ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
21 May 1999 *

In Case T-154/98,

Asia Motor France SA, a company incorporated under French law, in liquidation, established in Chemille, France, represented by André-François Bach, liquidator,

Jean-Michel Cesbron, a trader carrying on business under the name of JMC Automobiles, in liquidation, residing in Chemille, represented by André-François Bach, liquidator,

Monin Automobiles SA, a company incorporated under French law, in liquidation, established in Bourg-de-Péage, France, represented by Nicolas Grandjean, liquidator,

Europe Auto Services (EAS) SA, a company incorporated under Luxembourg law, in liquidation, established in Livange, Luxembourg, represented by Pierrot Schiltz, receiver,

all represented in these proceedings by Jean-Claude Fourgoux, of the Brussels and Paris Bars, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

applicants,

* Language of the case: French.

Commission of the European Communities, represented by Giuliano Marenco, Principal Legal Adviser, and Loic Guérin, national expert seconded to the Commission, 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 15 July 1998 rejecting the complaints lodged by the applicants as to the existence of cartel practices alleged to be contrary to Article 85 of the EC Treaty (now Article 81 EC),

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

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

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 The applicants imported and marketed in France vehicles of Japanese makes which had been cleared for free circulation in other Member States of the Community, such as Belgium and Luxembourg, and are currently in liquidation.

2 Considering himself to be the victim of an unlawful cartel operated by five importers of Japanese cars into France, namely Sidat Toyota France, Mazda France Motors, Honda France, Mitsubishi Sonauto and Richard Nissan SA, one of the applicants, Jean-Michel Cesbron, lodged a complaint with the Commission on 18 November 1985 alleging infringement of Article 30 of the EC Treaty (now, after amendment, Article 28 EC) and Article 85 of the EC Treaty (now Article 81 EC).

3 On 29 November 1988 the applicants lodged a fresh complaint against those five importers, this time under Article 85 of the Treaty.

4 In the latter complaint the five importers were essentially alleged to have given an undertaking to the French authorities not to sell on the French domestic market a quantity of cars greater than 3% of the number of vehicles registered throughout French territory during the preceding calendar year. Those importers were said to

have reached an agreement on sharing that quota in accordance with rules set in advance, precluding any other undertaking wishing to distribute in France Japanese vehicles of makes other than those distributed by the parties to the alleged agreement.

5 The applicants went on to maintain in that complaint that, in return for that undertaking, the French authorities had increased the obstacles to the free circulation of Japanese vehicles of makes other than the five makes distributed by the importers who were parties to the alleged agreement.

6 Under Article 11(1) of Regulation No 17 of the Council of 6 February 1962, First regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87), the Commission, in a letter dated 9 June 1989, requested information from the importers in question. The French Directorate-General for Industry and Regional Development instructed those importers in a letter dated 20 July 1989 not to reply to one of the questions posed by the Commission, whereupon the latter by letter dated 16 October 1989 sought information from the French authorities. On 28 November 1989 the French authorities replied essentially that 'the questions concerning the conduct of the undertakings mentioned in the Commission's letter [were] irrelevant in this context in so far as that conduct [was] connected with the regulatory arrangements of the public authorities; those undertakings [had] no autonomy in the implementation of those arrangements.'

7 Since the Commission failed to reply to them, the applicants sent a letter on 24 November 1989 requesting it to adopt a position on the complaints. When it still failed to reply the applicants brought an action before the Court of Justice on 20 March 1990 for failure to act and for damages. By order of 23 March 1990 in Case C-72/90 *Asia Motor France and Others* v *Commission* [1990] ECR I-2181, the Court declared the action for failure to act and for damages inadmissible in so

far as it concerned the Commission's lack of response to the alleged infringement of Article 30 of the Treaty and referred the action to the Court of First Instance in so far as it concerned the Commission's lack of response to the alleged infringement of Article 85 of the Treaty and the ensuing liability.

8 Meanwhile, by a letter dated 8 May 1990, the Director-General of the Commission's Directorate-General for Competition informed the applicants in accordance with Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-64, p. 47, hereinafter 'Regulation No 99/63') that it did not intend to take up their complaints and invited them to submit any observations they might have in that regard. On 29 June 1990 the applicants submitted their observations to the Commission, in which they reaffirmed that their complaints were well founded.

