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

25 September 1997 *

In Case T-170/94,

Shanghai Bicycle Corporation (Group), a company incorporated under Chinese law, established in Shanghai (People's Republic of China), represented by Izzet M. Sinan, Barrister, with an address for service in Luxembourg at the Chambers of Arendt and Medernach, 8-10 Rue Mathias Hardt,

applicant,

v

Council of the European Union, represented by Bjarne Hoff-Nielsen and Jorge Monteiro, Legal Advisers, acting as Agents, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, of the Hamburg and Brussels Bars, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Diretorate, European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

* Language of the case: English.

supported by

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

and

The European Bicycle Manufacturers' Association (EBMA), established in Paris, represented by Jacques H. J. Bourgeois, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

interveners,

APPLICATION for annulment of Council Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty (OJ 1993 L 228, p. 1),

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

composed of: R. García-Valdecasas, President, V. Tiili, J. Azizi, R. M. Moura Ramos and M. Jaeger, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the oral procedure on 11 March 1997,

gives the following

Judgment

Facts

1 The applicant, Shanghai Bicycle Corporation (Group), a company governed by Chinese law, is one of the largest producers and exporters of bicycles in China. It also exports to the European Community.

2 In July 1991, the European Bicycle Manufacturers' Association ('EBMA') submitted a complaint to the Commission alleging that bicycles originating in the People's Republic of China had been dumped, causing serious injury.

3 Following that complaint, the Commission initiated an anti-dumping procedure concerning imports into the Community of bicycles originating in Taiwan and China, pursuant to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the

European Economic Community (OJ 1988 L 209, p. 1, 'the basic anti-dumping regulation'). Notice of initiation of the procedure was published on 12 October 1991 (OJ 1991 C 266, p. 6).

4 During this procedure the Commission sent a questionnaire to the non-Community producers and exporters. The applicant replied by letter of 17 December 1991. Several other exporters also answered it.

5 On 5 February 1992 the Commission requested further information concerning the types and models of bicycles exported to the Community. In its reply, the applicant enclosed documents altering its original answer. Those alterations concern the quantities of bicycles sold by the applicant and the value of the quantities sold, exports to the Community and further particulars of the models of bicycles exported to the Community.

6 On 9 June 1992 a hearing was held by the Commission for various Taiwanese and Chinese exporters.

7 The Commission subsequently adopted Regulation (EEC) No 550/93 of 5 March 1993 imposing a provisional anti-dumping duty on imports of bicycles originating in the People's Republic of China (OJ 1993 L 58, p. 12, 'the provisional regulation'), fixing the provisional rate of duty applicable at 34.4%.

8 By letter of 8 April 1993, the applicant submitted its written observations on the provisional regulation, raising a number of objections. It also asked for information regarding the methodology adopted by the Commission.

9 On 21 June 1993 the Commission provided the applicant with a document entitled 'Disclosure Document', containing the principal facts and considerations relating to the grounds on which it contemplated proposing that the Council should impose a definitive anti-dumping duty. In due course, the applicant submitted written observations on that document and met the Commission's case handlers.

10 The Council subsequently adopted Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty (OJ 1993 L 228, p. 1, 'Regulation No 2474/93' or 'the contested regulation'), fixing the definitive rate of duty applicable at 30.6%.

Procedure

11 The applicant lodged the application initiating these proceedings at the Registry of the Court of Justice on 23 December 1993, where it was registered as Case C-477/93.

12 Council Decision 94/149/ECSC, EC of 7 March 1994 amending Decision 93/350/Euratom, ECSC, EEC amending Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1994 L 66, p. 29) provides that as from 15 March 1994 the Court of First Instance is to exercise jurisdiction in actions brought by natural or legal persons pursuant to Articles 173, 175 and 178 of the EC Treaty relating to measures to protect trade in the case of dumping and subsidies. Accordingly, by order of 18 April 1994 the Court of Justice referred the case to the Court of First Instance, where it was registered as Case T-170/94.

13 By order of 14 September 1994, the President of the Third Chamber of the Court of First Instance granted the Commission leave to intervene in support of the form of order sought by the defendant. By letter of 17 October 1994, the Commission stated that it did not intend to submit a statement in intervention.

14 By order of 20 October 1994, the President of the Third Chamber (Extended Composition) of the Court of First Instance granted EBMA leave to intervene in support of the form of order sought by the defendant and granted confidential treatment in respect of two documents annexed to the application. EBMA submitted its statement in intervention on 6 January 1995. The applicant lodged its observations concerning that statement on 3 March 1995. At the defendant's request, the written procedure was reopened by decision of this Court of 26 April 1995 in order to enable it to express its views on the applicant's observations concerning EBMA's statement in intervention. The defendant submitted its observations on 2 June 1995.

15 Following the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Communities, the case was reassigned on 23 January 1995 to the Third Chamber (Extended Composition) and a new Judge Rapporteur designated. Since he was later attached to the Fifth Chamber (Extended Composition), the case was in consequence assigned to that chamber.

16 Upon hearing the Report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber, Extended Composition) decided to open the oral procedure and to adopt measures of organization of procedure. Before the date of the hearing, the defendant produced the documents requested by the Court.

17 The parties presented oral argument and replied to the Court's questions at the hearing on 11 March 1997.

Forms of order sought

18 The applicant claims that the Court should:

— annul Regulation No 2474/93;

— order the defendant to pay the costs.

19 The defendant contends that the Court should:

— declare the application inadmissible;

— alternatively, dismiss it as unfounded;

— order the applicant to pay the costs.

20 The intervener, EBMA, contends that the Court should:

— declare the application inadmissible;

— alternatively, dismiss it as unfounded;

— order the applicant to pay the costs of intervention.

21 The other intervener, the Commission, contended at the hearing that the Court should:

— dismiss the application;

— order the applicant to pay the costs of intervention.

Admissibility

22 Supported by the interveners, the defendant raises essentially three pleas of inadmissibility. The first concerns the applicant's status as a legal person. The second alleges that the applicant is not directly and individually concerned. The third alleges that the scope of the application is excessively wide.

The first plea of inadmissibility

Arguments of the parties

23 The defendant and interveners contend that the applicant cannot be regarded as a legal person within the meaning of the fourth paragraph of Article 173 of the Treaty. The information supplied concerning the links between the applicant company and the 13 entities which form part of its group and the share held by one of those entities in another company is contradictory and does not make it possible to determine satisfactorily the applicant's legal status and activities. Furthermore, none of the information communicated by the applicant makes it clear whether the latter is a manufacturing company or a trading company.

