JUDGMENT OF THE COURT (First Chamber)

25 January 2007 *

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* Language of the case: English.

In Joined Cases C-403/04 P and C-405/04 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice, lodged on 22 September 2004,

Sumitomo Metal Industries Ltd, established in Tokyo (Japan), represented by C. Vajda QC and G. Sproul and S. Szlezinger, Solicitors (C-403/04 P),

Nippon Steel Corp., established in Tokyo, represented by J.-F. Bellis and K. Van Hove, avocats, with an address for service in Luxembourg (C-405/04 P),

appellants,

the other parties to the proceedings being:

JFE Engineering Corp., formerly NKK Corp., established in Tokyo, with an address for service in Luxembourg,

JFE Steel Corp., formerly Kawasaki Steel Corp., established in Tokyo, with an address for service in Luxembourg,

applicants at first instance,

Commission of the European Communities, represented by N. Khan and A. Whelan, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

EFTA Surveillance Authority,

intervener at first instance,

THE COURT (First Chamber),

composed of P. Jann, President of Chamber, K. Lenaerts, E. Juhász, K. Schiemann and M. Ilešič (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 December 2005,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2006,

gives the following

Judgment

1 By their appeals, Sumitomo Metal Industries Ltd ('Sumitomo') (C-403/04 P) and Nippon Steel Corp. ('Nippon Steel') (C-405/04 P) seek to have set aside the judgment of the Court of First Instance of the European Communities of 8 July 2004 in Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501 ('the judgment under appeal') in so far as it concerns them.

2 By the judgment under appeal, the Court of First Instance, after reducing the fines imposed on the appellants by Commission Decision 2003/382/EC of 8 December 1999 relating to a proceeding under Article 81 of the EC Treaty (Case IV/E-1/35.860-B seamless steel tubes) (OJ 2003 L 140, p. 1; 'the contested decision') essentially dismissed the actions for annulment of that decision.

I — The contested decision

A — *The cartel*

3 The Commission of the European Communities addressed the contested decision to eight undertakings which produced seamless steel tubes. Those undertakings included four European companies ('the Community producers'): Mannesmannröhren-Werke AG ('Mannesmann'), Vallourec SA ('Vallourec'), Corus UK Ltd (formerly British Steel Ltd; 'Corus') and Dalmine SpA ('Dalmine'). The other four addressees of the contested decision are Japanese companies ('the Japanese producers'): NKK Corp., Nippon Steel, Kawasaki Steel Corp. and Sumitomo.

4 Seamless steel tubes are used in the oil and gas industry and consist of two broad categories of products.

5 The first of those categories consists of borehole pipes and tubes, commonly called 'Oil Country Tubular Goods' or 'OCTG'. Those tubes may be sold unthreaded ('plain ends') or threaded. Threading is an operation intended to enable OCTG tubes to be joined. It may be carried out according to the standards laid down by the American Petroleum Institute (API), tubes threaded by that method being known as

'OCTG standard tubes', or according to special techniques, which are generally patented. In the latter case, the threading or joint is 'top quality' or 'premium', pipes threaded according to that method being known as 'OCTG premium pipes'.

6 The second category of products consists of pipes for carrying oil and gas ('line pipe'); pipes manufactured according to standardised norms are distinguished from those made to order for specific projects ('project line pipe').

7 In November 1994, the Commission decided to initiate an investigation into anti-competitive practices concerning those products. In December of that year it carried out inspections at the premises of a number of undertakings, including Sumitomo. Between September 1996 and December 1997 the Commission carried out further inspections at the premises of Vallourec, Dalmine and Mannesmann. During an inspection carried out at Vallourec's premises on 17 September 1996, the head of Vallourec Oil & Gas, Mr Verluca, made a number of statements ('Mr Verluca's statements'). During an inspection at Mannesmann's premises in April 1997, the director of that undertaking, Mr Becher, also made a number of statements ('Mr Becher's statements').

8 In view of those statements and other evidence, the Commission found, in the contested decision, that the eight undertakings to which the decision was addressed had concluded an agreement the object of which was, in particular, observance of their respective domestic markets. According to that agreement, each undertaking undertook not to sell OCTG standard pipe and project pipe on the domestic market of another party to the agreement.

9 The agreement was stated to have been concluded at meetings between Community and Japanese producers known as the 'Europe-Japan Club'.

10 The principle of observance of domestic markets was designated by the term 'fundamentals'. The Commission established that those fundamental rules had actually been observed and that, accordingly, the agreement in question had had anti-competitive effects on the common market.

11 The agreement consisted, in all, of three parts, the first part being represented by the fundamental rules on observance of domestic markets, described above, which constitute the infringement found in Article 1 of the contested decision, the second part consisting in the fixing of prices for tenders and minimum prices for 'special markets' and the third consisting in sharing the other world markets, with the exception of Canada and the United States of America, by means of 'sharing keys'.

12 As regards the existence of the fundamental rules, the Commission relied on a series of documentary indicia set out at points 62 to 67 of the grounds of the contested decision and also in the table at point 68 thereof. That table shows that the share of the domestic producer in deliveries made by the addressees of the contested decision to Japan and to the domestic market of each of the four Community producers is very high. The Commission inferred that, overall, the domestic markets were in fact observed by the parties to the agreement.

13 The members of the Europe-Japan Club met in Tokyo on 5 November 1993 in order to attempt to reach a new market-sharing agreement with the Latin American producers. The terms of the agreement adopted on that occasion were set out in a document handed to the Commission on 12 November 1997 by an informant not involved in the proceedings, which contained, in particular, a 'sharing key' ('the sharing key document').

B — *The duration of the cartel*

14 The Europe-Japan Club met from 1977, approximately twice each year, until 1994.

15 The Commission considered, however, that 1990 should be taken as the starting point of the cartel for the purpose of fixing the amount of the fines, owing to the existence, between 1977 and 1990, of an agreement between the European Community and Japan on the voluntary restraint of exports. According to the Commission, the infringement came to an end in 1995.

C — *The operative part of the contested decision*

16 According to Article 1(1) of the contested decision, the eight addressees of the contested decision '... have infringed the provisions of Article 81(1) of the EC Treaty by participating ... in an agreement providing, inter alia, for the observance of their respective domestic markets for ... OCTG pipes and tubes and project line pipe'.

