JUDGMENT OF THE COURT (Fifth Chamber)
11 July 1990 *

In Joined Cases C-305/86,

Neotype Techmashexport GmbH, whose registered office is in Bergisch-Gladbach (Federal Republic of Germany), represented by Dirk Schroeder, of the Cologne Bar, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 8 rue Zithe,

applicant,

v

Commission of the European Communities, represented by Peter Gilsdorf, Legal Adviser, acting as Agent, assisted by Michael Schütte, of the Hamburg Bar and also established in Brussels, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

supported by

Groupement des industries de matériels d'équipement électrique et de l'électronique industrielle associée, whose registered office is in Paris, represented by Ivo Van Bael and Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg in the Chambers of F. Brausch, 8 rue Zithe,

intervener,

APPLICATION for the annulment of Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of

* Language of the case: German.

standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR (Official Journal 1986 L 280, p. 68),

and C-160/87,

Neotype Techmashexport GmbH, whose registered office in Bergisch-Gladbach (Federal Republic of Germany), represented by Dirk Schroeder, of the Cologne Bar, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 8 rue Zithe,

applicant,

v

Council of the European Communities, represented by Hans-Jürgen Lambers, Director of the Legal Department, and Erik Stein, Legal Adviser, acting as Agents, assisted by Michael Schütte, of the Hamburg Bar and also established in Brussels, with an address for service in Luxembourg at the office of Jörg Käser, Director of the Legal Affairs Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer, Kirchberg,

defendant,

supported by

Groupement des industries de matériels d'équipement électrique et de l'électronique industrielle associée, whose registered office is in Paris, represented by Ivo Van Bael and Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg in the Chambers of F. Brausch, 8 rue Zithe,

and by

Commission of the European Communities, represented by Peter Gilsdorf, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

interveners,

APPLICATION for the annulment of Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the USSR, and definitively collecting the amounts secured as provisional duties (Official Journal 1987 L 83, p. 1).,

THE COURT (Fifth Chamber)

composed of: Sir Gordon Slynn, President of Chamber, M. Zuleeg, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: W. Van Gerven
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing,

after hearing the parties' submissions at the sitting on 13 June 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 November 1989,

gives the following

Judgment

1 By an application lodged at the Court Registry on 4 December 1986, Neotype Techmashexport GmbH, a company incorporated according to German law (hereinafter referred to as 'Neotype'), brought an application under the second subparagraph of Article 173 of the EEC Treaty for the annulment of Article 2 of Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR (Official Journal 1986 L 280, p. 68, hereinafter referred to as the 'provisional regulation'), in so far as that article concerns imports by the applicant of electric motors originating in the Soviet Union (Case C-305/86).

2 By an order of 8 May 1987, the Court allowed the Groupement des industries de matériels d'équipement électrique et de l'électronique industrielle associée (Association of electrical equipment and industrial electronics industries, hereinafter referred to as 'Gimelec') to intervene in Case C-305/86 in support of the defendant's conclusions.

3 By an application lodged at the Court Registry on 1 June 1987, Neotype brought an application under the second paragraph of Article 173 of the EEC Treaty for the annulment of Articles 1 and 2 of Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union and definitively collecting the amounts secured as provisional duties (Official Journal 1987 L 83, p. 1, hereinafter referred to as the 'definitive regulation'), in so far as those provisions concern imports by the applicant of electric motors originating in the Soviet Union and the definitive collection of the amounts paid by the applicant as provisional duties (Case C-160/87).

4 By orders of 30 September and 15 October 1987 the Court allowed the intervention of Gimelec and the Commission of the European Communities in Case C-160/87 in support of the defendant's conclusions.

5 By order of the Court of 11 November 1987, Cases C-305/86 and C-160/87 were joined for the purposes of the oral procedure and the judgment.

6 Neotype is a company whose activities include the importation of electric motors originating in the Soviet Union, exported by the Soviet undertaking Energomachexport, which is one of the shareholders of Neotype.

7 In October 1985, Gimelec, supported by four other national electronics associations, requested the Commission to review certain anti-dumping measures in accordance with Article 14 of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (Official Journal 1984 L 201, p. 1). That request sought the review of the decisions by which the price undertakings given by the exporters in question had been accepted in the context of an earlier anti-dumping proceeding concerning imports of electric motors originating in Bulgaria, Poland, the German Democratic Republic, Romania, Czechoslovakia, Hungary and the Soviet Union.

