OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 30 January 1996 *

1. The Court is asked in this preliminary reference to determine the extent to which an anti-dumping duty intended ostensibly to apply to the importation into the Community from certain third countries of complete multi-phase electric motors should also be levied on individual imports of certain of the principal parts used in the manufacture of such motors. The reference raises the issue of the relationship between Community customs legislation, particularly its general rules of interpretation, and the anti-dumping legislation in question.

I — The relevant Community legislation

2. Commission Regulation (EEC) No 3019/86 of 30 September 1986 (hereinafter 'the 1986 Regulation'), [1] imposed a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0.75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR. Council Regulation (EEC) No 864/87 of 23 March 1987 (hereinafter 'the 1987 Regulation') [2] imposed a definitive anti-dumping duty on imports of such electric motors originating in all of these State-trading countries except Romania. [3] Article 2(1) of the 1986 Regulation and Article 1(1) of the 1987 Regulation define the affected multi-phase electric motors as those 'falling within subheading ex 85.01 B 1b) of the Common Customs Tariff, corresponding to NIMEXE code ex 85.01-33, ex 85.01-34 and ex 85.01-36'.

3. The customs legislation which defined these tariff headings at the material time was Council Regulation (EEC) No 3618/86 of 24 November 1986, amending Regulation (EEC) No 3331/85 amending Regulation (EEC) No 950/68 on the Common Customs Tariff, [4] and Commission Regulation (EEC) No 3840/86 of 16 December 1986, amending the nomenclature of goods for the external trade statistics of the Community and statistics of trade between Member States

* Original language: English.

1 — OJ 1986 L 280, p. 68.

2 — OJ 1987 L 83, p. 1.

3 — The full Official Journal title for the 1987 Regulation is 'Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0, 75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union, and definitively collecting the amounts secured as provisional duties'.

4 — OJ 1986 L 345, p. 1.

(Nimexe).[5] Subheading 85.01 B I b) fell within tariff heading 85.01 and, following Regulation No 3618/86, was worded as follows:

'85.01 Electrical goods of the following descriptions: generators, motors, converters (rotary or static), transformers, rectifiers and rectifying apparatus, inductors:

A. The following goods, for use in civil aircraft:

Generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, inductors;

Electric motors of an output of not less than 0.75 kW but less than 150 kW(a)

B. Other machines and apparatus:

I. Generators, motors (whether or not equipped with speed reducing, changing or step-up gear) and rotary converters:

(a) Synchronous motors of an output of not more than 18 W

(b) Other

II. Transformers, static converters, rectifiers and rectifying apparatus; inductors

C. Parts'.

5 — OJ 1986 L 368, p. 1. A new form of 'Combined Nomenclature' ('CN') code number was assigned to the products at issue in the main proceedings in 1987, pursuant to the new tariff and nomenclature system introduced by Council Regulation (EEC) No 2658/87 of 23 July 1987, on the tariff and statistical nomenclature and on the Common Customs Tariff; OJ 1987 L 256, p. 1, see footnote 6 below.

The Nimexe codes which are used in Regulation No 3840/86 are worded, in so far as they refer to subheading 85.01 B I b), as follows:

« Code Nimexe	Renvoi au tarif douanier commun	Désignation des marchandises
85.01	B I b	Multi-phase motors, of an output of:
85.01 -33		More than 7.5 kW but not more than 37 kW
85.01 -34		More than 37 kW but not more than 75 kW
85.01 -36		de plus de 37 kW à 75 kW inclus
	C	Parts: Of generators, motors and rotary converters:
85.01 -89		Non-magnetic retaining rings
85.01 -90		Other
85.01 -93		Of transformers and inductors
85.01 -95		Of static converters and of rectifiers and rectifying apparatus'. [6]

4. From the time of the progressive introduction of the Community's Common Customs Tariff during the 1960s, it was considered that Community industry should be protected from unfair trade practices such as dumping, a description which can fairly be applied to the sale below cost, often with the benefit of a subsidy, of products on world markets. [7] The 1986 Regulation and the 1987 Regulation were adopted on the basis of Article 12 of the general anti-dumping regulation which was then in force, namely Council Regulation (EEC) No 2176/84 of 23 July 1984, [8] on protection against dumped or subsidized imports from countries not members of the European Economic Community (hereinafter 'the Basic Regulation'). [9] The purpose of the Basic Regulation was to update the Community's common rules for protection against dumped or subsidized imports from third countries. The concept of dumping was defined by Article 2 as follows:

'1. An anti-dumping duty may be applied to any dumped product whose release

6 — These Nimexe codes were reorganized somewhat during the period material to the present case pursuant to Regulation No 2658/87 to read, in so far as is relevant, as follows:

'CN code	Description
	8501 Electric motors and generators (excluding generating sets):
8501 52 91	— Of an output exceeding 750 W but not exceeding 7.5 kW
8501 52 93	— Of an output exceeding 7.5 kW but not exceeding 37 kW
8501 52 99	— Of an output exceeding 37 kW but not exceeding 75 kW
8503 00	Parts suitable for use solely or principally with the machines of heading No 8501 or 8502:
8503 00 10	— Non-magnetic retaining rings
8503 00 90	— Other'.

7 — See Kapteyn and Verloren Van Themaat, *Introduction to the Law of the European Communities* (Gormley editor, 2nd. edition, 1989), p. 812.

8 — OJ 1984 L 201, p. 1.

9 — The present measures are contained in Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community; OJ 1988 L 209, p. 1. On 19 July 1995 the Commission submitted a proposal to the Council for a new Council regulation on protection against dumped imports from countries not members of the European Community; OJ 1995 C 319, p. 10. This proposal is designed, *inter alia*, to take account of changes to GATT anti-dumping law agreed within the framework of the Uruguay Round of multilateral trade negotiations which concluded in 1994.

for free circulation in the Community causes injury.