17 Article 1(2) of that decision states that the infringement lasted from 1990 to 1995 in the case of Mannesmann, Vallourec, Dalmine, Sumitomo, Nippon Steel, Kawasaki Steel Corp. and NKK Corp. In the case of Corus, the infringement is stated to have lasted from 1990 to February 1994.

18 Article 4 of the decision provides that '[t]he following fines are imposed on the firms mentioned in Article 1 on account of the infringement established therein:

1. [Mannesmann] EUR 13 500 000

2. Vallourec ... EUR 8 100 000

3. [Corus] EUR 12 600 000

4. Dalmine ... EUR 10 800 000

5. Sumitomo ... EUR 13 500 000

6. Nippon Steel ... EUR 13 500 000

7. Kawasaki Steel Corp. ... EUR 13 500 000

8. NKK Corp. ... EUR 13 500 000'.

II — The proceedings before the Court of First Instance and the judgment under appeal

19 By applications lodged at the Registry of the Court of First Instance, seven of the eight undertakings on which sanctions were imposed by the contested decision, including Sumitomo and Nippon Steel, brought actions seeking annulment, in whole or in part, of that decision and, in the alternative, annulment of the fine imposed on them or reduction in the amount thereof.

20 By the judgment under appeal, the Court of First Instance:

— annulled Article 1(2) of the contested decision in so far as it established the existence of the infringement found in that article against the applicants in those cases as pre-dating 1 January 1991 and extending beyond 30 June 1994;

— set the fine imposed on each of the applicants at EUR 10 935 000;

— dismissed the remainder of the applications;

— ordered each party to bear its own costs.

III — Procedure before the Court of Justice

21 In its appeal, Sumitomo claims that the Court should:

— set aside the judgment under appeal in whole or in part;

— annul, in whole or in part, Articles 1 and 3 to 6 of the contested decision in so far as they concern it;

— if necessary, order the Commission to compensate Sumitomo for the excessive duration of the proceedings before the Court of First Instance, by paying a sum of at least EUR 1 012 332;

— order the Commission to pay the costs incurred before the Court of First Instance and the Court of Justice.

22 In its appeal, Nippon Steel claims that the Court should:

— set aside the judgment under appeal and annul the contested decision in so far as they concern it;

— in the alternative, if the appeal is allowed only in so far as it relates to 'project' pipe, reduce the fine imposed on the appellant by two thirds;

— order the Commission to pay the costs incurred before the Court of First Instance and the Court of Justice.

23 The Commission contends that the Court should dismiss the appeals and order the applicants to pay the costs.

24 By order of the President of the Court of 15 March 2005, the two appeals were joined for the purposes of the oral procedure and the judgment.

IV — The appeals

25 Sumitomo raises two pleas in law in support of its appeal, alleging, first, that the Court of First Instance made a number of errors of law as regards the participation of the Japanese producers in the infringement established in Article 1 of the contested decision and, second, that the proceedings before the Court of First Instance were excessively long.

26 Nippon Steel raises, in substance, a single plea in law, alleging errors of law in the definition of the requisite standard of proof.

27 It is appropriate to examine, first of all, the plea raised by Nippon Steel.

A — *The plea raised by Nippon Steel, alleging errors of law in the definition of the requisite standard of proof*

1. Arguments of the parties

28 In the first part of its plea, Nippon Steel claims that the Court of First Instance erred in law in failing to draw the legal consequences that follow from the absence of commercial interests on the part of the Japanese producers in committing the alleged infringement.

29 The Court of First Instance wrongly confined itself to finding that the possible lack of commercial interest is irrelevant if the existence of the agreement has been established. In Nippon Steel's submission, the fact that, owing in particular to the existence of trade barriers between the Japanese market and the principal European markets in respect of the pipes in question, the Japanese producers had no rational economic motive to conclude the alleged agreement implies that more persuasive evidence of the existence of the agreement ought to have been adduced, namely particularly precise, consistent and reliable indicia of all the essential elements of the infringement.

30 Furthermore, where, as in the present case, there is an alternative explanation, compatible with the competition rules, for the conduct of the undertaking concerned, the existence of an infringement cannot be concluded on the basis of ambiguous evidence. In that regard, Nippon Steel relies on the principle of the presumption of innocence.

31 In particular, statements made by an undertaking accused of having participated in a cartel which are disputed by other similarly accused undertakings can be used as evidence only if all the essential elements of the cartel have been established on the basis of evidence independent of those statements. In that regard, Nippon Steel claims that under Community competition law, which enables undertakings to benefit from a reduction in the fine in exchange for cooperation, there is a significant risk that statements may be inaccurate or false.

32 By the second part of its plea, Nippon Steel criticises the Court of First Instance for not having accepted that a plausible alternative explanation for the conduct of the accused undertaking is relevant where, owing to its ambiguous nature, the evidence on which the Commission relies requires interpretation. The Court of First Instance thus erred in law as regards the requisite level of proof and infringed the principle of the presumption of innocence.

33 By the third part of this plea, Nippon Steel criticises the Court of First Instance for having ignored the ambiguous nature of Mr Verluca's statements and the contradictions between those statements and other evidence. In omitting to require, in terms of both accuracy and content, a higher level of corroboration of the other evidence, the Court of First Instance erred in law and precluded a full judicial review of the facts established by the Commission. In that regard, Nippon Steel observes that such review by the Community Courts is necessary so that the condition of access to an independent and impartial tribunal referred to in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental freedoms, signed in Rome on 4 November 1950 ('the ECHR'), can be satisfied.

34 According to the fourth part of the plea, the Court of First Instance erred in law in relying on contradictory and inadequate grounds for its finding that Mr Becher's statements could corroborate Mr Verluca's statements as regards the infringement alleged in respect of project pipe. Although it recognised that a document may corroborate Mr Verluca's statements only where it does not contradict them, the Court of First Instance applied a different standard to Mr Becher's statements, which manifestly contradict Mr Verluca's statements.

35 The Commission observes that the second and third parts of the plea merely restate certain elements of the first part of the plea. In any event, those three parts are inadmissible since they cannot succeed without calling in question the finding of facts undertaken by the Court of First Instance and do not establish that that Court distorted the evidence.