8 On 30 September 1986 the Council and the Commission rescinded their acceptance of the abovementioned undertakings and the Commission, by the aforesaid Regulation No 3019/86 of the same date, imposed a provisional duty on imports of electric motors originating *inter alia* in the Soviet Union.

9 On 23 March 1987 the Council adopted the aforesaid Regulation No 864/87 imposing a definitive anti-dumping duty on the abovementioned imports and definitively collecting the amounts secured as provisional duties.

10 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case, the course of the procedure and the written submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The action brought against the provisional regulation (Case C-305/86)

11 The Commission, supported by the intervener, Gimelec, contests the admissibility of the application brought against the provisional regulation.

12 It should be pointed out, first, that this question is separate from the possibility of pleading the illegality of the provisional regulation as a ground of illegality vitiating the definitive regulation.

13 As regards Neotype's interest in contesting the provisional regulation, it should be stated that, as the amounts secured as provisional anti-dumping duties were collected, in accordance with Article 2(1) of the definitive regulation, at the rate of duty definitively imposed, Neotype may place no reliance on any legal effect arising out of the provisional regulation (see the judgments in Case 56/85 *Brother* v *Commission* [1988] ECR 5655, paragraph 6, and in Joined Cases 294/86 and 77/87 *Technointorg* v *Commission and Council* [1988] ECR 6077, paragraph 12).

14 As regards Neotype's interest in seeking a declaration that the provisional regulation is void as the basis for a claim for damages, it should be observed that, in so far as the amounts secured under the provisional regulation were collected under the definitive regulation, Neotype could plead the illegality of the definitive regulation in support of a claim for compensation for any damage caused by the provisional regulation. To that extent the definitive regulation replaced the provisional regulation; the legality of the provisional regulation therefore has no bearing on any damages claim.

15 As regards the amounts secured which were discharged because the rate of the definitive duty was lower than the rate of provisional duty, Neotype may be regarded as having an interest in securing a declaration that the provisional regulation is void as the basis for seeking damages only in so far as it has claimed damage in connection with the amounts secured. However, Neotype has never, at any stage in the procedure before the Court, given details of any damage suffered as a result of the application of the contested regulation.

16 In those circumstances, it must be concluded that the applicant has not proved an interest in bringing proceedings against the provisional regulation. That application must, therefore, be dismissed as inadmissible, without there being any need to consider the arguments based on the nature of the provisional regulation.

The action brought against the definitive regulation (Case C-160/87)

Admissibility

17 In its observations the intervener, Gimelec, contends that the action brought by Neotype against the definitive regulation is inadmissible inasmuch as the findings made in that regulation as to the existence of dumping do not concern the applicant directly, since the dumping margin for the exported products was established in accordance with the export prices of the exporter in question and not in accordance with the resale prices charged by the applicant.

18 Since this is an objection of inadmissibility based on public policy, to be examined of the Court's own motion under Article 92(2) of the Rules of Procedure, there is no need to examine whether an intervener can raise an objection of inadmissibility which has not been raised by the party in support of whose conclusions it is intervening.

19 According to the Court's consistent case-law, regulations imposing an anti-dumping duty, although by their nature and scope of a legislative nature, are of direct and individual concern *inter alia* to those importers whose resale prices for the products in question form the basis of the constructed export price, pursuant to Article 2(8)(b) of Regulation No 2176/84, where exporter and importer are associated (see judgments in Case 118/77 *ISO* v *Council* [1979] ECR 1277, paragraph 16, and in Cases 239 and 275/82 *Allied Corporation* v *Commission* [1984] ECR 1005, paragraphs 11 and 15, and the orders of the Court in Case 279/86 *Sermes* v *Commission* [1987] ECR 3109, paragraphs 14 to 16, and Case 301/86 *Frimodt Pedersen* v *Commission* [1987] ECR 3123, paragraphs 14 to 16).

20 The considerations underlying that case-law are applicable not only in connection with a finding of dumping by reference to importers' resale prices but also in connection with the calculation of the anti-dumping duty itself. As is apparent from Article 1(4)(a) of the definitive regulation, for associated importers the net unit price, free-at-Community-frontier, in accordance with which the amount of anti-dumping duty to be paid is determined, is the customs value as determined in accordance with Article 6 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980 L 134, p. 1). Under that provision the customs value is based essentially on the price at which the imported products are sold by the importer in question to persons not connected with the vendor. Associated importers are therefore in a position to influence, by means of the resale prices charged for the products in question to independent buyers, the amount of the duty payable.