9 In those circumstances, the Court of First Instance held in its judgment in Case T-28/90 *Asia Motor France and Others* v *Commission* [1992] ECR II-2285 ('*Asia Motor France I*') that there was no need to give a decision on the application in so far as it was based on Article 175 of the EC Treaty (now Article 232 EC). As for the remainder, the Court dismissed as inadmissible the applicants' claim for damages.

10 On 5 June 1990 Somaco likewise lodged a complaint with the Commission concerning the practices engaged in by CCIE, SIGAM, SAVA, SIDA and Auto GM, all established in Lamentin (Martinique, France), dealers for Toyota, Nissan, Mazda, Honda and Mitsubishi respectively, and importers of those makes in Martinique. That complaint, which was based on Articles 30 and 85 of the Treaty, also challenged the practices of the French authorities on the ground

that they were intended to prevent parallel imports by the complainant of certain Japanese makes of vehicle, and of the Korean-made Hyundai vehicles.

11 By letter of 9 August 1990 and with reference to its letter of 8 May 1990 to the applicants, the Commission informed Somaco that it did not intend to take up its complaint and invited it to submit observations in accordance with Article 6 of Regulation No 99/63. By letter of 28 September 1990 Somaco reaffirmed that its complaints were well founded.

12 By letter of 5 December 1991 the Commission notified to the applicants and to Somaco a decision rejecting the complaints lodged on 18 November 1985, 29 November 1988 and 5 June 1990.

13 The rejection was based on two grounds. According to the first, the conduct of the five importers concerned formed part of the policy of the French public authorities in regard to imports into France of Japanese motor vehicles. Under that policy the public authorities not only determined the total number of vehicles admitted each year into France but also laid down the arrangements for sharing out those quantities. The second ground was that there was no link between the interest of the complainants and the alleged infringement owing to the fact that, even if Article 85 of the EC Treaty were applied, it would be unlikely to remedy the situation of which the complainants considered themselves to be the victims.

14 By an application lodged at the Registry of the Court of First Instance on 4 February 1992 the applicants and Somaco brought an action for annulment of the abovementioned decision of 5 December 1991.

15 In its judgment in Case T-7/92 *Asia Motor France and Others* v *Commission* [1993] ECR II-669, ('*Asia Motor France II*'), the Court of First Instance annulled the Commission's decision of 5 December 1991 in so far as it related to Article 85 of the EC Treaty, since the first ground for rejection was based on an incorrect factual and legal assessment of the particulars submitted by the applicants for the Commission's appraisal and the second ground was itself vitiated by an error of law.

16 In that judgment the Court found, *inter alia*, that, in so far as the decision of 5 December 1991 rejected the complaints on the ground that the traders in question had no autonomy or 'freedom of action' whereas that ground was gainsaid by precise, detailed evidence which was submitted for the Commission's appraisal by the complainants, it was vitiated by a manifest error in the assessment of the facts which led it to err in law as regards the applicability of Article 85 of the EC Treaty to the conduct of the traders in question.

17 Following that judgment the Commission requested information, on 25 August 1993, from the French authorities and the Martinique dealers concerned by Somaco's complaint of 5 June 1990, in accordance with Article 11(1) of Regulation No 17.

18 The Martinique dealers replied to that request in October 1993. Four of them furnished, in support of their explanations, copies of documents showing, in their view, that the import quotas applied to their makes were allocated by the authorities and not under any agreement between them.

19 The French authorities replied to the request for information in a letter of 11 November 1993.

20 On 19 October 1993 the applicants and Somaco sent the Commission a formal letter of notice under Article 175 of the EC Treaty.

21 On 10 January 1994 the Commission addressed to the parties and Somaco a communication under Article 6 of Regulation No 99/63. It also provided them with copies of the replies to the requests for information and offered them an opportunity to examine the documentary evidence which had been submitted to it. By letter of 9 March 1994 the applicants and Somaco submitted their observations.

22 On 2 August 1994 the applicants and Somaco addressed a new letter of formal notice to the Commission.

23 By letter of 13 October 1994 the Commission notified to the applicants and Somaco a fresh decision in which it rejected their complaints. That decision relied solely on the first ground of rejection stated in the decision of 5 December 1991.

