JUDGMENT OF THE COURT (Fifth Chamber)
9 January 2003 *

In Case C-76/00 P,

Petrotub SA, established in Roman (Romania),

and

Republica SA, established in Bucharest (Romania),

represented by A. Merckx, avocat, and P. Bentley QC, with an address for service in Luxembourg,

appellants,

TWO APPEALS against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 15 December 1999 in Joined Cases T-33/98 and T-34/98 *Petrotub and Republica* v *Council* [1999] ECR II-3837, seeking to have that judgment set aside,

* Language of the case: English.

the other parties to the proceedings being:

Council of the European Union, represented by S. Marquardt, acting as Agent, assisted by G. Berrisch, Rechtsanwalt, with an address for service in Luxembourg,

defendant at first instance,

and

Commission of the European Communities, represented by V. Kreuschitz and S. Meany, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, A. La Pergola (Rapporteur) and P. Jann, Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 30 January 2002, at which Petrotub SA and Republica SA were represented by P. Bentley, the Council by G. Berrisch and the Commission by V. Kreuschitz and S. Meany,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2002,

gives the following

Judgment

1 By joint application lodged at the Registry of the Court of Justice on 2 March 2000, Petrotub SA ('Petrotub') and Republica SA ('Republica') brought, in so far as each is concerned respectively, an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 15 December 1999 in Joined Cases T-33/98 and T-34/98 *Petrotub and Republica* v *Council* [1999] ECR II-3837 ('the contested judgment'), in which the Court of First Instance dismissed their respective actions for the annulment of

Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1, 'the contested regulation').

Legislative background

2 Under the heading 'A. Normal value', the third subparagraph of Article 2(1) of 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), as amended by Council Regulation (EC) No 2331/96 of 2 December 1996 (OJ 1996 L 317, p. 1, 'the basic regulation'), provides:

'Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.'

3 Under the heading 'D. Dumping margin', Article 2(11) of the basic regulation provides:

'Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established

on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community ["the first symmetrical method"], or by a comparison of individual normal values and individual export prices to the Community on a transaction-to-transaction basis ["the second symmetrical method"]. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community ["the asymmetrical method"], if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised....'

4 The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the 1994 Anti-dumping Code') is contained in Annex 1A to the Agreement establishing the World Trade Organisation ('the WTO Agreement'), approved by Council Decision 94/800/EC of 22 December 1994) concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1). Article 2.4.2 of the 1994 Anti-dumping Code states:

'... the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions [first symmetrical method] or by a comparison of normal value and export prices on a transaction-to-transaction basis [second symmetrical method]. A normal value established on a weighted average basis may be compared to prices of individual export transactions [asymmetrical method] if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.'

Facts and the contested judgment

5 The contested judgment shows that the Commission published, on 31 August 1996, a notice of the initiation of an anti-dumping procedure in respect of imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Russia, the Czech Republic, Romania and the Slovak Republic (OJ 1996 C 253, p. 26).

6 As part of the anti-dumping investigation, Petrotub and Republica completed and returned the questionnaire which had been submitted to them by the Commission before their views were heard by the latter. The Commission subsequently carried out an inspection at the premises of those two companies.

7 On 29 May 1997 the Commission adopted Regulation (EC) No 981/97 of 29 May 1997 imposing provisional anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Russia, the Czech Republic, Romania and the Slovak Republic (OJ 1997 L 141, p. 36, 'the provisional regulation').

8 Having been informed, in accordance with Article 20(1) of the basic regulation, of the details underlying the essential facts and considerations on the basis of which those provisional duties had been imposed ('the provisional disclosure'), Petrotub and Republica submitted their written comments in that regard before their views were heard by the Commission. Pursuant to the same provision, they also replied in writing to the notification of the final disclosure of the essential facts and considerations on the basis of which the Commission intended to recommend the imposition of a definitive anti-dumping duty on their products ('the final disclosure').

9 By the contested regulation, the Council imposed definitive anti-dumping duties of 9.8% on exports by Petrotub and Republica to the Community.

10 On 23 February 1998 Petrotub and Republica respectively brought an action before the Court of First Instance, seeking the annulment of Article 1 of the contested regulation in so far as it concerns them. After the two cases were joined, those actions were dismissed by the contested judgment.

