JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber sitting in extended composition)
14 July 1995 *

In Case T-166/94,

Koyo Seiko Co. Ltd, a company incorporated under Japanese law, established in Osaka (Japan), represented by Jacques Buhart, of the Paris Bar, and Charles Kaplan, Barrister, of the Bar of England and Wales, with an address for service in Luxembourg at the Chambers of Arendt & Medernach, 8-10 Rue Mathias Hardt,

applicant,

v

Council of the European Union, represented by Ramon Torrent and Jorge Monteiro, Legal Advisers, acting as Agents, and Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg and Brussels, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: English.

supported by

Commission of the European Communities, represented by Eric L. White, of the Legal Service, acting as Agent, assisted by Claus-Michael Happe, a national official seconded to the Commission, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

and

Federation of European Bearing Manufacturers' Associations, an association governed by German law, established in Frankfurt-on-Main (Germany), represented by Dietrich Ehle and Volker Schiller, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Marc Lucius, 6 Rue Michel Welter,

interveners,

APPLICATION for the annulment of Council Regulation (EEC) No 55/93 of 8 January 1993 imposing a definitive anti-dumping duty on imports into the Community of outer rings of tapered roller bearings originating in Japan (OJ 1993 L 9, p. 7),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber sitting in extended composition),

composed of: K. Lenaerts, President, R. Schintgen, R. García-Valdecasas, C. W. Bellamy and P. Lindh, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 5 April 1995,

gives the following

Judgment

Facts

1 This action is for the annulment of Council Regulation (EEC) No 55/93 of 8 January 1993 imposing a definitive anti-dumping duty on imports into the Community of outer rings of tapered roller bearings originating in Japan (OJ 1993 L 9, p. 7, hereafter 'Regulation No 55/93' or 'the regulation at issue'). That regulation was adopted on the basis of 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, hereafter 'Regulation No 2423/88' or 'the basic regulation'). On 14 July 1992 the Commission adopted Regulation (EEC) No 1994/92 imposing a provisional anti-dumping duty on imports into the Community of outer rings of tapered roller bearings originating

in Japan (OJ 1992 L 199, p. 8, hereafter 'Regulation No 1994/92' or 'the provisional regulation').

The product

2 The outer rings of tapered roller bearings, also called 'cups', are one of the constituent parts of a tapered roller bearing (hereafter 'a complete TRB').

A complete TRB is made up of the following components:

— an inner cone-shaped ring made of the same material as the outer ring;

— tapered anti-friction rollers fitted onto the inner ring which allow it to move in relation to the outer ring;

— a cage, which holds the rollers in place on the inner ring;

— the cup, which is the female part into which the male part, the cone (consisting of the inner ring, rollers and the cage), is fitted.

3 Those various component parts of a complete TRB can be purchased separately. End-users of complete TRBs, such as some motor-vehicle manufacturers, sometimes attach the different components of a complete TRB to different parts of a

vehicle and the complete TRB is therefore assembled only when the vehicle itself is assembled.

Administrative procedure

4 On 26 September 1990 the Federation of European Bearing Manufacturers' Associations (hereafter 'FEBMA') submitted a complaint to the Commission alleging dumping.

5 At the time when the complaint giving rise to the regulation at issue was lodged, Council Regulation (EEC) No 1739/85 of 24 June 1985 imposing a definitive anti-dumping duty on imports of certain ball bearings and tapered roller bearings originating in Japan (OJ 1985 L 167, p. 3, hereafter 'Regulation No 1739/85') imposed anti-dumping duties of 5.5% on the applicant's complete TRBs and of 4.3% on the applicant's cones, both of which fell under the same CN Code No 8042 2000. That regulation was repealed by Council Regulation (EEC) No 2655/93 of 27 September 1993, repealing with retroactive effect the anti-dumping measures applying to imports into the Community of tapered roller bearings originating in Japan (OJ 1993 L 244, p. 1).

6 On 4 January 1991 the Commission published a notice initiating an anti-dumping proceeding in respect of imports of cups originating in Japan (OJ 1991 C 2, p. 8).

7 That proceeding resulted in the adoption by the Commission on 14 July 1992 of the provisional regulation, which imposed a provisional anti-dumping duty.

8 In reply to a letter from the applicant, received on 24 July 1992, the Commission explained the method by which it had calculated the dumping margin and the injury.

9 On 8 January 1993 the Council adopted the regulation at issue which was published in the *Official Journal of the European Communities* on 15 January 1993.

Procedure

10 Those are the circumstances in which, by application lodged at the Registry of the Court of Justice on 29 April 1993, the applicant brought the present action.

11 By order of 15 September 1993 the President of the Court of Justice granted the Commission leave to intervene in support of the Council.

12 By order of the President of the Court of Justice of 1 October 1993, FEBMA was given leave to intervene in support of the Council. In the same order the President of the Court ordered, at the applicant's request, that certain documents containing business secrets be excluded from the documents to be served on the intervener.

