JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

28 October 2004 *

In Case T-35/01,

Shanghai Teraoka Electronic Co. Ltd, established in Shanghai (China), represented by P. Waer, lawyer,

applicant,

v

Council of the European Union, represented by S. Marquardt, acting as Agent, assisted initially by G. Berrisch and P. Nehl and subsequently by G. Berrisch, lawyers,

defendant,

supported by

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

intervener,

* Language of the case: English.

ACTION for annulment of Article 1 of Council Regulation (EC) No 2605/2000 of 27 November 2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales originating in China, South Korea and Taiwan (OJ 2000 L 301, p. 42),

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

composed of: V. Tiili, President, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 6 March 2003,

gives the following

Judgment

Legal background

1 Article 1(4) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1, 'the basic regulation') provides:

'For the purpose of [the basic regulation], the term "like product" shall be interpreted to mean a product which is identical, that is to say, alike in all respects,

to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.'

2 Article 2(7) of the basic regulation, as amended by Council Regulation (EC) No 905/98 of 27 April 1998 (OJ 1998 L 128, p. 18), provides:

'(a) In the case of imports from non-market economy countries ..., normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits; where appropriate, a market economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

(b) In anti-dumping investigations concerning imports from [Russia] and ... China, normal value will be determined in accordance with paragraphs 1 to 6, if it is

shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in subparagraph (c) that market economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under subparagraph (a) shall apply.

(c) A claim under subparagraph (b) must be made in writing and contain sufficient evidence that the producer operates under market economy conditions, that is if:

— decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,

— the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,

— the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and

— exchange rate conversions are carried out at the market rate.

A determination whether the producer meets the abovementioned criteria shall be made within three months of the initiation of the investigation, after specific consultation of the Advisory Committee and after the Community industry has been given an opportunity to comment. This determination shall remain in force throughout the investigation.'

3 Article 3 of the basic regulation provides:

'Determination of injury

1. Pursuant to [the basic] regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products; and (b) the consequent impact of those imports on the Community industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

5. The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or

subsidisation, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. 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 [the basic] 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.

7. 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.

8. The effect of the dumped imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the

production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

9. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

(a) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;

(b) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;

(c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and

(d) inventories of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.'

4 Under Article 6(9) of the basic regulation:

'For proceedings initiated pursuant to Article 5(9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.'

5 Finally, Article 20 of the basic regulation states:

'...

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. Where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time-limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, 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. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.'

Facts

6 Following a complaint lodged on 30 July 1999 by European Community producers of electronic weighing scales accounting for the majority of the total Community production of that product, the Commission, by a notice published on 16 September 1999 (OJ 1999 C 262, p. 8), initiated an anti-dumping proceeding pursuant to Article 5 of the basic regulation in respect of imports of certain electronic weighing scales originating in China, South Korea and Taiwan.

7 Two Community producers of electronic weighing scales, Avery Berkel Ltd and Bizerba GmbH, which together accounted for 39% of the Community production at that time, cooperated in the Commission's investigation.

8 At the same time, eight exporting producers in the countries concerned, including the applicant company, four importers whose activity was related to the production in question and the cooperating producer in the analogue country, namely Indonesia, replied to the questionnaires sent by the Commission.

9 The investigation into the dumping and the injury arising therefrom covered the period from 1 September 1998 to 31 August 1999 ('the investigation period'). The examination of trends relevant for the purpose of determining injury covered the period from 1 January 1995 to the end of the investigation period ('the analysis period').

10 Shanghai Teraoka Electronic Co. Ltd ('the applicant' or 'Shanghai Teraoka') is a company incorporated under Chinese law in 1992 which is wholly owned by foreign investors and which produces electronic weighing scales and exports them, in particular to the Community.

11 On 11 October 1999, the applicant asked the Commission to recognise, for the purposes of the investigation, that it had the status of an undertaking operating in a market economy ('market economy status') under Article 2(7) of the basic regulation. By fax of 17 December 1999, the Commission informed the applicant that it did not satisfy the requirements laid down in Article 2(7)(c) of the basic regulation for recognition as an undertaking with market economy status.

12 In response to the rejection of its claim, the applicant submitted observations to the Commission by two letters dated 27 December 1999 and 11 January 2000 respectively.

13 On 4 January and 3 February 2000, the Commission confirmed its refusal to grant the applicant market economy status.

14 On 10 and 14 April 2000, following a meeting held on 6 April 2000 between the Commission and representatives of the Community industry concerned, two Community producers submitted to the Commission their observations on the latter's preliminary findings as to whether there was any injury to the Community industry.

15 On 1 August 2000, the applicant sent the Commission observations on the issues of injury and causality.

16 By fax of 21 September 2000, the Commission informed the applicant of the essential facts and considerations forming the basis for its intention to recommend the imposition of a definitive anti-dumping duty of 13.1% on imports of certain electronic weighing scales produced by the applicant.

17 By fax of 29 September 2000, the applicant requested further information on the existence of dumping and the determination of the injury alleged to arise from it.

18 The Commission responded to that request by two letters dated 29 September and 4 October 2000 respectively.

19 By fax of 4 October 2000, the applicant requested an extension of the deadline for the submission of its observations. By fax of 5 October 2000, the Commission refused that request, on the ground of urgency.

20 On 10 October 2000, the applicant submitted its observations on the information received by it.

21 By fax of 11 October 2000, the Commission replied to the applicant's observations and reduced the margin of dumping from 13.1 to 12.8%.

22 By fax of 23 October 2000, the Commission gave further replies to the applicant's observations.

23 By Council Regulation (EC) No 2605/2000 of 27 November 2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales originating in China, South Korea and Taiwan (OJ 2000 L 301, p. 42, 'the contested regulation'), the

Council imposed anti-dumping duties of 12.8% on the products exported by the applicant, which are defined below. Under Article 1 of the contested regulation:

'1. A definitive anti-dumping duty is hereby imposed on imports of electronic weighing scales having a maximum weighing capacity not exceeding 30 kg, for use in the retail trade which incorporate a digital display of the weight, unit price and price to be paid (whether or not including a means of printing this data) currently classifiable within CN code ex 8423 8150 (TARIC code 8423 8150 10) and originating in ... China, [South] Korea and Taiwan.

2. The duty, calculated on the basis of the net free-at-Community-frontier price of the product, before duty, shall be [in respect of the applicant]: ... 12.8% ...'

Procedure and forms of order sought

24 By application lodged at the Registry of the Court of First Instance on 16 February 2001, the applicant brought the present action.

25 By a document lodged at the Registry of the Court on 12 June 2001, the Commission applied for leave to intervene in the present proceedings in support of the form of order sought by the defendant. By order of 11 September 2001, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance granted leave to intervene.

26 The Commission having waived the right to submit a statement in intervention, the written procedure was closed on 28 November 2001.

27 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber, Extended Composition) decided to open the oral procedure.

28 As a measure of organisation of the procedure, the Court asked the parties to answer written questions and to produce certain documents. The parties complied with those requests in part.

29 The main parties to the proceedings and the intervener presented oral arguments and replied to the Court's questions at the hearing on 6 March 2003.

30 The applicant claims that the Court should:

— annul Article 1 of the contested regulation in so far as it imposes a definitive anti-dumping duty on its exports of electronic weighing scales;

— order the Council to pay the costs.

31 The Council, supported by the Commission, contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Substance

32 The applicant raises, essentially, four pleas in support its action. The first plea alleges a manifest error of assessment in the application of Article 2(7) of the basic regulation. The second plea alleges infringement of Article 3(2), (3), (5) and (8) of the basic regulation and a manifest error of assessment in the determination of injury. The third plea alleges infringement of Article 3(6) of the basic regulation. Finally, the fourth plea alleges infringement of the procedural rules laid down in the basic regulation.

A — *The first plea: manifest error of assessment in the application of Article 2(7) of the basic regulation*

1. *Introduction*

33 According to the applicant, the Community institutions were wrong to find that it does not satisfy the requirements laid down in Article 2(7)(c) of the basic regulation for the grant of market economy status. It claims to have submitted sufficient evidence that it was entitled to be granted such status.

34 The Council justified its refusal to grant market economy status by stating, in the 46th recital in the contested regulation:

'The Commission found that [two] companies [including the applicant] were selling at more or less uniform, loss-making prices in [China] for several years. Furthermore, both companies were not fully free to decide whether and to what

extent they should sell their production on the domestic market. It has been the Commission's practice to reject ... claims [for market economy status] when domestic sales are restricted and where there [are] no price variations between customers as such similar pricing may result from centrally imposed price controls. Moreover, the evidence indicated that these prices were at loss-making levels for several years which also indicates that the producers did not operate under market economy conditions.'

35 The Council therefore concluded, in the 47th recital in the contested regulation, that 'the conditions set out in Article 2(7)(c) of the basic regulation were not met' by the applicant.

36 For its part, the Commission — as the Court observed in paragraphs 11 and 13 above — had rejected the applicant's claim for market economy status by fax of 17 December 1999 and confirmed that rejection by faxes of 4 January and 3 February 2000. Having set out the results of the investigation, the Commission based its assessment on the following three considerations. First, the applicant had complied with the Chinese pricing law of 29 December 1997 ('the Pricing Law'), under which it was obliged to sell its products at more or less uniform loss-making prices on the Chinese domestic market. Secondly, the applicant was not entirely free to decide whether and to what extent to sell its products on the domestic Chinese market or on foreign markets. Finally, the applicant had provided the Commission with misleading information or failed to send it relevant documents and, as a result, impeded the investigation.

37 By the present plea, the applicant contests, first, the interpretation given by the Commission, and subsequently by the Council, to Article 2(7) of the basic regulation.

38 Secondly, it challenges the findings, of the Commission and of the Council which led them to take the view that the criteria laid down in Article 2(7) of the basic regulation were not fulfilled. In particular, the applicant challenges the findings,

made by the Commission in the part of its fax of 17 December 1999 entitled 'Results of the Investigation', that the applicant is under no obligation to make provision for bad debts on the liabilities side of its balance sheet, that a limit equal to the level of its capital is imposed on its foreign-currency account, that sales at a loss were systematically made on the Chinese domestic market, that the applicant is prohibited under the Pricing Law from charging different prices to similar customers in China, that there are restrictions on the freedom to sell on the Chinese domestic market and that the applicant submitted inaccurate information to the Commission during the investigation.

39 The Court rejects already at this stage the arguments of the applicant relating to the first two factors mentioned in the preceding paragraph. Since neither the Council nor the Commission based their findings on those factors, the arguments relating to them are irrelevant.

40 Thirdly, the applicant claims that the Community institutions failed to supply it with the documents on the basis of which they subsequently refused to grant it market economy status. That complaint must likewise be rejected because the Community institutions based their assessment of that question on the documents which the applicant had itself sent to the Commission in its reply to Part D of the investigation questionnaire and on the documents which the Commission inspected during the verification visit to the applicant's premises.

41 Moreover, the applicant has failed to explain what it means by 'new information' and has merely referred to the information in its own documents. It thus acknowledged in its reply that 'all invoices for all single ... transactions [on the Chinese domestic market] were available during the verification visit as well as all other accounting and cost of production information'. Accordingly, the Community institutions were under no obligation to send Shanghai Teraoka the documents in question after having drawn conclusions from them, given that the applicant supplied those documents and was therefore familiar with all of them.

42 It should be added that the new argument put forward by the applicant in its reply in support of its allegation of infringement of Article 20(4) of the basic regulation, namely that during the proceedings before the Court the Council produced information which had not been disclosed to the applicant during the administrative procedure, is irrelevant. That argument reveals a confusion between the procedure for the grant of market economy status and the procedure for the imposition of definitive anti-dumping measures. Since Article 20(4) of the basic regulation, which governs the latter procedure, has no bearing on the grant of market economy status, a failure to comply with it cannot be properly relied on by the applicant with respect to documents which were used specifically for the purpose of obtaining such status.

2. *Scheme of Article 2(7) of the basic regulation*

(a) Arguments of the parties

43 The applicant challenges the interpretation given by the Community institutions to Article 2(7) of the basic regulation, in particular as regards the burden of proof. It argues that the Council disregarded the *ratio legis* of the amendment to Article 2(7), namely the desire to take account of the fundamental change in the economic structure of China.

44 Moreover, the applicant relies on paragraph 112 of the Court's judgment in Case T-80/97 *Starway* v *Council* [2000] ECR II-3099, from which it is clear that requiring an exporter to provide proof which is not available to him is an infringement of the principles of legal certainty and of respect for the rights of the defence.

45 Finally, the applicant takes the view that, where the Community institutions rely on certain facts, they must prove that those facts are accurate and that they have been

properly established. In this connection, the applicant relies on paragraph 52 of the judgment in Case C-381/99 *Brunnhofer* [2001] ECR I-4961.

46 The Council contends that the applicant's reasoning is based on a misinterpretation of Article 2(7) of the basic regulation. It is apparent from, in particular, the preamble to Regulation No 905/98 that Article 2(7) establishes a simple presumption that the characteristic conditions of a market economy are lacking in China and Russia and that it is therefore for the exporting producer — in the present case, the applicant — to prove the contrary. In the Council's view, the argument put forward by the applicant is based on a reversal of the burden of proof. Moreover, the Community institutions have wide discretion in this matter, as is clear from the case-law (Case T-118/96 *Thai Bicycle* v *Council* [1998] ECR II-2991, paragraph 32) and from the words 'properly substantiated claim' and 'sufficient evidence' used in Article 2(7)(b) and (c) of the basic regulation.

47 Finally, the Council submits that, in principle, the five criteria laid down in Article 2 (7) are cumulative. However, it stresses that those criteria are not all of equal importance. The first criterion, namely that the decisions of firms regarding prices, costs and inputs must be made in response to market signals reflecting supply and demand, and without significant State interference, is of major importance. The finding that the applicant had failed to satisfy that requirement was therefore by itself a sufficient basis for the rejection of its claim for the grant of market economy status.

(b) Findings of the Court

48 First of all, it should be observed that, in the sphere of measures to protect trade, the Community institutions enjoy a wide discretion by reason of the complexity of the

economic, political and legal situations which they have to examine (Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 72; Case T-97/95 *Sinochem* v *Council* [1998] ECR II-85, paragraph 51; *Thai Bicycle*, cited in paragraph 46 above, paragraph 32; and Case T-340/99 *Arne Mathisen* v *Council* [2002] ECR II-2905, paragraph 53).

49 It follows that review by the Community judicature of assessments made by the institutions must be limited to establishing whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of assessment of the facts or a misuse of power (Case 240/84 *Toyo* v *Council* [1987] ECR 1809, paragraph 19; *Thai Bicycle*, cited in paragraph 46 above, paragraph 33; and *Arne Mathisen*, cited in paragraph 48 above, paragraph 54). The same applies to factual situations of a legal and political nature in the country concerned which the Community institutions must assess in order to determine whether an exporter operates in market conditions without significant State interference and can, accordingly, be granted market economy status (see, to that effect, Case T-155/94 *Climax Paper* v *Council* [1996] ECR II-873, paragraph 98).

50 Moreover, the method of determining the normal value of a product set out in Article 2(7)(b) of the basic regulation is an exception to the specific rule laid down for that purpose in Article 2(7)(a), which is, in principle, applicable to imports from non-market economy countries. It is settled case-law that any derogation from or exception to a general rule must be interpreted strictly (Case C-399/93 *Oude Luttikhuis and Others* [1995] ECR I-4515, paragraph 23; Case C-83/99 *Commission* v *Spain* [2001] ECR I-445, paragraph 19; and Case C-5/01 *Belgium* v *Commission* [2002] ECR I-11991, paragraph 56).

51 The original wording of Article 2(7) of the basic regulation was amended by Regulation No 905/98 because the Council took the view that the process of reform

in Russia and China had fundamentally altered their economies and led to the emergence of undertakings for which market economy conditions prevail. Thus, in the fifth recital in Regulation No 905/98, the Council stresses the importance of revising the anti-dumping practice followed with regard to those countries and states that the normal value of a product may be determined in accordance with the rules applicable to countries with a market economy where it can be shown that market conditions prevail for one or more producers subject to an investigation into the manufacture and sale of the product concerned. According to the sixth recital, 'an examination of whether market conditions prevail will be carried out on the basis of properly substantiated claims by one or more producers subject to investigation who wish to avail themselves of the possibility to have [the] normal value [of the relevant product] determined on the basis of rules applicable to market economy countries'.

52 It is therefore clear from Article 2(7) of the basic regulation and from the abovementioned recitals in Regulation No 905/98, first, that the Community institutions are under an obligation in cases such as that at hand to conduct their examination on a case-by-case basis, as China cannot yet be regarded as a market economy country. The normal value of a product originating in China can therefore be determined in accordance with rules applicable to market economy countries only 'if it is shown ... that market economy conditions prevail for this producer or producers'.

53 Secondly, it is apparent from the abovementioned provisions that the burden of proof lies with the exporting producer wishing to avail himself of market economy status. Article 2(7)(c) of the basic regulation provides that the claim 'must ... contain sufficient evidence'. Accordingly, there is no obligation on the Community institutions to prove that the exporting producer does not satisfy the criteria laid down for the recognition of such status. On the contrary, it is for the Community institutions to assess whether the evidence supplied by the exporting producer is sufficient to show that the criteria laid down in Article 2(7)(c) of the basic regulation are fulfilled and for the Community judicature to examine whether the institutions' assessment is vitiated by a manifest error.

54 In order to assess whether the evidence supplied by the producer concerned is sufficient, the criteria laid down in the first indent of Article 2(7)(c) of the basic regulation must be applied. It follows both from the use of the word 'and' between the fourth and fifth indents of that provision and from the very nature of the criteria that they are cumulative. Accordingly, the exporting producer concerned must fulfil all the criteria laid down in Article 2(7)(c) of the basic regulation in order to be granted market economy status and, should it fail to fulfil one of those criteria, its claim must be rejected.

