JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
20 October 1999 *

In Case T-171/97,

Swedish Match Philippines Inc., a company incorporated under the laws of the Philippines, established in Manila, the Philippines, represented by Francisco Miguel Rodero López, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14a Rue des Bains,

applicant,

v

Council of the European Union, represented by Ramon Torrent and Antonio Tanca, of its Legal Service, acting as Agents, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director General of the Legal Department of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: English.

supported by

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

intervener,

APPLICATION for partial annulment of Council Regulation (EC) No 423/97 of 3 March 1997 amending Regulation (EEC) No 3433/91 in respect of imports originating in Thailand and imposing definitive anti-dumping duties on imports of gas-fuelled, non-refillable pocket flint lighters originating in Thailand, the Philippines and Mexico (OJ 1997 L 65, p. 1), as amended by Article 1 of Council Regulation (EC) No 1508/97 of 28 July 1997 (OJ 1997 L 204, p. 7),

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

composed of: B. Vesterdorf, President, C.W. Bellamy, J. Pirrung, A.W.H. Meij and M. Vilaras, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 May 1999,

gives the following

Judgment

The relevant provisions

1 On 22 December 1995 the Council adopted Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1, 'the basic regulation'), with a view, *inter alia*, to adapting the Community rules to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the 1994 Anti-Dumping Code').

2 Article 1(1) and (2) 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. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product in the exporting country.

3 Article 3 of the basic regulation, on the determination of injury, reads as follows:

'1. Pursuant to this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry...

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products; and (b) the consequent impact of those imports on the Community industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that (a) the margin of dumping

established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) [= 2%] and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

5. The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry...

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

... '

4 Article 20(1) and (2) of the basic regulation provides that complainants, importers and exporters, *inter alia*, may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures. The fourth and fifth subparagraphs state as follows:

'(4) Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and,

normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action... Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

(5) Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.'

The facts, the anti-dumping measures, the procedure and the forms of order sought

Background to the dispute

5 The applicant belongs to the Swedish Match Group whose parent company is Swedish Match SA, established in Nyons, Switzerland. The applicant is 99.99% owned by Swedish Match International BV. Another subsidiary of the Swedish Match Group is the company Poppell BV in the Netherlands.

6 In August 1994 several Community producers, including a company belonging to the Swedish Match Group, submitted a complaint to the Commission concerning imports of certain types of lighters originating in the Philippines.

7 On 18 March 1995, as a result of those complaints, the Commission announced the initiation of an anti-dumping proceeding. The Commission's investigation

covered the period from 1 April 1994 to 31 December 1994. It is common ground that during that period the applicant exported only one consignment of lighters to the Community, to its fellow subsidiary, Poppell, a related importer.

8 In its investigation, the Commission first of all sent questionnaires to the parties known to be concerned. In its reply to the questionnaire addressed to it, the applicant supplied information concerning its legal form, production and sales, naming under the heading 'Details of the Company' its president and financial controller as 'Persons to contact' (Annex 4 to the application).

9 On 30 September 1996 the Commission sent a single letter, pursuant to Article 20(4) of the basic regulation:

— to Swedish Match, Nyons, Switzerland, for the attention of Mr Picard,

— to Mr Picard of the Swedish Match Lighter Division, Rillieux-La-Pape, France,

— to the applicant's Financial Controller, Manila, Philippines, and

— to Poppell in the Netherlands.

The subject of that letter was the 'anti-dumping proceeding concerning imports of... lighters originating... in the Philippines — Final disclosure to the companies

belonging to your Group (Swedish Match Philippines Inc., as exporter, Poppell BV, as importer, and Head Office) of the essential facts and considerations taken into account in the Commission's intended proposals'. The addressees were requested to submit any comments on the final disclosure document annexed to that letter by 11 October 1996.

10 In that final disclosure document, the Commission made findings of, in particular, a dumping margin of 36.7% and an underselling margin of 13% in respect of the applicant. The latter did not comment on that document before the expiry on 11 October 1996 of the period allowed.