11 With regard to the first part of the fourth plea put forward by Petrotub, complaining that the Council had failed to explain, in breach of *inter alia* Article 2.4.2 of the 1994 Anti-dumping Code, why the asymmetrical method used by the Council reflected the full degree of dumping better than the symmetrical methods, the Court of First Instance held, in particular, as follows:

'105 Although, according to settled case-law, the provisions of the basic regulation must be interpreted in the light of the 1994 Anti-dumping Code (Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraphs 30 to 32), the rules governing anti-dumping measures are contained in that regulation alone. The obligation referred to in Article 2.4.2 of the 1994 Anti-dumping Code to explain why the symmetrical methods of comparison cannot show the real extent of the dumping does not therefore, as such, constitute a rule which is to be applied, and Article 2(11) of the basic regulation clearly does not mention any specific obligation to give such an explanation.

106 However, in so far as this plea can be understood as meaning that the applicant alleges that the statement of reasons given for the contested

regulation is inadequate, it should be borne in mind that the statement of reasons required by Article 190 of the EC Treaty (now Article 253 EC) must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure, so as to inform the persons concerned of the justification for the measure adopted and thus enable them to defend their rights and the Community judicature to exercise its powers of review. The extent of the obligation to state reasons must be assessed in the light of the context and the procedure in which the contested regulation was adopted and the body of legal rules governing the field concerned (see, most recently, Case T-48/96 *Acme Industry* v *Council* [1999] ECR II-3089, paragraph 141).

107 In this case, the statement of reasons for the contested regulation must be appraised having regard, in particular, to the information disclosed to the applicant and to its observations concerning the method of comparison to be applied with a view to determining the dumping margin during the administrative procedure.

108 In recital 28 of the provisional regulation the Commission stated:

"The weighted average normal value for each product group was compared with the adjusted individual export prices in accordance with Article 2(11) of the basic regulation. This was necessary in order to reflect the full degree of dumping being practised and because there was a pattern of export prices which differed significantly between different customers and regions."

It maintained that view in the provisional disclosure of 2 June 1997.

109 In its provisional submissions on dumping dated 1 July 1997 and at the hearing on 9 July 1997, the applicant challenged that view, contending that the Commission should have used the symmetrical method which consists in comparing the weighted average normal value with the weighted average of the prices of all Petrotub's exports to the Community. In its letter of 11 July 1997 it also claimed that a comparison of the weighted average normal value with the weighted average of the prices of all its exports to the Community in fact yielded a dumping margin significantly lower than that obtained by the method used by the Commission.

110 The Commission stated in its final disclosure of 19 August 1997 that, as regards Petrotub, the pattern of export prices differed considerably as between the periods (from August 1995 to April 1996 and from May 1996 to August 1996 respectively). It indicated that, for all Romanian companies taken together, the difference in the dumping margin obtained by applying the methods of comparison of weighted average to weighted average or of weighted average to individual transactions was such that it could be concluded that the first of those methods did not enable the real extent of the dumping to be reflected.

111 In its final observations on dumping of 8 September 1997, the applicant contended that the dumping margin should be determined by applying the weighted average to weighted average method of comparison.

112 In recital 22 of the contested regulation, the Council stated:

"One company claimed that the calculation of the dumping margin should not be made on the basis of a comparison of weighted average normal values

with the adjusted export price of each corresponding group on a transaction-by-transaction basis, but on a weighted average to weighted average basis.

This claim was rejected after the methodology used for all Romanian companies was reconsidered and it was found that:

— for one company, there was no difference in dumping margin between both methods as all export transactions were made at dumped prices;

— for three companies, a pattern of export prices which differed significantly by destination or time period was found.

In view of the above, and in accordance with Article 2(11) of the basic regulation, the method comparing the weighted average normal value by time period to individual adjusted export prices on a transaction-by-transaction basis was retained for the purposes of the definitive determination."

113 The contested regulation thus sets out the reasons for which the Community institutions decided to apply the criterion of comparison of weighted average normal value with the prices of individual exports.

114 In those circumstances, and in the absence of any specific challenge on the applicant's part in the course of the administrative procedure which might possibly have called for more detailed reasons (see Case T-164/94 *Ferchimex* v *Commission* [1995] ECR II-2681, paragraphs 90 and 118), the contested regulation cannot be regarded as vitiated by an inadequate statement of reasons regarding the application by the Community institutions of Article 2(11) of the basic regulation.

115 As regards the applicant's complaint that the Community institutions confined themselves to considering the first symmetrical method (namely that of the weighted average to weighted average comparison) and failed to verify whether the second of the symmetrical methods referred to in Article 2(11) of the basic regulation (namely the method consisting in comparing individual normal values with individual export prices) might not reflect the real extent of the dumping engaged in, the Court finds that this is a separate plea in law which was not raised until the stage of the reply. This plea must therefore be rejected as inadmissible pursuant to Article 48(2) of the Rules of Procedure.

116 Finally, it is clear from the foregoing that, contrary to the applicant's assertions, the methods of comparison used to determine the existence of dumping were applied individually for each of the four Romanian exporting companies.