55 Accordingly, it must be examined whether the applicant has demonstrated that it satisfies the first criterion laid down in Article 2(7)(c), namely that the decisions of firms regarding prices, costs and inputs must be made in response to market signals reflecting supply and demand, and without significant State interference.

3. *The first criterion laid down in Article 2(7)(c) of the basic regulation*

(a) Charging of uniform prices

Arguments of the parties

56 The applicant submits that the finding that it sells its products in China at uniform prices is manifestly incorrect. It claims that the Pricing Law does not apply to the

market for electronic weighing scales. In any event, the actual wording of the Pricing Law is not that described by the Commission. The applicant also states that the price list on which the Commission relied does not reflect the prices actually charged, which are renegotiated with the dealers. The applicant adds that the fact that the same price is charged to partners at the same commercial level shows that it observes the principle of fair competition, as it is applied within the European Community by means of measures against abuses of a dominant position.

57 The applicant points out that it explained that its prices are determined by supply and demand and that the Chinese market is highly competitive. Moreover, the Community institutions adopted a very incomplete and imprecise approach, particularly inasmuch as they took account of only 13 invoices for sales on the Chinese domestic market. However, sales amounted to 25 701 units during the investigation period. All the invoices for all the individual transactions on the Chinese domestic market, which show that the prices were negotiated by the applicant and its customers, were made available to the Commission's investigators during the verification visit. The Community institutions failed to take account of the fact that, during those negotiations, no reference was made to government control of prices. Moreover, the applicant claims to have shown in its response to the questionnaire concerning the grant of market economy status that the monthly average sales price charged on the Chinese domestic market varies considerably, which supports its assertion that the prices of individual transactions carried out by it also vary significantly.

58 The Council contends that the applicant has failed to prove that price negotiations actually took place.

Findings of the Court

59 It must be examined whether the applicant furnished sufficient evidence during the investigation to establish that it was free to fix its prices on the Chinese domestic market 'in response to market signals reflecting supply and demand, and without significant State interference' as is required by the first indent of Article 2(7)(c) of the basic regulation.

60 Thus, while the investigation was being carried out, the applicant was under an obligation to supply the Commission with evidence of the variation in the prices charged for its individual transactions, for example by means of invoices. The applicant cannot complain that the Community institutions failed to take account of all the invoices (which numbered more than 25 000) for unit sales made during the investigation period. It was for the applicant to select from among the invoices those from which it would have been clear that it did in fact charge different customers different prices for the same model. In addition, when the applicant became aware of the Commission's conclusion that it sold at uniform prices, it could still, during the administrative procedure, have supplied the Commission with the invoices which it considered to be relevant.

61 Next, it is appropriate to examine whether the applicant satisfied the requirement to produce evidence by virtue of the fact that it supplied the Commission's investigators with negotiation sheets and national contracts during the verification visit in order to show that price negotiations had taken place with the local Chinese subsidiaries of SA Carrefour (Carrefour). Far from establishing that discounts were granted to that customer, those documents, which were produced by the applicant before the Court, show that the price invoiced and the price appearing on the price list adopted for the Chinese domestic market were exactly the same. Thus, the basic price for the model most frequently purchased by Carrefour was identical to the price specified on the applicant's price list for the Chinese domestic market. A comparison between the documents produced and the price list for the product concerned applicable to the Chinese domestic market shows that the price for the model in question (namely the electronic weighing scales SM-80SXB, which form part of the high range) in no way differed from that specified in that price list, that is to say, 6 837.61 yuans ren-min-bi (CNY), given that, whilst the invoices drawn up by

Carrefour and produced by the applicant during the investigation refer to a price of CNY 8 000, that price includes the value added tax (VAT) of 17% applied to the price specified on the list. Carrefour's negotiation sheets refer to a price of CNY 12 000, which is the price specified on the list plus VAT of 17% and an additional service charge of CNY 4 000. The same uniformity can be identified with respect to the price charged for the model SM-80SXP. Finally, in response to a written question, the Council submitted to the Court an invoice supplied by Carrefour from which it was clear that the price actually charged was equal to the sum of the price specified on the list, VAT of 17% and an additional amount of CNY 4 000, and which is thus evidence of the same approach as that revealed by the examination of the negotiation sheets. Indeed, at the hearing, the applicant confirmed that there was a practice of paying a flat-rate service charge of CNY 4 000.

62 The prices appearing on the invoices, the contracts and the negotiation sheets relating to Carrefour are therefore no different from those specified on the price list. An examination of the negotiation sheets shows that same principle likewise applied to the rates charged by the applicant to Nanjing Supermarket Ltd, another of its customers.

63 Consequently, there is no evidence in the negotiation sheets, the contracts or the invoices produced that the applicant charged its various customers different prices for the same product.

64 That finding is not affected by the fact, relied on by the applicant, that its main customer on the Chinese domestic market, namely Shanghai Teraoka Electronic Scales Co. Ltd, negotiated with it better prices than those charged to its other customers. As the Commission rightly pointed out in its fax of 17 December 1999, it is reasonable to entertain doubts as to the degree of that undertaking's independence of the applicant. Moreover, the applicant failed in its correspondence with the Commission, its application and its reply to even attempt to dispute that the suggested links exist. In its letter of 27 December 1999, in which it contested the results and findings of the Commission contained in the fax sent on 17 December 1999, it made no comment whatsoever on the argument that Shanghai Teraoka

Electronic Scales Co. Ltd was linked to it. The same is true of the letter of 11 January 2000, in which the applicant contested the replies made to its observations by the Commission by letter of 4 January 2000, in which that institution reiterated its concern that there were links tying the applicant to that company. Since the applicant has thus failed to deny that there are links between it and Shanghai Teraoka Electronic Scales Co. Ltd, the Commission was entitled to exclude from its assessment the prices invoiced to that undertaking by the applicant.

65 It must also be examined whether, despite its failure to produce relevant invoices, the applicant nevertheless provided pertinent evidence in its reply in Part D of the Commission's investigation questionnaire, which concerned the grant of market economy status. In that reply, the applicant submitted to the Commission the following information on its sales: the monthly quantities of the product in question sold on the Chinese domestic market and the monthly average sale price for that product on that market during the investigation period, its total sales figure in terms of volume and for each product, the main products sold by the applicant on the Chinese domestic market during the investigation period, the list of sales prices on the Chinese domestic market for the relevant product, the monthly quantities of export sales of the relevant product and the monthly average price for export sales during the investigation period, the list of export prices for the relevant product and the list of export sales to the Community, drawn up on a monthly basis for the main three months of the investigation period, namely September 1998, January 1999 and March 1999.

66 On the basis of the figures in the table annexed to the application showing the monthly average sales prices of the relevant product on the Chinese domestic market during the period of investigation, the applicant drew up a new table, which was submitted with its reply and shows, as a percentage, the difference between the lowest and highest average prices for each model of electronic weighing scales, in order to demonstrate that it did not charge identical prices. In that connection, it is appropriate to draw up, on the basis of the figures in the applicant's reply to Part D of the Commission's investigation questionnaire, which were not disputed by the Community institutions, a table showing the volume and percentage of sales on the Chinese domestic market for each model and, as a percentage, the variation in the sales price during the investigation period. It should be noted that, according to the

contested regulation, the market for electronic weighing scales is commonly divided into three distinct segments: a low-range segment, a mid-range segment and a high-range segment.

Model	Volume sold on the Chinese domestic market	Percentage of sales on the Chinese domestic market	Percentage variation in sales prices on the Chinese domestic market
DS-685B	13 693	53.28	2.21
DS-685FB	2 127	8.27	9.72
DS-685FP	26	0.10	15.86
DS-688B	3 455	13.44	11.88
DS-688P	6	0.02	Not available
DS-688FB	3 471	13.50	9.54
DS-688FP	88	0.34	13.47
DS-650	361	1.40	8.70
DS-681	189	0.74	68.75
SM-80/81B	151	0.59	71.89
SM-80/81P	1 982	7.71	34.55
SM-90H	18	0.07	21.87
RM-30	134	0.52	47.64

67 This table shows eight models (DS-685FP, DS-688P, DS-688FP, DS-650, DS-681, SM-80/81B, SM-90H and RM-30) which, together, account for 3.78% of the applicant's sales on the Chinese domestic market. It is the prices for these models in particular which vary the most. Consequently, given the low volume of total sales of these models, the variations in their prices cannot be regarded as representative of a trend which is characteristic of the applicant's overall conduct in determining the prices charged by it to its various customers.

68 The price variations of 71.89 and 34.55% identified in the sales of the high-range electronic weighing scales SM-80/81B and SM-80/81P arose primarily as a result of the fact that, as the Council pointed out without being contradicted by the applicant, the models in question comprise a number of sub-models. Since each sub-model has a different price, it follows that even though the same sub-model is sold at a uniform price, the average sales price varies according to the respective volume of sales of each sub-model during any given period.

69 It is also clear from the table that the monthly average prices for the most frequently sold model (namely the model DS-685B, which accounted for 53.28% of sales on the Chinese domestic market), varied by 2.21%. However, that variation, which is after all very slight, does not in itself confirm that different customers were charged different prices. Finally, the variation of approximately 10% in the price of each of the three remaining models (namely the models DS-685FB, DS-688B and DS-688FB) cannot, of itself, be regarded as significant.

70 The figures provided by the applicant concern only the monthly average sales prices, the trends in which may also be the result of periodic price variations, and, therefore,

it cannot be ruled out that different customers may have been charged uniform prices during each period. Consequently, it cannot be established on the basis of the figures on the file, in particular those set out in the table in paragraph 66 above, that different prices were actually invoiced to different customers during the investigation period.

71 Moreover, the applicant has failed to adduce any evidence which might substantiate its argument that it carries on its activities in a context of generalised competition and that it sets and adapts its prices according to those of its competitors. In addition, it has failed to establish that the conditions under which the charging of different prices could be regarded as abusive under the rules on competition are fulfilled in the present case.

72 Finally, as regards the applicant's argument that the Pricing Law has no bearing on its pricing policy, it need only be pointed out that the Council did not rely on the possible applicability of that law but on the fact the applicant had failed to submit sufficient evidence that it determines its prices according to market conditions.

73 Consequently, the Commission and, subsequently, the Council were entitled to find that the applicant had failed to furnish sufficient proof that it charged different customers different prices for the same product and, in making that finding, they committed no manifest error of assessment.

(b) Sales at a loss

Arguments of the parties

74 The applicant submits that the Commission's finding that it systematically made sales at a loss on the Chinese domestic market was both premature and irrelevant. First, the Commission did not await full disclosure of the information necessary to reach a decision on this matter. Secondly, it is clear from the Council's findings that such practices are currently adopted by a number of traders operating in market economy conditions. In that regard, the applicant refers to the 30th and 38th recitals in the contested regulation.

75 As regards the overall balance of profits and losses, the applicant contests the findings made by the Community institutions that it had suffered considerable systematic losses on the Chinese domestic market and made large profits on the export markets. The applicant points out that it sells a large number of products other than electronic weighing scales on the Chinese domestic market. All the figures on sales made on the Chinese domestic market appearing in the income statement relate to all of those products and, therefore, cannot, in the applicant's view, serve as a reliable indication of the profitability of sales of electronic weighing scales on the Chinese domestic market. Moreover, the balance sheet does not set out the profits and losses made on export sales separately from those made on the Chinese domestic market. Accordingly, the applicant takes the view that it is incorrect to claim that the income statement clearly shows that large profits were made on exports and significant losses on sales on the Chinese domestic market.

76 According to the applicant, the Community institutions never disclosed the calculations substantiating that claim. On the basis of the guesses which it has been

able to make as to how the Community institutions made their calculations, the applicant submits that the results of such calculations show, for sales made on the Chinese domestic market, a profit of 1.96% for 1997 and a loss of 0.73%, which the applicant considers to be insignificant, for 1998. According to that same calculation, the profits made by the applicant on exports amounted to 8.68% in 1997 and to 10.5% in 1998. In the applicant's view, the Council therefore committed a manifest error of assessment in concluding that the figures clearly indicate that considerable losses were made on sales on the Chinese domestic market for several years.

77 In addition, the applicant denies the Council's claim that it suffered 'huge losses' on its sales of the model DS-685B on the Chinese domestic market during the investigation period and submits that the Council failed to disclose the evidence on which it based that conclusion. The applicant states that its correspondence with the Commission shows that, on the contrary, most of its profits were made on sales on the Chinese domestic market, in particular sales of the models SM-80 and SM-90.

78 Further, the applicant asks the Council to produce the information on which it based its conclusion that the applicant sold almost all its models at uniform loss-making prices on the Chinese domestic market. Should the Council produce new figures, the applicant wishes to raise a new plea complaining that those figures were not disclosed within the meaning of the basic regulation, which constitutes an infringement of Article 20(4) of that regulation.

79 The Council claims that it is apparent from the applicant's reply to the Commission's investigation questionnaire and from the documents obtained during the verification visit that the applicant made large profits on its exports whilst suffering significant losses on the Chinese domestic market.

80 Moreover, the Council takes the view that the applicant's calculation is invalid because it has failed to take account of the subsidies received by it and, in respect of 1998, the income derived from other transactions. According to the Council's calculation, the sales made by the applicant on the Chinese domestic market actually gave rise to a profit of 0.24% for 1997, considered to be insignificant by the Council, and a loss, which the Council regards as considerable, of 2.59% for 1998, whereas the export profits amounted to 6.96% in 1997 and to 8.67% in 1998. In that connection, the Council drew up the following table, which reproduces the profit and loss table submitted by the applicant and incorporates the subsidies received by it, the amounts of which are indicated in bold (the table has been revised by the Court with a view to ensuring greater precision):

	1998			1997		
	Company total	Export	Domestic market	Company total	Export	Domestic market
Sales	123 463 310.37	76 972 132.82	46 491 177.55	106 828 244.78	64 065 349.63	42 762 895.15
Sales costs	97 605 947.54	57 656 631.16	39 949 316.38	84 044 953.44	48 673 547.18	35 371 406.26
	18 113 541.34	11 230 395.63	6 883 145.71	16 381 137.64	9 828 682.58	6 552 455.06
Other expenses and income	**+ 2 273 246.55**	**+ 1 409 412.86**	**+ 863 833.68**	**+ 1 844 989.62**	**+ 1 106 993.77**	**+ 737 995.84**
	+ 150 000.00					
	20 536 787.89	12 639 808.49	7 746 979.39	18 226 127.26	10 935 676.35	7 290 450.90
Profit/loss	~~7 743 821.49~~	~~8 085 106.03~~	~~— 341 284.54~~	~~6 402 153.70~~	~~5 563 119.87~~	~~839 033.83~~
	5 320 574.94	6 675 693.17	– 1 205 118.22	4 557 164.08	4 456 126.10	101 037.99
Profit/loss as % of turnover (sales)	~~6.27~~	~~10.50~~	~~— 0.73~~	~~5.99~~	~~8.68~~	~~1.96~~
	4.31	8.67	– 2.59	4.27	6.96	0.24

Findings of the Court

81 It must be examined, first, whether the applicant's procedural rights were infringed with respect to the facts on which the Community institutions based their finding that sales were made at a loss; secondly, whether the Community institutions committed a manifest error of assessment in finding that the sales at a loss were a factor from which it could be inferred that the applicant did not operate in a market economy; and, thirdly, whether the Community institutions committed a manifest error of assessment in finding, on the basis of those factors, that sales were made at a loss.

82 With respect, first of all, to the applicant's complaint of infringement of its procedural rights, it is sufficient to refer to paragraph 40 above.

83 Secondly, the applicant's argument that some traders operating in market economy conditions also make sales at a loss from time to time does not, in itself, alter the fact that such a practice may be regarded as one of the factors from which it may be inferred — particularly where there are other factors such as uniform prices and restrictions imposed on sales — that a trader has failed to fulfil the first criterion laid down in Article 2(7)(c) of the basic regulation.

84 Thirdly, it must be borne in mind that the Council justified its rejection of the claim for market economy status on the ground that 'the evidence indicated that [the applicant's] prices [on the Chinese domestic market] were at loss-making levels for several years'. Moreover, it is for the applicant to establish that it operates in market economy conditions. However, after having been informed, by letter of 17 December 1999, that the Commission took the view that the applicant had systematically made losses on the Chinese domestic market, the applicant, far from producing evidence to the contrary, merely claimed, by letters of 27 December 1999 and 11 January 2000, that the Commission could not reach such a conclusion without having

information which was required to be given only in the context of the reply to Part C of the investigation questionnaire, which concerned, inter alia, the profitability of the undertaking. If the applicant considered the Commission's findings to be incorrect, there was nothing to prevent it from submitting relevant documents to the Commission, showing, as the case may be, that profits were made on the Chinese domestic market in the years in question. However, the applicant failed to produce such evidence.

85 Moreover, with respect to the evidence on which the Community institutions based their assessment, it must be held, first of all, that the fact that the applicant also sold products other than electronic weighing scales does not mean, in the present case, that the Commission committed a manifest error of assessment by using the figures in the applicant's income statement in order to evaluate its profits and losses as regards the sole product in question. On the basis of the documents submitted by the applicant during the investigation, it was possible to determine the actual monetary value of sales of electronic weighing scales. If the sales are measured in terms of their actual monetary value rather than units, it can be seen that the sales of electronic weighing scales accounted for approximately three quarters of the applicant's sales on the Chinese domestic market. According to the 1998 income statement, the applicant's turnover on the Chinese domestic market amounted to almost CNY 46.5 million (this being the overall turnover less the export turnover), whereas, according to the table showing the monthly average sales prices and the monthly volumes of electronic weighing scales sold on the Chinese domestic market during the investigation period, which was produced by the applicant and not contested by the Council, the sales of electronic weighing scales amounted to CNY 34.1 million.

86 Furthermore, a ruling must be given on the validity of the applicant's calculation, according to which its sales on the Chinese domestic market gave rise to a profit of 1.96% during the 1997 financial year and to a loss of 0.73% during the 1998 financial year. The Council rightly observes that the applicant has added to the income derived from its sales during the period 1997 to 1998 subsidies amounting to more than CNY 4 million.

