JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

10 March 2009 *

In Case T-249/06,

Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT), formerly Nikopolsky Seamless Tubes Plant 'Niko Tube' ZAT, established in Nikopol (Ukraine),

Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT), formerly Nizhnedneprovsky Tube-Rolling Plant VAT, established in Dnipropetrovsk (Ukraine),

represented initially by H.-G. Kamann and P. Vander Schueren, and subsequently by P. Vander Schueren, lawyers,

applicants,

* Language of the case: English.

Council of the European Union, represented by J.-P. Hix, acting as Agent, assisted by G. Berrisch, lawyer,

defendant,

supported by

Commission of the European Communities, represented initially by H. van Vliet and T. Scharf, and subsequently by H. van Vliet and K. Talabér-Ricz, acting as Agents,

intervener,

APPLICATION for annulment of Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ 2006 L 175, p. 4),

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

composed of I. Pelikánová, President, K. Jürimäe (Rapporteur) and S. Soldevila Fragoso, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 10 June 2008,

gives the following

Judgment

Legal context

1 Article 2(10) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended by Council Regulation (EC) No 461/2004 of 8 March 2004

(OJ 2004 L 77, p. 12; 'the basic regulation'), lays down the criteria on the basis of which the institutions are to make a fair comparison between the export price and the normal value. It provides:

'A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are listed as follows.

…

(i) Commissions

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration. The term "commissions" shall be understood to include the mark-up received by a trader of the product or the like product if the functions of such a trader are similar to those of an agent working on a commission basis

…'

2 Article 3 of the basic regulation concerns the determination of the existence of injury. It provides:

'…

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.

…

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.

…'

3 Article 5 of the basic regulation is headed 'Initiation of proceedings'. Article 5(4) provides:

'An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Community industry.'

4 Finally, Article 19(3) of the basic regulation reads:

'If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct …'

Background to the dispute

5 The applicants, Nikopolsky Seamless Tubes Plant 'Niko Tube' ZAT, now Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) ('Niko Tube'), and Nizhnedneprovsky Tube-Rolling Plant VAT, now Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) ('NTRP') are Ukrainian

producers of seamless tubes and pipes. The applicants are connected with two sales companies: SPIG Interpipe, established in Ukraine, and Sepco SA, established in Switzerland.

6 Following a complaint lodged on 14 February 2005 by the Defence Committee of the Seamless Steel Tube Industry of the European Union, the Commission initiated an anti-dumping proceeding concerning imports of seamless pipes and tubes, of iron or steel, originating in Croatia, Romania, Russia and Ukraine, pursuant to Article 5 of the basic regulation. The Commission also initiated two interim reviews pursuant to Article 11(3) of the basic regulation on the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine. The notice of initiation of those proceedings was published on 31 March 2005 (OJ 2005 C 77, p. 2).

7 The investigation into dumping and resulting injury concerned the period from 1 January to 31 December 2004 ('the investigation period'). Examination of the trends relevant for assessing injury covered the period from 1 January 2001 to the end of the investigation period.

8 In view of the large number of Community producers supporting the complaint, the Commission proceeded, pursuant to Article 17 of the basic regulation, to select five Community producers for the purposes of the investigation. That sample initially comprised the following five Community producers: Dalmine SpA, Benteler Stahl/Rohr GmbH, Tubos Reunidos SA, Vallourec & Mannesmann France SA ('V & M France') and V & M Deutschland GmbH ('V & M Deutschland'). When Benteler Stahl/Rohr decided not to cooperate with the investigation, the Commission replaced it with Rohrwerk Maxhütte GmbH.

9 By letters of 6 June and 14 July 2005 the applicants, SPIG Interpipe and Sepco sent the Commission their responses to the anti-dumping questionnaire. On-site verifications

took place at the applicants' premises and those of SPIG Interpipe from 17 to 26 November 2005.

10 On 27 February 2006, the Commission sent the applicants the first disclosure document detailing the facts and considerations on the basis of which it was proposing to adopt definitive anti-dumping measures. By letter of 22 March 2006, the applicants officially challenged the Commission's findings as set out in the first disclosure document. They claimed that the Commission had wrongly included data on products which were not manufactured by them, that the Commission compared the normal value and export price at a different level of trade, which is contrary to the introductory part of Article 2(10) of the basic regulation, and that, by treating Sepco as an importer and constructing its export price, the Commission infringed Article 2(9) of the basic regulation.

11 On 24 March 2006, a hearing was organised by the Commission, in the presence of the applicants, in order to address the issue of the calculation of the dumping margin and their offer of a price undertaking. On 30 March 2006 another hearing, concerned with the injury, took place.

12 By fax of 3 April 2006, the applicants requested information from the Commission regarding the cooperation of the Community industry with the investigation.

13 On 24 April 2006, the Commission adopted its second disclosure document. In that document the Commission rejected the request for the exclusion of products falling under product control number ('PCN') KE4 from the calculation of the normal value. It carried out an adjustment to Sepco's sale prices, no longer on the basis of Article 2(9) of the basic regulation, but under Article 2(10)(i) of the basic regulation. Finally, in that document, the Commission provided some information regarding the cooperation of the Community industry.

14 By fax of 26 April 2006, the applicants reminded the Commission that the data provided in response to the anti-dumping questionnaire and verified by the Commission officials demonstrate that the atomic pipes falling under PCN KE4 were not produced by the applicants.

15 The applicants submitted their full observations on the second disclosure document to the Commission by letter of 4 May 2006.

16 By letter of 30 May 2006, the Commission explained to the applicants its reasons for not accepting their offer of undertaking submitted on 22 March 2006.

17 On 7 June 2006 the Commission adopted and made public its proposal for a Council regulation imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine.

18 By fax received by the applicants on 26 June 2006 at 19.06 hrs, the Commission replied to the arguments raised by the applicants in the fax of 26 April and the letter of 4 May 2006, save for the argument concerning lack of cooperation from the Community industry. By letter sent to the applicants on 16 June 2006, which they received on 27 June 2006, the Commission replied to the applicants' comments with regard to the support from the Community industry for the proceeding.

19 On 27 June 2006, the Council adopted Regulation (EC) No 954/2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ 2006 L 175, p. 4; 'the contested regulation').

20 By the contested regulation, the Council imposed anti-dumping duties of 25.1% on imports of seamless pipes and tubes, of iron or steel, from the applicants.

Procedure and forms of order sought

21 The applicants brought the present action by application lodged at the Registry of the Court of First Instance on 8 September 2006.

22 By application lodged at the Registry on 1 December 2006, the Commission applied to intervene in support of the form of order sought by the Council. By order of 16 January 2007, the President of the Fifth Chamber of the Court of First Instance granted leave to intervene. By letter of 27 February 2007, the Commission informed the Court that it waived its right to submit a written statement in intervention but would take part in the oral hearing.

23 Following a change in the composition of the chambers of the Court, the Judge-Rapporteur was assigned to the Second Chamber, to which, consequently, the present case has been assigned.

24 The applicants claim that the Court should:

— annul the contested regulation in so far as it affects the applicants;

— order the Council to pay the costs.

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

— dismiss the action;

— order the applicants to pay the costs.

Law

26 The applicants put forward six pleas in law in support of their action. In their first plea, the applicants claim that, by taking account, in the calculation of the normal value, of data concerning tubes that were not manufactured by them, the Council committed a manifest error of assessment and breach of the principle of non-discrimination. In the second plea, the applicants argue that, in using for the purposes of determining injury the data for the five Community producers selected in the sample, whereas those producers had not fully and entirely cooperated, the Council infringed Article 3(2), (3), (5), (6) and (7) and Article 19(3) of the basic regulation and the principle of non-discrimination. In their third plea, the applicants argue that, on account of the lack of full and entire cooperation of the Community producers taken as the sample, the level of support for the complaint was below the minimum specified in the regulation of 25% of Community production. The Council thus infringed of Article 5(4) of the basic regulation by not terminating the anti-dumping proceeding. In their fourth plea, the applicants argue that, by deducting from Sepco's sale price an amount corresponding to the commission which an agent, working on a commissions basis, would have charged, by way of adjustment, in comparing the normal value and the export price, the Council made a manifest error of assessment in applying Article 2(10)(i) and the first paragraph of Article 2(10) of the basic regulation. In their fifth plea, the applicants argue that the circumstances of the Council's rejection of the applicants' offer of undertaking constitute a breach of the principle of non-discrimination. Finally, the sixth plea is divided into five branches, alleging breach of the applicants' rights of defence and/or the obligation to state reasons: (i) in the treatment of the tubes allegedly not manufactured by the applicants for the purposes of calculating normal value; (ii) in the assessment of the alleged lack of cooperation from the Community industry; (iii) in the adjustment made on the export price charged by Sepco; (iv) in the rejection of the applicants' offer of undertaking; and (v) in the treatment of sales costs, administrative expenses and other general costs of SPIG Interpipe.

27 The Court considers that examination of these six pleas needs to be rearranged by reference to the facts to which they relate.

Calculation of the normal value

28 In the first plea and part of the sixth plea, the applicants rely on an identical fact, namely the fact that the Commission included in its calculation of the normal value data relating to products — certain atomic tubes — which the applicants did not manufacture.

29 According to the applicants, that fact has given rise to:

— a manifest error of assessment (first plea);

— an infringement of the principle of non-discrimination (first plea);

— an infringement of the rights of the defence and the obligation to state reasons (sixth plea).

Manifest error of assessment

— Arguments of the parties

30 In their first plea, the applicants argue that the Council made a manifest error of assessment by suggesting that data concerning pipes falling within the PCN KE4 and manufactured under technical standard TU l4-3P-197-2001 had not been verified and thus did not provide a sufficient level of assurance for the exclusion of those atomic pipes from the calculation of the dumping margin. By so doing, the Council failed both in its duty of diligence and its obligation to determine the normal value in a reasonable manner.

31 The applicants maintain that, in their answers to the Commission's questionnaire, they provided all the data proving that they did not manufacture those tubes. Those data were verified during the on-the-spot checks at the applicants' premises and were accepted without reservation by the Commission's officials.

32 According to the Council, whilst it is legally correct that calculation of the dumping margin cannot take account of data concerning products not manufactured by the parties under investigation, the applicants are wrong to claim that the Council infringed that rule in this case. The Council argues that the applicants' claim, to the effect that all relevant information concerning transactions falling under NCP KE4 had already been communicated in their reply to the questionnaire, is false. In order to make a decision excluding those transactions from the calculation of the dumping margin, it would have been necessary to make a fresh on-the-spot check.

33 In the first place, the Commission had no reason to assume that SPIG's sales lists contained any products that were not the product concerned. In particular, the reference to a Ukrainian manufacturing norm that was unknown to the Commission and for which no explanation was provided did not put the Commission on notice that

the products listed by the applicants might not be the product concerned. Moreover, the information allegedly indicating that the transactions in question did not relate to the product concerned represented only six lines out of over 16 000 lines of sales transaction data, and appeared in only six cells out of more than 600 000 in the tables completed by the applicants.

34 Secondly, whilst the Commission did verify the sales lists supplied by the applicants in general, it did not verify whether or not the sales related to the product concerned, since that was not its task. Instead, the Commission assumed that transactions concerning atomic tubes falling within technical standard TU l4-3P-197-2001 related to the product concerned. In addition, during the on-the-spot check, the Commission did not raise the question of tubes falling within NCP KE4, the applicants having not yet formulated their application for those transactions to be excluded from the calculation of the dumping margin.

35 Thirdly, the alleged mistake arose as a result of disregard by SPIG Interpipe itself of the Commission's reporting system, namely the six-symbol PCN code, and its decision to include data that could be interpreted only by reference to a Ukrainian manufacturing norm which was unknown to the Commission and which could not be a substitute for one half of the PCN code.