117 It follows that the first part of the fourth plea cannot be upheld.'

12 With regard to the second part of the second plea put forward by Republica, alleging infringement of the third subparagraph of Article 2(1) of the basic regulation and lack of an adequate statement of reasons for the contested regulation, the Court of First Instance further held as follows:

'73 The third subparagraph of Article 2(1) of the basic regulation provides that: "Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship".

74 It is plain that the applicant has produced no evidence to show or any reason to conclude that the compensatory arrangements to which it refers, mentioned in the document entitled "Total Value of Compensatory Arrangements" relating to sales made on the basis of compensatory arrangements made during the investigation period, affected the prices charged in such transactions, as required by the third subparagraph of Article 2(1) of the basic regulation.

75 Moreover, in the absence of any contrary indication from the applicant, the Council gave, in the contested regulation, an adequate statement of the reasons for its refusal to exclude compensatory sales from the determination of normal value, by stating that "it was found that sales made using compensation were indeed made in the ordinary course of trade".

76 It follows that both parts of the second plea must in any event be rejected.'

The appeals

13 By their appeals, Petrotub and Republica claim that the Court should set aside the contested judgment in so far as they are respectively concerned by it and, ruling on the substance of the case, annul the contested regulation in so far as it concerns them and order the Council to pay the costs of both sets of proceedings. Should the contested regulation be annulled at the request of either of them, Petrotub and Republica also claim that the Court should extend the legal effects of such annulment to the other party.

14 The Council and the Commission contend that the Court should dismiss the appeals and order the appellants to pay the costs.

Petrotub's appeal

15 In support of its appeal, Petrotub puts forward a single plea in law, alleging that the Court of First Instance erred in law in paragraph 114 of the contested judgment with regard to the scope of the Council's duty to state reasons when it applied the asymmetrical method in order to calculate the dumping margin. In support of that plea, Petrotub also relies on the errors of law which, it claims, the Court of First Instance made in paragraphs 105 and 115 of that judgment.

16 Under the first part of its plea, Petrotub submits that the Court of First Instance was not entitled to hold that the statement of reasons for the contested regulation was adequate since that regulation does not contain any reference to the second symmetrical method or, *a fortiori*, the slightest explanation as to why that

method was discarded in favour of the asymmetrical method. It is clear from the actual wording of Article 2(11) of the basic regulation that recourse to the asymmetrical method is permitted only if neither of the two symmetrical methods reflects the full degree of dumping. Since such an examination therefore concerns essential matters of law or fact relevant to the basis of the decision to impose anti-dumping duties, the statement of reasons for the contested regulation should at the very least have indicated that the Council had in fact carried out such an examination.

17 Moreover, the Court of First Instance was not entitled, according to Petrotub, to refrain from finding such a breach of the obligation to state reasons by holding, at paragraph 115 of the contested judgment, that the argument based on such breach was inadmissible since it was put forward too late. On the one hand, that argument was put forward implicitly in the application, as evidenced by the use of the words 'symmetrical methods' in the plural in the relevant passage thereof, and, on the other hand, the lack of a statement of reasons thus alleged should in any event have been considered by the Court of First Instance of its own motion.

18 Under the second and third parts of its plea, Petrotub claims that the Court of First Instance failed to have regard to the scope of the Council's duty to state reasons. According to Petrotub, the Court of First Instance was wrong to hold that that duty is fulfilled by the mere fact that it is clear from the contested regulation, read in conjunction with the acts which preceded it, including the provisional regulation, the provisional disclosure and the final disclosure, that, in this case, the asymmetrical method produced a dumping margin which was arithmetically greater than that resulting from the first symmetrical method and that the use of the asymmetrical method was necessary in order to reflect the full extent of the dumping.

19 According to Petrotub, the second of those statements is merely a self-justifying paraphrase of the wording of Article 2(11) of the basic regulation. That wording implies an examination on the part of the Council of essential matters of law or fact relevant to the basis of the decision to impose anti-dumping duties, so that

the logical link supporting that conclusion should have been specified in the contested regulation in order that it could be ascertained that the necessary examination had in fact taken place.

20 In that regard, Petrotub submits, in particular, that the mere finding that the asymmetrical method produces a dumping margin arithmetically greater than that resulting from the symmetrical method cannot constitute an adequate statement of reasons since the asymmetrical method will always produce a result equal to or greater than that resulting from the first symmetrical method.

21 According to Petrotub, the condition that the symmetrical methods 'would not reflect the full degree of dumping being practised' requires in reality that the existence of 'targeted' dumping be established, that is to say, that the exporter's conduct constitute manœuvres to disguise dumping.