Anti-dumping Regulation (EC) No 423/97

11 At the end of the abovementioned proceeding, the Council adopted on 3 March 1997 Regulation (EC) No 423/97 amending Regulation (EEC) No 3433/91 in respect of imports originating in Thailand and imposing definitive anti-dumping duties on imports of gas-fuelled, non-refillable pocket flint lighters originating in Thailand, the Philippines and Mexico (OJ 1997 L 65, p. 1, 'Regulation No 423/97' or 'the contested regulation'). Article 2 thereof imposed, *inter alia*, a definitive anti-dumping duty of 43% on lighters imported from the Philippines, except for those manufactured and sold by the applicant, for which a rate of 17% was fixed.

12 In recitals 33 and 34 of the preamble to Regulation No 423/97, the Council established the existence of a weighted average dumping margin of 52.6% for all the Filipino producers and exporters which had cooperated, except for the applicant, whose margin was 36.7%.

13 So far as the finding of injury is concerned, the Council made a cumulative assessment, within the meaning of Article 3(4) of the basic regulation, of the

similar and simultaneous effect of the dumped imports originating in the three countries concerned, namely Thailand, the Philippines and Mexico (recitals 40 to 44).

14 So far as concerns the prices of the dumped imports, the Council observed that 'the average level of price undercutting, expressed as a percentage of the Community industry's average price, was found to be more than 30% in all cases but one (namely the Filipino company related to the Swedish Match Group, whose exports to the Community, in extremely limited quantities, cannot be considered as representative of Filipino exports of disposable flint lighters). This means that prices of the disposable flint lighters imported from the countries concerned were significantly below the prices practised by the Community producers during the investigation period' (recital 50).

15 With regard to the situation of the Community industry, the Council found that on average prices increased slightly until 1992 and then decreased slightly, while noting that in an attempt to keep its market share the Community industry had sold increasing quantities of products with special production features (for example, lighters which would normally have justified higher price levels) over the period examined. The investigation thus showed that those higher price levels could not be maintained, with a consequent impact on the profitability of the Community industry (recital 54).

16 In its conclusion on injury, the Council noted in particular that 'prices of imports very substantially undercut the Community industry's average price, namely by more than 30% (with the exception of the Filipino company related to a Community producer whose exports were too limited to be considered as representative of Filipino exports)' (recital 57).

17 In its conclusion on causation, the Council stated that dumped imports from Thailand, the Philippines and Mexico had by themselves caused material injury to the Community industry. That conclusion was based primarily on the level of price undercutting and the quantities concerned, which tended to depress prices significantly (recital 71).

18 Last, the Council stated that measures to remove the injury could be fixed at a level lower than the dumping margins. For that purpose, it compared the selling prices of each exporter to the selling prices of Community producers, reflecting the production costs of those producers together with a reasonable amount of profit. It considered it appropriate to limit to 10% the profit margin used in determining the injury elimination level (recitals 79 to 82).

Regulation (EC) No 1508/97

19 By Regulation (EC) No 1508/97 of 28 July 1997 amending Regulation No 423/97 (OJ 1997 L 204, p. 7), the Council corrected an error in the calculation of the anti-dumping duty for the applicant's imports and fixed that duty at 13%. Before the Court of First Instance, the Council declared that that amendment had retroactive effect and that the overpayments would be refunded to the applicant.

Procedure

20 On 5 June 1997 the applicant brought this action, which was originally directed against Regulation No 423/97 alone. In the reply, however, it reworded the form of order sought to take account of the entry into force of Regulation No 1508/97.

21 By order of the President of the Second Chamber (Extended Composition) of 12 December 1997, the Commission was given leave to intervene in support of the forms of order sought by the Council. The Commission has not, however, lodged any statement in intervention.

22 By decision of the Court of First Instance of 21 September 1998, the Judge-Rapporteur was attached to the First Chamber (Extended Composition), to which the case was consequently assigned.

23 On hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber, Extended Composition) decided to open the oral procedure without prescribing any preparatory measures of inquiry. None the less, it asked the Council to reply in writing to a question concerning the quantity of the applicant's exports.