87 That fact casts doubt on the merit of the applicant's calculation. Whilst it is true that subsidies are also granted in market economies, they are always a factor which is external to the market and represent State interference which may steer the conduct of undertakings in a direction different from that which would have been dictated by market forces. Even though the amount of the subsidies in question is small in comparison to the applicant's overall turnover in those two years, it does appear to be significant when compared with the very small, occasional profits made on the Chinese market.

88 If the subsidies received by the applicant are deducted from the profits made by it, as the Council did (see paragraph 80 above), it can indeed be seen that, as is plausible, the applicant made losses on the Chinese domestic market of 2.59% in 1998, whereas, in 1997, its position was almost in balance, with a profit of 0.24%. Similarly, such a calculation shows that the losses made by the applicant on the Chinese domestic market in the two years in question exceeded CNY 1.1 million, whereas it made profits of more than CNY 11.1 million on its exports.

89 Accordingly, whilst the terms used in the recitals in the contested regulation certainly go beyond what was apparent from the evidence on which the Community institutions relied, those institutions were nevertheless entitled to conclude, on the basis of that evidence, that the applicant's sales in China were on the whole unprofitable during the period for which figures were available and, in doing so, they did not commit a manifest error of assessment.

90 That is one indication which, together with the other relevant evidence, could justify a finding that the applicant had failed to establish that it operated in market economy conditions.

91 Given that indication, it was for the applicant either to produce, during the administrative procedure, evidence which could invalidate the Community institutions' finding based on it or to provide specific evidence showing that, despite the overall unprofitability, its sales practice in China was consistent with the conduct of an undertaking operating in market conditions.

92 In this connection, the applicant merely claims that, on the Chinese domestic market, most of its profits were made on sales of the SM-80 and SM-90 models of electronic weighing scales. The fact that profits were made on the sale of those models, even though it has just been established that the applicant suffered losses on the Chinese domestic market in respect of all the other electronic weighing scales, logically leads to the conclusion that greater losses were made in respect of the other models, in particular the most frequently sold models such as the low-range model DS-685B, which invalidates the applicant's calculation, particularly as regards 1998. It was those low-range models which the applicant exported to the European Community.

93 Accordingly, it must be held that the applicant has failed to establish that the Community institutions committed a manifest error of assessment in finding that it sold its products at a loss in China.

(c) The ratio between sales on the Chinese domestic market and exports

Arguments of the parties

94 The applicant denies the finding made in the contested regulation that it was not entirely free to determine the ratio between its sales on the Chinese domestic market and those made on export.

95 The applicant contests the claim that, in accordance with the provisions of its articles of association and Article 15 of the detailed rules on implementation of the Chinese law on enterprises operated exclusively with foreign capital ('the detailed rules'), an export ratio was imposed on it by way of a contract concluded between it and the local investment authority. It argues that it is clear that no such ratio exists, first, from the certificate issued by the Economic Commission for Foreign Affairs of Jinshan (China) of 22 December 1999 ('the Jinshan certificate'), which it produced upon request and, secondly, from the fact that it made most of its sales on the Chinese domestic market. The applicant points out that the Jinshan certificate expressly confirms that no ratio was imposed by the Chinese authorities as regards its export sales. According to the applicant, that certificate is the only evidence relevant for the purposes of establishing that the Chinese Government did not impose any ratio on it.

96 The applicant disputes the Council's arguments concerning the policy followed by the Chinese Government in that connection. According to the applicant, it cannot seriously be denied that there were state-owned manufacturers of electronic weighing scales in China which began, from the 1980s onwards, to sell their scales on the Chinese domestic market.

97 The Council submits that the Community institutions found that, between 1996 and the investigation period, the ratio of Shanghai Tekaora's export sales to its sales on the Chinese domestic market was constant and that the applicant has failed to explain why, despite the losses on the Chinese domestic market, it maintained that percentage if no ratio had been imposed on it with regard to export sales.

Findings of the Court

98 The Jinshan certificate is worded as follows:

'We, Jinshan Foreign Economy Commission is the authority to approve the set up of wholly-owned enterprise Shanghai Teraoka Electronic Co. Ltd in China by Teraoka

Seiko Co. Ltd, Japan. Under the better negotiation between Mr Kazuharu Teraoka, Chairman of Board and us at the initial stage, we did not define any export sales ratio for this company. Further, contract was not requested to sign by us because Shanghai Teraoka Co. Ltd is a wholly-owned foreign company.'

99 For the purpose of establishing whether that document proves that the applicant was free to determine, on the basis of market conditions, the volume of its products to sell on the Chinese domestic market and on the volume to be exported, it is appropriate, first, to consider the content of the Chinese legislation governing the establishment of an undertaking such as the applicant.

100 Article 15 of the detailed rules states that the application for establishment of an undertaking wholly owned by foreign investors is to specify, inter alia, the ratio of sales on the Chinese domestic market to those on the international market. Under Article 45 of those rules, 'in selling products [on] the Chinese [domestic] market, a wholly foreign-owned enterprise shall follow its approved sale ratio' and 'in case a wholly foreign-owned enterprise intends to sell more of its products than the approved sale ratio [on] the Chinese [domestic] market, approval is required from the examination and approval authority'.

101 As regards the question whether a 'contract' was concluded under Article 15 of the detailed rules, it should be observed that what is meant by 'contract' is in fact 'the application for establishing a wholly foreign-owned enterprise', which must specify, inter alia, the ratio of product sales on the Chinese domestic market to exports. Despite the Commission's request that that document be produced, there was no

such document among the information supplied to the Commission by the applicant during the investigation.

102 By contrast, in response to a written question, the applicant submitted to the Court documents relating to the procedure followed when it was set up. It is apparent from three of those documents, namely the feasibility study report on the project of manufacturing and operation of high precision sensors and its applications by single investment, submitted by the applicant on 8 August 1992, the official reply to that project proposal given by Jinshan County on 3 September 1992 and the request for approval of the proposal to establish an undertaking wholly owned by foreign investors, which was registered with the Foreign Trade and Economic Cooperation Commission of Jinshan County on 4 September 1992, that 50% of the products were intended for sale abroad. The other documents, in particular the application form for newly built or expanded enterprise projects, which was lodged with the Development and Planning Commission of Jinshan County on 31 August 1992, the report on the feasibility study and the articles of association of an undertaking wholly owned by foreign investors, drawn up by the Foreign Trade and Economic Cooperation Commission of Jinshan County on 17 September 1992, and the official reply to the feasibility study and articles of association of an undertaking wholly owned by foreign investors, issued by Jinshan County on 17 September 1992, merely show that 'part' of production would be exported. Those documents confirm, first, that the applicant was indeed required to specify the percentage of its sales intended for export when making its application for establishment of a company wholly owned by foreign investors and, secondly, that that percentage was approved by the authorities of Jinshan County in the official reply of 3 September 1992 to the application for establishment of the applicant. Those documents show that, when the applicant was set up, it was not envisaged that it would have complete freedom to apportion its sales. They therefore contradict the Jinshan certificate. That certificate therefore does not suffice as proof that the applicant was free to decide, without interference from the Chinese authorities, what proportion of its products to sell on the Chinese domestic market and what proportion to export.

103 It must therefore be examined whether, during the administrative procedure, the applicant otherwise submitted evidence from which it could be inferred that no ratio had been imposed on it as regards the apportioning of its sales between the Chinese domestic market and export and that its economic decisions were taken in accordance with market signals reflecting supply and demand.

104 For that purpose, a table is shown below, which was drawn up by the applicant and the content of which was not disputed by the Council. It summarises the information submitted to the Commission by the applicant in its reply to the investigation questionnaire with respect to market economy status.

	1995	1996	1997	1998	IP*
Sales in China	9 020	26 122	23 241	26 183	25 695
Sales in the EC	2 070	9 045	4 407	7 597	5 552
Total global sales	12 452	43 859	40 882	44 740	42 687
Sales in China as a percentage of total sales	72.44	59.56	56.85	58.52	60.19

* Investigation period.

105 The above table shows that, at all times from 1996 until the end of the investigation period, sales on the Chinese domestic market amounted, approximately, to between 57 and 60% of total sales and thus reveals little variation. In light of that stable percentage, it must be held that a certain ratio existed between the applicant's sales on the Chinese domestic market and its export sales and that that ratio was virtually constant. As regards the fact that the percentage of sales on the Chinese domestic market was approximately 72% in 1995, it should be observed that the applicant

itself stated, during the verification visit, that it did not begin to manufacture electronic weighing scales until 1995 and that it only reached its full production capacity in 1996. Accordingly, the ratio identified for 1995, which is different from that for the other years, cannot be regarded as representative owing to the special circumstances peculiar to that year, total sales in 1995 amounting only to approximately one third of the total sales recorded during the other years. There is therefore nothing to preclude only the later years from being taken into account and, consequently, a finding that there was a constant ratio.

106 The fact that that ratio was not 50%, as was provided for in the rules and specifications relating to the applicant's establishment, but rather almost 60%, does not, in itself, show that the apportionment of sales was the result of independent decisions taken by the applicant in response to market signals and without interference from the Chinese authorities. It should be noted that under the detailed rules it was possible to increase the share of an undertaking's domestic sales by means of authorisation by the competent authority.

107 Moreover, in the present context, which is characterised by the loss-making or, in any event, unprofitable sales made by the applicant on the Chinese domestic market and by the subsidies granted to it, the conclusion that the constant ratio was not the result of market forces appears to be the most plausible, and it was for the applicant to prove the contrary.

108 At the hearing, in response to a question put by the Court concerning the fact that Shanghai Teraoka had consistently sold 60% of its products on the Chinese domestic market, even though such sales gave rise to a loss, the applicant explained that it had an affiliate in the United Kingdom which produced a large number of the products intended for the European market and that, therefore, there was no need for it to export to that market from China. However, that argument does not adequately

explain why it sold at a loss on the Chinese domestic market. As the Council submits, in a market economy, the applicant would have attempted either to increase its prices on the Chinese domestic market or to cease its sales on that market in order to concentrate on exports.

109 Accordingly, it must be held that the applicant failed to submit sufficient evidence to demonstrate that it was free to decide whether or in what proportion to sell its products on the Chinese domestic market.

(d) Conclusion as to the first criterion laid down in Article 2(7)(c) of the basic regulation

110 First, as is clear from paragraphs 59 to 73 above, the applicant failed, during the investigation period, to produce sufficient evidence to show that it charged different prices to different customers and that its economic decisions were taken in response to market signals reflecting supply and demand.

111 Secondly, as is clear from paragraphs 81 to 93 above, the applicant has not succeeded in showing that it did not sell its products at a loss in China or that there were purely commercial reasons for its conduct.

112 Thirdly, as is clear from paragraphs 98 to 109 above, the applicant has failed to show that it maintained the identified ratio of sales on the Chinese domestic market to exports for purely commercial reasons and that that ratio was not imposed on it by

the relevant provisions of Chinese law. In particular, it has failed to provide even the slightest plausible evidence explaining why it maintained that ratio despite its losses on the Chinese domestic market and even though its export sales were profitable.

113 It follows that the Community institutions did not commit a manifest error when assessing the facts by concluding, on the basis of the information supplied by the applicant during the investigation, that the applicant had failed to establish that it fulfils the first criterion laid down in Article 2(7)(c) of the basic regulation and that it therefore operated in market economy conditions.

114 The first plea must therefore be rejected as unfounded.

B — *The second plea: infringement of Article 3(2), (3), (5) and (8) of the basic regulation and manifest error of assessment in the determination of injury*

1. *Preliminary observations*

115 The applicant submits that the Community institutions infringed Article 3(2), (3), (5) and (8) by finding that the Community industry had suffered material injury. This plea can be divided into six parts. The first alleges infringement of Article 3(5) of the basic regulation; the second complains that, for the purpose of determining injury, account was taken of imports which were not dumped; the third challenges the finding that the Community industry suffered material injury; the fourth alleges a manifest error of assessment by the Community institutions in their assessment of

the magnitude of the actual margin of dumping; the fifth alleges infringement of Article 3(2) and (3) of the basic regulation resulting from consideration of the figures issued by the Statistical Office of the European Communities (Eurostat); and the sixth alleges infringement of Article 3(2) and (8) of the basic regulation in that the effect of the dumped imports was assessed by reference to the Community production of only part of the like-product range.

116 Before considering the various parts of the second plea, it is appropriate to examine the infringement of Article 48 of the Rules of Procedure of the Court of First Instance alleged by the applicant in its reply.

117 The applicant submits that the Council infringed the Rules of Procedure by submitting new facts and assessments in its defence which were not disclosed to the applicant at any time during the administrative procedure. The complaint relates, in particular, to the statement made in the defence that the 'change in the product mix, in particular, stemmed from the growth of high-range ... sales [of electronic weighing scales] in recent times'. It must be held that the reference to Article 48 of the Rules of Procedure is irrelevant because, in the present case, the applicant is, essentially, complaining that the Council supplemented its statement of reasons for the contested regulation at the stage of the defence. It is sufficient here to observe that the applicant's complaint is based on an erroneous premiss. As is clear from the disclosure document of 21 September 2000, the Commission disclosed to the applicant the change in sales volume for each segment separately. Accordingly, the complaint must be rejected.

118 As regards the substance of the second plea, it should be pointed out, first of all, that, as the Court observed in paragraph 48 above, the institutions enjoy broad discretion in assessing complex economic matters.

119 It is for the applicant to adduce evidence enabling the Court to find that the Council committed a manifest error of assessment when determining the injury (Case T-121/95 *EFMA* v *Council* [1997] ECR II-2391, paragraph 106; Case T-210/95 *EFMA* v *Council* [1999] ECR II-3291, paragraph 58; and Case T-58/99 *Mukand and Others* v *Council* [2001] ECR II-2521, paragraph 41).

120 It is appropriate to begin with the sixth part.

2. *Sixth part: infringement of Article 3(2) and (8) of the basic regulation relating to the assessment of the effect of the dumped imports by reference to the Community production of only part of the like-product range*

(a) Arguments of the parties

121 The applicant claims that the Council infringed Article 3(2) in conjunction with Article 3(8) of the basic regulation by assessing the effects of the imports by reference to only some of the products in the like-product range. According to the applicant, the clear wording of Article 3(8) makes it impermissible to assess imports in relation to the production of a part of the like-product range, in the present case, electronic weighing scales at the bottom of the range. In addition, the applicant submits that the Council has refused requests that injury be determined on the basis of an assessment of part of the like-product range only. In that regard, it refers to Council Regulation (EEC) No 3482/92 of 30 November 1992 imposing a definitive anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in Japan and collecting definitively the provisional anti-dumping duty (OJ 1992 L 353, p. 1) and, in particular, on the 12th recital in that regulation.

122 The Council contradicted itself by first acknowledging that the three segments of the relevant product are interchangeable but, ultimately, excluding the economic indicia relating to the mid and high-range segments from the scope of the assessment made by it in order to determine the injury.

123 In the applicant's view, the increase in sales of high-range models during the investigation period was not a new situation for the Community institutions and, in recently closed investigations, the Community institutions did not carry out separate assessments of the various segments of the like product. It bases its argument on the 37th to 48th recitals in Council Regulation (EC) No 468/2001 of 6 March 2001 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Japan (OJ 2001 L 67, p. 24) and on the 47th to 58th recitals in Council Regulation (EC) No 469/2001 of 6 March 2001 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Singapore (OJ 2001 L 67, p. 37).

124 As regards the 'average calculation' method, the applicant takes the view that Article 3(8) of the basic regulation places the Community institutions under an obligation to assess the effect of dumped imports in relation to the Community production of the like product, in the present case, electronic weighing scales, and refers to the aim of that provision. It claims that the assessment of the development of the various injury indicators listed in Article 3(5) of the basic regulation and the examination of the impact of the imports, which was conducted on the basis of only part of the relevant product range, should be declared contrary to Article 3(8) of the basic regulation.

125 The Council contends that its segment-based method of assessment was consistent with Article 3(8) of the basic regulation. It states that the choice of such a method was dictated by the substantial increase in the volume of imports of high-range electronic weighing scales. That circumstance explains the difference in the approach taken by the Community institutions in the investigation leading to adoption of the contested regulation and that taken in the investigations to which the applicant refers.

(b) Findings of the Court

126 It is clear from the 10th recital in the contested regulation that, as the Court pointed out in paragraph 66 above, the market for electronic weighing scales is commonly divided into three distinct segments: a low-range segment, a mid-range segment and a high-range segment.

127 First, it is not apparent from Article 3(8) of the basic regulation that an assessment by segment may not be carried out and that the average calculation method must be used. As the Council rightly pointed out, when determining injury under Article 3 of the basic regulation, the Community institutions may make an assessment on a segment-by-segment basis in order to evaluate the various injury indicators, particularly if the results obtained using another method prove to be distorted for one reason or another, provided that account is properly taken of the relevant product as a whole.

128 According to the 11th recital in the contested regulation, the relevant product comprises three segments. The 12th recital states that the electronic weighing scales manufactured in the Community are, in all respects, similar to the scales manufactured in China, South Korea and Taiwan and exported from those countries to the Community and that, therefore, those products are like products.

129 Moreover, given that the low-range segment accounted for 97% of the imports from the countries concerned in the investigation period (see the 63rd recital), it is logical, and indeed essential for an accurate result of the investigation, that the low-range segment of that product be assessed separately. Accordingly, there is no contradiction between the definition of the relevant product and the assessment of injury.

130 Secondly, as regards the applicant's complaint that, by assessing separately the relevant factors, such as sales prices, market share, etc., with respect to the low-range segment, the Council based its assessment on part of the like-product range, it should be observed that, as is clear from the recitals in the contested regulation relating to injury, the Council at all times took account of all the electronic weighing scales and not only those in the low-range segment (see the 81st recital). Since the overall examination is based on a like product consisting of three segments and not only a low-range segment, it must be held that the Council did not infringe Article 3 (8) of the basic regulation.