36 Fourthly, the applicants failed to submit any evidence clearly showing that the six transactions did indeed concern tubes and seamless tubes other than the product concerned, that those tubes were not manufactured by them, and that they had been bought from a third party.

37 Fifthly, the Council observes that, in the list of suppliers given in its reply to the questionnaire, SPIG Interpipe has mentioned only one supplier for the product falling within NCP KE4, namely one of the applicants, NTRP.

— Findings of the Court

38 It is clear from the case-law 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-413/03 *Shandong Reipu Biochemicals* v *Council* [2006] ECR II-2243, paragraph 61; see also, to that effect, Case 240/84 *NTN Toyo Bearing and Others* v *Council* [1987] ECR 1809, paragraph 19).

39 Review by the Community Courts of the institutions' assessments must therefore be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the disputed choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers (*NTN Toyo Bearing*, cited in paragraph 38 above, paragraph 19; Case C-16/90 *Nölle* [1991] ECR I-5163, paragraph 12; and *Shandong Reipu Biochemicals*, cited in paragraph 38 above, paragraph 62).

40 However, whilst the Community institutions have a wide power of appraisal, respect for the rights guaranteed by the Community legal order in administrative procedures is of even more fundamental importance. Those guarantees include, in particular, the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14; *Shandong Reipu Biochemicals*, cited in paragraph 38 above, paragraph 63).

41 Whilst in the area of commercial defence measures, and anti-dumping measures in particular, the Community Courts cannot intervene in the assessment reserved for the Community authorities, it is nevertheless for them to satisfy themselves that the institutions took account of all the relevant circumstances and appraised the facts of the matter with all due care, so that normal value may be regarded as having been

determined in a reasonable manner (Case T-48/96 *Acme* v *Council* [1999] ECR II-3089, paragraph 39; *Shandong Reipu Biochemicals*, cited in paragraph 38 above, paragraph 64; see also, to that effect, *Nölle*, cited in paragraph 39 above, paragraph 13).

42 It is in the light of the above considerations that the Court must examine whether, as the applicants claim, the Council made a manifest error of assessment by suggesting that the data concerning the atomic tubes falling under NCP KE4 and manufactured in accordance with technical norm TU 14-3P-197-2001 had not been verified and thus did not provide a sufficient level of assurance for the exclusion of those atomic pipes from the calculation of the dumping margin.

43 In that regard, first, it should be noted that it is undisputed that the calculation of the dumping margin cannot take account of data concerning products that are not manufactured by the parties under investigation.

44 Secondly, it has to be determined whether the information submitted by the applicants to the Commission during the investigation was sufficient for it to be concluded that they did not produce the atomic tubes at issue, with the result that it failed to examine, with care and impartiality, all the relevant aspects of the case and made a manifest error of assessment by holding that those aspects had to form the subject-matter of a fresh on-the-spot check at the applicants' premises.

45 The evidence on the Court's file shows that the national and European sales lists produced by the applicants, in their replies to the questionnaire, headed respectively 'DMsales' and 'ECsales', include, as the Commission has requested, a column headed 'Norm'. The applicants systematically entered the exact specification of the technical norm of each model of tube or pipe in that column. However, the norm TU 14-3P-197-2001 does not appear anywhere in that column, which is an indication that the applicants did not sell those atomic pipes, even to their associated sales company, SPIG Interpipe.

46 Moreover, it is apparent from examination of the applicants' lists of production costs for the products intended, respectively, for the national and European markets, those lists being headed 'DMcop' and 'ECcop', that the applicants do not produce those atomic pipes. Therefore, those lists prove that none of the products mentioned in the lists 'DMcop' and 'ECcop' were manufactured pursuant to technical norm TU 14-3P-197-2001.

47 However, the evidence on the file also shows that the list of sales on the national market, headed 'DMsales', produced by SPIG Interpipe in the context of its reply to the questionnaire, refers to six transactions concerning pipes falling within NCP KE4 and manufactured pursuant to technical norm TU 14-3P-197-2001.

48 Moreover, the list of suppliers and purchases of SPIG Interpipe mentioned a single supplier for pipes falling within NCP KE4, namely one of the applicants, NTRP. In that regard, it is clear from the explanations and documents supplied by the applicants, in the context of the measures of organisation of procedure adopted by the Court of First Instance, that the questionnaire which SPIG Interpipe had to complete concerned only sales to the Community and that the 'DMsales' list, concerning sales to the Ukraine market, was supplied only on a purely voluntary basis. Consequently, the list of suppliers and purchases of SPIG Interpipe should show only suppliers whose products had been resold in the Community. In so far as the evidence on file confirms that the pipes falling under code NCP KE4 and the technical norm TU 14-3P-197-2001 were resold on the Ukrainian national market and that all the pipes falling under code NCP KE4, but not technical norm TU 14-3P-197-2001, produced by NTRP were resold, by SPIG Interpipe, on the Community market, it must be held that SPIG Interpipe did not commit any error by making no mention, in its list of suppliers and purchases, of a supplier other than NTRP.

49 However, the fact, first, that the 'DMsales' list produced by SPIG Interpipe mentioned transactions concerning pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001 and, secondly, that the list of suppliers and purchases of SPIG Interpipe referred only to a single supplier for pipes falling under NCP KE4 may have been a source of confusion for the Commission officials charged with the investigation.

50 The Court therefore finds that, at the conclusion of a diligent assessment of the questionnaire replies by the applicants and their affiliated sales company, SPIG Interpipe, the Commission had contradictory information, or, at the very least, information the validity of which could be called into question.

51 It should also be noted that the applicants have not sought to dissipate the Commission's doubt in the face of those contradictions. For example, the written evidence shows that, following the adoption of the first final information document, at a hearing on 24 March 2006, the applicants supplied the Commission with several documents written in Ukrainian, those documents being supposed to be the invoices relating to the six transactions wrongly mentioned in SPIG Interpipe's sales list. Although a disagreement emerged between the parties at the hearing, as to whether, at the hearing on 24 March 2006, the Commission had requested a translation of those documents, it must be held that it was the responsibility of the applicants to adduce proof of what they were alleging, namely that the six transactions in question concerned purchases by SPIG Interpipe of pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001 from an independent supplier. Moreover, following the second final information document, dated 24 April 2006, the applicants reiterated their claim that data concerning those atomic pipes should be excluded, omitting once again to adduce the least evidence that the atomic pipes in question had been purchased from an independent third party.

52 It must therefore be held that, in view of the contradictory data appearing in the questionnaire replies and in the absence of proof that the atomic pipes in question had been purchased from an independent third party, a doubt subsisted as to the reliability of those data. Moreover, it follows from the above that the Commission showed all the required diligence in examining the data supplied by the applicants, and that it was right to state, in the second final information document, that it could not take account of that new, unverified, information.

53 It must therefore be concluded that the Commission complied with its obligation to examine, with care and impartiality, all the relevant factors of the case, and that it concluded, on the basis of that examination, that the data concerning those atomic pipes did not provide a sufficient level of assurance for the exclusion of those atomic

pipes from the calculation of the dumping margin, in the absence of a fresh verification. It follows that the normal value was determined in a reasonable manner, for the purposes of the case-law cited in paragraphs 40 and 41 above, and that the Council did not make any manifest error of assessment.

54 That conclusion is not called into question by the fact, raised by the applicants, that the Commission carried out a verification visit at the premises of the applicants and SPIG Interpipe, thereby implying, they submit, that all the data mentioned above should be regarded as verified and approved by the Commission. Since those data were contradictory, they did not allow it to be determined with certainty that the applicants did not produce the atomic pipes in question. Moreover, it should be noted that, at the time of the verification, the applicants had not yet informed the Commission that SPIG Interpipe had made an error in its 'DMsales' list. It was only after the adoption of the first final information document that the applicants informed the Commission of that error and formally notified it that they did not manufacture the atomic pipes falling under NCP KE4 and technical norm TU 14-3P-197-2001. Consequently, it cannot be maintained that verification enabled light to be shed on the contradictions vitiating the questionnaire replies sent to the Commission by the applicants and SPIG Interpipe.

55 The Court must therefore dismiss as unfounded the limb of the first plea alleging the existence of a manifest error of assessment in the calculation of normal value.

Infringement of the principle of non-discrimination

— Arguments of the parties

56 According to the applicants, the Council infringed the principle of non-discrimination by agreeing to exclude from calculation of the dumping margin all products not manufactured by the applicants falling within NCP codes AB2, AC4, BD3, BD4, BE3, CC6, EA1, EA2, EB1, GE5, HD1, HE1 and ID4, whereas it refused to do so in relation to the atomic pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001, while basing its decision on the same series of data duly verified in relation to costs and sales. They argue that the circumstances justifying the exclusion of the first series of transactions were exactly the same as those justifying the exclusion of the atomic pipes corresponding to technical norm TU 14-3P-197-2001.

57 The Council states that the Commission accepted the applicants' request seeking the exclusion of the first series of transactions, because the latter had not notified any production of those products or related production costs. Moreover, SPIG Interpipe had not indicated any purchases of those products from the applicants. The institutions thus took the view that they could accede to that request, without a new on-the-spot check being necessary, because they could reasonably take the view that the pipes in question had not been manufactured by the applicants, unlike the pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001.

— Findings of the Court

58 The principle of non-discrimination prohibits, first, treating similar situations differently and, secondly, treating different situations in the same way unless there are objective reasons for such treatment (Case C-422/02 P *Europe Chemi-Con (Deutschland)* v *Council* [2005] ECR I-791, paragraph 33).

59 It should be noted that, contrary to what the applicants allege, the circumstances surrounding the exclusion of the pipes falling within NCP codes AB2, AC4, BD3, BD4, BE3, CC6, EA1, EA2, EB1, GE5, HD1, HE1 and ID4 differ from the circumstances relating to the application for exclusion of the atomic pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001. In particular, it should be noted that, whereas pipes falling within NCP KE4 were produced by one of the applicants, namely NTRP, pipes falling within the other NCP codes did not appear anywhere in the applicants' lists of sales and production costs.

60 Moreover, as has already been pointed out in paragraph 48 above, SPIG Interpipe's list of suppliers and purchases rightly mentioned a single supplier for pipes falling within NCP KE4, namely one of the applicants, NTRP. Therefore, it must be held that the evidence on file concerning the atomic pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001 was particularly difficult to grasp, which was not the case with the evidence concerning the products which the Commission had agreed to exclude from calculation of the normal value. It follows that, whereas there was a doubt as to the reliability of the data concerning the atomic pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001, the applicants have not proved that such a doubt also existed in relation to pipes falling within other NCP codes.

61 In the light of the above, the Court must dismiss as unfounded the limb of the first plea alleging infringement of the principle of non-discrimination.

Infringement of the rights of the defence and the duty to state reasons

— Arguments of the parties

62 In their sixth plea, the applicants allege an infringement of the rights of the defence. They claim that the Commission sent them new factual evidence and new legal reasoning on 27 June 2006, the day on which the contested regulation was adopted. In addition, the Council infringed Article 253 EC requiring it to state reasons, in so far as the contested regulation did not supply any adequate response to the applicants' arguments concerning determination of the normal value.

63 Concerning infringement of defence rights, the Council maintains that the Commission provided explanations concerning determination of the normal value in the second final information document, dated 24 April 2006, and that the applicant replied to them in a communication dated 26 April 2006. Moreover, concerning the alleged infringement of the duty to state reasons, the Council argues that the matter at issue was a very precise question concerning a company and did not therefore need to be expressly dealt with in the contested regulation. In any event, the Council maintains, that question was dealt with in the letter of 26 June 2006 and the hearings of 24 and 30 March 2006.