24 In addition, the defendant points out that, contrary to the requirements of Article 38(5) of the Rules of Procedure of the Court of Justice, the application was not accompanied by an instrument constituting or regulating the applicant company or a recent extract from the register of companies, firms or associations.

25 The applicant challenges the defendant and interveners' argument that it is not a legal person. For that purpose, it has annexed to the reply a copy of its commercial registration and notes that the 13 entities forming part of the group are production units and not separate companies. Furthermore, the explanations contained in its reply to the Commission's questionnaire concerning its holding in the capital of another company are perfectly clear and have been confirmed by that company.

Findings of the Court

26 The admissibility of an action for annulment brought by an entity under Article 173 of the Treaty depends primarily on the legal personality of the applicant. Under the Community judicial system, an applicant is a legal person if it has acquired legal personality in accordance with the law governing its constitution (Case 50/84 *Bensider* v *Commission* [1984] ECR 3991, paragraphs 7 and 8), or if it has been treated as an independent legal entity by the Community institutions (Case 175/73 *Union Syndicale and Others* v *Council* [1974] ECR 917, paragraphs 11 to 13, and Case 18/74 *Syndicat Général du Personnel* v *Commission* [1974] ECR 933, paragraphs 7 to 9; Case T-161/94 *Sinochem Heilongjiang* v *Council* [1996] ECR II-695, paragraph 31).

27 In accordance with Article 38(5)(a) of the Rules of Procedure of the Court of Justice and Article 44(5)(a) of the Rules of Procedure of the Court of First Instance, where the applicant is a legal person governed by private law, its application must

be accompanied by the instrument or instruments constituting or regulating that person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law.

28 In this case, the applicant is the principal company of the Shanghai Bicycle Corporation Group, an undertaking engaged in both manufacturing and exporting. It is composed of 13 production units. At the reply stage it produced a copy of the commercial register evidencing its registration by the Shanghai provincial authorities on 21 May 1993. According to that document, the applicant is a 'corporate legal person' owned by the People's Republic of China and possessing legal personality under Chinese law. Since the fact that legal personality has been conferred by national law gives rise to the presumption that the conditions for acquiring legal personality for the purposes of the fourth subparagraph of Article 173 of the Treaty have been satisfied (see *Bensider*, cited above, paragraphs 7 and 8) and since the document showing commercial registration is evidence of legal personality under Chinese law, that document must be regarded as equivalent to an extract providing proof of the applicant's existence in law, within the meaning of the abovementioned Rules of Procedure of the Court of Justice and the Court of First Instance.

29 Furthermore, the applicant was treated as an independent legal entity by the Community institutions at the time of the administrative procedure. The Commission accordingly corresponded with it on a regular basis and accepted it as an interlocutor at the hearing. That being so, the Community institutions cannot maintain that, in the judicial proceedings following the administrative procedure, the applicant is not an independent legal person (*Sinochem*, cited above, paragraph 34).

30 In the light of all the above considerations, it is clear that at the time of making the application, the applicant was a legal person within the meaning of Article 173 of the Treaty.

The second plea of inadmissibility

Arguments of the parties

31 The defendant and interveners maintain that the applicant is not directly and individually concerned by the contested regulation within the meaning of the fourth paragraph of Article 173.

32 They point out that, in countries which do not have a market economy, exporters are controlled by the State and that, in consequence, anti-dumping proceedings and regulations are directed against the latter and not against the various exporters. In their view, the applicant cannot rely on the judgment in Case 113/77 *NTN Toyo Bearing Company and Others* v *Council* [1979] ECR 1185, paragraph 11, in which the Court held that an anti-dumping regulation, by analogy with a 'collective decision', is none the less of direct and individual concern to the producers specifically named in it. Nor can it rely on the judgment in Joined Cases 239/82 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, paragraphs 11 and 12, in which the undertakings, and not the State, were charged with dumping practices. According to the defendant, in so far as Regulation No 2474/93 concerns exports from a State-trading country it does not have the character of a 'collective decision' against undertakings specifically named in the regulation. In addition, it contends that the applicant cannot plead the judgment in *Allied Corporation* v *Commission* either, since in this case it is the People's Republic of China, and not the applicant or other manufacturers and/or exporters, which has been charged with dumping practices.

33 The applicant takes the view that it is directly and individually concerned by the contested regulation. First, it is specifically named in the regulation. Second, it participated in every stage of the investigation. It maintains that it satisfies the conditions for admissibility set out by the Court of Justice in *Allied Corporation* v *Commission*, cited above. Although it had always been treated as a party to the

proceedings by the Commission's case handlers, the Commission and the Council refused to use the information supplied by it. It is precisely that refusal which gave rise to the dispute.

34 The applicant claims to be a bicycle manufacturer and accordingly denies that it can be treated as an importer.

Findings of the Court

35 Although, in the light of the criteria set out in the second paragraph of Article 173 of the Treaty, regulations imposing anti-dumping duties are indeed, as regards their nature and their scope, of a legislative character in that they apply to all the traders concerned taken as a whole, their provisions may none the less be of individual concern to certain traders (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and *Sinochem*, cited above, paragraph 45).

36 It has thus been acknowledged that measures imposing anti-dumping duties are liable to be of direct and individual concern to those 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 *Allied Corporation* v *Commission*, cited above, paragraph 12; Case 53/83 *Allied Corporation and Others* v *Council* [1985] ECR 1621, paragraph 4; and *Extramet Industrie*, cited above, paragraph 15) and, more generally, to any trader who can establish the existence of certain attributes which are peculiar to him and which, as regards the measure in question, differentiate him from all other traders (see *Extramet Industrie*, cited above, paragraphs 16 and 17, and *Sinochem*, cited above, paragraph 46).

37 The Court is unable to endorse the defendant's argument that Joined Cases 239/82 and 275/82 *Allied Corporation* v *Commission* cannot be relied upon in this case on the ground that it is not the various Chinese manufacturers and exporters who have been charged with dumping practices but the People's Republic of China as a State. It is clear from Regulation No 2474/93, and in particular from the 50th recital in the preamble thereto concerning the calculation of the dumping margin, that the dumping practices are attributed to Chinese undertakings exporting bicycles to the Community.