131 Consequently, the sixth part of the second plea must be rejected.

3. *First part: infringement of Article 3(5) of the basic regulation*

(a) Arguments of the parties

132 The applicant complains that, when determining the injury, the Council failed to analyse all of the relevant factors, in particular the fact that the Community industry was still in the process of recovering from the effects of past dumping or subsidisation and the magnitude of the actual margin of dumping. In the applicant's view, under Article 3(5) of the basic regulation, the Council had to take into account, for the purpose of determining injury, each of the relevant economic factors and indices listed in that article. The applicant refers to the decisions of the Dispute Settlement Body of the World Trade Organisation (WTO) and relies, in particular, on the WTO Panel's report on anti-dumping duties on imports of cotton-type bedlinen from India ('the bedlinen report').

133 The applicant observes that the wording and context of Article 3(5) of the basic regulation and of Article 3.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the 1994 Anti-dumping Code') in Annex 1A to the Agreement establishing the WTO ('the WTO Agreement'), which was approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), are almost identical and that Article 3(5) of the basic regulation places the Community institutions under an obligation to examine each of the 16 economic factors. That point of view is, the applicant claims, in keeping with the findings made in the bedlinen report. Moreover, the applicant takes the view that, where necessary, the irrelevance of any factor must be made apparent by clearly setting out the arguments on which that conclusion is based in the statement of reasons. It submits that the absence in that statement of reasons of information indicating that the Community institutions had satisfied the requirements clearly imposed on them prevents the Community judicature from exercising its review function.

134 The applicant observes that the 77th recital in the contested regulation makes no reference to an assessment by the Council of all the factors listed in the basic regulation. In addition, the applicant submits that the Community institutions failed to assess either the 'fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation' or 'the magnitude of the actual margin of dumping'. As regards the first factor, the applicant argues that the 59th recital in the contested regulation, on which the Council relies in its defence, concerns Article 4 (1) of the basic regulation and cannot establish that the Community institutions satisfied the obligation arising from Article 3(5) of the basic regulation. Moreover, the assessment of the impact of the imports, referred to in the 88th and 94th recitals and relating to only part of the relevant product range, infringed Article 3(8) of the basic regulation. Those factors cannot therefore, in the applicant's view, serve as proof. With regard to the second factor, the applicant submits that, even if Article 3 (8) of the basic regulation was not infringed, the statements in question cannot be regarded as including an assessment of the economic factors to which they relate as the mere reference to anti-dumping measures does not mean that the Community institutions carried out the assessment at issue or, more specifically, assessed the fact that the industry was still in the process of recovering from the effects of past

dumping. As regards the magnitude of the actual dumping margin, the applicant claims that the statement in the 90th recital in the contested regulation cannot be regarded as an assessment, because it refers to the volume and prices of the relevant imports, which are per se separate indicators which the Community institutions are likewise required to examine.

135 The Council contends, first, that the bedlinen report on which the applicant relies is not directly applicable in the Community legal system. Moreover, it asserts that the applicant has misinterpreted the report, which is in perfect keeping with the method used by the Community institutions to determine injury. According to the Council, the present complaint concerns inadequacy of the statement of reasons for the purposes of Article 253 EC. Relying on the judgment in Joined Cases T-33/98 and T-34/98 *Petrotub and Republica* v *Council* [1999] ECR II-3837, which was annulled on appeal by the judgment in Case C-76/00 P *Petrotub and Republica* v *Council* [2003] ECR I-79, it argues that the institutions have an obligation to analyse, in the regulation imposing definitive anti-dumping measures, only the factors which have been found to be relevant.

136 Moreover, the Council submits that the Community institutions acted in conformity with Article 3(5) of the basic regulation. The Council submits that the applicant's argument that the contested regulation does not contain an analysis of all the factors is wrong and therefore irrelevant.

(b) Findings of the Court

137 First of all, the applicant's line of argument is restricted to a complaint that the Community institutions failed to apply Article 3(5) of the basic regulation in the

light of Article 3.4 of the 1994 Anti-dumping Code and thus failed to comply with the principle of compatible interpretation laid down in the Court of Justice's case-law.

138 Community legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the Community (see, in particular, Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 20, and Case C-76/00 P *Petrotub*, cited in paragraph 135 above, paragraph 57), as is the case with the basic regulation, which was adopted in order to fulfil the obligations arising from the 1994 Anti-dumping Code (Case C-76/00 P *Petrotub*, paragraph 56).

139 In the present case, Article 3(5) of the basic regulation consists of the same elements as Article 3.4 of the 1994 Anti-dumping Code. It provides that the examination of the impact of the dumped imports on the Community industry is to include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. It contains a list of factors which may be taken into account and states that that list is not exhaustive and that decisive guidance is not necessarily given by any one or more of those factors. The content of Article 3(5) is almost identical to that of Article 3.4 of the 1994 Anti-dumping Code, save for the element concerning 'the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation', which does not appear in Article 3.4 of the 1994 Anti-dumping Code.

140 Consequently, Article 3(5) of the basic regulation is, in itself, consistent with the 1994 Anti-dumping Code. However, according to the applicant, the Community institutions acted in breach of their obligation to evaluate all the relevant factors, which follows from the interpretation given to Article 3.4 of that code in the

bedlinen report, in that they failed to take account of two of the factors listed in Article 3(5) of the basic regulation, namely the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation and the magnitude of the actual margin of dumping.

141 It must therefore be examined whether or not the Community institutions evaluated those two factors.

142 In the 77th recital in the contested regulation, the Council states:

'In accordance with Article 3(5) of the basic regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry. However, certain factors are not dealt with in detail below because they were found to be not relevant for the situation of the Community industry in the course of this investigation. It should finally be noted that none of these factors necessarily gives decisive guidance.'

143 As regards the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation, in the present case express reference was made to the anti-dumping measures in force in the part of the contested regulation headed 'D. Injury'. First of all, the Council stated, in the 59th recital:

'The structure of the Community industry has changed substantially over the analysis period. Since October 1993 (i.e. when definitive anti-dumping measures

were imposed on imports of [electronic weighing scales] originating in Singapore and [South] Korea) [the industry has implemented] a restructuring and consolidation programme ...'

144 Next, in the 88th recital in the contested regulation, it is stated that '... the losses in [the low-range] segment have reduced the overall profitability of the Community industry and prevented it from fully benefiting from the euro-effect and the anti-dumping measures against imports originating in Japan and Singapore ...'.

145 Finally, in the 94th recital, it is concluded that '... the poor economic situation of the low range segment has prevented the Community industry from achieving the overall profitability level that it could have expected under the circumstances of the euro-effect and the anti-dumping measures in place, particularly bearing in mind the restructuring efforts which it has implemented'.

146 Those recitals clearly demonstrate that, in their examination of the impact of the dumped products on the Community industry concerned, the Community institutions took account of the fact that the industry was still in the process of recovering from the effects of past dumping.

147 With respect to the applicant's argument that the statements in the 88th and 94th recitals are invalid and cannot serve as proof that the Community institutions evaluated that factor because the evaluation related to only part of the relevant product range and thus infringed Article 3(8) of the basic regulation, it is sufficient to state that that argument is irrelevant. As was found in paragraph 129 above, given

that the imports of low-range electronic weighing scales accounted for 97% of imports of all electronic weighing scales together, the institutions were entitled to examine the low-range segment separately when determining the injury.

148 As regards 'the magnitude of the actual dumping margin', the Council evaluated this factor in the 90th recital, stating there that, 'as concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible'.

149 Thus, the Council did not fail to evaluate the factor of the magnitude of the actual dumping margin. Whilst the Commission failed to mention that factor in its disclosure document of 21 September 2000, it referred to it in its letters of 4 and 23 October 2000, in which it replied to the applicant's observations of 29 September 2000.

150 Accordingly, the first part of the second plea must be rejected.

4. *Second part: consideration of non-dumped imports in the evaluation determining injury*

(a) Arguments of the parties

151 The applicant submits that the Community institutions manifestly infringed Article 3(2), (3) and (5) of the basic regulation by taking account, in their evaluation of

injury, of non-dumped imports, namely those of CAS Corp., one of the Korean companies subject to investigation, which was found not to have engaged in dumping.

152 The applicant interprets the reference made in Article 3 of the basic regulation to 'dumped imports' as precluding the taking into account of imports from exporting producers who do not engage in dumping. Consequently, the cumulative assessment of those imports, provided for in Article 3(4) of the basic regulation, may not include imports from an exporting producer in respect of whom a zero or *de minimis* margin of dumping has been established. The taking into account of CAS Corp.'s imports therefore renders the Community institution's analysis unlawful and invalidates the entire determination of injury. In that connection, the applicant relies on Council Regulation (EC) No 1644/2001 of 7 August 2001 amending Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bedlinen originating in Egypt, India and Pakistan and suspending its application with regard to imports originating in India (OJ 2001 L 219, p. 1), which was adopted by the Council following the bedlinen report.

153 The applicant submits that the Council has failed to produce any justification for or any other convincing evidence in support of its statement that the fact that certain imports from one Korean producer were not dumped was immaterial to the overall impact of the Korean imports on the Community industry.

154 The Council challenges the applicant's interpretation of Article 3(2), (3) and (5) of the basic regulation. The Council argues that 'dumped imports' must be understood

as meaning imports from a country in respect of which a margin of dumping above the *de minimis* level has been established for the country as a whole. According to the Council, this approach is consistent with long-standing Community practice and does not run counter to the wording of Article 3.

155 The Council submits that it adopted the approach described above because, first, dumped and non-dumped imports can be separated only in certain circumstances and only if certain approaches are adopted, which are often not applicable. Secondly, it states that dumping is established only for the investigation period, but the development of injury indicators is assessed over a longer period. The Community institutions cannot determine whether imports which have been dumped during the investigation period were also dumped during the rest of the analysis period and vice versa. Moreover, the Council states that its approach can be beneficial to exporters, whereas that advocated by the applicant may be prejudicial to them. Finally, the Council argues that it acted within the limits of its wide discretion, which was recognised in the *Thai Bicycle* case, cited in paragraph 46 above. The Council submits that, contrary to what the applicant claims, the conclusion reached in the judgment in Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861 is general and that, in that judgment, the Court held that it is unnecessary to treat separately the part of the injury suffered by the Community industry that is attributable to the imports of a specific producer.

156 In the alternative, the Council argues that, even if the Community institutions made an error when establishing the volume of dumped imports because they included CAS Corp.'s imports, that error did not actually affect the determination of injury as such. Finally, the Council points out that the applicant must have been well aware of the margin of dumping established in respect of CAS Corp., given the content of the disclosure document sent to it, and observes that the applicant raised no objection at that time. Moreover, it submits that, even if the Community institutions had not carried out a cumulative assessment of the imports from South Korea and China, they would have reached the same conclusions as regards the Chinese imports.

(b) Findings of the Court

157 Article 3(2) of the basic regulation lays down the general rules to be followed in determining whether there is injury and the provisions following it offer more specific guidance as regards that determination. Article 3(5) and (6) also provide for the examination of dumped imports.

158 In order to examine the second part of the second plea, it is necessary, first, to interpret the expression 'dumped imports' contained in Article 3 of the basic regulation.

159 First of all, that term quite evidently covers the sum of all the dumping transactions. However, since it is impossible to examine all of the individual transactions, account must, for the purposes of analysing injury, be taken of all imports by any exporting producer in respect of whom it has been established that he engages in dumping practices. By contrast, imports by an exporting producer in respect of whom a zero or *de minimis* margin of dumping has been established may not be regarded as 'dumped' for the purposes of the injury assessment.

160 Furthermore, under Article 3(4) of the basic regulation, where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that the margin of dumping established in relation to the imports from each country is more than *de minimis*, as defined in Article 9(3), the volume of

imports from each country is not negligible, and a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition.

161 That provision must be interpreted as permitting account to be taken of imports from a given country only in so far as they come from an exporting producer in respect of whom it has been established that he is engaging in dumping. Consequently, imports from a country in respect of which a margin of dumping greater than *de minimis* has been established may be taken into account in their entirety only where there is no exporting producer in that country in respect of whom a zero or *de minimis* margin of dumping has been established.

162 Therefore, in the present context and in light of the object and purpose of Article 3 of the basic regulation, it must be held that the term 'dumped imports' does not cover imports by an exporting producer who does not engage in dumping, even if that exporter is established in a country in respect of which a margin of dumping greater than *de minimis* has been identified.

163 That interpretation in no way contradicts the case-law according to which, for the purposes of determining the existence of injury, the Community legislature chooses to use the territorial scope of one or more countries, considering all dumped imports from the country or countries concerned together (Case T-171/97 *Swedish Match Philippines* v *Council* [1999] ECR II-3241, paragraph 65). It has been held that the existence of injury to the Community industry caused by dumped imports must be assessed as a whole and it is not necessary (or, indeed, possible) to define separately the share in such injury attributable to each of the companies responsible (*Nachi Fujikoshi*, cited in paragraph 155 above, paragraph 46; *Swedish Match Philippines*, paragraph 66; and *Arne Mathisen*, cited in paragraph 48 above, paragraph 123).

164 It should be observed that in the cases cited above it was a question of companies which were responsible for dumped imports. By contrast, in the present case it is a question of a company whose imports were not dumped, in other words the imports of a company which is not responsible for dumping. Consequently, the case-law referred to in the preceding paragraph is not applicable, as such, in the present case and has no bearing on the interpretation of the term 'dumped imports'.

165 In addition, the interpretation is consistent with that given to the WTO Agreement in the bedlinen report, the findings of which were accepted by the Council. Thus, it is stated in the 17th recital in Regulation No 1644/2001 that 'the Panel also expressed the opinion that imports attributable to a producer/exporter found not to be dumping could not be considered as falling within the notion of "dumped imports" for purposes of injury analysis'. As a result, the Council undertook a new assessment of the impact of the dumped imports which excluded exporters found not to be dumping.

166 It follows from all of the above that the Community institutions ought not to have taken account of the imports from the Korean company CAS Corp., even though the margin of dumping established for South Korea was above *de minimis*, because that company did not engage in dumping.

167 As a second step, it is necessary to examine the effects of that error in the present case. The impact must therefore be assessed in the light of the present head of claim, which relates to the injury allegedly caused to the applicant as a result of the fact that the imports from CAS Corp. were taken into account together with those which had been dumped (see, to that effect, Joined Cases T-163/94 and T-165/94 *NTN Corporation and Koyo Seiko* v *Council* [1995] ECR II-1381, paragraphs 112 to 115). For the judgment to be annulled it is not sufficient that the Council committed an

error. That error must also have had an impact on the determination of whether there is injury and thus on the content of the regulation itself.

168 The Council submits that it could have determined the injury solely on the basis of the imports from China. For that purpose, it drew up a table in its rejoinder which shows the main injury indicators as they would be assessed if only the imports from China had been taken into account and compares them with those which led it to adopt the findings set out in the contested regulation. An error of calculation in the table was rectified at the hearing.

Amended information	Original figures (all countries concerned)	New figures (China only)
Volume of the imports concerned	Increased from 14 853 units in 1995 to 33 063 units in the investigation period	Increased from 3 456 units in 1995 to 16 827 units in the investigation period
Increase in volume of imports	123 %	387 %
Market share of imports	Increased from 9.2% in 1995 to 15.1% in the investigation period	Increased from 2.1% in 1995 to 7.7% in the investigation period
Price-undercutting margin for each country	0 to 52% for China 60 to 65% for Taiwan 30 to 50% for South Korea	0 to 52%
Low-range imports (estimate)	Increased from 14 407 to 32 071 units	Increased from 3 352 to 16 322 units
Increase in volume (low range)	123 %	387 %

169 It is apparent from that table, the figures in which were not challenged by the applicant and, as regards the figures on volume and the market share of the imports, are on the file, that the Chinese imports into the Community increased by 387% from 3 456 units in 1995 to 16 827 units during the investigation period. During the same period, the imports from South Korea increased by only 32% (5 532 units in 1995 and 7 301 in 1999) while those from Taiwan increased by only 52% (5 865 units in 1995 and 8 935 in 1999). The aggregate increase in the volume of imports from those three countries was 123% (14 853 units in 1995 and 33 063 in 1999). Thus, the percentage increase in imports from China was much greater than that in imports from the other countries concerned. However, in the light of Article 3(3) of the basic regulation, the important question is whether there was a notable increase in imports from a particular non-member country in absolute terms and not merely as a percentage, or whether there has been a considerable increase in the market share in Community consumption held by imports. The increase from 3 456 units in 1995 to 16 827 units during the investigation period may be regarded as a notable increase in absolute terms. The market share accounted for by the imports increased from 2.1% in 1995 to 7.7% during the investigation period. During that period, the market share held by the Community industry in respect of all models of electronic weighing scales decreased from 26.1 to 24.9%, which corresponds to a relative decrease of 4.6%. Those figures show that the imports from China alone would have been sufficient for injury to be established.

170 Although the injury could have been determined on the sole basis of the imports from China, it is appropriate to examine, in addition, the effects of the exclusion of CAS Corp.'s exports on the volume of total imports from the three countries concerned. In its rejoinder, the Council also drew up a table on this matter, in which it evaluated the imports into the Community excluding those from CAS Corp. In response to a written question put by the Court, the Council supplied the figures relating to CAS Corp. and supplemented the table with those figures. The table was likewise rectified at the hearing.

