application whereas the courts of the other party do not recognise such direct application is not in itself such as to constitute a lack of reciprocity in the implementation of the agreement (*Kupferberg*, paragraph 18).

45. However, the lack of reciprocity in that regard on the part of the Community's trading partners, in relation to the WTO agreements which are based on'reciprocal and mutually advantageous arrangements' and which must *ipso facto* be distinguished from agreements concluded by the Community, referred to in paragraph 42 of the present judgment, may lead to disuniform application of the WTO rules.

46. To accept that the role of ensuring that those rules comply with Community law devolves directly on the Community judicature would deprive the legislative or executive organs of the Community of the scope for manoeuvre enjoyed by their counterparts in the Community's trading partners.

47. It follows from all those considerations that, having regard to their nature and structure, the WTO agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions.

48. That interpretation corresponds, moreover, to what is stated in the final recital in the preamble to Decision 94/800, according to which 'by its nature, the Agreement establishing the World Trade Organisation, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State courts'.

49. It is only where the Community intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to the precise provisions of the WTO agreements, that it is for the Court to review the legality of the Community measure in question in the light of the WTO rules (see, as regards GATT 1947, *Fediol*, paragraphs 19 to 22, and *Nakajima*, paragraph 31).

50. It is therefore necessary to examine whether, as the Portuguese Government claims, that is so in the present case.

51. The answer must be in the negative. The contested decision is not designed to ensure the implementation in the Community legal order of a particular obligation assumed in the context of the WTO, nor does it make express reference to any specific provisions of the WTO agreements. Its purpose is merely to approve the Memoranda of Understanding negotiated by the Community with Pakistan and India.

52. It follows from all the foregoing that the claim of the Portuguese Republic that the contested decision was adopted in breach of certain rules and fundamental principles of the WTO is unfounded.

Breach of rules and fundamental principles of the Community legal order

Breach of the principle of publication of Community legislation

53. The Portuguese Government claims that this principle has been breached because the contested decision and the Memoranda of Understanding which it approves were not published in the Official Journal of the European Communities. In its reply, it merely states that the validity of its argument has been recognised, since the contested decision was published after it lodged its application.

54. In that regard, it is sufficient to observe that the belated publication of a Community measure in

the Official Journal of the European Communities does not affect the validity of that measure.

Breach of the principle of transparency

55. The Portuguese Government contends that this principle has been breached because the contested decision approves Memoranda of Understanding which are not adequately structured and are drafted in obscure terms which prevent a normal reader from immediately grasping all their implications, in particular as regardstheir retroactive application. In support of this plea it relies on the Council Resolution of 8 June 1993 on the quality of drafting of Community legislation (OJ 1993 C 166, p. 1).

56. It should be noted that, as the Council has observed, that resolution has no binding effect and places no obligation on the institutions to follow any particular rules in drafting legislative measures.

57. Furthermore, as the Advocate General observes in point 12 of his Opinion, the decision appears to be clear in every aspect, as regards both the wording of its provisions relating to the conclusion of the two international agreements and as regards the rules contained in the two Memoranda of Understanding, which provide for a series of reciprocal undertakings by the contracting parties with a view to the gradual liberalisation of the market in textile products. Furthermore, the Portuguese Government‘s complaint that the contested decision fails to indicate precisely what provisions of the earlier measures it amends or repeals is not of such a kind as to vitiate that decision, since such an omission does not constitute a breach of an essential procedural requirement with which an institution must comply if the measure in question is not to be void.

58. The Portuguese Government's claim that the contested decision was adopted in breach of the principle of transparency is therefore unfounded.

Breach of the principle of cooperation in good faith in relations between the Community institutions and the Member States

59. The Portuguese Government maintains that the bilateral agreements with India and Pakistan were concluded without regard for its position concerning the negotiations with those two countries, which it had clearly stated throughout the negotiatingprocedure, in particular at the meeting of the Council on 15 December 1993 at which it was decided to accede to the WTO agreements and in a letter of 7 April 1994 from the Portuguese Minister for Foreign Affairs to the Council.

60. It consented to the signature of the Final Act of the WTO and the annexes theretoon condition that, *inter alia*, the obligation imposed on India and Pakistan to open up their markets could not give rise, in the negotiations with those countries, to reciprocal concessions on the part of the Member States other than those provided for in the ATC.

61. In approving the Memoranda of Understanding, which provide for an accelerated process for opening the market in textile products in comparison with the ATC and, consequently, the dismantling of the Community tariff quotas for those products, the contested decision was adopted in breach of the principle of cooperation in good faith in relations between the Community and the Member States as inferred from the wording of Article 5 of the EC Treaty (now Article 10 EC), and should therefore be annulled on that ground.

62. The Portuguese Government also claims that the signature of the Final Act required the consent of all the Member States and not of a qualified majority of the members of the Council. Any change in the equilibrium on the basis of which the Final Act was signed required fresh deliberations in the same voting conditions, that is, with unanimity.

63. The Council considers that the position expressed by the Portuguese Government, in particular in the letter of 7 April 1994 from the Minister for Foreign Affairs, is of a political nature and that, furthermore, it was taken into consideration in so far as it led to the adoption of Regulation No 852/95, whereby the Council granted a series of subsidies to the Portuguese textile industry.