2. A product shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product.'

The determination of the normal value of dumped products is a complex operation, involving, in particular, the establishment, where possible, of a comparable price for a like product in the exporting country. Sometimes no such comparable price actually paid or payable exists in the country of origin or exportation or, even if it does, it is not sufficiently normal to provide a practical point of comparison with Community prices [10] and, therefore, Article 2(3) envisages a number of alternative approaches with a view to establishing a market price or constructed value. Article 2(5) of the Basic Regulation envisaged the adoption of special criteria in the case of imports from non-market economies. Article 7(1) set out the procedure for initiating a complaint and, *inter alia*, required the Commission to 'indicate the product and countries concerned' and to 'advise the exporters and importers known to the Commission to be concerned as well as representatives of the exporting country and the complainants'. Article 13 set out various general provisions on duties. They include the requirement that anti-dumping duties must be imposed by regulation, [11] that such regulations must indicate, *inter alia*, the amount and type of the duty imposed, the product covered and that 'the amount of such duties shall not exceed the dumping margin provisionally estimated or finally established'. [12]

5. By way of elaboration of the material scope of the duty imposed by Article 1(1) of the 1987 Regulation (the definitive regulation), Article 1(2) thereof provides that '[T]he expression "Standardized multi-phase motors" shall include all motors which are subject to international standardization, in particular to that of the International Electrotechnical Commission (IEC)'. It proceeds to enumerate the standardized rotation speeds, the standardized power and the standardized axle heights of the 'motors in question'. Article 1(3) of the 1987 Regulation and Article 2(2) of the 1986 Regulation (hereinafter, when referred to collectively, 'the Regulations') prescribed the method by which the amount of the anti-dumping duty was to be determined; for each type of motor this corresponded to the difference between the net unit price, free-at-Community-frontier, not cleared through customs, and the price specified in the Annex. The regulations thus

10 — See Kapteyn and Verloren Van Themaat, cited in footnote 7 above, p. 812.

11 — See Article 13(1) of the Basic Regulation.

12 — See Article 13(3) of the Basic Regulation.

established a variable [13] form of anti-dumping duty which was designed to take account both of the multiplicity of possible types of motors concerned and, having regard to the countries involved, the fact that the motors originated in State-trading countries operating command economies where price formation was not the result, at least not entirely, of market forces.

6. Article 1(5) of the 1987 Regulation (Article 2(5) of the 1986 Regulation) provided that '[T]he provisions in force with regard to customs duties shall apply, subject to the provisions of this Regulation.' During 1986 and 1987 the General Rules for the Interpretation of the Combined Nomenclature of the Common Customs Tariff (hereinafter the 'General Rules') provided at Rule 2(a) as follows: [14]

'Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), imported unassembled or disassembled.'

Under Article 2 of the 1987 Regulation, the amounts secured by way of provisional anti-dumping duty were to be 'collected definitively at the level of the definitive duty imposed'. The 1987 Regulation entered into force on 28 March 1987.

II — Facts and procedure

7. Robert Birkenbeul GmbH&Co. KG (hereinafter 'the plaintiff') carries on an electrical engineering business. It is almost exclusively involved in the production of what are described as 'special motors' for machine factories in accordance with performance, dimensions, electronic design and ball-bearing characteristics specified by its customers. The plaintiff satisfies its customers' requirements in a number of ways: by modifying parts of standardized, multi-phase electric motors (hereinafter 'MPM(s)') imported from third countries — in the present case at the material time, from (what

13 — At the hearing, the Commission pointed out that the 1987 Regulation was the only anti-dumping measure ever to impose a variable duty on unassembled goods and that it has now been repealed. Pursuant to Article 15 of the Basic Regulation, anti-dumping duties normally lapse after five years from the date on which they entered into force. This contention may, however, be somewhat at odds with the view expressed by Advocate General Van Gerven in Joined Cases C-305/86 and C-160/87 *Neotype Techmashexport* v *Commission and Council* [1990] ECR I-2945, where he states that the Council and the Commission 'regularly make use of a variable duty calculated according to the difference between a minimum price and the export price (or price paid by the first independent purchaser)', paragraph 39 of the Opinion. While the validity of the 1987 Regulation was upheld by the Court in this case (see paragraph 39 below), it is unclear whether the above-quoted comment of the Advocate General was directed at unassembled goods.

14 — Regulation No 3618/86, cited in footnote 4 above, p. 11. This rule was continued, almost verbatim, by Regulation No 2658/87, cited in footnote 5 above, p. 15, with the immaterial substitution of 'presented' for 'imported'.

was then) Czechoslovakia — and adding to them other motor parts from Community countries; by building motors of its own, using parts of imported third-country standardized MPMs, and turning them into special motors in terms of their thrust, their electrical design or both.

8. On investigating the plaintiff's business in 1987 and 1988, the Hauptzollamt Koblenz (the Principal Customs Office, Koblenz, hereinafter 'the defendant') found that the plaintiff often imported simultaneously both stators (with a winding) and rotors (with shafts) of MPMs (hereinafter 'the stators' and 'the rotors'). The defendant took the view that such motor parts fell to be considered, pursuant to Rule 2(a) of the General Rules, as complete or finished standardized MPMs within subheading ex 85.01 B 1b) of the Common Customs Tariff (hereinafter 'the CCT'), because the combination of the stators with the rotors created an object which had the *essential character* (my emphasis) of a complete or finished standardized MPM. A revised assessment was thus issued requiring the plaintiff to pay an additional sum of DM 7 703 in CCT customs duty and DM 149 613.90 in anti-dumping duty. Following the rejection of its administrative appeal against this reassessment, the plaintiff brought legal proceedings before the Finanzgericht Rheinland-Pfalz (Rheinland-Palatinate Finance Court), which ultimately resulted in the present reference.

9. Before the Finanzgericht Rheinland-Pfalz (hereinafter 'the national court'), the plaintiff argued that the relevant import consignments did not include a number of important parts essential to a finished or complete MPM. In economic terms, those missing parts (obtained by the plaintiff within the Community), together with the plaintiff's assembly costs in Germany, represent 30.35% of the price of a complete or finished standardized MPM, while the net unit price of such a motor is 43.57% higher than the total price payable on importing the stators and rotors. Furthermore, in technical terms, the imported parts could not function without the remaining parts which originated within the Community.

10. Under the variable duty system instituted by the Regulations, a minimum import price was fixed in the Annex and any MPMs imported for less than that price were subject to an anti-dumping duty equal to the difference between the actual import price and the stated minimum import price. The plaintiff contended before the national court that, as considerable discounts could be obtained on the importation of such parts, their net unit prices were much lower than the comparable net unit prices for complete motors and, therefore, that the calculation of the anti-dumping duties to be applied on the importation of parts by reference to the minimum import price prescribed in the Annex would result in imposition of excessive duties. It could not have been the intention, according to the plaintiff, of the Community legislature

that Rule 2(a) would operate so as to favour the importation of finished or completed MPMs over that of parts.