38 Moreover, the judicial protection afforded to individual undertakings concerned by an anti-dumping duty cannot be affected by the mere fact that the duty in question is a single duty and is imposed by reference to a State and not to individual undertakings.

39 In the circumstances of the case, it must be recognized that the applicant is individually concerned by the contested regulation. In the first place, the bicycles it manufactures are subject to an anti-dumping duty. In the second place, it participated in the administrative procedure as far as it could (it replied to the Commission's questionnaire, took part in a hearing, made observations on the provisional regulation and the 'Disclosure Document'). Furthermore, its participation is expressly referred to in the contested regulation, which consequently 'identifies' the applicant (see Case T-155/94 *Climax Paper Converters* v *Council* [1996] ECR II-873, paragraphs 50 and 51).

40 Moreover, the defendant has not produced evidence to support its assertion that the applicant is simply a trader in bicycles and may be placed on the same footing as an importer free to select its manufacturers (see paragraph 23 above).

41 The applicant is also directly concerned because a regulation which imposes an anti-dumping duty obliges the Member States' customs authorities to levy the duty imposed without leaving them any discretion (Case 118/77 *I. S. O.* v *Council* [1979] ECR 1277, paragraph 26, and *Climax Paper*, cited above, paragraph 53).

42 It follows that the second plea of inadmissibility must be rejected.

The third plea of inadmissibility

Arguments of the parties

43 According to the defendant, the applicant cannot in any event seek annulment of the contested regulation in its entirety, but only in so far as the applicant has not been exempted from the anti-dumping duty (Case C-174/87 *Ricoh* v *Council* [1992] ECR I-1335, paragraph 7).

44 The applicant points out that in *Ricoh*, cited above, the Japanese companies concerned had been subjected by the Council to anti-dumping duties calculated individually for each of them. In its view, the reasoning of the Court of Justice, to the effect that a company may seek annulment only of the provisions imposing a specific anti-dumping duty on it, is irrelevant in the context of an anti-dumping procedure against undertakings from a non-market economy country such as the People's Republic of China. Consequently, the defendant's arguments revolve in a 'vicious circle', since the dumping practices in question are attributed to undertakings from a country with no market economy.

45 Furthermore, it is clear from the first page of the application that annulment of the contested regulation is sought in so far as it affects the applicant.

Findings of the Court

46 Although it is not stated in so many words in the form of order sought by the applicant, it is clear from the first page of the application as confirmed at the hearing that it seeks annulment of Regulation No 2474/93 'in so far as it affects the applicant'.

47 It follows that the application must be interpreted as seeking annulment of the regulation only in so far as it affects the applicant.

48 Accordingly, the third plea of inadmissibility alleging that the scope of the action is too wide must be rejected (see also *Climax Paper*, cited above, paragraphs 54 to 56).

49 It follows from all the foregoing considerations that the action is admissible.

Substance

50 The applicant relies on five pleas in law in support of its action. The first plea alleges infringement of Article 2(12) of the basic anti-dumping regulation, and abuse of powers in determining which products should be subject to the anti-dumping duty. The second plea alleges infringement of Article 2(13) of the basic anti-dumping regulation in that the defendant used an improper sampling technique. In its third plea, the applicant alleges that, by refusing to grant it individual treatment, the Community institutions infringed Articles 2(5) and (9) and 13(3) of the basic anti-dumping regulation and Article VI(2) of the General Agreement on

Tariffs and Trade ('GATT'). According to the fourth plea, the defendant infringed Article 7(4)(b) and (c) of the basic anti-dumping regulation by refusing to disclose the method used to calculate the dumping margin. In its fifth plea, the applicant alleges infringement of Article 13(3) of the basic anti-dumping regulation and abuse of discretion in that the anti-dumping duty imposed is said to be excessive.

The first plea: error in defining 'like products' (breach of Article 2(12) of the basic anti-dumping regulation) and abuse of powers in determining the products subject to the anti-dumping duty

Arguments of the parties

51 The applicant claims that the defendant has grouped all types of bicycles together as a single like product, instead of distinguishing five separate categories, namely mountain bicycles, sports/racing bicycles, touring bicycles, children's bicycles and the residual category of other bicycles. The Commission originally used that classification, as its questionnaire shows, but departed from it in the provisional regulation. Accordingly, the defendant failed to classify the products correctly in order to calculate the normal value and the dumping margin.

52 According to the applicant, all bicycles cannot be regarded as like products, the differences between the categories of bicycles listed above being fundamental. Each category is aimed at a different class of consumers and is used for a specific purpose.

53 In order to determine 'like products' within the meaning of Article 2(12) of the basic anti-dumping regulation, the question is not how the product is actually used once it is purchased, but the criteria on which the purchaser bases his choice, since that is the stage at which competition takes place. Those criteria include physical characteristics and 'functional substitutability' (Joined Cases 294/86 and 77/87 *Technointorg* v *Commission and Council* [1988] ECR 6077; Case C-176/87 *Konishiroku Photo Industry* v *Council* [1992] ECR I-1493 and Case C-177/87 *Sanyo Electric* v *Council* [1992] ECR I-1535; see also the Opinion of Advocate General Lenz in Case C-75/92 *Gao Yao* v *Council* [1994] ECR I-3141, point 82).

54 Moreover, the applicant alleges that the defendant abused its discretion by failing to determine the dumping margin and injury for each of the abovementioned categories of bicycle. Unlike the Taiwanese manufacturers and Chinese joint-venture undertakings which mainly export mountain bicycles to the Community and, to a lesser extent, racing bicycles, the applicant exports a large number of children's bicycles, a few mountain bicycles and virtually no racing bicycles.

55 As a preliminary point, the defendant observes that the concept of 'like product' in the basic anti-dumping regulation does not allow any conclusion to be drawn as to the product or range of products which may be subject to an anti-dumping investigation, but is intended to ensure that a proper price comparison is made in order to establish the normal value and the dumping margin.

56 First of all, the defendant denies that it initially sought to distinguish between five categories of bicycle.

57 Second, it was correct in considering the whole range of bicycles to be a single product, because the distinctions between the various categories are blurred and because the various categories are in competition with one another on account of

the resemblances between bicycles of different types. Moreover, it is impossible to establish clear-cut categories of bicycle, since new models displaying the features of various types of bicycles are constantly appearing on the market.

