JUDGMENT OF THE COURT
14 March 1990 *

In Case C-156/87

Gestetner Holdings plc, whose registered office is in London, represented by Clare Tritton, K. P. E. Lasok and Fergus Randolph, barristers, Charlemagne Chambers, Brussels, with an address for service in Luxembourg at the Chambers of E. Arendt, 4 avenue Marie-Thérèse,

applicant,

supported by

Mita Industrial Co. Ltd, represented by Jean-Franßois Bellis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of F. Bausch, 8, rue Zithe,

intervener,

v

Council of the European Communities, represented by Hans-Jürgen Lambers, a Director in its Legal Department, and Erik H. Stein, Legal Adviser, acting as Agents, assisted by Hans-Jürgen Rabe and Michael Schütte, Rechtsanwälte, of Messrs Schön & Pflüger, Hamburg and Brussels, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100, boulevard Konrad-Adenauer, Kirchberg,

and

Commission of the European Communities, represented by its Legal Adviser John Temple Lang, 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,

defendants,

supported by

* Language of the case: English.

Kingdom of Spain, represented by F. Javier Conde de Saro, Director-General for Legal and Institutional Cooperation with the Communities, and Rosario Silva de Lapuerta, abogado del Estado, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6, boulevard Emmanuel-Servais,

and by

Committee of European Copier Manufacturers (Cecom), whose registered office is in Cologne (Federal Republic of Germany), represented by Dietrich Ehle and Volker Schiller, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Messrs Arendt and Harles, 4, avenue Marie-Thérèse,

interveners,

APPLICATION for the annulment of the Commission's decision rejecting the undertaking offered by the applicant in an anti-dumping proceeding concerning the importation of plain paper photocopiers originating in Japan, the annulment of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan (Official Journal 1987, L 54, p. 12) and, in the alternative, the annulment of that regulation in so far as it imposes an anti-dumping duty of 12.6% on photocopiers manufactured by Mita,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, R. Joliet, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and F. Grévisse, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 18 May 1989,

after hearing the Opinion of the Advocate General at the sitting on 5 July 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 21 May 1987, Gestetner Holdings plc, whose registered office is in London (hereinafter referred to as 'Gestetner') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of the decision whereby the Commission rejected the undertaking offered by Gestetner in the course of an anti-dumping proceeding concerning the importation of plain paper photocopiers originating in Japan (hereinafter: 'the contested decision') and the annulment of Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan (Official Journal 1987, L 54, p. 12; hereinafter referred to as 'the contested regulation').

2 As far as the contested regulation is concerned the action seeks its annulment as a whole or, in the alternative, its annulment in so far as it imposes an anti-dumping duty of 12.6% on plain paper photocopiers manufactured by Mita Industrial Company Ltd (hereinafter: 'Mita').

3 Gestetner is an original equipment manufacturer (hereinafter: 'OEM'), that is to say, a company supplying under its own brand name products manufactured by other undertakings. It purchases plain paper photocopiers in Japan from Mita, a Japanese manufacturer, and sells them under the Gestetner brand name in the Community and many non-member countries.

4 In July 1985, Mita, together with other Japanese producers, was the subject of a complaint submitted to the Commission by the Committee of European Copier Manufacturers, which accused it of dumping its products in the Community.

5 The anti-dumping proceedings initiated by the Commission pursuant to 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) led, in the first instance, to the imposition on Mita of a provisional anti-dumping duty of 13.7%. In the contested

regulation, adopted on a proposal from the Commission, the Council then set the definitive anti-dumping duty at 12.6%.

6 Reference is made to the Report for the Hearing for a fuller account of the applicable legislation, the facts of the dispute, the course of the procedure and the 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.

Admissibility

The claim for the annulment of the Commission's rejection of the undertaking offered by Gestetner

7 As the Court held in its order of 11 November 1987 in Case C-150/87 *Nashua* v *Council and Commission* [1987] ECR 4421, paragraph 6), the Commission's role forms an integral part of the Council's decision-making process. It follows from the provisions of Council Regulation No 2176/84 that the Commission is responsible for carrying out the necessary investigations and for deciding, on the basis of those investigations, whether to terminate the proceedings or to continue them by adopting provisional measures and by proposing that the Council adopt definitive measures. However, it is the Council which has the power to give a final decision. It is not obliged to make any decision at all if it disagrees with the Commission but may, if it wishes, adopt a decision on the basis of the latter's proposals.