11. The defendant argued that the ratio in value between parts and finished goods was irrelevant. Moreover, it contended that any modifications of imported parts after their clearance through customs were irrelevant for customs classification purposes. Finally, according to the defendant, there was no legal foundation in the 1987 Regulation for waiving the application of, possibly excessive, anti-dumping duties properly determined in accordance with its provisions.

12. In order to give judgment the national court considered it necessary to refer the following questions to the Court:

'(1) Are Commission Regulation (EEC) No 3019/86 of 30 September 1986 and Council Regulation (EEC) No 864/87 of 23 March 1987 to be interpreted as imposing anti-dumping duty only on imports of complete or finished (even if presented as unassembled or disassembled) standardized, multi-phase electric motors, within the meaning of Article 2(1) of Regulation No 3019/86 and Article 1(1) and (2) of Regulation 864/87;

or

do those regulations also cover incomplete or unfinished goods which, by virtue of Rule 2(a) of the General Rules for the Interpretation of the Combined Nomenclature, fall to be classified as complete or finished standardized, multi-phase electric motors?

(2) If the second alternative to Question 1 is answered in the affirmative:

Which parts of a standardized, multi-phase electric motor, either alone or in combination, have the essential character of a complete or finished, multi-phase electric motor;

and, in particular;

is even a stator and winding together with a rotor and shaft to be subject to anti-dumping duty?

(3) If Question 2 is answered in the affirmative:

What rate of anti-dumping duty should be applied to imported parts of standardized, multi-phase electric motors, and how, and under which provisions, if occasion arises, should the duty on the imported motor parts be properly calculated?'

13. The national court makes a number of observations concerning each question. Regarding the first question, it observes that the Regulations do not cater for the application of the anti-dumping duty to imported motor parts; they contain no prices for motor parts nor any special rates of anti-dumping duty applicable to them. [15] The difference between the import prices of complete motors and their constituent parts could, in individual cases, result in the imposition of anti-dumping duty on an unfinished motor where, because of its higher net import price, no such duty would be payable on a comparable complete motor. In other words, the total value of the imported parts would be such as to exceed the minimum import value for a complete motor specified in the legislation but, because each import consignment is treated separately, anti-dumping duties would be applied individually to such imports.

14. On the other hand, the national court notes that the fact that the Regulations refer to MPMs 'falling within subheading ex 85.01 B 1b) of the CCT' might be indicative of a legislative intention to impose anti-dumping duty on all imports falling for CCT classification purposes within that subheading. On that interpretation motor parts would be classified as a complete or finished motor, by virtue of the application of Rule 2(a), if, when assembled, they presented that 'essential character' even though they were, in fact, incomplete and unfinished. The national court believes that such an interpretation would be more consistent with the purpose of the Regulations than an interpretation according to which only complete or finished standardized MPMs could be subjected to the relevant anti-dumping duty.

15. The national court states that the purpose of the second question is to ascertain whether, if the Regulations apply to those motor parts which may be considered as complete or finished MPMs, they can be interpreted as applying to the imported parts at issue in the present dispute. With regard to the third question, the national court expresses reservations about applying the anti-dumping duty. It raises the difficulty of applying the method of calculation of anti-dumping duty set out in the Regulations for motors to imported motor parts; the lower the value of the imported part, which is

15 — It points out that motor parts are mentioned in recital 34 in the preamble to the 1987 Regulation but not anywhere else in the text of either regulation. It should be noted, as the Commission has observed, that there is also a reference to motor parts in recital 29 in the preamble to the 1987 Regulation.

construed as essentially equivalent to a complete MPM pursuant to Rule 2(a) of the General Rules, the greater the financial burden of the anti-dumping duty. In these circumstances the national court seeks guidance as to how such anti-dumping duties ought to be calculated.

III — Observations submitted to the Court

16. In accordance with Article 20 of the Statute of the Court, the plaintiff, the Commission and the French Government submitted written observations, while the plaintiff and the Commission also presented oral observations. Neither the defendant nor the German Government has submitted any observations.

The plaintiff

17. The plaintiff states that it is a medium-sized undertaking employing about 80 workers whose principal business involves the manufacture of special electric motors in the course of which it uses motor parts both imported from third countries and purchased within the Community. Each such special motor has to be specifically designed and manufactured for the needs of the plaintiff's customers, who, for the most part, are machine manufacturers.

18. In addressing the first question, the plaintiff contends that both the recitals in the preamble to and the text of the Regulations, not to mention the anti-dumping investigation which preceded them, are consistent only with the interpretation that the products affected are only those which may be classified as complete or finished MPMs. [16] At the hearing the plaintiff asserted that, in relation to customs law in general, anti-dumping law constitutes a *lex specialis* and that anti-dumping duties ought not to be applied in a general manner but rather so as to provide protection only in the case of proven and specific cases of unfair commercial trading practices.

19. General customs provisions, such as Rule 2(a), are, according to the plaintiff, applicable, pursuant to Article 1(5) of the 1987 Regulation, only to the extent that they are consistent with provisions of that regulation. However, Article 13(2) of the Basic Regulation required individual anti-dumping regulations to indicate the 'product covered'. The plaintiff, thus, submits that, as the Regulations in the present case expressly define the product covered by reference to specific types of complete or finished MPMs, the application of Rule 2(a) is thereby excluded. The plaintiff further contends that the fact

16 — At the hearing, counsel for the plaintiff referred to recital 29 of the 1987 Regulation in support of his contention that, while conscious that motor parts were being imported separately into the Community, the Community legislature nevertheless deliberately decided not to include such parts within the scope of the Regulation.

that the Regulations only fix a variable anti-dumping duty for 'each type of motor' supports its view that the Community legislature did not address itself to the issue of the importation of motor parts. It also draws attention to the issue raised by the national court, namely, that the application of the variable rate to the importation of motor parts would result in the imposition on them of larger amounts of anti-dumping duty than that payable on the import of complete motors.

20. The plaintiff relies on the principle that the scope of a regulation is normally to be interpreted by reference to 'its own terms'. [17] While this principle is subject to exceptions, no derogation is permissible where the proposed interpretation would impose an obligation on an affected party. [18] As this would be the effect of the interpretation proposed by the defendant in the present case, it ought not to be accepted. In the present case, the plaintiff submits that an interpretation which limits the Regulations to complete motors is not incompatible with Community law. The Basic Regulation specifically enabled the Community legislature to determine the products to be subject to anti-dumping duty; in this case both the initial investigation and the ultimate duty imposed were confined to complete or finished MPMs.