64. The Council also refutes the Portuguese Government's argument that approval of the two Memoranda of Understanding should have been decided unanimously. It claims that since the contested decision constitutes a commercial policy measure it could be adopted by a qualified majority of the members of the Council on the basis of Article 113(4) of the EC Treaty (now, after amendment, Article 133(4) EC). The adoption of both memoranda complied fully with the provisions

of the Treaty, moreover, in particular Article 113.

65. The Commission supports the Council's argument and further contends that, even if the Portuguese Republic expressed reservations in concluding the final agreement, the Council's failure to act in accordance with that agreement could not constitute a ground for annulling the contested decision.

66. The Court observes, first, that the contested decision is a measure of commercial policy, to be adopted by a qualified majority pursuant to Article 133(4) of the Treaty. Accordingly, since it is common ground that the contested decision was adopted in accordance with that provision, the fact that a minority of Member States, including the Portuguese Republic, were opposed to its adoption is not of such a kind as to vitiate that decision and entail its annulment.

67. Second, the Court observes, as did the Advocate General at point 32 of his Opinion, that the principle of cooperation in good faith between the Community institutions and the Member States has no effect on the choice of the legal basis of Community legal measures and, consequently, on the legislative procedure to be followed when adopting them.

68. Accordingly, the Portuguese Republic's claim that the contested decision failed to comply with that principle is unfounded.

Breach of the principle of legitimate expectations

69. The Portuguese Government claims that in adopting the contested decision the Council breached the principle of legitimate expectations as regards economic operators in the Portuguese textile industry.

70. It maintains that the latter were entitled to expect that the Council would not substantially alter the timetable and rate of the opening of the Community market in textile products to international competition, as fixed in the WTO agreements, in particular the ATC, and in the applicable Community legislation, in particular Regulation No 3030/93, as amended by Regulation No 3289/94, which transposed the rules set out in the ATC into Community law.

71. The adoption of the contested decision entailed a significant acceleration of the process of liberalising the Community market and therefore altered the legislative framework established by the ATC by making it significantly tougher. That significant and unforeseeable alteration of the conditions of competition in the Community market in textile products changed the framework in which the Portuguese economic operators implemented the restructuring measures which the Council itself, in adopting Regulation No 852/95, deemed indispensable, rendering those measures less effective and causing serious harm to the operators concerned.

72. The Council contends, first, that Portuguese operators in the textiles sector could not rely on a legitimate expectation that a situation which was still the subject of negotiation would be maintained. Although they assumed that the markets in India and Pakistan would be opened up without any reciprocal concessions, that expectation was not such as to found a legitimate expectation, having regard to the fact that it did not result from any legal commitment given by the Council.

73. Second, the Council contends that the approval of the two Memoranda of Understanding does not call in question the outcome of the Uruguay Round. Thememoranda do not contain any provision modifying the level of restrictions in force or the rate of expansion provided for in the bilateral agreements concluded with India and Pakistan. The Memoranda of Understanding provide only that the Commission is prepared to give favourable consideration to requests for exceptional flexibilities (including carry-over, carry-forward and inter-category transfers) introduced by Pakistan or India, within the framework of the existing restrictions and not exceeding, for each quota year, the amounts fixed in each memorandum. Those exceptional flexibilities, and in particular the possibility of carrying them forward, do not modify the restrictions in force and, in particular, do not have the effect of altering the timetable for integration of the categories concerned into GATT 1994.

74. The Commission maintains that the Portuguese Republic cannot reply on breach of the principle of legitimate expectations of the economic operators because, first, it does not have a direct and personal interest in the protection of their legitimate interests and, second, it failed to forewarn those economic operators, although the information in its possession showed clearly and adequately that in order to reach an agreement the Community would probably have to grant additional

concessions.

75. In that regard, it should be noted that it is settled law that the principle of respect for legitimate expectations cannot be used to make a regulation unalterable, in particular in sectors - such as that of textile imports - where continuous adjustment of the rules to changes in the economic situation is necessary and therefore reasonably foreseeable (see to that effect Case C-315/96 *Lopex Export* [1998] ECR I-317, paragraphs 28 to 30).

76. Furthermore, for the reasons stated by the Advocate General at point 33 of his Opinion, no appreciable differences in treatment were established between Indian and Pakistani producers, on the one hand, and those from other States which haveacceded to the WTO, on the other hand; in any event, if such differences exist they are not of such a kind as to prejudice the expectations of the operators concerned.

77. It follows that the Portuguese Republic's claim that the contested decision was adopted in breach of the principle of legitimate expectations is unfounded.

Breach of the principle of the non-retroactivity of legal rules

78. The Portuguese Government claims that the principle of the non-retroactivity of legal rules has been breached, since the arrangements introduced by the Memoranda of Understanding approved in the contested decision have retroactive effect and apply to past situations without any reasons being stated for the need to derogate from the principle that legal rules apply only for the future.