24 The parties presented oral argument and their replies to the Court's oral questions at the hearing on 4 May 1999.

25 The applicant claims that the Court should:

— annul Article 2(2)(b) of Regulation No 423/97, as amended by Article 1 of Regulation No 1508/97, in so far as it affects the applicant, the expression 'in so far as it affects' being interpreted as including the suspension as regards the applicant of the application of the residual duty set out in that article;

— order the defendant to pay the costs.

26 The Council contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Substance

27 In support of its application, the applicant puts forward three pleas in law. By the first, alleging infringement of Article 20(4) of the basic regulation, the applicant criticises the way in which the final disclosure document was notified to it and the lack of details in that document. The applicant also alleges that the flaws in the final disclosure document amount to breach of the principle *audi alteram partem*. By the second, alleging infringement of Articles 1(1) and 3(2) and (6) of the basic regulation, it claims in substance that the injury to the Community industry could not in any way be attributable to its exports. By the third it alleges that the Council did not state sufficient reasons for the contested regulation.

The first plea, alleging infringement of Article 20(4) of the basic regulation and breach of the principle audi alteram partem

Arguments of the parties

28 In its first plea the applicant alleges a twofold infringement of Article 20(4) of the basic regulation. It claims, first, that the final disclosure document was improperly notified to it and, second, that it did not contain sufficient

information concerning the manner in which the Commission calculated the injury margin.

29 First, the applicant maintains that the final disclosure document addressed to it ought also to have been communicated to its legal representative in Brussels, the law firm Eureka. It observes that, for the purposes of the anti-dumping proceeding, it had an address for service in Brussels, but that the final disclosure document was not notified to that address. It claims that the failure to notify the final disclosure document at Eureka's address made it impossible for the applicant to defend itself effectively and within the prescribed period, and states that it believed, in good faith, that the final disclosure document had been sent to Eureka as well and that the latter would deal with the procedural matters.

30 The applicant claims that it was legitimate and reasonable for it to believe that the legal representative of the Swedish Match Group would deal with the procedural matters, as it had done in the past. It is not for a party to an anti-dumping proceeding to satisfy itself that its legal representative has received the Commission's notifications and that its interests can thus be effectively defended. On the contrary, it is for the Commission to take the necessary steps, even on its own initiative, to ensure that the rights of an interested party in connection with an anti-dumping proceeding are safeguarded.

31 The applicant states that it had no direct contact with the Commission during the administrative procedure, except when the Commission carried out its on-site inspection in the Philippines. Through Mr Picard, Swedish Match SA acted as intermediary in its dealings with the Commission, since it had no independent position in the anti-dumping proceeding. Eureka was the legal representative of the Swedish Match Group, and therefore represented both undertakings. Furthermore, on certain occasions, Eureka expressly and directly represented the applicant's interests during the anti-dumping proceeding, and the Commission accepted the intervention of Swedish Match SA and Eureka on the applicant's behalf throughout.

32 Second, the applicant claims that no trace of how the injury margin was assessed by the Commission can be found in the final disclosure document. Consequently, it could not know on the basis of what data its underselling margin had been calculated and was therefore unable to defend itself with regard to the substance of the injury established.

33 The applicant acknowledges that the method used to calculate the injury margin was explained in the final disclosure document. It maintains, however, that the document contains none of the data used by the Commission to calculate the injury margin as regards the applicant. In that connection, the applicant also requests the Commission to provide it with non-confidential information concerning the Community industry's production costs. It claims that the failure to supply that information makes it impossible for the applicant to know how the Commission reached the conclusion that its underselling margin was 13%.

34 The Council contends, first, that the fact that the final disclosure document was sent directly to the applicant does not in itself constitute an infringement of Article 20(4) of the basic regulation. It is for the applicant to adduce evidence to show how such notification prevented it from effectively defending its interests. The defendant observes that the only effect could have been to make the applicant lose time, in so far as it had to make arrangements to send the document to its representative. In such a case, the applicant ought to have contacted the Commission to request an extension of the time-limit for submitting its observations on the final disclosure document, which it never did. It never even complained subsequently about the fact that the final disclosure document was sent to it directly.

