OPINION OF ADVOCATE GENERAL MAZÁK

delivered on 11 September 2007 [1]

I — Introduction

1. These preliminary ruling proceedings concern the determination of the customs value of goods imported into the Community for the purposes of the application of an anti-dumping duty.

2. More particularly, by the question which it referred for a preliminary ruling by order of 30 March 2006, the Corte Suprema di Cassazione, Sezione Tributaria (Supreme Court of Cassation — Taxation Chamber) (Italy) essentially wishes to ascertain whether the customs authority may, for the purposes of the application of an anti-dumping duty such as that laid down by Commission Decision No 67/94/ECSC of 12 January 1994 imposing a provisional anti-dumping duty on imports into the Community of hematite pig iron, originating in Brazil, Poland, Russia and Ukraine ('Decision No 67/94' or 'the decision imposing the provisional duty'), [2] refer to the price indicated in a sale of the same goods which took place prior to that on the basis of which the customs declaration was made.

3. This question was raised in the context of a dispute between Carboni e Derivati Srl ('Carboni') and the Italian customs authorities concerning the decision of those authorities to determine the customs value of a consignment of hematite pig iron — originating in Russia and imported by Carboni through an agent into the Community — not on the basis of the price stated in the invoice relating to the final sale to Carboni but on the basis of a lower price indicated in a prior sale of those goods, with the effect that the customs value was lower than the minimum import price laid down in Decision No 67/94 and an anti-dumping duty was imposed.

1 — Original language: English.

2 — OJ 1994 L 12, p. 5.

II — Legal framework

A — *Anti-dumping legislation*

4. On 12 January 1994, the Commission adopted, on the basis of Commission Decision No 2424/88/ECSC of 29 July 1988 on protection against dumped or subsidised imports from countries not members of the European Coal and Steel Community ('the basic decision'), [3] Decision No 67/94.

5. Chapter G, entitled 'Provisional Duty', in the preamble to Decision No 67/94, which was applicable at the material time, is worded as follows:

'(63) Having established that the dumped imports under consideration have caused material injury to the Community industry and that it is in the Community's interest to take action, the measures envisaged should only be sufficient to eliminate the injury caused.

(64) A calculation was made in order to establish the price level at which the imports concerned cease to cause material injury to the Community industry. In this respect the Commission has based its calculation on the cost of production data supplied by the Community industry excluding certain of the least efficient companies. Added to the production cost is a profit margin of 5% on turnover, a margin that can be considered reasonable under present market conditions.

(65) The Commission considers that in addition to restoring fair competition on the hematite pig iron market, the measures should at the same time enable the exporting countries to secure a better return on their exports of the product concerned.

(66) The Commission considers the introduction of a minimum price more appropriate in this particular case than any other type of measure in order to achieve these aims.

...

3 — OJ 1988 L 209, p. 18.

(68) Taking into account the costs normally incurred by importers of the product concerned and their need for a reasonable rate of profit, together with the calculation on injury as outlined in recital 64, the Commission considers it appropriate to establish, by way of a provisional measure, a variable duty equal to the difference between the minimum price (cif duty unpaid) of ECU 149 per tonne and the declared customs value of the product concerned originating in Brazil, Poland, Russia and Ukraine in all cases where the declared customs value is less than the minimum import price.

2. The amount of the duty shall be the difference between the price of ECU 149 per tonne (cif duty unpaid) and the declared customs value in all cases where the declared customs value is less than the minimum import price.

3. The provisions in force concerning customs duties shall apply.

…'

4. The release for free circulation of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.'

6. Article 1 of the decision imposing the provisional duty provides as follows:

'1. A provisional anti-dumping duty is hereby imposed on imports of hematite pig iron falling within CN code 7201 10 19, originating in Brazil, Poland, Russia and Ukraine.

