JUDGMENT OF THE COURT (Fifth Chamber)
10 March 1992 *

In Case C-179/87,

Sharp Corporation, Osaka, Japan, represented by Jeremy Lever QC, and Christopher Vajda, Barrister-at-Law of Gray's Inn, and by Robin Griffith, Solicitor, of Messrs Clifford Chance, with an address for service in Luxembourg at the Chambers of Jean-Claude Wolter, 8 Rue Zithe,

applicant,

v

Council of the European Communities, represented by Hans-Jürgen Lambers, Director in its Legal Service, and Erik Stein, Legal Adviser, acting as Agents, assisted by Hans-Jürgen Rabe and Michael Schütte, Rechtsanwälte, Hamburg and Brussels, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

Commission of the European Communities, represented by its Legal Adviser John Temple Lang, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

intervener,

and by

* Language of the case: English.

Committee of European Copier Manufacturers (CECOM), Cologne, represented by Dietrich Ehle and Volker Schiller, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Messrs Arendt and Harles, 4 Avenue Marie-Thérèse,

intervener,

APPLICATION for the annulment in whole or in part of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan (Official Journal 1987 L 54, p. 12), in so far as it affects the applicant,

THE COURT (Fifth Chamber),

composed of: R. Joliet, President of the Chamber, Sir Gordon Slynn, F. Grévisse, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: J. Mischo,
Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 3 October 1990, at which Sharp Corporation was represented by Ian Stewart Forrester QC, and Robin Griffith, Solicitor,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 June 1987, Sharp Corporation (hereinafter referred to as 'Sharp'), whose registered office is in Osaka, brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment in whole or in part of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan (Official Journal 1987 L 54, p. 12), hereinafter referred to as 'the contested regulation', in so far as it affects the applicant.

2 The Sharp company manufactures plain paper photocopiers ('PPCs'). In July 1985 Sharp, together with other Japanese manufacturers, was the subject of a complaint lodged with the Commission by the Committee of European Copier Manufacturers (CECOM), which accused it of selling its products at dumped prices.

3 The anti-dumping procedure initiated by the Commission on the basis of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1984 L 201, p. 1) resulted in the adoption of Commission Regulation (EEC) No 2640/86 of 21 August 1986 imposing a provisional anti-dumping duty on imports of plain paper photocopiers originating in Japan (Official Journal 1986 L 239, p. 5). The rate of the provisional anti-dumping duty was fixed at 15.8% of the net free-at-Community-frontier price in the case of imports of PPCs manufactured and exported by Sharp. By the contested regulation, which was adopted on a proposal from the Commission, the Council subsequently fixed the definitive anti-dumping duty at 20%.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or referred to hereinafter only in so far as is necessary for the reasoning of the Court.

5 In support of its action Sharp relies upon five pleas in law alleging variously miscalculation of the normal value, incorrect comparison of the normal value and the export price, incorrect evaluation of the injury suffered by the Community industry, incorrect appraisal of the interests of the Community and miscalculation of the anti-dumping duty.

The plea in law alleging miscalculation of the normal value

6 Sharp maintains that in so far as the institutions considered that they could not establish the normal value on the basis of the prices charged in transactions between it and its sales subsidiary in Japan, Sharp Business KK (hereinafter referred to as 'SBK'), they should not have based the normal value on the prices charged by SBK to the first independent purchaser but rather should have established the normal value in accordance with Article 2(3)(b) of Regulation No 2176/84. That is to say, they should have had recourse to the comparable price of the like product when exported to a third country, or constructed the normal value. Sharp adds that all SBK's costs should have been deducted from the normal value of the seven PPC models for which the normal value was determined as indicated above and that they should not have been included in the calculation of the normal value of the eighth model, for which the normal value was constructed.

7 According to the documents before the Court, Sharp has financial control of its sales subsidiary in Japan, and entrusts to it tasks which are normally the responsibility of an internal sales department of the manufacturing organization.

8 As the Court has already held, in particular in its judgment in Case 250/85 *Brother* v *Council* [1988] ECR 5683, at paragraph 16, the division of production and sales activities within a group made up of legally distinct companies can in no way alter the fact that the group is a single economic entity which organizes in that way activities that, in other cases, are carried on by what is in legal terms as well a single entity.