36 Furthermore, even if those parts were admissible, they would be manifestly unfounded, in so far as they rely on the ambiguity of the evidence and the existence of plausible alternative explanations for that evidence. In that regard, the Commission observes that the indicia on which it relied, such as Mr Verluca's

statements, are wholly unambiguous as regards the essential elements of the infringement and that no plausible alternative explanation for the terms used in the documentary evidence was provided. The Commission concludes that the findings of the Court of First Instance in respect of the evidence of the infringement are perfectly consistent with the law.

37 The Commission contends that the fourth part of the plea is also inadmissible, since if it were founded it would not constitute a ground for setting aside the judgment under appeal. After considering at paragraph 333 of the judgment under appeal that Mr Becher's statements supported Mr Verluca's statements concerning project line pipe, the Court of First Instance found at paragraphs 334 and 335 of that judgment that, in any event, Mr Verluca's statements constituted sufficient evidence to establish a market-sharing agreement between the members of the Europe-Japan Club covering not only standard OCTG but also project line pipe.

2. Findings of the Court

(a) First part of the plea

38 It must be borne in mind that, in an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the Court of First Instance accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it (Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, paragraph 22). Save where the evidence adduced before the Court of First Instance has been distorted, the appraisal therefore does not constitute a point of

law which is subject to review by the Court of Justice (Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42, and Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 49).

39 The jurisdiction of the Court of Justice to review the findings of fact by the Court of First Instance therefore extends, inter alia, to the substantive inaccuracy of those findings as apparent from the documents in the file, the distortion of the evidence, the legal characterisation of that evidence and the question whether the rules relating to the burden of proof and the taking of evidence have been observed (Joined Cases C-2/01 P and C-3/01 P *BAI and Commission* v *Bayer* [2004] ECR I-23, paragraphs 47, 61 and 117, and Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraphs 51 and 52).

40 The first part of the plea concerns essentially the question whether the alleged absence of commercial interests in committing the alleged infringement ought to have led the Court of First Instance to evaluate the evidence according to different criteria from those which it used. Contrary to the Commission's contention, this part of the plea is admissible. The question whether the Court of First Instance applied the correct legal standard when examining the evidence is a question of law.

41 As regards the merits of this part of the plea, it is appropriate to examine the paragraphs of the judgment under appeal in which the Court of First Instance set out the principles governing the burden of proof and the taking of evidence which it applied.

42 At paragraph 179 of the judgment under appeal, the Court of First Instance referred to the case-law according to which the Commission is required to produce sufficiently precise and consistent evidence to support the conviction that the

infringement was committed. At paragraph 180 of the judgment, it observed that it is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement. Next, at paragraph 181, the Court of First Instance recalled that it follows from the actual text of Article 81(1) EC that agreements between undertakings are prohibited, regardless of their effect, where they have an anti-competitive object.

43 The Court of First Instance concluded, at paragraphs 183 and 184 of the judgment under appeal, that the applicant's argument concerning the absence of effects of the agreement, even if well founded, could not lead to annulment of Article 1 of the contested decision. In that regard, the Court of First Instance observed that it had already held, in Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraphs 1085 to 1088, that agreements which involve respecting domestic markets in themselves pursue an object restrictive of competition and fall within a category of agreements expressly prohibited by Article 81(1) EC and that that object cannot be justified by an analysis of the economic context of the anti-competitive conduct concerned.

44 At paragraph 185 of the judgment under appeal, the Court of First Instance held that, as far as the existence of the infringement is concerned, it would not matter whether or not the conclusion of the agreement was in the commercial interests of the Japanese producers.

45 As the Advocate General observed at point 190 et seq. of his Opinion, that reasoning by the Court of First Instance is in accordance with the law. It is in keeping with a consistent line of decisions of the Court (see, in particular, Joined Cases 29/83 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraph 20; Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 123; and Joined Cases C-238/99 P, C-244/99 P, C 245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR I-8375, paragraph 508). Nippon Steel's argument that the

existence of a plausible alternative explanation for the conduct complained of, namely the absence of a commercial interest, should have led the Court of First Instance to impose stricter requirements as to the evidence to be adduced is contrary to that case-law.

46 The Court of First Instance was therefore correct to hold that where the Commission has succeeded in gathering documentary evidence in support of the alleged infringement, and where that evidence appears to be sufficient to demonstrate the existence of an agreement of an anti-competitive nature, there is no need to examine the question whether the undertaking concerned had a commercial interest in the agreement.

47 As regards, in particular, agreements of an anti-competitive nature reached, as in the present case, at meetings of competing undertakings, the Court has already held that an infringement of Article 81(1) EC is constituted when those meetings have as their object the restriction, prevention or distortion of competition and are thus intended to organise artificially the operation of the market (*Limburgse Vinyl Maatschappij and Others* v *Commission*, paragraphs 508 and 509). In such a case, it is sufficient for the Commission to establish that the undertaking concerned participated in meetings during which agreements of an anti-competitive nature were concluded in order to prove that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward indicia to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (Case C-199/2 P *Hüls* v *Commission* [1999] ECR I-4287, paragraph 155, and *Aalborg Portland and Others* v *Commission*, paragraph 81).

48 The reason underlying that rule is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking has given the other participants to believe that it subscribed to what was decided there and would comply with it (*Aalborg Portland and Others* v *Commission*, paragraph 82).

49 However, in the present case, Nippon Steel neither formally disputed having participated in the meetings of the Europe-Japan Club nor put forward any evidence to establish that its participation in those meetings was without any anti-competitive intention as regards the protection of domestic markets.

50 In that regard, the Court of First Instance did not err in law when it analysed the available documents as follows:

'194 ... the Japanese applicants do not deny that meetings were held between the representatives of Japanese and European producers of seamless steel tubes ... Moreover, JFE-NKK, JFE-Kawasaki and Sumitomo do not deny having participated in those meetings but state that the only information they have regarding them derives from the recollections of their employees, and that those recollections are not very reliable in view of the time which has elapsed since those meetings.

195 As regards Nippon [Steel], it states that, as far as it knows, none of its present employees attended such meetings, but it states that it cannot rule out the possibility that certain former employees attended. However, a detail given in Nippon [Steel]'s reply of 4 December 1997 to the supplementary questions put to it by the Commission, namely the fact that Mr [X], who was in charge of steel tube exports, went to Cannes on a trip from 14 to 17 March 1994, supports the Commission's view regarding Nippon [Steel]'s participation in the meetings in question, since one of the meetings of the Europe-Japan Club to which Mr Verluca referred was held in Cannes on 16 March 1994 ... In the same reply, Nippon [Steel] states that it is not in a position to explain the purpose of that trip or that of other trips made by its employees to Florence, even though it had no customers in those two cities.