35 Second, the Council states that the method used by the Commission to calculate the injury margin was described on page 21 of the final disclosure document. The Commission had also provided the detailed figures relating to the applicant's underselling margin (13%) and those relating to the underselling margin of the other exporters concerned. Furthermore, the applicant was also given informa-

tion on the export price and, so far as concerns the calculation of the price sufficient to eliminate injury ('the non-injurious price'), it was informed that the institutions had included a profit margin of 10%. On the other hand, the calculations used to establish the Community industry's average production costs were not disclosed to the applicant, on the grounds that they contained business secrets.

36 With regard to the applicant's request for the data in a non-confidential form, the Council observes that the applicant never complained that the final disclosure was inadequate. Nor did it seek further particulars of the Community producers' production costs.

Findings of the Court

37 The first point to note is that in accordance with Article 20(1) and (2) of the basic regulation the Commission is required to communicate, *inter alia* to the exporter of the product which is the subject of the anti-dumping investigation, final disclosure of the essential facts and considerations on the basis of which it intends to recommend that the Council should adopt definitive measures, specifically in order to safeguard the rights of the defence. According to established case-law, the rights of the defence are respected if the undertaking concerned has been afforded the opportunity during the anti-dumping proceeding of making known its views on the truth and relevance of the facts and circumstances alleged and, where appropriate, on the documents used (see, for example, Case T-170/94 *Shanghai Bicycle* v *Council* [1997] ECR II-1383, paragraph 120, and the case-law cited therein).

38 By its letter of 30 September 1996, the Commission sent the final disclosure document referred to in Article 20 of the basic regulation, addressing it to the

applicant's registered office and marking it for the attention of the Financial Controller. As is clear from the case-law, sending a measure to the addressee's registered office must be regarded as valid notification. In Case 42/85 *Cockerill-Sambre* v *Commission* [1985] ECR 3749, paragraphs 10 to 12, concerning ECSC production quotas, the Court of Justice held that notification of a decision, which causes time to run for the purposes of the time-limit for bringing an action, is duly made where it is communicated to the registered office of the undertaking concerned, even if the undertaking has expressly asked the Commission to notify that decision to it at another address.

39 The Court considers that that case-law applies *a fortiori* to the case in point since the applicant had not informed the Commission in due time of a change in the 'Persons to contact' named in its reply to the questionnaire (see above, paragraph 8), expressly asking the Commission henceforth to address all correspondence to Eureka.

40 By sending the letter of 30 September 1996 to the applicant's registered office, the Commission has, moreover, complied with the instructions given it by the applicant itself in its reply to the questionnaire in naming its President and financial controller as the 'Persons to contact'. It follows that the applicant was put in a position to take cognisance of the final disclosure document and to submit its observations in the light of its interests, whether on its own initiative, through its legal representative or, lastly, through the Swedish Match Group.

41 In so far as the applicant maintains that the final disclosure document ought to have been addressed to its legal representative in Brussels, it must be noted that none of the provisions of Article 20 of the basic regulation requires the Commission to ensure that the final disclosure document has been communicated to the legal representative of the exporter concerned.

42 The fact that the Commission was actually in contact with Eureka and with other companies and persons belonging to the Swedish Match Group several times during the proceeding is, in the absence of any requirement that the Commission should address the final disclosure document to the legal representative of the person concerned, quite irrelevant.

43 It follows that the head of claim alleging improper notification must be rejected.

44 Second, it is clear that during the administrative procedure and, in particular, after receipt of the final disclosure document the applicant never sought further information concerning the margin of injury. Since the Commission was not informed of the alleged failure to provide information, it was not in a position during the anti-dumping proceeding to make good any such failure in order to protect the applicant's right to defend itself.

45 It follows that the second head of claim also must be rejected.

46 Last, since the applicant has not demonstrated the existence of any defect vitiating the administrative procedure and since that procedure has been closed, its request, expressed for the first time before the Court of First Instance, for a non-confidential version of the information relating to the Community industry's production costs must be rejected.