9 In those circumstances, the fact that the institutions took the prices paid by the first buyer who was independent of the sales subsidiary is justified, given that those

prices may quite properly be regarded as the prices actually paid or payable in the ordinary course of trade within the meaning of Article 2(3)(a) of Regulation No 2176/84.

10 It should be recalled in this connection that, as the Court held in Joined Cases 277 and 300/85 *Canon* v *Council* [1988] ECR 5731, at paragraph 11, it is to those prices that regard must primarily be had in order to establish the normal value, the other possibilities indicated in Article 2(3)(b)(i) and (ii) being merely subsidiary.

11 It should further be added that, as the Court held in Joined Cases 273/85 and 107/86 *Silver Seiko* v *Council* [1988] ECR 5927, at paragraph 14, by taking into consideration the sales subsidiary's prices it is possible to ensure that costs which manifestly form part of the selling price of a product where the sale is made by an internal sales department of the manufacturing organization are not left out of account where the same selling activity is carried out by a company which, despite being financially controlled by the manufacturer, is a legally distinct entity. The same is true as regards the inclusion of the costs incurred by SBK in the constructed normal value for one of Sharp's models.

12 Sharp further alleges that it received treatment different from that which the institutions accorded to Nakajima, a Japanese exporter, in the electronic typewriters case (Case 301/85 *Sharp Corporation* v *Council* [1988] ECR 5813). In Nakajima's case none of the domestic marketing or distribution costs or profits were included in the calculation of normal value.

13 That argument cannot be accepted. In this regard it is sufficient to state that the situations are not comparable in view of the fact that, unlike Sharp, Nakajima did not itself undertake the marketing of its products on the domestic market but sold them to others for that purpose.

14 It follows from all the foregoing considerations that the plea in law alleging miscalculation of the normal value must be rejected.

The plea in law alleging that the comparison of the normal value and the export price was incorrect

15 Sharp maintains that, if the institutions were entitled to determine the normal value on the basis of SBK's selling prices, they should have deducted all SBK's costs from that value, since they related solely to domestic sales. The same is true of the Sharp models in respect of which costs were included in the constructed normal value. By refusing to make those deductions, although the equivalent costs borne by Sharp's European sales subsidiaries were deducted from the export price, the institutions determined the normal value at a level of trade that was not comparable to the ex-factory level used for the export price.

16 It must be observed in this regard that the normal value and the export price were established on the basis of the price at which the product was sold for the first time to an independent customer.

17 It should further be emphasized that Sharp has not produced evidence that the sales on the basis of which the normal value and the export prices were determined related to different categories of purchasers and consequently took place at different levels of trade so as to justify the allowances claimed. Thus the institutions were not bound to grant them.

18 Lastly, Sharp maintains that Regulation No 2176/84 must be interpreted in accordance with the General Agreement on Tariffs and Trade (GATT) and the 1979 Anti-Dumping Code, which require a fair comparison to be made in order to establish the existence of dumping.

19 That argument cannot be accepted. In view of the foregoing, it is sufficient to observe that Sharp has not shown that the normal value and the export price were compared at different levels of trade.

20 The plea in law alleging that the comparison of the normal value and the export price was incorrect must therefore be rejected.

The pleas in law alleging that the injury suffered by the Community industry was inaccurately assessed

A — *Incorrect assessment of the similarity between PPCs*

21 It must be observed *in limine* that the institutions concluded that all PPCs, at least those falling within adjoining segments, from the personal copier to segment 5 in the Dataquest classification, should be regarded as like products; segment 6 machines, for which there was no Community production, were excluded from the investigation (paragraph 31 of the preamble to the contested regulation).

22 It must be observed in this connection that, according to the Info-Markt and Dataquest PPC classifications referred to by the institutions in this case, the PPC market comprises different segments defined on the basis of the technical features and performance of the machines in question. As paragraph 31 of the preamble to the contested regulation indicates, however, in the reference period Japanese manufacturers exported PPCs falling solely within the personal copier segment and segments 1 to 4.

