JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
15 December 1999 *

In Joined Cases T-33/98 and T-34/98,

Petrotub SA, a company incorporated under Romanian law, established in Roman, Romania,

and

Republica SA, a company incorporated under Romanian law, established in Bucharest, Romania,

represented by Alfred L. Merckx, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Duro & Lorang, 4 Boulevard Royal,

applicants,

v

Council of the European Union, represented by Stephan Marquardt, of its Legal Service, acting as Agent, assisted by Hans-Jürgen Rabe, Rechtsanwälte, Hamburg, and Georg M. Berrisch, of the Brussels Bar, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director of Legal Affairs at the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: English.

supported by

Commission of the European Communities, represented by Nicholas Khan and Viktor Kreuschitz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION 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), to the extent to which that regulation affects the applicants,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: A. Potocki, President, K. Lenaerts, C.W. Bellamy, J. Azizi and A.W.H. Meij, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 July 1999,

gives the following

Judgment

Facts

1 Following a complaint lodged in July 1996 by the Defence Committee of the Seamless Steel Tube Industry of the European Union, the Commission published a notice, pursuant to 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'), on 31 August 1996 of the initiation of an anti-dumping procedure in respect of imports into the Community 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).

2 By a notice published on the same date, the Commission announced the initiation of an interim review of the anti-dumping measures applicable to imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland and the Republic of Croatia (OJ 1996 C 253, p. 25). That review was conducted in tandem with the investigation mentioned above, at issue in these proceedings.

3 The Commission informed the Association Council established pursuant to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part (OJ 1994 L 357, p. 1, 'the Europe Agreement'), of the opening of the proceedings by letter dated 6 September 1996.

4 Petrotub SA ('Petrotub') and Republica SA ('Republica'), both established in Romania, manufacture and export seamless pipes and tubes.

5 On 9 October 1996, that is to say within the time-limit set by the Commission, they submitted the completed questionnaires sent to them by the Commission as part of the anti-dumping investigation and made a request in writing for a hearing and for provisional and final disclosure in accordance with Article 20(1) and (2) of the basic regulation.

6 On 12 November 1996 the views of those companies were heard by the Commission.

7 On 10 October 1996 the anti-dumping procedure at issue was discussed at a meeting of the Association Committee which, under Article 110 of the Europe Agreement, assists the Association Council.

8 The Commission carried out an inspection at Petrotub's premises from 3 to 5 December 1996 and at Republica's premises on 6 and 7 December 1996.

9 By letters dated 17 March 1997 Petrotub and Republica called upon the Commission, if it considered that dumping was occurring, to refer the matter immediately to the Association Council in order that a solution acceptable to the two parties might be reached in accordance with Article 34(2) of the Europe Agreement. By fax dated 19 March 1997 the Commission replied that the anti-dumping procedure at issue had been discussed at a meeting of the Association Committee on 10 October 1996 at which it had been noted that all the

procedural requirements in regard to Romania had been observed. It also stated that the applicants' request was not admissible and should have been made by the Romanian authorities.

10 On 14 April 1997 the Romanian Government sent a *note verbale* to the Commission, asking it, should it be of the opinion that dumping was taking place, to refer the matter to the Association Council, with a view to reaching a solution acceptable to both parties.

11 By letter of 22 May 1997 the Commission informed the Association Council of its decision to impose provisional anti-dumping duties. It invited the Association Council to suggest undertakings or to request consultations on matters relating to that procedure within 10 days of publication of Commission 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') with a view to reaching a final settlement acceptable to all parties.

12 By the provisional regulation the Commission imposed a provisional anti-dumping duty of 10.8% on the products concerned falling under CN codes 7304 10 10, 7304 10 30 and 7304 39 93 of the combined nomenclature of the European Union, manufactured and exported by Petrotub and Republica.

13 On 2 June 1997 the Commission informed the applicants of the essential facts and considerations on the basis of which provisional duties had been imposed on their exports to the Community ('the provisional disclosure').

14 On 1 July 1997 Petrotub and Republica submitted written comments on dumping ('the provisional submissions on dumping') and on injury ('the provisional submissions on injury').

15 On 9 July 1997 the applicants attended a hearing at the Commission and each submitted on that occasion a written summary of their arguments on dumping and injury ('the summary of arguments on dumping', and 'the summary of arguments on injury').

16 On 19 August 1997 the Commission informed the applicants in writing that it intended to recommend that a definitive anti-dumping duty of 9.8% be imposed on their exports into the European Community. Annex 1 to those communications contained the definitive findings on dumping, Annex 2 the definitive findings on injury and Annex 3 the essential points to be included in a possible undertaking to bring the dumping to an end ('the final disclosure').

17 By letter of 21 August 1977 the Commission notified the final disclosures to the Association Council and informed it that they had been forwarded to the Romanian authorities.

18 At a meeting on 4 September 1997 the Commission informed Petrotub and Republica that undertakings relating to the price index appended to Annex III to the final disclosure and regarding a maximum volume of duty-free imports might be acceptable.

19 On 5 September 1997 Petrotub submitted written observations on the final findings concerning dumping and injury ('the final observations on dumping' and

'the final observations on injury'). On the same day they submitted proposals for undertakings to the Commission regarding prices.

20 At a meeting on 12 September 1997 the Commission stated that the only form of undertaking acceptable would involve the setting of a duty-free quantity of imports subject to a price index. The quantities eligible for exemption from anti-dumping duties would be 9 000 tonnes for Petrotub and 2 000 tonnes for Republica. Exports exceeding those quantities would be subject to anti-dumping duty of 9.8%.

21 Following a further exchange of correspondence with the Commission, Petrotub, in a letter dated 30 September 1997, and Republica, in a letter dated 27 October 1997, offered to give the undertakings which the Commission had suggested at the abovementioned meeting of 12 September 1997.

22 On 24 October 1997 the Commission adopted Decision 97/790/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, the Czech Republic, Romania and the Slovak Republic and repealing Commission Decision 93/260/EEC (OJ 1997 L 322, p. 63).

23 By 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'), the Council imposed anti-dumping duties of 9.8% with respect to Petrotub and Republica (Article 1).

24 Article 2 of the contested regulation, in conjunction with the annex thereto, exempts from the anti-dumping duties imposed by Article 1 imports of products manufactured and exported to the Community by Petrotub and Republica within the scope and under the terms of the undertakings by those companies, and within the permitted volume for duty-free imports set out in the undertakings accepted by the Commission.

Procedure

25 By applications lodged at the Registry of the Court of First Instance on 23 February 1998, Petrotub and Republica brought the present actions, which were registered as Cases T-33/98 and T-34/98 respectively.

26 By order of the President of the Second Chamber, Extended Composition, of the Court of First Instance of 3 December 1998 the Commission was granted leave to intervene in support of the form of order sought by the defendant. However, it did not submit any written observations.

27 By order of 31 May 1999 the President of the Second Chamber, Extended Composition, of the Court of First Instance, after hearing the views of the parties, ordered that Cases T-33/98 and T-34/98 be joined for the purposes of the oral procedure and judgment, in accordance with Article 50 of the Rules of Procedure of the Court of First Instance.

28 On hearing the report of the Judge Rapporteur, the Court of First Instance (Second Chamber, Extended Composition) decided to open the oral procedure and, by way of measures of organisation of procedure, asked the defendant to answer certain questions at the hearing.

29 The parties presented oral argument and answered questions put to them by the Court at the hearing on 7 July 1999.

Forms of order sought by the parties

30 The applicants claim that the Court of First Instance should:

— annul Article 1 of the contested regulation in so far as it concerns them;

— annul Article 2 of the contested regulation in so far as it concerns them, inasmuch as that article imposes illegal conditions for the exemption of the applicants' imports from the anti-dumping duties;

— order the defendant to pay the costs.

31 The defendant contends that the Court of First Instance should:

— dismiss the applications;

— order the applicants to pay the costs.

32 By fax of 6 July 1999, confirmed at the hearing, the applicants abandoned their claim for the annulment of Article 2 of the contested regulation. They confirmed their remaining claims relating, in particular, to costs, including those in respect of the claim for annulment of Article 2 of the contested regulation.