58 According to the defendant, since Article 2(12) of the basic anti-dumping regulation defines 'like product' as a product which is identical 'in all respects' to the product under consideration, it would have been necessary, in keeping with the applicant's reasoning, to divide bicycles into substantially more than five categories. No two bicycles are perfectly identical, that is to say 'alike in all respects'.

59 First, it follows in its view from the judgment of the Court of Justice in Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 58, that in the absence of generally accepted criteria for grouping products into distinct categories, all products concerned could validly be treated as like products. Second, according to the Opinion of Advocate General Lenz in *Gao Yao*, cited above, the Community institutions enjoy a broad discretion with regard to the comparability of the products concerned. Third, the Community institutions are entitled to treat some products as a single 'like product' if the product segments are not clearly delimited, if some product types can be classified in several different segments and if there is competition between product types in adjoining segments and between product types in various distinct segments (Case C-179/87 *Sharp Corporation* v *Council* [1992] ECR I-1635, paragraphs 26 to 28). The defendant submits that the Court's reasoning in that case applies to the present case as well. In accordance with that case-law, the burden of proving that the Community institutions made an error of assessment in determining 'like products' rests with the applicant. In the present case, however, the applicant has failed to establish any such error.

60 The intervener EBMA shares the defendant's view that the distinction between bicycles is unclear, as various categories overlap. In addition, there is a very high degree of functional substitutability between the various types of bicycle, since it is very easy to remove, add or replace various components according to the customer's wishes.

Findings of the Court

61 The basic anti-dumping regulation does not specify exactly how the product or range of products which may be subject to an anti-dumping investigation is to be defined or require an intricate classification of the product.

62 It refers to the concept of 'like product' in the context of establishing normal value and injury. Article 2(5) provides that the normal value of a dumped product is to be defined by reference to a 'like product' of a market economy third country which is actually sold. In accordance with Article 2(12), '"like product" means a product which is identical, i. e. alike in all respects to the product under consideration or, in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration'. According to Article 4(4), 'the effect of the dumped or subsidized imports shall be assessed in relation to the Community production of the like product when available data permit its separate identification'.

63 The institutions enjoy a wide discretion in analysing complex economic situations (see, for instance, Case T-164/94 *Ferchimex* v *Council* [1995] ECR II-2681, paragraph 66) and the determination of 'like products' in establishing normal value pursuant to those provisions falls within that context.

64 Judicial review of such assessment must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of appraisal of the facts or a misuse of power (Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861, paragraph 21; Case C-156/87 *Gestetner Holdings* v *Council and Commission* [1990] ECR I-781, paragraph 63; and *Ferchimex*, cited above, paragraph 67).

65 This Court must therefore consider whether, in this instance, the Community institutions have exceeded their wide discretion (see paragraph 63 above) by treating as 'Community production of the like product' bicycle production as a whole, all segments merged together.

66 The Court of Justice held in its judgments concerning anti-dumping duties imposed on plain paper copiers originating in Japan (see, for example, Case C-171/87 *Canon* v *Council* [1992] ECR I-1237, paragraphs 47, 48 and 52; *Ricoh*, cited above, paragraphs 35, 36 and 40; and *Sharp Corporation*, cited above, paragraphs 25, 26 and 30) that the Community institutions did not make an error of assessment by considering, with a view to determining the injury suffered by the Community industry, that 'Community production of the like product' meant production of all photocopiers, in all segments merged together, excluding machines not produced in the Community, since according to the market surveys on which the institutions had relied, there was no clear delimitation in the segment classification of photocopiers inasmuch as, on the one hand, some photocopiers could be classed in several different segments in view of certain of their characteristics and technical features and, on the other, there was competition both between machines in adjoining segments and between those classified in non-adjoining segments.

67 As indicated in the provisional regulation (see the 9th to 11th recitals in the preamble) and the contested regulation (see the eighth recital in the preamble), the institutions concluded that it was not possible to define clearly distinct categories of bicycles based on end-users' application or consumers' perception.

68 It must be stated that several models of bicycle exist which are distinguished chiefly by their particular accessories. Bicycles are usually classified in five sub-categories: mountain bicycles, sports/racing bicycles, touring bicycles, children's bicycles and the residual category of other bicycles.

69 None the less, it is clear from the documents before the Court and the explanations supplied by the parties at the hearing that those models are not clearly delimited, since some bicycles can be classified in several sub-categories in view of certain of their characteristics and technical features. Furthermore, there is competition both between bicycles in adjoining sub-categories and between those classified in the various sub-categories.

70 Those differences between bicycles are not sufficient to establish that all those models have different functions or answer different needs. As is apparent, moreover, from the eighth recital in the preamble to the contested regulation, the fact that consumers tend to use multi-purpose bicycles and that it is possible to alter models by adding various components weakens, even eliminates entirely, the relevance of any distinction drawn between various categories of bicycles for the purposes of an anti-dumping procedure.

71 In any event, the applicant has not established that the institutions committed a manifest error in their appraisal of the facts by considering that, in this instance, the concept of 'like product' within the meaning of Article 2(12) of the basic anti-dumping regulation covers all bicycles, all categories merged together.

72 It follows that the first plea must be rejected.

The second plea: improper sampling technique (breach of Article 2(13) of the basic anti-dumping regulation)

Arguments of the parties

73 In its second plea, the applicant claims that the defendant infringed Article 2(13) of the basic anti-dumping regulation, which allows the use of sampling techniques only where a significant volume of transactions is involved. In those circumstances, the defendant should use the most frequently occurring or representative prices.

74 In the present case, according to the applicant, the sample used is not representative. The defendant did not take into account data relating to the State-owned undertakings which replied to the questionnaire, with just one exception. Admittedly, that undertaking had the largest volume of exports, but its prices were much lower than those of the other exporters concerned. Since the number of transactions by State-owned undertakings was relatively low, the defendant, if it wished to adopt the sampling technique, could and should have set price bands or referred to the most frequently occurring transactions by all State-owned exporters. At the very least the defendant ought to have taken into consideration data relating to State-owned undertakings more representative than the company it used, especially the data supplied by the applicant. The latter is the second largest State exporter operating on the market under consideration and sells at 'more normal prices'.

75 Furthermore, the applicant alleges that the defendant made a fundamental error in its sampling by treating Waimanly Bicycle Manufactory ('Waimanly') as a State-owned company, whereas it does not fall into that category of undertakings.