13 By order of 18 April 1994 the Court of Justice referred the case to the Court of First Instance pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993, amending Decision 88/591/ECSC, EEC, Euratom establishing the Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), and to Council Decision 94/149/ECSC/EC of 7 March 1994 (OJ 1994 L 66, p. 29).

14 On 31 May 1994 the applicant requested confidential treatment of its observations on the statement in intervention of 16 May 1994 and of the annexes to those observations. By order of 24 February 1995, the President of the Court's Fourth Chamber (sitting in extended composition) granted the applicant's request.

15 Upon hearing the Report of the Judge-Rapporteur, the Court (Fourth Chamber sitting in extended composition) decided to open the oral procedure without any preparatory inquiry. As measures of organization of procedure provided for in Article 64 of the Rules of Procedure, the parties were invited to reply in writing to a number of questions before 16 March 1995.

16 The parties presented oral argument and answered questions put to them by the Court at the hearing which took place on 5 April 1995.

Forms of order sought by the parties

17 The applicant claims that the Court should:

— annul Regulation No 55/93 in so far as it affects the applicant;

— order the Council and FEBMA to pay the costs.

18 The Council contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

19 The Commission contends that the Court should:

— dismiss the application.

20 FEBMA contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs, including those of the intervener.

Substance

21 The applicant advances five pleas in law in support of its application. The first plea alleges a manifest error of appraisal and infringement of Article 2(1) of the basic regulation, in that the import of cups from Japan could not have caused injury. The second plea alleges a misuse of powers, in that the purpose of the regulation at issue was to prevent an anti-dumping duty being avoided in circumstances in which the requirements of Article 13(10) of the basic regulation were not satisfied. The third

plea alleges that the Council infringed Article 4(5) of the basic regulation, in that it took into account, when assessing the effect of the import of cups originating in Japan on overall sales of Community cups, only sales of Community cups in France, Germany and the United Kingdom. The fourth plea alleges infringement of Article 2(2) and Article 4(1) of the basic regulation, in that the Council failed to take sufficient account of imports of cups from non-member countries other than Japan in order to determine their effect on Community cup production. The fifth plea alleges infringement of Article 190 of the Treaty.

First plea: manifest error of appraisal and infringement of Article 2(1) of the basic regulation

Arguments of the parties

22 The applicant claims in substance that, because different manufacturers' cups are not interchangeable, the Community institutions were not entitled to adopt the view that there was a Community market for cups which was different from the market for complete TRBs and that, accordingly, the data relating to the price of cups alone are irrelevant when determining the injury suffered by the Community industry. The applicant adds that a reduction in the price of cups is not likely to lead to a reduction in the price of complete TRBs, since the price of the cone, which is sold separately after separate negotiation, precisely offsets the reduction in the price of the cups.

23 The applicant observes that if an anti-dumping duty is to be applied, Article 2(1) of the basic regulation requires that it be proved that the dumped product causes injury to an industry established in the Community. In the present case, it is not possible to prove as a matter of economics that the import of cups from Japan

could have caused injury to the Community industry, and to determine the extent of any such injury, since the various manufacturers' cups are not interchangeable.

24 According to the applicant, this means that, since there is no competition between the cups, there is no market for them. Purchasers of cups cannot choose a make of cup different from that which they have chosen for the cones.

25 It also means that, as regards calculating the extent of the injury, purchasers of cups do not choose one make rather than another on the basis of the price of the cups but, rather, on the basis of the price of complete TRBs, which depends not only on the price of the cups but also on that of the cones.

26 It concludes that the Community institutions committed a manifest error of appraisal in taking the price of the cups as a basis, and not that of complete TRBs, in order to prove the existence and the extent of the injury, since it is the price of complete TRBs alone which determines a purchaser's choice. The applicant also observes that the correctness of its economic analysis is not refuted by the fact that it is legally possible for cups to be sold and invoiced separately from the cones.

27 The Council, the Commission and FEBMA consider that the import of dumped cups causes injury to Community cup producers. They consider that the cup is a separate product from the complete TRB, regardless of the extent to which it is interchangeable.

28 The Community institutions also observe that the question of the interchangeability of the cups of different producers is irrelevant in this case because the cups are theoretically and technically interchangeable, even though users wish to acquire all the component parts of a complete TRB from the same manufacturer, and also because the cups can be sold and invoiced separately.

29 Furthermore, they contend that the imports of dumped cups cause injury to Community cup producers not only on the market for cups but also on the market for complete TRBs. Such imports cause injury to producers of complete TRBs since the price of imported cups enables Japanese producers to compensate for the anti-dumping duty levied on the import of cones. Purchasers of complete TRBs are actually willing to pay a higher price for cones originating in Japan if the price at which they can obtain cups originating in Japan more than compensates for that increase in the price of the Japanese cones. Consequently, the import of dumped cups causes injury to Community producers of cups and complete TRBs.