33 At the hearing, the defendant submitted that the applicants should be ordered to pay the costs in their entirety.

Substance

34 The six pleas in law advanced by either or both of the applicants in support of their applications for annulment of Article 1 of the contested regulation allege infringement of Article 34 of the Europe Agreement and failure to provide a statement of reasons concerning the application in this case of the procedural rules laid down in that article; infringement of Article 2(1) of the basic regulation; infringement of Article 2(4) of the basic regulation in the determination of normal value; infringement of Article 2(11) of the basic regulation in determining the dumping margin; infringement of Article 3(2) and (5) to (7) of

the basic regulation in determining injury; and, finally, infringement of Article 20(2) of the basic regulation and of the right to be heard, and inadequacy of the statement of reasons for the contested regulation in relation to that point.

I — *First plea: infringement of Article 34 of the Europe Agreement and lack of a statement of reasons*

Summary of the parties' arguments

35 The applicants submit that Article 34(3)(b) of the Europe Agreement imposes two conditions on the power of Community institutions to adopt anti-dumping measures unilaterally with regard to Romanian companies.

36 First, the Commission is required immediately to inform the Association Council of the initiation of an anti-dumping procedure. The applicants concede that in this case, having regard to recital 6 of the contested regulation, the Commission discharged that first obligation.

37 Second, the Commission is required, in the context of the preliminary investigation leading to the imposition of provisional duties and after establishing the existence of dumping, to refer the matter to the Association Council in order to provide it with the opportunity of settling the dispute within 30 days. It is only at that stage that the need to find a solution in the Association Council arises.

Prior thereto, the existence of dumping is still merely an allegation made by the complainant undertakings and may be rejected by the Commission following its investigation.

38 That interpretation is corroborated by the wording of Article 34(3) which, in subparagraphs (b) and (d), distinguishes between the Association Council being informed and the case being referred to it for prior examination (order of the President of the Court of First Instance in Case T-75/96 R *Söktas* v *Commission* [1996] ECR II-859, paragraphs 23 to 25). Article 34(3)(d) of the Europe Agreement provides for only one exception to that dual obligation for the Commission, that is to say where exceptional circumstances require immediate action making prior information or examination impossible.

39 Contrary to the defendant's assertions, the procedural provisions in Article 34(3)(b) of the Europe Agreement have direct effect in accordance with the criteria laid down by the Court in Case 104/81 *Hauptzollamt* v *Kupferberg* [1982] ECR 3641, paragraphs 22 and 23.

40 In the present case, since the procedure was opened on 31 August 1996 and, in accordance with Article 7(1) of the basic regulation, the provisional duties were to be imposed not later than nine months after that date, the Commission ought to have brought the case before the Association Council by 30 April 1997 at the latest in order to give the parties 30 days to reach a bilateral solution, as provided for in Article 34(3)(b) of the Europe Agreement.

41 However, despite the request from the applicants of 17 March 1997 and the *note verbale* from the Romanian authorities of 14 April 1997 (paragraphs 9 and 10 above), the Commission did not in fact refer the matter to the Association

Council within the prescribed time-limit before imposing provisional anti-dumping duties. It merely informed it by letter of 22 May 1997 of its decision of 21 May 1997 to impose such duties. That omission, the applicants maintain, renders not only the provisional regulation but also the contested regulation unlawful.

42 Furthermore, the contested regulation is vitiated by the inadequacy of the statement of reasons on which it is based, inasmuch as it fails to explain, particularly in recital 6, why the matter was not referred to the Association Council under Article 34(3)(b) of the Europe Agreement.

43 The Council contends that the plea alleging infringement of Article 34 of the Europe Agreement must be rejected. First, the illegality of the provisional regulation resulting, according to the applicants, from the infringement of Article 34, does not make the contested regulation unlawful; second, the matter was referred on 22 May 1997 to the Association Council, which therefore had more than 30 days to reach a satisfactory solution prior to the adoption of the contested regulation; third, the interpretation of Article 34 of the Europe Agreement advocated by the applicants is incorrect; and fourth, Article 34 of the Europe Agreement does not have direct effect.

Findings of the Court

44 Article 30 of the Europe Agreement permits one of the parties to take appropriate measures against dumping practices in accordance with, *inter alia,* its own legislation, and with the conditions and procedures laid down in Article 34, the relevant provisions of which are as follows:

'2. ... before taking ... measures [against dumping] ... the Community or Romania as the case may be shall supply the Association Council with all relevant information, with a view to seeking a solution acceptable to the two parties.

...

3. For the implementation of paragraph 2, the following provisions shall apply:

...

(b) ... the Association Council shall be informed of the dumping case as soon as the authorities of the importing party have initiated an investigation. When no end has been put to the dumping or no other satisfactory solution has been reached within 30 days of the matter being referred to the Association Council, the importing party may adopt the appropriate measures;

...

(d) where exceptional circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Community or Romania ... may ... apply forthwith the precautionary and provisional measures strictly necessary to deal with the situation, and the Association Council will be informed immediately.'

45 In this case it is common ground that the Commission informed the Association Council by letter of 6 September 1996 of the initiation of the anti-dumping procedure at issue. The case was also discussed subsequently at the meeting on

10 October 1996 in Brussels of the Association Committee set up by Article 110 of the Europe Agreement for the purpose of assisting the Association Council.

46 Contrary to the applicants' arguments, Article 34(3)(b) of the Europe Agreement did not require the Commission to refer the matter to the Association Council a second time before adopting the provisional regulation.

47 In order to comply with that provision, the Community must disclose all the relevant information to the Association Council in due time to enable it to seek a solution acceptable to both parties. Under the system provided for by the basic regulation, which gives the Council sole power to adopt definitive measures, it is sufficient if such disclosure occurs no later than 30 days before adoption of the final regulation.

48 It is clear from the file that the Commission later informed the Association Council, by letter of 22 May 1997, of its decision to impose provisional anti-dumping duties. In that letter, it disclosed to the Association Council the details on which the provisional regulation was based and invited it to propose undertakings or to ask for consultations on any matter relating to the anti-dumping procedure being conducted, with a view to reaching a definitive solution acceptable to all parties. Finally, by letter of 21 August 1997, the Commission notified the final disclosure to the Association Council.

49 In those circumstances, since the contested regulation, which imposes definitive anti-dumping duties, was not adopted until 17 November 1997, the Association Council was in any event given considerably more than 30 days in which to seek a

solution acceptable to the Community and to Romania following the disclosure of all the relevant information for that purpose.

50 Moreover, contrary to the applicants' contention, which in any case was not supported by evidence, the contested regulation contains a sufficient statement of reasons on that point in recital 6, where it is stated that, in addition to the initial notification of the matter, the Commission immediately informed the Association Council of the particulars on which the provisional regulation was based and that consultations with the exporting countries continued throughout the inquiry in order to reach a mutually acceptable solution.

51 It follows that the first plea must be rejected in any event without its being necessary to examine first the question whether Article 30 of the Europe Agreement may be relied upon.

II — *Second and third pleas: infringement of Article 2(1) and (4) of the basic regulation in the determination of normal value and lack of an adequate statement of reasons*

52 The applicants dispute the method used for determining the normal value of similar products under Article 2 of the basic regulation. To that end they each

advance a separate plea alleging, in Case T-33/98, infringement of Article 2(4) and, in Case T-34/98, infringement of Article 2(1).

The second plea: infringement of Article 2(1) of the basic regulation and lack of an adequate statement of reasons (Case T-34/98)

53 This plea, put forward by Republica, comprises two parts. First, the Community institutions failed, when determining the normal value, to disregard domestic stock sales, which are not sales of a like product. Second, they ought to have disregarded domestic sales made under compensatory arrangements which could not be regarded as being made in the ordinary course of trade.

The first part of the plea: the inclusion of domestic stock sales

— Summary of the parties' arguments

54 The applicant states that Article 2(1) of the basic regulation requires the Community institutions, when establishing normal value on the basis of domestic prices, to check that those prices were paid in the ordinary course of trade in like products. In the present case they ought, without any request to that effect having to be made by the applicant, to have disregarded stock sales because they are not sales of the like product.

55 In fact stock sales by the applicant concerned pipes or tubes 'produced to order' (referred to in point 4 of the questionnaire completed by the applicant) which, at the time of the sale, did not display, or no longer displayed, the required quality in order to meet the STAS norm, a Romanian standard for seamless pipes and tubes. Stock sales may consist of left-overs from a given order for pipes which do not have the required tolerance, or pipes with more than the required wall thickness or with defects on the internal or external surfaces. They are not accompanied by a quality certificate, unlike exported products. As a result, stock sales are made at prices which are considerably lower than normal prices and cannot therefore be regarded as made in the ordinary course of trade, or as sales of the like product. They accounted for 44% of the total sales of seamless tubes and pipes of iron or non-alloy steel by the applicant during the investigation period.