Amended information	Original figures (all countries concerned)	New figures (all countries concerned, with the exception, in respect of South Korea, of the exports of CAS Corp.)
Volume of the imports concerned	Increased from 14 853 units in 1995 to 33 063 units in the investigation period	Increased from 11 273 units in 1995 to 29 248 units in the investigation period
Increase in the volume of imports	123 %	159 %
Market share held by imports	Increased from 9.2% in 1995 to 15.1% in the investigation period	Increased from 7% in 1995 to 13.4% in the investigation period
Price-undercutting margin for each country	0 to 52% for China 60 to 65% for Taiwan 30 to 50% for South Korea	0 to 52% for China 60 to 65% for Taiwan 30 to 32% for South Korea
Low-range imports (estimate)	Increased from 14 407 to 32 071 units	Increased from 10 935 to 28 671 units
Increase in volume (low range)	123 %	162 %

171 The table, the figures in which were not challenged by the applicant and, as regards the volume and market share of the imports, are on the file, shows that the volume of exports to the Community from all the countries concerned, with the exception, in relation to South Korea, of CAS Corp.'s exports, increased by 159%, rather than 123% if account is taken of CAS Corp.'s exports, namely from 11 273 units in 1995 to 29 248 units during the investigation period. It should also be noted that, in absolute terms, dumped exports increased considerably while CAS Corp.'s exports remained almost constant. In addition, the market share accounted for by imports into the Community from the countries concerned, excluding those from CAS Corp., increased from 7 to 13.4%, which represents a considerable increase. Moreover, given that the market share accounted for by CAS Corp.'s exports was reduced, the increase in the market share held by other producers was even more significant.

172 Furthermore, it does not appear to have been established that the Council's findings as to the effect of the dumped imports on the price of like Community products, and those as to the impact of those imports on the Community industry, would have been altered appreciably if the Council had excluded from its assessment the imports from the exporter who did not engage in dumping.

173 Consequently, it must be held that consideration of the imports from the three countries concerned, with the exception of those of CAS Corp., would, in any event, have been sufficient for the Council to establish that injury had been caused. Accordingly, the error committed by the Community institutions in taking account of CAS Corp.'s imports cannot be regarded as having had a decisive impact on the Council's conclusion that there was injury.

174 The finding that such an error was committed is therefore insufficient to lead to annulment of the contested regulation.

5. *Third part: the finding that the Community industry suffered material injury*

175 The line of argument put forward by the applicant with regard to the third part of the second plea can be divided into four parts, which will be examined separately.

(a) Difference between the preliminary and definitive figures

Arguments of the parties

176 The applicant submits that there is a contradiction between the figures on injury disclosed to it in the annex to the letter of 4 October 2000, in the form of a table

drawn up in April 2000 ('the April 2000 document'), and those set out in the disclosure document of 21 September 2000 and in the contested regulation. Those figures related to, inter alia, the volume of sales in the Community, the market share, the sales price in the Community and employment in the Community industry but, as a result of the inconsistency, they are not based on positive and irrefutable evidence, as is required under Article 3(2) of the basic regulation.

177 The applicant submits that it ought to have been able to assume that the figures disclosed by the Commission to the Community industry were accurate since provisional findings are usually verified by the Commission, which does not generally accept any amendments to figures after verification. According to the applicant, the figures in question, which were disclosed to it several months after initiation of the investigation, are of crucial importance in determining whether the Community institutions properly established that the Community industry had suffered material injury.

178 The Council argues, first, that the complaint is inadmissible because it does not relate to the manifest error of assessment alleged. The applicant indirectly complains that the Community institutions failed to disclose adequate final information to the applicant by failing to reply to its questions as to the existence of a contradiction between the preliminary and definitive figures. In the alternative, the Council submits that the present complaint is unfounded because the only relevant question is whether there was a manifest error of assessment in the interpretation of the definitive figures as set out in the contested regulation.

Findings of the Court

179 First of all, with respect to the alleged inadmissibility of the present complaint, it is sufficient to state that, contrary to what the Council claims, it is linked to the manifest error of assessment alleged. If the Community institutions mistakenly

based their findings on inaccurate figures, they would have misinterpreted the facts and could therefore have committed a manifest error of assessment. The complaint is therefore admissible.

180 As regards the substance, in its letter of 4 October 2000, the Commission granted the applicant access to the non-confidential version of the table appearing in a document which it drew up in April 2000 and which, according to the Council, contained preliminary findings as to injury. However, some of the figures in the April 2000 document differed from those in the disclosure document of 21 September 2000 and the contested regulation. Those figures concerned, inter alia, the volume of sales in the Community, the market share, the sales price in the Community and employment in the Community industry.

181 It is apparent from the file that the Community producers disagreed with the figures on certain injury indicators contained in the April 2000 document. The Community institutions therefore took account of the observations made by the Community industry at the meeting on 6 April 2000 and in their subsequent correspondence.

182 In this connection, it is sufficient to state that, as the Council rightly points out, an anti-dumping investigation is an ongoing process during which many findings are constantly revised. It cannot therefore be ruled out that the definitive findings made by the Community institutions will differ from the findings made at any other stage of the investigation. Moreover, the preliminary figures may, by definition, be amended during the investigation. Consequently, the applicant is wrong to argue that the alleged inconsistency illustrates in any way whatsoever the lack of objectivity and reliability of the figures in question. Finally, the Court points out that injury must be determined in relation to the time when any measure imposing protective measures was adopted (Case C-121/86 *Epicheiriseon Metalleftikon Viomichanikon kai Naftiliakon and Others* v *Council* [1989] ECR I-3919, paragraphs 34 and 35).

183 In the light of that case-law, it must be held that the applicant's argument relating to the discrepancies between the preliminary and definitive findings is irrelevant.

184 Consequently, the first complaint cannot be upheld.

(b) Evaluation of certain injury indicators

Arguments of the parties

185 The applicant claims that the Community institutions made a manifest error of assessment in finding that the figures on market shares, the sales prices of the like product and profitability showed that there was material injury. Those figures show a different trend in the economic indicators of the situation of the Community producers cooperating in the procedure between 1995 and the investigation period.

186 As regards the market share, the applicant submits that, given the discrepancies in the figures, it cannot be found that the conclusions drawn from them are based on accurate evidence.

187 As regards the sales prices, the applicant argues that it was inconsistent with the definition of the product under consideration, as set out in the 10th and 11th recitals in the contested regulation, and the interchangeability of the three segments of the market for electronic weighing scales to exclude the factor relating to the development of the price for the three segments. The applicant points out that

there was no separate analysis of each segment in previous anti-dumping procedures. It refers to the 73rd recital in Council Regulation (EEC) No 993/93 of 26 April 1993 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Japan (OJ 1993 L 104, p. 4) and the 36th recital in Commission Regulation (EEC) No 1103/93 of 30 April 1993 imposing a provisional anti-dumping duty on imports into the Community of certain electronic weighing scales originating in Singapore and South Korea (OJ 1993 L 112, p. 20). In any event, the Council acted in breach of Article 3(8) by carrying out a segment-by-segment assessment since that article does not permit the separate assessment of segments of the like product.

188 The applicant submits further that, in recent regulations imposing definitive anti-dumping duties on electronic weighing scales, weighted average sales prices were used rather than average sales prices determined by segment. It relies on the 42nd recital in Regulation No 468/2001 and on the 52nd recital in Regulation No 469/2001.

189 Moreover, the applicant challenges the Council's finding that the sales prices declined and the Council's assertion that the figures showing an increase in sales price of 17% are incorrect. It states that that claim contradicts the 83rd recital in the contested regulation and submits that that contradiction is evidence that the determination of injury was not based on indisputable evidence.

190 Moreover, under Article 3(5) of the basic regulation, the Council ought to have examined the average sales prices together with the factors affecting those prices, such as the downward trend in production costs, which is in fact referred to in the 122nd recital in the contested regulation. In addition, according to the applicant, the recent practice of the Community institutions shows that factors affecting Community prices are assessed together with the prices themselves, with a view to determining whether changes in production costs might have had an impact on

the sales prices of the Community industry. It thereby relies on, in particular, the 80th and 81st recitals in Commission Regulation (EC) No 1612/2001 of 3 August 2001 imposing a provisional anti-dumping duty on imports of ferro molybdenum originating in China (OJ 2001 L 214, p. 3).

191 As regards profitability, the applicant also alleges a manifest contradiction making it impossible to accept the Council's definition of the non-injurious price. According to the applicant, since the Community industry achieved a profit margin of approximately 10% during the investigation period, the Council ought to have concluded that overall profitability was satisfactory. According to the Community institutions, the 10% profit margin is the margin which the Community industry can expect to achieve on sales of electronic weighing scales in the European Community if imports are not dumped. The applicant takes the view that the increase in profits was largely attributable to the considerable reduction in production costs.

192 The Council disputes that it made a manifest error of assessment in evaluating the economic indicators relating to market shares, sales prices and the profitability of the Community industry.

Findings of the Court

193 First of all, given that the applicant bases its argument on the discrepancies between the preliminary and definitive figures, it should be recalled that that complaint was rejected when the preceding complaint was examined.

— Sales price of the like product

194 In the 83rd recital in the contested regulation, the Council found that the sales prices of electronic weighing scales decreased by 11% in the high-range segment, by 18% in the mid-range segment and by 17% in the low-range segment. In response to a comment made by the applicant during the anti-dumping procedure that the overall average sales prices for all electronic weighing scales had increased over the analysis period, the Council stated, in the 83rd recital, as the Commission had done in different terms in its letter of 23 October 2000, that 'this apparent increase was entirely due to changes in the product mix (i.e. substantial changes in the volume of sales of the product ranges from 1995 to the investigation period)'.

195 In response to a written question put by the Court, the Council gave reasons for the discrepancy identified between the preliminary calculation appearing in the April 2000 document, showing a 17% increase in the sales price for all electronic weighing scales, and the definitive calculation, which this time showed decreases for all of the separately examined segments. It is apparent from the Council's response that the Commission made three changes to the preliminary calculation, which, taken together, explain why different results were achieved with respect to the price trend. First, there was an error in the calculation set out in the April 2000 document because, contrary to the wording of the table, only sales to unrelated customers should have been included. As a result, the April 2000 document stated that there was an increase in sales prices even though, given that the calculation in that table showed an increase of 35% in the quantities sold and an increase in turnover of 27%, the result ought to have shown a decrease in the sales price of 6%, which would be equivalent to an index of 94 if the method usually used to calculate price trends were used, whereby, for each year, the total value of sales is divided by the total volume (127/135), the index 100 corresponding to the beginning of the investigation period. Secondly, the Commission revised slightly the calculation of the trend in sales volume. Whereas the calculation set out in the April 2000 document showed an increase of 35% in quantities sold, there was an increase of only 29% according to the definitive calculation of both the Commission and the Council (see the 79th recital

in the contested regulation). That amendment clearly had an impact on the calculation of the price trend. Given that the growth in turnover, for all electronic weighing scales together, was 27% (see the 80th recital), the relationship between that growth and the increase in total quantities sold was 98 (127/129), which corresponds to a decrease in the overall price of almost 2%. Thirdly, the Commission calculated the price trend for each product category and not for all of them together, which explains the remaining discrepancy in the price trend.

196 Moreover, it is also apparent from the Council's response that, as a result of a phenomenon familiar to statisticians, where a product comprises different categories, the calculation of the overall price trend (on the basis of the trend in volume and sales value) is distorted if the prices and trends in sales volume differ appreciably from category to category. As this was so in the present case, the Commission calculated the price trend for each category of product. As was held in paragraphs 127 to 131 above, examination on the basis of categories is not contrary to Article 3(8) of the basic regulation.

197 It cannot therefore be found, in these circumstances, that the Community institutions committed a manifest error of assessment by failing to make their calculation using the method designed to give a weighted average sales price. In any event, none of the information on the file invalidates the calculation according to which the sales prices for all the categories together decreased by approximately 2% between 1995 and the investigation period, rather than increasing by 17% as was shown by the preliminary calculation.

198 Finally, the applicant's argument that the price trend ought to have been assessed together with the factors affecting prices, such as the Community trend in production costs and productivity as regards the relevant product, is irrelevant. Whilst the Community institutions could sometimes have examined other factors at the same time as prices, such an examination is carried out on a case-by-case basis and, thus, may differ according to the case at hand. In any event, as the Council points out, the factors referred to by the applicant were taken into account in the assessment of profitability and in the Council's definitive findings as to injury.

Accordingly, it must be held that the Community institutions examined 'factors affecting Community prices', as is required under Article 3(5) of the basic regulation.

— Profitability and the effect of the introduction of the euro

199 In the 89th recital in the contested regulation, the Council stated that 'the overall profitability of the Community industry was not at the level it could reasonably have expected during the investigation period, due to the price depressive effects of the dumped imports'. However, the applicant takes the view that that finding contradicts the 131st recital, according to which a profit margin of 10% is considered necessary to ensure the Community industry's viability, and the 84th recital, in which it is stated that 'the return on turnover of [electronic weighing scales] as a whole rose from low positive levels in 1995 to around 10% in the investigation period' whereas, by contrast, 'the low range segment suffered a fall from low positive profitability in 1995 to substantial losses in the investigation period (around 20%)'.

200 The Council rightly submits that, in view of all the circumstances, the profit margin was merely the minimum requirement for the survival of the Community industry, which, in the present case, was insufficient in the light of the effect produced by the introduction of the euro. The Commission explained, in point 4.4.7 of the disclosure document of 21 September 2000, that the Community industry's usual profit was 10%. However, the industry was unable to achieve that profit level during the years prior to the effect produced by the introduction of the euro. Conversely, during the investigation period the profitability of the Community industry reached a level which was sufficient to ensure its viability, because that effect increased sales volumes.

201 Accordingly, as is clear from the 85th to 88th recitals in the contested regulation, the Community institutions cancelled out the impact of the effect on profitability produced by the introduction of the euro by finding that profitability would be insufficient in the absence of that effect. It must be noted that the imposition of an anti-dumping duty is a measure producing effects in the future. Given their broad discretion, the Community institutions were therefore entitled to disregard the effects of the introduction of the euro when assessing the Community industry's profitability and did not thereby commit a manifest error of assessment.

202 The second complaint therefore cannot be upheld.

(c) Material injury and assessment of the facts

Arguments of the parties

203 The applicant submits that, with respect to the factors relating to market shares and the trends in the average prices for all the electronic weighing scales in each of the three segments, the Council, by finding that the Community industry had suffered material injury, failed to carry out an objective assessment of the facts. Such an assessment would have shown that the Community industry's market shares increased in the period from 1995 to the investigation period and that there was a simultaneous decrease in production costs. In addition, the Council infringed Article 3(8) of the basic regulation because its findings as to injury should not have been based on those figures.

204 The Council contends that the applicant is merely repeating the line of argument put forward by it in connection with the second part of the second plea.

Findings of the Court

205 The applicant raises here the same arguments as those already addressed and rejected in paragraphs 127 to 131, 180 to 184 and 198 above.

206 Consequently, the third complaint cannot be upheld.

(d) Beginning and peak of the effect produced by the introduction of the euro

Arguments of the parties

207 The applicant submits that the Council made a manifest error of assessment when evaluating the impact on the Community industry of the prospect of the introduction of the euro. According to the applicant, as a result of significant discrepancies between the information forming the basis for the Community institutions' assessment of the impact of the introduction of the euro and their actual findings, the contested regulation is not based on positive and irrefutable evidence and does not contain an objective examination. Moreover, as regards the alleged links between the improvement in profitability and the introduction of the euro, the applicant states that the increase in question was caused by lower costs and not by the prospect of the introduction of the euro.

208 The Council contends, first, that the applicant's argument is irrelevant since it does not deny that the introduction of the euro had an effect as such, but rather disputes

only the period of time for which that effect was found to have been felt. Secondly, the applicant fails to adduce any evidence that the estimate made by the Community institutions is wrong.

Findings of the Court

209 The applicant does not deny that the introduction of the euro had an effect as such but rather the validity of the evidence on which the Council based its determination of the beginning and peak of that effect.

210 The Community institutions found that the introduction of the euro began to have an effect in 1997, whereas the applicant submits that it began in 1998, relying on the non-confidential summary of Bizerba's reply of 17 November 1999 to the investigation questionnaire. In point I.1 of that document, it is stated that 'fortunately, the introduction of the euro leads to a temporary increase in demand since the last quarter of 1998'. In Bizerba's letter of 10 April 2000, it is stated that 'due to the introduction of the euro the EU sales turnover began to slightly increase in 1998 and during the [investigation period]' and that 'the total EU ... market [for electronic weighing scales] however [was] susceptible to a much higher rise of [approximately] 50% from 1997 to the [investigation period] due to the [anticipated] substitution of [electronic weighing] scales in the course of the euro introduction'. Finally, it is clear from the graphs which Bizerba attached to its letter of 10 April 2000 that sales of all the electronic weighing scales increased from 1996. It must therefore be held that the information supplied by Bizerba is at times contradictory and in any event uncertain.

211 Given that, in anti-dumping investigations, the Community institutions must examine all the figures supplied to them by the Community industry and given the

wide discretion conferred on the Community institutions in such procedures, the figures in the contested regulation, which are based on those in the final disclosure, may differ from those supplied by an undertaking at any given time, especially where those figures are contradictory or inconsistent. Moreover, as Bizerba claimed in its statements of 10 April 2000, there was a strong growth in the entire Community market for electronic weighing scales from 1997 to the investigation period. The Council was thus entitled to find that the introduction of the euro began to have a noticeable effect as early as 1997. In addition, the applicant has failed to submit evidence showing that the Community institutions were mistaken in that regard.

212 The Community institutions took the view that the effect of the introduction of the euro reached its peak in 1999 whereas the applicant considers that it was reached during 2001 and refers to the figures supplied by the Community industry.

213 The fact that the Community institutions' findings are not entirely consistent with all the observations made by the Community industry does not mean that the Community institutions manifestly erred in their assessment. It is clear from point 7.4 of the Commission's letter of 4 October 2000 that the Commission had based its forecasts on the information submitted by the Community industry on the effect of the introduction of the euro. In its defence, the Council stated that it was on the basis of that assessment that the Community institutions predicted that the effect of the introduction of the euro would reach its peak in 1999. Moreover, it is apparent from the Community producers' complaint that they had stated that it was anticipated that the effect of the introduction of the euro would disappear in the period between 2000 and 2003. Finally, although the contested regulation states that the effect of the introduction of the euro reached its peak in 1999, it is also pointed out that the temporary increase in sales continued until 2000. It is expressly stated in the 64th recital in that regulation that the effect of the introduction of the euro was

to bring forward some sales from one period (2001 to 2004) to another (1997 to 2000). Thus, according to the contested regulation, the introduction of the euro continued to have an effect in 1999.