30 The Council concedes that it is difficult to assess the extent of the injury because producers of cups are also producers of complete TRBs, but it considers that it had sufficient data to do so, namely the sale prices of cups, the volume of production and the sales of cups in the Community, the changes in the market shares of Japanese and Community producers and also the changes in the profitability of the Community cup industry. The Council therefore concludes that, even if the cups are not interchangeable in fact, it correctly based its analysis on the price of the cups and not on that of complete TRBs.

31 Moreover, the Commission observes that the applicant does not dispute that the import of dumped cups causes an injury, but that it merely contests the manner in which the Commission calculated the duty imposed. The estimate made in the present case of the extent of the injury is reasonable since it is based on the price of cups, which, in the absence of any more accurate information provided by the applicant, constitutes the most appropriate basis for a calculation.

Findings of the Court

32 The data on the basis of which the Commission adopted the provisional regulation and on the basis of which the Council adopted the regulation at issue relate to cups sold and invoiced separately from the other components of a complete TRB, as the Council and the Commission explained at the hearing without being contradicted by the applicant.

33 The parties agree that cups are a separate product which may be the subject of a separate anti-dumping proceeding — that being expressly accepted by the applicant in point 3 of its reply.

34 However, the applicant claims that despite that technical distinction between the cup and the complete TRB there is, in the present case, no competition between the cups of different producers since it is impossible in practice to assemble the cups of one producer with the other components of another producer's TRB. Nor, therefore, can the import of dumped cups cause injury different from the injury caused by the import of dumped complete TRBs.

35 In that regard, the Court observes that Article 2(1) of the basic regulation provides that: 'An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury'. It follows that the Community institutions correctly concentrated their analysis on the cup as a separate product since, in addition to the technical distinction that exists between a cup and a complete TRB, the cups are sold and invoiced separately from the other components of the TRB. It should moreover be added that the existence of competition between cups from different producers does not merely depend upon the degree to which they are interchangeable, that is to say the extent to which one producer's cup can be assembled with the other components of another producer's TRB.

36 The Court finds that, leaving to one side the question of interchangeability, as so defined, of the cups of the various producers, one producer's complete TRB may be replaced by a complete TRB of the same type from any other producer without affecting in any way its usefulness to the purchaser. Accordingly, since the product as a whole can be replaced by another, any advantage derived from one of the components of that product — the component being sold as a separate product — is likely to influence the buyer's choice. When that advantage is one of price, the buyer will in principle prefer the cheaper component and will, moreover, be unconcerned by the fact that it is compatible with only one type of the other component parts of the complete TRB. Undercutting the price of that component, which in the present case is the cup, is therefore indeed likely to injure Community producers of cups.

37 According to the applicant, however, reliance cannot be placed on the price level of the cups, since it is determined and offset by the price level of the other component parts of a complete TRB, so that a decrease in the price of the cup does not mean that there is a decrease in the price of the complete TRB.

38 In that regard, the Court finds, first, that the parties agree on the fact that the price of the cup makes up between 31.8% and 34.8% of the price of all component parts of a complete TRB.

39 Secondly, it does not follow from the figures set out in confidence by the applicant in point 52 of its application that any decrease in the price of the cup leads to an increase in the price of the other component parts of a complete TRB, and still less that such an increase would offset the effect of the decrease in cup price on the overall price of a complete TRB. To the contrary, the examples submitted by the applicant show that the lowest cup price entails the lowest complete TRB price. The Court therefore finds that the prices of the other components forming a complete TRB are relatively stable and that they do not offset the injury caused by the competition which exists between the different producers' cups following the import of dumped Japanese cups.

40 Furthermore, since the consequence of choosing one of the component parts of a complete TRB is, as the applicant also points out, that all the other parts will come from the same producer, the effects of the competition existing between the cups of different producers are felt at the level of complete TRBs. Consequently, the fact that cups and cones of different producers are not actually assembled together has the result that the import of dumped Japanese cups first causes injury to Community cups and then injury to the other Community component parts of a complete TRB.

41 It follows from the foregoing that the imports of cups, the dumping of which has not been contested, are likely to injure Community cup producers and that the Community institutions committed no manifest error of appraisal by taking the

price of the cups as a basis for proving the existence and the extent of the injury caused to Community cup producers.

42 The first plea in law must therefore be rejected.

Second plea: misuse of powers

Arguments of the parties

43 The applicant claims that the regulation at issue is vitiated by a misuse of powers. Its object is not to sanction the import of a dumped product but to prevent the anti-dumping duties levied by Regulation No 1739/85 on the import of complete TRBs or on the joint import of cups and TRB cones being avoided by the partially separate import of cups. The only provision of the basic regulation applicable in that regard, namely Article 13(10), applies solely to the assembly in the Community of products from imported parts which are not subject to an anti-dumping duty, but on which an anti-dumping duty is levied if they are imported ready-assembled. Since the conditions for the application of that provision are not satisfied, the Council was unable to rely on it.