196 In those circumstances, the Commission was right to conclude that the Japanese applicants named by Mr Verluca in his statement of 14 October 1996 ..., including Nippon [Steel], did in fact participate in the meetings of the Europe-Japan Club described by him.

...

201 As regards the argument that the meetings of the Europe-Japan Club never related to the Community markets, it must be observed that, if, according to Mr Verluca, the "important events affecting the petroleum products market (American VRA, political upsets in the USSR, development in China)" were discussed during those meetings, that does not prevent the "application of the Fundamental Rules referred to above" from also being "established" there. Thus, it is clear from Mr Verluca's statement of 17 September 1996 that the application of the Fundamental Rules, involving in particular respect of the four domestic markets of the Community producers by the Japanese applicants, is one of the subjects which was discussed at those meetings.

202 It must be borne in mind in that connection that the task of the Commission is to penalise infringements of Article 81(1) EC and that agreements which "share markets or sources of supply" are expressly mentioned in Article 81(1)(c) EC as being prohibited by that provision. It is therefore sufficient for the Commission to establish that an agreement between undertakings capable of affecting trade between Member States had the object or effect of sharing the Community markets in one or more products between them for that agreement to constitute an infringement.

203 It must also be pointed out that, in practice, the Commission is often obliged to prove the existence of an infringement under conditions which are hardly

conducive to that task, in that several years may have elapsed since the time of the events constituting the infringement and a number of the undertakings covered by the investigation have not actively cooperated therein. Whilst it is necessarily incumbent upon the Commission to establish that an illegal market-sharing agreement was concluded ..., it would be excessive also to require it to produce evidence of the specific mechanism by which that object was attained ... Indeed, it would be too easy for an undertaking guilty of an infringement to escape any penalty if it was entitled to base its argument on the vagueness of the information produced regarding the operation of an illegal agreement in circumstances in which the existence and anti-competitive purpose of the agreement had nevertheless been sufficiently established. ...

...

205 In that connection, the appropriate view, contrary to the Japanese applicants' contention, is that Mr Verluca's statements are not only reliable but are of particularly great probative value since they were made on behalf of Vallourec. ...

...

207 In any event, Mr Verluca was a direct witness of the circumstances which he described. The Commission stated, ... without being contradicted in that regard, that Mr Verluca, as chairman of Vallourec ..., had himself taken part in the Europe-Japan Club meetings.'

51 That appraisal of the evidence is consistent with well-established case-law. As the Court has already held in other cases, it is normal for the activities which anti-competitive practices and agreements entail to take place in a clandestine fashion, for meetings to be held in secret, and for the associated documentation to be reduced to a minimum. It follows that, even if the Commission discovers evidence explicitly showing unlawful contact between traders, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. Accordingly, in most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (*Aalborg Portland and Others* v *Commission*, paragraphs 55 to 57).

52 In so far as Nippon Steel also relies, in the context of this first part of the plea, on the principle of the presumption of innocence and also on the danger of inaccurate or false statements on the part of competing undertakings accused of the infringement, it is sufficient to observe, as the Court of First Instance did at paragraphs 177 to 179 of the judgment under appeal, that while the benefit of any doubt that exists must be given to the undertaking accused of the infringement, there is nothing to preclude a finding of infringement when the infringement is established.

53 Last, there is nothing in the file to support the conclusion that in its analysis and appraisal of the evidence the Court of First Instance distorted the sense of that evidence or was guilty of a substantive inaccuracy.

54 It follows from all of the foregoing that in applying the criteria referred to above in relation to the burden of proof and the taking of evidence and in holding that, in the present case, those criteria are satisfied, the Court of First Instance did not err in law.

55 Accordingly, the first part of the plea must be rejected.

(b) Second part of the plea

56 The second part of the plea rests on the premise that the evidence is ambiguous. However, as already observed in the context of the examination of the first part of the plea, the appraisal by the Court of First Instance of the probative force of the documents submitted to it cannot, save where the rules on the burden of proof and the taking of evidence have not been observed or the evidence has been distorted, be challenged before the Court of Justice (see also Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 49 and 66, and Case C-182/99 P *Salzgitter* v *Commission* [2003] ECR I-10761, paragraph 43). In the present case, that applies to the Court of First Instance's finding that the evidence was not ambiguous but, on the contrary, was precise and consistent and thus founded the conviction that the infringement had been committed.

57 Accordingly, is so far as Nippon Steel challenges that finding by the Court of First Instance, its arguments must be rejected as inadmissible.

58 Furthermore, Nippon Steel's argument that the Court of First Instance erred in law in holding that the alternative explanation for the conduct of the Japanese producers, which was plausible and compatible with the competition rules, was irrelevant is in substance the same as the argument which was rejected in the context of the first part of the plea and whereby the Court of First Instance was criticised for having found that the absence of any commercial interest on the part of the Japanese producers in committing the alleged infringement is irrelevant where the existence of the agreement has been established.

59 In the light of the foregoing, the second part of the plea must be rejected.

(c) Third part of the plea

60 By this part of the plea, Nippon Steel criticises the Court of First Instance for not having taken account, first, of the ambiguous nature of Mr Verluca's statements and, second, of the contradictions between those statements and other evidence, in particular Mr Becher's statements.

61 It must be observed that, in his statement of 17 September 1996, Mr Verluca admitted that the domestic markets of the participants in the agreement 'benefited from protection', with the exception of the United Kingdom offshore market, which was 'semi-protected'. The products affected by the agreement were, according to Mr Verluca, standard OCTG pipe and project line pipe. As regards the duration of the agreement, Mr Verluca stated that '[t]hose changes began after the fall in the market in 1977' and that 'they ceased a little over a year ago'. As regards the practical arrangements of the agreement, Mr Verluca stated that '[m]eetings were held, as a rule, twice per year ... They dealt with important matters affecting the oil products market ... Overall, note was taken of the significant gap between worldwide capacities for pipe and demand, and also of the application of the fundamental rules mentioned above'.