21. Finally, the plaintiff contends that the acceptance of the interpretation which it proposes — whereby the application of Rule 2(a) is excluded — would not undermine the protectionist nature of the relevant regulations. Rule 2(a) is only applicable where product parts, possessing the essential character of a finished product, are presented simultaneously for customs clearance. [19] The objective of Rule 2(a) is not to prevent the evasion of anti-dumping duties but, rather, to simplify customs classification. The plaintiff contends that anti-dumping duties can always be avoided by importers who are willing to stagger their imports; it does not engage in such practices and submits, therefore, that it should not be treated differently merely because it imports at the same time the rotors and stators which it requires. [20]

22. In relation to the second question the plaintiff argues that, if its arguments on the first question are not accepted, the parts involved in the present case do not possess the essential character of a MPM as defined in Article 1 of the 1987 Regulation, either from the perspective of their external appearance and functioning or by reason of Rule 2(a). At the hearing the plaintiff referred to the Court's recent decision in *Develop Dr Eisbein.* [21] It contended that the Court held that, for the purposes of applying

17 — Case 165/84 *Krohn* v *BALM* [1985] ECR 3997, paragraph 13 of the judgment.

18 — Case 6/78 *Union Française de Céréales* v *Hauptzollamt Hamburg-Jonas* [1978] ECR 1675.

19 — See Case 183/73 *Osram* v *Oberfinanzdirektion* [1974] ECR 477.

20 — In response to a question posed at the hearing, counsel for the plaintiff conceded that, while in the case of many of the imports at issue in the present proceedings the parts had been imported separately, in other cases they were imported together in an assembled state.

21 — Case C-35/93 *Develop Dr Eisbein* v *Hauptzollamt Stuttgart-West* [1994] ECR I-2655.

Rule 2(a), the relevant parts must be already such as to be capable of identification as the finished product. In this case it maintained that the parts are not so visually distinguishable as an electric motor.

23. So far as 'essential character' is concerned, the plaintiff argues that the parts do not externally resemble electric motors, given the absence of various important pieces; namely, two bearing discs on the motorized part, the opposite part thereto and the cover for those discs. Internally they are also different; they lack ball-bearings, a ventilator, a lid for the ventilator and a clamping device. Furthermore, they do not possess the essential feature of a MPM, namely the capacity, with the help of magnetic fields, of transforming electrical energy into mechanical energy.

24. The plaintiff claims that between 65% and 85% of the costs of manufacture of its special electric motors comprises the costs of the parts other than the disputed third-country imports and its factory and assembly costs. In support it cites, by way of example, while conceding the existence of much variation, two costings for typical special MPMs which, respectively, show the value of the Czechoslovak imports at 35.07% and 17.13%.

25. The plaintiff also refers to the 'assembly rules' which the Court has employed in its case-law concerning Rule 2(a). It submits that, based on the judgment of the Court in *Brother International*,[22] its assembly process, in the light of the contribution of its skilled labour force, the additional necessary parts and the processing, using specialized equipment, cannot be regarded as a purely simple one. It argues that the imported parts, taken alone and in advance of these further operations, cannot be regarded as essentially similar to complete or finished MPMs.

26. On the third question — again without prejudice to its views in relation to the earlier questions — the plaintiff maintains that, even if a stator and a rotor, taken together, were to be treated as equivalent to a complete MPM, it would be anomalous to apply the method prescribed by the Regulations for the calculation of the anti-dumping duty. Article 1(3) of the 1987 Regulation provides that '[T] he amount of duty shall be equal, for each type of motor, to the difference between the net unit price, free-at-Community-frontier, not cleared through customs, and the price specified in the Annex'. To apply that method of duty calculation to the importation of motor parts would infringe both the principles of legal certainty and proportionality.

22 — Case C-26/88 *Brother International* v *Hauptzollamt Gießen* [1989] ECR 4253.

27. The principle of legal certainty requires, according to the plaintiff, that regulations should be formulated in a clear way, [23] particularly where, as in the case of anti-dumping regulations, they impose financial charges. What is more, Article 13(2) of the Basic Regulation requires the precise specification of both the product covered and the duty imposed. The extension of duties to unspecified products would, according to the plaintiff, be illegal. Lacunae in regulations can never be filled at the expense of affected traders. [24] If the duty is to be applied to imported motor parts, it is for the Community legislature to say so.

28. The imposition of the duty on motor parts would, as recognized by the national court, result in the institution of a higher level of protection against such imports than those of complete motors. The amount of the duty would be higher both in absolute terms and, *a fortiori*, as a proportion of the value of the imported product. The plaintiff submits that this would infringe the principle of proportionality. Moreover, Article 13(3) of the Basic Regulation provides that the anti-dumping duty must not exceed the dumping margin and should, in any event, be less if a lower level of protection would suffice to eliminate the prejudice to the Community industry concerned. While the Regulations respect this principle in so far as complete or finished motor imports are concerned, the plaintiff submits that the automatic application to imported parts of their variable duty would violate both the principle of proportionality and Article 13(3) of the Basic Regulation.

The Commission

29. The Commission firstly observes that the references to the tariff heading in the Regulations limit their scope to MPMs and that they do not apply to parts or pieces, which are classified under a separate subheading. The effect of the application of Rule 2(a) is that, where imported parts possess the essential character of a complete MPM, they must be treated for customs duty purposes as MPMs, but this does not necessarily produce the same result in the case of an anti-dumping duty, whose application depends principally on the regulation implementing it.

30. The Commission draws attention in particular to the decision of the Court in *Dr Tretter* which explained the relationship between the CCT and anti-dumping regulations. [25] A simple reference, in an anti-dumping regulation, to a specific CCT heading does not necessarily mean that every product within that heading is subject to the

23 — The plaintiff cites Case 143/83 *Commission* v *Denmark* [1985] ECR 427 in support of this contention.

24 — The plaintiff relies essentially on the *Krohn* case, cited in footnote 17 above, to support this argument.

25 — Case C-90/92 *Dr Tretter* v *Hauptzollamt Stuttgart-Ost* [1993] ECR I-3569.

duty. It is only where, following an appropriate dumping investigation, it has been shown that a particular product is being dumped, that the product may be subjected to an anti-dumping duty.