24 By an application lodged at the Registry of the Court of First Instance on 12 December 1994 the applicants and Somaco brought an action for failure to act, for annulment and for damages. That action was directed against the Commission and concerned its decision of 13 October 1994.

25 In its judgment of 18 September 1996 in Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961 ('*Asia Motor France III*'), the Court dismissed as inadmissible the claims for failure to act and for damages made by the applicants and Somaco. However, the Court annulled the Commission's decision of 13 October 1994 in so far as it rejected the complaints of

18 November 1985 and 29 November 1988. The Court found that the Commission had manifestly erred in its assessment of the facts by forming the view, on the evidence available to it, that the conduct of authorised importers in metropolitan France was fettered to the extent that it fell outside the purview of Article 85(1) of the EC Treaty. The Court reached that conclusion after finding that the Commission had based its decision on the abovementioned complaints on the same evidence as it had used in its decision of 5 December 1991 in support of its conclusion that the traders concerned had no autonomy or 'leeway'. The Court held that in the absence of new evidence relating to the import scheme applicable in metropolitan France, the decision of 13 October 1994 was not based on objective, relevant and consistent evidence such as to show that the French authorities had unilaterally brought irresistible pressure to bear on the undertakings in question to adopt the conduct criticised in the complaints.

26 Following that judgment, the Commission addressed to the five importers concerned in metropolitan France new requests for information under Article 11(1) of Regulation No 17 on 7 May 1997.

27 On 7 October 1997, after receiving replies to those requests for information, the Commission addressed a communication to the applicants under Article 6 of Regulation No 99/63. The applicants submitted their observations on that communication by letter of 5 December 1997.

28 By letter of 16 July 1998 the Commission notified to the applicants a decision again rejecting their complaints ('the contested decision'). According to the Commission, the replies which it received to its requests for information of 7 May 1997 confirm that the French public authorities unilaterally determined the manner in which the overall quota of 3% was to be shared amongst the five importers concerned and required them not to exceed their share of the quota.

The pressure exerted by the French authorities was said to have been applied to each of those five importers individually, and not to all of them as a whole. In any event, in the Commission's view, there was no Community interest sufficient to justify fresh intervention by it.

29 It was in those circumstances that, by an application lodged at the Registry of the Court of First Instance on 23 September 1998, the applicants brought these proceedings.

30 The application is formally divided into five parts.

31 In a first part entitled 'Subject-matter of the dispute', the application essentially rehearses the Court's case-law on the Member States' obligation to ensure the effectiveness of Articles 85 and 86 of the EC Treaty.

32 A second part, entitled 'Decision of 15/16 July 1998 whose annulment is sought', states the chief grounds on which the communication of 7 October 1997 was based, together with certain remarks on them, and reproduces verbatim the observations of the applicants of 5 December 1997. At the end of that second part it is stated that 'the observations rejected by the Commission form the basis of the applicants' reasoning.'

33 In a third part entitled 'Previous judgments of the Community judicature in this matter', the application gives a brief account of the background to the dispute. Copies of the judgments in *Asia Motor France I, Asia Motor France II* and *Asia*

Motor France III, and of the order in *Asia Motor France and Others* v *Commission* cited above, are appended to the application.

34 In a fourth part entitled 'Judgment of the Court of First Instance of 18 September 1996', the application reproduces the main points of the Court's appraisal concerning the complaints of 18 November 1985 and 29 November 1988. At the end of that fourth part it is once again stated that the applicants' observations of 5 December 1997 'constitute the foundation of this action and take up the pleas in law relied on before the Court of First Instance in support of the claim for annulment.'

35 The fifth part, entitled 'Annulment pleas', is couched in the following terms:

'Since the Commission refuses to take account of the findings of the Court of First Instance in its previous judgments or of the instructions given to [the Commission] to examine the case afresh on the basis of objective, relevant and consistent evidence to be collected with a view to enabling it finally to reach a determination in accordance with Community law, the decision cannot but be annulled, since the Commission has deliberately abstained from seeking evidence which would have undermined its decision.

In it are to be found the same factual and legal errors of assessment, the same Treaty infringement as if, having deliberately set out along the wrong path at the outset, it could conceive of no solution other than to carry on in the same direction, that is to say to persist in its error.