7. The provisional anti-dumping duty was confirmed by Commission Decision No 1751/94/ECSC of 15 July 1994 imposing a definitive anti-dumping duty on imports into the Community of hematite pig iron, originating in Brazil, Poland, Russia and Ukraine ('Decision No 1751/94' or 'the decision imposing the definitive duty'). [4]

4 — OJ 1994 L 182, p. 37.

8. Articles 1 and 2 of the decision imposing the definitive duty provide as follows:

'*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports into the Community of hematite pig iron falling within CN code 7201 10 19, originating in Brazil, Poland, Russia and Ukraine.

2. The amount of the duty shall be the difference between the price of ECU 149/tonne and the accepted customs value (free at EC frontier) in all cases where this value is less than the above price.

...

4. The provisions in force concerning customs duties shall apply.

Article 2

1. The amounts secured by way of provisional anti-dumping duty pursuant to Commission Decision No 67/94/ECSC shall be collected at the level of the duty definitively imposed and any amount secured in excess of the amount of the anti-dumping duty definitively imposed shall be released.

2. The provisions of Article 1(4) above shall also apply for the definitive collection of the amounts provisionally determined.'

B — *The Customs Code and the implementing rules*

9. Article 28 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [5] ('the Customs Code'), which is included in Chapter 3 of Title II, entitled 'Value of Goods for Customs Purposes', provides as follows:

'The provisions of this Chapter shall determine the customs value for the purposes of applying the Customs Tariff of the European Communities and non-tariff measures laid down by Community provisions governing specific fields relating to trade in goods.'

5 — OJ 1992 L 302, p. 1.

10. So far as relevant to this case, Article 29(1) of the Customs Code provides as follows:

'1. The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with Articles 32 and 33, provided:

...

(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 32;

and

(d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under paragraph 2.'

11. By Commission Regulation (EEC) No 2454/93 ('the implementing regulation'), [6] the Commission laid down provisions for the implementation of the Customs Code. In the version in force in June 1994, at the time of the import of the hematite pig iron in question, Article 147(1) of the implementing regulation provided as follows:

'1. For the purposes of Article 29 of the Code, the fact that the goods which are the subject of a sale are declared for free circulation shall be regarded as adequate indication that they were sold for export to the customs territory of the Community. This indication shall also apply in the case of successive sales before valuation; in such case each price resulting from these sales may, subject to the provisions of Articles 178 to 181, be taken as a basis for valuation.'

12. In its current version, as amended, as to the second sentence, by Commission Regulation (EC) No 1762/95 of 19 July 1995, [7] Article 147(1) of the implementing regulation is worded as follows:

'1. For the purposes of Article 29 of the Code, the fact that the goods which are the subject

6 — Regulation of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

7 — Regulation amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1995 L 171, p. 8).

of a sale are declared for free circulation shall be regarded as adequate indication that they were sold for export to the customs territory of the Community. In the case of successive sales before valuation, only the last sale, which led to the introduction of the goods into the customs territory of the Community, or a sale taking place in the customs territory of the Community before entry for free circulation of the goods shall constitute such indication. Where a price is declared which relates to a sale taking place before the last sale on the basis of which the goods were introduced into the customs territory of the Community, it must be demonstrated to the satisfaction of the customs authorities that this sale of goods took place for export to the customs territory in question. The provisions of Articles 178 to 181a shall apply.'

13. Articles 178 to 181 of the implementing regulation concern the declaration of particulars and the documents to be furnished for the determination of the customs value. It should be noted that, by Commission Regulation (EC) No 3254/94 of 19 December 1994, [8] the following Article 181a was inserted into the implementing regulation:

'1. The customs authorities need not determine the customs valuation of imported goods on the basis of the transaction value method if, in accordance with the procedure set out in paragraph 2, they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable as referred to in Article 29 of the Code.

2. Where the customs authorities have the doubts described in paragraph 1 they may ask for additional information in accordance with Article 178(4). If those doubts continue, the customs authorities must, before reaching a final decision, notify the person concerned, in writing if requested, of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefor shall be communicated in writing to the person concerned.'