62 When interviewed on 18 December 1997 during a new inspection at Vallourec's premises, Mr Verluca stated:

— 'The producers involved in the Europe-Japan Club observed, for international calls for tenders, an approximative sharing key for standard products alone.

— In that context, indicative price lists were drawn up and served as a basis for the tenders submitted in the context of those calls for tenders ...

— Those lists were updated from time to time ("NL": New List) and enabled individual producers to determine the price to offer in order to be successful ("WP": Winning Price). ...

— The French, German and Italian markets were regarded as domestic markets. The [United Kingdom] had a special status (cf. my statement of 17.09.96).'

63 Mr Becher's statement reads as follows:

— 'To my knowledge ..., [t]he "fundamental rules" consist of agreements relating to OCTG pipe and "project" line pipe which seek essentially to protect the respective home markets. That meant that, in those sectors, the Japanese producers were not to penetrate the European markets while the European producers were not ... to deliver their products to Japan.

— Alongside those agreements which directly concerned the respective domestic markets, there were apparently other supplementary agreements affecting other countries. ...

— For the other markets which had been the subject of worldwide calls for tenders, it had been agreed that certain quantities would be delivered by the Japanese and European producers respectively, which, at the time, had designated by the term "sharing key". The aim was manifestly to maintain the respective quantities to be delivered at the level reached historically. ...'

64 As regards the first complaint raised in the context of this part of the plea, alleging that Mr Verluca's statements were ambiguous, it is sufficient to observe that the Court of First Instance considered that those statements constituted specific evidence. In particular, it held at paragraph 193 of the judgment under appeal that 'the term "échanges" used in Mr Verluca's statement of 17 September 1996 ... indicates that there were contacts between the Japanese and European producers of steel tubes' and, at paragraph 201 of that judgment, that 'it is clear from Mr Verluca's statement of 17 September 1996 that the application of the Fundamental Rules, involving in particular respect of the four domestic markets of the Community producers by the Japanese applicants, is one of the subjects which was discussed at [the meetings of the Europe-Japan Club]'.

65 In the light of the case-law cited at paragraphs 38, 39 and 56 of this judgment, that appraisal by the Court of First Instance of Mr Verluca's statements cannot, save in cases involving non-observance of the rules on the burden of proof and the taking of evidence, distortion of those statements or substantive inaccuracies, be called in question before the Court of Justice. In fact, Nippon Steel has put forward no argument capable of demonstrating that the abovementioned findings, made by the Court of First Instance on the basis of Mr Verluca's statements, are vitiated by a substantive inaccuracy, distortion of those statements or an error of law.

66 It is apparent, moreover, from the examination of the first part of the plea that the Court of First Instance also did not fail in its appraisal of the documents before it to observe the rules on the burden of proof and the taking of evidence.

67 It follows that the first complaint, based on the ambiguity of Mr Verluca's statements, must be rejected.

68 As regards the second complaint put forward in the context of the third part of the plea, it must be held that the Court of First Instance took into account, in its appraisal of the evidence, the existence of a certain inconsistency between Mr Verluca's statements and other evidence. Thus, it held, at paragraph 302 of the judgment under appeal, that '[i]t is true that the fact that Mr Becher denied the existence of an intra-European component of the Fundamental Rules in the form of an obligation for mutual respect of domestic markets as between European producers weakens his statement, in some degree, as evidence capable of corroborating Mr Verluca's statements'.

69 The Court of First Instance then examined whether, in spite of that inconsistency, Mr Verluca's statements were corroborated in a sufficiently precise manner by Mr Becher's statements.

70 For the purposes of that examination, the Court of First Instance stated, in respect of Mr Verluca's statements, that:

> '219 ... according to the case-law of the Court of First Instance, an admission by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement committed by the latter unless it is supported by other evidence ... Therefore, it must be

concluded that, despite their reliability, Mr Verluca's statements must be corroborated by other evidence to establish the existence of the infringement penalised in Article 1 of the contested decision.

220 Nevertheless, the degree of corroboration required in this case is lesser, in terms both of precision and of depth, in view of the reliability of Mr Verluca's statements, than would be the case if the latter were not particularly credible. Thus, it must be concluded that, if it were to be held that a body of consistent evidence was such as to corroborate the existence and certain specific aspects of the market-sharing agreement referred to by Mr Verluca and referred to in Article 1 of the contested decision, Mr Verluca's statements might be sufficient in themselves, in such a case, to constitute evidence of other aspects of the contested decision, in accordance with the rule deriving from [the judgment in *Cimenteries CBR and Others* v *Commission*] (paragraph 1838) ... Moreover, provided that a document does not manifestly contradict Mr Verluca's statements as to the existence or the essential content of the market-sharing agreement, the fact that it provides evidence of significant elements of the agreement which he described is sufficient to endow it with corroborative value in the context of the body of inculpatory evidence ...'

71 It is in the light of those considerations that the Court of First Instance analysed Mr Becher's statements. As regards that document, the Court of First Instance held, at paragraph 302 of the judgment under appeal, that 'Mr Becher confirmed the existence of a market-sharing agreement between the European and Japanese producers for OCTG and project line pipe unequivocally ... Thus, his statement corroborates those of Mr Verluca as regards that aspect of the infringement and, therefore, regarding the fact that the Japanese applicants were parties to a market-

sharing agreement under which they agreed not to market standard thread OCTG and project line pipe on Community markets. ... Finally, the probative value of Mannesmann's statement is, in this case, further reinforced by the fact that it also corroborates those of Mr Verluca regarding the existence of a sharing key for awards in international tendering procedures on the markets of third countries ...'

72 It was after that comparative examination of the main evidence, in which it applied the criteria on the burden of proof and the taking of evidence examined in the context of the first part of the plea, that the Court of First Instance concluded as follows:

'332 It is not clearly apparent from most of the information making up the said body of evidence which seamless steel tubes were covered by the sharing arrangement, but there is no doubt that the products covered included standard thread OCTG. The specific references to those products ... in the sharing key document and in the Mannesmann reply, and the unqualified references to OCTG in general in other documents relied on by the Commission adequately and clearly corroborate Mr Verluca's statement relating to the fact that the Fundamental Rules concerned those products.