214 The applicant has failed to adduce evidence showing that Community institutions' forecasts were manifestly erroneous and that they were not based on positive proof. Moreover, the applicant has failed to show how the Council's findings as to injury would have differed if the introduction of the euro had begun to have an effect at the end of 1998 and reached its peak in 2001. At any rate, the introduction of the euro had an effect during the investigation period.

215 Consequently, the fourth complaint cannot be upheld.

216 Accordingly, the third part of the second plea must be rejected.

6. *Fourth part: manifest error by the Community institutions when assessing the magnitude of the actual margin of dumping*

(a) Arguments of the parties

217 The applicant submits that the Community institutions made a manifest error of assessment, infringing Article 3(5) of the basic regulation, when assessing the magnitude of the actual margin of dumping. The margin of undercutting of the prices for Community electronic weighing scales by scales from the countries concerned was distinctly higher than the actual margin of dumping. Thus, the

potential elimination of dumping would not give rise to any substantial change in the margin of undercutting. The applicant therefore argues that the margin of dumping and the margin of undercutting must be compared. It submits that such a comparison can reveal that the injury is caused by factors other than dumping.

218 The Council disputes that the Community institutions are under an obligation to compare the undercutting margin and the dumping margin, two factors which are difficult to compare. Whatever the actual undercutting margin, the margin of dumping must always be regarded as relevant on its own for the purpose of determining injury if it is more than *de minimis* within the meaning of Article 3(4) of the basic regulation.

(b) Findings of the Court

219 The basic regulation does not provide that dumping margins are to be compared with undercutting margins or that, where the dumping margin is lower than the undercutting margin, that comparison shows that the injury suffered by the Community industry is caused not by dumping but by other factors such as natural cost advantages enjoyed by the exporters.

220 Accordingly, the Community institutions cannot be censured for having failed to make such a comparison. In accordance with Article 3(3) of the basic regulation, the question whether the price of a like product of the Community industry has been undercut is to be examined when assessing the effect of dumped products on prices, whereas, in accordance with Article 3(5) of the basic regulation, other factors, including the magnitude of the actual margin of dumping, are to be evaluated when examining the impact of the dumped products on the Community industry. The

Council described its examination of undercutting in the 72nd to 74th recitals and, in the 90th recital, it examined the magnitude of the actual margin of dumping, as noted above. Thus, when assessing the injury, the Council took account of one of the factors listed in Article 3(5) of the basic regulation and was not required to compare that factor with the undercutting margin.

221 The fourth part of the second plea must therefore be rejected as unfounded.

7. *Fifth part: infringement of Article 3(2) and (3) of the basic regulation in taking account of Eurostat figures*

(a) Arguments of the parties

222 The applicant submits that the Council's finding that the Community industry had suffered material injury was reached in breach of Article 3(3) in conjunction with Article 3(2) of the basic regulation in so far as, in order to determine the volume of imports, it relied on Eurostat statistics which included imports of products other than the relevant product.

223 The definition corresponding to CN code 8423 8150 included products which did not fall within the scope of the procedure, as the test for inclusion refers to any type of scales with a weighing capacity of less than 30 kg intended to be used in trade. The applicant observes that the Council concedes that CN code 8423 8150 covers scales other than electronic weighing scales.

224 The applicant also relies on the figures resulting from the market study carried out by the Community producers which raised the complaint, according to which only 50% of the imports from China which were classified under the abovementioned code were electronic weighing scales covered by the contested regulation.

225 The applicant challenges the Council's statement that all the evidence obtained suggested that only electronic weighing scales were exported from the countries concerned. First, the applicant submits that, during the investigation, various parties produced prima facie evidence that Eurostat was not a reliable source for the purpose of determining the volume of imports of electronic weighing scales. Secondly, with respect to imports under the heading CN 8423 8150, the applicant states that, because the exporters and importers which cooperated in the investigation exported and imported only electronic weighing scales, they could not prove that other products were likewise imported under that heading. Thirdly, according to the applicant, the Commission was aware of the existence of Chinese manufacturers which produced weighing scales other than electronic weighing scales. However, since those other scales were not the subject of the investigation, it could not be presumed that those exporting producers cooperated with the Commission in that investigation. Fourthly, the applicant submits that the volume of imports from China ought to have been determined on the basis of the verified figures for the three Chinese exporters. Fifthly, in the applicant's submission, the Eurostat figures on the average import prices, which were annexed to the complaint, clearly show that Eurostat was no longer a reliable source of information regarding China. The applicant notes that there were several factors which showed that it was inappropriate to use Eurostat figures.

226 Finally, the applicant points out that, in several recent anti-dumping procedures, the Council, when determining injury, has challenged the relevance of statistics supplied by Eurostat because the CN code under which the relevant product fell covered products which were not the subject of the procedure being conducted. It thereby relies on, inter alia, the 35th recital in Council Regulation (EC) No 2313/2000 of 17 October 2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cathode-ray colour television

picture tubes originating in India and South Korea, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania, Malaysia and China (OJ 2000 L 267, p. 1). That approach was confirmed in Case C-315/90 *Gimelec and Others* v *Commission* [1991] ECR I-5589, paragraphs 13 and 14).

227 The Council does not deny that CN code 8423 8150 also applies to weighing scales other than those which were the subject of the investigation or that Eurostat does not draw a distinction between the various models covered by that code. However, the Council states that all the evidence obtained, including that provided by the exporters and importers which cooperated in the investigation, suggested that only electronic weighing scales were exported by the countries concerned. Moreover, the Council states that the Community institutions only had information on less than 50% of total imports, as a result of the extremely low level of cooperation on the part of the exporters, in particular the Chinese exporters. However, it cannot be concluded from the fact that only limited information on exports from China was available that the Council exceeded the limits of its discretion by basing its assessment on the figures supplied by Eurostat.

(b) Findings of the Court

228 The applicant argues that, by determining the volume of imports on the basis of Eurostat statistics, even though they were aware that CN code 8423 8150 covered goods other than electronic weighing scales, the Community institutions failed to base their findings as to the volume of imports on positive evidence. The Court's examination of the use of the Eurostat figures in determining the volume of imports will therefore be confined to that specific aspect.

229 The applicant relies on *Gimelec*, cited in paragraph 226 above (paragraphs 13 and 14). The Court's judgment in that case stated as follows:

'The Commission was entitled to base its decision on the specific data resulting from its investigation, even if they did not correspond to the Community statistics on which the applicants rely. In fact, as the Commission has pointed out, without being challenged on that point by the applicants, the Community statistics cannot provide any evidence because they classify the electric motors under a tariff heading which includes other products as well.

It follows that the Commission determined the volume of imports in question on the basis of the information reasonably available to it.'

230 It is clear from that judgment that the Community institutions do not commit a manifest error of assessment where they base their findings on the information reasonably available to them. The case-law also makes clear that the Community institutions are not bound by the replies of the parties concerned if the degree of cooperation is low and, therefore, the figures supplied by one or two undertakings concerned cannot be regarded as representative (see, to that effect, Case T-161/94 *Sinochem Heilongjiang* v *Council* [1996] ECR II-695, paragraph 65).

231 In the present case, the Community institutions took the view that, despite the fact that CN code 8423 8150 may also include products other than electronic weighing scales, such as counting scales and check-out scales, it was, for the purposes of the present investigation, appropriate to use the Eurostat figures in order to determine the volume of imports from the countries concerned because no evidence was submitted to the Commission during the investigation which suggested that scales other than electronic weighing scales had been imported into the Community from the countries concerned.

232 In response to a written question put by the Court, the Council stated that the Community institutions did not use the Eurostat figures as such. As regards imports from China in 1995 and 1998 and during the entire investigation period, the Commission found that the figures on volume reported by Eurostat were far too high and that the prices established by Eurostat were far too low. For example, in respect of 1995, Eurostat reported an average price of EUR 7 per unit. It was therefore clear that those prices could not relate to complete units of electronic weighing scales but rather to imports of parts. The Commission therefore adjusted the Eurostat figures. According to the Council, the adjustments made by the Commission brought the import volumes to more plausible unit levels, which appeared reasonable in the light of the figures supplied by the Chinese exporters which cooperated in the investigation, the level of cooperation on the part of the Chinese market and the estimates made by the Community industry which lodged the complaint. Thus, the Commission used in its investigation the figures disclosed to the applicant in the disclosure letter of 21 September 2000. Furthermore, the applicant was, according to the Council, aware that the basic Eurostat figures had been adjusted and did not object to that adjustment. It simply claimed that the Commission had failed to prove that the Eurostat figures did not cover products other than electronic weighing scales.

233 In its reply, the Council also provided the Court with the Eurostat figures on the basis of which the adjustment was made. Those figures do indeed differ from the Eurostat figures which the Community industry attached to its complaint. In order to explain that discrepancy, the Council stated at the hearing that, because Eurostat's figures are continuously revised, the basic Eurostat figures used by the Commission at the final stage of its investigation are not identical to those which were available when the complaint was lodged.

234 It is apparent from the Eurostat figures provided by the Council that, during the investigation period, the volume of imports from China was 47 658 units. However, the figure used by the Commission following the adjustment was 16 827 units. Accordingly, rather than use the figure of 63 894 units, which, according to Eurostat,

represented the exports from the three countries concerned, the Commission likewise drew up a lower figure of 33 063 units. Similarly, as regards 1995, the Eurostat figures reported imports from China at 21 289 units, whereas the figure used by the Commission was 3 456 units, and, although Eurostat obtained a total of 32 686 units for imports from the three countries concerned, the Commission estimated that total at 14 853 units.

235 It is clear from the 63rd, 70th and 71st recitals in the contested regulation that the figures drawn up by Eurostat were used to assess Community consumption, the volume of imports and, thus, market shares. According to the Council's statements, the figures mentioned are therefore adjusted figures which show that the total volume of imports was 33 063 units during the investigation period.

236 However, it is clear from the 105th recital in the contested regulation that, during the investigation period, the exporting producers cooperating in the investigation exported to the Community almost 15 000 units, 97% of which were in the low-range segment of the market.

237 There is therefore a large discrepancy between the figures provided by the cooperating exporting producers and the adjusted Eurostat figures. In that connection, the Council points out that the level of cooperation by the exporters, in particular the Chinese exporters, was low. At the hearing, it stated that, according to a report drawn up by the association of Chinese producers of scales, which the Council did not propose to place on the file, the market was shared by 15 companies. Of those 15 companies, only three cooperated in the investigation. Thus, according to the Council, a large number of those companies did not cooperate in the investigation procedure and, in the light of the Eurostat figures, which showed the difference between sales actually identified and those which had been recorded, the Community institutions had good reason to believe that many of those companies were exporting but had not cooperated.

238 Under Article 18 of the basic regulation, in the event of a failure to cooperate, findings may be made 'on the basis of the facts available', which must be verified, where possible, by reference to other available independent sources such as official statistics on imports.

239 Moreover, in the present case, as is apparent from the fifth recital in the contested regulation, with the exception of one Taiwanese exporting producer, all the exporting producers, including the three Chinese companies, which the Community-industry producers had mentioned in their complaint, in fact cooperated in the investigation. The fact that the Community industry mentioned only three Chinese companies in its complaint does not mean that there were no other Chinese exporting producers on the market. Consequently, the Community institutions cannot be censured for having taken the view that some exporting producers had not cooperated. It should be noted that, at the hearing, the applicant claimed that the report drawn up by the association of Chinese producers of scales had been attached to the replies to the Commission's questionnaire. However, no such report is to be found on the file. In its response to the questionnaire on the grant of market economy status, the applicant referred to six main producers of electronic weighing scales, including the three cooperating companies.

240 As regards the applicant's argument that the CN code in question also applies to products other than electronic weighing scales, it should be recalled that the Commission, rightly, adjusted the Eurostat figures because it took the view that other products (namely, in this case, spare parts) had been imported under that code, and ultimately obtained a figure of 33 063 units. The Community institutions received no specific information subsequently which showed that that figure also included imports of products other than electronic weighing scales. Moreover, the applicant has failed to submit the slightest evidence that this was the case. Accordingly, the Commission was entitled to take the view that, although the code in question applies to other products, the figure of 33 063 units represented only

imports of electronic weighing scales. It should be borne in mind that the Community institutions enjoy wide discretion and that, as was pointed out in paragraph 119 above, it is for the applicant to adduce evidence by which the Court may find that the Council committed a manifest error of assessment. The applicant, however, has failed to adduce such evidence.

241 In the circumstances of the present case, it must be held that the Community institutions did not commit a manifest error of assessment in using the adjusted Eurostat figures in order to assess consumption within the Community and to determine the total volume of imports from the countries concerned and the market shares held by the Community and by the importers.

242 The fifth part of the second plea therefore cannot be upheld. Accordingly, the second plea must be rejected in its entirety.

C — *The third plea: infringement of Article 3(6) of the basic regulation*

1. *Introduction*

243 The applicant submits that the Council infringed Article 3(6) of the basic regulation by committing a manifest error of assessment when determining causation.

244 The contested regulation deals with causation in the 98th to 116th recitals. In the 115th and 116th recitals, the following conclusion is reached:

'In view of the coincidence in time between, on the one hand, the price undercutting established, the significant market share gained by the dumped imports from the countries concerned and, on the other hand, the corresponding loss of market share suffered by the Community industry, as well as the reduction of its sales prices, it is concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry.

It was, therefore, concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry. While other factors may have contributed, they are not such as to break the causal link between the dumped imports and the injury suffered by the Community industry.'

245 The applicant puts forward several arguments in support of the third plea. Those arguments are for the most part the same as those relating to the determination of injury which were examined in connection with the second plea. Reference will therefore be made, where appropriate, to the preceding paragraphs. The applicant's line of argument can be divided into four parts.

2. *First part: profitability*

(a) Arguments of the parties

246 The applicant relies on the appreciable increase in the profitability of the Community industry between 1995 and the investigation period as evidence that imports of dumped products had no effect. The claim made by the Council in the

102nd recital in the contested regulation that there were 'adverse consequences for the profitability of the Community industry' is contradicted by the data in the 84th recital, according to which 'the return on turnover of [electronic weighing scales] as a whole rose from low positive levels in 1995 to around 10% in the investigation period'.

247 The Council disputes the applicant's arguments.

(b) Findings of the Court

248 It is sufficient to point out that the applicant fails to have regard to the impact of the introduction of the euro. Reference must be made to paragraphs 199 to 202 above, in which it is shown that this argument, which is linked more to injury than to causation, is unfounded.

3. *Second part: the trend in sales prices*

(a) Arguments of the parties

249 The applicant argues that the fall in the prices for high and mid-range models of electronic weighing scales could not have been caused by imports from the countries concerned. According to the Council's own findings, the volume of imports of mid and high-range scales was negligible. The Council failed to examine and to explain the fact that the prices in the mid-range segment sank even lower

than those in the low-range segment and that prices in the high-range segment also fell to a very similar extent.

250 According to the applicant, the fall in prices was in fact attributable to the well-known fact that the price of electronic goods naturally tends to decrease as technology advances. Thus, the Community institutions failed to examine the trend in production costs when assessing the impact of imports on the trends in the prices of electronic weighing scales in those segments. Moreover, in the applicant's view, the reference to the knock-on effect is irrelevant. The applicant claims that the fall in the prices of electronic weighing scales in the mid and high-range segments did not cause a decrease in the profitability of those segments. The applicant submits that, on the contrary, profitability increased.

251 Moreover, the applicant submits that the Community institutions failed to take proper account of the fact that prices decreased as a result of the emergence of multiple users, which led to a shift in purchasing power. The applicant takes the view that this error of assessment stemmed from the fact that the Community institutions took account of changes in the structure of and/or mergers between companies which were not part of the Community industry. The Community institutions thus failed to provide proof that the increase in the purchasing power of supermarket chains did not cause the material injury referred to in the 113th and 114th recitals in the contested regulation.

252 Moreover, the applicant submits that, in order to establish that the alleged fall in prices in each of the three segments of electronic weighing scales did indeed constitute a material injury to the like product, it must also be shown what impact those falls in price had on profitability in those three segments. The applicant points out that the Community industry recorded large profits and that, if profits remain at a satisfactory level despite the fall in the sales price, no material injury is caused by imports. According to the applicant, the oligopolistic profits made by the Community producers may have decreased as a result of the competition from imports.

253 The Council disputes the applicant's arguments.

(b) Findings of the Court

254 As regards the argument that the Community institutions failed to take account of the effect on sales prices of the increase in productivity, it is sufficient to state that that argument has already been addressed in paragraph 198 above, in which it was held that it is irrelevant. The claim that the decrease in the prices for models of electronic weighing scales in the mid and high-range segments was caused by significant reductions in production costs was likewise addressed in paragraph 198 above. As regards the knock-on effect, described in the 88th recital in the contested regulation, which states that '... the price depressive effects of the dumped imports have also been felt within the mid and high-range segments because prices in one range inevitably have a knock-on effect on the other segments', the applicant has failed to put forward any arguments invalidating the Council's findings. Moreover, as is clear from the 114th recital in the contested regulation, the Community institutions did in fact examine the effect on prices of an increase in productivity when examining other factors. The applicant has failed to show how the Community institutions made an error of assessment in finding that the improvements in productivity did not break the causal link in question.

255 Moreover, as regards the complaint concerning multiple users, the Court finds that, as the applicant itself concedes, that factor was examined by the Council. The 113th recital in the contested regulation states:

'Throughout the Community, the market share of the multiple users (i.e. large supermarket chains) has increased significantly, whereas the number of smaller users has declined. This change of structure has increased the buying power of the user industry in general, and it is likely that this change has had some downward effect on average prices.'

256 In the 114th recital, the Council stated:

'As mentioned at recital 59, the structure of the Community industry has also changed substantially over the period considered. The reduction in the number of companies and improvements in productivity, shown in recital 90, were designed to deal with these market changes. It was concluded that internal market competition arising from changes in the structure of the Community retail sector did not break the causal link between the dumped imports and the injury suffered by the Community industry.'