III — Factual background, procedure and the question referred

14. In May 1994, Carboni acquired from Commercio Materie Prime CMP SpA ('CMP'), which has its seat in Italy, a consignment of hematite pig iron originating in Russia. For its part, CMP had acquired the hematite pig iron from OME-DTECH Electronics Limited of Limassol (Cyprus) ('OME-DTECH').

8 — Regulation amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1994 L 346, p. 1).

15. In June 1994, the consignment of hematite pig iron was declared for import by Carboni's agent, the transport company SPA-MAT, at the port of Molfetta and cleared through customs on the basis of a shipping bill dated 14 June 1994, subject to payment of customs duties.

16. By notice of assessment of 16 July 1994, the customs office informed Carboni through its agent SPA-MAT that the amount due had to be increased because of infringement of the anti-dumping legislation introduced by Decision No 67/94 imposing a provisional duty equal to the difference between the minimum import price of ECU 149 per tonne and the declared customs value.

17. Carboni challenged that claim in proceedings in the Tribunale di Bari (Bari District Court) against the Ministero delle Finanze (Ministry of Finance) and the Riunione Adriatica di Sicurtà ('RAS'), arguing that the price, stated on the invoice, was ECU 151, and thus higher than the minimum import price. It asked the Tribunale di Bari to declare that the anti-dumping legislation had not been infringed and, consequently, that it did not owe anything in respect of the acquisition of the goods concerned.

18. The Ministry of Finance stated before that court that the import declaration was accompanied by an invalid certificate of origin and a pro forma invoice from CMP, and that the price indicated thereon was unreliable, as a result of which, while waiting for it to be established whether the conditions for the application of the anti-dumping duty were met, the goods were cleared using the suspended duty procedure, subject to payment of the correct customs duties. It maintained that the original invoice of first sale issued by OME-DTECH, which it had subsequently received following a request made by it, showed that the sale price to CMP was ECU 130.983 per tonne and that there was therefore a difference from the minimum import price.

19. Carboni's action was dismissed by judgment of the Tribunale di Bari of 30 September 2000 on the ground, inter alia, that the protection of the European market through the imposition of the anti-dumping duty had to take place at the time of first acquisition by a Community undertaking (in the present case OME-DTECH) at the time of entry into the European Community.

20. Carboni brought an appeal against that judgment before the Corte d'apello di Bari (Bari Court of Appeal), which dismissed it as unfounded. According to that court, the expression 'release for free circulation' means release onto the free Community market, which must refer to the commercial stage of acquisition of the goods by the first Community operator. It held that it is therefore that commercial stage which must be taken into

consideration, as it precedes the customs clearance which, in its turn, serves to guarantee protection of the minimum import price.

21. In the main proceedings, the Corte Suprema di Cassazione has to decide on the appeal brought by Carboni against that judgment of the Corte d'apello di Bari.

22. In its defence in those proceedings, the Customs Administration takes the view that the conclusion of a sale other than directly with the Community operator which presents the goods at customs constitutes an operation which is truly designed to evade the consequences of the anti-dumping measures, having the sole purpose of increasing the price of the goods at the time of their presentation to customs. That argument is disputed by Carboni, which considers the Community customs regime to be decisive and maintains that, according to that regime, only the time of the introduction of the goods onto the Community market, which takes place on the presentation of the goods at customs, is relevant.

23. According to the referring court, the question is essentially whether the customs authorities have the power to choose as the basis for the application of an anti-dumping duty the value which corresponds to the price indicated in a sale of goods for import into the Community which has taken place prior to that on the basis of which the customs declaration occurred.

24. Against that background, the Corte Suprema di Cassazione considered it necessary to refer the following question to the Court of Justice for a preliminary ruling:

'According to the principles of Community customs law and for the purposes of application of an anti-dumping duty such as that laid down by Commission Decision No 67/94/ECSC, may the customs authority refer to the price indicated in a sale of the same goods which took place prior to that on the basis of which the customs declaration was made, where the buyer is a Community subject or, in any case, the sale took place for import into the Community?'