23 Sharp maintains that the institutions wrongly ignored the segmentation of the PPC market and regarded all machines as like products within the meaning of Article 2(12) of Regulation No 2176/84. In order to demonstrate the absence of similarity between PPCs in adjoining segments, Sharp points out that the buyer of a PPC in segment 1 would not buy a personal PPC, on the ground that the cost per photocopy and its relative utility would diminish as copy volume increased.

24 Sharp claims, moreover, that there is no similarity between the PPCs in the so-called non-adjoining segments. In this connection it refers, first, to Commission Decision 88/88/EEC of 22 December 1987 relating to the Canon-Olivetti joint

venture (Official Journal 1988 L 52, p. 51), according to which PPCs are split into three distinct markets, namely low-end PPCs (extending from personal copiers to segment 2 of the Dataquest classification), mid-end PPCs (segments 3 and 4) and high-end PPCs (segments 4 to 6). It goes on to argue that the segmentation of the market thus accepted by the Commission is a result of the competition between PPCs within individual segments, which is much stronger than that between PPCs in different segments.

25 It must be pointed out in this connection that, according to Article 4(1) of Regulation No 2176/84, 'a determination of injury shall be made only if the dumped or subsidized imports are, through the effects of dumping or subsidization, causing injury i. e., causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry'. Article 4(4) provides that 'the effect of the dumped or subsidized imports shall be assessed in relation to the Community production of the like product (...)'. Furthermore, Article 2(12) of Regulation No 2176/84 provides that '"like product" means a product which is identical, i. e., alike in all respects, to the product under consideration, or, in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration'.

26 On the basis of the market surveys carried out by Info-Market and Dataquest, the institutions concluded that, although all PPCs were not like products, at least PPCs in adjoining segments, from the personal copier to copiers in segment 5 of the Dataquest classification should be regarded as such. It appears from the documents before the Court that in the said surveys the segments were not clearly delimited inasmuch as, on the one hand, some PPCs can be classified in several different segments in view of certain of their characteristics and technical features and, on the other hand, there is competition between PPCs in adjoining segments and between PPCs classified in the various segments referred to above.

27 The differences in point of, *inter alia*, speed and copy volume between PPCs falling within one or various segments are not sufficient to establish that those PPCs do not have identical functions or do not satisfy the same needs. Moreover,

as the third subparagraph of paragraph 30 of the preamble to the contested regulation indicates, the fact that customers' choice may be made on the basis of factors relating in particular to the decision to centralize or decentralize their photocopying facilities confirms that there is competition between machines in different categories.

28 It must be emphasized that, in view of the overlapping between the various segments mentioned above, copying speed cannot be used as a distinguishing factor as between PPCs. It is apparent from the documents before the Court *inter alia* that PPCs which produce between 40 and 45 copies per minute may belong either to segment 3 (from 31 to 45 copies) or to segment 4 (from 40 to 75 copies). The same applies to personal photocopiers which produce up to 12 copies per minute whereas copiers in segments 1a and 1b produce up to 20 and 15 to 20 copies per minute respectively.

29 With regard to Sharp's argument concerning the definition of the markets in question as given in Decision 88/88/EEC cited above, it must be acknowledged, together with the Commission, that that definition is not inconsistent with there being some substitutability between PPCs in the three segments in question or with that substitutability's being of a lesser order than that between PPCs in the same segment. It is clear from the foregoing considerations that the segments defined in that decision, like those in the Dataquest and Info-Markt classifications, are not reflected in distinct markets.

30 In view of the above, it must be held that Sharp has not established that the institutions made an error of assessment by considering that in this case 'Community production of the like product' within the meaning of Article 4(4) of Regulation No 2176/84 was production of all PPCs, in all segments merged together.

31 The plea in law alleging that the similarity of the products was incorrectly assessed must therefore be rejected.

B — *The erroneous definition of the Community industry*

32 Sharp claims that in view of the numerous imports from Japan by Rank Xerox, Océ and Olivetti, the institutions should not have included those companies in the number of producers making up the 'Community industry' within the meaning of Article 4(5) of Regulation No 2176/84, thus altering the position which the institutions had adopted in several previous cases. In Sharp's view, no Community undertaking was in a position to allege that it had suffered injury as a result of imports of small photocopiers from Japan. In any event, European production in this field was low or non-existent.