Doubtless it is counting on the ruination, thanks to its policy, of the complainant undertakings so that they will in the end waive their rights.

It is appalling for an institution like the Commission now to claim, without batting an eyelid, that the fact that the matter goes back thirteen years, that is to say the duration of the proceedings, means that there is no interest in protecting the rights of the victim undertakings, European citizens, when it is the Commission itself which is responsible for the unreasonable delay owing to its unlawful decisions.

Reason and equity dictated that a statement of objections be served on the participants in the agreement and their union thirteen years ago. The agreement was by then sufficiently well-established. It would have been for the undertakings concerned to establish at a hearing that the so-called self-restraint arrangement, in return for benefits (including the exclusion of Japanese competitors), was not a commercial choice but was due to irresistible pressure exerted by the French State capable of causing them to incur significant losses.

In thirteen years the Commission has been unable to marshal evidence of any such irresistible pressure.

It is against that background that the applicants are seeking the outright annulment of the decision of 15/16 July 1998, whilst reserving the right to claim compensation for the Commission's acts and omissions.'

36 In a separate document the Commission raised an objection of inadmissibility on 29 October 1998. It contends that the Court should:

— declare the action inadmissible;

— order the applicants to pay the costs.

37 On 30 December 1998 the applicants submitted their observations on the objection of inadmissibility, in which they claim that the Court should:

— dismiss the objection of inadmissibility;

— order the Commission to pay the costs of that part of the proceedings.

Admissibility

38 Under Article 114 of the Rules of Procedure, a party applying to the Court of First Instance for a decision on admissibility not going to the substance of the case must do so by a separate document. The Court may decide that there is no need to open the oral procedure and may by reasoned order give a decision on the application. In the present case the Court considers that the case-file provides it with sufficient information and that there is no need to open the oral procedure.

Parties' arguments

39 The Commission points out that, under the first paragraph of Article 19 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure, the application must state 'the subject-matter of the proceedings and a summary of the pleas in law on which the application is based'.

40 The Commission contends that the application in the present case does not state the pleas in law or legal arguments in support of the applicants' claims and, for that reason, does not comply with the abovementioned provisions.

41 The reference by the applicants to their observations of 5 December 1997, 'even on the supposition that, from a formal point of view, such a reference is able to remedy the absence of a statement of pleas in law in the application', does not enable the criticisms directed against the contested decision to be identified. In any event, those observations are irrelevant because they predate the contested decision and cannot therefore have taken account of it.

42 In support of its assertions, the Commission states that, whilst the Court has acknowledged that the statement of the pleas in the application need not match the terms and the order used in the Rules of Procedure, and may be expressed in terms of substance rather than legal classification, that is subject to the condition that the pleas may be discerned from the application with a sufficient degree of clarity (judgment in Joined Cases 19/60, 21/60, 2/61 and 3/61 *Société Fives Lille Cail and Others* v *High Authority of the European Coal and Steel Community* [1961] ECR 281, and order in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523). In the same cases, the Court also held that a mere abstract statement of the pleas in the application does not satisfy the requirements of the EC Statute or the Rules of Procedure. It has been consistently held that the statement of a plea must be sufficiently clear and precise to enable the Court to exercise its power of judicial review and the defendant to prepare its defence. It is therefore necessary for the basic matters of fact or of law relied on to be indicated, at least in summary form, coherently and intelligibly in the application itself (order in *De Hoe*, cited above, and judgment in Case T-84/96 *Cipeke* v *Commission* [1997] ECR II-2081).

43 The Commission goes on to rely on the case-law of the Court of First Instance in which it held that, whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to

the application, cannot compensate for the absence of the essential arguments in law which must feature in the application. The Court cannot substitute its own assessment for that of the applicant and attempt to seek and identify in the annexes the grounds on which it may consider the action to be based, since the annexes serve merely to support and explain (*Cipeke*, cited above, and orders in *De Hoe*, cited above, and Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267). The Commission observes that in *De Hoe* the Court also stated that reproducing the entire text of the complaint in the body of the application likewise does not satisfy the provisions of the EC Statute or the Rules of Procedure.