8 The rejection by the Commission of a proposed undertaking is not a measure having binding legal effects of such a kind as to affect the interests of the applicant, because the Commission may revoke its decision or the Council may decide not to introduce an anti-dumping duty. Such a rejection is an intermediate measure whose purpose is to prepare for the final decision, and is not therefore a measure which may be challenged.

9 As is clear from the judgments of 7 May 1987 in Cases 240/84, 255/84 and 256/84 (*Toyo Bearing* v *Council*, *Nachi Fujikoshi* v *Council*, and *Koyo Seiko* v *Council* [1987] ECR 1809, 1861 and 1899 respectively), it is by challenging the regulation introducing definitive anti-dumping duties that traders can raise any irregularity associated with the rejection of their proposed undertakings.

10 It follows from the foregoing that the claim for the annulment of the contested decision is inadmissible.

The claim for the annulment of Regulation No 535/87

11 The Council takes the view that the application is inadmissible in so far as it seeks the annulment of the contested regulation in its entirety. It argues that the provisions of the contested regulation which impose specific anti-dumping duties on imports of products made by exporting undertakings with which Gestetner has no connection cannot be of direct and individual concern to it. According to the Council, the only provisions which may affect Gestetner individually are those relating to imports of products manufactured by Mita.

12 As the Court has consistently held, in particular in its judgment of 7 May 1987 in Case 258/84 *Nippon Seiko* v *Council* [1987] ECR 1923, paragraph 7, a regulation imposing different anti-dumping duties on a series of traders is of direct concern to any one of them only in respect of those provisions which impose on that trader a specific anti-dumping duty and determine the amount thereof, and not in respect of those provisions which impose anti-dumping duties on other undertakings.

13 It follows from the foregoing that the main claim for the annulment of the contested regulation in its entirety must be rejected.

14 As regards the alternative claim for the annulment of the contested regulation in so far as it imposes an anti-dumping duty of 12.6% on plain paper photocopiers manufactured by Mita, the Council contends that the relevant provisions of that regulation are not of direct and individual concern to Gestetner.

15 In that regard the Council argues, first, that Gestetner is an independent importer of plain paper photocopiers manufactured by Mita whose resale price was not

taken into account by the institutions in establishing the export price; according to the Court's case-law it is only where that is done that the importer in question must be recognized as having *locus standi* to bring an action for the annulment of a regulation introducing definitive anti-dumping duties.

16 Secondly, the Council argues that in order to construct the normal value of the products at issue the institutions set the profit margin of the exporter at 5% on the basis of information deriving solely from Mita, the producer and exporter, and not from Gestetner.

17 Regulations introducing an anti-dumping duty are legislative in nature and scope, inasmuch as they apply to all traders generally. Nevertheless, it is conceivable that some provisions of those regulations may be of direct and individual concern to those producers and exporters of the product in question who are alleged on the basis of information about their business activities to be dumping. This is true in general of producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations (see judgments of 21 February 1984 in Joined Cases 239 and 275/82 *Allied Corporation I* [1984] ECR 1005, paragraphs 11 and 12, and of 23 May 1985 in Case 53/83 *Allied Corporation II* [1985] ECR 1621, paragraph 4).

18 The same is true of those importers whose resale prices were taken into account for the construction of export prices and who are consequently concerned by the findings relating to the existence of dumping (see judgments of 29 March 1979 in Case 118/77 *Import Standard Office (ISO)* [1979] ECR 1277, paragraph 15, and of 21 February 1984 *Allied Corporation I*, quoted above, paragraph 15).

19 It is therefore necessary to determine whether, in this case, Gestetner was concerned by the findings relating to the existence of the dumping complained of.

20 It was by reference to the particular features of Mita's sales to OEMs, especially the differences in costs incurred by Mita in its sales to OEMs as compared with its costs in sales of plain paper photocopiers under its own brand name, that the Council saw fit, in constructing the normal value, to set the profit margin of exporters at 5%, that is to say, at a lower rate than the average profit margin, which was estimated at 14.6%.