56 Such stock sales are entirely different from sales 'made from stock' (also mentioned in point 4 of the questionnaire), that is to say sales of products produced continuously and sold as and when customers call. In the present case the applicant acknowledges that it stated in reply to the questionnaire that its domestic sales were made 'to order' and not 'from stock'. That is, however, irrelevant. In fact, unlike 'stock sales' by the applicant, sales 'made from stock', in the words of the questionnaire, correspond to the required production norms in the same way as sales produced 'to order'.

57 The applicant admits having raised the issue of the exclusion of its stock sales for the first time during the hearing on 9 July 1997 and in the summary of arguments on dumping submitted during that hearing. None the less, those arguments cannot be regarded as having been made too late, the only legally prescribed period for observations to be taken into account being that laid down by Article 20(5) of the basic regulation.

58 Moreover, after that hearing, the applicant submitted to the Commission on 14 July 1997 a computer print-out of stock sales during the period of the

investigation. That document shows that the applicant clearly explained to the Commission that the products in stock, corresponding to codes N and Z on the computer print-out, were initially put into production in accordance with the STAS standards but in the end did not come up to standard owing to small imperfections. In its letter of 15 July 1997 the applicant provided further explanations concerning that computer print-out and the codes used.

59 In any event, the Community institutions were necessarily apprised of the problem of stock sales as a result of the on-the-spot investigation. That fact is evidenced by the following statement by the Commission at page 2 of the provisional disclosure of 2 June 1997: 'the company stated in its response that it had exported 2 041 tonnes of the product concerned to the Community. The on-the-spot investigation revealed, however, that a proportion of this total could not be considered comparable to the products sold domestically, consisting as it did of pipes and tubes without quality certificates'.

60 For all those reasons, the contested regulation is vitiated by a manifest error of assessment and an inadequate statement of reasons in so far as it states that in no document submitted by the company was the Commission able to differentiate between sales made from stock or otherwise, or between sales made with or without quality certificates (recital 19, fifth paragraph).

61 The Council maintains, first, that the applicant's request for exclusion of its stock sales from calculation of normal value was made belatedly. Second, the

applicant's allegation that its stock sales should be excluded from the calculation of normal value were not supported by facts.

— Findings of the Court

62 According to the first and second subparagraphs of Article 2(1) of the basic regulation, 'The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country. However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers'.

63 The applicant's assertion that its stock products are not like products within the meaning of Article 2(1) of the basic regulation because they do not meet the STAS norm, or because they do not have quality certificates, is not supported by adequate evidence.

64 In particular, the only evidence relied on by the applicant, both in the administrative procedure and before the Court of First Instance, consists of a computer print-out containing a list of its stock sales during the period of the investigation. That document, which refers to the STAS norm for a large number of products in stock, does not, having regard to the explanations provided by the applicant to clarify the list which it contains, support the conclusion that the products in stock were not, or were no longer, accompanied by quality certificates; nor does it make it possible to determine whether or not they complied with the STAS norm at the time of sale.

65 It follows that the claim concerning the inclusion of stock sales cannot be upheld.

66 Moreover, contrary to the applicant's assertions, the Council gave a sufficient statement of reasons for the contested regulation on that point, in recital 19 thereof, where it is stated that it had not been made possible for the Commission to distinguish between sales of different products.

67 It follows that the first part of the second plea must be rejected.

The second part: the inclusion of domestic sales in the form of compensatory arrangements

— Summary of the parties' arguments

68 The applicant maintains that its domestic sales made on the basis of compensatory arrangements accounted for some 24% of domestic sales of the product concerned during the investigation period. The compensation system is imposed on the applicant by major clients, such as Romanian utilities companies, and the prices charged under that system, which are non-negotiable, are considerably lower than normal market prices. Those sales ought therefore to have been excluded for the purposes of determination of normal value in accordance with the third subparagraph of Article 2(1) of the basic regulation.

69 The applicant made no reference to those sales in its reply to the questionnaire because it was never asked to do so. It admits raising the question of sales under compensatory arrangements for the first time during the hearing on 9 July 1997, and in the summary of arguments on dumping produced on that occasion. Moreover, a document entitled 'Total Value of Compensatory Arrangements', listing those arrangements, was submitted to the Commission as an annex to the

summary mentioned above. The contents of that document were then explained by the applicant in a fax sent to the Commission on 21 July 1997. The request for exclusion, for the purposes of determining normal value, of sales made on the basis of compensatory arrangements was not, however, made out of time, having regard to the time-limit laid down by Article 20(5) of the basic regulation.

70 Moreover, under the third subparagraph of Article 2(1) of the basic regulation, it is for the Community institutions to establish, by means of checks during the investigation, whether domestic sales involved compensatory arrangements. If that is the case, there is a presumption that they were not made in the ordinary course of trade unless the Community institutions can establish that the prices applied were unaffected by the relationship.

71 By merely stating in recital 19 of the contested 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', without indicating whether the Community institutions had examined whether the prices for sales based on those arrangements were affected by them, as required by the third subparagraph of Article 2(1) of the basic regulation, the contested regulation is vitiated by inadequacy of the statement of the reasons on which it is based.

72 The Council for its part contends that the applicant's claim that sales under alleged compensatory arrangements should be disregarded on the grounds

that it was made too late and its allegations were not in any way substantiated.

— Findings of the Court

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.

Third plea: infringement of Article 2(4) of the basic regulation and inadequacy of the statement of reasons (Case T-33/98)

Summary of the parties' arguments

77 The applicant (Petrotub) claims that the Community institutions exceeded their discretionary powers in determining the normal value and failed to give an adequate statement of reasons in that regard when they opted to apply the 20% criterion provided for by the third subparagraph of Article 2(4) of the basic regulation in order to determine whether there were sales at prices below unit cost in 'substantial quantities'.

78 The first criterion laid down in the third subparagraph of Article 2(4), whereby the weighted average selling price is to be compared to the weighted average unit cost, is the 'normal' criterion for determining whether sales below per unit cost are being made in substantial quantities. It was introduced in order to incorporate Article 2.2.1 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, hereinafter 'the 1994 Anti-dumping Code'), appended as Annex 1A to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3). The second criterion, namely verifying that the volume of non-profitable sales accounts for at least 20% of the sales used to determine normal value, which was generally applied before that amendment, can now only be used 'in the alternative'.

79 Moreover, the use in the present case of the latter 20% test to determine whether there had been substantial quantities of unprofitable transactions on the domestic market which could therefore be excluded in determining normal value resulted in non-profitable transactions being excluded in 17 groups of products out of 24. Normal value was therefore established for 17 groups on the basis of profitable

transactions alone and for seven groups on the basis of both profitable and non-profitable transactions. Conversely, application of the first test would have led to a more reasonable result with the normal value being determined on the basis of both profitable and non-profitable transactions in 18 out of 24 groups.

80 Since that outcome is unreasonable, the application in this instance of the second test under Article 2(4) infringed the principle of proportionality laid down in Article 3b of the EC Treaty (now Article 5 EC) (see Case T-162/94 *NMB France* v *Commission* [1996] ECR II-427, paragraphs 69 and 73).

81 Furthermore, the contested decision is not supported by an adequate statement of reasons as far as the choice of that second criterion is concerned, and the applicant objected to that choice several times during the administrative procedure.

82 The Council rejects the applicant's interpretation of the third subparagraph of Article 2(4) of the basic regulation.

Findings of the Court

83 The first subparagraph of Article 2(4) of the basic regulation provides: 'Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in

determining normal value, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time'.

84 The third subparagraph of Article 2(4) provides that 'sales below unit cost shall be considered to be made in substantial quantities within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20% of sales being used to determine normal value.'

85 It follows that the third subparagraph of Article 2(4) of the basic regulation lays down two alternative criteria for determining whether sales below unit production cost are to be regarded as made in substantial quantities. According to the express terms of that provision, as is indicated by the use of the conjunction 'or', it is sufficient if one of those criteria is fulfilled for such sales to be regarded as being made in substantial quantities.