— Findings of the Court

64 The case-law of the Court of Justice shows that the requirements following from compliance with defence rights must be observed not only in the course of proceedings which may result in the imposition of penalties, but also in investigative proceedings prior to the adoption of anti-dumping regulations which may directly and individually affect the undertakings concerned and entail adverse consequences for them (Case C-49/88 *Al-Jubail Fertilizer* v *Council* [1991] ECR I-3187, paragraph 15). In particular, the undertakings concerned should have been placed in a position during the administrative procedure in which they could 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 resultant injury (*Al-Jubail Fertilizer*, paragraph 17). Those requirements have also been set out in Article 20 of the basic regulation, paragraph 2 of which provides that complainants, importers and exporters and their representative associations, and representatives of the exporting country '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'.

65 It should also be recalled that, according to the case-law, the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure, so as to inform the persons concerned of the justification for the measure adopted and thus to enable them to defend their rights and the Community judicature to exercise its powers of review (Case T-48/96 *Acme Industry* v *Council* [1999] ECR II-3089, paragraph 141). On the other hand, the Council is not required to reply, in the statement of reasons for the regulation, to all the points of fact and law raised by the persons concerned during the administrative procedure (see, to that effect, Joined Cases T-371/94 and T-394/94 *British Airways and Others* v *Commission* [1998] ECR II-2405, paragraph 94). Nor is there a requirement that the statement of reasons give details of all relevant factual or legal aspects, the question whether it fulfils the applicable requirements having to be assessed with particular regard to the context of the act and to all the legal rules governing the matter in question (Case T-164/94 *Ferchimex* v *Commission* [1995] ECR II-2681, paragraph 118).

66 It is in the light of the above that the Court must determine whether the Council did in fact infringe defence rights and fail in its duty to state reasons.

67 Concerning, first, the infringement of defence rights, it should be noted, without it being necessary to rule on the essential character of the considerations concerning the exclusion of the atomic pipes falling within NCP KE4 and technical norm TU 14-3P-197-2001 from calculation of the normal value, that, contrary to what the applicants claim, no new element of fact or reasoning was communicated to them by the letters which they did indeed receive on 27 June 2006, namely the day on which the contested regulation was adopted. The applicants argue that the Commission stated for the first

time in those letters that the atomic pipes could not be excluded from the calculations of the dumping margin, because the data which it had at its disposal did not provide a sufficient level of assurance in the absence of a fresh verification. However, the Commission had already stated, in the second final information document, dated 24 April 2006, that, since its officials were not in a position to carry out a verification of the information provided by the applicants, it could not accede to their request. Moreover, it should be noted that the applicants replied to that remark by the Commission in their fax of 26 April 2006, so that they exercised their defence rights on that point.

68 Concerning, secondly, infringement of the duty to state reasons, it should be pointed out that, although the contested regulation does not make any reference to the question of products falling within NCP KE4, that is because that question is particular to the applicants. Therefore, since the second final information document, dated 24 April 2006, clearly and unequivocally shows the Commission's reasoning, the applicants cannot accuse the Council of failing in its duty to state reasons.

69 The Court must therefore dismiss the sixth plea, alleging infringement of the requirements following from compliance with defence rights and of the duty to state reasons, in so far as it concerns determination of the normal value, as unfounded.

The consequences of the lack of replies to the questionnaire from companies affiliated to the Community producers

70 In their second and third pleas and in part of the sixth plea, the applicants rely on an identical fact, namely that each of the five Community producers of seamless tubes and pipes, which the Commission had included in the sample on which it based its investigation, is affiliated to companies which failed to provide a reply to the questionnaire.

71 According to the applicants, that fact has resulted in:

— an infringement of Article 3(2), (3), (5), (6) and (7) of the basic regulation (second plea);

— an infringement of the principle of non-discrimination (second plea);

— an infringement of Article 19(3) of the basic regulation (second plea);

— an infringement of Article 5(4) of the basic regulation (third plea);

— an infringement of the rights of the defence and the duty to state reasons (sixth plea).

Infringement of Article 3(2), (3), (5), (6) and (7) of the basic regulation

— Arguments of the parties

72 In the second plea, the applicants argue that, in so far as each of the five Community seamless tube and pipe producers selected in the sample is affiliated to one or more

production or sales companies which failed to lodge a separate reply to the Commission's questionnaire, those five producers cannot be regarded as having fully cooperated. According to the applicants, the contested decision is based on an alleged total cooperation of the Community industry. The applicants conclude that the assessment of the injury infringes Article 3(2), (3), (5), (6) and (7) of the basic regulation.

73 In that respect, the applicants argue, first, that it is impossible to satisfy the abovementioned provisions of the basic regulation if all entities related to the Community producers and involved with the product concerned are not required to give their full and entire cooperation to the investigation.

74 Secondly, the applicants argue that infringement of the above provisions cannot be justified, as the Commission appears to do in its letter of 27 June 2006, by the fact that partial cooperation of a group to which a Community producer belongs does not have a noticeable impact on the determination of the injury suffered by that producer or by the Community industry as a whole. According to the applicants, the Commission thereby relies on the principle of 'harmless error'.

75 First, the applicants argue that the Commission does not claim that the principle of harmless error applies with regard to the exporting producers in that they too would be allowed to cooperate only partially in the investigation.

76 Secondly, the applicants argue, lack of complete information on the production of all related producers and sales to first unrelated customers is not a harmless error. First, transfer prices between members of the same group are not reliable, and, second, to exempt all related traders from submitting a questionnaire reply amounts to giving a blank cheque to the Community producers, allowing them to be selective in the supply of data, so as to influence the assessment of injury.

77 Thirdly, the applicants argue that the Commission's approach as to the lack of noticeable impact of partial cooperation of a group of companies is overly simplistic and therefore incorrect. Partial cooperation by certain entities in the group projects a partial and distorted picture of the group in question or of the Community industry as a whole.

78 Fourthly, the applicants argue that to adopt the principle of harmless error as a line of defence cannot excuse multiple violations of the provisions of Article 3 of the basic regulation.

79 Fifthly, the applicants argue that, if the Commission has not received full data and has not been able to verify those data, it cannot determine with certainty that the production and sales that were not submitted were sufficiently small in volume and value not to have an effect on the injury assessment.

80 Thirdly, the applicants argue that, in this case, the lack of full cooperation from the sampled Community producers has had a noticeable impact on the injury assessment for those producers and as a result for the Community industry as a whole. In particular, the Commission based its injury margin calculations almost totally on the transfer prices charged by the Community producers. That method involved a significant exaggeration of the injury margins.

81 In reply to the applicants' arguments, the Council argues that the institutions were right to regard all the sampled Community producers as cooperating.

82 The Council maintains that the concept of cooperation does not have to be literally understood as implying the provision of complete and exact replies to all the questions put by the Commission. The Commission will always assess whether and to what extent failure to provide certain information has compromised the investigation. That applies both to exporters and Community producers, even though the Commission may apply different criteria to exporters and to Community producers, since those two groups of companies supply information for different purposes. In that regard, the Council further maintains that it never intended to rely on the existence of a harmless error to justify the alleged infringements.

83 In this case, the Council argues, the Commission was right, in the light of the facts it had at its disposal, not to exclude any sampled company from the Community industry.

84 Concerning, first, the applicants' claim that calculation of the injury margin was distorted by reason of the lack of cooperation, the Council points out that the Commission needs the sales prices to the first independent buyer in order to establish the average sales prices of all Community producers and the weighted average undercutting margin. In the present case, the weighted average undercutting margin was 32%. It may be that with the inclusion of the missing sales from some related companies it would have been 30%, or 32%, or 35%, but that would not have affected the conclusion that significant undercutting did take place and that the dumped imports were causing injury to the Community industry. The Council also argues that the applicants' reference to the calculation of the injury margin is misplaced in this context. The injury margin is relevant only for the purpose of the lesser-duty rule, according to which the duty should be the lesser of the dumping or the injury margin. In the present case, inclusion of the sales of the product concerned by Vallourec & Mannesmann Oil & Gas Ltd ('VMOG United Kingdom') and Productos Tubolares, which together accounted for less than 8% of the Community industry's sales of the product concerned, could never have resulted in a reduction of the injury margin, assessed at 57%, below the dumping margin, assessed at 25.7%.

85 The Council then argues that the applicants merely assume that the complaining Community producers included in the sample were indeed non-cooperating. Since the absence of information for certain companies related to the Community producers did not materially affect the injury and causation analysis, that assumption is incorrect, and the allegation of infringement of Article 3(2), (3), (5), (6) and (7) of the basic regulation should be dismissed.

— Findings of the Court

86 As has already been pointed out in paragraphs 38 and 39 above, since, 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, review by the Community Courts of the institutions' assessments must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the disputed choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers.

87 Moreover, whilst, in the context of the basic regulation, it is for the Commission as the investigating authority to determine whether the product concerned by the anti-dumping procedure has been dumped and causes injury when placed in free circulation in the Community, and it is not therefore for that institution, in that context, to exonerate itself from part of the burden of proof which it bears in that regard (see, to that effect, Case T-121/95 *EFMA* v *Council* [1997] ECR II-2391, paragraph 74; *Acme*, cited in paragraph 41 above, paragraph 40), the fact remains that the basic regulation does not confer on the Commission any power of investigation allowing it to compel companies to participate in the investigation or to provide information. In those circumstances, the Council and the Commission depend on the voluntary cooperation of the parties in supplying the necessary information within the time-limits set. The replies of those parties to the questionnaire referred to in Article 6(2) of the basic regulation are therefore essential to the operation of the anti-dumping procedure (*Shandong Reipu Biochemicals*, cited in paragraph 38 above, paragraph 65).

88 Nevertheless, it is clear from Article 18 of the basic regulation, headed 'Non-cooperation' and more particularly from Article 18(3), that '[w]here the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability'.

89 It is in that context that the Court must examine whether, as the applicants claim, the fact that the companies related to the sampled Community producers did not lodge a reply to the questionnaire implies, on the part of those producers, a lack of cooperation which has distorted the analysis of the injury, contrary to Article 3(2), (3), (5), (6) and (7) of the basic regulation.

90 Although the parties to an anti-dumping proceeding are in principle required, pursuant to Article 6(2) of the basic regulation, to lodge a reply to the Commission's questionnaire, it follows from the wording of Article 18(3) of that regulation that information presented in another form or in the context of another document do not have to be ignored where the four conditions set out in that article are satisfied.

91 Thus, where a party has failed to lodge a reply to the questionnaire, but has supplied information in the context of another document, it cannot be accused of lack of cooperation if, first, any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding; secondly, the information is submitted in good time; thirdly, it is verifiable; and, fourthly, the party has acted to the best of its ability.

92 It follows that, contrary to what the applicants allege, the failure, by a company related to the Community producer, to lodge a reply to the Commission's questionnaire does not necessarily imply that that producer must be regarded as not cooperating. Thus,

that producer will not be regarded as not cooperating if the deficiencies in the production of the data have no significant impact on the running of the investigation.

93 In this case, the documents before the Court show that the Commission had drawn up and sent to each of the Community producers a specific questionnaire for their related production and sales companies. Those producers were thus required to submit a reply to that questionnaire for each of those related companies. The evidence produced by the Council shows, however, that no reply to that questionnaire was submitted by the following related companies:

— Vallourec Mannesmann Oil & Gas Germany GmbH ('VMOG Germany'), a production and sales company related to V & M Germany;

— Productos Tubulares, SA, a production and sales company related to Tubos Reunidos;

— Acecsa-Aceros Calibrados, SA ('Acecsa'), a production and sales company related to Tubos Reunidos;

— Almesa Almacenes Metalurgicos ('Almesa'), a trading company related to Tubos Reunidos;

— Dalmine Benelux BV, Dalmine France SARL, Dalmine Deutschland GmbH, Tenaris Global Services (UK), Eurotube Ltd, Quality Tubes Ltd, trading or resale-distribution companies related to Dalmine;

— Tenaris West Africa Ltd, a company related to Dalmine, responsible initially for the transformation of pipes and subsequently for administrative tasks.