21 Proceeding on the basis of the normal value thus constructed for sales by Mita to OEMs, the Council and the Commission arrived at a dumping margin lower than the margin calculated for sales of plain paper photocopiers marketed under Mita's own brand name, and that dumping margin, together with those ascertained for all Mita's sales channels, was taken into account in calculating a weighted dumping margin on the basis of which the anti-dumping duty was set.

22 It is true that the profit margin of 5% was applied without any differentiation between the various traders concerned for the purpose of constructing the normal value of plain paper photocopiers. However, the traders in question, who are limited in number, were identified by the institutions, and it was precisely in order to reflect the particular features of their business dealings with producers that the profit margin used was set at 5%.

23 It follows from the foregoing that there is no need to define the applicant as an importer or as an exporter; in the light of its business dealings with Mita, Gestetner is concerned by the findings relating to the existence of the dumping complained of, and the provisions of the contested regulation regarding Mita's dumping practices are therefore of direct and individual concern to it.

24 The alternative claim seeking the annulment of Regulation No 535/87 in so far as it imposed an anti-dumping duty of 12.6% on plain paper photocopiers manufactured by Mita is therefore admissible.

Substance

25 In support of its claim Gestetner makes five submissions, alleging variously: (1) miscalculation of the export price; (2) incorrect comparison of the normal value and the export price; (3) an incorrect definition of the Community industry; (4) incorrect assessment of the interests of the Community; (5) the inadequacy of the reasons given for the rejection of the undertaking offered by Gestetner.

Miscalculation of the export price

26 Gestetner claims that since it is independent of Mita the Council should have taken as the export price the price that it paid to Mita through Mita Europe, under Article 2(8)(a) of Council Regulation No 2176/84, instead of taking account of that price in order to construct an export price in accordance with Article 2(8)(b).

27 Plain paper photocopiers produced by Mita are sold through Mita Europe, which handles customers' orders, sends them the invoices and receives the relevant payments. However, the price paid by purchasers to Mita Europe is not the same as the price invoiced by Mita Japan to Mita Europe.

28 The Council therefore decided to construct the export price on the basis of the price invoiced by Mita Europe to Gestetner by making the allowances for which Regulation No 2176/84 provides, that is to say by deducting from that price a reasonable margin for overheads and profit, estimated at 5%.

29 In following that procedure, the Council correctly applied Article 2(8)(b) of Regulation No 2176/84, under which:

'In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party, or that for other reasons the price actually paid or payable for the product sold for export to the Community is unreliable, the export price may be

constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale, including all duties and taxes, and for a reasonable profit margin.'

30 It is clear from Article 2(8)(b) that the export price must be constructed when, for whatever reason, the price actually paid or payable for the product sold for export to the Community is unreliable.

31 In this case, neither the price paid by Mita Europe to Mita Japan nor the price paid by Gestetner to Mita Europe could serve as a point of reference, on account of the association between the exporting manufacturer and its subsidiary and the sales activities pursued by that subsidiary. The costs entailed by such activities effectively reduce the amount received by the exporting manufacturer inasmuch as they are normally borne by the importer.

32 It is true that the last part of Article 2(8)(b) mentions only the allowance to be made for all costs incurred between importation and resale, whereas the activities of Mita Europe are pursued prior to importation and, on the basis that Mita Europe resells plain paper photocopiers to Gestetner, that resale takes place before importation.

33 However, the allowances referred to are those inherent in the construction of an export price in the commonest cases of an association or a compensatory arrangement between the exporter and the importer or a third party. That does not mean that Article 2(8)(b) precludes the making of necessary allowances when the export price must be constructed for other reasons.

34 In those circumstances, it must be accepted that it was appropriate to construct the export price on the basis of the price paid by the first independent purchaser, adjusting that price to reflect the costs and the profits inherent in the role played by Mita Europe.

35 Neither the documents submitted nor the oral arguments made to the Court have shown that deduction to have been excessive. The submission alleging miscalculation of the export price must therefore be rejected.

Incorrect comparison of the normal value and the export price

36 Gestetner maintains that the difference in level of trade between the products sold by Mita to Gestetner and those sold by Mita to distributors and retailers in Japan required due allowance to be made pursuant to Article 2(10) of Regulation No 2176/84, which the Council and the Commission failed to do. In sales to the Japanese market Mita bears costs which are borne by OEMs in selling products sold to them, in particular advertising and promotion costs and the expense of employing sales staff.