47 It follows that the first plea must be rejected in its entirety.

The second plea, alleging infringement of Articles 1(1) and 3(2) and (6) of the basic regulation

Arguments of the parties

48 In its application, the applicant claims in substance that the injury caused to the Community industry by the exports of lighters from the three countries covered by the investigation, the existence of which it does not challenge, is not attributable to its own exports, on account first of the very small quantity and second of their unit price.

49 It states, first, that it has been proved during the anti-dumping proceeding that during the investigation period it had exported to the Community only 10 500 lighters, which represents only 0.0369% of all lighters from the Philippines and 0.0083% of all lighters from the three countries covered by the investigation and exported onto that market. Of the 126.5 million lighters imported from the three countries concerned, 28.4 million came from the Philippines. The applicant concludes that the volume of its own exports could not have had any effect on the Community industry.

50 Second, it points out that its own exports were sold at a unit price (USD 0.19) considerably higher than the prices charged by other Filipino exporters (USD 0.07) or Mexican exporters (USD 0.08) covered by the anti-dumping investigation, that is to say, higher than those charged by the Community industry for the like product. While, in order to determine the injury suffered by the Community industry, the Council made a cumulative assessment for the volume of exports from the three countries covered by the investigation, it failed to calculate the price undercutting of the applicant's exports precisely because of their limited quantity.

51 According to the applicant, consideration of those facts in the light of Article 3(2) of the basic regulation ought to have prompted the Council to find that it was not in any way possible for the applicant's exports to give rise to a finding of injury. In any event and for the same reasons, it considers that there is no causal connection between its exports and the injury actually suffered by the Community industry.

52 In its reply, the applicant claims in addition that the Council, by including it in its cumulative assessment of the impact of all exports from the countries covered by the investigation on the Community industry, committed a manifest error of assessment, amounting to breach of the principles of equal treatment and of proportionality.

53 It argues that, contrary to the Council's submissions, the Community institutions have in the past assessed the impact of exports by individual producers (Commission Regulation (EEC) No 1696/88 of 14 June 1988 imposing a provisional anti-dumping duty on imports of synthetic fibres of polyesters originating in Mexico, Romania, Taiwan, Turkey, the United States of America or Yugoslavia (OJ 1988 L 151, p. 47) by taking into consideration their specific situation. Thus, in that regulation, individual consideration was given to the impact of exports made by American producers.

54 The applicant points out that the Community institutions ought to have taken account of its special position, which is quite different from that of the other producers and exporters. Although it is part of the European Group Swedish Match, its export activities are focused on Japan, the United States and the countries of the Asia-Pacific area, so that it cannot be treated as an exporter in the sense in which that term is used for the other producers involved in the anti-dumping investigation. Its single shipment of lighters during the course of

investigation, sent for quality testing by Poppell, cannot be regarded as a usual, well-established trade relationship between exporter and importer. In its view, therefore, the Community institutions infringed the principle of equal treatment by treating completely different situations in the same way.

55 The applicant also maintains that the Community institutions breached the principle of proportionality. In its case, the imposition of an anti-dumping duty represents a disproportionate use of the powers conferred on the Community institutions by the basic regulation, since it was not necessary in order to attain the objective pursued. The applicant has demonstrated that its exports to the Community market do not form an integral part of its normal business and that, in consequence, there is no likelihood of such exports being made in the future.

56 In its plea alleging failure to provide sufficient reasons, the applicant claims that the Community institutions wrongly used target prices to calculate the anti-dumping duty. It relies on the judgment of the Court of Justice in Joined Cases 260/85 and 106/86 *TEC* v *Council* [1988] ECR 5855, paragraphs 48 to 50, according to which target prices are to be used when actual prices on the market have been reduced and can no longer be used for comparison. Only in such a case is the use of target prices justified. Where prices are not depressed, the prices to be used in the comparison are the actual prices of the Community producers. If the Community institutions had used the actual prices in order to fix the level of the anti-dumping duty, no anti-dumping duty would have been imposed on the applicant.