94 The evidence on file also shows that a production and sales company, VMOG United Kingdom, related to V & M Germany and V & M France, submitted its reply to the questionnaire after the expiry of the time-limit. The Commission therefore did not take account of it for the purposes of determining the injury.

95 It therefore needs to be determined whether, for those companies, the four conditions laid down in Article 18(3) of the basic regulation are satisfied, so that the Council cannot be accused of making a manifest error of assessment by taking the view that the non-submission of questionnaire replies by the companies related to the Community producers did not distort either the determination of the injury of the calculation of the margin of injury.

96 Concerning, first, determination of the injury, an analysis must be made, for each related company, of the data which the Council and the Commission had at their disposal, in order to verify whether the insufficiencies on the part of those companies, caused by non-submission of questionnaire replies, did not make that determination excessively difficult. As regards related production and sales companies, particular attention must be paid to insufficiencies in data concerning the production and sales of related companies and their potential impact on determination of the injury. It also needs to be verified whether the data which the Council and the Commission had at their disposal satisfy the last three conditions laid down by Article 18(3) of the basic regulation.

97 As regards VMOG Germany, the replies to the written questions of the Court show that the Council based its reasoning on the following factors in assessing the impact of that company's non-submission of a reply to the questionnaire: the list of V & M Germany's sales transaction by transaction, the table showing the volume of V & M Germany's

production and the value of V & M Germany's sales. Those documents were submitted by V & M Germany on time and were verified by the Commission.

98 Since, as the documents produced by the Council confirm, the sales and production figures of VMOG Germany were included in the questionnaire replies of V & M Germany, they were taken into account in determining the injury. In those circumstances, the Court finds that the Council did not make a manifest error of assessment by not requesting VMOG Germany to submit a reply to the questionnaire and by taking the view that the lack of a questionnaire response from VMOG Germany did not distort the determination of the injury.

99 As regards Productos Tubulares, the replies to the Court's written questions show that the Council based its reasoning on the following factors in assessing the impact on the determination of the injury of that company's not submitting a questionnaire response: the confidential version of the reply to the presampling questionnaire of Productos Tubulares and a confidential annex to the complaint containing an estimate of the production and production capacity of the Community producers not supporting the complaint. Those data were supplied by Productos Tubulares on time.

100 It should be noted at the outset that, unlike Tubos Reunidos, Productos Tubulares did not support the complaint. Therefore, data concerning it should not, in principle, be taken into account in the analysis of the situation of the Community industry, appearing in recitals 155 to 176 of the contested regulation, that analysis being essential to the determination of the injury, unless to omit those data would distort that analysis. In that latter hypothesis, it was necessary either to take those data into account, or to exclude the data concerning Tubos Reunidos. In this case, on reading the documents produced by the Council, it appears that the production and sales of Productos Tubulares represented less than 3% of the total production and sales of the Community industry during the period under investigation. That means that, if the lack of a questionnaire response from Productos Tubulares did have an impact on determination of the injury and the causal link, that impact can only have been insignificant. Moreover, although the Council had no information at its disposal concerning the period prior to the investigation period, namely the period covering the years 2001 to 2003, the lack of

information concerning that period has no impact on determination of the injury, since the missing information could, at the most, have led the Council to underestimate the injury rather than overestimate it. Moreover, the Council had verified, at the premises of Tubos Reunidos, that no sale had taken place between that company and Productos Tubulares.

101 It must therefore be concluded that the Council did not make a manifest error of assessment by not requiring Productos Tubulares to submit a reply to the questionnaire and by holding that the lack of a questionnaire reply from that company did not distort determination of the injury.

102 Concerning Acecsa, the Council's pleadings show that, during the investigation period, that company merely bought a small amount of the product concerned from Tubos Reunidos, that amount being intended to be processed into a product other than the product concerned. The information on the file, and in particular the non-confidential version of the reply to the questionnaire by Tubos Reunidos, shows that, during the investigation period, that volume represented no more than 4% of Tubos Reunidos sales and no more than 1% of the total of the sales of the Community producers supporting the complaint. Having regard to the above, the non-submission of a questionnaire response by Acecsa cannot have significantly distorted the data used for determination of the injury. Moreover, as in the case of Productos Tubulares, although the Council did not have any information concerning the period prior to the investigation period, namely that covering the years 2001 to 2003, the absence of information concerning that period has no impact on determination of the injury, since the missing information could, at the most, have led the Council to underestimate the injury rather than overestimate it. Moreover, the reply to the questionnaire from Tubos Reunidos was submitted on time and was subject to a verification by Commission officials. In those circumstances, it must be held that the Council did not make a manifest error of assessment by not requiring Acecsa to submit a questionnaire reply in the proper form.

103 As regards Almesa, the Council's pleadings show that that company is a trading company. The volume of that company's sales was therefore taken into account in analysing the injury, by means of the sales of Tubos Reunidos which were intended for it. Moreover, it is apparent from the evidence on file, particularly the non-confidential version of the reply to the Tubos Reunidos questionnaire, that, on average, the prices

invoiced by Tubos Reunidos to Almesa were higher than those invoiced to independent customers. That means that the figure taken into account concerning the value of the sales was not underestimated and did not therefore distort the determination of the injury. Therefore, it must be held that the Council did not commit a manifest error of assessment by not requiring Almesa to supply additional information, in the form of a questionnaire reply in the proper form.

104 As regards Dalmine Benelux, Dalmine France, Dalmine Deutschland, Eurotube, Tenaris Global Services (UK) and Quality Tubes, the Council's pleadings show that Dalmine did not make any sales to Dalmine Benelux, Dalmine Deutschland and Eurotube during the investigation period. As regards Quality Tubes and Tenaris Global Services (UK), the confidential version of the reply to the Dalmine questionnaire contained a list of their sales transaction by transaction, which implies that that information was taken into account in the analysis of the injury. Finally, as regards Dalmine France, its sales in the Community were necessarily marginal, the total of Dalmine's sales to those six affiliated companies representing less than 4% of the total sales of the product concerned by the Community industry during the investigation period.

105 In any event, it is apparent from the evidence on file, and particularly from the non-confidential version of Dalmine's reply to the questionnaire — that version having been submitted on time and verified by the Commission's services — that Dalmine Benelux, Dalmine France, Dalmine Deutschland, Eurotube, Tenaris Global Services (UK) and Quality Tubes are active either in trading or in retailing and distribution. It follows that the volume of those companies' sales was taken into account in the analysis of the injury, by means of the sales which were made to those companies by Dalmine.

106 Having regard to the above, it must be held that the Council did not make a manifest error of assessment by not requiring Dalmine Benelux, Dalmine France, Dalmine Deutschland, Eurotube, Tenaris Global Services (UK) and Quality Tubes to supply additional information in the form of a questionnaire reply in the proper form, and by holding that Dalmine had cooperated with the investigation.

107 As regards Tenaris West Africa, the Council's pleadings show that that company did not participate either in the production or in the sale of the product concerned. It is further apparent from the answers to the written questions of the Court of First Instance that the Council based its reasoning on an electronic message from Dalmine to the Commission, dated 24 May 2006, in order to assess the impact of that company's not submitting a questionnaire reply. As that electronic message was submitted on time, it must be held that the Council did not commit a manifest error of assessment by not requiring that company to supply additional information in the form of a reply to the questionnaire in the proper form, and by holding that Dalmine had cooperated with the investigation.

108 Finally, concerning VMOG United Kingdom, it should be noted that, as that company submitted its reply to the questionnaire outside the time-limit, the information contained in that reply cannot be used in determining the injury. In any event, the evidence on file shows that that company did not support the complaint. The information concerning it should not therefore, in principle, be taken into account in analysing the position of the Community industry for the purposes of determining injury, unless such omission would distort that determination. In the latter case, it would be necessary either to take that information into account, or to exclude the information relating to V & M Germany and V & M France. In assessing whether the analysis would be distorted, the Council based its reasoning on the following documents: the table showing the production volume of VMOG United Kingdom, the table showing the volume and value of VMOG United Kingdom's sales and list, transaction by transaction, of the sales of V & M France.

109 As the documents produced confirm, the Council was able to determine, on the basis of the reply submitted out of time, that, during the investigation period, the sales of VMOG United Kingdom represented less than 3% of the total sales volume of the Community producers behind the complaint. Failure to take account of that 3% cannot have had a decisive impact on the determination of the injury. Moreover, it must be held that the information on which the Council based its reasoning in determining that company's share in the sales of the Community industry was submitted on time for the purposes of Article 18(3) of the basic regulation.

110 Therefore, it must be held that the Council did not make a manifest error of assessment in not excluding from the definition of the Community industry V & M Germany and V & M France, the sampled Community producers affiliated to VMOG United Kingdom.

111 Concerning, next, the calculation of the injury margin, the Council is correct to point out that, pursuant to Article 9(4) of the basic regulation, which lays down the lesser-duty rule, the injury margin is used to determine the rate of anti-dumping duty only if the dumping margin is higher than it is. In this case, the rate of the anti-dumping duty imposed on the applicants was based on the applicants' dumping margin, namely 25.7%, and not on the injury margin of 57%. Assuming the injury margin was based on the transfer prices charged by the Community producers in relation to VMOG United Kingdom, Productos Tubulares and the companies affiliated to Dalmine, sales to those companies represented at most 10% of the total sales of the Community industry. It would therefore have been necessary, as the Council points out, for the sales prices charged by those affiliated companies to have been totally disproportionate in relation to those of the other sales taken into account in the calculation of the injury margin for the latter to be brought to a level below that of the dumping margin.

112 Having regard to the above, it must be held that the Council did not make a manifest error of assessment in holding that the fact that the companies affiliated to the Community producers did not submit replies to the questionnaire did not distort determination of the injury or the calculation of the injury margin, and did not infringe Article 3(2), (3), (5), (6) and (7) of the basic regulation.

113 It follows that the limb of the second plea alleging infringement of Article 3(2), (3), (5), (6) and (7) of the basic regulation must be dismissed as unfounded.

Infringement of the principle of non-discrimination

— Arguments of the parties

114 In their second plea, the applicants claim that the Council infringed the principle of non-discrimination. Whereas the Commission required, in the context of the investigation, that all companies affiliated to producer-exporters of the product concerned reply to its questionnaire, it had no such requirement in relation to the sales companies affiliated to the Community producers.

115 The applicants consider that the explanation provided by the Commission does not justify the discriminatory treatment. First, whilst it is true that a dumping margin is calculated for each group of affiliated producer-exporters whereas the injury suffered by the Community industry is determined on the scale of the whole sector, it is not true that the two operations require a different degree of cooperation on the part of the parties concerned. According to the applicants, just as the dumping margin may be distorted if a group of affiliated producers supplies an answer in the name of one of their number which does not practise dumping whereas another does so, determination of the injury will, likewise, be distorted if a Community producer which operates at two different production sites, one of which suffers injury and the other does not, supplies an answer on the basis of the site that has suffered injury.

116 Secondly, the applicants argue that the procedure for calculating the injury margin requires producer-exporters and Community producers to provide exactly the same degree of cooperation, so that any discrimination between them is unjustified.

117 Thirdly, the applicants argue that the text of the questionnaire itself expressly requires Community producers to provide information not only for each affiliated production

company, but also for each affiliated sales company. In other words, it imposes the same requirements on them as on the producer-exporters.

118 The Council denies the existence of an infringement of the principle of non-discrimination. It argues that the applicants do not attempt at any stage to show that the fact that an exporter does not reply to a questionnaire for affiliated companies and the fact that a Community producer does not reply to it are similar situations. According to the Council, the alleged difference in treatment is justified by the different use for which the information sought is intended, namely determination of the injury in the case of the information supplied by the Community producers and calculation of the dumping margin in the case of the information supplied by the producer-exporters. Nor, the Council submits, do the applicants demonstrate that the Commission actually treated exporters and Community producers differently.