37 It is apparent from the documents before the Court that the institutions took into consideration the difference between the costs and profits associated with sales to OEMs and the equivalent figures for other sales. Indeed, it was for that purpose, and because the institutions found it impossible to gauge that difference accurately, that in constructing the normal value they set the profit margin at 5% instead of its average rate, estimated at 14.6%.

38 Furthermore, it is the party claiming an allowance under Article 2(10) of Regulation No 2176/84 that must prove the need for the allowance, and under Article 2(10)(c) allowances for differences in the level of trade can be made only in so far as no account has been taken of them otherwise. Lastly, subparagraph (c) provides that allowances generally will not be made for differences in overheads and general expenses, including research and development or advertising costs.

39 Gestetner has not adduced evidence to show that the allowance made did not cover the alleged differences. Nor has it demonstrated that differences in the level of trade were not taken into account in connection with the other allowances made by virtue of differences in the terms of sale, or that any particular factor justified the inclusion of overheads and general expenses.

40 The submission alleging incorrect comparison of the normal value and the export price must therefore be rejected.

Incorrect definition of 'Community industry'

41 Gestetner argues that the Council and the Commission departed from their previous practice whereby a producer which is related to exporters or importers or is itself an importer of the product alleged to be dumped or subsidized must automatically be excluded from the set of producers constituting the 'Community industry' for the purposes of Article 4(5) of Regulation No 2176/84.

42 According to Article 4(1) of Regulation No 2176/84, 'a determination of injury shall be made only if the dumped or subsidized imports are, through the effects of dumping or subsidization, causing injury, i.e. causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry . . . '. Under Article 4(5) the term 'Community industry' is to be interpreted as referring 'to the Community producers as a whole of the like product or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products except that:

'when producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidized product the term "Community industry" may be interpreted as referring to the rest of the producers . . . '

43 Those provisions show that it is for the institutions, in the exercise of their discretion, to determine whether they should exclude from the 'Community industry' producers which are related to exporters or importers or are themselves importers of the dumped product. The discretion must be exercised on a case-by-case basis, by reference to all the relevant facts.

44 According to the documents submitted and the oral arguments made to the Court it was by the exercise of that discretion that a Community producer was excluded from the 'Community industry' in each of the cases referred to by the applicant. The practice of the institutions relied on by Gestetner thus does not exist.

45 Gestetner goes on to argue that even if it is accepted that the institutions are not obliged to exclude certain producers from the category of 'Community industry' on discovering such relationships, the exclusion of Olivetti, Océ and Tetras on the one hand and of Rank Xerox on the other would have been justified in the circumstances.

46 As far as Olivetti and Océ are concerned, Gestetner submits that the importation of plain paper photocopiers originating in Japan reflected a strategy on their part aimed at reinforcing their market position and increasing their profits. In view of the large share of their total sales accounted for by sales and rentals within the EEC of plain paper photocopiers imported by both those undertakings, their inclusion in the definition of 'Community industry' renders the exception in Article 4(5) of Regulation No 2176/84 devoid of any real meaning. With regard to Tetras, Gestetner points out that Canon has a 19% shareholding in that undertaking, with an option to purchase a further 30%.

47 According to the Council and the Commission, Olivetti and Océ imported plain paper photocopiers from Japan so as to be able to offer their customers a full range of models. Those photocopiers, falling within segments 1 and 2, were sold at higher prices than those charged by their suppliers and accounted for between 35 and 40% of sales and rentals of new machines placed on the market over the period from 1981 to July 1985. The attempts of both producers to develop and

market a full range of models failed, however, because of the depressed market prices imposed by Japanese imports.

48 In those circumstances, the correctness of which has not been disproved by the documents submitted or in oral argument before the Court, it must be held that the abovementioned producers did not, by their imports, cause injury to themselves by reducing the use of their production capacity, lowering their own prices or abandoning projects designed to increase production or to produce new products.

49 In view of the foregoing it must be concluded that by including Olivetti and Océ in the category of 'Community industry' the Council and the Commission did not exceed the margin of discretion which they enjoy.