31. The Commission states that only the objective of preventing avoidance could justify the imposition of the anti-dumping duty on the stators and rotors as if they were complete motors. However, even such an interpretation would not prevent avoidance of the duties. The duty could be effectively applied only if all the parts capable of being regarded essentially as similar to the finished product specified in the regulation were imported simultaneously; but a determined importer could easily stagger its imports. Such a purposively broad interpretation could only be justified if it would be effective.

32. According to the Commission, there are reasons which manifestly oppose such an interpretation. Firstly, the wording of the Regulations reveals no indication that incomplete motors are covered; there is no reference to parts in the 1986 Regulation and the reference in recital 29 in the preamble to the 1987 Regulation deals with a specific situation, namely the use by 'small scale Italian artisanal manufacturers' of 'parts originating in State-trading countries', with the apparent consequence that they were capable of competing with the prices of cheap imported MPMs. The recitals in the preamble to the Regulations show that only MPMs were the subject of a prior investigation and all the findings of fact relate to the effect of their importation. To interpret the Regulations as applying to imported parts would be incompatible with the Basic Regulation and would, thus, violate a superior rule of law. At the hearing, the Commission referred to two additional reasons why the wording of the 1987 Regulation did not warrant its application to imported parts. Firstly, the tariff subheading referred to in Article 1(1) specifically excluded the part of the subheading dealing with 'parts'. Secondly, unlike what the agent for the Commission described as 'normal anti-dumping regulations' [26] (namely those applying an *ad valorem* duty) which provide that, for questions concerning their application, the relevant provisions of the CCT are decisive, Article 1(5) of the 1987 Regulation, in contrast, provides that the application of CCT shall be 'subject to the provisions of this regulation'.

33. The second reason advanced by the Commission in its written observations concerned the method of duty calculation prescribed by the Regulations, which is predicated on two prices: the price paid by the first independent purchaser of the imports and the minimum price specified in the Annex. In explaining the possible basis for calculation of duty in the case of parts, the Commission identifies several possibilities,

26 — By way of example, the agent for the Commission referred to Article 1(3) of Council Regulation (EEC) No 1739/85 of 24 June 1985, imposing a definitive anti-dumping duty on imports of certain ball-bearings and tapered roller-bearings originating in Japan; OJ 1985 L 167, p. 3.

all of which, it submits, are unsatisfactory; [27] the variable duty enjoined by the Regulations does not provide for application to imported parts, or at least not without leading to inequitable results.

34. The Commission also submits that the Regulations should not be interpreted in a manner which would result in the application of manifestly unfair duties, and that national customs authorities could not be permitted to fix the amount of anti-dumping duty. To do so would put at risk the uniform application of Community law in a field where the Community enjoys exclusive competence, would create difficulties in applying anti-dumping duties in the absence of any proper Community guidance as to reference prices and would deprive importers of an appropriate level of legal certainty. According to the Commission, such a conclusion is in conformity both with the case-law of the Court and the general principles governing the interpretation of the combined tariff system nomenclature. [28]

35. At the hearing, the Commission observed that, even if the Court felt it necessary to answer the second question referred by the national court, it should do so negatively in so far as the parts at issue in the present case are concerned. It relied upon the Court's recent decision in *GoldStar Europe*. [29] In view of its approach to the first two questions, the Commission did not make any submissions on the third.

The French Government

36. The French Government took a position quite different both from the plaintiff and the Commission in its written observations. It did not appear at the hearing.

37. In relation to the first question, it submits that the general principles governing the classification of goods contained in the CCT ought to apply to the interpretation of the Regulations. It gives two reasons: (i) the Regulations make specific reference to the application of those principles; (ii) the similarities between customs and anti-dumping duties, particularly in terms of the authorities responsible for their collection, suggest that the principles governing the interpretation of one should influence those applied to the other. It would be contrary to the principle

27 — They may be summarized as follows: (i) determining the difference between the minimum price for a complete motor and the price of *each* part imported paid by the first independent purchaser; (ii) determining the difference between the minimum price for a complete motor and the sale price of a standardized MPM; (iii) determining the difference between the minimum price for an incomplete motor and the contract price agreed with the ultimate purchaser of that unfinished motor.

28 — The Commission refers in this respect to Case C-35/93 *Develop Dr Eisbein*, cited in footnote 21 above, paragraph 18 of the judgment.

29 — Case C-401/93 *GoldStar Europe* v *Hauptzollamt Ludwigshafen* [1994] ECR I-5587.

of legal certainty for national customs authorities not to use customs nomenclature rules in applying anti-dumping duties. Thus, the Government concludes that Rule 2(a) applies in the present case.

38. On the second question, the French Government submits that the question whether, pursuant to Rule 2(a), the stators and rotors ought to be classified as complete motors raises two separate subquestions: (i) has the stator, combined with the rotor, the essential character of a complete electric motor; (ii) does the fact that further parts must be added in the manufacturing process prevent a positive response to the first subquestion? It suggests consideration of the essential function of an electric motor and, then, whether the stator combined with rotor fulfils that function. The transformation of electric energy into mechanical energy is fulfilled primarily by the combination of a stator with a rotor. The conception and manufacture of these pieces is a sophisticated operation having a very high added-value element, representing on average about 66% of the cost of an electric motor, and the characteristics of the motor are exclusively determined by the quality of the stator and rotor. While alone they are not sufficient to constitute an electric motor, the addition of the other required pieces and their manufacture are of secondary importance. These essential components can be used for various applications without the need to construct a complete motor. [30] The necessity for the addition of 'secondary' pieces during the manufacturing process does not detract from the essence of the function assured by the stator and rotor. In its view these pieces were properly classified by the defendant as MPMs and thus subject to the anti-dumping duty.

39. Turning to the third question, the French Government emphasizes the fact that neither the 1986 Regulation nor the 1987 Regulation admits of any variation of the prescribed rates of anti-dumping duty. It bases this contention on the fact that the Community legislature decided to institute a variable duty system in this case. By way of contrast, had the legislature opted for an *ad valorem* method of calculating the duty, such a system would have allowed for the differences in value between imports of complete and incomplete motors to be taken fully into account. The Government draws attention to the decision of the Court in *Neotype Techmashexport* [31] rejecting a challenge to the variable nature of the anti-dumping duty definitively imposed by the 1987 Regulation and accepting that its adoption lay within the margin of appreciation allowed to the Council. It concludes that national customs authorities possess no discretion in relation to the collection of the duty prescribed by the Regulations and that the full duty must, therefore, be collected once the imports fall within their scope.