33 With regard to Rank Xerox, Sharp points out, first, that that undertaking is a 50% shareholder in Fuji Xerox, a Japanese company from which it procured large quantities of completely finished PPCs bearing the Rank Xerox label, 'kits' and components and, in addition, technical and design assistance. By purchasing PPCs from Fuji Xerox under those conditions Rank Xerox was enabled both to make a profit and influence the transfer price of the machines in question. As a result, the inclusion of Rank Xerox in the category of Community producers could only distort the assessment of the alleged injury.

34 It should be noted in this connection that when the same argument was relied on by the applicant in Case C-156/87 *Gestetner*, cited above, the Court pointed out at paragraph 57 that, with regard to imports of PPCs supplied by Fuji Xerox from Japan, the institutions took the view that Rank Xerox had not produced evidence that it had been led to buy the machines on grounds of self-protection. According to the information obtained the decision was a management decision taken by the Xerox group of companies. However, the volume of those imports was minimal in relation to the entire range of PPCs produced by Rank Xerox within the Community and in relation to the Community market as a whole (1%), and the resale prices were the same as the prices of equivalent machines produced by Rank Xerox.

35 Sharp then complains that Rank Xerox's production was counted as part of Community production whereas part of its operations consisted in reality of

assembling or producing machines in the Community from parts or materials originating in Japan. It states in this connection that Article 13(10), which was added to Regulation No 2176/84 by Regulation (EEC) No 1761/87 of 22 June 1987 (Official Journal L 167, p. 9), the 'screwdriver regulation', provides for the possibility of imposing anti-dumping duties in this type of situation. It considers that by bringing only companies established in Japan within the scope of that provision whilst counting companies established in the Community which carry out the same 'screwdriver' activities as Community producers, the institutions are treating similar cases dissimilarly.

36 That argument cannot be accepted. Article 13(10) of Regulation No 2176/84 was introduced after the contested regulation was adopted and is concerned with the imposition of anti-dumping duty on products assembled or produced in the Community from parts or materials originating in the exporting country or countries in question, not with the definition of Community production.

37 With regard to Océ and Olivetti, which also import PPCs from Japan, but from unrelated suppliers, Sharp claims that their imports represented 35 to 40% of their sales and machine rentals in the EEC and that they should therefore also have been excluded from the Community industry.

38 That argument cannot be accepted. As the Court held in its judgment in Case C-156/87 *Gestetner*, at paragraph 47, Olivetti and Océ imported PPCs from Japan so as to be able to offer their customers a full range of models. Those PPCs, falling within segments 1 and 2, were sold at higher prices than those charged by their suppliers and accounted for between 35 and 40% of sales and rentals of new machines placed on the market over the period from 1981 to July 1985. The attempts of both producers to develop and market a full range of models failed, however, because of the depressed market prices imposed by Japanese imports.

39 Nor can Sharp's argument based on the institutions' previous practice be accepted. As the Court held in *Gestetner*, at paragraph 43, in applying Article 4 of Regulation No 2176/84 it is for the institutions, in the exercise of their discretion, to determine whether they should exclude from the 'Community industry' producers which are related to exporters or importers or are themselves importers of the dumped product. The discretion must be exercised on a case-by-case basis, by reference to all the relevant facts.

40 It must be held that, according to the documents before the Court and the oral argument at the hearing, it was in the exercise of such discretion that a Community producer was excluded from or included in the Community industry in each of the cases referred to by the applicant.

41 Finally, as regards Sharp's argument that Community production of small photocopiers is low or non-existent, it is sufficient to observe that in this case the institutions were right to regard as like products all PPCs in adjoining segments, from the personal photocopier to copiers in segment 5 of the Dataquest classification, and that therefore Community production in the field of small photocopiers alone could not be taken into account for the purposes of defining the Community industry.

42 In view of the foregoing the plea in law alleging that the Community industry was wrongly defined is unfounded and must therefore be rejected.