44 In support of those arguments, the Commission also states that the Court has consistently declared inadmissible applications under Article 169 of the EC Treaty (now Article 226 EC) which do not contain a specific statement of the claims on which the Court is asked to adjudicate and, at least in summary form, the matters of fact or of law on which those claims are based, but merely refer to the reasoning contained in the letter of formal notice and the reasoned opinion (Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, Case C-43/90 *Commission* v *Germany* [1992] ECR I-1909, and Case C-375/95 *Commission* v *Greece* [1997] ECR I-5981). The Court has also dismissed as inadmissible applications which fail to specify the facts and circumstances giving rise to the infringement alleged against the national authorities (Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187).

45 Finally, the Commission relies on the fact that the Court has dismissed as inadmissible appeals which do not indicate precisely which elements of the contested judgment are challenged, or the legal arguments which specifically support the appeal, but merely repeat or reproduce word for word the arguments previously submitted to the Court of First Instance (judgment in Case C-73/95 P *Viho* v *Commission* [1996] ECR I-5457, and orders in Case C-26/94 P *X* v *Commission* [1994] ECR I-4379, Case C-148/96 P(R) *Goldstein* v *Commission* [1996] ECR I-3883, Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435 and Case C-293/95 P *Odigitria* v *Council and Commission* [1996] ECR I-6129).

46 In response to that objection of inadmissibility the applicants claim that it is sufficient if the application enables the claims to be discerned, even if it does not mention the provisions of the Treaty on which it is based or even refers to the wrong provision and does not employ the usual terminology (Joined Cases 2/63 to 10/63 *Società Industriale Acciaierie San Michele and Others* v *High Authority of the European Coal and Steel Community* [1963] ECR 327 and Case 12/68 *X* v *Audit Board of the European Communities* [1969] ECR 109). What is important is that it should be possible readily to ascertain from the application the legal scope of the pleas relied on. That being the case, the application may, in regard to certain aspects of the dispute, refer to arguments used in other cases brought before the Court (Case 4/69 *Lütticke* v *Commission* [1971] ECR 325).

47 The applicants challenge the relevance of the case-law cited by the Commission in support of its objection of inadmissibility. First, they submit that in the orders in *De Hoe* and *Koelman,* and in the judgment in *Cipeke*, all cited above, the Court of First Instance declared the applications inadmissible on the ground that they referred globally to the documents annexed thereto. However, in the present case there is no reference to annexes. In particular, the observations of 5 December 1997 form an integral part of the application. Secondly, the applicants maintain that the two *Commission* v *Greece* judgments and the judgments in *Commission* v *Denmark* and *Commission* v *Germany*, cited above and relied on by the Commission, cannot be applied in the present case because they concern actions for failure to fulfil Treaty obligations. Finally, the judgment in *Viho* and the orders in *X*, *Goldstein*, *San Marco* and *Odigitria*, cited above, concern appeals declared inadmissible on the ground that they merely repeated or reproduced word for word the arguments previously submitted to the Court of First Instance.

48 According to the applicants, the application essentially contains four pleas for annulment of the contested decision: the first alleges a manifest error of assessment, the second an inadequate statement of the reasons on which it is based, the third infringement of the rights of the defence and the fourth

infringement of the Treaty. The first and fourth pleas are expressly stated in the application, whilst the second and third are contained in it 'impliedly but in a manner which is sufficiently intelligible.'

Findings of the Court

49 Under the first paragraph of Article 19 of the Protocol on the Statute of the Court of Justice of the EC, applicable to the Court of First Instance by virtue of the first paragraph of Article 46 of the same Statute and Article 44(1)(c) of the Rules of Procedure, all applications must contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based. The Court considers that, irrespective of any question of terminology, that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, even without further information. In order to guarantee legal certainty and sound administration of justice it is necessary, for an action to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provisions, must appear in the application (order in *De Hoe*, cited above, paragraph 20).

50 In this case, first, the applicants' observations of 5 December 1997 must be taken fully into account in determining whether the application satisfies the requirements of the aforementioned provisions. The applicants reproduced in the body of the application the full text of those observations, expressly stating that they formed the basis of their action (pp. 10 and 14). In those circumstances, incorporation of the full text cannot be equated with mere reference to or reproduction of an annex, which, in the order in *De Hoe* cited above, was held by the Court of First Instance not to satisfy the requirements of the abovementioned provisions.