21 In those circumstances Neotype, which is associated with the exporter of the products in question, Energomachexport, and to which the method of calculation mentioned above was applied in accordance with Article 1(4)(b) of the definitive regulation, is directly and individually concerned by that regulation.

22 It follows from the foregoing that the action brought by Neotype in Case C-160/87 is admissible.

Substance

23 Neotype puts forward the following submissions against the definitive regulation:

(i) incorrect calculation of the normal value, in particular in regard to the choice of reference country;

(ii) inadequate statement of reasons for the choice of reference country;

(iii) incorrect finding of injury;

(iv) unlawful method of determining the anti-dumping duty;

(v) illegality of the definitive collection of the amounts secured as provisional duties.

The supposedly incorrect calculation of the normal value

24 In its first submission Neotype first of all contends that Yugoslavia, chosen as the reference country for the purposes of establishing the normal value, is not a market-economy country within the meaning of Article 2(5) of Regulation No 2176/84, owing to the fact that there is a system of price control and maintenance which keeps prices of electric motors at an artificially high level.

25 On that point it should be noted that Article 2(5) of Regulation No 2176/84 provides that, with regard to imports from countries not having a market economy, the normal value is to be determined in an appropriate and not unreasonable manner on the basis, essentially, of the price at which the like product is actually sold in a market-economy country.

26 The aim of that provision is to prevent account from being taken of prices and costs in non-market-economy countries which are not the normal result of market forces (see the *Technointorg* judgment, cited above, paragraph 29).

27 Article 2(5) defines as countries not having a market economy in particular those countries to which Regulation (EEC) No 1765/82 of 30 June 1982 on common rules for imports from State-trading countries (Official Journal 1982 L 195, p. 1) applies; Yugoslavia is not amongst those countries.

28 It must therefore be examined whether in that country trade in electric motors is subject to a total or near monopoly or whether all domestic prices are fixed by the State. Those two conditions are not satisfied in the case of Yugoslavia. As stated at

paragraph 5 of the definitive regulation, whose accuracy has not been contested by Neotype, there are in Yugoslavia at least three undertakings which market electric motors on both the domestic and the Community market. Moreover, it is clear from the documents appended to the application that there was at the time no general system of price fixing in Yugoslavia and that in any event there was no such system in the field of electric motors.

29 Neotype's argument that Yugoslavia is not a market-economy country within the meaning of Article 2(5) of the abovementioned regulation must therefore be rejected.

30 Neotype further contends that Yugoslav prices do not afford an appropriate and reasonable basis of comparison on the ground that the size of the market is insufficient, in particular in relation to the markets of the reference countries chosen for the purposes of earlier anti-dumping measures, and that there are practically no imports into Yugoslavia capable of providing any competition.

31 That reasoning cannot be accepted. The size of the domestic market is not in principle a factor capable of being taken into consideration in the choice of a reference country as determined by Article 2(5), in so far as during the period of the investigation there is a sufficient number of transactions to ensure the representative nature of the market in relation to the exports in question. In that context it should be remembered that, in the judgment in Case 250/85 *Brother* v *Commission* [1988] ECR 5683, paragraphs 12 and 13, the Court rejected the challenge against the institutions' practice of fixing the minimum level of representativity of the domestic market, for the purposes of calculating the normal value in accordance with Article 2(3) of Regulation No 2176/84, at 5% of the exports in question. It is apparent neither from the file nor from the arguments put forward before the Court that the Yugoslav market was not representative in the abovementioned sense.

32 The alleged absence of imports of electric motors into Yugoslavia is not in itself sufficient to render the Yugoslav market inappropriate for reference purposes since there is sufficient competition on that market to ensure that the prices charged there are representative. During the period under consideration, there were three

producers of electric motors on the Yugoslav market. Even if, as alleged by Neotype, the prices charged by those undertakings on the domestic market were more or less identical, that is not in itself sufficient to support the conclusion that competition was non-existent, since the similarity in prices may be accounted for by factors other than State-imposed price controls.

33 Moreover, the determination of the normal value on the basis of the prices prevailing on the Yugoslav market resulted in a dumping margin for electric motors originating in the Soviet Union considerably smaller than the margin contained in the provisional regulation; those prices were thus in any event lower than the prices prevailing on the Swedish market.

