OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 13 December 1990 *

Mr President,
Members of the Court,

1. I am able to make my Opinion in Case C-179/87 *Sharp Corporation* v *Council*, extremely brief.

2. In support of its application for the annulment of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan, [1] Sharp makes, on the one hand, submissions relating respectively to the *injury, the Community interest* and *calculation of the anti-dumping duty*, which it put forward jointly with the applicants in Cases 174/87 *(Ricoh)*, 175/87 *(Matsushita)*, 176/87 *(Konishiroku)* and 177/87 *(Sanyo)*. For the reasons set out in my Opinion in Case 174/87 *(Ricoh)*, none of those submissions can be upheld.

3. Sharp also makes two submissions relating respectively to *determination of the normal value* and its *comparison with the export price* which both, essentially, relate to the manner in which the Council treated the selling, administrative and other general expenses (hereinafter referred to as 'SGA expenses') of Sharp Business KK (hereinafter referred to as 'SBK'), Sharp's sales subsidiary in Japan. Those submissions are, for the most part, based on similar, and sometimes identical, arguments to those put forward in certain of the other cases, which I have just proposed that the Court dismiss in the Opinions I have delivered today. Sharp also refers expressly to its written submissions in the electronic typewriter ('ETW') cases which were dealt with by the Court it its judgments of 5 October 1988. [2] It will therefore be possible for me to confine my views to the few more or less new matters which Sharp has raised or on which it seems to place particular emphasis.

4. *1.* The fact that the SGA expenses incurred by SBK relate 'solely and exclusively' to sales on the domestic market (see the title of Chapter A III(b)(1) and in particular paragraph A.3.7 of the application) is not sufficient to imply either that they must not be included in the normal value when the latter is determined in accordance with Article 2(3) of the basic regulation [3] or that they must be deducted from the normal value for the purposes of the comparison with the export price in accordance with Article 2(9) and (10). In the first place, the normal value must reflect the selling price of a product as it is charged on the domestic market or as it would be if the product were sold in the ordinary course

* Original language: French.

1 — OJ 1987 L 54, p. 12.

2 — Case 250/87 Brother v Council [1988] ECR 5638; Joined Cases 277 and 300/85 Canon v Council [1988] ECR 5731; Case 301/85 Sharp Corporation v Council [1988] ECR 5813; Joined Cases 260/85 and 106/86 TEC v Council [1988] ECR 5855; and Joined Cases 273/85 and 107/86 Silver Seiko v Council [1988] ECR 5927.

3 — Council Regulation (EEC) No. 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ 1984 L 201, p. 1).

of trade, so that all the expenses relating to sales made in the ordinary course of trade on that market must be included therein. In the second place, for those differences in SGA expenses to qualify for an adjustment for the purposes of the comparison, it must be established that they bear 'a direct relationship to the sales under consideration', and as a general rule that is not the case with administrative and general expenses which are incurred whether or not a particular sale is made.

5. *2.* The argument that the institutions accorded different treatment to the Nakajima company in the ETW cases (see paragraph A.4.9 of the application) has already been rejected by the Court in its judgment of 5 October 1988 in Case 301/85 *Sharp Corporation* v *Council* [1988] ECR 5813. According to the Court,

'since Nakajima's exclusion from the number of companies subject to a definitive anti-dumping duty stems from that decision [a specific Commission decision establishing that Nakajima's dumping margin was to be regarded as negligible], discrimination in favour of Nakajima could not, even if it were established, lead to the annulment of the regulation imposing a definitive anti-dumping duty on Sharp, which was adopted on the basis of findings correctly made in the course of the anti-dumping investigation and in accordance with the rules laid down by Regulation No 2176/84' (paragraph 22).

That reasoning seems to apply with even greater force to the present case, where the issue raised is comparison of the manner in which two different companies were treated in two distinct anti-dumping investigations relating to two different products. Furthermore, the situation of Sharp, which sells on the domestic market through a sales subsidiary which it controls financially and which fulfils the functions of a sales department, cannot be regarded as identical to that of another exporter which does not itself undertake marketing or distribution of its products on the domestic market but sells them to a third party to deal with those aspects.

6. *3.* Finally, to take the view taken by Sharp in paragraphs 5 and 6 of its reply that, in so far as the resale prices of its sales subsidiary in Japan were used to determine the normal value, dumping can only exist if the resale price charged by its European subsidiaries is lower than that normal value plus the export costs relating to shipment of the products to the Community and the costs relating to Community customs duties, would be to disregard the very definition of the export price and, thus, the definition of dumping. Pursuant to Article 2(2) of the basic regulation,

'a product shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product'.

Moreover, it is apparent from Article 2(8)(b) of the same regulation that where the price agreed for export sales cannot be used as a reference, which is the case in instances such as the present one where the transactions are between associated parties, the export price is constructed on the basis

of the price at which the imported product is first resold to an independent buyer, after deduction, however, of all the costs incurred between import and resale and of a reasonable profit margin. But if Sharp's argument were to be accepted, the costs and profits of its European subsidiaries would be included in the export price, and that would be contrary to the express provisions of the basic regulation.

7. Since none of the foregoing arguments specifically put forward by Sharp can thus be upheld, it merely remains for me to propose that the Court dismiss this application as well and order Sharp to pay the costs, including those of the interveners.