76 According to the defendant, supported by the interveners, the conditions for the application of Article 2(13) of the basic anti-dumping regulation were satisfied. It notes, first, that the investigation concerned exports of bicycles from the People's Republic of China and not exports from individual Chinese companies. Second, prices varied greatly and the number of transactions was very high. For each type of Chinese bicycle a corresponding model sold on the Taiwanese market had to be found in order to establish normal value, and a model sold on the Community market in order to assess undercutting. Extending the sample to other exporters and their types of bicycle would have significantly increased the number of transactions to be analysed and, consequently, prolonged the proceedings unreasonably.

77 According to the defendant, the applicant is wrong to complain that it did not include all the exporters in its sample. The provision in question allows sampling based on a representative selection of exporters, especially where, as in this case, a large number of exporters are involved.

78 In this case, it submits, the sample was representative since it covered 88% of all exports to the Community by the 20 companies which replied to the questionnaire. It included exports made by Guangzhou Five Rams Bicycle Group and Waimanly, two State-owned companies. Those exports account for more than 85% of all exports effected during the investigation period by those State-owned companies which replied to the questionnaire.

79 Contrary to the applicant's assertion, the defendant maintains, Waimanly is a State-owned company since it is wholly owned by the 'Foreign Trading Company of Po Ou Province', which in turn is wholly owned by the People's Republic of China.

Findings of the Court

80 Article 2(13) of the basic anti-dumping regulation provides that 'where prices vary (...) sampling techniques, [i. e.] the use of the most frequently occurring or representative prices may be applied to establish normal value and export prices in cases in which a significant volume of transactions is involved'.

81 In determining the normal value of goods, undertakings may be chosen on account of the degree to which they are representative as regards their exports to the Community market (see, *inter alia*, Case 246/87 *Continentale Produkten-Gesellschaft* [1989] ECR 1151, paragraph 12).

82 There is not the slightest indication either in the aforesaid provision or in the case-law that the Community institutions are required to take into account the prices which occur most frequently or the most representative prices of each exporter individually rather than the prices of all exporters taken together.

83 As the Community institutions point out, it is clear from the 15th recital in the preamble to the provisional regulation and the 28th recital in the preamble to the contested regulation that the undertakings concerned were selected on account of the degree to which they are representative in terms of exports to the Community market. In that regard, the applicant does not deny that the six companies included in the sample represented 88% of all exports to the Community made by the companies which replied to the questionnaire (28th recital in the preamble to the contested regulation).

84 As regards the applicant's assertion that Waimanly cannot be regarded as a State-owned undertaking, it appears from the documents produced by the Commission before the Court on 25 February 1997 and in particular from a fax sent to the Commission on 1 July 1992 by Waimanly's legal adviser that Waimanly is an undertaking wholly owned by the Foreign Trading Company of Po Ou Province, an organ of the People's Republic of China. Consequently, the Community institutions had good reason to consider Waimanly to be a State undertaking.

85 Finally, Article 2(13) of the basic anti-dumping regulation grants the institutions a wide discretion (see *Ferchimex*, cited above). As a result, this Court's review must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of appraisal of the facts or a misuse of power (see the judgments cited in paragraphs 63 and 64 above: *Nachi Fujikoshi*, paragraph 21; *Gestetner Holdings*, paragraph 63; and *Ferchimex*, paragraph 67).

86 In light of the foregoing, the mere fact that the defendant took account of the representative prices of the largest exporters in each of the categories it had established and not of the prices of all exporters is not such as to demonstrate that the sampling on which the imposition of the disputed anti-dumping duty was based was patently unrepresentative.

87 It follows that the second plea must be rejected.

The third plea: refusal to grant individual treatment to the various exporters concerned (breach of Articles 2(5) and (9) and 13(3) of the basic anti-dumping regulation and Article VI(2) of the GATT)

Arguments of the parties

88 The applicant points out, as a preliminary matter, that as regards the imposition of anti-dumping duties, the Community institutions have for some years applied a policy which consists of refusing to grant individual treatment to undertakings in non-market economy countries (see the 33rd and 34th recitals in the preamble to the provisional regulation). Accordingly, a single anti-dumping duty is imposed in respect of all exporters in the country concerned and applied to all products exported to the European Community, regardless of the dumping margins established for each of the producers or exporters concerned. According to the applicant, the Commission and Council considered that the imposition of differentiated duties for undertakings in centrally planned economies would encourage the State to channel all exports through the company bearing the lowest anti-dumping duty.

89 The applicant maintains that application of such a policy is contrary to the basic anti-dumping regulation, which requires the Community institutions to grant individual treatment as far as possible to exporters, irrespective of the products' country of origin, at least where the undertaking has fully cooperated in the proceedings.

90 The policy of the Community institutions not to impose anti-dumping duties according to the individual position of each of the exporters concerned implies not only that the data specifically relating to each exporter had been disregarded in calculating normal value concerning them but also that differences affecting each exporter's prices and volume of exports had been ignored. A practice of that kind leads to violation of one of the fundamental principles of the GATT with regard to anti-dumping duties (Article VI(2) of the GATT), embodied in Article 8(3) of the Agreement on Implementation of Article VI of the GATT of 12 April 1979 (OJ 1980 L 71, p. 90, 'the GATT Anti-Dumping Code'), and incorporated in Article 13(3) of the basic anti-dumping regulation, which provides that 'the amount of

such duties shall not exceed the dumping margin (...) provisionally estimated or finally established; it should be less if such lesser duty would be adequate to remove the injury'. Finally, that practice prevents the undertakings concerned, including the applicant, from receiving a fair hearing.

91 According to the applicant, the defendant cannot plead the fact that the applicant is a company from a non-market economy country, since the only distinction drawn by the legislature between companies from those countries and others relates purely to the method of calculating normal value.

92 In addition, the applicant maintains that even in the context of the disputed policy the Community institutions ought to have granted it individual treatment. In previous cases concerning products from the People's Republic of China, the Community institutions allowed individual treatment where the exporters in question had demonstrated that they were independent of the State in the conduct of their export policy and in establishing their export prices (16th recital in the preamble to the contested regulation).

93 So far as concerns precisely its independence from the State, the applicant considers that it meets the conditions laid down by the Community institutions in a Commission memorandum of 1 December 1992 specifying the line of conduct it intended to adopt with regard to dumping by joint ventures in non-market economy countries. The applicant claims that it is entirely free to sell its products abroad without any authorization and that generally it sells direct to unrelated importers established in the Community on terms which are freely negotiated.

