



LUXEMBOURG

TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SOD PRVHO STUPNE EVROPSKYCH SPOLEČENSTVÍ
DE EUROPEISKE FÆLLESSKABERS RET I FØRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMENE ASTME KOHUS
ΠΡΩΤΟΒΑΘΜΟ ΤΩΝ ΕΥΡΩΠΑΙΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT CHEADCHÉIME NA GCOMHGHOBAL EORRACH
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
EIROPAIS KOPIENU PIRMAŠ INSTANCES TIESA

EUROPOS BENDRIŲ PIRAMOSIOS INSTANCIOS TEISMAS
EURÓPAI KOZÖSSÉGEK ELSŐFOKŰ BÍRÓSÁGA
IL-QORTI TAL-PRIM'ISTANZA TAL-KOMUNITAJIET EWROPEJ
GERICHT VAN EERSTE AANLEED VAN DE EUROPESE GEMEENSCHAPPEN
SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
SOD PRVHO STUPŇA EURÓPSKYCH SPOLOČENSTEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIKISTUUN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

ORDER OF THE PRESIDENT OF THE FIRST CHAMBER
OF THE COURT OF FIRST INSTANCE

- 274396 -

8 July 2005 *

(Intervention – Representative association – Association which as its object the
protection of its members' interests – Interest in the result of the case –
Confidential treatment)

In Case T-498/04,

Zhejiang Xinan Chemical Industrial Group Co. Ltd, established in Jiande City
(China), represented by D. Horovitz, lawyer, and B. Hartnett, barrister-at-law,
with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by J.-P. Hix, acting as Agent,
assisted by G. M. Berrisch, Rechtsanwalt,

defendant,

supported by

Commission of the European Communities, represented by E. Righini, and K.
Talabér Ricz, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of Article 1 of Council Regulation (EC) No
1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on
imports of glyphosate originating in the People's Republic of China (OJ L 303,
p.1), in so far as it concerns the applicant,

* Language of the case : English

CERTIFIED A TRUE COPY,

LUXEMBOURG,
REGISTRAR :

11.07.05

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF FIRST
INSTANCE OF THE EUROPEAN COMMUNITIES,

makes the following

Order

Procedure

- 1 By application lodged at the Registry of the Court of First Instance on 23 December 2004, Zhejiang Xinan Chemical Industrial Group Co. Ltd, brought an action for annulment of Article 1 of Council Regulation (EC) No 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China (OJ L 303, p.1), in so far as it concerns the applicant.
- 2 By application lodged at the Court Registry on 5 April 2005, the Commission of the European Communities sought to intervene in support of the form of order sought by the defendant. By order of 13 June 2005, the President of the First Chamber of the Court allowed the intervention of the Commission.
- 3 By application lodged at the Court Registry on 25 April 2005, the « Association des utilisateurs et distributeurs de l'agrochimie européenne » (hereinafter « AUDACE »), represented by J. E. Flynn, Q.C., sought leave to intervene in the case in support of the form of order sought by the applicant, pursuant to article 40, paragraph 2, of the Statute of the Court of Justice, applicable to proceedings before the Court of First Instance by virtue of article 53, paragraph 1, thereof and to Article 115 of the Rules of Procedure of the Court of First Instance.
- 4 The application to intervene was served on the parties pursuant to the first subparagraph of article 116(1) of the Rules of Procedure.
- 5 By document lodged at the Court Registry on 1st June 2005, the Council requested the Court to reject AUDACE's application to intervene.
- 6 By document lodged at the Court Registry on 1st June 2005, the Council requested, pursuant to Article 116(2) of the Rules of Procedure, that information contained in paragraph 30 of its Defence be treated as confidential vis-à-vis AUDACE and it provided a non-confidential version of its Defence.
- 7 By document lodged at the Court Registry on 2 June 2005, the applicant stated that it had no objection to the AUDACE's application to intervene. By the same document the applicant requested, pursuant to Article 116(2) of the Rules of

Procedure, that the Court treat as confidential certain matters lodged by the applicant in the present proceedings as well as the information contained in paragraph 30 of the Defence. The applicant provided a non-confidential version of the documents and matters in question.

The application for intervention

Arguments of the parties

- 8 In support of its application AUDACE states that it is an association having legal personality under French law which brings together generic producers, independent of the major manufacturers, distributors and users of plant protection products, including some of their representative organisations, namely farmers' trade unions, cooperatives and farmers' purchasing groups. It claims that it has over 80 000 members from most Member States.
- 9 It points out as well that by virtue of Article 2 of its statute, its objects include the representation and defence of its members' personal and collective interests before regulatory authorities and in legal proceedings in the field of plant health, seeds, fertilizers as well as veterinary medicine.
- 10 AUDACE maintains that it has been active on matters relevant to plant protection at national, Community and international levels, especially through input into the elaboration of legislation in the field, assisting the European Commission in merger cases relating to the plant protection industry and in legal disputes. As regards glyphosate particularly, AUDACE lodged a complaint in 2002 alleging an agreement between Monsanto and Cheminova and abuses of dominant position with respect to Monsanto's Roundup brand and generic glyphosate based herbicides.
- 11 AUDACE states that, in April 2002, it lodged a request for a review, pursuant to Article 11(3) 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], of the measures extending the anti-dumping duty to imports of glyphosate consigned from Malaysia or Taiwan. When the Commission itself undertook the review of the antidumping measures applicable to imports of glyphosate originating in the People's Republic of China, AUDACE actively participated in the procedure by making submissions on 18 February 2003 on the choice of Brazil as the analogue country and by making detailed submissions on other issues on 17 March 2003. It also claims that there were many other exchanges of correspondence as well as three meetings with the Commission in relation to this review.
- 12 AUDACE claims that the present case raises questions of principle affecting its members' interests. It claims that the importance of glyphosate for agriculture and

its impact on the profitability of the European agricultural sector is and will be substantial. It submits that the Regulation contested in the present case reinforces a monopoly situation in the Community market that is particularly detrimental to Community users, distributors and independent generic producers. AUDACE considers that its members' interests will therefore be directly and specifically affected by the outcome of the present case.