34 In those circumstances the Council cannot be said to have exceeded the margin of discretion conferred upon the institutions in Article 2(5) by choosing Yugoslavia as the reference country.

35 Neotype contends next that when calculating the normal value the Council did not take into account the Yugoslav rate of inflation, which in 1985 is said to have reached 80%.

36 In reply to a question asked by the Court on this point, the Council and the Commission explained that in the definitive regulation the normal value had been calculated on the basis of the weighted average of domestic sales prices charged by Yugoslav producers during the 1985 reference year. The difference between the Community and the Yugoslav rates of inflation was reflected in the fluctuations of the ecu-dinar exchange rate, which underwent an increase of 78.7%.

37 In choosing that method in order to take into account the inflation rate in the reference country the Council did not exceed the margin of discretion conferred upon the institutions in the evaluation of complex economic situations such as those in this case. Moreover, Neotype has adduced no evidence to show that that method did not enable appropriate account to be taken of the Yugoslav rate of inflation during the period of the investigation.

38 Neotype's submission based on the disregard of the Yugoslav inflation rate is accordingly unfounded.

39 Finally, Neotype contends that the official exchange rate for the Yugoslav dinar used by the Council for calculating the dumping margin did not correspond to the actual value of that currency, since banks in the Community pay only DM 0.15 to 0.17 for 100 dinars, whereas the official buying rate was DM 0.27.

40 On that point it should be recalled that, in its judgment in Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861, paragraph 53, the Court held that, in determining a dumping margin, the institutions may take into account the official rates of exchange on the basis of which international commercial transactions are carried out.

41 The arguments put forward by Neotype cannot call in question the validity of the method applied in this case for calculating the normal value. First, the rates of exchange referred to by the applicant are not applicable to commercial transactions between the Community and Yugoslavia, but represent purchasing rates for bank notes applied by banks in the Federal Republic of Germany. Secondly, as the applicant acknowledged in its written reply to a question asked by the Court, there is no reason to apply the abovementioned method, for the purpose of determining the normal value applicable to Yugoslav exports, when a different method of calculation must be chosen for exporters from State-trading countries concerned by the definitive regulation.

42 Neotype's argument with regard to the dinar exchange rates used by the Council cannot therefore be accepted.

43 It follows from the foregoing that the submission that the normal value was wrongly calculated must be rejected.

The supposed inadequacy of the statement of reasons with regard to the choice of reference country

44 Neotype considers that the choice of Yugoslavia as the reference country for the purpose of determining the normal value was not supported by an adequate statement of reasons.

45 In that respect the Court has consistently held (see in particular the judgments in *Nachi Fujikoshi* v *Council*, cited above, paragraph 39 and in Case C-156/87 *Gestetner* v *Commission* [1990] ECR I-781, paragraph 69) that the statement of reasons required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such as way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and to enable the Court to exercise its supervisory jurisdiction.

46 That requirement was satisfied in this case. The choice of Yugoslavia as the reference country is covered in part C of the statement of the reasons on which the definitive regulation is based and, in particular, at point 8. There it is stated *inter alia* that, subsequent to the imposition of the provisional duty and following the opening of a parallel anti-dumping proceeding on electric motors originating in Yugoslavia, the Commission was able to carry out checks on the prices charged by three Yugoslav exporters on the domestic market. Moreover, the Council states that Yugoslavia is a market-economy country and that to establish the normal value for the products sold in the State-trading countries in question on the basis of the Yugoslav market prices ensured equality of treatment of all the exporters involved in the two proceedings in question.

47 Neotype's submission that the choice of Yugoslavia as the reference country was based on an insufficient statement of reasons must therefore be rejected.

The incorrect assessment of injury

48 Neotype maintains that the Council committed manifest errors in determining injury. By comparing only the import figures for the years 1982 to 1985, the Council failed to take account of the considerable reduction in imports observed during the preceding period, that is to say from 1977 to 1981. Moreover, the market share of imports originating in the countries covered by the definitive regulation diminished between 1982 and 1985 by 13% and, in relation to 1978, by as much as 27.5%.

49 As regards the first argument put forward by Neotype, it should be recalled that the anti-dumping procedure which led to the adoption of the definitive regulation was opened following a request for review made by the associations of Community producers concerned. The investigation was intended to check whether the undertakings given by the exporters from the countries in question and accepted by the institutions during the previous anti-dumping procedure continued to be sufficient to eliminate the injury caused by the dumped imports. The figures for imports effected prior to 1982 had therefore already been taken into consideration in the context of that earlier anti-dumping procedure. It was not therefore necessary to use them in examining the situation after 1982.