44 The Council, supported by the interveners, replies by stating that Article 13(10) of the basic regulation is totally irrelevant in the present case. In this case, it merely

responded to a complaint that a dumped imported product was causing injury to the Community industry. Since dumping and injury were established, it was therefore entitled to impose a different duty from that imposed on complete TRBs by Regulation No 1739/85.

Findings of the Court

45 The Court finds that it follows from its rejection of the first plea in law that, by taking as a basis the price of cups considered as separate products from the other component parts of a complete TRB, the Community institutions did not commit a manifest error of appraisal when establishing the existence and the extent of the injury inflicted on Community producers by the dumped Japanese imports. They were therefore entitled to treat the cups independently by imposing an anti-dumping duty different from that imposed on the complete TRBs by Regulation No 1739/85.

46 It follows that Article 13(10) of the basic regulation is not applicable in the present case and that the Community institutions did not misuse their powers.

47 The applicant's second plea must therefore be rejected.

Third plea: infringement of Article 4(5) of the basic regulation

Arguments of the parties

48 The applicant claims that the Council infringed Article 4(5) of the basic regulation by limiting its inquiry into the effect of imports of cups from Japan on the Community industry only to sales of Community cups in France, Germany and the United Kingdom.

49 The Council replies by stating that it was able to limit its investigation of changes in sales of Community cups to those Member States only, because the majority of sales are made there. Consequently, those markets are sufficiently representative of the whole of the Community market. It had therefore observed the principle of market unity. The Council also states that the share of cup sales in Italy and Spain is not as large as the applicant claims. Italy (10%) and Spain (8%) together account for only 18% of the Community market, whereas France (14%), Germany (45%) and the United Kingdom (18%) together account for 77%.

50 The Commission considers that the expeditious and efficient conduct of an anti-dumping proceeding requires that it should be able to limit its investigation of the effects of the import of the product in question to a part of the common market. That is why the basic regulation authorizes it to restrict its inquiry to certain Member States where those markets are sufficiently representative.

Findings of the Court

51 The Court observes, first of all, that Article 4(4) and (5) of the basic regulation permit the Community institutions to assess the injury caused by the dumped imports to the Community industry by considering their effect in relation to the Community producers 'whose collective output of the products constitutes a major proportion of the total Community production of those products'.

52 The parties agree that the French, German and United Kingdom producers represent a major proportion of the total Community production of cups for the purposes of Article 4(5) of the basic regulation, since they represent 80% of that production (point 19 in the recitals to the regulation at issue and points 63 and 66 of the application). However, the applicant contests the Community institutions' right to limit their investigation, for the purposes of determining the injury suffered by the Community industry, to price differences and to sales and market shares relating to only one part of the Community market stated to be representative.

53 The Court holds that the Community institutions' practice of taking only a representative part of the Community market in order to investigate the impact of dumped imports does not infringe the principle of the unity of the Community market, provided that the representative nature of the sample of the Community market adopted is sufficiently demonstrated.

54 In that regard, the applicant claims that the exclusion of Italy and Spain affects the representative nature of the sample adopted, since the taking into account of the sales of Community producers in Italy and Spain would have made it possible to reduce the effect of dumped imports in the rest of the Community, because Italy

and Spain were not accessible for Japanese imports of cups during the investigation period (from 1 January to 31 December 1990; see point 6 of the provisional regulation) owing to national measures adopted by those Member States on the basis of Article 1(2) of Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports (OJ 1982 L 35, p. 1).

55 It is first of all necessary to consider whether the institutions were obliged to include the Italian and Spanish markets in their assessment of the extent of the injury caused by the imports of dumped Japanese cups or whether they were able to limit their investigation to the only part of the Community market which was accessible to those imports.

56 In that regard, the Court finds that the effect of the national measures to protect the Italian and Spanish markets adopted on the basis of Community rules was to foreclose those markets and to preserve them from the injurious effects of the imports of dumped Japanese cups. Consequently, it follows that the Italian and Spanish markets must be considered as atypical in comparison with the Community market for cups as a whole, since the latter market was in principle accessible to those imports.

57 Accordingly, to accept the applicant's argument would amount to accepting that the penalties to be applied to the same dumping practice would have to differ according to whether the products to which it related had access to the whole of the Community market or merely to part of it. In the latter case, the applicant claims that in order to assess its significance, it would be necessary to view that injury in relation to the whole of the Community market including the part of it to which the products in question had no access and on which no injury could be suffered. The Court considers that such an argument, in so far as it brings down

the extent of the injury suffered in the part of the common market to which the products in question have access by relating it to the whole of the common market, must be rejected because it reduces the necessary protection, on the accessible part of the Community market, provided by the basic regulation.

58 It is then necessary to consider whether France, Germany and the United Kingdom constitute a representative part of the Community market as a whole with regard, at the same time, to the investigation of price differences, sales and market shares, which the applicant claims is not the case.