— Findings of the Court

119 It is in the light of the case-law cited in paragraph 58 above that the Court must examine the alleged infringement of the principle of non-discrimination. According to that case-law, there cannot be discrimination unless the position of Community producers and that of producer-exporters are, in the particular case, similar, and the former have received different treatment from the Commission from that given to the latter.

120 It should be noted at the outset, without particular reference to the present case, that the position of producer-exporters faced with the obligation to reply to the Commission's questionnaire and that of Community producers faced with the same obligation are, in principle, dissimilar. As the Council has pointed out in its pleadings, the reply to the questionnaire which the producer-exporters have to supply has as its purpose the determination of the dumping margin, which is based on data individual to each undertaking. By contrast, the reply to the questionnaire which Community producers have to supply has as its purpose determination of the injury, which is based on an analysis of the whole of the Community industry.

121 The possibility cannot, however, be excluded that, in this case, the circumstances which led the Commission to conclude that it was necessary for the producer-exporters to submit a reply to the questionnaire for all their affiliated companies were similar to those which led it to conclude that there was no lack of cooperation on the part of the Community producers mentioned in paragraphs 93 and 94 above in the event that such a reply was not submitted.

122 Nevertheless, the fact remains that the applicants have attempted to demonstrate that in theory the position of the producer-exporters and the Community producers was comparable, but have not in any way proved that it was so in this case.

123 Moreover, it should be noted that the applicants have not put forward the least evidence that the producer-exporters and the Community producers were in fact treated differently by the Commission. In their pleadings, they merely assert that the Commission admits that it does not require companies affiliated to Community producers to reply to the questionnaire. However, they do not prove that such a requirement was placed on producer-exporters.

124 It follows from the above that the applicants have not in any way proved the allegedly discriminatory character of the Commission's decision not to require companies affiliated to Community producers to submit a reply to the Commission questionnaire.

125 Therefore, the limb of the second plea alleging infringement of the principle of non-discrimination must be dismissed as unfounded.

Infringement of Article 19(3) of the basic regulation

— Arguments of the parties

126 In their second plea, the applicants argue that supposing, as the Council claims, the investigation file contains data showing that the absence of questionnaire replies from companies affiliated to the Community producers had no significant impact on the assessment of the injury suffered by Community producers, the Council could not, in accordance with Article 19(3) of the basic regulation, validly rely on those data, because the non-confidential investigation file contains no information of that type.

127 The Council argues that Article 19(3) of the basic regulation does not provide that information of which no non-confidential summary is supplied must always be disregarded, but that the information may be disregarded, save where it can convincingly be demonstrated from appropriate sources that it is correct. The obligation on the parties to an anti-dumping investigation, set out in Article 19(3) of the basic regulation, to supply a non-confidential summary of the information which they submit to the Commission is, the Council submits, designed to protect the defence rights of the other parties. The Council concludes that the applicants cannot rely, as a ground for annulment of an anti-dumping measure, on use by the Commission of information of which no non-confidential summary was provided unless they are able to demonstrate that use of that information constituted an infringement of their defence rights. That, the Council submits, is not the case here.

— Findings of the Court

128 It should be noted at the outset that the applicants' claim of infringement of Article 19(3) of the basic regulation was raised for the first time in their reply. In

principle, new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure (Case T-107/04 *Aluminium Silicon Mill Products* v *Council* [2007] ECR II-669, paragraph 60).

129 In the present case, it was in reply to the information communicated by the Council for the first time in paragraphs 52, 53, 55, 59, 60 and 64 and in footnote 31 of the defence that the applicants raised that new plea. The applicants' new claim of infringement of Article 19(3) of the basic regulation is thus based on facts which were revealed during the proceedings, and must therefore be regarded as admissible.

130 As for whether that claim is well founded, it should be noted, first, that the wording of Article 19(3) of the basic regulation gives the Commission only the possibility of disregarding confidential information of which no non-confidential summary is available.

131 Secondly, it should be noted that the aim of Article 19 of the basic regulation is to protect not only the business secrets but also the defence rights of the other parties to the anti-dumping proceeding. That, as the case-law shows, implies that, in an anti-dumping proceeding, irregularities in the Commission's communication of non-confidential summaries cannot constitute an infringement of procedural rights justifying annulment of the regulation fixing the anti-dumping duties unless the person concerned did not have sufficient knowledge of the essential content of the document or documents in question and was therefore not able validly to express his point of view on their accuracy or relevance (see, to that effect, concerning Article 8(4) of Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1), the legislative content of which is identical in substance to that of Article 19(3) of the basic regulation, Case T-2/95 *Industrie des poudres sphériques* v *Council* [1998] ECR II-3939, paragraph 137). Therefore, this Court agrees with the Council that use by the Commission of information of which no non-confidential summary was supplied cannot be relied upon by parties to an anti-

dumping proceeding as a ground for annulment of an anti-dumping measure unless they are able to demonstrate that use of that information constituted an infringement of their defence rights.

132 It is in that context that it needs to be verified whether the Commission and the Council have infringed Article 19(3) of the basic regulation. In that regard, the Council states, in its answers to the questions put by the Court, that, in order to verify that the non-submission of questionnaire replies by companies affiliated to the Community producers had no impact on assessment of the injury, the Commission based its reasoning on the following documents:

— for VMOG Germany: the transaction by transaction list of the sales of V & M Germany, the table showing the production volume of V & M Germany and the table showing the volume and value of the sales of V & M Germany; in other words, the Commission based its reasoning on matters contained in the questionnaire reply of V & M Germany, a non-confidential version of which had been submitted;

— for VMOG United Kingdom: the table showing the production volume of VMOG United Kingdom, the table showing the volume and value of VMOG United Kingdom sales and the transaction by transaction list of the sales of V & M France; whereas that latter list was contained in the confidential version of the questionnaire reply of V & M France, of which a non-confidential version existed, the first two tables were contained in the confidential version of VMOG United Kingdom's questionnaire reply, of which no non-confidential version existed;

— for Productos Tubulares: the confidential version of the presampling questionnaire reply of Productos Tubulares and a confidential annex to the complaint comprising the estimate of the production capacity and production of the Community producers not supporting the complaint; whereas a non-confidential version existed of the latter document, there was none of the former;

— for Acecsa: Section D.2 of the questionnaire reply of Tubos Reunidos, of which a non-confidential version existed;

— for Almesa: the transaction by transaction list of the sales of Tubos Reunidos; that list was contained in the confidential version of that company's questionnaire reply, of which a non-confidential version also existed;

— for Dalmine Benelux, Dalmine France, Dalmine Deutschland, Eurotube, Tenaris Global Services (UK) and Quality Tubes: matters contained in the confidential version of the reply to the questionnaire reply of Dalmine, of which a non-confidential version existed;

— for Tenaris West Africa: an email from Dalmine to the Commission, dated 24 May 2006, of which there was no non-confidential version.

133 It therefore needs to be determined whether the fact that the Commission based its reasoning on the confidential version of VMOG United Kingdom's questionnaire reply, the confidential version of the presampling questionnaire reply of Productos Tubulares and the email of 24 May 2006, there being no non-confidential version of those documents in existence, constituted an infringement of defence rights.

134 The existence of such an infringement needs to be determined in the light of the case-law cited in paragraph 64 above. According to that case-law, the interested parties must have been placed in a position in which they were able effectively to make their point of view known concerning the evidence used by the Commission in support of its

allegation of the existence of a dumping practice and the resulting injury. However, infringement of the right of access to the investigation file can result in total or partial annulment of the contested regulation only if there is a chance, which may be slight, that disclosure of the documents in question might have caused the administrative procedure to have a different result if the undertaking concerned had been able to rely on them during that procedure (see, to that effect, Case T-206/07 *Foshan Shunde Yongjian Housewares & Hardware* v *Council* [2008] ECR II-1, paragraph 71).

135 In this case, the applicants argue that they needed those documents in order to prove that the lack of questionnaire replies from VMOG United Kingdom, Tubos Reunidos and Tenaris West Africa distorted the analysis of the injury. However, this Court has held in paragraphs 101, 108 and 107 respectively that the Council did not make any manifest error of assessment by holding that non-submission of questionnaire replies from Productos Tubulares, VMOG United Kingdom and Tenaris West Africa, or failure to take those replies into account, had no impact on the determination of the injury. Therefore, there was no likelihood that disclosure to the applicants of the non-confidential versions of the VMOG United Kingdom questionnaire reply, the presampling questionnaire reply of Productos Tubulares and the email of 24 May 2006 could have caused the administrative procedure to have a different result.

136 It follows that the limb of the second plea alleging infringement of Article 19(3) of the basic regulation must be dismissed as unfounded.

Infringement of Article 5(4) of the basic regulation

— Arguments of the parties

137 In support of their third plea, the applicants argue that by not terminating the proceeding when the level of support for the complaint was below the statutory minimum of 25% of Community production, by reason of the non-cooperation of the Community industry, the Council infringed Article 5(4) of the basic regulation.

138 The Council points out that that plea is based on the allegation that the Community producers at the origin of the complaint and selected in the sample did not cooperate. Since that argument is, the Council submits, erroneous for the reasons set out in the context of the second plea, the third plea must be dismissed.

— Findings of the Court

139 Article 5(4) of the basic regulation does not place any obligation on the Commission to terminate an anti-dumping proceeding in progress where the level of support for the complaint falls below a minimal threshold of 25% of Community production. That article concerns only the degree of support for the complaint necessary for the Commission to be able to initiate a proceeding. That interpretation is confirmed by the wording of Article 9(1) of the basic regulation, according to which '[w]here the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest'. Thus, even if the complaint is withdrawn by the Community industry, the Commission is not placed under an obligation to terminate the proceeding, but merely has the option to do so.

140 In the present case, the necessary degree of support had been attained at the opening of the anti-dumping proceeding but allegedly fell below the 25% threshold during the proceeding, when the Commission asked Community producers to reply to its questionnaire. Therefore, the Council cannot be accused of any breach of Article 5(4) of the basic regulation in this case.

141 Moreover, even if Article 5(4) of the basic regulation had placed an obligation on the Commission to terminate the proceeding when the level of support for the complaint fell below a minimum threshold of 25% during the proceeding, such an infringement is not constituted in this case. It was concluded in paragraph 112 above that the Council did not make a manifest error of assessment by holding that the non-submission of questionnaire replies by companies affiliated to the Community producers had no impact on the analysis of the injury caused to the Community industry. That means that the sampled Community producers must be regarded as cooperating, which implies that no diminution in the degree of support for the complaint can be found.

142 Therefore, the third plea must be dismissed as unfounded.

Infringement of defence rights and the duty to state reasons

— Arguments of the parties

143 In their sixth plea, the applicants claim that their defence rights have been infringed. In that respect, they argue that the fact that the Council considered that the absence of full and entire cooperation of certain sampled Community producers had no significant impact on the assessment of the injury suffered by those producers and by the

Community industry as a whole was communicated to them only on the day of the contested regulation. The Council also failed in its duty to state reasons, since the contested regulation did not provide an adequate response to the applicants' argument on lack of cooperation from the Community industry.

144 The Council points out that the applicants submitted observations concerning lack of cooperation of the Community industry in two letters dated 3 April and 4 May 2006 and received a reply from the Commission in the second final information document. As regards the alleged infringement of the duty to state reasons, the contested regulation described the composition of the Community industry at the origin of the complaint and the choice of the sample. Moreover, the Commission replied to the applicants' allegations in the second final information document, in its note in reply to the observations of the applicants on the first final information document and in its letter of 16 June 2006.

— Findings of the Court

145 It is in the light of the case-law cited in paragraphs 64 and 65 above that this Court must examine the applicants' sixth plea, alleging infringement of defence rights and the duty to state reasons, in so far as it concerns determination of the injury.