30 — The French Government refers to the fact that, for example, in certain cleaning-up and decontamination operations stators combined with rotors can be used to drive pumps.

31 — Cited in footnote 13 above.

40. With regard to the contention made by the plaintiff of the inequity of imposing the duty on it, the French Government says that the effective rate of anti-dumping duty adopted in the Regulations already represents a very modest amount having regard to the effective dumping margin identified during the relevant investigations. [32] It is only in cases such as that of the plaintiff — which in the opinion of the Government are 'marginal' — that the costs of the parts other than the stator and the rotor and the manufacturing costs represent a significant element of the overall cost. The Government concludes that the system established by the Regulations cannot be interpreted as being subject to variation in such cases and, moreover, the Council cannot be considered to have overstepped the limits of its margin of appreciation in not enacting special rules for undertakings such as the plaintiff.

IV — Analysis of the questions

The first question

41. The French Government correctly points out that it is not surprising that specific anti-dumping regulations, such as the 1986 Regulation and the 1987 Regulation, should refer both to tariff nomenclature and general customs rules for the purposes of providing the national authorities, charged with their application, with assistance in identifying the products subjected to the anti-dumping duty. The regulations, thus, refer to CCT subheading ex 85.01 B 1b), corresponding to Nimexe code ex 85.01-33, 85.01-34 or 85.01-36, for the purpose of identifying the standardized MPMs which are to be subject to the duty. For customs classification purposes, I agree with the Government that the description of an article within a particular customs classification is not necessarily exhaustive. The context and particular headings must also be considered.

42. In *Osram* [33] the Court was asked to consider the scope of CCT heading No 70.11 which referred to '[G] lass envelopes (including bulbs and tubes) for electric lamps, electronic valves or the like'. Having stated that tariff heading 70.11 as worded applied only to 'unfinished' products, it continued that '[T] his term must be interpreted in line with Rule 2(a)'. [34] It is the same Rule 2(a) which the French Government submits should be applied to the classification of the unfinished products involved in the present case. The effect of applying that

32 — This results from the fact that the minimum price fixed by the 1987 Regulation was based on the cost prices of the most efficient Community producers of complete MPMs, rather than those of the average Community producer (in the provisional 1986 Regulation it was based on the average costs). According to the Government, employing the higher cost base would have necessitated adopting an anti-dumping duty designed to raise import prices by 60%, as opposed to that adopted in the 1987 Regulation which merely raised import prices by around 35%. This contention finds support in the Opinion of Advocate General Van Gerven in *Neotype Techmashexport*, loc. cit. footnote 13 above, where he stated that the anti-dumping duty fixed by the 1987 Regulation 'represents an increase of approximately 25% in relation to import prices during the reference period' and was thus 'clearly lower than the dumping margins established'; paragraph 10 of the Opinion.

33 — Case 183/73, cited in footnote 19 above.

34 — Ibid., paragraph 6 of the judgment.

rule was articulated cogently by Advocate General Trabucchi when he stated that:

'Under a rule in general use when the Common Customs Tariff is applied, reference to an article under a specific heading of the Tariff includes a reference to the article even if it is incomplete or "unfinished", provided that, as imported, it has the essential character of the complete or finished article.' [35]

Both he and the Court were of the view that, for the application of the rule, the separate parts must be imported or put forward for customs clearance together. [36]

43. If the submission of the French Government concerning the applicability of Rule 2(a) in the present case were to be accepted, it must not be overlooked that, while *Osram* was concerned merely with customs classification, this case also involves the application of an anti-dumping duty. The French Government contends that it would be incompatible with the principle of legal certainty if national authorities were not to include within the material scope of the Regulations both finished or complete and unfinished or incomplete MPMs, once the latter possess the essential character of the former. This is a contention which I cannot accept.

44. While it was expressly envisaged by Article 2(5) of the 1986 Regulation, as rendered definitive by Article 1(5) of the 1987 Regulation, that general rules relating to customs classification would apply, their application is, as the plaintiff has rightly observed, subject to the other provisions of the regulation. As the Court observed in *Krohn*, 'the scope of a regulation is normally defined by its own terms and it may not in principle be extended to situations other than those which it envisaged'. [37] In that case a trader argued unsuccessfully that a provision of one Commission regulation for the cancellation of import licences for manioc from third countries other than Thailand could be applied by analogy to Thailand, even though the Commission regulation governing Thai imports made no reference to such a possibility. Here the plaintiff is seeking to rely upon the ordinary meaning of the wording used in the Regulations and not, for example, to argue that the failure to refer to parts constitutes 'an omission which is incompatible with a general principle of Community law and which can be remedied by application by analogy of ... other rules', [38] such as Rule 2(a). I do not believe that this failure by the Council to legislate for imported motor parts can be regarded as constituting a gap which must be filled in the system of protection against dumping put in place by the Regulations at issue in this case. Community measures imposing anti-dumping duties are by their very nature exceptional and should not normally be

35 — Ibid., see paragraph 8 of the Opinion.

36 — Paragraph 7 of the judgment; paragraph 17 of the Opinion.

37 — Cited in footnote 17 above, paragraph 13 of the judgment.

38 — Ibid., paragraph 14 of the judgment.

interpreted other than in a strictly literal manner. This, in my opinion, must particularly be the case where a broad interpretation would have grave pecuniary consequences for affected traders, such as the plaintiff.

45. Article 1 of the 1987 Regulation defines in highly specific terms the material scope of the anti-dumping duty which it put in place as comprising certain MPMs falling within subheading ex 85.01 B 1b) of the CCT. At the material time that subheading referred only to complete machines and apparatus. It seems to me only reasonable to assume that if the Council had wished to extend the duty to motor parts it would have also referred to subheading 85.01 C, which specifically covered parts and, presumably, the detachable pieces of the machines classified in heading 85.01. [39] Reference to the corresponding Nimexe codes only serves to reinforce this view, as none of the three codes mentioned (see paragraph 3 above) refers to parts of MPMs. The language so carefully used applies to 'standardized multi-phase electric motors' and then unambiguously refers to the three grades of power output covering the total range of Nimexe Codes ex 85.01-33, ex 85.01-34 and ex 85.01-36. Inclusion by an extended interpretation of the subsequent heading, which actually covers 'parts', would do violence to the clear language used. I believe that a literal interpretation of Article 1(1) of the 1987 Regulation can only, therefore, lead to the conclusion that parts are excluded. In my opinion that conclusion is sufficient to dispose of the problem in the instant case.