86 Contrary to the applicant's assertions, that interpretation is not incompatible with Article 2.2.1 of the 1994 Anti-dumping Code, read in conjunction with explanatory note 5 thereto, which states that 'sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.'

87 In those circumstances, the Community institutions were certainly entitled to apply the second criterion set out in the third subparagraph of Article 2(4) of the basic regulation, consisting in verifying whether the volume of sales below unit cost represented not less than 20% of the sales being used to determine normal value.

88 The applicant does not deny that that criterion is met in the 17 groups of products in which unprofitable sales were excluded by the Commission in determining normal value, in so far as they represented 20% or more of total sales.

89 As regards the applicant's allegations of breach of the principle of proportionality, the choice between the different methods of calculation indicated in a basic regulation requires an appraisal of complex economic situations, which means that review of the observance of the principle of proportionality by the Community judicature is limited, in that sphere, to determining whether the method chosen is manifestly inappropriate having regard to the objective pursued (see Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861, paragraph 21, and Case T-162/94 *NMB France*, cited above, paragraphs 72 and 73).

90 The purpose of Article 2(4) of the basic regulation is to define the normal value of the product concerned in order to determine whether dumping is taking place, having regard to the prices charged in the normal course of trade for like products in the exporting country, which means that sales at prices lower than unit production cost, plus selling and general costs, when they are made in substantial quantities over an extended period, are to be disregarded.

91 In that context, the mere fact, relied on by the applicants, that the application of the 20% criterion provided for by the third subparagraph of Article 2(4) of the basic regulation involved the exclusion of transactions at prices lower than unit costs in 17 out of 24 groups of products does not in itself show that that criterion

was manifestly inappropriate having regard to the objective pursued, which is to determine normal value by specifically excluding all unprofitable sales made in substantial quantities over an extended period. It merely indicates that, for those 17 groups of products, at least 20% of sales were made for a considerable period at prices lower than unit cost.

92 Finally, the contested regulation cannot be regarded as vitiated by an inadequate statement of the reasons on which it is based since it states, in essence, in the third paragraph of recital 19, that the Commission, having regard to Article 2(4) of the basic regulation, considered that sales made at a loss had to be excluded when establishing the normal value where such sales constituted more than 20% of all domestic sales, given the terms of the basic regulation and the institutions' consistent practice in the establishment of normal value.

93 It follows that the third plea must be rejected.

III — *Fourth plea: infringement of Article 2(11) of the basic regulation (Case T-33/98)*

94 The applicant (Petrotub) notes that Article 2(11) of the basic regulation provides as follows:

'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, or by a comparison

of individual normal values and individual export prices to the Community on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community, 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. This paragraph shall not preclude the use of sampling in accordance with Article 17.'

95 Petrotub claims, first, that the Community institutions failed to explain, as they were obliged to do under Article 2(11) of the basic regulation, why a comparison of the weighted average normal value with the prices of all individual export transactions reflected the full degree of dumping better than the normal methods; second, that their dumping determination was based on factors falling outside the investigation period; and third, that they did not demonstrate the existence of a pattern of export prices which differed as between different purchasers or time periods.

The alleged lack of justification for the method chosen for determining the dumping margin

Summary of the parties' arguments

96 The applicant claims that, in order to resort by way of exception to the method of comparing weighted average normal value with the prices of all individual exports to the Community, the Community institutions are obliged under Article 2(11) of the basic regulation to explain for each of the companies taken separately why that method reflects the full degree of dumping better than the

normal methods mentioned above of a weighted average to weighted average comparison or a transaction-to-transaction comparison (symmetrical methods).

97 It submits that Article 2(11), which was introduced into the basic regulation in order to implement Article 2.4.2 of the 1994 Anti-dumping Code, must be interpreted in the light of the latter provision. It is clear from the wording of Article 2.4.2 that the method of comparing weighted average normal value with the prices of individual exports may be used only if, first, the differences in patterns of export prices amongst different purchasers, regions or time periods cannot appropriately be taken into account by the use of one or other of the two normal methods and, second, an explanation is provided as to why those differences cannot be taken into account by use of the normal methods. In this case there is no such explanation in the contested regulation.

98 Moreover, the Community institutions did not establish that in the applicant's individual situation the normal methods for determining the dumping margin would not reflect the full extent of the dumping engaged in by the applicant.

99 In its reply, the applicant submits that the Community institutions also infringed Article 2(11) of the basic regulation in that they confined themselves to comparing the first of the two symmetrical methods with the third method under which the weighted average normal value is compared with the prices of individual exports and failed to compare the second symmetrical method with that third method. It follows that the institutions did not demonstrate that the application of the two symmetrical methods of determining the dumping margin did not enable the real extent of the dumping to be disclosed.

100 According to the Council, the applicant's arguments based on Article 2.4.2 of the 1994 Anti-dumping Code were raised neither during the investigation nor in the application. They are therefore inadmissible under Article 48(2) of the Rules of Procedure of the Court of First Instance. That applies to the argument that the Community institutions ought to have compared individual normal values with individual export prices and decided whether that comparison reflected the actual degree of dumping. That is true also of the argument that it was for the Community institutions to explain why account could not appropriately be taken of the differences in export price patterns by applying the two normal methods.

101 In any event, those arguments are unfounded. It is clear from the first sentence of Article 2(11) of the basic regulation that the Community institutions may opt for one of the two normal methods referred to. In that connection they have a discretionary power and only rarely have recourse to the method of comparing individual normal values with individual export prices because that method is generally considered to be impracticable and somewhat arbitrary.

102 Moreover, in accordance with the second sentence of Article 2(11), it is sufficient for the Community institutions to demonstrate that there are differences in the pattern of export prices and that the normal method resorted to first does not reflect the true degree of dumping to enable them to have recourse to the third method. That interpretation is fully in keeping with Article 2.4.2 of the 1994 Anti-dumping Code.

103 The Community institutions are not required to explain why differences in patterns of export prices cannot be adequately taken into account by recourse to one of the first two methods. The fact that those normal methods do not make it possible to reveal the real extent of the dumping constitutes the explanation required by Article 2.4.2 of the 1994 Anti-dumping Code.

Findings of the Court

104 In its application, the applicant complains that the Community institutions failed to explain why a comparison of the weighted average normal value with the prices of individual exports reflected the real extent of the dumping better than the symmetrical methods, a failure which, was *inter alia*, in breach of Article 2.4.2 of the 1994 Anti-dumping Code.

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.

The allegation that factors outside the investigation period were taken into account

118 The applicant (Petrotub) observes that the Commission stated in the final disclosure that it considered prices of the product concerned for a period of nine months (August 1995 to April 1996). By including the month of August 1995 in that period, the Community institutions infringed Article 2(11), which permits them to determine the dumping margin only with respect to the period of investigation which, in this case, extended from 1 September 1995 to 31 August 1996.

119 The Council objects that that reference to August 1995 is merely a clerical error.

120 In that context, since the applicant has produced no evidence to show that August 1995 was included in the abovementioned investigation period and since it concedes that it failed to provide the Commission with information concerning the prices charged in August 1995, there is nothing in the documents before the Court to support the view that the Community institutions took into considera-

tion the prices charged for the product concerned during August 1995, that is to say outside the investigation period which extended from 1 September 1995 to 31 August 1996, as indicated by recital 9 of the contested regulation.

121 The second part of the fourth plea must therefore be rejected.

The allegation that there is no evidence of a pattern of export prices which differed as between different purchasers, regions or periods

Summary of the parties' arguments

122 According to Petrotub, the Community institutions did not establish the existence of a pattern of export prices which differed as between different purchasers, regions or periods. In the final disclosure, the Commission found a pattern of export prices which differed significantly for the period from August 1995 to April 1996 and from May 1996 to August 1996. It did not explain why it chose to compare a period of nine months with a period of four months.

123 Moreover, out of the 148 products considered by the Commission, it was possible to determine whether there was a different pattern of export prices during the abovementioned periods only as regards the 40 products sold during the two periods, according to Annex 2 to the final disclosure. However, those products accounted for less than 30% of the total volume of the applicant's exports. Furthermore, the majority of those 40 products did not display substantial price differences from one period to the other. Finally, the prices charged by the applicant simply reflected prevailing market trends.

124 The Council contends that the existence of a pattern of prices which differed according to the period is clearly established, since, out of the 40 products sold during the two periods concerned, 36 were sold at higher prices during the second period.