146 Concerning, first, the alleged infringement of defence rights, it should be noted that although, as mentioned in paragraph 64 above, the legislature intended to confer on the parties concerned, particularly exporters, a right under Article 20(2) of the basic regulation to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive anti-dumping duties (Case T-147/97 *Champion Stationery and Others* v *Council* [1998] ECR II-4137, paragraph 55), the Commission is not required to inform the parties concerned of all the various

factual or legal matters relevant in that respect (see, to that effect, *Ferchimex* v *Commission*, cited in paragraph 65 above, at paragraph 118).

147 In this case, the applicants claim, essentially, that the fact that the Council informed them belatedly of the particular reasons why it regarded the sampled Community producers as having validly cooperated in the investigation constitutes an infringement of defence rights.

148 It should be noted that, although questions relating to the definition of the Community industry and the validity of the sample of Community producers selected by the Commission are essential to determination of the injury, the Commission is not required to inform the parties concerned of the details of the assessment of that injury. In particular, the fact that, in this case, the Commission considered that it was not necessary for certain companies affiliated to Community producers to submit a reply to its questionnaire, since the replies which those companies would have given would have been without impact on the analysis of the injury, was not a consideration essential to the determination of the injury which the Commission was required to specify in the final information document.

149 In that respect, it should be noted that the first final information document, dated 27 February 2006, contained in point 1.4.2 a general statement of reasons for the selection of the sample of Community producers and, in point 4.1, a general description of the Community producers supporting the complaint and regarded as forming the Community industry for the purposes of Articles 4(1) and 5(4) of the basic regulation, the investigation, and, in particular, the determination of the injury. Point 1.4.2 referred to a Community producer, initially selected to form part of the sample, having failed to cooperate and thus having been replaced in the sample by another Community producer.

150 Following that first final information document, by letter of 3 April 2006, the applicants requested more detailed explanations as to the composition of the sample, particularly as to the identity of the Community producer which had refused to cooperate, the date

of the submission of the VMOG United Kingdom and Rohrwerk Maxhütte questionnaire replies, the cooperation of VMOG United Kingdom, and the support given by Productos Tubulares to the complaint.

151 The Commission replied to each of those requests for information in points 3 to 6 of Annex C to the second final information document, dated 24 April 2006. The applicants then made further observations on those various points, in their letter of 4 May 2006. The Commission replied in a letter dated 16 June 2006, which reached the applicants on 27 June 2006, as is demonstrated by the documents produced by the latter.

152 Although the Commission's observations in reply to the letter of 4 May 2006 did not reach the applicants until 27 June 2006, the day on which the contested regulation was adopted, the Court finds that the applicants were not only put in a position to make their views effectively known on the question of the definition of the Community industry and the validity of the sample, but actually expressed their position on those questions. The letter of 16 June 2006 followed an exchange of observations between the applicants and the Commission, namely the exchange described in paragraphs 149 to 151 above.

153 The limb of the sixth plea alleging infringement of defence rights must therefore be dismissed in so far as it concerns the question of the cooperation of the Community industry.

154 As for the alleged infringement of the duty to state reasons, it should be noted that, in accordance with the case-law cited in paragraph 65 above, the Council is not required to reply, in the statement of reasons for the regulation, to all the points of fact and law raised by the persons concerned during the administrative procedure. Moreover, also pursuant to that case-law, by reference to the context, there is no requirement that the reasoning specify all the various factual or legal factors which are relevant.

155 As has been pointed out in paragraph 148 above, the fact that the Commission considered it unnecessary for certain companies affiliated to the Community producers to submit a reply to its questionnaire, because the answers which those companies would have been able to give would have had no impact on the analysis of the injury, was not a consideration essential to the determination of the injury which the Commission was required to specify in the contested regulation. The considerations essential to the determination of the injury which the Council was required to mention in the contested regulation relate to the definition of the Community industry and the sample of the Community producers.

156 Since recital 12 of the contested regulation contains a general statement of reasons for the selection of the sample of Community producers, and recital 14 contains a general description of the questionnaires received, accepted and verified, the Council cannot be accused of infringing the duty to state reasons.

157 Moreover, the letter of 16 June 2006, received by the applicants on 27 June 2006, contained the essential elements in the Commission's reasoning which led it to consider that it was not necessary for certain companies affiliated to the Community producers to submit a reply to its questionnaire, since the replies which those companies would have been able to give would have had no impact on the analysis of the injury.

158 It follows that the limb of the sixth plea alleging infringement of the duty to state reasons, in so far as it concerns the question of the cooperation of the Community industry, must be dismissed.

The adjustment made on the Sepco sale price

159 In their fourth plea and part of their sixth plea, the applicants rely on an identical fact, namely the fact that the Council deducted from the sale price invoiced by Sepco to unconnected importers in the Community an amount corresponding to a commission, without demonstrating that Sepco's functions are similar to those of an agent operating on a commission basis.

160 According to the applicants, that fact gave rise, on the part of the Council, to:

— a manifest error of assessment in applying Article 2(10)(i) of the basic regulation (fourth plea);

— a manifest error of assessment in applying Article 2(10), first paragraph, of the basic regulation (fourth plea);

— an infringement of the rights of the defence and of the duty to state reasons (sixth plea).

Manifest error of assessment in applying Article 2(10)(i) of the basic regulation

— Arguments of the parties

161 In their fourth plea, the applicants maintain that, by deducting an amount corresponding to a commission from the sale price invoiced by Sepco to unconnected importers in the Community, without demonstrating that Sepco's functions were similar to those of an agent operating on a commissions basis, the Council made a manifest error of assessment in applying Article 2(10)(i) of the basic regulation. In particular, the Council did not discharge the burden of proof upon it either in the contested regulation or in the fax of 26 June 2006.

162 As for the contested regulation, the Council simply declared there, in recital 132, that the export price had been adjusted for commissions pursuant to Article 2(10)(i) of the basic regulation when the sales took place through connected traders, since the latter carried out functions similar to those of an agent working on a commission basis.

163 As for the fax of 26 June 2006, the applicants state that, in that fax, the Commission took account of the following factors:

— the applicants carried out direct sales of the product concerned in the Community;

— the sales company affiliated to the applicants in Ukraine, namely SPIG Interpipe, intervened as a sales agent for sales carried out by Sepco;

— Sepco's links with the applicants are insufficient, and do not support the conclusion that it is under the control of the latter or of SPIG Interpipe, as would be the case, in fact and in law, if Sepco were an integrated export service.

164 The applicants consider that those facts are not relevant.

165 First, the Commission took into account, in that fax, only indirect facts having no connection with the functions of Sepco and which are not in any way sufficient to show that Sepco intervened in the capacity of an agent.

166 Second, the applicants emphasise that, even if they did carry out direct sales in the Community, they pursued those sales to the new Member States during a transitional phase. Moreover, it was not because the Ukrainian commercial company SPIG Interpipe continued to carry out certain intermediary tasks between Sepco and the applicants that the role of Sepco could not be that of a commercial service of the applicants.

167 Third, the applicants point out that the Commission does not invoke any provision of law in support of its point of view that unless companies share the same ultimate beneficiaries so as to share a common control they cannot *de jure* or *de facto* be considered part of a single economic entity such that the trading companies can be considered to have the functions of an integrated export department. In the applicants' submission, such common control exists *de facto*. That control should have been known to the Commission, the applicants' representatives having been present at the

verification visits on Sepco's premises and certain revised data requested by the Commission having been transmitted to it by the representatives of Sepco.

168 Fourth, the applicants argue that Sepco's situation is no different from that of sales companies of which the results are consolidated with those of their affiliated producers for the determination of normal value in the exporting company. In these instances, neither the Council nor the Commission enquired whether the companies shared the same ultimate beneficiaries or common control. The mere existence of capital being held directly or indirectly at 5% or more was considered sufficient for normal value to be determined at the level of the single economic entity constituted of the producer and its related sales companies which were considered to act as the trading department of the company concerned.

169 To the applicants' arguments, the Council replies that Sepco was not the applicants' integrated export sales service towards the Community, but a trader whose functions were similar to those of an agent working on a commission basis.

170 First, the Council maintains that, even though they raise a question of the burden of proof when formulating their allegations concerning the function of Sepco, the applicants are in reality challenging the conclusion of the institutions that Sepco was a trader whose functions were similar to those of an agent working on a commission basis. The relevant question henceforth, they argue, is whether the institutions based their reasoning on evidence capable of demonstrating, or allowing it to be inferred, that the functions of Sepco were those of a trader working on a commission basis and that they were of such a kind as to affect comparability between the export price and the normal value. The Council and the Commission had highlighted that evidence.

171 Secondly, the Council argues that the applicants have not supplied the least evidence to prove that its conclusions were vitiated by a manifest error of assessment.

172 First, the applicants wrongly maintained that the fact that Sepco was an independent company was of no importance. Nor did they ever provide proof that they themselves — or the common parent company, Allied Steel Holding BV, in the case of Sepco and NTRP — exercised control over Sepco.

173 Second, the applicants were equally wrong to suggest that the mere fact of holding 5% of capital in common was sufficient to support the conclusion that Sepco was their integrated export service.

174 Third, the applicants did not take account of the fact that their relationship with Sepco was that of a buyer and a seller.

175 Fourth, since the applicants do not deny that they both carried out direct sales to independent customers, in the Community or in non-member countries, those sales clearly showed that they had their own integrated export sales services.

176 Fifth, the Council argues that the applicants are wrong to claim that the presence of representatives of the applicants at the verification visits at Sepco's premises and their participation in the investigation should have led the institutions to conclude that, despite its distinct legal personality, Sepco was in fact the applicants' export service. In reality, all the institutions could deduce from that was that, Sepco and the applicants being connected companies, they cooperated in the context of the investigation.

— Findings of the Court

177 According to consistent case-law concerning the calculation of the normal value, but applicable by analogy to the calculation of the export price, the sharing of production and sales activities within a group formed by legally distinct companies does not alter the fact that one is dealing with a single economic entity which organises in that manner a series of activities which are carried out, in other cases, by an entity which is also a single entity from the legal point of view (see, by analogy, Case 250/85 *Brother Industries* v *Council* [1988] ECR 5683, paragraph 16; Case C-175/87 *Matsushita Electric* v *Council* [1992] ECR I-1409, paragraph 12; Case C-104/90 *Matsushita Electric Industrial* v *Council* [1993] ECR I-4981, paragraph 9).

178 It should be noted that, where it is found that a producer entrusts tasks normally falling within the responsibilities of an internal sales department to a company for the distribution of its products which it controls economically and with which it forms a single economic entity, the fact that the institutions base their reasoning on the prices paid by the first independent buyer from the affiliated distributor is justified. Taking the prices of the affiliated distributor into account avoids costs which are clearly included in the sale price of a product when that sale is carried out by an integrated sales department in the producer's organisation no longer being included where the same sales activity is carried out by a company which is legally distinct, even though economically controlled by the producer (see, to that effect, and by analogy, Case C-171/87 *Canon* v *Council* [1992] ECR I-1237, paragraphs 9 to 13).

179 The case-law also shows that a single economic entity exists where a producer entrusts tasks normally falling within the responsibilities of an internal sales department to a company for distributing its products which it controls economically (see, to that effect, *Canon* v *Council*, cited in paragraph 178 above, at paragraph 9). Moreover, the capital structure is a relevant indicator of the existence of a single economic entity (see, to that effect, Opinion of Advocate General Lenz in Case C-75/92 *Gao Yao* v *Council* [1994] ECR I-3141, I-3142, point 33). It has also been held that a single economic entity

may exist where the producer assumes part of the sales functions complementary to those of the distribution company for its products (*Matsushita Electric Industrial*, cited in paragraph 177 above, paragraph 14).