50 As far as Tetras is concerned, it need merely be observed that, as paragraphs 81 and 107 of the contested regulation show, this producer was not taken into consideration either in assessing the injury suffered or in determining the rate of anti-dumping duty.

51 According to Gestetner, Rank Xerox should not have been regarded as a Community producer either. Gestetner points out that Rank Xerox has a 50% shareholding in Fuji Xerox, a Japanese company, and that both companies are controlled by Xerox Corporation (USA). Consequently, it claims that the commercial decisions of Rank Xerox are made within the context of a world-wide corporate business strategy.

52 Gestetner further argues that in segments 1 and 2 Rank Xerox virtually limits itself to the assembly of components imported from Japan; the value added in the Community would reach 20% only if labour were included and 35% only if factory profits were also included. The value added referred to by the institutions is merely a weighted average for all Rank Xerox photocopiers in segments 1 to 4.

This dependence of Rank Xerox on imports of Japanese plain paper photocopiers means that it cannot be classed as one of the producers making up the 'Community industry'.

53 Gestetner adds that Rank Xerox's decision to purchase low-volume photocopiers from Fuji Xerox is not justified in terms of self-defence. It was a management decision, as the Council itself acknowledged in paragraph 64 of the contested regulation.

54 Finally, Gestetner relies on the injury which Rank Xerox causes to the other Community producers through the resale of plain paper photocopiers supplied by Fuji Xerox at dumped prices, an injury which was admitted by the Council in paragraph 63 of the contested regulation.

55 On the basis of those arguments, Gestetner maintains that by including the undertakings mentioned above in the 'Community industry' for the purpose of determining the injury caused to that industry by the alleged dumping the institutions infringed Article 4(1) and (5) of Regulation No 2176/84. It adds that the introduction of anti-dumping duties was all the less justified inasmuch as the other producers could not be regarded as representing 'a major proportion of the total Community production' within the meaning of Article 4(5), and that no evidence of injury to their production could therefore be found.

56 In assessing whether, in this case, the relevant facts as a whole called for the exclusion of Rank Xerox from the 'Community industry', it should first be observed that during the reference period the value added on plain paper photocopiers manufactured by Rank Xerox in the Community was 50% in segments 1 to 4. It is true that in the case of low-volume photocopiers manufactured in the United Kingdom the value added was much less; however, as the Council rightly observed in paragraph 58 of the contested regulation, '. . . since the like product in the proceeding has been defined to be all photocopiers from personal copiers up to and including machines classified in Dataquest segment 5, it would be inappro-

priate to analyse whether a Community producer should be part of Community industry just in terms of its production of one model or a limited range of models.'

57 Secondly, with regard to imports of plain paper photocopiers supplied by Fuji Xerox from Japan, the Council and the Commission took the view that Rank Xerox had not produced evidence that it had been led to buy the machines on grounds of self-protection. According to the information obtained the decision was a management decision taken by the Xerox group of companies. However, the volume of those imports was minimal in relation to the entire range of plain paper photocopiers produced by Rank Xerox within the Community and in relation to the Community market as a whole (1%), and the resale prices were the same as the prices of equivalent machines produced by Rank Xerox.

58 Moreover, whilst it is true that by reselling plain paper photocopiers imported from Japan at dumped prices, lower than those charged by the other Community producers, Rank Xerox caused injury to those producers, it should none the less not be excluded from the class of Community producers and thereby deprived of the protection afforded by Community legislation against the injury which it would have suffered on its own account.

59 Lastly, it should be noted that, according to the Council, Rank Xerox had committed itself to manufacturing some components to replace components of Japanese origin, or to obtaining them from other Community producers. The performance of that commitment would have become extremely onerous in the absence of anti-dumping measures.

60 It is true that Rank Xerox has a 50% shareholding in its Japanese supplier, Fuji Xerox. However, in the light of all the circumstances set out above, the correctness of which has not been disproved either by the documents submitted or in oral argument before the Court, it must be concluded that by including Rank Xerox in the 'Community industry' the Council and the Commission did not exceed the margin of discretion which they enjoy.

61 It follows from the foregoing that the submission alleging an incorrect definition of the 'Community industry' must be rejected.