50 As regards the reduction in market share for imported electric motors, relied on by Neotype, it should be pointed out that, in accordance with Article 4(2) of Regulation No 2176/84, the examination of injury must take account of a whole series of factors and no single factor can in itself be decisive.

51 In the present case, whilst recognizing that the market share of the imports in question went down from 23% in 1982 to 19.6% in 1985, the Council made a determination of injury in accordance with several factors set out in Article 4(2) of Regulation No 2176/84. Thus, as stated at paragraph 25 of the provisional regulation, to which paragraph 19 of the definitive regulation refers, the volume of imports of electric motors originating in the countries in question increased from 716 000 units in 1982 to 748 300 units in 1985, having fallen to 604 000 and 689 500 units in 1983 and 1984 respectively. At paragraphs 21 to 24 of the definitive regulation it is also shown that the resale prices of imported electric motors significantly undercut cost and selling prices of Community producers. The Council goes on to find at paragraphs 25 and 26 of the contested regulation that, in spite of an increase in sales and production since 1982, Community producers of electric motors have sustained operating losses of between 2 and 25% of the cost price, with the exception of only two undertakings, one of which is situated in a Member State in which the relevant imports are very low. Finally, it is stated at paragraph 26 of the definitive regulation that employment directly related to the production of electric motors in the Community continued to decline between 1982 and 1985.

52 Having regard to those factors, whose accuracy has not been challenged by Neotype, the Council cannot be said to have exceeded the limits of its discretionary power by concluding that significant injury had been caused to Community producers by the imports in question, in spite of a reduction to the extent mentioned above in their market share.

53 Neotype further maintains that the Council ought to have calculated the market share of electric motors originating in the countries concerned not on the basis of import figures but on the basis of sales in the Community, which are at a lower level than imports owing to storage periods.

54 On that point it should be stated that any difference between the figures for imports and for sales brought about by the need to maintain stocks in the Community is only a temporary problem during the period when such stocks are built up, but it cannot reasonably be said that in the long run the volume of electric motors imported can be significantly in excess of the volume of sales of such motors. In view of the fact that electric motors originating in the countries concerned were already sold in the Community in considerable quantities during the 1970s and that stock accumulation must therefore have been completed, the Council cannot be criticized for calculating market share during the period of the investigation on the basis of imports.

55 In the light of the foregoing, the submission that injury was determined in an incorrect manner must be rejected.

The supposedly unlawful method of determining the anti-dumping duty

56 In its fourth submission Neotype contends that Regulation No 2176/84 does not authorize the Council to determine, with regard to associated importers, an anti-dumping duty which varies according to the difference between the price mentioned in the annex to the contested regulation and the customs value determined in accordance with Article 6 of Regulation No 1224/80, mentioned above.

57 According to Article 6(1)(a) of that regulation, the customs value of imported products is based, in the first place, on the unit price at which the imported goods or identical or similar imported goods are sold, at or about the time of the importation of the goods that are being valued, to persons not related to the vendors. If no such sales have been effected, the customs value is to be based, in accordance with paragraph 1(b) of that provision, on the unit price at which the imported goods or identical or similar imported goods are sold in the Community at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

58 As far as this submission is concerned, under Article 13(2) of Regulation No 2176/84 regulations imposing an anti-dumping duty are to indicate in particular the amount and type of duty imposed, together with certain other matters. Accordingly, the institutions are free to choose, within the limits of their margin of discretion, between the different types of duty.

59 As is stated at paragraph 38 of the contested regulation, the Council decided, in the interests of transparency, efficiency and in order to induce exporters to raise their prices, to impose a variable duty calculated according to the difference between a minimum price and the price to the first independent buyer. Moreover, the Council considered it necessary, in respect of importers associated with an exporter, to base its calculation of anti-dumping duty on the price paid by the first buyer not associated with the exporter, as determined in accordance with Article 6 of Regulation No 1224/80.

60 In taking that action, the Council did not exceed the limits of its discretionary power, since, in particular, a variable duty is generally more favourable to the traders in question, on account of the fact that it makes it possible to avoid anti-dumping duties, provided that the imports are effected at prices above the minimum price fixed.