257 Accordingly, in the present case, the Council examined whether multiple users had emerged. Moreover, in arguing that the error of assessment stems from the fact that the Community institutions took account of changes in the structure of and/or mergers between companies which are not part of the Community industry, the applicant misinterprets the term 'Community industry'. According to the applicant, that term covers only the Community producers which participated in the investigation. However, Article 4(1) of the basic regulation states that the term 'Community industry' refers to all Community producers of like products or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products.

258 With respect to the applicant's complaint that the Community institutions ought to have shown what effect the decreases in prices had on profitability in each of the three segments, reference must be made to paragraphs 127 to 131 above. It is sufficient to observe that, as the Council argues, the Community institutions are under no obligation to carry out a separate examination of injury and of the causal link for each of the product segments. As is clear from the 84th recital in the contested regulation, the models in the low-range segment, which accounted for 97% of all the imports, had a particularly serious impact because the Community industry suffered significant losses in that segment during the investigation period.

259 Therefore, it has not been established that the Community institutions committed a manifest error of assessment.

4. *Third part: calculation of the undercutting margin*

(a) Arguments of the parties

260 The applicant submits that the Community institutions calculated the undercutting margin only in relation to the low-range models of electronic weighing scales and that, as a result, their findings as to causation are inconsistent with the definition of the like product.

261 The Council challenges the applicant's argument.

(b) Findings of the Court

262 According to the 73rd recital in the contested regulation:

'The vast majority of models sold in the Community by the cooperating exporting producers were for low range models (over 97% by volume). The calculations made have not, therefore, included the smaller quantities of mid and high-range models as they were considered unrepresentative.'

263 The Commission had explained in the disclosure document of 21 September 2000 that 'in order to ensure a fair comparison, the undercutting margins and the underselling margins were calculated using similar low range models produced and sold by the Community industry'. Given that the low-range segment models accounted for 97% of total imports from the countries concerned, the Community institutions were entitled to calculate the undercutting margin solely in respect of the low-range segment and did not commit a manifest error of assessment in doing so. It must be observed, in addition, that all the applicant's imports were in the low-range segment and, thus, the margin of undercutting by the applicant in respect of the other segments could not have been calculated.

264 The applicant's argument is therefore unfounded.

5. *Fourth part: the market share*

(a) Arguments of the parties

265 The applicant calls into question the figures on the development of market share. According to the applicant, the development of the market share and of the volume of imports ought to have been assessed in absolute terms. It submits, first, that the increase in the volume of imports from the countries concerned had no effect on the volume of sales by the Community industry and, secondly, that those imports decreased in volume from 1997. The applicant points out that the change in the volume of sales by the Community industry was extremely favourable. Moreover, the other traders operating in the Community appear to be the most significant players on the Community market. The applicant also points out that the Community institutions failed to take account of the fact that the imported products were consumed progressively and that, therefore, the figures on consumption are inaccurate. The applicant states that it has shown, on the basis of the figures

produced by the Community institutions, that imports of electronic weighing scales from the countries concerned increased more slowly than consumption and that the market share held by those imports decreased between 1996 and the investigation period. By contrast, according to the applicant, the volume of sales of products of the Community industry increased and that industry's market share remained unchanged.

266 In the Council's view, market share is by definition a relative term based on a comparison of sales and consumption. The Council contends that the increase in sales by the Community industry, in absolute terms, was attributable to the effect of the introduction of the euro. As regards the applicant's statement that the largest increase in imports from the countries concerned took place between 1995 and 1996, the Council submits that that increase was caused by stockpiling and that products imported in 1996 were not consumed immediately upon entering the Community. It states that, despite the fact that there were stockpiles, imports did not decrease and that this is evidence of the ability of the dumped imports to penetrate the Community market.

267 Moreover, the Council denies the claim that the injury was in fact caused by other Community producers which did not support the complaint. It points out that two of the other largest producers supported the complaint from the outset and a large company related to a Chinese producer, Mettler Toledo, could not have contributed to the injury because its prices were fixed fairly.

(b) Findings of the Court

268 In the 81st recital in the contested regulation, the Council refers to the following evidence:

'The Community industry's share of the Community market fell for all [electronic weighing scales] from 26.1% in 1995 to 24.9% in the investigation period; i.e. a fall of

4.6%. In contrast the Community industry's share of the low range market fell from 21.8% in 1995 to 17.1% in the investigation period; i.e. a fall of 22%.'

269 According to the 100th recital:

'During the period considered consumption on the Community market increased by 35%. However, Community industry sales only increased by 29% and the imports from the countries concerned increased by 123%.'

270 Finally, the following is stated in the 101st recital:

'As explained at recital 81, the Community industry's market share fell by 4.6% over the period considered. In contrast, the market share of imports from the countries concerned increased from 9.2 to 15.1% over the same period.'

271 In its application, the applicant drew up three tables on the basis of the figures in the disclosure document of 21 September 2000 and in the contested regulation on the volume of sales, in absolute terms, by the Community industry and on the market shares held by the Community industry and the countries concerned. It is appropriate to draw up a new table showing the information contained in those three tables and, moreover, the trend as a percentage for each set of figures. The table must be drawn up in the light of the fact that the imports from CAS Corp., which were not dumped, ought not to have been taken into account.

	1995	1996	1997	1998	IP	Trend as a %
Community industry's market share	26.1 %	25.1 %	26.0 %	23.6 %	24.9 %	– 4.6
Community consumption	161 682	172 314	177 391	201 123	218 655	35
Volume of sales by the Community industry	42 199	43 251	46 122	47 465	54 445	29
Volume of sales by other traders in the Community	93 301	87 749	93 897	105 554	120 491	29
Total imports	26 182	41 314	37 372	48 104	43 719	67
Total imports from China, South Korea and Taiwan *	14 853 11 273	32 834 28 753	26 422 20 850	34 464 29 838	33 063 29 248	123 159
Market share held by China, South Korea and Taiwan *	9.2 % 7.0 %	19.1 % 16.7 %	14.9 % 11.8 %	17.1 % 14.8 %	15.1 % 13.4 %	64 91
Other imports	11 329	8 480	10 950	13 640	10 656	– 6

* The second line represents the total excluding products imported by CAS Corp.

272 Using those figures, the applicant attempts to show that the volume of the Community industry's sales increased steadily and significantly during the analysis period and that, in so far as the Community industry lost any of its market share in relative terms, that loss could not have been caused by imports from the countries concerned, which themselves suffered a loss in terms of market shares.

273 The applicant's line of argument cannot be upheld. An assessment of sales volume as compared with consumption in the Community cannot be expressed in absolute terms since market share is a relative term expressed as a percentage. It is apparent from the above figures that the Community industry had a market share of 26.1% in 1995 and of 24.9% during the investigation period, which corresponds to a relative

decrease of 4.6%. The market share held by the dumped imports was 7% in 1995 and 13.4% during the investigation period, which corresponds to a relative increase of 91%.

274 A market share of 13.4% may be regarded as sufficiently strong to indicate that the imports from the countries concerned may have had a prejudicial effect on the Community industry (see, to that effect, Case T-51/96 *Miwon* v *Council* [2000] ECR II-1841, paragraph 106). Moreover, whilst the volume of sales by the Community industry increased by 29% during the analysis period, that increase is not in proportion to the increase in consumption during the same period of 35%. The figures clearly show that, as the Council claims, the Community industry's market share declined. The imports of electronic weighing scales from the countries concerned also increased by approximately 159% during the analysis period. The applicant is wrong to claim that the other traders appear to play the most important role on the Community market. The volume of those traders' sales increased by only 29% during that period.

275 Furthermore, with respect to the applicant's argument that, if 1996 and the investigation period are compared, the result is different and, in particular, there is a decrease of 4% in the market share held by the dumped imports, the Court finds that, even if the view were to be taken that the market share held by the imports from the countries concerned declined, it is apparent, if one takes 1996 as the beginning of the period, that those imports' market share, namely 13.4% during the investigation period, remained substantial (see, to that effect, *Miwon*, cited in paragraph 274 above, paragraph 106).

276 Moreover, the results vary depending on the period chosen for the purpose of examining the figures. In the present case, the analysis period was from 1995 to the end of the investigation, that is to say, 1999. As the Council submits, the best and most reliable figures for establishing the parameter for consumption and, by extension, the market shares are the overall figures for the entire analysis period.

The Court concurs with the Council's finding that those figures confirm that there was a clear concomitance between the Community industry's loss of market shares and the acquisition of market shares by the dumped imports, which is significant in terms of causation.

277 It should also be observed that the Community institutions have wide discretion in determining what period is to be considered for the purpose of determining injury in anti-dumping proceedings (Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 86). In the present case, the applicant has not challenged the determination of the analysis period as such and it has not been established that the Community institutions exceeded the limits of their discretion in basing their assessment of the injury on the period from 1995 to the end of the investigation period.

278 Accordingly, the fourth part of the third plea cannot be upheld.

279 It follows from all of the above that the applicant has failed to demonstrate that the Community institutions committed a manifest error of assessment when examining the causal link. Accordingly, they did not infringe Article 3(6) of the basic regulation.

280 The third plea must therefore be rejected.

D — *The fourth plea: infringement of the procedural rules laid down in the basic regulation*

281 The fourth plea comprises, essentially, three complaints of procedural errors.

1. *The first part: infringement of Article 20(4) of the basic regulation*

(a) Arguments of the parties

282 The applicant submits that the Community institutions infringed Article 20(4) of the basic regulation in that the Commission failed to disclose certain facts and considerations forming the basis for its intention to propose to the Council the imposition of definitive duties.

283 Despite the applicant's request for additional information, the Commission failed to reply to questions 2, 3, 4, 6, 10, 11 and 12 put to it in the applicant's fax of 29 September 2000 and thus prevented the applicant from effectively defending its interests. The applicant submits that it is clear from the Commission's answers to each of the questions relating to the investigation findings that the Community institutions deliberately refused to provide it with information and obstructed the applicant's exercise of its rights of defence.

284 The Council states that the Commission is under an obligation to disclose the essential facts and considerations on the basis of which it intends to propose to the

Council that definitive anti-dumping duties be imposed in so far as that information is relevant to the parties' defence of their interests. Any party which considers that the information disclosed is insufficient must ask the Commission to clarify that information. Where the Commission responds to a request for additional information but the requesting party considers the response to be insufficient, that party must clearly state so. In addition, the Council submits that the failure by the Commission to disclose certain information requested by a concerned party does not in itself mean that the measures finally adopted must be annulled, as the party concerned must demonstrate that its ability to defend its interests effectively has in fact been affected.

285 The Council submits that, since the applicant has failed to explain why it was unable to defend its interests effectively, its claims are unsubstantiated and therefore inadmissible. Alternatively, the Council submits that the Commission responded properly and adequately to its questions. In addition, the Council argues that the statements made by the applicant in its reply are irrelevant and for the most part inadmissible because they include new factual allegations which ought to have been submitted to the Court in the application.

(b) Findings of the Court

286 First of all, as regards the alleged inadmissibility of the first part of the fourth plea, it is sufficient to state that the applicant's claims satisfy the requirements of Article 44 (2) of the Rules of Procedure and are therefore admissible.

287 The purpose of the obligation on the Commission under Article 20(4) of the basic regulation to disclose to undertakings concerned by an anti-dumping procedure the essential facts and considerations on the basis of which it is intended to impose anti-dumping duties is to ensure respect for the rights of the defence of the undertakings

involved in such a procedure (Case T-88/98 *Kundan and Tata* v *Council* [2002] ECR II-4897, paragraph 131). The present part of the plea, alleging breach of that provision, must therefore be interpreted as alleging, in essence, a breach of the rights of the defence of the applicants during the administrative procedure, which came to an end with the adoption of the contested regulation.

288 First, the principle of respect for the rights of the defence is a fundamental principle of Community law (Case C-49/88 *Al-Jubail Fertiliser and Saudi Arabian Fertiliser* v *Council* [1991] ECR I-3187, paragraph 15; Joined Cases T-159/94 and T-160/94 *Ajinomoto and NutraSweet* v *Council* [1997] ECR II-2461, paragraph 81; and Case T-147/97 *Champion Stationery and Others* v *Council* [1998] ECR II-4137, paragraph 55).

289 It is settled case-law that, in accordance with the principle of respect for the rights of the defence, the undertakings affected by an investigation preceding the adoption of an anti-dumping regulation must be placed in such a position during the administrative procedure that they can effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the injury suffered by the Community industry as a result (*Al-Jubail Fertiliser and Saudi Arabian Fertiliser*, cited in paragraph 288 above, paragraph 17; *Ajinomoto and Nutrasweet*, cited in paragraph 288 above, paragraph 83; *Champion Stationery*, cited in paragraph 288 above, paragraph 55; and *Kundan*, cited in paragraph 287 above, paragraph 132).

290 Those requirements are laid down in Article 20 of the basic regulation. Article 20(1) and (2) of the basic regulation places the Commission under an obligation to make a final disclosure, in particular to the exporter of the product which is the subject of the anti-dumping investigation, of the essential facts and considerations on the basis of which it intends to recommend to the Council that definitive measures be adopted. Article 20(4) of the basic regulation provides that final disclosure is to be given in writing. It is to be made as soon as possible and, normally, no 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. Where the Commission is not in a position to disclose certain facts or considerations at that time, these are to be disclosed as soon as possible thereafter. Disclosure does not prejudice any subsequent decision which may be taken by the Commission or the Council but where such a decision is based on different facts and considerations, these are to be disclosed as soon as possible.

291 Under Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1, 'the former basic regulation'), the adequacy of the information provided by the Community institutions had to be assessed in the light of how specific the request for information was (see to that effect, *Ajinomoto and NutraSweet* v *Council*, cited in paragraph 288 above, paragraph 93).

292 Moreover, the fact that final disclosure, which is intended to enable the parties involved effectively to defend their position, is incomplete renders the regulation imposing definitive anti-dumping duties unlawful only if, as a result of the omission, the parties were not in a position to defend their interests effectively (*Champion Stationery*, cited in paragraph 288 above, paragraphs 55, 73 and 81 to 84).

293 It must therefore be examined, in the light of those principles, whether the applicant's rights of defence were infringed during the investigation procedure.

294 In the present case, on 21 September 2000 the Commission sent the applicant the document disclosing the facts and considerations on the basis of which it intended to recommend the imposition of definitive anti-dumping duties of 13.1% on imports of electronic weighing scales manufactured by the applicant. The deadline given to

the applicant for the submission of its observations was set at 11 October 2000. By fax of 29 September 2000, the applicant requested additional information from the Commission. The Commission responded by two separate letters, dated 29 September 2000 (concerning the questions relating to dumping) and 4 October 2000 (concerning the questions relating to injury and causation). By fax of 4 October 2000, which preceded the Commission's letter of the same day, the applicant requested an extension of the period granted to it for the submission of its observations. By fax of 5 October 2000, the Commission refused the request. By letter of 10 October 2000, the applicant submitted its observations on the dumping, injury and causation. On 11 October 2000, the Commission replied to some of the concerns related to dumping expressed in the letter of 10 October 2000. In particular, it this time agreed to accept the applicant's arguments as to salesmen's salaries and reduced the margin of dumping from 13.1 to 12.8%. Finally, on 23 October 2003, the Commission presented its remaining comments on the letter of 10 October 2000.

295 In order to assess whether the applicant was in a position to defend its interests effectively, it is necessary to examine the Commission's responses to each of the questions in respect of which it is claimed that it failed to give an adequate answer.

296 By question 2, the applicant asked 'in order to be able to comment on the comparability of normal value and export prices, ... what exact allowances were made to the export prices and domestic prices of the Indonesian producer'.

297 In the disclosure document of 21 September 2000 (Annex A, point 2.c), the Commission provided the following explanation of the comparison:

'The comparison between Normal value and Export price was made on an ex-factory basis and at the same level of trade (distributors/dealers). For this purpose, your company's data as submitted in your questionnaire reply had been retained.

Allowances, in the form of adjustments, had been accepted by the Commission as proposed by your company; an allowance of 1% on the invoiced price for the differences in the cost of credit granted for the sales under consideration, had been made in accordance with Article 2(10)(g) of the basic regulation.'

298 In its letter of 29 September 2000, the Commission gave additional information on the technical features of the Indonesian models used. Moreover, the Commission explained that no upward adjustments had been made in order to take account of differences in physical characteristics and this applied to both domestic sales and to export sales of the reference model, namely the model TEC SL-2200. It also stated that all sales of the TEC SL-2200 model were invoiced on an ex-factory basis. In its letter of 11 October 2000, in response to the letter of 10 October 2000, in which the applicant claimed that the Commission had failed to take account of the differences in physical characteristics between the model used to determine the normal value and the various models exported by the applicant, the Commission explained the following:

'It should be noted, as following from [the applicant's] transaction-by-transaction listing, any alleged differences in market value possibly requiring an adjustment in normal value between a [set of electronic weighing scales] having [an] LCD or a fluorescent-display is not warranted. We note that there are even sales of the same model with fluorescent display being sold at lower prices than without such a feature. Your claim is therefore rejected.'

299 It went on to state the following in point 2 of that letter:

'Furthermore, we recall, as already outlined in our letter of 29 September 2000, that no upward adjustments for differences in physical characteristics in the normal

value had so far been made for technical features such as battery operation, direct PLU-keys, fold-up display etc., existing in [the applicant's] exported models, but non-existing in TEC's SL 2200. Considering these existing differences, higher dumping would be found.'

300 Finally, in point 3 of the same letter, it also explained that, if it had adopted the approach suggested by the applicant when calculating the margin of dumping, it would have found that there was a higher level of dumping than that which it calculated in accordance with its own approach.

301 In the present case, the applicant insisted that account be taken of the differences in the cost of credit granted for the sales under consideration. As is clear from point 2.c of Annex A to the disclosure document of 21 September 2000, that factor was accepted. According to the disclosure document, the applicant put questions as regards the physical characteristics of the products. As was shown in the preceding paragraph, the Commission adequately explained why it did not make any adjustment for differences in physical characteristics.