59 As regards price differences, the applicant does not accept that the part of the Community market adopted was a representative sample (point 63 of the application) but it adduces no evidence to show that the prices charged in Italy and in Spain by French, German and United Kingdom producers differ from those charged by those same producers in France, Germany or in the United Kingdom. The applicant has therefore not shown that the Community institutions committed a manifest error in limiting their investigation of the injury suffered by the Community industry to price differences in France, Germany and the United Kingdom (point 33 of the provisional regulation).

60 As regards sales and market shares, the Court observes that the applicant also disputes that France, Germany and the United Kingdom are representative of the Community market on the ground that the sales made in Italy and Spain are so large that the exclusion of those countries affects the representative nature of the sample adopted.

61 In that regard, the Commission indicated in point 30 of the provisional regulation that the French, German and United Kingdom markets together account for the

majority of Community sales of TRB cups manufactured in the Community and also of those resold by the Japanese manufacturers in the Community. The Council confirmed that statement in point 19 of the recitals to the regulation at issue. In paragraph 33 of its defence the Council also stated that sales in France, Germany and the United Kingdom accounted for 77% of total sales of cups of whatever origin in the Community market, whereas sales in Italy and in Spain accounted for only 18%, with the other Member States sharing the remaining 5%. At the hearing the applicant did not contradict the Council when the latter claimed that those figures were not in dispute, even though in its reply the applicant had questioned the sources used by the Council and their reliability. Moreover, the applicant has not referred to any evidence showing that those figures were incorrect.

62 It must also be examined whether the sample adopted by the institutions, which therefore represents 77% of sales in the Community of cups of whatever origin, is also representative as regards the sales in the Community as a whole of cups produced in France, Germany and the United Kingdom.

63 In that regard, in reply to a written question from the Court, the Council submitted a table comparing and showing changes in sales of cups by producers established in the Community (Community production and production in non-member countries other than Japan) and by producers established in Japan, whose figures are set out below. At the hearing the Council explained that the figures set out in that table, which have not been contested or contradicted by the applicant, represented the total sales of cups in France, Germany and in the United Kingdom by French, German and United Kingdom producers ('EC producers' shares') and the sales of cups from Japan in those three Member States. It should be observed that all the figures used by the Community institutions, both in the provisional regulation and the regulation at issue and also in the pleadings in the present proceed-

ings, refer, as regards production, only to producers established in France, Germany and in the United Kingdom (which account for 80% of Community production), an approach which the applicant has not contested (see paragraph 52 above).

Sales of cups	*1988*	*1989*	*1990*
EC producers' shares (EC production)	78.3%	75.9%	70.8%
EC producers' shares (Production in non-member countries)	10.5%	11.5%	14.9%
Prom Japan	11.2%	12.6%	14.3%
	100%	100%	100%

64 It therefore follows from the figures set out above that in 1990 (the investigation period) 70.8% of 77% of all sales made in the Community were of cups manufactured in the Community by French, German and United Kingdom producers and sold by them in France, Germany and the United Kingdom, which accounts for 54.5% of all sales made in the Community. They are therefore the majority of total sales in the Community of cups of whatever origin.

65 Finally, it is necessary to examine whether sales of cups by French, German and United Kingdom producers in France, Germany and the United Kingdom also accounted for the majority of all sales made by those same producers throughout the Community. To that end, it is necessary to compare the proportion of those producers' sales in those three Member States with the proportion of their sales in the other Member States, again by reference to total sales in the Community.

66 In that regard, the Court finds that, even assuming that the French, German and United Kingdom producers had a monopoly in the other Member States, the proportion of their sales could not exceed 23% of all sales of cups in the Community, namely 18% for Italy and Spain and 5% for the other Member States.

67 It follows that the proportion of the sales of French, German and United Kingdom producers in France, Germany and the United Kingdom (54.5%) was necessarily greater than those by those same producers in the other Member States, including Italy and Spain (23%). On the most unfavourable assumption for the institutions' case, the sales made in France, Germany and the United Kingdom still accounted for more than twice the sales of those producers in the rest of the Community (54.5%/23%).

68 Consequently, the majority of the cups sold on the Community market and manufactured in France, Germany and the United Kingdom were sold in those three Member States.

69 It follows from the foregoing that the Community institutions were right to consider that the sales made by French, German and United Kingdom producers in France, Germany and the United Kingdom accounted for the majority of sales of cups of whatever origin throughout the Community market and the very large majority of sales by French, German and United Kingdom producers throughout the Community market.

70 It follows from all the foregoing that the Community institutions were right in regarding the sample taken to be representative of the Community market as a whole, both as regards price differences and as regards sales and market shares.