46. Moreover, I am also satisfied that this conclusion finds considerable support in the order made by the President of the Court in *Enital*. [40] Enital brought an application for the suspension, *inter alia*, of the operation of the 1986 Regulation. One of its arguments in support of its application was that in the 1986 Regulation the Commission had illegally applied the anti-dumping duty to motor parts. The President of the Court rejected that argument in the following terms: [41]

'As the Commission rightly points out, it must be observed that the applicant's second argument appears, at first sight, to be devoid of all relevance. It can be seen by merely reading the Common Customs Tariff (Official Journal 1985, L 330, at p. 335) and the Nimexe code (Official Journal 1985, L 353, at p. 475) that heading No 85.01 of the Common Customs Tariff, entitled "Electrical goods of the following descriptions: generators, motors, converters (rotary or static),

39 — In support of this view, it is noteworthy that the French version, in contrast to the English and German texts, of the subheading 85.01 C refers to '*parties* et *pièces détachées*' (emphasis added).

40 — Case 304/86 R *Enital* v *Council and Commission* [1987] ECR 267.

41 — Ibid., paragraph 15 of the order.

transformers, rectifiers and rectifying apparatus, inductors", is divided into three subheadings:

85.01 A (goods for use in civil aircraft)

85.01 B (other machines and apparatus)

85.01 C (parts),

and that the reference in Commission Regulation No 3019/86 to subheading 85.01 B I (b) does not concern parts which come within subheading 85.01 C. Comparison with the corresponding headings of the Nimexe code (85.01-33, 85.01-34 and 85.01-36) confirms that view because they refer to standardized multi-phase motors of an output of more than 0.75 kW but not more than 75 kW, whereas parts for motors are covered by Codes 85.01-89 and 85.01-90, to which Regulation No 3019/86 does not refer.'

47. However, the French Government contends that both the reference to 'the provisions in force with regard to customs duties' in Article 1(5) of the 1987 Regulation and the requirement of legal certainty for national customs authorities justify the application of Rule 2(a) and, consequently, an interpretation of the 1987 Regulation which would apply it to imported parts which can be regarded as essentially similar to complete motors. It seems to me that, before addressing the relevance of possible difficulties which national authorities might face if required to apply the 1987 Regulation to imported parts, I should examine whether the reference, *inter alia*, to Rule 2(a) dictates a non-literal interpretation of the material scope of the 1987 Regulation.

48. The national court has intimated that such an interpretation might accord more fully with the underlying objective of anti-dumping measures generally, and the 1987 Regulation in particular, by discouraging importers from seeking to avoid anti-dumping duties which the Community legislature has decided are necessary and justifiable to protect Community industry from unfair trading practices. I do not agree. As the Commission has correctly pointed out, Rule 2(a) requires the relevant incomplete import to possess the essential character of the corresponding complete product. The Court has held in *Osram* [42] that, while the effect of this rule is that any reference to an article in a given tariff heading shall include a reference to that article whether

42 — Cited in footnote 19 above.

imported 'complete or finished' or 'unassembled or disassembled', it nevertheless 'appears from the wording of this provision that it can apply only provided that the disassembled parts are put forward simultaneously for customs clearance'. [43] In this light, an affected trader would merely have to stagger or phase its imports in order to ensure that no one consignment contained a number of parts sufficient to permit the application of Rule 2(a). The plaintiff contends that it should not be subject to the anti-dumping duty merely because it does not engage in such practices. At the hearing it admitted that, at the material time, it sometimes imported together the two parts in question. However, this was dependent not on its own volition, but, rather, on the manufacturing conditions prevailing at its Czechoslovak suppliers.

49. I believe that it follows from *Osram* that, in the many cases where the plaintiff imported stators separately from rotors, there can be no question of applying Rule 2(a). It follows, therefore, that in those cases the first aspect of the first question referred by the national court should be answered affirmatively, while the second aspect should be answered negatively to the effect that the relevant imports manifestly do not satisfy the conditions for the application of Rule 2(a).

50. In my opinion, Rule 2(a) applies, if at all, only where the allegedly essential parts are imported together or simultaneously presented for customs clearance. Even in those cases, I do not believe that an anti-avoidance rationale can be invoked to support the application of the anti-dumping duty to parts such as those imported by the plaintiff, which are not within the scope of the duty.

51. Rule 2(a) can apply only by virtue of Article 1(5) of the 1987 Regulation, which provides that the applicability of customs duty provisions shall be '*subject* to the provisions of this Regulation' (emphasis added). In my opinion, it is clear that this conditional reference to customs law must be given its ordinary, literal meaning. A general rule of interpretation, such as Rule 2(a), could not, in any event, by virtue of its simple adoption in Article 1(5) be allowed to extend the specific material scope of the duty ordered by the 1987 Regulation; its demotion to a subordinate ('subject to') role puts the matter beyond doubt. It is noteworthy that the doubts of the national court regarding the application of Rule 2(a) arise principally from its concern about the disproportionate effects of applying the variable anti-dumping duty to imports of parts, such as those at issue in the present case. I share those doubts. Even if I were to ignore the constraints imposed by the Basic Regulation on adoption of individual anti-dumping regulations, in particular the necessity for a prior investigation of alleged damage, and then assume that the Council could legitimately — which would appear to me to be

43 — Ibid., paragraph 7 of the judgment.

extremely unlikely — have imposed an anti-dumping duty on imports of parts of MPMs, it is patently clear that the Council would in any case have been obliged, in accordance with the provisions of the Basic Regulation, to assess the relevant dumping margin and determine an appropriate rate of duty, which did not go beyond what was strictly necessary to remedy the harm being caused by such imports to Community manufacturers of like products. No such assessment, of course, took place.

52. The French Government, however, argues that, since the Council did not opt to impose as high a rate of variable duty on imports of complete MPMs as it could have done, in the light of the investigation actually carried out, and in accordance with the Basic Regulation, the mere fact that a higher variable rate of duty would be imposed on imported parts than on complete motors should not be considered unjust. This submission must be rejected. I accept the plaintiff's argument that the straightforward application of the 1987 Regulation to motor parts would result in the institution of an unacceptably higher rate of protection against such imports than that expressly envisaged in that regulation for imports of complete motors. In my view, such an application of the 1987 Regulation would be incompatible with, *inter alia*, the economic basis of the regulation itself. Fortunately, an ordinary interpretation of Article 1(5), as set out in paragraph 45 above, excludes such a capricious and anomalous result.