IV — Legal analysis

A — *Main submissions of the parties*

25. In the present proceedings, written observations have been submitted by the Italian Government, which also acts in

the interests of the Amministrazione delle Finanze (Finance Administration), and by the Commission.

26. According to the Italian Government, the question referred should be answered in the affirmative. It takes the view that the customs authority was entitled to determine the customs value on the basis of the first sale of the hematite pig iron in question from OME-DTEC to CMP, which is a Community operator.

27. The Italian Government argues that the relevant time for the determination of the customs value for the purposes of application of anti-dumping duty can only be that of the first acquisition of the goods concerned by a Community operator, which is to be regarded as the time when those goods enter the Community market. Consequently, the price paid at that time, and not the price paid by the importer for the acquisition of the goods concerned, is, in a case like that at hand, the price on the basis of which the customs value is to be determined for the purposes of Article 29 of the Customs Code.

28. Such an approach is consistent with the ratio of the anti-dumping legislation, as the prejudice to the Community market arises not only with the actual release into the Community customs territory of goods selling below cost price, but also when an advantage is given to a Community operator who acquires goods at a lower price than do other Community operators.

29. That view is, according to the Italian Government, corroborated by the wording of the decision imposing the definitive duty which refers to the 'accepted customs value (free at EC frontier)' instead of the 'declared customs value' referred to by the provisional decision.

30. The Commission accepts that the use of the last transaction value for the determination of a variable anti-dumping duty is to some extent problematic. On the one hand, from the point of view of customs law, the price of the last sale is in fact the best way of taking account of all the cost elements of an import and thus guarantees the imposition of the correct import duty. On the other hand, from the point of view of the anti-dumping measure, if the customs value is to be determined by reference to the last sale, the object and purpose of the setting of a minimum price may easily be circumvented.

31. In the Commission's opinion, the wording of the decision imposing the definitive duty does not, however, allow for the

calculation of the variable duty on any basis other than the price of the last sale. In other words, the relevant sale or transaction for purposes of the application of anti-dumping duty can only be the sale or transaction which is used to determine the customs value.

32. Nevertheless, the customs authority may still question whether the customs value declared truly represents the price paid or payable by the importer. The Commission points out that, although it is not in possession of the detailed facts underlying the present case, in its view the customs authority could — in accordance with the prevailing customs practice at the material time, which is reflected in Article 181a subsequently inserted into the implementing regulation — rightly choose a price prior to the one declared in order to determine the customs value, if it could, after further investigation, still reasonably be doubted that the declared price corresponded to the price actually paid or payable.

33. Accordingly, the Commission proposes to answer the question referred by saying that the customs authority may refer to the price indicated in a sale of the same goods which took place prior to that on the basis of which the customs declaration was made if the authority continues, after having asked for additional information to be provided in accordance with the Customs Code, to have reasonable doubts as to whether the declared value truly corresponds to the price actually paid or payable within the meaning of Article 29 of the Customs Code.

B — *Appraisal*

34. As a preliminary point, it should be borne in mind that the present case is not concerned with the establishment of the normal value or, on the basis of it, the minimum import price of ECU 149 per tonne as laid down in the anti-dumping measure at issue, but with the determination of the amount of the anti-dumping duty to be imposed in accordance with that measure with regard to a particular import.