71 It follows that the third plea must also be rejected.

Fourth plea: manifest error of appraisal and infringement of Article 2(2) and Article 4(1) of the basic regulation

Arguments of the parties

72 The applicant claims that it follows from the case-law that Article 4(1) of the basic regulation requires the Council and the Commission, when determining the injury, to investigate whether the injury which they are set to find actually results from the dumped imports and to disregard any injury resulting from other factors (judgment of the Court of Justice in Case C-358/89 *Extramet Industrie SA* v *Council* [1992] ECR I-3813, paragraph 16).

73 In the present case, the applicant complains that the Council, without explanation, insufficiently investigated whether or not imports of cups from non-member countries other than Japan might have contributed to the injury caused to the Community industry. According to the applicant, those imports might have contributed to the injury caused to the Community industry since each cup imported into the Community, whether released for free circulation in the Community as a cup or incorporated in a complete TRB, necessarily takes the place of a Community cup. It states, with supporting figures (see Appendices 9 and 10 to Annex 3 to the application), that significant quantities of complete TRBs and of cups were imported from non-member countries other than Japan. It is therefore surprised that the Community institutions contend, without giving any other details, that only small quantities of cups were imported from those non-member countries and that they did not have any effect on the profitability of the Community producers (point 47 of the provisional regulation).

74 In reply the Council and the Commission state that it is incorrect to claim that there was no investigation of the effect of imports of cups from non-member countries, that being a pure allegation by the applicant. The Council points out that during its investigation the Commission found that, since imports of cups from non-member countries other than Japan were small and were most often made by companies related to Community producers, they had little or no effect on the profitability of the Community producers (point 47 of the provisional regulation, to which the Council refers in point 26 of the regulation at issue). It therefore fulfilled the obligation imposed on it by Article 4(1) of the basic regulation.

75 The Commission also adds that in order to calculate the shares of the Community market for cups of whatever origin it was able to exclude the Community cups which were exported and also the cups imported from non-member countries other than Japan — most often by companies related to Community producers — since they were intended only for the manufacture of complete TRBs and were not therefore released as 'cups' for free circulation in the Community. It is on that basis that it found that the market share of 'cups' imported from non-member countries was small.

76 However, the Council and the Commission explained at the hearing, in support of the table reproduced in point 22 of the Council's reply to the Court's written questions, which has not been contested by the applicant, that the sales of cups from non-member countries other than Japan, as a product sold and invoiced separately, had been added to the sales of cups from Community producers in order to establish the injury caused to the Community industry in terms of sales, market shares and profits (points 39 to 42 of the provisional regulation).

Findings of the Court

77 Point 47 of the provisional regulation, confirmed by point 26 of the regulation at issue, states that 'with regard to the effects of TRB cups originating in other third countries, from information supplied to the Commission it appeared that such imports were in small quantities and mainly from companies related to the Community producers (e. g. parent companies or subsidiary companies)'. According to the applicant, that claim is, however, incorrect since the imports from non-member countries other than Japan do not account for 'small quantities' but quantities at least equivalent to, and for 1990 even greater than, those of Japanese imports, as is apparent from the figures in the table reproduced in point 22 of the Council's reply to the Court's written questions (reproduced in paragraph 63 above). It claims that the Community institutions thereby infringed their duty to investigate and take into account the effect of all the factors which might have caused the injury suffered by the Community industry, in accordance with Article 4(1) of the basic regulation, as interpreted by the Court of Justice in *Extramet Industrie SA* v *Council* (cited above), at paragraph 16.

78 In that regard, the Court observes that at the hearing the Council, like the Commission, accepted that the term 'small quantities' was incorrect since the quantities to which that expression referred were of the same size as the quantities of cups imported from Japan, as is shown, moreover, by the table reproduced in point 22 of the Council's reply to the Court's written questions (see paragraph 63 above). However, the Council stressed the need to consider the statements in point 47 of the provisional regulation as a whole and not to consider the meaning of the words 'small quantities' separately from the reasons that led to their use, namely from the companies related to the Community producers.

79 The Court considers that, although the Community institutions have accepted that point 47 of the provisional regulation is inaccurate, its content must nevertheless

be considered by reference to the whole of the reasoning adopted by those institutions in the regulation at issue in order to establish, first, whether they investigated whether other factors were likely to have affected the injury found and, secondly, whether they took such factors into account.

80 As regards the first question, the Court observes that, contrary to the applicant's claims, it follows from the recitals to the provisional regulation and the regulation at issue, and more particularly from the figures set out in point 41 of the recitals to the provisional regulation as clarified by the Council in point 22 of its reply to the Court's written questions, that the Community institutions at least investigated whether the imports of cups from non-member countries other than Japan might have contributed to the injury suffered by the Community industry and in particular to the decrease in the market share of the Community industry in France, Germany and the United Kingdom.

81 Secondly, it must be examined whether the Community institutions failed to take into account, after considering the matter, any effect of imports of cups from non-member countries other than Japan on the determination of the injury found and, more especially, whether those imports would have broken the causal link between the imports of cups from Japan at dumped prices and the injury suffered by the Community industry.