Incorrect assessment of the interests of the Community

62 Gestetner claims that in view of the structure of the market, in particular its degree of concentration, the interests of the Community did not call for the introduction of anti-dumping duties. It further claims that the imposition of those duties strengthened the dominant position of Rank Xerox and restricted competition, and that ensuing market developments were unfavourable to the consumer. It concludes that by introducing the anti-dumping duties the institutions infringed Article 12(1) of Regulation No 2176/84.

63 The question whether the interests of the Community call for Community intervention involves appraisal of complex economic situations. As the Court has held, in particular in its judgment of 7 May 1987 in Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861, paragraph 21, judicial review of such an appraisal must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers.

64 The Council and the Commission contend that in the absence of anti-dumping duties the continued existence of an independent Community photocopier industry would be in doubt, although that industry is needed to retain and develop the technology required for the manufacture of reprographic products and also to protect a large number of jobs. That fear was based in particular on the take-over by a Japanese manufacturer, in the course of the investigation, of one of the Community producers. The institutions also considered that the need to protect the Community industry was more important than the protection of the short-term interests of consumers.

65 The same need also justifies any strengthening of the market position of one of the Community producers as a result of the introduction of anti-dumping duties,

especially since the Council and the Commission had no reason to fear abuses. It may be noted that none of the six Japanese manufacturers holding a share of the Community market have withdrawn from that market since the introduction of those duties.

66 That being so, it must be concluded that in taking the view that the interests of the Community called for the introduction of anti-dumping duties the institutions did not commit a manifest error of appraisal.

67 The submission alleging incorrect assessment of the interests of the Community must therefore be rejected.

Inadequate statement of the reasons for the rejection of the undertaking offered by Gestetner

68 Gestetner maintains that the reasons given for the rejection of its proposed undertaking are inadequate and therefore do not comply with the requirements of Article 190 of the Treaty. The Commission simply referred to its traditional practice of not accepting undertakings from importers (see paragraph 100 of the contested regulation) without explaining the reasons for that practice or the way in which it was applied in this case, when the applicant should have been regarded as an exporter.

69 The Court has consistently held (see in particular the judgment of 26 June 1986 in Case 203/85 *Nicolet Instrument* [1986] ECR 2049, paragraph 10) 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 a 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.

70 That requirement was satisfied in this case. The Commission's practice of not accepting undertakings from importers, supported by the Council at paragraph 100 of the contested regulation, is based both on the rules of the GATT Anti-Dumping

Code, Article 7 of which provides for the acceptance of undertakings from exporters only, and on Article 10 of Regulation No 2176/84. Although Article 10 does not rule out the possibility for the Commission of accepting an undertaking offered by an importer, its wording implies that they may be accepted only in exceptional cases. Article 10(4) and (6), dealing with the continuation of the investigation after the acceptance of undertakings and the introduction of anti-dumping duties after the withdrawal of an undertaking or the discovery that it has been infringed, refers only to exporters, that is to say, those traders whose undertakings may a priori be accepted.

71 The system is justified on two lines of reasoning. First, acceptance of the undertaking offered by an importer would have the effect of encouraging him to continue to obtain supplies from outside the Community at dumped prices. Secondly, other importers would have to receive the same treatment and this, on account of the large number of companies involved, would make it extremely difficult to monitor compliance with the undertakings.

72 The question whether Gestetner is the actual exporter of the plain paper photocopiers or the importer is quite irrelevant. Since the photocopiers are purchased for importation into the Community, and therefore the reasons justifying the refusal to accept undertakings offered by importers are applicable, Gestetner could not be regarded as an exporter for that purpose (fourth subparagraph of paragraph 100 of the contested regulation).

73 It follows that the submission alleging the inadequacy of the reasons given for the rejection of the proposed undertaking put forward by Gestetner must be rejected, and hence the application must be dismissed in its entirety.

Costs

74 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions it must be ordered to pay the costs, including those of interveners who have asked for them in their pleadings. Mita, which intervened in support of the applicant, must bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs, including those incurred by the interveners; Mita is ordered to bear its own costs.

Due Slynn Schockweiler Zuleeg Koopmans Mancini

Joliet O'Higgins Moitinho de Almeida Rodríguez Iglesias Grévisse

Delivered in open court in Luxembourg on 14 March 1990.

J.-G. Giraud
Registrar

O. Due
President