35. According to the decision imposing the provisional duty, the amount of the anti-dumping duty corresponds to the difference between the minimum import price and the 'declared customs value'. It should be observed in that regard that the text of the decision imposing the definitive duty refers in this context to 'accepted customs value', which seems to me more accurate since the declared customs value can, according to the Customs Code, be unacceptable for various reasons. That difference in wording appears, however, to be of little relevance in the present context. What is important is rather that the anti-dumping duty is to be imposed on the customs value of the import concerned, [9] which is to be determined — as is also clarified by the reference contained in Article 1(3) of the decision imposing the provisional duty — in accordance with applicable customs legislation, that is to say in particular by the method laid down in

9 — See also, in that regard, Case C-69/89 *Nakajima* [1991] ECR I-2069, paragraph 105, and Case C-93/96 *ICT* [1997] ECR I-2881, paragraph 14.

Chapter 3 of Title II of the Customs Code on the value of goods for customs purposes and in accordance with the relevant implementing regulations.

36. The referring court seeks essentially to ascertain whether, according to those provisions, [10] the customs authorities were entitled to determine the customs value for the purposes of the application of the anti-dumping duty measure in question on the basis of a price fixed on the occasion of a sale prior to the last sale which led to the introduction of the goods into the customs territory of the Community.

37. In answering this question it should be observed at the outset that the order for reference is not unequivocal as to the circumstances in which that question has been raised. In particular, it is not entirely clear whether the Italian customs authorities have chosen to refer to the price of the previous sale, as the submissions of the Italian authorities may suggest, on the ground that it is disputed that Carboni actually paid for the imported goods at issue the price of ECU 151 stated on the invoice from CMP or, alternatively, because they take the view that, even though that amount represents the price actually paid by Carboni for the imported goods, the object and purpose of anti-dumping legislation requires the customs value to be determined on the basis of the first sale to a Community operator.

38. As will become apparent in the following assessment, the ability of the customs authorities to refer, for the purposes of determining the customs value, to a previous sale is subject to certain conditions, so that it is important in the present case to determine what, precisely, the relevant situation is. However, in order to provide the referring court with a useful answer in any event, I shall examine the question referred in a broader sense having regard both to a situation where there are reasonable doubts as to whether the declared value actually represents the price paid by the importer and to a situation where that factor is not disputed.

39. To that end, I shall, first, examine the ability of the customs authorities under the valuation system as laid down in applicable Community customs rules to choose, in a case of successive sales, the price of a prior sale for the determination of the customs value and, secondly, address more specifically the question whether, as the Italian Government submitted, the ratio of the anti-dumping legislation requires in a case such as

10 — It should be noted that it is clear from the order for reference that the expression 'principles of Community customs law' in the text of the question referred is not meant to refer in a technical sense to specific general principles of Community law but rather, more generally, to rules of Community customs law relevant to the present case as laid down, in particular, in the Customs Code and the implementing regulation. In so far as I refer to that expression, I use it in the same sense.

that at issue the customs value to be determined with regard to a previous sale such as, in the present case, the sale from OMEDTECH to CMP.

40. It should be recalled, to begin with, that the Community legislation on customs valuation seeks to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values and is based on the principle that the customs value should reflect the real economic value of goods which are imported. [11]

41. Accordingly, the value for customs purposes is to be determined on the basis of the concept of 'transaction value', [12] which is, pursuant to Article 29(1) of the Customs Code, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with the relevant provisions of the Customs Code.

42. The customs value thus corresponds in principle to the individual price agreed on between the buyer (importer) and the seller (exporter) for the exported goods. [13]

43. Article 29(1) of the Customs Code makes it clear that customs valuation is concerned only with goods which are 'sold for export to the customs territory of the Community', which means that it must be agreed, at the time of sale, that the goods originating in a non-member country will be transported into the customs territory of the Community. [14]

44. According to Article 147(1) of the implementing regulation, the fact that goods are declared for free circulation in the Community is to be regarded as adequate indication that that condition is fulfilled, that is to say that they were sold for export to the Community.

45. Where goods are the subject of two or more successive transactions before valuation, the condition that the sale of the goods took place for export to the Community can in principle be fulfilled with regard to each of the successive sales. Consequently,

11 — See to that effect, inter alia, Case C-11/89 *Unifert* [1990] ECR I-2275, paragraph 35, and Case C-306/04 *Compaq Computer* [2006] ECR I-10991, paragraph 30.