82 In that regard, the Court finds, first, that the Community institutions determined the injury in terms of 'the profitability of all types of the like product sold by Community producers in the same markets' (point 42 of the provisional regulation) using figures relating to price differences (point 33 of the provisional regulation and point 21 of the regulation at issue), to sales/market shares (points 31, 32 and 39 to 41 of the provisional regulation, points 21 and 24 of the regulation at issue and points 20 to 22 of the Council's reply to the Court's written questions) and to pro-

duction (points 34 to 38 of the provisional regulation) and, secondly, that the applicant has never disputed that the Community institutions correctly determined the injury in terms of the profitability of the Community industry, even though it claims that the injury found was not correctly determined and that manifest errors of appraisal were committed.

83 It must therefore be investigated whether that causal link, when assessed from the viewpoint of the profitability of the Community industry as perceived by the Community institutions in terms of price differences, sales/market shares and production, was correctly established.

84 First, as regards price differences, it must be examined whether the injury suffered by the Community industry, as determined by the Community institutions, may have its origin, in whole or in part, in the differences found between the prices of cups originating from Community producers and those of cups originating from non-member countries other than Japan, according to whether they were sold and invoiced separately or incorporated in complete TRBs sold by the Community producers.

85 In that regard, it is first of all agreed between the parties that cups imported from non-member countries other than Japan originate principally from companies related to Community producers.

86 Secondly, the applicant has never alleged nor shown that the sales price of cups imported from non-member countries other than Japan, when sold and invoiced separately, was different from that charged by the Community producers. Moreover, it seems logical for the prices to be identical since inter-related companies are not deemed to compete at that level between their own products.

87 Finally, it should be noted, as regards cups imported from non-member countries other than Japan which are incorporated in complete TRBs sold by the Community producers, that the Community institutions limited their investigation of the injury suffered by the Community industry solely to the data relating to cups sold and invoiced separately, as the Council explained in particular in support of point 22 of its reply to the Court's written questions, and which the applicant has not contradicted.

88 It follows from the foregoing that the injury suffered by the Community industry, as determined by the Community institutions, could not result, in whole or in part, from the differences between the prices of cups originating from Community producers and those of cups originating from non-member countries other than Japan.

89 Secondly, as regards sales and market shares, it should be examined whether the injury suffered by the Community industry, as determined by the Community institutions, might possibly have been caused in whole or in part by the volume of sales and the size of the market shares of cups originating from non-member countries other than Japan.

90 In point 41 of the provisional regulation the Commission states that 'the market share of the Community producers also declined between 1988 and the investigation period:

1988	88.8%
1989	87.4%
1990	85.7%'.

The Commission also explained to the applicant, in its letter of 25 November 1992 (at point 22 of Annex 13 to the application), that sales of cups from non-member countries other than Japan had been included when the percentages set out in point 41 of the provisional regulation had been established. Finally, the Council explained the details of those figures in the table reproduced in point 22 of its reply to the written questions from the Court, as reproduced in point 63 above.

91 According to that table, the figures of which have not been contested by the applicant, the percentages set out in point 41 of the provisional regulation are the result of adding together the first and the second line of the table. That therefore means that the sales and market shares taken by the Community institutions in order to assess the effect of imports of Japanese cups on the determination of the injury caused to the Community industry also took account of imports of cups originating from non-member countries other than Japan.

92 The Court finds, moreover, that the sales and market shares of cups manufactured in the Community originating from the Community producers, as set out in the first line of the table, declined by a greater amount than that found by the Commission in point 41 of the provisional regulation. The reduction is 7.5% in the former case (from 78.3% to 70.8%) whereas it is only 3.1% in the latter case (from 88.8% to 85.7%) when the sales and market shares of cups originating from non-member countries other than Japan are included. Accordingly, the Community institutions took account of any effect of the imports of cups from non-member countries other than Japan.

93 The applicant cannot therefore claim that the mere increase in sales and market shares of cups originating from non-member countries other than Japan (increasing from 10.5% to 14.9%) shows that those imports had an effect on the determi-

nation of the injury found by the Community institutions. Even supposing that the imports of cups from non-member countries other than Japan had been maintained at their 1988 level in 1989 and in 1990, that is to say at 10.5% of the total Community sales of cups in France, Germany and the United Kingdom, the level of sales of Community cups would have had to absorb that difference, that is to say 4.4%, in order to attain 75.2% of the total Community sales of cups in the three Member States referred to. The loss recorded by sales of Community cups between 1988 and 1990 would then amount to 3.1% (from 78.3% to 75.2%), which corresponds exactly to the loss of market share found in point 41 of the provisional regulation (see point 92 above) and also to the increase in the level of sales of cups originating from Japan (which increases from 11.2% to 14.3%).

94 It follows that even the increase in sales and market shares of cups originating from non-member countries other than Japan cannot account, in whole or in part, for the injury suffered by the Community industry in terms of profitability as a result of the dumped Japanese imports.