22 By the fourth part of its plea, Petrotub submits that, unlike Article 2(11) of the basic regulation, Article 2.4.2 of the 1994 Anti-dumping Code provides that, if the competent authority uses the asymmetrical method, it is obliged to explain why significant differences in export prices as among different purchasers, regions or time periods cannot be taken appropriately into account by the use of the symmetrical methods.

23 Petrotub produces in that regard an extract from a communication dated 15 February 1996 from the Commission to the secretariat of the Committee on Anti-Dumping Practices of the World Trade Organisation ('the WTO'), including

in particular a reply to questions raised by several WTO Member States concerning the textual difference mentioned in the previous paragraph ('the communication of 15 February 1996'), according to which:

'The term "full degree of dumping" simply refers to targeted dumping which is the heading under which this problem was addressed in the Uruguay Round negotiations. This is understood as meaning that there may be occasions when [the first or second symmetrical method] may not be appropriate where targeted dumping is taking place. Any departure from the abovementioned methods will be explained both to the parties concerned and in regulations imposing anti-dumping measures.'

24 According to Petrotub, that communication means that the Community considers that the explanation referred to in Article 2.4.2 of the 1994 Anti-dumping Code must be provided as part of the statement of reasons required by Article 190 of the Treaty, that is to say, the adequacy of the reasons for recourse to the asymmetrical method must be assessed in the light of the said Article 2.4.2. The Court of First Instance therefore erred in law in paragraph 105 of the contested judgment by not taking account of that provision of the code in determining whether the contested regulation contained an adequate statement of reasons for the purposes of Article 190.

25 However, such an explanation is lacking in this case, primarily for two reasons. First, the contested regulation merely paraphrases Article 2(11) of the basic regulation, and this cannot constitute an 'explanation... as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison' as required by Article 2.4.2 of the 1994 Anti-dumping Code. Second, as is clear from the account of the second and third parts of the plea, the contested regulation does not make any assessment as to whether there was 'targeted

dumping' even though, according to the communication of 15 February 1996, the term 'full degree of dumping' used in Article 2(11) of the basic regulation specifically refers to such a situation.

— *Admissibility*

26 The Council and the Commission contend that the appeal is inadmissible.

27 First, they argue that Petrotub has merely reproduced the arguments raised before the Court of First Instance, without specifically challenging the legal assessments made by it.

28 In that regard, it is sufficient to observe that, as may be seen from paragraphs 15 to 25 of the present judgment, Petrotub clearly identified, in accordance with Article 225 EC, the first paragraph of Article 51 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure, the aspects of the contested judgment which are criticised and the legal arguments which specifically support its appeal, so that the fact that the arguments developed by Petrotub in support of its plea were also raised at first instance cannot entail their inadmissibility (see, in particular, the order in Case C-338/93 P *De Hoe* v *Commission* [1994] ECR I-819, paragraph 18, and Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 38).

29 Second, the Council and the Commission submit that the first part of the plea is inadmissible in that it raises an argument which was declared inadmissible at first instance on the ground that it had not been raised until the stage of the reply.

30 It must be pointed out in that regard that the plea in law so rejected in paragraph 115 of the contested judgment sought to obtain a finding that the Community institutions confined themselves to considering the first symmetrical method and that they failed to verify whether the second symmetrical method might not reflect the real extent of the dumping engaged in. Contrary to what is maintained by the Council and the Commission, such a plea relates solely to the substance, so that the fact that it was declared inadmissible at first instance cannot in any way affect the admissibility at the appeal stage of a plea alleging an error in law relating to the scope of the obligation to state reasons.

31 Moreover, as Petrotub pointed out, the fourth plea put forward by it in the application before the Court of First Instance alleges that the Community institutions 'failed to explain... why a comparison of the weighted average normal value with the prices of all individual export transactions reflects the full degree of dumping better than the normal methods...'.

32 Third, the Council and the Commission contend, as regards the fourth part of the plea, that any argument based on the communication of 15 February 1996 is inadmissible on the ground that that communication, which is described as evidence by the Commission, was not submitted to the Court of First Instance.

33 It need merely be observed in that regard that the action for annulment brought by Petrotub before the Court of First Instance sought, in particular, a declaration that Article 2.4.2 of the 1994 Anti-dumping Code had been infringed and that the fourth part of the plea claims that the Court failed to take account of that provision in the assessment of the scope of the Council's duty to state reasons.

34 In those circumstances, there is nothing to prevent the Court of Justice from taking into consideration the communication of 15 February 1996 if it were to be established that that document, which was addressed to the secretariat of the WTO Committee on Anti-Dumping Practices in the circumstances described in paragraph 23 of this judgment, is relevant for the purpose of assessing the legal force of Article 2.4.2 of the 1994 Anti-dumping Code and the possible validity of the plea.