333 As regards project line pipe, a single item of evidence, Mannesmann's reply made by Mr Becher, unequivocally supports Mr Verluca's statement that the illegal agreement also covered project line pipe. However, given the particularly probative nature of that reply ..., it must be considered as being sufficient to corroborate Mr Verluca's statements, which were in themselves already very reliable ... in relation to those products.

334 In any event, it has already been held that, if the body of consistent evidence relied on by the Commission makes it possible to establish the existence of, and certain specific aspects of, the market-sharing agreement mentioned by Mr Verluca and referred to in Article 1 of the contested decision, the latter's statements could in themselves be sufficient, in that case, to evidence other aspects of the contested decision ... It has already been held, in paragraphs 330 and 332 above, that the body of evidence relied on by the Commission is sufficient to corroborate Mr Verluca's statements in several respects, and in particular with regard to standard thread OCTG.

335 In those circumstances, it must be considered that Mr Verluca clearly told the truth in his statements and, therefore, that those statements constitute sufficient evidence to establish that the agreement on sharing of the home markets of the Europe-Japan Club members covered not only standard thread OCTG, as shown by several other items of evidence, but also the project line pipe. There is no reason to suppose that Mr Verluca, who had direct knowledge of the facts, might have made incorrect statements regarding line pipe, when other evidence corroborates his statements concerning the existence of the agreement and its application to standard thread OCTG.'

73 Contrary to Nippon Steel's contention, it follows from those extracts from the judgment under appeal that the Court of First Instance carried out a full judicial review of the veracity of the facts established by the Commission. It also weighed up the inconsistencies and the consistencies between Mr Verluca's and Mr Becher's statements, and correctly concluded that Mr Becher's statements corroborated Mr Verluca's statements as regards the existence of the infringement found in Article 1 of the contested decision.

74 Nor, moreover, can the Court of First Instance be criticised for having demanded too low a level of corroboration. In that regard, it is sufficient to observe that the reasoning followed by the Court of First Instance does not in any way depart from the criteria applicable in relation to the burden of proof and the taking of evidence, as defined in paragraphs 42 to 48 and 51 of this judgment.

75 Accordingly, the second complaint raised in the context of the third part of the plea is also unfounded.

76 The third part of the plea must therefore be rejected.

(d) Fourth part of the plea

77 As regards the fourth part of the plea, it must be borne in mind at the outset that the question whether the grounds of a judgment of the Court of First Instance are contradictory or inadequate is a question of law which is amenable, as such, to judicial review on appeal (Case C-401/96 P *Somaco* v *Commission* [1998] ECR I-2587, paragraph 53, and Case C-185/95 P *Baustahlgewebe* [1998] ECR I-8417, paragraph 25). This part of the plea is therefore admissible.

78 Therefore, in order to reply to the arguments submitted by Nippon Steel, it is necessary to ascertain whether the finding of the Court of First Instance that Mr Becher's statements corroborate Mr Verluca's statements as regards the infringement in respect of project line pipe is based on sufficient and coherent grounds.

79 As the Court of First Instance held at paragraph 290 of the judgment under appeal, Mr Becher stated in reply to the Commission's inspectors that the Fundamental Rules concerned OCTG and project line pipe. It follows from that finding by the Court, and from the actual words of Mr Verluca's and Mr Becher's statements cited at paragraphs 61 to 63 of the present judgment, that those statements agree as to the material scope of the infringement. The fact that Mr Becher confirmed that his undertaking had been involved in a market-sharing agreement which also concerned project line pipe was capable of constituting sufficient reason for the Court of First Instance to consider that his reply, in so far as it related to project line pipe, confirmed Mr Verluca's statements of 17 September 1996 to the effect that the agreement concerned standard OCTG pipe and also project line pipe.

80 It follows that the grounds of the judgment under appeal cannot be characterised as contradictory or inadequate.

81 Incidentally, in so far as Nippon Steel criticises the Court of First Instance, in the context of this fourth part of the plea, for having made a legally incorrect application of the rules on the taking of evidence, it is sufficient to state that its arguments essentially repeat those developed in the context of the other parts of its plea, which are all unfounded.

82 The fourth part of the plea cannot therefore succeed.

83 Accordingly, the plea must be rejected in its entirety.

84 It follows from all of the foregoing that Nippon Steel's appeal must be dismissed.

B — *First plea raised by Sumitomo, alleging errors of law as regards the participation of the Japanese producers in the infringement found in Article 1 of the decision*

1. Arguments of the parties

85 Sumitomo maintains that the Court of First Instance made a number of errors of law in concluding that the Japanese producers had participated in the infringement found in Article 1 of the contested decision, as regards both standard OCTG pipes and project line pipe.

86 In that regard, Sumitomo adopts the arguments set out in Nippon Steel's appeal and adds certain specific arguments concerning project line pipe.

87 Sumitomo claims that the Court of First Instance distorted the evidence provided by Mr Becher. It also made an incorrect legal characterisation of that evidence, stated contradictory and inadequate grounds for using Mr Verluca's and Mr Becher's statements, and reversed the burden of proof.

88 As regards Mr Becher's statements, Sumitomo maintains, first, that the Court of First Instance attributed an incorrect probative value to them by finding that those statements unequivocally confirmed the existence of a market-sharing agreement concerning project line pipe. The Court of First Instance ought to have taken into account the fact that Mr Becher had stated that he was relating facts which had taken place before he became director of Mannesmann. Furthermore, it follows from the actual words used by Mr Becher that he expressed doubts about the information which had been given to him.

89 A further error by the Court of First Instance consists in the characterisation of Mr Becher's statements as reliable evidence supporting Mr Verluca's statements of 17 September 1996, in spite of the fact that that Court had acknowledged that Mr Becher's denial of the inter-European aspect of the Fundamental Rules was incorrect. Having established that Mr Becher's statements were affected by a significant error as regards their content, the Court of First Instance ought to have refrained from using evidence other than those statements to support Mr Verluca's statements.

90 Furthermore, Sumitomo contends that the Court of First Instance failed to observe the rules on the taking of evidence when it held, at paragraph 336 of the judgment under appeal, that 'even if it is assumed that the Japanese applicants may have raised a doubt as to the specific products covered by the agreement penalised in Article 1 of the contested decision — which has not been demonstrated — it must be observed that if the decision, taken as a whole, shows that the infringement found related to a particular kind of product and mentions the evidence on which that conclusion is based, the fact that the decision does not contain a precise and

exhaustive list of all the types of product covered by the infringement is not sufficient in itself to justify annulment thereof (see, by analogy, in the context of a plea alleging an inadequate statement of reasons, [Case T-310/94 *Gruber + Weber* v *Commission* [1998] ECR II-1043], paragraph 214). ...'. In following that reasoning in support of its theory that the Commission had demonstrated an infringement in respect of project line pipe, the Commission reversed the burden of proof.