- 13 The Council does not deny that AUDACE is a representative trade association which seeks to protect its members' interests. It maintains, however, that the present case does not raise questions of principle that could affect AUDACE's members.

Findings of the President

- 14 The application to intervene was submitted in accordance with Article 115 of the Rules of Procedure. It is necessary therefore to determine whether the applicant has established an interest in the result of the case, as required by the second paragraph of Article 40 of the EC Statute of the Court of Justice, which applies to the procedure before the Court of First Instance by virtue of the first paragraph of Article 53 thereof.
- 15 It has consistently been held that the concept of an interest in the result of the case, within the meaning of that provision, must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the forms of order sought and not as an interest in relation to the pleas in law put forward. The expression «result» is to be understood as meaning the operative part of the final judgment which the parties ask the Court to deliver. [Order of the President of the Court of Justice of 17 June 1997 in Joined Cases C-151/97 P(I) and C-157/97 P(I) National Power and PowerGen [1997] ECR I-3491, paragraphs 53 and 57; order of the Court of First Instance of 25 February 2003 in Case T-15/02 BASF AG v Commission, [2003] ECR II-213, paragraph 26]
- 16 It is also settled case-law that representative associations the object of which is to protect their members in cases raising questions of principle liable to affect those members may be granted leave to intervene (orders of the President of the Court of Justice in National Power and PowerGen, cited above, paragraph 66, and of 28 September 1998 in Case C-151/98 P Pharos v Commission [1998] ECR I-5441, paragraph 6). More particularly, an association may be allowed to intervene if it represents an appreciable number of undertakings active in the sector concerned; if its objects include that of protecting its members' interests, and if the case raises questions of principle affecting the functioning of the sector concerned such that the interests of its members may therefore be affected to an appreciable extent by the judgment (see, to that effect, orders of the Court of First Instance of 8 December 1993 dismissing the application for leave to intervene submitted by Yves Saint Laurent Parfums SA in Case T-87/92 Kruidvat v Commission [1993]

ECR II-1375, paragraph 14, and of 28 May 2004 in Case T-253/04 Akzo Nobel Chemicals v Commission, not yet published in the ECR, paragraph 21).

- 17 In the present case, first, AUDACE has stated, without being contradicted on this point by the applicant or the defendant, that it represents the interests of a significant number of users, distributors and generic producers of plant protection products for which glyphosate has a special importance. AUDACE must for that reason be regarded as being sufficiently representative of undertakings that are active within the sector concerned.
- 18 Second, according to Article 2 of its statute its objects include the representation and defence of its members' personal and collective interests before regulatory authorities and in legal proceedings in the field of plant health, seeds, fertilizers as well as veterinary medicine. AUDACE must therefore be regarded as having among its purposes that of safeguarding the interests of its members.
- 19 Third, the present case raises the question as to whether the Community institutions properly applied the market economy treatment test, pursuant to Article 2(7) of Regulation No 384/96, to one of the major Chinese producers of glyphosate. The position which the Court may take on this question is liable to have a bearing on the market conditions in the sector in which AUDACE's members operate and therefore their interests may be affected to an appreciable extent. It should be noted, in that regard, that the statute of AUDACE designates as one of its principal aims the respect of freedom of trade in the sector of plant protection products. Furthermore, AUDACE participated actively in the proceedings leading to the adoption of the contested Regulation. AUDACE has therefore established an interest in the result of the case.
- 20 This conclusion is not vitiated by the fact that neither AUDACE nor its members are involved in the market economy treatment determinations. Indeed, as stated above, it suffices that their interest is established in relation to the operative part of the final judgment which the applicant claims from the Court.
- 21 It follows from the foregoing that AUDACE will be granted leave to intervene in the present proceedings in support of the form of order sought by the applicant.

The applications for confidential treatment

- 22 At this stage, the service on AUDACE of the procedural documents will be limited to the non-confidential versions produced by the applicant and the defendant. A decision on the merits of the requests for confidentiality will, if necessary, be taken at a later stage in the light of the observations which may be submitted in that respect.

On those grounds,

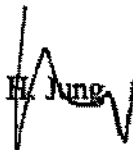
THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF FIRST
INSTANCE

Hereby orders :

- 1) The « Association des utilisateurs et distributeurs de l'agrochimie européenne » (AUDACE) is granted leave to intervene in case T-498/04 in support of the form of order sought by the applicant.
- 2) The Registrar shall serve on the intervener a copy of the non-confidential versions of the documents served on the parties.
- 3) A period shall be prescribed within which the intervener may submit its observations on the applications for confidential treatment. A decision on the merits of those applications is reserved.
- 4) A period shall be prescribed within which the intervener may submit its statement in intervention.
- 5) The costs are reserved.

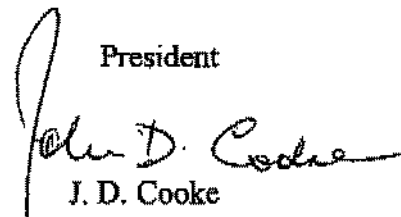
Luxembourg, 8 July 2005

Registrar



H. Jung

President



J. D. Cooke