35 Fourth, the Council maintains that, under cover of an alleged error in law by the Court of First Instance with regard to the scope of the obligation to state reasons, Petrotub is actually complaining that the contested regulation incorrectly interprets or applies Article 2(11) of the basic regulation. A similar contention applies, in particular, to the first part of the plea which in reality is not so much a complaint concerning an inadequate statement of reasons as a complaint that the Council did not take the second symmetrical method into consideration in its decision to use the asymmetrical method.

36 Since such arguments are closely connected with the points of substance raised by the appeal, which specifically concern the scope of the Council's duty to state reasons, they must be examined together with the substance.

37 Fifth, the Commission contends that Petrotub's argument relating to an obligation for the institution using the asymmetrical method to substantiate the claim as to the existence of 'manœuvres to disguise dumping' is inadmissible on the ground that it was not included in the application to the Court of First Instance.

38 On that point, it should be observed that, as is clear from paragraph 15 of the present judgment, Petrotub's appeal is based solely on the error of law allegedly committed by the Court of First Instance with regard to the Council's duty to state reasons. That appeal cannot therefore be construed as raising a new plea relating to an error of law by which the contested regulation is vitiated as regards the interpretation of the substantive rules contained in Article 2(11) of the basic regulation and Article 2.4.2 of the 1994 Anti-dumping Code respectively.

39 An account of the interpretation which, according to Petrotub, must be placed on those substantive provisions, even if it is more detailed than that formulated at first instance, is limited to clarifying the scope of the provisions which the Court must take into consideration when it determines whether the requirements arising from the obligation to state reasons have been correctly assessed by the Court of First Instance.

40 It follows from all the foregoing that Petrotub's appeal must be declared admissible in its entirety.

— *Substance*

First and second parts of the plea

— Arguments of the parties

41 As is clear from paragraphs 16 and 22 to 25 of the present judgment, Petrotub submits under the first and fourth parts of its plea that the Court of First Instance erred in law by holding that the obligation to state reasons was complied with even though the contested regulation contained no explanation as to why the second symmetrical method was discarded in favour of the asymmetrical method.

42 In that regard, the Council contends, first, as is clear from paragraph 35 of the present judgment, that Petrotub's appeal fails to take account of the distinction between the substance of, and the statement of reasons for, the contested regulation. In this case, under cover of an inadequate statement of reasons, Petrotub is in reality complaining of the very fact that the second symmetrical method was not taken into consideration for the purpose of determining whether recourse could be had to the asymmetrical method.

43 Second, the Council maintains that the wide discretion which it enjoys in applying the methods for calculating the dumping margin cannot be affected by strengthening the purely formal and procedural requirement constituted by the statement of reasons. It is settled case-law that only the essential considerations which determined the exercise of the Council's discretion are required to appear

in the statement of reasons. There is no need to add, as Petrotub suggests, a new requirement relating to explanation of the logical link between the assessment made and the legislation applied.

44 In particular, the Council contends that, after making a choice, in the exercise of its discretion, as between the two symmetrical methods, only the symmetrical method thus chosen should have to be compared with the asymmetrical method where the institution is considering using the latter. Account should also be taken of the fact that the second symmetrical method is very rarely used on account of its impracticable and arbitrary nature.

45 Third, the Council argues that the scope of the obligation to state reasons is more restricted where the essential aspects of the case have been the subject of detailed discussions during the administrative procedure. In order to be entitled to a more detailed statement of reasons in the definitive anti-dumping regulation, it is, in particular, for the parties concerned to make full use in good faith of the procedural rights which they enjoy under the basic regulation for the purpose of specifically challenging the essential points of law and fact on the basis of which the Community authority intends to adopt definitive anti-dumping measures.

46 In the absence of any challenge on this point on the part of Petrotub during the administrative stage, there was no need, according to the Council, to explain why, in line with a practice consistently followed by the Community institutions, an exceptional method such as the second symmetrical method was not chosen.

47 The Commission likewise contends that, in view of the background against which the contested regulation was adopted, the statement of reasons for that regulation did not require explanations to be provided in connection with the discarding of the second symmetrical method.

48 The Council and the Commission also submit that the fourth part of the plea is unfounded. The Court of First Instance was entitled to hold that the obligation referred to in Article 2.4.2 of the 1994 Anti-dumping Code is not, as such, a rule to be applied. Nor can such a conclusion be affected by the communication of 15 February 1996, since that document remains irrelevant as regards the legal force of that code.