91 As regards Mr Verluca's statements, Sumitomo challenges the reasoning followed by the Court of First Instance at paragraphs 219 and 220 of the judgment under appeal, cited at paragraph 70 of this judgment, in so far as it follows that, on the sole basis of Mr Verluca's statements, it might be affirmed that the Japanese producers' conduct also concerned project line pipe. The position adopted by the Court of First Instance at paragraph 220 of the judgment under appeal in respect of the reliability of Mr Verluca's statements is in any event open to dispute, since the Court of First Instance expressly stated, at paragraphs 281 to 284 and 349 of the judgment, that those statements were vitiated by errors and lack of precision. Since the Court of First Instance found that Mr Verluca's communications were not reliable on certain points, there was no justification for following a different approach in respect of a further point as to which serious doubt might also exist.

92 Last, Sumitomo claims that the Court of First Instance erred in law in acknowledging the existence of an infringement of Article 81(1) EC in respect of project line pipe, when, on the basis of the available evidence, it was not in a position to state the dates on which that infringement began and came to an end.

93 The Commission contends, first of all, that Sumitomo cannot enlarge the scope of its appeal by adopting the arguments set out in Nippon Steel's pleadings. Sumitomo's appeal is therefore inadmissible in so far as it concerns standard OCTG and relies on Nippon Steel's arguments in respect of project line pipe.

94 Next, the Commission claims that Sumitomo's arguments show at the most that a different assessment of the evidence would have been plausible. However, that does not suffice to found the appeal, since Sumitomo has not succeeded in refuting the three principal grounds of the judgment under appeal, namely that Mr Verluca's statement is in itself sufficient proof, that the absence of other specific evidence concerning project line pipe does not undermine the finding of an infringement and that Mr Verluca's statements were corroborated by Mr Becher's statements.

95 The Commission emphasises that Sumitomo has not contested certain findings of the Court of First Instance which in themselves are sufficient to confirm the infringement. The appeal is therefore ineffective. It is also inadmissible, since Sumitomo's arguments are essentially confined to the findings of fact. In particular, Sumitomo's criticisms of the finding that Mr Verluca's statements were reliable reveal no error of law.

96 In any event, the Court of First Instance did not distort the evidence or reverse the burden of proof.

97 The Commission observes, last, that Sumitomo's assertion that the judgment under appeal is based on contradictory and inadequate grounds is supported only by a general reference to the preceding paragraphs of the appeal and must be rejected for that reason.

2. Findings of the Court

98 It must be held at the outset that there is no need to adjudicate on the question whether Sumitomo could adopt the arguments submitted in Nippon Steel's pleadings. As already held above, Nippon Steel's arguments are in any event unfounded.

99 As regards the arguments submitted in Sumitomo's pleadings, it must be held that they seek essentially to challenge the probative value which the Court of First Instance ascribed to the statements of Mr Verluca and Mr Becher, by arguments seeking to demonstrate that those statements are not reliable or in any case less credible than the Court of First Instance considered.

100 As the Advocate General observed at points 88 to 92 of his Opinion, and as follows from the case-law cited at paragraph 56 of the present judgment, those arguments are admissible only in so far as they do not constitute a disguised means of securing a re-examination of the facts by the Court of Justice.

101 As regards the probative value ascribed to Mr Becher's statements, Sumitomo's argument that the Court of First Instance ought to have characterised the probative force of those statements differently owing to the fact that Mr Becher had no direct knowledge of the alleged infringement merits examination by the Court.

102 At paragraph 297 of the judgment under appeal, the Court of First Instance stated that '[w]here, as in the present case as far as Mannesmann is concerned, a person not having direct knowledge of the relevant circumstances makes a statement as a representative of a company, admitting the existence of an infringement by it and by other undertakings, that person [necessarily] relies on information provided by his company and, in particular, by employees thereof with direct knowledge of the practices in question. ... statements running counter to the author's own interests must, in principle, be regarded as probative and it is therefore appropriate to give considerable weight to Mr Becher's statement in this case'.

103 It follows from that paragraph that the Court of First Instance did indeed take into account, in its appraisal of the probative value of Mr Becher's statements, the fact that he had no direct knowledge of the infringement in question. Furthermore, the reasoning developed by the Court of First Instance in that paragraph is not vitiated by any breach of the rules on the burden of proof and the taking of evidence. As the Advocate General observed at point 119 of his Opinion, a statement made by a person acting in the capacity of a representative of a company and admitting the existence of an infringement by that company entails considerable legal and economic risks, which makes it extremely unlikely that such a statement will be made unless the person making it had information provided by employees of the company who themselves have direct knowledge of the facts complained of. In those circumstances, the fact that the representative of the company did not himself have direct knowledge of the facts does not affect the probative value which the Court of First Instance was able to attribute to such a statement.

104 As regards Sumitomo's other arguments, alleging errors of law in the assessment of Mr Becher's statements and inconsistencies in the use of those statements and Mr

Verluca's statements, it must be held that they substantially correspond with Nippon Steel's arguments which were rejected as unfounded for the reasons set out at paragraphs 68 to 73, 79 and 80 of the present judgment. For those same reasons, the substantially identical arguments put forward by Sumitomo cannot be accepted.

105 In so far as Sumitomo criticises the Court of First Instance for having reversed the burden of proof in holding, at paragraph 336 of the judgment under appeal, that, 'even if it is assumed that the Japanese applicants may have raised a doubt as to the specific products covered by the agreement penalised in Article 1 of the contested decision — which has not been demonstrated — it must be observed that if the decision, taken as a whole, shows that the infringement found related to a particular kind of product and mentions the evidence on which that conclusion is based, the fact that the decision does not contain a precise and exhaustive list of all the types of product covered by the infringement is not sufficient in itself to justify annulment thereof', its argument is equally unacceptable.