Findings of the Court

125 According to the documents before the Court, the existence of a price pattern which differed from one period to the other was established by the Community institutions in this case on the basis of a comparison of the prices of the 40 products sold by the applicant during the two periods mentioned above. In particular, the list of those prices contained in Annex 2 to the final disclosure indicates that for 36 of those products prices were appreciably higher during the second period than those charged during the first, the difference in most cases being of 10% or more.

126 The Community institutions cannot be criticised in that regard for comparing prices charged during a period of nine months with those charged during a period of four months. Given that such a comparison is intended to establish whether the exporting undertakings charged targeted prices liable to mask dumping during a given period, whatever it might be, the Community institutions enjoy considerable discretion in defining the periods to be taken into account, as part of a complex economic appraisal. In this case, there is no evidence before the Court to indicate that the choice of the periods concerned was liable to distort the comparison of the prices concerned.

127 Finally, there is no evidence whatsoever to support the applicant's argument that the pattern of prices reflected market trends. In any event, that argument is contradicted by the fact that the existence of a price pattern differing from one period to the other was not established for one of the Romanian exporters or, as emphasised by the Council, in relation to exports from the Slovak Republic.

128 It follows that all three parts of the fourth plea must be rejected.

IV — *Fifth plea: infringement of Article 3(2) and (5) to (7) of the basic regulation*

129 This plea, concerning the determination of injury, comprises two parts. The first must be understood as alleging that the contested decision infringed Article 3(2), (5) and (6) of the basic regulation inasmuch as it is vitiated by mistakes of fact, manifest errors of appraisal and inadequate reasoning as regards the situation in the Community industry. In the second part, the applicants submit that the Community institutions infringed Article 3(7) of the basic regulation by failing to take into account the impact of factors other than dumped imports.

The first part: infringement of Article 3(2), (5) and (6) of the basic regulation

Summary of the parties' arguments

130 The applicants allege infringement of Article 3(6) of the basic regulation, which provides:

'It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of

this regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.'

131 They state in their replies that, contrary to the Council's allegations of confusion on their part between the establishment of injury and the analysis of causation, their claims concern the first step in the assessment of injury made in the contested regulation, namely an analysis of the situation in the Community industry. Inasmuch as the Community institutions failed to show on the basis of a description of the situation of that industry, as required by Article 3(6) of the basic regulation, that the industry had suffered injury, there was no need for the applicants specifically to deal with the issue of causation.

132 After making that observation, the applicants first refute the statement in recital 56 of the contested regulation that they did not dispute the results presented in the provisional regulation on the situation of the Community industry in recitals 57 to 61 of the contested regulation.

133 By making that statement, the Council failed to observe its duty of diligence and infringed the principle of sound administration. Moreover, the contested decision is vitiated by a lack of reasoning in regard to the situation of the Community industry. It is not sufficient to enable either the applicants or the Court to determine whether the institutions took into account the comments submitted by the applicants on that subject. Such a failure to state reasons cannot be remedied during the proceedings.

134 The applicants then dispute the findings of the institutions regarding the situation of the Community industry. They examine in turn the findings on capacity, production, sales volume and profitability.

135 First, the findings of the Community institutions on capacity in recital 57 of the contested regulation are vitiated by mistakes of fact. In particular, most of the 11 production plants (accounting for about a quarter of total Community production capacity of the product in question) which, according to recital 57, ceased production between 1992 and the investigation period either were not closed but had renewed their production plant (Dalmine (Arcore), 1992, 95 000 tonnes; Mannesmann (Mülheim), 1992, 350 000 tonnes; Tubacex (Amurrio), 1993, 60 000 tonnes; and Tubos Reunidos (Amurrio), 1994, 50 000 tonnes), or had been taken over by other producers (Seta (Roncadelle), 1992, 100 000 tonnes), or, finally, had ceased production under an aid-for-closure scheme (ATM (Bari), 1995, 35 000 tonnes), according to information from the European manufacturers themselves published in the *Metal Bulletin* or in the work entitled *Pipe and Tube Mills of the World with Global Technical Data, 1997*.

136 Even if it were not possible to take into consideration the abovementioned evidence produced by the applicants, the allegations of the Community institutions regarding plant closures are not supported by evidence, particularly as regards the issue whether the figures on which they are based relate only to the product concerned. The findings of the institutions on capacity are therefore manifestly wrong.

137 Secondly, the production figures for the Community industry (recital 57 of the contested regulation) are appreciably lower than the production figures provided by the Community producers, which were submitted by the applicants in the provisional submissions on injury (table 5, p. 9) and were based on a document from the German 'Stahlrohrverband' of 19 September 1996. Furthermore, the

figures mentioned in that recital also refer to the production of the Community industry as a whole and not merely to production of the product concerned, contrary to the Council's allegations, which are unsupported by evidence.

138 As to the volume of sales, which fell from 781 770 tonnes in 1992 to 775 721 tonnes in 1995 and to 722 042 tonnes during the investigation period according to recital 58 of the contested regulation, it is expressly stated in that recital that the figures thus quoted relate to 'sales of Community producers' and not merely to sales of the product concerned. Those figures 'appear to be contradicted' by information contained in an article entitled 'Seamless changes transform the European scene', published in *Metal Bulletin*, April 1996, indicating that sales of seamless pipes from Dalmine alone exceeded 700 000 tonnes in 1994. The trend towards a constant decrease in sales reflected in the figures referred to in recital 58 is moreover contradicted by the increased turnover figures indicated by the Community producers in the non-confidential version of the complaint.

139 With regard, thirdly, to profitability, the contested regulation (recital 60) contradicts the provisional regulation (recital 57), is based on no clear evidence and is vitiated by a manifest error of appraisal. The contested regulation, which merely mentions a reduction in losses based in particular on the 0.7% rate of negative profitability during the investigation period, does not concur with the finding in the provisional regulation that, owing partly to price rises, the Community industry had broken even during the first eight months of 1996, that is to say the first eight months of the investigation period.

140 Moreover, the figures from the Community producers confirm the profitability of sales. Thus, Vallourec Industries (France), one of the largest producers of seamless pipes in the European Union, was reported to be back in profit in 1995 in the abovementioned article published in *Metal Bulletin* in April 1996 and the same

applies to Dalmine in 1992, 1994 and 1995, according to an article entitled 'Dalmine goes private', appearing in the same issue of that publication.

141 Moreover, the Community institutions had identified financial losses as one of the factors occasioning injury to the Community industry (recital 62 of the contested regulation), but failed to demonstrate, as they were required to do by Article 3(6) of the basic regulation, that the financial losses were caused by imports from the countries subject to investigation.

142 Finally, the applicants challenge the fact that the determination of injury took account of a period from January 1992 to the end of the investigation period (recital 9 of the contested regulation), whereas the investigation period extended only from 1 September 1995 to 31 August 1996.

143 In that connection, the contested regulation is vitiated by an absence of reasoning inasmuch as the Community institutions failed to give any justification, first, for examining the injury over a period longer than the investigation period and, second, for choosing 1992 as the start of that longer period (*Nakajima*, cited above, paragraph 87). Such justification was needed in the present case since, with the exception of 1995 (a year in which the seamless pipes and tubes industry was characterised by a worldwide depression), the figures mentioned in recitals 57 to 60 of the contested regulation for all the relevant factors indicate that the state of the Community industry improved in 1994 and 1995 and that it reached break-even during the first eight months of 1996.

144 The Council rejects those arguments, contending in particular that the charges concerning the findings in the contested regulation have no basis.

Findings of the Court

145 It is appropriate, before considering the first part of the fifth plea, first to determine its scope. Although, in terms, the applicants merely allege infringement of Article 3(6) of the basic regulation, it is clear from the wording of their submissions that they consider the contested regulation to be vitiated by errors of fact and inadequate reasoning as regards the analysis of the situation of the Community industry.

146 In that context, by maintaining that the institutions concerned failed to establish, on the basis of all the relevant evidence concerning the situation of the Community industry, as indicated by Article 3(6) of the basic regulation, the existence of injury suffered by that industry, the applicants referred sufficiently clearly to the legal principles on which they rely, without its being necessary for paragraphs 2 and 5 of that article, which refer more particularly to evaluation of the situation of the Community industry, to have been expressly relied on in the application.

147 In those circumstances, the first part of the fifth plea must be understood as alleging infringement of Article 3(2), (5) and (6) of the basic regulation.