— Findings of the Court

49 First, it is clear from the actual wording of Article 2(11) of the basic regulation that the existence of a dumping margin is normally to be established using one of the two symmetrical methods and that recourse to the asymmetrical method, by way of an exception to that rule, may be had only on the twofold condition that, on the one hand, the pattern of export prices differs significantly among different purchasers, regions or time periods and, on the other hand, the symmetrical methods do not reflect the full degree of dumping being practised.

50 The Council was therefore wrong to claim that the effect of that provision is that, having made a choice, in the exercise of its discretion, as between the two symmetrical methods, it is sufficient for it to satisfy itself that the symmetrical method thus chosen does not reflect the full degree of dumping being practised in order for it then to be entitled to use the asymmetrical method.

51 However, both the question whether the two conditions referred to in paragraph 49 of the present judgment are fulfilled in this case and, more generally, the question whether the Council correctly applied Article 2(11) of the basic regulation go to the substance of the case and therefore fall outside the scope of the Court's review in the present appeal.

52 Second, it is necessary, contrary to what the Court of First Instance held at paragraph 105 of the contested judgment, to take account of Article 2.4.2 of the 1994 Anti-dumping Code in so far as that provision states that an explanation must be provided as to why significant differences in the pattern of export prices as among different purchasers, regions or time periods cannot be taken into account appropriately by the use of the symmetrical methods.

53 It is true that it is settled case-law of the Court of Justice that, having regard to their nature and structure, the WTO Agreement and the agreements and understandings annexed to it are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions, pursuant to the first paragraph of Article 230 EC (see Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraph 47, and the order in Case C-307/99 *OGT Fruchthandelsgesellschaft* [2001] ECR I-3159, paragraph 24).

54 However, where the Community intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to precise provisions of the agreements and understandings contained in the annexes to the WTO Agreement, it is for the Court to review the legality of the Community measure in question in the light of the WTO rules (see, in particular, *Portugal* v *Council*, paragraph 49).

55 The preamble to the basic regulation, and more specifically the fifth recital therein, shows that the purpose of that regulation is, *inter alia*, to transpose into Community law as far as possible the new and detailed rules contained in the 1994 Anti-dumping Code, which include, in particular, those relating to the calculation of the dumping margin, so as to ensure a proper and transparent application of those rules.

56 It is therefore established that the Community adopted the basic regulation in order to satisfy its obligations arising from the 1994 Anti-dumping Code and that, by means of Article 2(11) of that regulation, it intended to implement the particular obligations laid down by Article 2.4.2 of that code. To that extent, as is clear from the case-law cited in paragraph 54 of the present judgment, it is for the Court to review the legality of the Community measure in question in the light of the last-mentioned provision.

57 In that regard, it should be recalled that Community legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the Community (see, in particular, Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 20).

58 However, in this case, the fact that it was not expressly specified in Article 2(11) of the basic regulation that the explanation required by Article 2.4.2 of the 1994 Anti-dumping Code had to be given by the Community institution in the event of recourse to the asymmetrical method may be explained by the existence of Article 190 of the Treaty. Once Article 2.4.2 is transposed by the Community, the specific requirement to state reasons laid down by that provision can be considered to be subsumed under the general requirement imposed by the Treaty for acts adopted by the institutions to state the reasons on which they are based.

59 Such an interpretation coincides in essence with the international assurances given in the communication of 15 February 1996 from the Commission to the secretariat of the WTO Committee on Anti-Dumping Practices, according to which the explanation referred to in Article 2.4.2 of the 1994 Anti-dumping Code will be given directly to the parties and in regulations imposing anti-dumping duties.

60 In view of the reasoning set out in paragraphs 54 to 59 of the present judgment, it must be held that a Council regulation imposing definitive anti-dumping duties and having recourse to the asymmetrical method for the purposes of calculating the dumping margin must in particular contain, as part of the statement of reasons required by Article 190 of the Treaty, the specific explanation provided for in Article 2.4.2 of the 1994 Anti-dumping Code.

61 It is evident in this case that the contested regulation does not contain even the merest reference to the second symmetrical method or, *a fortiori*, the slightest explanation as to why that method would not enable significant differences in the pattern of export prices among different purchasers, regions or time periods to be taken appropriately into account.

62 In those circumstances, it must be held that the Court of First Instance erred in law by holding, at paragraph 105 of the contested judgment, that there was no need to take into consideration Article 2.4.2 of the 1994 Anti-dumping Code for the purposes of determining whether the Council had fulfilled the obligation to state reasons for the contested regulation and by therefore finding, at paragraph 114 of that judgment, that the statement of reasons given for that regulation was adequate for the purposes of Article 190 of the Treaty.