94 In any event, it is for the Community institutions to prove the existence of State control of exports and not simply to assume it. In the circumstances, they have not adduced any evidence to that effect.

95 Last, the applicant claims that the People's Republic of China is not a State-trading country but a 'socialist market economy' which, while it does not permit companies' shares to be owned by individuals, does require undertakings to be responsible for their profits and losses. In this respect the applicant refers to several articles of economic literature which attest that the Chinese economy is in the process of being transformed into a market economy. The fact that the Chinese State, like any other State, can at any time change its legislation does not call into question the independence of the undertakings *vis-à-vis* the State.

96 The defendant contends that the basic anti-dumping regulation does not require the Community institutions to treat exporters individually. It maintains that it is evident from Article 7(1)(a) of that regulation that anti-dumping proceedings concern exports from one or more countries and not exports from one or more companies taken individually. Article 13(2) merely stipulates that anti-dumping regulations should always indicate the country of origin or export and, if practicable, the name of the supplier.

97 It submits that there is no provision in the basic anti-dumping regulation, including Article 13(3), which requires individual dumping margins to be calculated for each exporter and that the same holds true for the GATT Anti-Dumping Code. The latter, however, is inapplicable in the present case since the People's Republic of China is not a contracting party to the GATT.

98 The defendant maintains that in the present case the applicant could not be treated individually. It points out that it has not been demonstrated that the applicant was free to act independently of the Chinese State. It would not have been possible to individualize exporters without reducing the effectiveness of the protection measures adopted. Because the State is able to control subcontractors' prices, the costs of export companies do not necessarily reflect economic reality. Consequently, taking into consideration individual dumping margins might give one of the export companies an unjustified competitive advantage, since the State would be able to circumvent the protection measures by channelling exports through the exporter bearing the lowest duty.

99 Even if State control in the People's Republic of China has been reduced in certain sectors, Chinese export companies such as the applicant are still wholly owned and controlled by the State and cannot, therefore, be regarded as independent companies comparable to those operating in a market economy. Accordingly, the State may at any time withdraw from any exporter authorization to engage in export transactions. In any event, even by conducting an on-the-spot investigation, it is impossible to ascertain the exact degree of State control: on the one hand, some laws are not published and foreigners do not have access to them and, on the other, certain practices take precedence over the law.

Findings of the Court

100 There is no provision in the basic anti-dumping regulation which prohibits the imposition of a single anti-dumping duty for State-trading countries (*Climax Paper*, cited above, paragraph 92).

101 Article 2(5) merely indicates the criteria on the basis of which normal value is to be determined in the case of imports from non-market economy countries. Article 2(9) concerning the comparison of normal value with export price concerns only the comparability of prices and the adjustments that are intended to take account of the differences affecting such comparability.

102 It follows from Article 2(13) that, where prices vary, export prices are as a rule to be compared with normal value on a transaction-by-transaction basis. In this case, the comparison was made on that basis (see the 28th recital in the preamble to the provisional regulation). However, contrary to the applicant's claim, that does not mean that a single anti-dumping duty could not be fixed.

103 Neither Article 13(3) of the basic anti-dumping regulation nor Article 8(3) of the GATT Anti-Dumping Code, irrespective of whether or not the latter is applicable in this case, prohibits the imposition of a single duty or requires calculation of a dumping margin for each exporter individually. All they require is that there should be a connection between the amount of duty, even if a single duty, and the dumping margin, even if determined singly.

104 While Article 2(14)(a) of the basic anti-dumping regulation defines the 'dumping margin' as the amount by which the normal value exceeds the export price, Article 2(14)(b) provides that 'where dumping margins vary, weighted averages may be established'.

105 Finally, Article 13(2) provides that an anti-dumping regulation is to 'indicate in particular the amount and type of duty imposed, the product covered, the country of origin or export, the name of the supplier, if practicable, and the reasons on which the regulation is based'. In that regard (see *Climax Paper*, cited above, paragraph 93), although it does indeed follow from both the scheme and purpose of that provision that the obligation to indicate the name of the supplier in anti-dumping regulations in principle implies an obligation to fix a specific anti-dumping duty for each supplier, the wording of that provision nevertheless specifies that the name is to be indicated only 'if practicable'. The legislature has therefore expressly limited the obligation to indicate the name of the supplier, and thus the obligation to fix a specific anti-dumping duty for each supplier, strictly to those cases where such specific particulars are practicable.

106 In pursuing the disputed policy the institutions did not misinterpret the expression 'if practicable'. The fact is that it is not practicable to indicate the name of each supplier if, in order to avoid the risk of circumventing anti-dumping duties, it is necessary to impose a single duty for an entire country. That is particularly so where, in the case of a State-trading country, the Community institutions have examined the situation of the exporters concerned and are not convinced that those exporters are acting independently of the State (see *Climax Paper*, cited above, paragraph 94).

107 Nor is the disputed policy contrary to the purpose and spirit of the basic anti-dumping regulation. As the Court of First Instance has already held in *Climax Paper*, cited above, paragraph 95, the purpose of that regulation is *inter alia* to protect the Community against dumped imports. As to its spirit, it follows from its various provisions that the normal value and the export prices must normally be established individually for each exporter. However, that does not mean that the Community institutions are obliged to do so in each case, or that they are obliged to impose an individual anti-dumping duty for each exporter. The spirit of the regulation leaves the Community institutions with a wide discretion in deciding when the most appropriate solution is to grant individual treatment to the exporters concerned. That follows *inter alia* from Article 2(14)(b) and Article 13(2), which leave to the Community institutions the possibility of establishing a weighted average of the dumping margins, and thus a single dumping margin, for an entire country and of imposing a single anti-dumping duty for that country.

108 It follows from the foregoing that a policy which results in the imposition of a single anti-dumping duty in respect of an entire country is not contrary to the letter or purpose, or to the spirit of the basic anti-dumping regulation, if that policy is necessary in order for the Community to protect itself against dumping and against the risk of protection measures being circumvented (see *Climax Paper*, cited above, paragraph 96).