180 It should, moreover, be remembered that, just as a party who is claiming adjustments under Article 2(10) of the basic regulation in order to make the normal value and the export price comparable for the purpose of determining the dumping margin must prove that his claim is justified, it is incumbent upon the institutions, where they consider that they must make an adjustment, to base their decision on direct evidence or at least on circumstantial evidence pointing to the existence of the factors for which the adjustment was made, and to determine its effect on price comparability (Case T-88/98 *Kundan and Tata* v *Council* [2002] ECR II-4897, paragraph 96).

181 It is in the light of the above considerations that it needs to be verified whether the institutions have proved, or at least adduced evidence, that the functions of Sepco are not those of an internal sales department but comparable to those of an agent working on a commission basis.

182 In its fax sent to the applicants on 26 June 2006, the Commission set out three factors on which it based its conclusion that Sepco carried out functions comparable to those of an agent working on a commission basis. First, the applicants carried out direct sales of the product concerned in the Community. Second, SPIG Interpipe, the connected sales company in Ukraine, intervened as a sales agent for sales of the applicants to Sepco. Third, Sepco's links with the applicants were insufficient and did not support the conclusion that it was under the applicants' control, or that there was a control common to Sepco and the applicants.

183 The applicants drew attention to the nature of Sepco's functions in two letters to the Commission of 22 March and 4 May 2006. They stated in those letters that the functions of Sepco were the following: Sepco provides daily contact with existing and potential customers; Sepco presents the technical characteristics and uses of the seamless tubes and pipes manufactured by the applicants; Sepco determines the sales

prices and policy which the market and the customers concerned can bear; Sepco solicits and receives orders; Sepco issues invoices and all sales documents; Sepco provides the after-sales service. However, none of these factors are supported by any evidence.

184 However, it should be noted that, in accordance with the case-law cited in paragraph 180 above, the initial burden of proof is on the institution which considers it must make an adjustment, and not upon the party concerned affected by that adjustment. In the light of the case-law cited in paragraphs 177 and 178 above, the factors put forward by the Commission to justify the adjustment under Article 2(10)(i) of the basic regulation cannot be regarded as sufficiently convincing and cannot therefore be regarded as evidence establishing the existence of the factor on the basis of which the adjustment was made and enabling its impact on price comparability to be determined.

185 In the first place, concerning the applicants' carrying out direct sales of the product concerned in the Community, this Court draws attention to the case-law cited in paragraph 179 above, according to which a single economic entity may exist where the producer assumes some of the sales functions complementary to those of the distribution company for its products. In that respect, as the parties' pleadings show, the direct sales in the Community carried out by the applicants were destined for the new Member States during a transitional phase. Moreover, the applicants confirmed at the hearing that the volume of direct sales represented about 8% of the applicants' total sales volume towards the Community and was thus marginal. It should therefore be noted that the applicants assumed only sales functions that were complementary to those of Sepco and for a transitional period only.

186 Secondly, as regards the fact that SPIG Interpipe, the connected sales company in Ukraine, intervened as a sales agent for sales carried out by the applicants to Sepco, the Council does not in any way explain how SPIG Interpipe receiving a commission on the applicants' sales to Sepco is supposed to demonstrate that Sepco carried out functions

comparable to those of an agent working on a commission basis or prevents recognition of its status as the applicants' internal sales department.

187 Thirdly, concerning the alleged insufficiency of Sepco's connections with the applicants, such connections not supporting the conclusion that Sepco was under the applicants' control or that there was a common control, the evidence on file shows that Sepco and NTRP are linked by a common parent company, Allied Steel Holding, which held 100% of Sepco's capital and 24% of NTRP's capital during the investigation period. That is a fact which, if corroborated by other relevant factors, might contribute to establishing that there was a control common to Sepco and NTRP and which, in any event, does not demonstrate the insufficiency of the links between Sepco and NTRP. That conclusion is not called into question by the Council's assertion that the applicants failed to provide sufficient information as to the identity of the actual beneficiaries of the shares of Niko Tube, SPIG Interpipe and 76% of the capital of NTRP. Similarly, the fact that the relationship between Sepco and NTRP is one of buyer and seller is of no relevance in demonstrating that those latter do not constitute a single economic entity or that Sepco carries out functions comparable to those of an agent working on a commission basis.

188 On the other hand, the evidence on file does not demonstrate that Sepco is under the control of Niko Tube or that there is a control common to both companies. Questioned at the hearing on the existence of such controls, the applicants explained that the connection between Niko Tube and Sepco arises, first, from the fact that Niko Tube and NTRP have three common shareholders and, secondly, from the fact that Allied Steel Holding holds 24% of NTRP's shares and 100% of Sepco's shares.

189 That evidence does not establish that Sepco is under the control of Niko Tube or that a control exists which is common to both companies. It merely establishes the existence of an indirect connection between those two companies.

190 Therefore, this Court must accept the limb of the fourth plea claiming manifest error of assessment in applying Article 2(10)(i) of the basic regulation in so far as the Council made an adjustment on the export price charged by Sepco, in the context of transactions concerning pipes manufactured by NTRP. That same limb is rejected as to the remainder, namely in so far as it concerns the adjustment of the export price charged by Sepco, in the context of transactions concerning pipes manufactured by Niko Tube.

Manifest error of assessment in applying Article 2(10), first subparagraph, of the basic regulation

— Arguments of the parties

191 In their fourth plea, the applicants argue that the Council made a manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation, in that the deduction from Sepco's sale price of an amount corresponding to the commission which an agent working on a commission basis would have taken implies a functional asymmetry between the normal value and the export price, that asymmetry affecting the comparability of prices.

192 The Council argues that the applicants are ignoring the fact that they themselves explained that SPIG Interpipe received a commission for all sales made through the intermediary of Sepco. Since SPIG Interpipe was associated both with internal and export sales, and since the adjustment covered only the supplementary participation of Sepco in export sales, the operation created a symmetry and not an asymmetry.

— Findings of the Court

193 This Court is of the view that the limb of the fourth plea claiming manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation cannot be regarded as an autonomous limb in relation to the limb of the same plea claiming infringement of Article 2(10)(i) of the basic regulation. In this case, the applicants claim that the adjustment, pursuant to Article 2(10)(i) of the basic regulation, is unjustified since, far from rendering the normal value and the export price comparable, it created a functional asymmetry. Such an adjustment thus constituted a manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation.

194 According to the case-law, it is apparent both from the wording and the general system of Article 2(10) of the basic regulation that an adjustment of the export price or normal value may be made only in order to take account of differences concerning factors which affect prices and thus their comparability (*Kundan and Tata* v *Council*, cited in paragraph 180 above, at paragraph 94). In other words, and to use the terminology used by the applicant, the raison d'être of an adjustment is to re-establish the symmetry between normal value and export price.

195 Thus, if the adjustment has been validly made, that implies that it has re-established the symmetry between normal value and export price. By contrast, if the adjustment has not been validly made, that implies that it has maintained or created an asymmetry between the normal value and the export price.

196 In this case, the limb of the fourth plea claiming the existence of a manifest error of assessment in applying Article 2(10)(i) of the basic regulation has been upheld in so far as the Council made an adjustment on the export price charged by Sepco, in the context of transactions concerning pipes produced by NTRP, but has been dismissed in so far as

it concerns the adjustment on the export price charged by Sepco in the context of transactions concerning pipes produced by Niko Tube (see paragraph 190 above). The Court must therefore hold that there has been a manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation in so far as an adjustment was made on the export price charged by Sepco in the context of transactions concerning pipes produced by NTRP and that there has been no manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation in so far as an adjustment was made on the export price charged by Sepco in the context of transactions concerning pipes produced by Niko Tube.

197 This Court therefore upholds the limb of the fourth plea claiming manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation in so far as the Council made an adjustment on Sepco's export price in the context of transactions concerning pipes manufactured by NTRP. That same limb is dismissed as to the remainder, namely in so far as it concerns the adjustment of the export price charged by Sepco in the context of transactions concerning pipes manufactured by Niko Tube.

Infringement of defence rights and the duty to state reasons

— Arguments of the parties

198 In their sixth plea, the applicants argue that their defence rights were infringed, in that the letter of 16 June 2006 and the fax of 26 June 2006, both actually received on 27 June 2006, contained new factual elements seeking to demonstrate that Sepco was not an export service of the applicants. Article 253 EC was also infringed, in that the contested regulation did not provide an adequate response to the applicants' arguments on that question.

199 The Council maintains that the Commission supplied explanations as to the adjustment at issue in its second final information document, dated 24 April 2006. The applicants, who claim that the letter of 16 June 2006 and the fax of 26 June 2006 contained new factual elements, have not explained what those factual elements were or in what way they were new. Finally, concerning the alleged infringement of Article 253 EC, the question of the deduction from the Sepco sale price of an amount corresponding to a commission was dealt with in the contested regulation, more particularly in recital 132, in the first final information document dated 27 February 2006, in the second final information document dated 24 April 2006, and in the fax of 26 June 2006.

— Findings of the Court

200 The claim that there has been an infringement of defence rights must be examined in the light of the case-law referred to in paragraphs 64 and 146 above. According to that case-law, in anti-dumping proceedings, the parties concerned have the right to be informed of the facts and essential considerations on the basis of which it is envisaged that the imposition of definitive anti-dumping duties will be recommended. In addition, the parties concerned must be informed on a date which still allows them effectively to make their point of view known before the adoption of the contested regulation (see, to that effect, *Tribunal Champion Stationery and Others* v *Council*, cited in paragraph 146 above, at paragraph 83, and Case T-35/01 *Shanghai Teraoka Electronic* v *Council* [2004] ECR II-3663, paragraph 330).

201 In this case, the applicants claim, essentially, that they were belatedly informed of the reasons why an adjustment was made, pursuant to Article 2(10)(i) of the basic regulation. The parties concerned by an anti-dumping proceeding have a right to be informed not only that an adjustment has been made, in the context of the comparison between normal value and export price, in accordance with Article 2(10) of the basic regulation, but also to be informed of the reasons why the adjustment was made. Information concerning the adjustment and the reasons why it was made is essential, since such an adjustment directly affects the level of the anti-dumping duty. In that respect, it should be noted that mere notification to the parties concerned that an adjustment has been made, without explaining the reasons, cannot be regarded as sufficient in the light of the case-law referred to in paragraphs 64 and 146 above. That

case-law shows that the Community institutions are required to give the undertakings concerned indications that are useful to the defence of their interests (*Al-Jubail Fertilizer*, cited in paragraph 64 above, at paragraph 17). Merely to indicate to the applicants that an adjustment has been made, without indicating the reasons which justify such an adjustment in the Commission's eyes, cannot enable them to defend their interests, in particular by explaining in what way those reasons are not valid.

202 In that context, it should be noted that, in this case, the Commission had informed the applicants of its decision to make an adjustment to the export price charged by the affiliated importers — of which Sepco was one — in the first final information document, dated 27 February 2006. As the wording of that latter document shows, that adjustment was made in accordance with Article 2(9) of the basic regulation, and consisted in the deduction of all the costs incurred between importation and resale plus a profit margin.

203 In the second final information document, dated 24 April 2006, the Commission informed the applicants that, concerning sales towards the Community in which Sepco was an intermediary, the adjustment made had in fact been carried out pursuant to Article 2(10)(i) of the basic regulation, and not pursuant to Article 2(9) thereof, as had been erroneously stated in the first final information document. It was stated that the amount of the deduction made remained unchanged. On the other hand, the Commission did not supply any justification as to why Article 2(10)(i) of the basic regulation was applicable in this case.

204 By letter of 4 May 2006, the applicants informed the Commission that they considered it essential that it show that Sepco's activities were comparable with those of an agent working on a commission basis.