C — *The erroneous assessment of the factors making up the injury*

43 Sharp contests both the analysis of the various factors which was carried out by the institutions in order to evaluate the injury suffered by the Community indsutry and the very existence of the injury thus defined, which, in Sharp's view, resulted not from the imports in question but from the policy followed by Community undertakings and the inferiority of their machines compared with Japanese PPCs.

44 In this respect reference should be made to the provisions of Regulation No 2176/84 which set out the methods for determining injury, in particular Article 4(1). According to that provision, first, there is no injury unless the dumped imports are, through the effects of dumping, causing or threatening to cause material injury to an established Community industry and, secondly, injuries caused by other factors must not be attributed to the dumped imports.

45 Article 4(2) of Regulation No 2176/84 lists the factors which must be examined to establish injury, namely (a) the volume of dumped imports, (b) the prices of dumped imports and (c) their impact on the industry concerned. The same provision specifies, however, that no one or several of those factors can necessarily give decisive guidance.

46 It is therefore in the exercise of their discretion that the institutions are called upon to analyse the said factors and to use such of the assessment factors listed for that purpose in Article 4(2) as they deem to be relevant in each particular case. In the present case the institutions carried out a detailed examination of the factors mentioned in Article 4(2).

47 As regards the volume of Japanese exports it must be observed that although sales and rentals of new machines manufactured by Community producers increased by 74% between 1981 and 1984, their share of the market fell from 21% in 1981 to 11% in the course of the reference period, whereas the share of the Community market held by Japanese producers rose from 70 to 78% over the same period. The institutions were therefore entitled to consider that Japanese imports, which increased by more than 120% between 1981 and 1984, prevented a more favourable development of PPC sales and rentals by Community undertakings.

48 With regard to price undercutting on the imported products, it is sufficient to point out that, despite the extra features and performance of PPCs manufactured in Japan in relation to comparable PPCs manufactured in the Community, their

prices were the same as or, indeed, lower than the prices of Community manufacturers' PPCs (paragraphs 44, 47 and 49 of the preamble to the contested regulation).

49 As far as the impact of the low-priced imports on the industry in question is concerned, it should be noted that besides the appreciable reduction in Community manufacturers' market share as mentioned above, the profitability of the Community manufacturers concerned also fell in the course of the reference period.

50 On this point it should be emphasized that the institutions were not, as Sharp claims, obliged to take into consideration the profits or losses made by Community producers on their activities in the photocopier sector as a whole. In accordance with Article 4(4) of Regulation No 2176/84 the effect of the dumped imports must be assessed in relation to the Community production of the like product. Consequently, the Council was right to assess the effect of Japanese imports on the profitability of Community producers by reference to Community production as defined above.

51 Sharp further alleges that the development of the European photocopier market shows that the institutions wrongly attributed to the imports in question injury resulting from other factors, in particular from the decision by Community undertakings not to manufacture small photocopiers owing to the costs and technological difficulties which development of new models of small photocopiers would have involved.

52 That argument cannot be accepted. Thus, in the case of Rank Xerox, the Council explains in paragraph 85 of the preamble to the contested regulation that in 1982/1983 difficulties experienced by that company in developing a new model were resolved and a new model was in fact launched on the market. Consequently, the Council did not make any error of assessment when it considered that such difficulties did not have any effect on the injury otherwise caused to Rank Xerox as a result of imports from Japan.

53 With regard to Océ and Olivetti, it should be borne in mind, as mentioned above (paragraph 37), that those two producers' attempts to develop and launch on the market a complete range of models failed as a result of depressed market prices brought about by Japanese imports.

54 Finally, as regards the argument concerning the alleged superiority of the Japanese PPCs, the range of their machines and their quality and reliability, it must be pointed out that no evidence to this effect has been produced.

55 In the light of the foregoing, the plea in law alleging that the factors making up the injury were wrongly assessed must be rejected.