12 — See, to that effect, Case 65/85 *Van Houten* [1986] ECR 447, paragraph 13.

13 — See, to that effect, *Van Houten*, cited in footnote 12, paragraph 13; *Unifert*, cited in footnote 11, paragraph 36; and Case C-491/04 *Dollond & Aitchison* [2006] ECR I-2129, paragraph 26.

14 — See, to that effect, *Unifert*, cited in footnote 11, paragraph 11.

Article 147(1) of the implementing regulation extends the presumption that, if goods are declared for free circulation, the condition of 'sale for export' is fulfilled as regards each of the successive sales.

46. The original version of Article 147(1) of the implementing regulation, in force at the material time in the present case, provided that in such a case each price resulting from these sales could be taken as a basis for valuation.

47. As appears from the judgment of the Court in *Unifert*, this means that, in the case of successive sales of goods for export to the customs territory of the Community, the importer is at liberty to select from the prices agreed for each of the sales the price which he will take as a basis for determining the customs value, provided that he can furnish to the customs authorities all the necessary particulars and documents relating to the price he chooses. [15]

48. Clearly, the fact that the importer of goods can in principle choose any of the prices agreed in a chain of sales leading to the import of the goods for the purposes of establishing the transaction value has the consequence that cost elements contained in the final price of the goods as paid or payable by the importer, like for example profit margins of one or several previous sellers of the goods, may not be reflected in the customs value.

49. It should therefore be pointed out that that rule is, to a certain extent, at odds with the transaction-value method. That concept seeks in particular, as I have mentioned above, [16] to determine a customs value which reflects the actual economic value of imported goods, that is, the actual price of goods as they are declared for release into free circulation. In other words, the customs value should correspond as much as possible to the export price at the point when the goods reach the Community frontier, which is also illustrated by the fact that, according to Article 145 of the implementing regulation, reductions in the commercial value of the goods — for instance due to the loss or damaging of the goods — which have occurred after they have been purchased but before they have been released for free circulation, must result in a proportional reduction in the price actually paid or payable. [17]

15 — *Unifert*, cited in footnote 11, paragraphs 16 and 21. That judgment referred to Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1) and Article 6 of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of the first-mentioned regulation (OJ 1980 L 154, p. 14), which were, however, re-enacted in essentially the same terms in Article 29(1) of the Customs Code and Article 147(1) of the implementing regulation respectively.

16 — See point 40 above.

17 — See also, to that effect, Case 183/85 *Repenning* [1986] ECR 1873, paragraph 18, and *Unifert*, cited in footnote 11, paragraph 35.

50. It is also for this very reason that, as the Commission has rightly pointed out, in the current version of Article 147(1) of the implementing regulation, as amended in 1995, it has been made clear that in the case of successive sales before valuation, the customs value is, as a rule, to be determined on the basis of the last sale which led to the introduction of the goods into the customs territory of the Community. The declarant cannot, according to the amended Article 147(1) of the implementing regulation, without more declare a price which relates to a sale which took place before that last sale but must, in such a case, demonstrate to the satisfaction of the customs authorities that that sale prior to the last sale took place for export to the customs territory.

51. Turning, however, to the question raised in the present case, it should be noted that, to my mind, it is only the declarant which Article 147(1) of the implementing regulation allows to choose, in the case of successive sales, a price relating to a sale which took place prior to the last sale on the basis of which the goods were introduced.

52. Neither that provision, nor Article 29(1) of the Customs Code can, by contrast, be construed so as to allow the customs authority to select — in a case like that at hand, where the declarant has declared the price of the goods as agreed in the last sale leading to the introduction of the goods into the Community — at liberty a price relating to a prior sale of the goods.