148 The first observation the Court would make in that connection is that the applicants challenged the Commission's provisional findings concerning the situation of the Community industry in their provisional submissions on injury, and in their summarised arguments on injury presented at the hearing of 9 July 1997 before the Commission, and that, in their final comments on injury, they confirmed the position which they had set out in detail on that point in their provisional submissions.

149 It follows that the statement in recital 56 of the contested regulation that the findings in the provisional regulation on the situation of the Community industry had not been contested by the parties is incorrect, as claimed by the applicants.

150 However, contrary to the applicants' assertions, that inaccuracy does not mean that the statement of reasons for the contested regulation is inadequate, having regard to the observations which the applicants had put forward in the course of the administrative procedure.

151 The Council is not required to give specific reasons, in the definitive regulation, explaining why it did not take account of the various arguments put forward by the parties in the course of the administrative procedure. It is sufficient for that regulation to contain a clear explanation of the main factors considered, in this case, in the analysis of the situation of the Community industry, provided that that explanation is capable of clarifying the reasons for which the Council rejected the parties' arguments on that point put forward in the administrative procedure (Case C-171/87 *Canon* v *Council* [1992] ECR I-1237, paragraphs 55 and 57, and *Ferchimex*, cited above, paragraphs 90 and 118).

152 In this case, recitals 57 to 62 of the contested regulation contain an adequate statement of the reasons relating to the evaluation of the main aspects of the Community industry, as taken into account by the Community institutions. In that regard, the applicants do not refer to any argument or specific evidence, put forward in the course of the administrative procedure to challenge the findings made in the provisional regulation, which might have required additional clarification in the contested regulation.

153 Moreover, in so far as it did not specifically undermine the applicants' rights, the incorrect statement in recital 56 of the contested regulation that the applicants

did not dispute the findings on the situation of the Community industry in the provisional regulation cannot constitute a breach of the requirement of diligence and sound administration such as to render the contested regulation unlawful.

154 Second, it is necessary to examine, with respect to the situation of the Community industry, the merits of the findings made in the contested regulation regarding the applicants' arguments.

155 As a preliminary point, the Court notes that an analysis of that situation involves appraisal of complex economic situations in which judicial review must be limited to verifying whether the rules of procedure have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers (Case C-174/87 *Ricoh* v *Council* [1992] ECR I-1335, paragraph 68).

156 In addition, the applicants' allegations that the information concerning capacity, production and sales mentioned in the contested regulation relates to the entire production of the Community industry must be rejected at the outset. In that connection, the applicants have put forward no sound argument capable of undermining the Council's statement that the figures used to determine injury relate solely to the product concerned.

157 As regards, first, the findings concerning capacity, the information published in the *Metal Bulletin* and in *Pipe and Tube Mills of the World with Global Technical Data*, on which the applicants base their arguments, is not such as to prove incorrect the findings concerning the reduction of capacity contained in recital 57 of the contested regulation. Before the Court of First Instance, the applicants have not referred to any evidence which might cast doubt on the Council's statement that Dalmine (Arcore) and SETA (Roncadelle) in fact reduced

their respective capacities by 95 000 and 100 000 tonnes. Nor have they rebutted the statement by the defendant institution that Mannesmann, which still has a plant at Mülheim, closed a second plant with a capacity of 350 000 tonnes in that locality. As regards the closure of an ATM plant at Bari, the applicants' argument that that closure was not attributable to dumped imports would not, even if true, be capable of undermining the conclusions in recital 57 of the contested regulation, in which the Council confines itself to a finding that the capacity of the Community industry has been reduced. Moreover, the applicants have not contested before the Court of First Instance the Council's arguments that, first, the capacity of Tubacex (Amurrio), to which they refer, relates to products not covered by the investigation and, second, Tubos Reunidos (Amurrio) reduced its capacity by 50 000 tonnes, as shown by the on-the-spot investigation.

158 As regards the production of the Community industry (recital 57 of the contested regulation), the arguments relied on by the applicants cannot be upheld in so far as they are based on figures provided by the German Stahlrohrverband relating to the full range of seamless tubes and pipes listed under heading 7304 of the combined nomenclature and not solely to the products concerned (falling under five of the 37 tariff sub-headings of heading 7304).

159 As regards the figures for sales volumes (recital 58), the applicants confine their comments to the observation that those figures 'appear to be contradicted' by information contained in a press article, without drawing a distinction between the whole range of products and the relevant products taken by themselves. Figures relating to sales made by one undertaking, in this case Dalmine, are no basis for any conclusion regarding the pattern of production of the relevant products by the entire Community industry, as defined in the contested regulation. As regards the applicants' argument concerning the increase in Community producers' turnover, it is not apparent from the documents before the Court that the figures mentioned in the complaint, on which the applicants rely, relate solely to the products covered by the contested regulation.

160 Similarly, with regard to profitability (recital 60 of the contested regulation), the applicants put forward certain figures emanating from Community producers, without drawing any distinction between the entire range of products and the relevant products. Moreover, they do not rebut the Council's argument that, although some of them achieved profits, Community producers on average made losses on sales of like products, as is expressly stated in recital 60 of the contested regulation. Contrary to the applicants' assertion, that regulation, which refers to a reduction in losses during the investigation period attributable in part to the anti-dumping measures then in force in the relevant product sector, is perfectly consistent with the findings made in the provisional regulation (recital 57), to the effect that break-even was achieved during the last eight months of the investigation period. In addition, the applicants do not dispute the finding of the Community institutions in recital 60 of the contested regulation that that development was nevertheless not sufficient to produce the income needed to enable the Community industry to cover its increasing production costs and high restructuring costs, to make a reasonable profit, to recover from previous years' losses and to ensure its long-term viability.

161 Finally, the institutions enjoy a wide discretion in determining the period to be taken into consideration for the purposes of determining injury in an anti-dumping proceeding (*Nakajima*, paragraph 86).

162 In this case, it has not been established that they exceeded the limits of their discretion in taking into consideration the period from 1992 to the end of the investigation period in order to determine injury. The Council has argued cogently that to take 1993, a year marked by world-world economic depression, as the beginning of the reference period would have led to unreasonable and unrepresentative results. Moreover, since the present proceeding was initiated at the same time as a review relating to the same product from other Eastern European countries (paragraph 2 above), the Community institutions committed no manifest error of appraisal in considering it reasonable to take 1992 into

account in order to determine, among other things, the injury suffered in the light of the existing anti-dumping measures instituted in 1992 and 1993 for imports of relevant products from Hungary, Poland and the Republic of Croatia, and to avoid discrimination between countries covered by the new investigation and those covered by the investigation carried out in the context of the review (see recital 45 of the provisional regulation).

163 In those circumstances, the applicants have not established that the contested regulation is vitiated by errors of fact, manifest errors of appraisal or an inadequate statement of reasons as regards the evaluation of the situation of the Community industry.

164 It follows that the first part of the fifth plea must be rejected.

The second part: infringement of Article 3(7) of the basic regulation

Summary of the parties' arguments

165 The applicants claim that the Community institutions were required by Article 3(7) of the basic regulation to consider whether factors other than dumped imports, of which the Commission was aware or ought reasonably to have been aware, were likely to have contributed to the injury found, and whether those factors were such as to break the causal link between imports of the product concerned from the countries subject to the investigation and the injury suffered by the Community industry (Case T-166/94 *Koyo Seiko* v *Council* [1995] ECR II-2129, paragraphs 79, 81 and 82).

166 However, the Community institutions did not correctly examine the impact of the volume or the prices of imports of the product concerned from other non-member countries. In that regard, recital 64 of the contested regulation contains errors of fact and manifest errors of appraisal. Moreover, it does not enable the applicants to verify whether the Commission followed the proper procedure for determining injury. The contested regulation therefore contains an inadequate statement of reasons in that connection.

167 Recital 64 refers solely to imports from Argentina and does not disclose which other imports from non-member countries were in fact examined by the Community institutions. Furthermore, contrary to the defendant's contentions, Table 1 attached to Annex 2 to the final disclosure gives only a global figure for imports from non-member countries and does not therefore indicate that the Community institutions looked at imports from non-member countries other than Argentina. However, as a result of the facts disclosed in the initial complaint, the Commission was aware of and should have analysed at least the impact on the Community industry of imports from Ukraine, Japan and South Africa. Moreover, the applicants drew the Commission's attention, during the administrative procedure, to the need to assess the effects of imports from other non-member States, particularly Ukraine, in both the provisional and the final submissions on injury.