63 The contested judgment must therefore be set aside on that ground without there being any need to rule on the other parts of the plea put forward by Petrotub in support of its appeal.

64 Since, under the first paragraph of Article 54 of the EC Statute of the Court of Justice, the state of the proceedings so permits, final judgment may be given on Petrotub's appeal by annulling the contested regulation in so far as it concerns that company, on the same grounds as those set out in paragraphs 60 and 61 of the present judgment.

Republica's appeal

65 In support of its appeal, Republica puts forward a single plea in law based on the error of law which the Court of First Instance is alleged have made in paragraph 75 of the contested judgment by holding that the statement of reasons given for the contested regulation is adequate with respect to the Council's refusal to exclude from the determination of normal value certain sales made by Republica using compensation.

66 Republica submits more specifically that once it was accepted that 'sales made using compensation' and thus 'prices between parties which appear to be associated or to have a compensatory arrangement with each other' within the meaning of the third subparagraph of Article 2(1) of the basic regulation were involved, the Council was not entitled to use such prices to establish normal value without the proof required by that provision that such prices were not affected by the relationship. The Court of First Instance therefore erred in finding, at paragraph 74 of the contested judgment, that '... the applicant has produced no evidence to show or any reasons to conclude that the compensatory arrangements... affected the prices charged in such transactions...'.

67 The passage from the contested regulation upon which the Court of First Instance relies, namely the statement contained in the fifth paragraph of recital 19 in the preamble to that regulation that 'during the course of the investigation, it was found that sales made using compensation were indeed made in the ordinary course of trade', merely repeats the words of the third subparagraph of Article 2(1) of the basic regulation. Since it contains no explanation as to why the Council considered that the prices of those sales using compensation had not been affected by the relationship, such a self-justifying paraphrase does not constitute an adequate statement of reasons.

68 According to Republica, the wording of the third subparagraph of Article 2(1) implies, on the part of the Council, an examination of essential elements of law or of fact relevant to the basis of the decision to impose anti-dumping duties, so that the logical link supporting that conclusion should have been specified in the contested regulation. More specifically, the Council should have explained why the sales in question had indeed been made in the ordinary course of trade.

— *Admissibility*

69 The Council and the Commission contend that Republica's appeal is inadmissible.

70 First, Republica has merely reproduced the arguments raised before the Court of First Instance, without specifically challenging the legal assessments made by it.

71 In that regard, it is sufficient to observe that, as may be seen from paragraphs 65 to 68 of the present judgment, Republica clearly identified, in accordance with Article 225 EC, the first paragraph of Article 51 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure, the aspects of the contested judgment which are criticised and the legal arguments which specifically support its appeal. In those circumstances, the fact that the arguments developed by Republica in support of its plea were also raised at first instance cannot, as was pointed out in paragraph 28 of the present judgment, entail their inadmissibility.

72 Second, the Council maintains that, under cover of an alleged error of law by the Court of First Instance with regard to the scope of the obligation to state reasons,

Republica is actually complaining that the contested regulation incorrectly interprets or applies the third subparagraph of Article 2(1) of the basic regulation. The appeal is in reality contending, not so much that the statement of reasons is inadequate, but rather that the Council did not establish, as it was obliged to do, that the sales in question had taken place in the ordinary course of trade.

73 Since such arguments are closely connected with the points of substance raised by the appeal, which specifically concern the scope of the Council's duty to state reasons, they must be examined together with those on the substance.

74 It follows that Republica's appeal must be declared admissible in its entirety.

— *Substance*

Arguments of the Council

75 As is clear from paragraph 72 of the present judgment, the Council contends that Republica's appeal fails to take account of the distinction between the substance of, and the statement of reasons for, the contested regulation.

76 Second, the Council contends that the arguments put forward in its response to Petrotub's appeal, as set out in paragraphs 43 and 45 of the present judgment, must, *mutatis mutandis*, lead to the dismissal of Republica's appeal.

77 In particular, according to the Council, an indication of the reasons which led it to consider that the selling prices charged by Republica in the context of compensatory arrangements had not been affected by the relationship might have had relevance only if Republica had substantiated its claim in sufficient time during the administrative procedure. The burden of proof in support of widening the scope of the Community institutions' duty to state reasons rests with the party which is the subject of the investigation.

78 According to the Council, the obligation to state reasons did not, therefore, require it to explain in greater detail the reasons which led it to conclude that the sales in question had taken place in the ordinary course of trade.