95 The Court therefore considers that in order to determine the injury suffered by the Community industry in terms of profitability the Community institutions took account of any effect of sales and market shares of cups originating from non-member countries other than Japan by including those sales and market shares in the sales and market shares of the Community producers.

96 Thirdly, as regards the injury affecting the Community industry as such, it must be examined whether it may be imputed in whole or in part to the import of cups originating from companies established in non-member countries other than Japan and related to Community producers.

97 In that regard, the Court considers that, since the injury was determined in terms of the Community producers' profitability, it was not unreasonable for the Community institutions to consider that the import of cups originating from related

undertakings could not have had an effect on the profitability of the Community producers. Those imports were in fact instigated by the Community producers themselves. The ultimate aim of any producer when taking decisions concerning the manufacture of its products is, unless the contrary is shown, to increase the profitability of its business. A Community producer may therefore choose to produce cups in the Community or to import cups from related undertakings either in order to sell them directly and separately on the Community market, or in order to incorporate them in complete TRBs, with the objective of reducing its cost price and thus increasing its profitability. A decision of that kind cannot result in a loss of profitability and cannot therefore constitute even an ancillary cause of the injury determined by the Community institutions, *a fortiori* because the applicant has not produced evidence to show that by importing cups from related companies the aim of the Community producers was not to increase their profitability.

98 Consequently, the Community institutions correctly considered that the imports of cups originating from non-member countries other than Japan could not have affected the profitability of the Community industry and that they did not therefore have to be taken into account in order to determine the injury caused by the dumped Japanese imports.

99 It follows from the foregoing that, although point 47 of the provisional regulation is indeed inaccurate in so far as it states that imports from non-member countries other than Japan were in 'small quantities' and might therefore have been misleading, the underlying reasoning adopted by the Community institutions in the regulation at issue proved to be correct.

100 It follows that the fourth plea must be rejected.

Fifth plea: infringement of Article 190 of the Treaty

Arguments of the parties

101 The applicant considers that the statement of the reasons on which the contested measure is based does not satisfy the requirements of Article 190 of the Treaty in three respects. First, it does not indicate the reasons for which, in order to determine the injury caused to the Community industry, the conclusion could be reached that a separate market exists for cups, on which Japanese and Community cups compete. Secondly, it does not sufficiently explain why the investigation of the existence of injury was limited to sales of cups in France, Germany and the United Kingdom. Finally, it does not show that the institutions carried out an investigation of the effect of imports from non-member countries on the extent of the injury found.

102 The Council considers that it has satisfied the requirements of Article 190 of the Treaty.

Findings of the Court

103 It is settled case-law (see, in particular, the judgment of the Court of Justice in Case 258/84 *Nippon Seiko* v *Council* [1987] ECR 1923, paragraphs 27 to 29) 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 of Justice and the Court of First Instance to exercise their supervisory jurisdiction.

104 In the present case, the Court considers that it follows from its examination of the first and third pleas that the statement of reasons in the regulations in question disclosed in a clear and unequivocal fashion the reasoning followed by the Community institutions and enabled the applicant to be aware of the reasons for the provisional regulation and the regulation at issue in order that it could defend its rights and the Court of First Instance could exercise its supervisory jurisdiction, both as regards the existence of competition between the cups, and as regards the limitation to France, Germany and the United Kingdom of the investigation of the effects of dumped Japanese imports.

105 As regards the investigation of the effect of imports from non-member countries other than Japan, considered in the context of the fourth plea, the Court points out that it found that the wording of point 47 of the provisional regulation was misleading as regards the volume of imports of cups from companies related to the Community producers and established in non-member countries other than Japan, but that that inaccuracy in no way affected either the lawfulness of the regulation at issue or the reasoning underlying it. The recitals in the provisional regulation and the regulation at issue clearly and intelligibly show the reasoning of the Community institutions, so that the applicant, which had available to it all the figures on which the Community institutions based their reasoning and which had moreover participated actively in the various stages of the administrative procedure prior to the fixing of the definitive rate of anti-dumping duty, could not reasonably have been mistaken as regards that reasoning.

106 The fifth plea must therefore be rejected.

107 It follows from the foregoing that the application must be dismissed.

Costs

108 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicant has been unsuccessful and the Council and the intervener FEBMA have applied for an order that it pay the costs, the applicant must be ordered to pay, in addition to its own costs, the costs incurred by the Council and by FEBMA. In accordance with Article 87(4) of the Rules of Procedure of the Court of First Instance, the Commission shall bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber sitting in extended composition)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay its own costs and the costs of the Council and FEBMA;

3. Orders the Commission to bear its own costs.

Lenaerts Schintgen García-Valdecasas

Bellamy Lindh

Delivered in open court in Luxembourg on 14 July 1995.

H. Jung K. Lenaerts

Registrar President