168 In addition, the institutions applied an inappropriate criterion in finding that although their market share had almost doubled from 1992 to the end of the investigation period imports from non-member countries not covered by the investigation had had a negligible impact on the situation of the Community industry, because the prices of those imports were distinctly higher than those of dumped imports. They should, pursuant to Article 3(7) of the basic regulation, have established whether the injury might have resulted, wholly or in part, from differences between the prices charged for the products concerned by Community producers and the prices of products from other countries.

169 In that connection, the Eurostat figures for imports into the Community of seamless pipes from 1992 to 1995 show that the average prices of imports from Ukraine and Argentina were considerably lower not only than the average prices charged by Community producers but also than the average prices of imports from non-member States subject to the investigation during the same period. The defendant's assertions to the contrary on this point are unsupported by evidence.

170 The Community institutions have also failed to demonstrate on the basis of positive evidence that the decline in employment (recital 62 of the contested regulation) was caused by imports from the countries subject to the investigation, to the exclusion of other factors such as automation of the production process. However, such automation reportedly involved the loss of 23 000 jobs in the steel industry since 1992, according to an article entitled 'A strictly private business', published in *Metal Bulletin* in December 1996.

171 The Commission also failed to take into account, among the other factors referred to in Article 3(7) of the basic regulation, the decrease in exports from the Community which may be inferred, in particular, from the information mentioned in the complaint.

172 The Council considers that the contested regulation complies with Article 3(7) of the basic regulation.

Findings of the Court

173 Article 3(7) of the basic regulation provides that 'known factors other than the dumped imports which at the same time are injuring the Community industry

shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.'

174 As regards, first, the allegation concerning the Community institutions' failure to examine the effects on the situation of the Community industry of imports from South Africa, Japan and Ukraine, the Court finds, first, that it is clear from the contested regulation (recital 64) that the Community institutions did not limit their examination to the imports from Argentina cited by way of example but took into account all imports from the non-member countries not covered by the two investigations. In that respect, imports of the relevant products from non-member countries not covered by the investigations, the volume of which (45 875 tonnes in 1992, for example) is mentioned in Table 1 appended to Annex 2 to the final disclosure, are not, contrary to the applicants' assertions, limited to imports from Argentina, as is apparent from the figures given by the applicants (which indicate, for example, that 7 415 tonnes of relevant products from Argentina were imported into the Community in 1992). Moreover, the Community institutions took account of all imports from non-member countries not covered by the investigations, as is shown by recital 64 of the contested regulation, which states that the market share of imports from non-member countries not covered by the investigations had risen from 4.3% in 1992 to 7.7% during the investigation period.

175 Furthermore, the applicants have produced no specific evidence to support the view that the Community institutions made an error of fact or a manifest error of appraisal in considering that, despite that increase in their market shares from 1992 to 1996, the effect of imports from non-member countries not covered by the two investigations on the situation of the Community industry had been

negligible, on the grounds, first, that they had been made at prices distinctly higher than those of dumped imports and, second, that there was nothing to indicate that those imports had been dumped. In particular, the Eurostat figures relied on by the applicants relate to the annual average prices of imports from Argentina, South Africa, Japan and Ukraine from 1992 to 1995. In fact, those figures do not enable a sufficiently detailed comparison to be made between the prices of imports from those non-member countries and the prices charged by Community producers or by exporters in the countries subject to investigation.

176 In those circumstances, the applicants have not established that the Community institutions made a manifest error of appraisal in considering that imports from non-member countries not covered by the investigations did not provide a basis for breaking the causal link between dumped imports and the injury suffered by the Community industry.

177 As regards, second, the impact of restructuring and automation of the production process in relation to the elimination of about 35% of jobs in the Community industry, representing a loss of some 2 800 jobs from 1992 to the end of the investigation period (recitals 61 and 62 of the contested regulation), it must be observed that the evidence relied on by the applicants — in particular the article published in *Metal Bulletin*, in December 1996, which relates to the steel industry as a whole — is not sufficient to establish that the Community institutions made a manifest error of appraisal in finding, in recital 66 of the contested regulation, that dumped imports alone made a considerable contribution to those heavy job losses.

178 As regards, third, the impact of the reduction in Community exports on the Community industry, it must be noted that, in any event, the applicants' allegations are not supported by any evidence or specific argument and must therefore be rejected.

179 For all those reasons, the Community institutions cannot be criticised for failing to examine other known factors causing injury to the Community industry and to verify whether those factors were such as to break the causal link between dumped imports and the injury suffered by the Community industry. Moreover, it is clear from the considerations set out above that the contested regulation contains an adequate statement of reasons in that regard.

180 In those circumstances, the second part of the fifth plea, concerning infringement of Article 3(7) of the basic regulation, is unfounded.

181 Both parts of the fifth plea must therefore be rejected.

V — *Sixth plea: infringement of Article 20(2) of the basic regulation and of the right to be heard, and inadequacy of the statement of reasons*

Summary of the parties' arguments

182 The applicants observe that according to Article 20(2) of the basic regulation 'the parties mentioned in paragraph 1 [which include exporters] may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures.'

183 Under that provision, the Commission is required to inform exporters of its findings not only as to the existence of dumping and injury but also on the

Community interest. It follows from Articles 7(1) and 9(4) of the basic regulation that the Community interest is one of those essential facts and considerations on the basis of which the imposition of a definitive duty may be envisaged, as is not denied by the Council.

184 In this case, the Community institutions infringed an essential procedural requirement provided for in Article 20(2), cited above, by failing to provide final disclosure of findings relating to the Community interest, although the applicants requested such disclosure, under that provision, by letter of 9 October 1996.

185 Furthermore, by that omission, they infringed the applicants' right to be heard, which includes the right to be informed of all matters adversely affecting their position and relevant to the defence of their interests, together with the right to submit observations on the position taken by the Community institutions (Case C-49/88 *Al-Jubail Fertilizer* v *Council* [1991] ECR I-3187, paragraphs 15 and 16).

186 Furthermore, in the present case, the Community institutions failed to take account of the observations on the Community interest submitted by the applicants in the course of the administrative procedure. That is evidenced by recital 73 of the contested regulation, according to which 'after publication of the provisional regulation, none of the parties concerned made comments on the Commission's provisional conclusions on the Community interest issue'.

187 Since the Community institutions failed to reply to the applicants' objections referred to in the foregoing paragraph, the reasoning of the contested regulation is insufficient as regards the determination of the Community interest.

188 Finally, the applicants rejected at the hearing the Council's argument that they were in a position properly to defend their interests. It is clear from recital 73 of the contested regulation that the Commission resumed its investigation after publication of the provisional regulation. It took its final decision concerning the Community interest on the basis of additional information thus obtained in the responses to questionnaires sent to undertakings using the product concerned.

189 The Council rejects the applicants' argument. First, the failure to mention the Community interest in the final disclosure does not constitute an infringement of Article 20(2) of the basic regulation or of the right to be heard.

190 Exporters cannot call for information on the Community interest under Article 20(2) of the basic regulation. As far as the determination of the Community interest is concerned, the right to information is governed by the special provisions of Article 21(6) of the basic regulation, which specifically lists the persons enjoying that right (who do not include exporters), lays down the detailed rules under which that right may be exercised in regard to findings on the Community interest, and supersedes in that respect the general provisions of Article 20(2) on disclosure to the parties.

191 The conclusion that Article 21(6) specifically deals with disclosure of findings on Community interest is borne out by recital 30 of the basic regulation and by the fact that that article also refers to certain parties entitled to disclosure under Article 20(2) of the basic regulation.

192 Moreover, the judgment in *Al-Jubail Fertilizer*, cited above, confirms that the findings on Community interest need not be disclosed to exporters because they do not form part of the allegations made against them, against which they must be in a position to defend themselves.

193 In particular, the interests of exporters do not by definition form part of the assessment of the Community interest. Such an assessment is not required by Article VI of the General Agreement on Tariffs and Trade 1994 or the 1994 Anti-dumping Code. That requirement was inserted in the basic regulation in order to reconcile the interests of the various economic agents of the Community, ensuring that not only the interests of the complainant Community industry are taken into account but also those of other persons (importers, users and consumers) who must therefore be able effectively to defend themselves.