109 The question whether an exporter in a State-trading country is acting with sufficient independence of the State for individual treatment to be granted to him involves an assessment of complex factual situations which are at one and the same time of an economic, political and legal nature. In that regard, it is established case-law that the institutions enjoy a wide discretion in regard to the assessment of complex economic matters (see *Ferchimex*, cited above, paragraph 131), and that judicial review of such an assessment must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of appraisal of the facts or a misuse of power (see the judgments

cited in paragraph 64 above: *Nachi Fujikoshi*, paragraph 21, and *Gestetner Holdings*, paragraph 63). The position is the same in regard to factual situations of a legal and political nature in the country concerned which the Community institutions must assess in order to determine whether an exporter is acting with a sufficient degree of independence from the authorities of a State-trading country in order to receive individual treatment (see *Climax Paper*, cited above, paragraph 98).

110 In the circumstances of the case, the defendant's arguments — set out in the 17th to 21st recitals in the preamble to the contested regulation and in its pleadings — in favour of the imposition of a single duty are pertinent. In particular, the basic anti-dumping regulation does not make individual treatment mandatory; moreover, the Commission's inability, in the present situation, to verify the Chinese exporters' statements on the spot would seem plausible.

111 It should be noted, in particular, that the reasons set out in the 19th recital in the preamble to the contested regulation to support the claim that in a country such as the People's Republic of China it was extremely difficult to verify whether a Chinese undertaking really was independent of the State do not appear to be manifestly incorrect. Furthermore, the applicant has not rebutted the argument set out in the aforesaid recital that during the investigation period the People's Republic of China was in transition from a fully State-controlled economy to a partly market-orientated economy. Nor has it challenged the claim that State control subsisted in many aspects of economic life and that the law and institutions necessary for the functioning of a market economy were not sufficiently developed and familiar to the traders and officials concerned.

112 In addition, the applicant has not denied that a representative of the Chinese Government, claiming to represent all bicycle manufacturers in which the Chinese State had a shareholding, declared to the Commission that the State coordinated the activities of all bicycle manufacturers in China (26th recital in the preamble to the contested regulation).

113 Furthermore, the applicant stated both in its application and at the hearing that the economy of the People's Republic of China is not, strictly speaking, a market economy, but rather a 'socialist market economy', thus impliedly acknowledging that it remains a State-trading country.

114 As to the Commission's memorandum of 1 December 1992, suffice it to note that it is an internal document, and thus the Commission's own working document, and as such cannot give rise to justified hopes on the part of the applicant (see *Climax Paper*, cited above, paragraph 115) or bind another Community institution.

115 It follows that the applicant has not succeeded in showing that it really was independent of the influence of the Chinese authorities. The Community institutions have not therefore committed a manifest error in appraising the facts.

116 It follows that the third plea must be rejected as unfounded.

The fourth plea: refusal to disclose the method of calculation (breach of Article 7(4)(b) and (c) of the basic anti-dumping regulation)

Arguments of the parties

117 The applicant complains that the Commission has failed to fulfil its duty of disclosure under Article 7(4)(b) of the basic anti-dumping regulation, inasmuch as the

information imparted to it was insufficient. The Commission merely communicated, first, data relating to Guangzhou Five Rams Bicycle Group, though it disclosed none at all concerning the applicant, second, insufficient information concerning the models and prices of Taiwanese bicycles used as the basis for calculating normal value and, third, global figures for total dumping and the dumping margin, instead of supplying information on a transaction-by-transaction basis.

118 The defendant considers that the Community institutions complied with the criteria laid down by the Court in Case C-49/88 *Al-Jubail Fertilizer and Saudi Arabian Fertilizer* v *Council* [1991] ECR I-3187, paragraph 17, and that the Commission notified the applicant of the method of calculating the anti-dumping duty in its Disclosure Document. It also gave the six exporters included in the sample information on all the calculations concerning them. That information could not be divulged to the other undertakings, including the applicant, for reasons of confidentiality. Besides, that information would not have enabled those undertakings to provide meaningful comments. Moreover, the applicant had in any event had access to the non-confidential files open for inspection at the Commission's premises. The Community institutions could not supply further and better particulars of the dumping margin because no individual dumping margin had been calculated. The applicant cannot complain that the institutions did not provide it with any data concerning it. Such data were not used for the purposes of the contested provision, since the applicant was not included in the sample.

Findings of the Court

119 Article 7(4)(b) of the basic anti-dumping regulation provides that 'exporters (...) of the product subject to investigation (...) may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties (...)'. Such requests are to be addressed to the Commission in writing (Article 7(4)(c)(i)(aa)). They must be received, in cases where a

provisional duty has been applied, not later than one month after publication of the imposition of that duty (Article 7(4)(c)(i)(cc)). Article 7(4)(c)(ii) and (iii) lay down the detailed rules in accordance with which the Commission may supply the information sought and within what period it must do so.

120 According to established case-law, the rights of the defence are respected if the undertaking concerned has been afforded the opportunity during the administrative procedure of making known its views on the truth and relevance of the facts and circumstances alleged and, where appropriate, on the documents used (see, for example, the judgments of the Court of Justice in Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 11; *Nakajima*, cited above, paragraph 108; and *Al Jubail*, cited above, paragraph 17; and the judgments of the Court of First Instance in Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775, paragraph 59; Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847, paragraph 69; and *Sinochem*, cited above, paragraph 75).

121 The Commission's duty to supply information must, however, always be balanced against the prohibition on revealing confidential information. Article 8(2) of the basic anti-dumping regulation provides that neither the Community institutions nor the Member States, nor their officials, are to reveal any information received pursuant to the regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. The Community institutions may consider certain information to be confidential if to disclose it is likely to have a significantly adverse effect upon the supplier or the source of such information (Article 214 of the Treaty and Article 8(3) of the basic anti-dumping regulation).

122 In this instance, the applicant is not justified in claiming that the non-confidential information supplied by the Commission was inadequate. In the first place, in its Disclosure Document the Commission provided information relating to the prod-

uct concerned, the Community industry, the sampling technique, normal value, export prices, the dumping margin and injury to the Community. Second, not only are the Community institutions not required to calculate the dumping margin for each of the undertakings concerned and to impose a separate anti-dumping duty for each of them (see the grounds above relating to the third plea), but they also enjoy a wide discretion in selecting the undertakings included in the sample which is to be used to determine the dumping margin and the duty to be imposed. Consequently, the Community institutions have the right not to gather and use information relating to certain undertakings. Nor can they be required to communicate such information which, *ex hypothesi* and all the more so in the circumstances of this case, has not been sought and therefore has not been used either. Third, the applicant does not deny that it had access to the non-confidential files at the Commission's premises.