57 The Council explains, first of all, that anti-dumping investigations are always directed to exports from a given country or group of countries, not the exports of a given producer. Consequently, the Community institutions are concerned only to assess whether injury has been caused by dumped imports from the country under investigation.

58 The Council contends that the argument inferred by the applicant from Regulation No 1696/88, cited above (see paragraph 53), has no bearing on the present case because the facts are not the same. In particular, it was the exports of all US producers which were excluded from cumulation and not the exports of a single US producer.

59 The Council points out that, in its application, the applicant did not mention breach of the principles of equal treatment and proportionality. Those allegations were put forward for the first time in the reply, but the applicant gives no reason why it could not have put them forward in its application. The allegations are therefore new pleas in law and thus inadmissible in accordance with Article 48(2) of the Rules of Procedure of the Court of First Instance.

60 In the alternative, the Council maintains that the allegation of breach of the principle of equal treatment is unfounded. First, it is immaterial that an exporter exports to a related Community producer, as such exports also can cause injury. Second, the fact that the volume of exports was very limited does not constitute sufficient reason for making a separate assessment with regard to causation. As regards the principle of proportionality, the Council considers that the applicant has put forward practically the same arguments as those already adduced in order to claim breach of the principle of equal treatment.

Findings of the Court

61 The applicant maintains, first, that it cannot be regarded as an 'exporter' within the meaning of the basic regulation because it is part of the Swedish Match Group and because its sole export of lighters during the investigation period was made to its fellow subsidiary Poppell. However, in recital 38 of the preamble to the contested regulation the Council stated, and was not contradicted in that respect

by the applicant, that imports by the companies belonging to the Swedish Match Group of lighters originating in the Philippines were extremely limited and their main business in those products was carried out in the Community. The Council accordingly considered it appropriate to keep those companies within the category of 'the Community industry'.

62 Furthermore, the mere fact that an import is made within a single group of undertakings is not a reason to exclude it from the scope of Article 3 of the basic regulation, which is designed to protect the Community industry against 'dumped imports'. In accordance with Article 2(9) of the basic regulation, the particular case of an association between a non-Community exporter and a Community importer is to be taken into consideration only with regard to the determination of the export price.

63 It follows that the applicant's first head of claim must be rejected.

64 The applicant's second complaint is that the Community institutions considered that its single export of lighters during the investigation period, which was moreover very limited in quantity, was capable of causing substantial injury to the Community industry. However, there is no provision in the basic regulation — nor indeed in the 1994 Anti-Dumping Code — which obliges the Community institutions to consider, in anti-dumping proceedings, whether and if so how far each exporter responsible for dumping individually contributes to the injury caused to the Community industry. On the contrary, examination of Article 3 of the basic regulation reveals that the Community legislature uses the plural 'dumped imports', specifically stating that the volume of dumped imports and their effect on prices in the Community market for like products, and the

impact of those imports on the Community industry, are the relevant factors in determining whether or not there is injury. In particular, Article 3(4) permits cumulative assessment of the effects of imports 'from more than one country', subject to the condition, *inter alia*, that 'the volume of imports from each country is not negligible'.

65 It is therefore apparent that for the purposes of determining the existence of injury the Community legislature has chosen to use the territorial scope of one or more countries, considering all dumped imports from the country or countries concerned together.

66 In Case 255/84 *Nachi Fujikoshi* v *Council* [1987] ECR 1861, paragraph 46, the Court of Justice held that the injury caused to an established Community industry by dumped imports must be assessed as a whole, 'and it is not necessary (or, indeed, possible) to define separately the share in such injury attributable to each of the companies responsible'. Moreover, in Joined Cases 294/86 and 77/87 *Technointorg* v *Commission and Council* [1988] ECR 6077, paragraphs 40 and 41, the Court indicated that the effects of imports from different non-member countries must be assessed cumulatively and that there was good reason to allow the Community authorities to consider the effect of all such imports on the Community industry and to take appropriate action against all the exporters, 'even if the volume of each individual exporter's exports is relatively small'.