53. In my view, such an interpretation would, in particular, first, run counter to the transaction-value concept underlying Community customs law, which requires that, as a rule, goods are valued on the basis of the price of the last sale before valuation leading to their introduction into the Community and that, as a consequence, exceptions to that rule are to be interpreted strictly. Secondly, the requirement of legal certainty and the need to protect the individual importer from discretionary imposition of customs duties and, in particular, anti-dumping duties, also mean that it cannot be left to the customs authorities to choose at liberty a price other than the one selected and declared by the declarant.

54. It therefore appears that, according to the Customs Code and the implementing regulation, the customs value must in principle be determined on the basis of the price actually paid or payable for goods under the last sale before customs valuation if that price is declared by the importer. Thus, the customs authorities may not refer in such a case to a price fixed on the occasion of a sale of the same goods which took place prior to that sale.

55. Furthermore, the aims of the anti-dumping rules similarly do not, in my opinion and contrary to what the Italian Government seems to suggest, justify a different interpretation.

56. It should be noted in that regard that, according to Articles 1 and 2(1), respectively, of the basic decision, which are applicable to the provisional and the definitive decision at issue, [18] the rules on anti-dumping are aimed at protecting against 'dumped or subsidised imports' and an anti-dumping duty may be applied to any dumped product 'whose release for free circulation in the Community causes injury'. Furthermore, according to the definition contained in Article 2(2) of the basic decision, a product is to be considered to be dumped if its export price to the Community is less than the normal value of the like product.

57. It may be seen from those provisions that the application of an anti-dumping measure presupposes an introduction of goods into Community trade which cause injury to Community industry. Contrary to the submissions of the Italian Government, Community anti-dumping legislation is not concerned with the sale of goods as such (as, for example, in the present case, the first sale of the hematite pig iron from OME-DTECH to CMP) before they are actually exported to the customs territory of the Community, even if a Community operator is a party to such a transaction.

58. Moreover, anti-dumping duties are intended to neutralise the dumping margin resulting essentially from the difference between the export price to the Community and the normal value of the product and to remove in that way the injurious effects of the import of the goods into the Community. In the present case, the minimum price of ECU 149 per tonne laid down in the decision imposing the provisional duty and the decision imposing the definitive duty represents the price level at which imports of the hematite pig iron concerned cease to cause injury to Community industry. [19]

59. It follows that if the price actually paid or payable by the declarant is above the minimum price laid down in an anti-dumping measure, there is, with regard to the object and purpose of the anti-dumping

18 — See also the corresponding provisions of Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1) ('the basic regulation') as well as Article 1 of the subsequent Council Regulation (EC) 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).

19 — See also recital 64 in the preamble to Decision No 67/94.

rules, no reason to collect an anti-dumping duty by reference, for example, to a previous sale of the goods. This is even so if a price above the set minimum price has specifically been agreed in order to avoid anti-dumping duty. [20]

60. Therefore, according to both customs and anti-dumping legislation, if the declarant chooses to declare a price relating to the last sale which led to the introduction of the goods into the Community, the customs authorities are not free to determine the customs value for the purposes of the imposition of an anti-dumping duty such as that at issue on the basis of a price relating to a prior sale of the same goods.

61. It should be stressed that this applies, however, on condition that the declared value actually represents the price paid or payable for the goods.

62. The situation is different in my view where there are reasonable doubts as to the veracity of the value declaration and where it is for example suspected that — as the Ministry of Finance appears, according to the order for reference, to have suggested — the price stated on the invoice submitted is unreliable or falsified.

63. It should be recalled in that context that the Customs Code provides in Articles 30 and 31 for subsidiary valuation methods in cases where the customs value cannot be determined according to the transaction-value method under Article 29 of the Customs Code.

64. Accordingly, Article 181a of the implementing regulation as amended by Regulation No 3254/94 states that where the customs authorities have reasonable doubts that the declared value represents the total amount paid or payable, they need not determine the customs value according to the transaction-value method and that they may thus reject the price declared if those doubts continue after they may have asked for additional information in accordance with Article 178(4) of the Customs Code.