106 As the Advocate General observed at points 130 to 132 of his Opinion, it is clear from the beginning of paragraph 336 of the judgment under appeal, which is worded as follows: '... even if it is assumed that ... — which has not been demonstrated — ...', that this ground is included purely for the sake of completeness and is autonomous by reference to the conclusions which the Court of First Instance drew at paragraphs 332 to 335, cited at paragraph 72 of this judgment. According to settled case-law, the Court rejects outright complaints directed against grounds of a judgment of the Court of First Instance which are included purely for the sake of completeness, since they cannot lead to its being set aside (order in Case C-137/95 P *SPO and Others* v *Commission* [1996] ECR I-1611, paragraph 47, and judgment in Case C-362/95 P *Blackspur and Others* v *Council and Commission* [1997] ECR I-4775, paragraph 23).

107 As regards, next, the probative force of Mr Verluca's statements, it is sufficient to observe, as already noted in the context of the examination of the third part of Nippon Steel's plea, that the reasoning followed by the Court of First Instance at paragraphs 219 and 220 of the judgment under appeal, which Sumitomo challenges,

is not vitiated by any error of law. In any event, as the Advocate General observed at point 104 of his Opinion, the Court of First Instance, after having characterised Mr Verluca's statements as reliable, was also able to consider that those statements were sufficient to prove the infringement in so far as they were supported by other evidence and that, on that hypothesis, those statements were sufficient to support a finding of infringement in respect of a specific product within the category of products in question.

108 Last, the fact that, at paragraph 349 of the judgment under appeal, the Court of First Instance held that Mr Verluca's statements were insufficiently precise in relation to the date on which the infringement came to an end, does not in any way affect the reliability of those statements as regards their content, as their reliability was established in the judgment under appeal and corroborated by other evidence.

109 As none of the complaints put forward by Sumitomo can be upheld, the first plea must be rejected.

C — *Second plea raised by Sumitomo, alleging that the duration of the proceedings before the Court of First Instance was excessive*

1. Arguments of the parties

110 Sumitomo criticises the duration of the proceedings before the Court of First Instance, which was four years and three months. Two years elapsed between the end of the written procedure and the decision to open the oral procedure, and almost 16 months between the closing of the oral procedure and delivery of the judgment. In addition, two years elapsed between the Commission's application for measures of organisation and the Court of First Instance's request to the Commission to lodge a consolidated file.

111 In those circumstances, the duration of the proceedings before the Court of First Instance was incompatible with Article 6(1) of the ECHR.

112 Sumitomo further submits, in essence, that the Court of First Instance took longer to deal with the case than the period deemed excessive by the Court of Justice in *Baustahlgewebe* v *Commission*. Furthermore, by comparison with the average duration of proceedings initiated before the Court of First Instance in similar categories of cases, the time taken to deal with the present case was disproportionate.

113 Sumitomo claims to have suffered financial loss owing to the duration of the proceedings. It submits that compensation of at least EUR 1 012 332 is appropriate.

114 The Commission contends that, regard being had to the circumstances of the case, the duration of the proceedings before the Court of First Instance was not excessive.

2. Findings of the Court

115 It must be borne in mind that the general principle of Community law that everyone is entitled to a fair hearing, which is inspired by Article 6(1) of the ECHR, and in particular the right to legal process within a reasonable period, is applicable in the context of proceedings brought against a Commission decision imposing fines on an undertaking for infringement of competition law (*Baustahlgewebe* v *Commission*, paragraphs 20 and 21; *Limburgse Vinyl Maatschappij and Others* v *Commission*, paragraph 179; and Case C-194/99 P *Thyssen Stahl* v *Commission* [2003] ECR I-10821, paragraph 154).

116 The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (*Baustahlgewebe* v *Commission*, paragraph 29, and *Thyssen Stahl* v *Commission*, paragraph 155).

117 The Court has held in that regard that that list of criteria is not exhaustive and that the assessment of the reasonableness of a period does not require a systematic examination of the circumstances of the case in the light of each of them, where the duration of the proceedings appears justified in the light of one of them. Thus, the complexity of the case may be deemed to justify a duration which is prima facie too long. Conversely, the time taken may be regarded as longer than is reasonable (*Limburgse Vinyl Maatschappij and Others* v *Commission*, paragraph 188, and *Thyssen Stahl* v *Commission*, paragraph 156).

118 In the present case, the procedure before the Court of First Instance began on 1 April 2000, when Sumitomo lodge its application for annulment of the contested decision, and ended on 8 July 2004, the date of delivery of the judgment under appeal. It thus lasted approximately four years and three months.

119 Such a duration is prima facie considerable. However, as the Advocate General observed at points 151 and 159 of his Opinion, virtually all the facts forming the basis of the contested decision were disputed at first instance and therefore had to be verified. The probative value of the statements and the documents available had to be evaluated. In addition, the various measures which the Court of First Instance adopted from June 2002 for the purpose of the organisation of the procedures presumed a prior analysis of the files or, at least, of certain parts of them.

120 It must also be borne in mind that seven undertakings brought actions for annulment of the same decision, in three languages of the case. The judgment under appeal was delivered on the same day as the other three judgments adjudicating on the actions brought against the contested decision.

121 It follows from the foregoing findings that the duration of the procedure culminating in the judgment under appeal may be explained, in particular, by the number of undertakings that participated in the impugned cartel and brought actions against the contested decision, which necessitated a parallel examination of those different actions, by the thorough investigation of the case carried out by the Court of First Instance and by the language constraints imposed by its Rules of Procedure.

122 It follows that the duration of the procedure before the Court of First Instance is justified in the light of the particular complexity of the case.

123 The second plea put forward by Sumitomo is therefore not founded.

124 Since none of the pleas in law put forward by Sumitomo can be upheld, its appeal must be dismissed.

125 It follows from all of the foregoing that the appeals must be dismissed.

V — Costs

126 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 69(2), which

is applicable to the procedure on appeal pursuant to Article 118 of those 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. As the Commission has claimed that Sumitomo and Nippon Steel should be ordered to pay the costs, and as those parties were unsuccessful, Sumitomo must be ordered to pay the costs in Case C-403/04 P and Nippon Steel to pay the costs in Case C-405/04 P.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeals;**

2. **Orders Sumitomo Metal Industries Ltd to pay the costs in Case C-403/04 P and Nippon Steel Corp. to pay the costs in Case C-405/04 P.**

[Signatures]