67 Consequently, the applicant's second head of claim must also be rejected.

68 Accordingly, the applicant cannot successfully rely on the principle of equal treatment. While it is contrary to that principle for different situations to be treated in the same way, the anti-dumping system, as analysed above, precludes a trader who has exported a limited quantity from being considered, for the

purposes of determining injury, as being in a situation different to that of a trader who has exported substantial quantities. Although the applicant still maintains in this context that no anti-dumping duty was imposed on other Filipino exporters because the Commission accepted their offers of price undertakings, it is sufficient to point out that, as indicated in recital 89 in the preamble to the contested regulation, the applicant did not offer any similar undertaking, with the result that the Community institutions were not able to treat it in the same way as the other Filipino companies.

69 The same applies as regards the principle of proportionality, according to which, for a Community measure to be lawful, the means it employs must be appropriate to attain the legitimate objective pursued and must not go further than is necessary to attain it and, where there is a choice of appropriate measures, it is necessary, in principle, to choose the least onerous (see, to that effect, Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 69).

70 In order to safeguard the Community industry it may be necessary to take even limited exports into consideration when determining the existence of injury. In the applicant's case, the limited volume of the exports that it has made so far corresponds to a risk, similarly limited, of being required to pay the anti-dumping duty. That risk will be realised only in so far as the applicant makes exports to the Community in the future. The applicant has expressly declared that such exports do not form part of its normal business, which is focused on Japan, the United States and the countries of the Asia-Pacific area, and that it is unlikely that it will make such exports in future.

71 It follows that the applicant's allegations of breach of those two principles must be rejected.

72 The applicant also attempts, in the first place, to show that there was no injury by relying on the fact that the price invoiced for its exported lighters was higher than Community prices. Secondly, it maintains that the Community institutions used target prices, although the conditions for their application — namely, a reduction in real market prices — were not satisfied in this case.

73 It should be borne in mind that the applicant and the Community importer to which the shipment in question was sent belong to the same group. In accordance with Article 2(9) of the basic regulation, where there is an association between the exporter and the importer, the Community institutions are not bound to recognise the price invoiced as being the export price, but may construct the latter on the basis of the price at which the imported products are first resold to an independent buyer. The Council has declared, without being contradicted by the applicant, that in this case it used such a constructed price. Consequently, the applicant's reference to the price actually invoiced is irrelevant.

74 So far as concerns the criticism of the use of target prices, recital 54 in the preamble to the contested regulation indicates that the prices generally charged by the Community industry, after a slight increase, decreased between 1992 and the investigation period. More specifically, as regards the sophisticated lighters which would normally have justified higher price levels, it has been found that during the investigation period those higher price levels could not be maintained, which affected the profitability of the Community industry. Recital 53 in the preamble to that regulation notes, moreover, that the Community industry's market share decreased from 57.3% in 1990 to 48.6% during the investigation period. Finally, according to the statements in recitals 34 and 50 of the preamble to the contested regulation, the prices of the imported lighters were significantly below the prices practised by the Community producers during the investigation period, even taking into account dumping margins of 36.7% for the applicant and 52.6% for the other Filipino exporters.

75 In the light of those findings, which have not been disputed by the applicant, the Council was entitled to consider that the Community prices actually charged could no longer be used in the determination of injury, since they had been reduced as a result of the downward pressure exerted by Filipino imports, and that the amount of anti-dumping duty necessary to remove the injury, as provided for in Article 9(4) of the basic regulation, had therefore to be calculated by using a constructed price.

76 Finally, it is clear from recitals 57, 81 and 82 in the preamble to the contested regulation and from pages 14 and 21 of the final disclosure document that the prices charged by Filipino exporters other than the applicant were more than 30% lower than the prices actually charged by the Community industry, and that in order to remove the injury a profit margin of 10% had to be taken into account for the Community industry and its production costs. In consequence, the underselling margin of those Filipino exporters compared with the constructed Community prices was assessed at 43%, which includes a rate of 3% for production costs. Since the applicant's undercutting margin was fixed at 0%, the calculation of the 'non-injurious' price necessarily led to the individual underselling margin being fixed at 13%, namely 10% for the Community industry's profit margin and 3% for its production costs, as stated in the contested regulation and as reflected in an anti-dumping duty at the same rate.