65. Although that provision of the implementing regulation had not yet entered into force when the goods at issue were declared, it reflects, according to the information provided by the Commission, consistent customs practice — as already applied at the material time — and is in my view, moreover, in compliance with the system of the Customs Code.

20 — See also, in that regard, Case C-99/94 *Birkenbeul* [1996] ECR I-1791, paragraph 17, and Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport* v *Commission and Council* [1990] ECR I-2945, paragraph 60.

66. According to Article 29(2)(a) of the Customs Code, for example, the customs authorities may, in cases where buyer and seller are related, refuse to accept the transaction value determined in accordance with Article 29(1) of the Customs Code if, in the light of further information provided by the declarant or otherwise, and after the declarant has been given an opportunity to respond, the customs authorities consider that the relationship influenced the price.

67. In such cases, where the transaction value cannot be accepted for any reason, the Customs Code provides that the customs value is in principle to be determined by subsidiary valuation methods, ranging from determination by reference to the transaction value of identical goods sold for export under Article 30(2)(a) of the Customs Code to the use of other reasonable means as provided for by Article 31 of the Customs Code.

68. As regards, however, the question at issue, that is to say, whether the customs authorities can also refer to the price fixed on the occasion of a sale prior to the last one leading to the introduction of the goods concerned and on the basis of which the customs declaration was made, it should be noted that that method of customs valuation may be more capable of reflecting the real value of those goods at customs than the abovementioned 'constructed values' as established in accordance with Articles 30 and 31 of the Customs Code. Furthermore, the price agreed on the occasion of a previous sale is apparently, under the conditions of Article 147(1) of the implementing regulation, considered acceptable as the transaction value of the goods.

69. It appears therefore that if the customs authorities have — after they have asked for additional information — reasons of the kind outlined above at point 62 to refuse a valuation of goods on the basis of the price declared, they may, according to the system of customs valuation as laid down in the Customs Code, refer to a price indicated in a sale of the same goods which took place prior to that on the basis of which the value declaration was made.

70. In the light of all the foregoing considerations I conclude that according to the principles of Community customs law and for the purposes of the application of an anti-dumping duty such as that laid down by the decision imposing a provisional duty, the customs authorities are not at liberty to determine the customs value on the basis of a price fixed on the occasion of a sale prior to the one on the basis of which the customs valuation was made, if the price declared is the price actually paid or payable by the importer.

71. However, if the customs authorities have reasonable doubts that the declared value represents the total amount actually

paid or payable for the goods concerned, they may, if those doubts are confirmed after having asked for additional information and after having provided the person concerned with a reasonable opportunity to respond, as provided for in the Customs Code and the implementing regulation, calculate the customs value for purposes of the application of the anti-dumping duty by reference to a price agreed on the occasion of a prior sale of the goods concerned for export to the Community.

V — Conclusion

72. In the light of the foregoing I propose that the reply to the question referred to the Court should be:

According to the principles of Community customs law and for the purposes of the application of an anti-dumping duty such as that laid down by Commission Decision No 67/94/ECSC of 12 January 1994 imposing a provisional anti-dumping duty on imports into the Community of hematite pig iron, originating in Brazil, Poland, Russia and Ukraine, the customs authorities are not at liberty to determine the customs value on the basis of a price fixed on the occasion of a sale prior to the one on the basis of which the customs valuation was made, if the price declared is the price actually paid or payable by the importer.

If, however, the customs authorities have reasonable doubts that the declared value represents the total amount actually paid or payable for the goods declared, they may, if those doubts are confirmed after having asked for additional information and after having provided the person concerned with a reasonable opportunity to respond, as provided for in the Customs Code and the implementing regulation, calculate the customs value for purposes of the application of the anti-dumping duty by reference to a price agreed on the occasion of a prior sale of the goods concerned for export to the Community.