194 In any event, the provisional regulation (recitals 68 to 77) in this case already dealt with the issue of Community interest. None of the observations submitted in that connection by the applicants related to any particular finding made in recitals 68 to 77 of that regulation.

195 At the hearing, the Council rejected — on the ground that it should have been put forward at an earlier stage than the reply — the applicants' argument concerning pursuit of the investigation through approaches to user undertakings after publication of the provisional regulation, as indicated by recital 73 of the contested regulation.

196 Finally, the Council denies that the statement of reasons in the contested regulation (recital 73) is inadequate.

Findings of the Court

197 Article 20 of the basic regulation provides:

'Disclosure

1. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty ... .

4. Final disclosure shall be given in writing. It shall be made ... as soon as possible and, normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Article 9 ...'.

198 Article 21 of the basic regulation provides:

'Community interest

1. A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this article, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional duties imposed ... .

...

6. The parties which have acted in conformity with paragraph 2 may request the facts and considerations on which final decisions are likely to be taken to be made available to them ...'.

199 In order to determine whether Article 20(2) of the basic regulation requires the Community institutions in principle to give exporters final disclosure of the facts and considerations relating to the Community interest, even though the latter are not mentioned in Article 21 of the basic regulation, it is necessary to construe those provisions in the light of the general scheme of the basic regulation and the general principles of Community law.

200 Within the scheme established by the basic regulation, Article 20 provides for disclosure to the parties directly concerned by the result of the procedure (complainants, importers and exporters) and to their representative associations and representatives of the exporting country, so that they may effectively defend their interests. Such information is to be supplied at two stages of the procedure: immediately after the imposition of provisional measures (Article 20(1)) and

again before the imposition of definitive measures or the closure of an investigation or procedure without measures being imposed (Article 20(2)).

201 Article 20 of the basic regulation, together with other provisions thereof, including Article 5(10) and Article 6(5), (6) and (7), cater for the need, referred to in recital 13 of the regulation, to provide interested parties with 'ample opportunity to present all relevant evidence and to defend their interests.' It thus gives expression to the right of interested parties, in particular exporters, to be heard, which constitutes one of the fundamental rights recognised by Community law and includes the right to be informed of the main facts and considerations on the basis of which it is intended to recommend the imposition of definitive anti-dumping duties (*Al-Jubail Fertilizer*, cited above, paragraph 15, and Case T-147/97 *Champion Stationery and Others* v *Council* [1998] ECR II-4137, paragraph 55).

202 However, in the scheme of the basic regulation, the essential facts and considerations, on the basis of which the imposition of definitive anti-dumping duties is envisaged, relate not only to determination of the existence of dumping and of injury but also to appraisal of the Community interest, as is apparent from Article 9(4) of that regulation. That provision states that an anti-dumping duty is to be imposed by the Council 'where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21 ...' (see also, with regard to provisional measures, Article 7(1) of the basic regulation).

203 In those circumstances, exporters are entitled to be informed, at least summarily, of the considerations concerning the Community interest, under Article 20(2) of the basic regulation.

204 Contrary to the Council's contentions, that interpretation of Article 20 is not incompatible with Article 21, relating to Community interest, which has a

different aim. Article 21 establishes, according to the terms used in recital 30 of the basic regulation, an 'administrative system' intended to allow the Community industry, users and consumers to make known their views, so that the Community institutions may, having regard to all the interests at stake taken together, determine whether it is in the Community interest for measures to be adopted and to determine the disclosure rights of those parties. It is in that context that it provides, in paragraphs 3 and 4, for the right to be heard, and, in paragraph 6, for specific disclosure to certain parties (complainants, importers and their representative associations, and the representative associations of users and consumers) whose interests deserve to be given particular consideration when the Community interest is appraised. However, the fact that Article 21(3), (4) and (6) grant the parties which they mention a specific right to be heard in relation to the Community interest does not mean that that provision has the effect of depriving other interested parties, in particular exporters, of the right to be heard on that point in the context of Article 20(1) or (2).

205 It is common ground that the final disclosure to the applicants on 19 August 1997 did not mention the Community interest.

206 However, the fact that the final disclosure, which is intended to enable interested parties properly to put forward their views in the administrative procedure, is incomplete does not render unlawful a regulation imposing definitive anti-dumping duties unless, as a result of that omission, those parties were not in a position properly to defend their interests (*Champion Stationery*, cited above, paragraphs 55, 73 and 81 to 84).

207 That would be the case in particular where the omission related to facts or considerations different from those relied on for the provisional measures, to which sufficient prominence must be given in the final disclosure, in accordance with Article 20(2) of the basic regulation.

208 In the present case, the applicants do not deny that the contested regulation repeats and confirms the facts and considerations relating to the Community interest which had already been included in the provisional regulation. It is common ground that the Commission stated the facts and considerations relevant to appraisal of the Community interest in recitals 68 to 77 of the provisional regulation, and that that regulation, accompanied by provisional disclosure, was notified to the applicants on 2 June 1997. Thereafter, the applicants put forward their views on those facts and considerations in their respective observations on injury, dated 1 July 1997. In those observations the applicants referred in general terms to the Community's privileged commercial relations with Romania, the risk of a shortage of supplies to the Community of the relevant product, and the risk of an oligopoly being created for some of the products concerned. Furthermore, Petrotub referred to substantial investments being made by Community undertakings in Romanian undertakings covered by the investigation, such as the applicant.

209 The applicants also repeated their observations in their final observations on injury, dated 5 September 1997, whilst making it clear that the final observations did not 'contain any remarks on the Community interest'.

210 However, the applicants have not identified any new factor concerning the Community interest which was mentioned in the contested regulation without previously being mentioned, in essence, in the provisional regulation. Moreover, a comparison between recitals 74 to 78 of the provisional regulation and recitals 68 to 77 of the contested regulation confirms that the latter contains no new decisive factors compared with those in the provisional regulation.

211 Whilst it is true, as the applicants contend, that the Commission pursued its investigation after adoption of the provisional regulation, in order in particular to complete its analysis of the impact of the anti-dumping measures on the user industries (recital 73 of the contested regulation), that fact did not result in

account being taken of factors other than those mentioned in the provisional regulation. On the contrary, it prompted the Community institutions to confirm, in recital 73 of the contested regulation, the findings set out in recital 76 of the provisional regulation concerning the limited effect it expected the imposition of anti-dumping measures to have on industrial users downstream.

212 It follows from all the foregoing that the applicants have not succeeded in demonstrating that the incompleteness of the final disclosure as regards the Community interest prevented them from properly exercising their rights of defence in the course of the administrative procedure.

213 As regards the allegedly defective statement of reasons, the Court considers that the Council's finding in recital 73 of the contested regulation that after publication of the provisional regulation 'none of the parties concerned' submitted observations on the Community interest issue refers in particular to importers/dealers and the user industries identified in recitals 70 and 71 of the provisional regulation. However, even if the course of the administrative procedure was incorrectly described, in so far as the applicants did submit observations on the question of Community interest, that inaccuracy does not entail any inadequacy of the statement of reasons of the kind alleged by the applicants.

214 Indeed, recitals 74 to 78 of the contested regulation contain a detailed analysis of the impact of the anti-dumping measures in question on the Community industry, on importers and dealers and on industrial users. That statement of reasons is sufficient to enable the applicants to ascertain the Community institutions' view as to the Community interest and the Court to exercise its power of review.

215 It follows that the sixth plea must be rejected.

216 Consequently, the application must be dismissed in its entirety.

Costs

217 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they are applied for in the successful party's pleadings. Article 87(4) of the same rules provides that institutions which intervene in proceedings are to bear their own costs. Article 87(5) of those rules provides that a party who discontinues or withdraws from proceedings is to be ordered to pay the costs if they are applied for in the successful party's pleadings.

218 Since the applicants withdrew their claim for the annulment of Article 2 of the contested regulation and have been unsuccessful in their claim for the annulment of Article 1 of that regulation, they must be ordered to pay the costs of the Council, as applied for by that institution.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

1. **Dismisses the application;**

2. **Orders the applicants to pay the costs;**

3. **Orders the Commission to bear its own costs.**

Potocki Lenaerts Bellamy

Azizi Meij

Delivered in open court in Luxembourg on 15 December 1999.

H. Jung
Registrar

A. Potocki
President