The plea in law alleging erroneous appraisal of the interests of the Community

56 Sharp maintains that the appraisal of the interests of the Community was vitiated by the fact that Rank Xerox, Océ and Olivetti, which were dependent on and benefited from Japanese imports, were regarded as belonging to the number of manufacturers making up the Community industry, and that the institutions did not set their interest against that of the OEM importers such as Gestetner, Agfa-Gevaert and others. In this connection it claims that Rank Xerox, Océ and Olivetti held, together with Tetras, only 3% of the Community market for small photocopiers, whereas the abovementioned OEM importers, which employed a very large number of people, were very active in the field of small photocopiers.

57 Sharp considers that, in view of the very limited Community production and the very narrow range of products offered in the field of small photocopiers, the institutions' appraisal of whether the interests of the Community called for Community intervention was incorrect in so far as in deciding to protect manufacturers of a very small quantity of products it did not take account of the consequences which would ensue.

58 It should be borne in mind that, as the Court held in its judgment in C-156/87 *Gestetner*, at paragraph 63, the question whether the interests of the Community call for Community intervention involves appraisal of complex economic situations and judicial review of such an appraisal must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers.

59 It must be pointed out in this connection that, according to the institutions, in the absence of anti-dumping duties it would be doubtful whether an independent Community PPC industry could survive although it is necessary in order to maintain and develop the techniques required in manufacturing reprographic equipment and in order to preserve a large number of jobs. That concern arose in particular from the take-over, in the course of the investigation, of the business of one of the Community producers by a Japanese manufacturer. The institutions therefore took the view that the need to protect Community industry was more important than the need to protect the immediate interests of consumers, as is explained in paragraph 99 of the preamble to the contested regulation, and the need to protect importers.

60 Since the institutions did not commit any obvious error in their appraisal of the interests of the Community, the plea in law on this point must be rejected.

The plea in law alleging miscalculation of the anti-dumping duty

61 Finally, Sharp claims that in fixing the definitive anti-dumping duties at 20% of the net free-at-Community-frontier price the institutions were in breach of Article 13(3) of Regulation No 2176/84, according to which the amount of such duties may not exceed that which is necessary to remove the injury.

62 In this connection Sharp states, first, that the Commission was wrong to consider that a profit margin of 12% was necessary to ensure a reasonable profit or return on the sale of photocopiers. That margin is obviously excessive, in its view, given

that small photocopiers are always sold at a profit lower than that on total PPC sales operations. Sharp goes on to observe that the duty was calculated so as to eliminate price-undercutting which, for the reasons already given, did not in fact exist. Finally, Sharp considers that the explanation of the method of calculation of the duty which is contained in paragraph 107 of the preamble to contested regulation is unclear.

63 With regard to the argument that the profit margin of 12% is excessive, it should be noted that according to paragraph 103 of the preamble to the contested regulation the rate chosen was intended to allow the Community producers as whole a reasonable return commensurate with the risk represented by investing in the development of new products. In this regard the institutions considered it inappropriate to take into account profits made on supplies or other operations relating to photocopiers.

64 It appears neither from the documents before the Court nor from the argument at the hearing that the institutions exercised their discretion incorrectly. Moreover, Sharp has not established the extent to which a lower margin for small photocopiers would have affected the amount of the anti-dumping duty imposed.

65 The argument to the effect that the price-undercutting to be eliminated by the duty did not exist cannot be accepted. As paragraph 110 of the preamble to the contested regulation indicates, Japanese exporters undoubtedly did practise a certain form of price-undercutting (paragraph 48) but in view of the impossibility of quantifying it, no element was included in the calculations of the anti-dumping duty with a view to taking it into account.

66 Finally, with regard to the description of the method of calculating the duty, it is sufficient to observe that paragraph 107 of the preamble to the contested regulation describes in detail all the institutions' calculations, and that Sharp has not explained why the calculations were incomprehensible.

67 In view of the foregoing considerations, the plea in law alleging miscalculation of the anti-dumping duty must be rejected, and consequently the application must be dismissed in its entirety.

Costs

68 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs, including the costs of the intervener CECOM which has asked for them in its pleadings. The Commission shall bear its own costs in accordance with Article 69(4) of the Rules of Procedure.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs, including those incurred by the intervener CECOM.**

Joliet Slynn

Grévisse Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 10 March 1992.

J.-G. Giraud
Registrar

R. Joliet
President of the Fifth Chamber