77 It follows that none of the arguments raised by the applicant can be accepted.

78 The second plea must therefore be rejected in its entirety.

The third plea, alleging breach of the obligation to state reasons

79 The applicant claims that the recitals in the preamble to the contested regulation stating the facts which led the Council to establish the applicant's average underselling margin and to fix the rate of the anti-dumping duty applied to it are unclear and inconsistent. In particular, it criticises recital 50. It claims that the Community institutions failed to indicate or to assess the applicant's individual level of underselling. There is therefore total uncertainty as to the level of price undercutting used by the Council to assess the injury caused to the Community industry. The uncertainty is increased if account is taken of the high price invoiced by the applicant to the importer and of the extremely limited quantities of its imports.

80 The applicant also challenges recital 57 in the preamble to the contested regulation. The wording of that recital could be taken to indicate that the Council concluded that the applicant had not caused injury to the Community industry and that it did not deserve the imposition of an anti-dumping duty. Nevertheless, the Council imposed an individual duty on its imports. It fails to see how the Council arrived at an average underselling margin of 13%, since the Council based its conclusion on injury on, *inter alia,* an undercutting margin of 0%.

81 Finally, the applicant points out that the recitals concerning an increase in the Community industry's prices contradict the subsequent findings of downward price pressure. The applicant is therefore prevented from defending itself, since it cannot know the facts on which the Council based its decision to impose an anti-dumping duty on its imports.

82 It is settled law that the statement of reasons required by Article 190 of the EC Treaty (now Article 253 EC) must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community institution which adopted the measure so as to inform the persons

concerned of the justification for the measure adopted and to enable the Community judicature to exercise its powers of review. It is also apparent from the case-law that the statement of reasons on which a measure is based is not required to specify the various matters of fact and law dealt with in the measure, provided that the measure falls within the general scheme of the body of measures of which it forms part, and in addition the obligation to state reasons must be assessed in the light of the circumstances of the case (Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraphs 34 and 35). The statement of the reasons on which regulations, which are measures of general application, are based does not have to specify the often very numerous and complex matters of fact or law dealt with in the regulations. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be unreasonable to require a specific statement of reasons for each of the technical choices made by the institution (Case 250/84 *Eridania* v *Cassa Conguaglio Zucchero* [1986] ECR 117, paragraph 38).

83 The Court considers that in the circumstances of this case the requirements laid down by that case-law have been complied with. As demonstrated by a consideration of the first and second pleas in law raised by the applicant, the latter had sufficient information as a result of its participation in the anti-dumping proceeding, from the final disclosure document and from the recitals in the preamble to the contested regulation, to be able to defend its interests effectively before the Court. In addition, the Court has been able to exercise judicial review in giving judgment on this application.

84 Accordingly, the third plea must also be rejected.

85 It follows that the action must be dismissed as unfounded.

Costs

86 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the applicant must be ordered to pay the costs inasmuch as it has been unsuccessful. In so far as the lodging of the application prompted the Council to correct a calculation error and to reduce by four points the anti-dumping duties by amending the contested regulation, the Court considers it equitable to order the Council to bear one fifth of its costs, pursuant to Article 87(6) of the Rules of Procedure.

87 Under the first subparagraph of Article 87(4) of the Rules of Procedure, the Commission, which has intervened, must bear its own costs.

On those grounds,

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

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to bear its own costs and four fifths of the costs incurred by the Council;**

3. **Orders the Council to bear one fifth of its own costs;**

4. **Orders the intervener to bear its own costs.**

Vesterdorf Bellamy Pirrung

Meij Vilaras

Delivered in open court in Luxembourg on 20 October 1999.

H. Jung B. Vesterdorf

Registrar President