123 It follows that the fourth plea must also be rejected.

The fifth plea: incorrect method of calculating the dumping margins (infringement of Article 13(3) of the basic anti-dumping regulation) and abuse of powers with regard to the rate of anti-dumping duty imposed

Arguments of the parties

124 The applicant maintains that the defendant abused its discretion by unreasonably and incorrectly increasing the dumping margin. By using the dumping margin of the company in the sample with the highest margin, the defendant artificially inflated the overall dumping margin and rate of duty of most of the other compa-

nies which replied to the questionnaire. For those companies, therefore, the amount of the duty exceeds the actual dumping margin, in breach of Article 13(3) of the basic anti-dumping regulation. According to the applicant, the defendant is not entitled to include the 27% of exports attributable to companies which allegedly did not cooperate in the calculation of the dumping margin, since the data provided by Chinese exporters were enough to constitute a representative sample. The figure of 27%, taken from an unknown source, is moreover without foundation. If it came from the Statistical Office of the European Communities (Eurostat), it is noteworthy that the Commission has often complained of the inaccuracy of data supplied by that body.

125 The defendant states that the figure for the total volume of bicycle exports from the People's Republic of China to the European Community during the period of the investigation was supplied by Eurostat, which was the only source of reliable data. Information provided by the exporters covered 73% of that volume during the period of the investigation. The dumping margin for the other 27% was calculated on the basis of the best information available, in accordance with Article 7(7)(b) of the basic anti-dumping regulation. According to usual practice, the relevant data are those concerning the company with the highest dumping margin of those which cooperated.

Findings of the Court

126 Article 13(3) of the basic anti-dumping regulation provides that the amount of the anti-dumping duties may not exceed the dumping margin provisionally estimated or finally established, and must be less if such lesser duty would be adequate to remove the injury.

127 In the present case, it is apparent from the provisional regulation (see the 37th recital in the preamble) and from the contested regulation (see the 50th recital in the preamble) that the exports of the companies which replied to the Commission's questionnaire accounted for 73% of the total exports of the People's Repub-

lic of China. The dumping margin for those companies was established on the basis of the weighted average of the margins for the various models of the six companies included in the sample. As regards the exporters which did not reply to the questionnaire and which accounted for the remaining 27% of exports, the dumping margin was calculated on the basis of Article 7(7)(b) of the basic anti-dumping regulation. According to that provision, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available, in cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation. The Commission took the view here that the best information available was that relating to the company with the highest dumping margin included in the sample. The dumping margin for the People's Republic of China, expressed as a percentage of the cif (cost, insurance, freight) value so calculated, amounted to 30.6%.

128 It is clear from the above consideration of the third plea relating to refusal to grant individual treatment to the various exporters concerned, first, that the course of action followed by the Community institutions was not contrary to the letter, purpose or spirit of the basic anti-dumping regulation and, secondly, that the applicant did not satisfy the necessary conditions for the grant of individual treatment, with the result that the institutions did not commit a manifest error in appraising the facts.

129 Furthermore, in connection with that course of action, the assumption is that as a general rule exporters in State-trading countries are not independent of State influence and that one of the aims of that policy is to prevent circumvention of anti-dumping duties. If the institutions were not permitted to calculate the dumping margin by taking into account the exports of companies which had not cooperated in the investigation, the authorities in a State-trading country might, where an anti-dumping investigation was initiated, order the exporter with the highest export prices to cooperate with the Community institutions and prohibit the other exporters from doing so. They could thus ensure that an anti-dumping duty equal to the dumping margin established for the exporter with the lowest margin would be applicable to all exporters involved in the dumping (see *Climax Paper*, cited above, paragraph 130).

130 Finally, as found in paragraph 107 above, it follows from Article 2(14)(b) of the basic anti-dumping regulation that the Community institutions may establish a weighted average of the dumping margins and therefore a single dumping margin for an entire country.

131 Furthermore, the Community institutions were right to base their decisions, in accordance with Article 7(7)(b) of the basic anti-dumping regulation, on the Eurostat statistics and on the information supplied by the companies which had replied to the Commission's questionnaire, since that information was the best available in the circumstances, within the meaning of the abovementioned provision.

132 In addition, both the calculation of the export price of producers who did not cooperate in the investigation and the calculation of the single dumping margin on the basis of the information available presuppose an appraisal of complex economic situations. 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 contested choice is based have been accurately stated and whether there has been a manifest error of appraisal of the facts or a misuse of power (see *Nachi Fujikoshi*, cited above, paragraph 21; *Gestetner Holdings*, cited above, paragraph 63; and *Climax Paper*, cited above, paragraph 135).

133 In that regard, the provisional regulation (see the 37th recital in the preamble) and the contested regulation (see the 50th recital in the preamble) make it clear that the information supplied by the companies which replied to the Commission's questionnaire did not relate to total Chinese exports of the product in question but only to 73% of the total exports from the People's Republic of China. The fact remains that in calculating the proportion of exports to be attributed to the exporters which did not provide information, the Community institutions based their decisions, pursuant to Article 7(7)(b) of the basic anti-dumping regulation, on Eurostat's statistics concerning the total volume of imports of bicycles from the People's Republic of China into the Community and on the information supplied by the companies which did reply to the Commission's questionnaire.

134 The applicant has merely challenged the calculation made by the Community institutions but has not adduced the slightest evidence that it was incorrect. In any event, the Community institutions relied on the best information available.

135 So far as concerns the method of calculating the export prices of the producers which did not cooperate in the investigation, the Community institutions cannot be criticized for basing their calculations on the lowest prices in the sample, since the effect of any other approach would be to encourage non-cooperation by exporters (see *Climax Paper*, cited above, paragraph 140). Moreover, there is nothing to suggest that the calculation was in itself inaccurate or that the defendant committed a manifest error in appraising the facts.

136 For those reasons, the fifth plea must be rejected as unfounded.

137 It follows from all the preceding considerations that the application must be dismissed in its entirety.

Costs

138 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council and the intervener EBMA have applied for costs and the applicant has been unsuccessful, the latter must be ordered to bear its own costs and to pay the costs incurred by the defendant and the intervener EBMA.

139 Article 87(4) of the Rules of Procedure provides that institutions which have intervened in the proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

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

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to bear its own costs and to pay those of the defendant and the intervener EBMA;**

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

García-Valdecasas Tiili Azizi

Moura Ramos Jaeger

Delivered in open court in Luxembourg on 25 September 1997.

H. Jung R. García-Valdecasas

Registrar President

Summary