205 It was only in its fax of 26 June 2006 that the Commission explained why it considered that those functions were comparable to those of an agent working on a commission basis and that an adjustment pursuant to Article 2(10)(i) was therefore justified. In that respect, the Commission enumerated the three factors referred to in paragraph 182 above. Thus this Court finds that, as the Council confirmed at the hearing, the Commission had not communicated to the applicants, before its fax of 26 June 2006, the least information as to why it considered that an adjustment pursuant to Article 2(10)(i) of the basic regulation was justified.

206 The evidence on the Court's file shows that that fax reached the applicants at 19.06 hrs, on 26 June 2006, namely, as the applicants point out, after office hours. The applicants must therefore be regarded as having taken cognisance of that document on 27 June 2006, namely the day on which the contested regulation was adopted.

207 It must therefore be held that the applicants were not able to take cognisance of the factors put forward by the Commission to justify the adjustment made pursuant to Article 2(10)(i) of the basic regulation at a date which still enabled them to make their views in that respect effectively known, before the Council adopted the contested regulation.

208 However, such an irregularity on the part of the Commission is not capable of constituting an infringement of defence rights, justifying annulment of the contested regulation, unless the applicants have established, not that the said regulation would have had a different content, but that they would have been better able to defend themselves in the absence of that irregularity (see, to that effect, *Foshan Shunde Yongjian Housewares & Hardware*, cited in paragraph 134 above, at paragraph 71). It therefore needs to be determined whether the applicants have demonstrated that an earlier communication of the matters contained in the fax of 26 June 2006 could have given them a chance, even a slim chance, of causing the administrative procedure to lead to a different result.

209 In that regard, it should be noted, as has been mentioned in paragraph 182 above, that, in its fax to the applicants of 26 June 2006, the Commission enumerated three factors on which it based its reasoning in concluding that Sepco carried out functions comparable to those of an agent working on a commission basis. It has been shown in paragraphs 185 to 188 above, on the basis of the arguments put forward by the applicants during the procedure before the Court of First Instance, that those three factors could not be regarded as sufficient evidence that, first, Sepco carries out functions comparable to those of an agent working on a commission basis, and, second, that Sepco and NTRP do not constitute a single economic entity. Therefore, it must be concluded that the applicants have established that an earlier communication of the factors contained in the fax of 26 June 2006 would have enabled them to make that same demonstration before the adoption of the contested regulation and, by so doing, support the assertion that the Commission did not have any tangible evidence allowing it to proceed with the adjustment at issue.

210 Therefore, in the absence of the irregularity committed by the Commission, the applicants would have been able to put forward, in good time, arguments which they were not able to put forward owing to the Commission's delay in communicating the information in question. They would thus have been better able to defend themselves and, possibly, cause the administrative procedure to have a different result.

211 The sixth plea, claiming infringement of defence rights, in so far as it concerns the adjustment made pursuant to Article 2(10)(i) of the basic regulation, must therefore be upheld.

212 Concerning the alleged infringement of the duty to state reasons, such a claim cannot succeed in this case. The case-law referred to in paragraph 65 above shows that the Council is not required to reply, in the statement of reasons for the regulation, to all the points of fact and law raised by the persons concerned during the administrative procedure. Nor is there a requirement that the statement of reasons specify all the various factual or legal elements which may be relevant, the requirements as to the statement of reasons having to be assessed, in particular, in the context of the measure.

213 In that regard, whilst the reasons for the adjustment made pursuant to Article 2(10)(i) of the basic regulation were only briefly stated in recital 132 of the contested regulation, it is apparent from the above that the Commission's fax of 26 June 2006 contained a detailed statement of the reasons why that adjustment was made.

214 Therefore, the sixth plea, claiming an infringement of the duty to state reasons, in so far as it concerns the adjustment made pursuant to Article 2(10)(i) of the basic regulation, must be dismissed as unfounded.

The applicants' offer of an undertaking

215 The fifth plea and part of the sixth plea concern the fact that the Commission refused the applicants' offer of an undertaking.

216 According to the applicants, that refusal gave rise, on the part of the Council, to:

— an infringement of the principle of non-discrimination (fifth plea);

— an infringement of the duty to state reasons (sixth plea).

Infringement of the principle of non-discrimination

— Arguments of the parties

217 In their fifth plea, the applicants argue that they have been victims of discrimination.

218 In their submission, the discrimination results from the fact that, whereas the Commission had entered into separate negotiations with the Romanian producer-exporters with a view to reaching an acceptable undertaking, namely one with a limited product scope and a quantitative ceiling, it did not inform the other producer-exporters of the possibility of submitting an offer of undertaking with a reduced scope and a quantitative ceiling.

219 Discrimination further arises from the fact that the contested regulation referred in recital 248 to some generic problems with the offers of undertakings, but then claims in recital 251 that those generic problems do not apply to the Romanian producers. They observe in that respect that reference to the temporary nature of the undertakings in relation to the Romanian producers does not in any way explain why an offer of undertaking for a limited period could not have been accepted for the applicants, given that the limited scope and duration of the undertaking could overcome certain generic problems.

220 In reply to the applicants' arguments, the Council maintains that they are challenging the fact that the Commission accepted offers of undertaking from the Romanian exporters and claiming that that constitutes an infringement of the principle of non-discrimination.

221 Firstly, as regards the allegedly unlawful acceptance of the offers of undertaking from the Romanian exporters, the Council maintains that the legality of the refusal of the applicants' offer of undertaking is not compromised by the allegedly unlawful acceptance of the offers of undertaking from the Romanian exporters.

222 Secondly, the Council denies the alleged infringement of the principle of non-discrimination. First, the applicants had the opportunity to submit an undertaking concerning a limited number of products. The applicants not having submitted such an offer or an offer of undertaking containing a sufficiently high minimum import price, their offer was intrinsically different from any offer submitting a sufficiently high minimum import price or satisfying another condition such as the limited duration and limited number of products concerned.

223 Secondly, the Council argues that the Commission was right to conclude that the particular situation of the Romanian exporters was sufficient to remedy the generic problems of the undertakings.

— Findings of the Court

224 According to Article 8(3) of the basic regulation, '[u]ndertakings offered need not be accepted if their acceptance is considered impractical, if such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of

general policy'. That article thus shows that the Commission may take account of all sorts of factual circumstances in assessing the offer of undertaking.

225 The case-law further shows that there is no provision of the basic regulation requiring the Community institutions to accept proposed price undertakings formulated by the traders concerned by an investigation prior to the establishment of anti-dumping duties. On the contrary, it is apparent from that regulation that the acceptability of such undertakings is defined by the institutions in the context of their discretionary power (see, to that effect, in relation to Article 10 of Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1979 L 339, p. 1), the legislative content of which is essentially identical to that of Article 8 of the basic regulation, Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861, paragraph 42).

226 However, it should be recalled that, where the Community institutions have a wide discretion, compliance with the safeguards conferred by the Community legal order in administrative procedures becomes all the more important, and that those safeguards include, in particular, the principle of non-discrimination (see, to that effect, *Shandong Reipu Biochemicals*, cited in paragraph 38 above, at paragraph 63).

227 According to the case-law, the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated in the same way, unless such treatment is objectively justified (Case T-118/96 *Thai Bicycle* v *Council* [1998] ECR II-2991, paragraph 96).

228 Since the Commission has a wide discretion to accept or refuse a price undertaking and may take account of all the factual circumstances surrounding such an offer, those factual circumstances must be strictly comparable for it to be possible to conclude that the principle of non-discrimination has been infringed.

229 In this case, the applicants do not deny the validity of the undertakings offered by the Romanian producer-exporters and accepted by the Commission. They consider, however, that they have been victims of discrimination in that the treatment which they have received was different from that reserved for the Romanian producer-exporters. However, the applicants have not at any time explained in what way their situation was comparable with that of the Romanian producer-exporters, but have merely described the facts which, in their submission, constitute such discrimination.

230 In any event, it should be noted that, by virtue of Article 8(1) of the basic regulation, a fundamental condition for the Commission's acceptance of an offer of undertaking is that '[exporters have given] satisfactory voluntary undertakings … to revise [their] prices or to cease exports … at dumped prices'. Here, the evidence on the file shows that the prime reason why the Commission rejected the applicants' offer of undertaking was that the minimum import prices which they proposed were not sufficient to eliminate the prejudicial effect of the dumping. By contrast, the Council's pleadings show that the Commission considered that the minimum import prices proposed by the Romanian producer-exporters were sufficient to eliminate that effect.

231 It must therefore be concluded, as the Council has done, that, since the applicants did not submit an offer of undertaking with a sufficiently high minimum import price, their offer was intrinsically different from any offer which did propose a sufficiently high minimum import price. That conclusion cannot be called into question by the applicants' other arguments, particularly those relating to the Commission's not suggesting to the applicants that they might make an offer of undertaking limited in time and subject to a ceiling.

232 The fifth plea must therefore be dismissed as unfounded.

Infringement of the duty to state reasons

— Arguments of the parties

233 In their sixth plea, the applicants argue that the contested regulation does not contain sufficient reasoning in reply to their arguments concerning discriminatory treatment in relation to the price undertaking.

234 The Council argues that that question has been dealt with in the contested regulation, the second final information document dated 24 April 2006 and in the letter of 30 May 2006 and the fax of 26 June 2006.

— Findings of the Court

235 The contested regulation contains a complete statement, in recitals 246 to 257, of the reasons why the offer of undertaking from the Romanian producer-exporters was accepted whereas that of other companies, including the applicants, was not.

236 Moreover, the Commission had already partially justified its position in its letter of 30 May 2006 and its fax of 26 June 2006.

237 In the light of the above, this Court rejects the sixth plea, claiming infringement of the duty to state reasons, in so far as it concerns the applicants' offer of undertaking, as unfounded.

The treatment of sales costs, administrative costs and other general expenses of SPIG Interpipe

Arguments of the parties

238 In their sixth plea, the applicants claim that the contested regulation contains insufficient reasoning as to the deduction of general and administrative costs and sales costs of SPIG Interpipe.

239 The Council maintains that, since the applicants have not stated what the question at issue was, the plea claiming infringement of the duty to state reasons in that respect is manifestly unsupported.

Findings of the Court

240 According to the first paragraph of Article 21 of the Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 53 of that Statute and Article 44(1)(c) and (d) of the Rules of Procedure of the Court of First Instance, all applications must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court of First Instance to decide the case. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible the essential facts and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible (Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraph 20; Case T-19/01 *Chiquita Brands and Others* v *Commission* [2005] ECR II-315, paragraph 64).

241 In this case, the Court, like the Council, finds that the applicants have not set out in a sufficiently clear and precise manner the argument as to the deduction of general, administrative and sales costs of SPIG Interpipe which has allegedly not been replied to.

242 Therefore, the sixth plea must be declared inadmissible in so far as it concerns the treatment of sales, administrative and other general costs of SPIG Interpipe.

243 It follows from the above, and in particular from the conclusions drawn in paragraphs 190, 197 and 211 above, that the contested regulation must be partially annulled in so far as the institutions concerned made an adjustment on Sepco's export price.

Costs

244 In accordance with Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court of First Instance may order that the costs be shared or that each party bear its own costs.

245 In this case, the applicants' claims for annulment have been found partially well founded. The Court considers that, on a just assessment of the circumstances of this case, the Council should bear its own costs and pay one quarter of those incurred by the applicants, and that the latter should pay three quarters of their own costs.

246 In accordance with Article 87(4) of the Rules of Procedure, the Commission must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Annuls Article 1 of Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC)**

No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine, in so far as the anti-dumping duty fixed for exports towards the European Community of the products manufactured by Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) exceeds that which would have been applicable had the export price not been adjusted for a commission when sales took place through the intermediary of the affiliated trader, Sepco SA;

2. **Dismisses the action as to the remainder;**

3. **Orders the Council to bear its own costs and one quarter of the costs incurred by the applicants. The Commission is ordered to bear its own costs.**

Pelikánová Jürimäe Soldevila Fragoso

Delivered in open court in Luxembourg on 10 March 2009.

[Signatures]

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