302 Consequently, it must be held that the applicant was in a position to know which models the Commission had used in order to determine the normal value. It was also adequately informed of the reason why no adjustment was made for differences in physical characteristics. The Commission chose not to make an upward adjustment, which would have given rise to a greater margin of dumping. The applicant likewise knew that the prices had been compared at the same level of trade. Moreover, the applicant did not request any other adjustments. Accordingly, with respect to question 2 in its fax of 29 September 2000, the applicant was able to defend its interests effectively.

303 Questions 3 and 4 relate to an allowance for salesmen's salaries which the Commission initially deducted from the export price charged by the applicant and which had the effect of reducing the export price and, thus, of increasing the margin of dumping.

304 It is clear from the letters of 29 September and of 11 October 2000 that the Commission did not deduct the allowance for salesmen's salaries when it made its final calculation of the margin of dumping. In the letter of 11 October 2000, it reduced the margin of dumping from 13.1 to 12.8%. It therefore took a decision which was more favourable to the applicant and accepted fully its arguments on that subject. It is therefore unnecessary to examine whether the Commission properly answered the applicant's questions 3 and 4.

305 In question 6, the applicant set out the following considerations:

'The same letter of 14 April 2000 addressed to the Commission by JKM Consulting states: "As agreed at that meeting Bizerba and Avery Berkel would complete their Company specific responses in Confidential and Non-confidential forms, and that I would then forward same to you at the Commission." [The applicant] would like to request disclosure of what precise information [was] needed at that time to be completed by Bizerba and Avery Berkel in their Company specific responses.'

306 In its letter of 4 October 2000, the Commission replied as follows:

'The Commission services discussed the attached injury indicators with the Community industry. The Community industry then made submissions, copies of which you have taken from the non-confidential file.'

307 A letter from Bizerba, dated 10 April 2000 and received on 14 April 2000, which contains its comments on the matter of injury is included in the documents attached by the applicant as annexes to its application. That letter contains additional information supplied by Bizerba, to which JKM Consulting's letter of 14 April 2000 refers. As regards the information supplied by Avery Berkel, that company's letter is not among the documents attached as annexes to the application although it is clear from the file that the applicant was nevertheless aware of it. That document, which the Council produced as an annex to its rejoinder, was made available in the non-confidential file, of which the applicant made a copy. The Council has submitted as an annex to its rejoinder the two protocols confirming that the applicant's legal representative inspected the non-confidential file on 14 September and 1 December 2000. Point 12 of the protocol of 14 September 2000 shows that the applicant's legal representative made copies of Avery Berkel's letter of 14 April 2000, which was received on 17 April 2000. Accordingly, the applicant's claim that 'the non-confidential file [did] not contain any submission by Bizerba and Avery Berkel after this letter of 14 April 2000 which completes "their company specific responses"' and that 'there is only a submission by Bizerba dated 10 April 2000 but no submission by Avery Berkel' is untrue. Both Bizerba and Avery Berkel sent letters to the Commission after the meeting at the beginning of April 2000 in order to supplement their responses. As shown above, the applicant was aware of those two letters.

308 The applicant was therefore aware of all the non-confidential summaries of all the observations made by the Community industry. It was thus in a position effectively to defend its interests in connection with question 6 in its fax of 29 September 2000.

309 By question 10, the applicant asked the Commission whether it had examined the extent to which the high rate of exchange of pounds sterling to euros had affected Avery Berkel's competitiveness with regard to its sales in the euro zone.

310 In its letter of 4 October 2000, the Commission responded as follows:

'A detailed breakdown of injury data, showing euro zone and non euro zone figures, was not possible for the reasons given in the answer to question 9 above. ... [The requested evolution of data [was] not available, since Table 4.2.2 was established from the transaction by transaction lists provided by the cooperating Community producers. It is normal practice for the Commission services to only request transaction by transaction lists for the investigation period.] However, from the information available, injury is evident in respect of sales by the cooperating producers to customers both inside and outside the euro zone.'

311 The Commission thus explained that it did not have figures on injury which were broken down for the euro zone and for outside that zone. Moreover, it explained that it had found that there was injury to the cooperating producers (including Avery Berkel) with regard to sales to customers both in the euro zone and outside the euro zone. It therefore explained to the applicant the nature of the examination carried out by it.

312 The Commission replied properly to the applicant's question and provided it with all the information which it required in order to be able to defend its interests effectively. However, as the Council argues, the question whether the Commission properly took account of that factor has no bearing on the issue of observance of the applicant's rights of defence.

313 By question 11, the applicant asked 'how ... the Commission [was] able to establish clear dividing lines between the low, mid and high-range [electronic weighing scales] as used in its injury analysis', given that 'in the disclosure document at paragraph 2.1, it is stated that: "the investigation has shown that between the three segments there are no clear dividing lines, models in neighbouring segments often being interchangeable"'.

314 In its letter of 4 October 2000, the Commission gave the following reply to that question:

'In the current investigation the product concerned is the same as used in previous and ongoing investigations. All models used for comparison purposes in the current investigation were defined by the cooperating company concerned (whether exporting producer or Community producer) and these were verified as necessary.'

315 The Commission thus explained how it had divided the product into the low, mid and high-range segments. Consequently, the Commission's response sufficed to enable the applicant to defend its interests effectively.

316 Moreover, as the Commission rightly submits, the distinction between low-range electronic weighing scales and other electronic weighing scales was drawn for illustration purposes only and the injury analysis covered the entire product range (see paragraphs 127 to 131 above).

317 By question 12, the applicant submitted observations on the magnitude of the dumping:

'In the disclosure document at paragraph 4.4.1, it is stated that "the examination included all factors specifically listed in Article 3(5) of the basic regulation". However, there appears to be no analysis of the magnitude of the actual margin of dumping which is listed in Article 3(5) [of that regulation]. Was this factor considered irrelevant in the course of the investigation? In view of the very

significant level of undercutting margins established by the Commission which are much higher than the dumping margins established for the cooperating producers, how did the Commission [find] that it [was] the effects of dumping which caused the alleged injury? Did the Commission consider that the imports if made at non-dumped price levels would cause exactly the same alleged injury, because after elimination of the alleged dumping the price undercutting would still remain very substantial and nearly unchanged for most cooperating producers?'

318 The Commission gave the following answer in its letter of 4 October 2000:

'Your question is very hypothetical because you ask the Commission services to imagine a situation whereby sales of the exporting producers were not made at dumped prices. This is clearly not the case in this investigation. However, the Commission services examined all the relevant factors which may have had an impact on the injury suffered by the Community industry. In the "Causation" section of the disclosure document the causal link between the dumped imports from the countries concerned and the injury suffered by the Community industry was confirmed.'

319 The Court finds that the Commission responded properly to the applicant's question 12.

320 For the reasons set out above, the first part of the fourth plea must be rejected.

2. *Second part: infringement of Article 20(5) of the basic regulation*

(a) Arguments of the parties

321 The applicant submits that the Community institutions infringed Article 20(5) of the basic regulation by failing to grant it the minimum period of 10 days in which to prepare its observations on the disclosure document. The Commission's final response to the request for additional information was sent on 4 October 2000 and, since the deadline imposed on the applicant for the submission of its observations had been fixed at 11 October 2000, the applicant was not allowed the period prescribed by Article 20(5).

322 The applicant claims, first, that the Council has failed to explain why the applicant is wrong to argue that that period ought to have been calculated from the date of receipt of the clarification. Secondly, the applicant rejects the Council's interpretation that the final additional disclosure must be regarded as clarification and that there is no need to grant the parties a compulsory minimum period within which to make their representations. According to the applicant, that interpretation attributes little importance to the rights of defence in anti-dumping procedures. Thirdly, the applicant argues that it is sufficient to show that the mandatory time-limit provided for in the basic regulation was not observed. Finally, the applicant argues that, since final disclosure on the injury issues was made on 4 October 2000 and as there were public holidays in China, it was unable to submit its observations until 7 October 2000 and, because 7 and 8 October were a weekend, it in fact had only one day in which to prepare the observations in question. It wished, in particular, to verify the Commission's assertion that there was no physical difference between the models sold in the euro zone and those sold outside it and that there were comparable models, and also to verify the consumption figures supplied in an annex to the letter of 4 October 2000 and the evidence relating to exports of products other than electronic weighing scales but falling under the same Eurostat code. It argues that, in

anti-dumping procedures, it is essential that an absolute minimum of rights of the defence be guaranteed, including a period of at least 10 days for preparation by the parties of the defence of their interests.

323 The Council rejects the applicant's line of argument and submits, first, that final disclosure was made by letter of 21 September 2000 and that the time-limit was fixed at 11 October 2000. Thus, according to the Council, a period of more than 10 days was granted.

324 Secondly, the Council states that, even if the applicant's interpretation as regards the commencement of the period is correct, the fact that it did not have 10 days within which to prepare its representations cannot lead to annulment of the contested regulation. The Council argues that the applicant must establish that the failure to give it 10 days within which to prepare its observations on the clarification actually prevented it from defending its interests effectively. The Council argues that the letter of 21 September 2000 contained all the information needed by the applicant in order to defend its interests effectively.

325 Moreover, the Council contends that new factual allegations, namely that the applicant was unable to obtain evidence relating to the physical differences between the models sold in the euro zone and those sold outside it and evidence relating to the consumption figures, were not submitted until the stage of the reply and that they are therefore inadmissible. In any event, they are unfounded.

(b) Findings of the Court

326 Article 20(5) of the basic regulation provides that 'representations made after final disclosure is given shall be taken into consideration only if received within a period

to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter'.

327 In the present case, the Commission sent the disclosure document by letter of 21 September 2000. The deadline for making representations was fixed at 11 October 2000 and the period thus exceeded 10 days. By fax of 29 September 2000, the applicant requested additional information from the Commission. The Commission replied by two different letters, dated 29 September and 4 October 2000. By fax of 4 October 2000, the applicant sought an extension of the period set for the submission of its comments. The Commission refused the request by fax of 5 October 2000. By letter of 10 October 2000, the applicant submitted its comments on the information it had received from the Commission.

328 The applicant's main argument is that it ought to have been given a period of 10 days from the Commission's letter of 4 October 2000. The Council, however, takes the view that the period must begin on the date of disclosure of the final information, namely 21 September 2000.

329 Before it is examined whether the Council is right to claim that the letter of 21 September 2000 was in itself final disclosure and that the subsequent letters were mere clarifications, it is appropriate, first, to consider what the consequences would be in the present case if it were to be held that the letters of 29 September and 4 October 2000 also constituted final disclosure.

330 It is clear from the case-law that failure to set out certain factors in the disclosure document is not a breach of the applicant's rights of defence where it has been established that it became aware of that evidence on another occasion, at a time

when it was still possible for them effectively to make known their point of view in that respect before the Commission adopted its proposal for the adoption of the contested regulation (see, to that effect, *Champion Stationery*, cited in paragraph 288 above, paragraph 83).

331 Even if the applicant ought to have been given 10 days within which to lodge any representations with respect to the information which was not contained in the disclosure document sent to it on 21 September 2000 and even if that period was not observed, that fact cannot, in itself, lead to annulment of the contested regulation. It is also necessary to establish whether the Community institutions' failure to grant the applicant the period prescribed by Article 20(5) of the basic regulation within which to submit any comments on the abovementioned additional information was actually capable of affecting its rights of defence in the procedure in question.

332 In the comments made by it in response to the disclosure document sent to it by the Commission on 21 September 2000, the applicant challenged a number of points, including those examined above in regard to which it disputed the Commission's replies. The Commission's letters of 29 September and 4 October 2000 were replies to the questions put by the applicant in its fax of 29 September 2000. However, as was shown in paragraphs 295 to 320 above, there was no infringement of the applicant's rights of defence with regard to those questions. Moreover, the applicant was able to make its representations, on both the disclosure document and the Commission's additional replies, in its letter of 10 October 2000.

333 The applicant submits, in particular, that it was unable, in the short time available to it after receipt of the Commission's letter of 4 October 2000 providing additional information on injury, to obtain evidence that products other than electronic weighing scales but falling under heading CN 8423 8150 were exported from China and the other countries concerned.

334 That argument should not be upheld. On reading the disclosure document of 21 September 2000, the applicant became aware that the Commission had taken the view that all the exports recorded under that CN code were electronic weighing scales. Accordingly, this was not a new 'final disclosure'.

335 As regards the applicant's argument that it did not have time to verify the claim made by the Commission on 4 October 2000 that there was no physical difference between the models sold in the euro zone and those sold outside that zone and that there were comparable models, it should be pointed out that, in Table 4.2.2 of the disclosure document of 21 September 2000, the Commission set out (as indexed figures) the average prices for each segment in the euro zone and outside that zone, in order to support its reasoning concerning the impact of the introduction of the euro. In point 8 of its fax of 29 September 2000, the applicant stated that 'with regard to Table 4.2.2, [the applicant] would like to request disclosure of whether there is any physical difference between the models sold by the Community industry in the euro zone and the non-euro zone area on the basis of which this price comparison was established'. The Commission replied in its letter of 4 October 2000, stating that 'comparable models were used in table 4.2.2 and, therefore, there was no need to make adjustments for differences in physical characteristics'. In its letter of 10 October 2000, the applicant merely stated that 'further, the high price differences between the euro and non-euro zone sales by the EC complainant companies as documented by the Commission clearly demonstrate anti-competitive conduct by the complainants and the prevention of parallel imports within the single market'.

336 Thus, following the Commission's reply in its letter of 4 October 2000, the applicant did not even attempt to point out that its concerns had related to the existence of physical differences between the models sold in the euro zone and those sold outside it and to the comparability of those models. It must therefore be held that the rights of the defence were not infringed.

337 As regards the figures on consumption, which were contained in the April 2000 document and were sent to the applicant in the letter of 4 October 2000, it is sufficient to state that they were preliminary figures and that only the figures in the disclosure document of 21 September 2000 were relevant. Accordingly, the argument is irrelevant.

338 In its letter of 10 October 2000 the applicant was therefore able to express its point of view on the issues on which it disagreed with the Commission and to submit all the arguments which it subsequently put forward before the Court.

339 Accordingly, the applicant cannot claim that its rights of defence were infringed during the investigation procedure.

340 The applicant is likewise wrong to rely on Article 20(3) of the basic regulation, which states that 'where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time-limits set by the Commission'. The time-limit fixed in the letter of 21 September 2000 applied to the observations to be submitted and was not a time-limit for requests for final disclosure.

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

3. *The third part: infringement of Article 6(9) of the basic regulation and of Article 253 EC*

(a) Arguments of the parties

342 The applicant submits that the Council infringed Article 6(9) of the basic regulation by failing to conclude the investigation within one year. Moreover, the failure to justify the fact that that time-limit was exceeded in a sector which had already been the subject of several previous procedures is an infringement of Article 253 EC. The applicant relies on the case-law of the Court of First Instance (*NTN Corporation and Koyo Seiko*, cited in paragraph 167 above, paragraphs 119 to 125, and Case T-164/94 *Ferchimex* v *Council* [1995] ECR II-2681, paragraph 166).

343 The applicant submits that the period of one year is a general rule. If it is not possible to observe that time-limit, the investigation must be concluded within 15 months. That obligation relates, in particular, to cases in which it has been demonstrated that it is impossible to observe the time-limit of one year.

344 The Council rejects the applicant's claim and contends that its interpretation contradicts the clear wording of Article 6(9) of the basic regulation. The institutions are bound by an express obligation to conclude investigations within 15 months.

(b) Findings of the Court

345 First, as regards the case-law of the Court relied on by the applicant, according to which anti-dumping investigations may not continue beyond a reasonable period to be assessed in the light of the specific circumstances of each case (*Ferchimex*, cited in paragraph 342 above, paragraph 166), it should be pointed out that that case-law concerns Article 7(9)(a) of the former basic regulation.

346 Article 6(9) of the basic regulation does not, however, correspond to Article 7(9)(a) of the former basic regulation, which was worded as follows:

'An investigation shall be concluded either by its termination or by definitive action. Conclusion should normally take place within one year of the initiation of the proceeding.'

347 Article 6(9) of the basic regulation, which is applicable to the present case, states:

'For proceedings initiated pursuant to Article 5(9) [of that regulation], an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.'

348 Thus, unlike the earlier provision, Article 6(9) of the basic regulation lays down a guideline period of one year and a compulsory period of 15 months. The fact that provision is made for these two periods means that, if the Community institutions have failed to conclude the investigation within the guideline period of one year, it is sufficient for observance of the procedural rules laid down in the basic regulation that they conclude it within the compulsory period of 15 months and there is no need to examine whether a duration of more than the guideline period but less than the compulsory period is reasonable in the light of the facts of the case. Accordingly, it must be held that the case-law relied on by the applicant is inapplicable in cases in which the compulsory period of 15 months has been observed.

349 Secondly, in the present case, the procedure was initiated on 16 September 1999 by notice of initiation published in the Official Journal on the same day and concluded on 27 November 2000 by adoption by the Council of the contested regulation. Therefore, the investigation was not concluded within the guideline period of one year. However, it is clear that it was concluded well before expiry of the compulsory period of 15 months. Accordingly, it cannot be complained that the Community institutions infringed Article 6(9) of the basic regulation.

350 Thirdly, the Community institutions were therefore under no obligation to state why they had exceeded the guideline period of one year. Accordingly, there was likewise no infringement of Article 253 EC by the Community institutions.

351 Consequently, the third part of the fourth plea must likewise be rejected.

352 It follows from all the above that the action must be dismissed in its entirety.

Costs

353 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs incurred by the defendant, in accordance with the form of order sought by it.

354 The Commission, which intervened in the proceedings, must be ordered to bear its own costs pursuant to the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

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

hereby:

1. **Dismisses the action;**

2. **Orders the applicant to bear its own costs and to pay those incurred by the defendant;**

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

Tiili Pirrung Mengozzi

Meij Vilaras

Delivered in open court in Luxembourg on 28 October 2004.

H. Jung V. Tiili

Registrar President

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