51 Moreover, the argument based on the fact that those observations predate the contested decision is irrelevant since the content of the contested decision is identical in substance to that of the Commission's communication of 7 October 1997, to which those observations were intended to reply.

52 Secondly, two pleas are stated expressly in the application. The applicants allege that the Commission committed 'the same manifest errors of assessment as to the facts and the law' (pp. 5 and 15 of the application), and they rely on 'the same infringement of the Treaty' (p. 15 of the application).

53 The arguments used in the application to support those two pleas are sufficiently clear to enable the Court to review the legality of the contested decision and the defendant effectively to prepare its defence (Case T-378/94 *Knijff* v *Court of Auditors* [1996] ECR-SC II-1341).

54 Thus, as regards the first plea, it is apparent from the application that the applicants maintain that, as in *Asia Motor France II* and *Asia Motor France III*, the Commission manifestly erred in its assessment of the facts in considering the conduct of approved importers in metropolitan France to be so fettered as to fall outside the purview of Article 85(1) of the EC Treaty (pp. 5, 6 and 15 of the application). The applicants recall that, in *Asia Motor France III*, the Court held that there was no mandatory rule of French law requiring the importers concerned to adopt the conduct criticised in the complaints. In the circumstances the Commission was entitled to reject the complaints on the ground of the

importers' lack of autonomy only if it appeared on the basis of objective, relevant and consistent evidence that the adoption by them of such conduct was dictated by irresistible pressure exerted by the national authorities (pp. 6, 7, 12 and 13 of the application). However, in the present case, according to the applicants, the information gathered by the Commission following its fresh investigation cannot constitute such evidence (pp. 4, 7, 14 and 15 of the application). Furthermore, the information was not the result of a meticulous and impartial investigation and was not properly analysed (pp. 7, 8, 9 and 10 of the application).

55 As regards the second plea, it may be inferred from the application that it is to be understood as alleging failure on the part of the Commission to take the steps necessary to comply with the judgment in *Asia Motor France III*, in breach of Article 176 of the EC Treaty. Certainly, the latter provision is not mentioned expressly by the applicants. None the less, the Court has held that the statement of pleas in the application need not match the terms and the order used in the Rules of Procedure and, whilst they may be expressed in terms of substance rather than legal classification, it may be sufficient if the application sets them out with sufficient clarity (*Société Fives Lille Cail*, cited above, and order in *De Hoe*, paragraph 21).

56 As regards the second plea, the applicants claim, more specifically, that the contested decision repeats the factual and legal errors identified by the Court of First Instance in *Asia Motor France III* (pp. 5, 9 and 15 of the application). They rely on two points to support that argument. First, the fresh investigation by the Commission to gather objective, relevant and consistent evidence to demonstrate that the French authorities unilaterally exerted irresistible pressure on the five importers concerned to adopt the conduct criticised in the complaints was not conducted in a serious and diligent manner (pp. 6, 9, 10 and 15 of the application). Secondly, the Commission has in any event failed to adduce any new

evidence of the existence of such irresistible pressure (pp. 8 and 14 of the application).

57 The application contains no other plea satisfying the requirements of the first paragraph of Article 19 of the EC Statute and Article 44(1)(c) of the Rules of Procedure.

58 Thus, contrary to what is submitted by the applicants in their observations on the objection of inadmissibility, it is not apparent from the application that they also rely on a plea alleging inadequacy of reasoning or infringement of the rights of the defence.

59 Even if the application should be deemed to refer by implication to such pleas, it is clear that no arguments of sufficient clarity are set out to support them.

60 It follows that the pleas alleging manifest error of assessment and infringement of Article 176 of the EC Treaty are the only two pleas which are validly before the Court of First Instance.

61 Accordingly, the action must be declared admissible to that extent and costs are to be reserved.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The action is admissible in so far as it is based on a plea alleging a manifest error of assessment and a plea alleging infringement of Article 176 of the EC Treaty (now Article 233 EC).**

2. **The remainder of the action is inadmissible.**

3. **A period shall be prescribed within which the defendant shall submit a defence to be limited to the two abovementioned pleas, as described herein.**

4. **Costs are reserved.**

Luxembourg, 21 May 1999.

H. Jung — Registrar

J.D. Cooke — President