Findings of the Court

79 As a preliminary point, it must be observed that the following questions, namely, whether the Council correctly applied the third subparagraph of Article 2(1) of the basic regulation, whether the prices of the sales using compensation made by Republica were or were not affected by the relationship and whether this latter circumstance can be proven, and, if so, with whom the burden of proof rests, or the question whether the Council was entitled to claim, in the contested regulation, that Republica had been late in informing it of that difficulty concerning the selling prices charged, all go to the substance of the case and fall outside the scope of the Court's review in the present appeal.

80 The appeal is confined to a plea of error in law by the Court of First Instance in misdirecting itself as to the scope of the Council's duty to state reasons, so that the Court of Justice must confine itself to examining that plea.

81 In that regard, it is settled case-law that the statement of reasons required by Article 190 of the Treaty must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in particular, Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and the case-law cited).

82 In the present case, the determination of normal value constitutes one of the essential steps required to prove the existence of any dumping.

83 The first subparagraph of Article 2(1) of the basic regulation provides, in that regard, that normal value is to be normally based on prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

84 The third subparagraph of the same provision states, for its part, that prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

85 It therefore follows from the first and third subparagraphs of Article 2(1) of the basic regulation that, in principle, prices between parties which have a compensatory arrangement with each other may not be taken into account in determining normal value, and that there is no exception to this, unless it is determined that those prices are unaffected by the relationship.

86 In those circumstances, it must be held that, by merely stating, in the contested regulation, that it had been 'found that sales made using compensation were indeed made in the ordinary course of trade', the Council did not satisfy the requirements of the obligation to state reasons.

87 Such a peremptory statement, which amounts to no more than a reference to the provisions of Community law, does not contain any explanatory element of such a kind as to enlighten the parties concerned and the Community judicature as to the reasons which led the Council to consider that the prices charged in connection with those sales made using compensation had not been affected by the relationship (see, to similar effect, Case 185/85 *Usinor* v *Commission* [1986] ECR 2079, paragraph 21).

88 Consequently, that statement does not enable the parties concerned to know whether those prices were, by way of exception, correctly taken into consideration for the purpose of calculating normal value, or whether this latter circumstance may constitute a flaw affecting the legality of the contested regulation.

89 As the Advocate General points out in paragraphs 99 and 104 of his Opinion, this total absence of any explanation is also such as to prevent the Community judicature from exercising its power of review, and, in particular, from determining whether there may have been a manifest error of assessment on the part of the Council.

90 In those circumstances, the question whether Republica's request that the prices charged in connection with sales made using compensation be excluded from the basis of determination of normal value was submitted too late in the preliminary procedure is irrelevant, as the Advocate General points out in paragraph 103 of his Opinion.

91 In view of the foregoing, it must be held that the Court of First Instance erred in law by holding, at paragraph 75 of the contested judgment, that, in the absence of any contrary indication from the applicant, the Council gave, in the contested regulation, an adequate statement of the reasons for its refusal to exclude sales made using compensation from the determination of normal value, by specifying that it had been 'found that sales made using compensation were indeed made in the ordinary course of trade'.

92 The contested judgment must therefore be set aside on that ground.

93 Since, under the first paragraph of Article 54 of the EC Statute of the Court of Justice, the state of the proceedings so permits, final judgment may be given on Republica's appeal by annulling the contested regulation in so far as it concerns that company, on the same grounds as those set out in paragraphs 86 to 90 of the present judgment.

Costs

94 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is unfounded or where the appeal is well founded and the Court itself gives

final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of those Rules, which is rendered applicable to appeal proceedings by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. The first subparagraph of Article 69(4) of those Rules provides that institutions which intervene in the proceedings are to bear their own costs.

95 Since the appeals brought by Petrotub and Republica have been allowed and the contested regulation is annulled in so far as it concerns them, the Council must be ordered to pay the costs incurred by Petrotub and Republica, both at first instance and in connection with the present proceedings, as asked for in their pleadings. The Commission must also be ordered to bear its own costs, both at first instance and in connection with the present proceedings.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 15 December 1999 in Joined Cases T-33/98 and T-34/98 *Petrotub and Republica* v *Council*;

2. Annuls Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia in so far as it concerns Petrotub SA and Republica SA;

3. Orders the Council of the European Union to pay the costs incurred by Petrotub SA and Republica SA both in the present proceedings and in the proceedings at first instance which culminated in the judgment in *Petrotub and Republica* v *Council*, cited above;

4. Orders the Commission of the European Communities to bear its own costs both in the present proceedings and in the proceedings at first instance which culminated in the judgment in *Petrotub and Republica* v *Council*.

Wathelet Timmermans Edward

La Pergola Jann

Delivered in open court in Luxembourg on 9 January 2003.

R. Grass — Registrar

M. Wathelet — President of the Fifth Chamber