79. Although they were signed on 15 October and 31 December 1994 respectively, and only approved by the Council on 26 February 1996, the Memoranda of Understanding concluded with Pakistan and India ratify the application of a system of exceptional flexibilities which took effect, pursuant to paragraph 6 of each memorandum, as from 1994 in the case of Pakistan and 1995 in the case of India.

80. In that regard, it is sufficient to point out that the implementation of these international commitments in Community law was to be effected by the Commission, pursuant to Article 19 of Regulation No 3030/93, by the adoption of measures amending the annexes thereto.

81. Accordingly, it is only in the context of an action against the adoption of such measures that their retroactive effect may be challenged.

82. It follows that the Portuguese Republic cannot rely on the claim that the contested decision failed to observe the principle of the non-retroactivity of legal measures.

Breach of the principle of economic and social cohesion

83. The Portuguese Government maintains that the contested decision was adopted in breach of the principle of economic and social cohesion set out in Articles 2 and 3(j) of the EC Treaty (now, after amendment, Articles 2 EC and 3(1)(k) EC), and also of Articles 130a of the EC Treaty (now, after amendment, Article 158 EC), 130b and 130c of the EC Treaty (now Articles 159 EC and 160 EC), and 130d and 130e of the EC Treaty (now, after amendment, Articles 161 EC and 162 EC). The Council itself referred to such a principle in the recitals in the preamble to Regulation No 852/95, when it stated that the adoption of that regulation had become necessary owing to the adoption of legal arrangements which aggravated inequalities and jeopardised the economic and social cohesion of the Community.

84. The Council maintains that the Community adopted Regulation No 852/95 in favour of the Portuguese industry in order to strengthen economic and social cohesion. It also observes that the Community's obligation to integrate textile products and clothing within the framework of GATT 1994 in accordance with the provisions of the ATC and Regulation No 3289/94 amending Regulation No 3030/93, was not affected by the commitments contained in the two Memoranda of Understanding.

85. The Commission maintains that, contrary to what the Portuguese Republic claims, the EC Treaty does not set up economic and social cohesion as a fundamental principle of the Community legal order, compliance with which is absolutely binding on the institutions to the extent that any measure capable of having a negative impact on certain less-favoured areas of the Community is

automatically void.

86. The Court would observe that although it follows from Articles 2 and 3 of the Treaty, and also from Articles 130a and 130e, that the strengthening of economicand social cohesion is one of the objectives of the Community and, consequently, constitutes an important factor, in particular for the interpretation of Community law in the economic and social sphere, the provisions in question merely lay down a programme, so that the implementation of the objective of economic and social cohesion must be the result of the policies and actions of the Community and also of the Member States.

87. Consequently, the Portuguese Government's claim that the contested decision was adopted in breach of the principle of economic and social cohesion is unfounded.

Breach of the principle of equality between economic operators

88. The Portuguese Government claims that the contested decision favours woollen products over cotton products, since the measures opening the markets of India and Pakistan established by the Memoranda of Understanding benefit virtually exclusively Community producers of wool products. Producers in the cotton sector - in which the essential part of the export capacity of the Portuguese industry is concentrated - are thus doubly penalised.

89. The Council replies that the purpose of the negotiations with India and Pakistan was to improve access to the Indian and Pakistan markets. If the products supplied by those two countries tended to suit a particular category of economic operator, in this case those in the wool sector, that cannot constitute a breach of the principle of equality between economic operators, since the memoranda were not in any way intended to discriminate between them.

90. The Commission maintains that the fact that India and Pakistan offered more favourable treatment for wool products than for cotton products (an allegation which has not been proven by the Portuguese Republic) and thereby established a certain inequality of treatment between different categories of operators in thetextile industry cannot be attributed to the Council as discrimination on its part. Even if it could, the discrimination would be justified by the nature of the measure in question and the objective which the Council pursued in approving the Memoranda of Understanding, namely to improve, in the common interest, access to the Indian and Pakistan markets for all products of Community origin.

91. The principle of non-discrimination requires that 'comparable situations should not be treated in a different manner unless the difference in treatment is objectively justified' (see, in particular, *Germany* v *Commission*, cited above, paragraph 67).

92. In the present case, as the Advocate General observes at point 35 of his Opinion, operators in the textile sector are active in two separate markets, the market in wool and the market in cotton, and, consequently, any economic prejudice suffered by one of those two categories of producers does not imply a breach of the principle of non-discrimination.

93. Consequently, the Portuguese Republic's claim that the contested decision was adopted in breach of the principle of equality between economic operators is also unfounded.

94. It follows that its claim that the contested decision was adopted in breach of certain rules and fundamental principles of the Community legal order is unfounded; accordingly, the application must be dismissed in its entirety.

Costs

95. Under Article 69(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. Since the Council applied for the Portuguese Republic to be orderedto pay the costs and the Portuguese Republic has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;

2. Orders the Portuguese Republic to pay the costs;

3. Orders the French Republic and the Commission of the European Communities to bear their own costs.

Moitinho de Almeida Edward Sevón

Kapteyn Gulmann Puissochet

Hirsch Jann Ragnemalm

Delivered in open court in Luxembourg on 23 November 1999.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President

1: Language of the case: Portuguese.