61 As regards the determination of the price to the first independent buyer, Article 2(8)(b) of Regulation No 2176/84 recognizes that for the purpose of examining an

allegation of dumping the export price paid or payable by an importer associated with the exporter cannot be used for reference purposes. That provision states that in such a case the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer. The same uncertainties with regard to transactions between associated parties apply here as regards the determination of the net unit, free-at-Community-frontier price, according to which the amount of the anti-dumping duty varies.

62 Moreover, Regulation No 1224/80 itself provides in Article 3(2)(b) that in order to determine customs value in a sale between related persons the transaction value is accepted only if it closely approximates to a value established on the basis of factors other than those relating to the transaction in question. One of the reference values indicated in that provision (at subparagraph (ii)) is the customs value of identical or similar goods, as determined under Article 6 of that regulation.

63 Under those circumstances the Council cannot be criticized for determining in respect of associated importers, including Neotype, an anti-dumping duty whose amount varied in accordance with the customs value, within the meaning of Article 6 of Regulation No 1224/80.

64 Neotype further contends that the alternative method of calculation mentioned in Article 1(4)(a) of the definitive regulation, namely the determination of the net free-at-frontier price on the basis of the customs value within the meaning of Article 2(3) of Regulation No 1224/80, is not sufficiently precise and infringes the principle that administrative measures should be clear.

65 Article 2(3) of Regulation No 1224/80 provides that:

'Where the customs value of imported goods cannot be determined under Articles 3, 4, 5, 6 or 7, it shall be determined using reasonable means consistent with the

principles and general provisions of the Agreement and of Article VII of the General Agreement on Tariffs and Trade and on the basis of data available in the Community.'

66 Regard being had to the guarantees contained in Article 2(3) of Regulation No 1224/80 and to the fact that that provision lays down an alternative method, reference to that provision by the definitive regulation must be regarded as compatible with Regulation No 2176/84 and with the general principles of Community law. Should the customs authorities be required in a given case to have recourse to that alternative method of calculation, it would be for the national administrative authorities to ensure that the amount of the variable anti-dumping duty is determined in a transparent manner within the limits laid down in Article 2(3).

67 Neotype's submission that the method of determining the anti-dumping duty is unlawful must therefore be rejected.

The supposed illegality of the definitive collection of the amounts secured as provisional duties

68 Finally, Neotype contends that the definitive collection under Article 2 of the definitive regulation of the amounts secured as provisional duties is unlawful, inasmuch as the provisional regulation was null and void and was therefore not capable of being confirmed by the definitive regulation.

69 In that connection it should first be stated that the legality of the definitive regulation providing for the collection of the provisional anti-dumping duty may be

affected by any illegality of the provisional regulation only in so far as that illegality is reflected in the definitive regulation.

70 The submissions put forward by Neotype against the provisional regulation cannot be relied on against the definitive regulation. Neotype's first submission that the provisional regulation is unlawful owing to an irregularity occurring in the hearing procedure does not affect the definitive collection of the provisional duty. Even if Neotype was not informed in due time of the imposition of the provisional duty, that could not affect the definitive collection of that duty, since Neotype had the opportunity of making known its arguments before the definitive regulation was adopted. As regards the second and third submissions put forward by Neotype, the choice of Sweden as reference country was altered in the definitive regulation, which is based on Yugoslav market conditions. The fourth submission, namely that the injury was incorrectly established, which is also relied on with regard to the definitive regulation, was rejected above (see paragraphs 48 to 55). In its fifth submission, Neotype challenged the method applied for determining the provisional duty. In that regard it should be pointed out that that method cannot affect the legality of the definitive regulation adopted at the end of a separate procedure and on the basis of fresh considerations.

71 The submission that the definitive collection of the amounts secured as provisional duties was unlawful must therefore be rejected.

72 It follows from all the foregoing considerations that the application must be dismissed as a whole.

Costs

73 Under the terms of Article 69(2) of the Rules of Procedure the unsuccessful party is to pay the costs. Since the applicant has failed in its submissions it must be ordered to pay the costs, including the costs of the interveners who asked for them.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

(1) Dismisses the applications;

(2) Orders the applicant to pay the costs, including those of the interveners.

Slynn Zuleeg

Joliet Moitinho de Almeida Rodríguez Iglesias

Delivered in public in Luxembourg in 11 July 1990.

J.-G. Giraud
Registrar

Gordon Slynn
President of the Fifth Chamber