53. I find further support for this construction of Article 1(5) of the 1987 Regulation from the telling comparison drawn by the Commission at the hearing between the wording of Article 1(5) and the wording employed in other 'normal anti-dumping regulations', [44] such as Regulation No 1739/85 [45] which was at issue in *Dr Tretter*. [46] Article 1(3) of that Regulation provided that '[T] he provisions in force with regard to customs duties *shall apply* to the said duty', as distinct from the expression, '*subject* to the provisions of this Regulation', found in Article 1(5) (emphasis added).

54. I am also fortified in this view by the cogent argument advanced by the Commission in its written observations and based on the Court's judgment in *Dr Tretter*, [47] concerning the proper relationship between anti-dumping and customs duty provisions. In that case the Court was asked whether Article 1(1) of Regulation No 1739/85, [48] which imposed an anti-dumping duty on certain ball-bearings and tapered roll-bearings originating in Japan, was invalid because the tariff heading to which it referred covered not only ball-bearings in the technical sense (i. e. radial bearings), but also so-called bearing bushes (i. e. linear only guideways), even though the anti-dumping proceedings which

44 — Cited at paragraph 32 above of this Opinion.
45 — Cited in footnote 26 above.
46 — Cited in footnote 25 above.
47 — Ibid.
48 — Cited in footnote 26 above.

led to the imposition of the duty in question did not include such bearing bushes. Adopting, as its point of departure, the principles that when more than one interpretation of the wording of secondary Community law is open preference should be given to the interpretation which renders the provision consistent with the Treaty, and that implementing regulations should, where possible, be interpreted in conformity with the provisions of the Basic Regulation, [49] the Court held that the actual wording of the impugned provision, and, in particular, the words 'falling within heading No ex 84.62 of the Common Customs Tariff', permitted the conclusion that the possible classification of a product under that heading does not automatically result in the product being subjected to an anti-dumping duty under that provision. I agree that it follows from *Dr Tretter* that a mere reference to a particular customs heading does not necessarily lead to every product falling within that heading being subjected *systematically* to the anti-dumping duty. Whether it does will depend on the description adopted by the Community legislature in the relevant anti-dumping regulation, the purpose of that regulation and its history read in the light of the requirements imposed by the Basic Regulation. In the present case, none of these factors supports the application of the 1987 Regulation to imported motor parts.

55. In *Dr Tretter* the Court held that, had the Council wished to subject bearing bushes to the anti-dumping duty, it would have set out distinguishing criteria in their regard. The present case can be distinguished from *Dr Tretter* in that the products which it is sought to include within the scope of the anti-dumping duty are actually classified in a separate subheading. Given that specific reference to 'parts' in 85.01 C, I am satisfied that, if the Council had wanted to include such parts within the material scope of the anti-dumping duty, it would, at least, have incorporated a reference to that subheading in Article 1(1) of the 1987 Regulation.

56. For all of the reasons articulated at paragraphs 41 to 55 above, I am convinced that the first question referred by the national court ought to be answered to the effect that the anti-dumping duty established by the Regulations at issue applies only to finished or complete MPMs, whether or not they are presented unassembled or disassembled. If the Court takes the view that Rule 2(a) applies it will be obliged to answer the second question, which has been posed in the alternative by the national court. It is, of course, for the national court to apply Rule 2(a) where it is appropriate and, in the light of its assessment of the facts of the case, to reach a conclusion on whether an incomplete or unfinished article has the essential character of the complete or finished article. In performing that task the national court

49 — The Court cited Case 218/82 *Commission* v *Council* [1983] ECR 4063 in support of the first principle and Case 38/70 *Tradax* [1971] ECR 145 as authority for the second principle, paragraph 11 of the judgment.

may also, as in this case, seek an interpretation of that rule from the Court, in the light of these facts.

57. It should first be noted, as Advocate General Gulmann pointed out in his Opinion in *Develop Dr Eisbein*, [50] that Rule 2(a) was inserted in the CCT with effect from 1 January 1972 as a result of a recommendation adopted on 9 June 1970 by the Customs Cooperation Council, which was approved by the Community Member States by a decision of the Council of 21 June 1971, [51] and that its purpose 'was to facilitate customs processing' so that an 'importer who imports all the components necessary to produce a finished article is afforded the possibility of having the components classified as the finished article, that is to say the parts are not classified in the tariff headings relating to parts and accessories for the article in question — if such headings exist — or in the tariff headings which the components would otherwise fall under'. [52] It is clear from the terms of the Court's judgment in *Develop Dr Eisbein* that the Court in that case was concerned with the second sentence of Rule 2(a), namely the situation which applies when *all* the parts or components of a complete product are presented together for customs clearance in a disassembled or unassembled state. In such a case the Court held that it was clear from the second sentence of the rule that those parts or components 'must be regarded as a complete article', [53] and that 'no account is to be taken in that regard of the assembly technique or the complexity of the assembly method'. [54] The present case is entirely different since it concerns the first sentence of Rule 2(a). No one has alleged that the plaintiff's disputed imports comprised essentially all the parts necessary even to manufacture a standardized electric MPM, let alone the special motors in the production of which the parts were actually used. Furthermore, Rule 2(a) applies, if at all, only by virtue of Article 1(5) of the 1987 Regulation to which it is, therefore, 'subject'. The specific nature of the products affected by the anti-dumping duty, namely electric motors, affects the manner in which the rule can be applied. On the assumption that they were imported simultaneously (see paragraph 50 above), can the stator and rotor be regarded, as submitted by the French Government, as possessing the essential character of the complete or finished article?

58. While it may be true that some important characteristics of the motor, such as its power, are primarily indicated by the combination of the stator and the rotor, I do not consider that to be sufficient. As the plaintiff has correctly submitted, the combination of

50 — Cited in footnote 21 above, footnote 12 of the Opinion.

51 — OJ 1971 L 137, p. 10.

52 — See *Develop Dr Eisbein*, paragraph 19 of the Opinion. The Advocate General cites the judgment of the Court in Case 165/78 *IMCO* [1979] ECR 1837 in support of this view. In that case the Court held that Rule 2(a) 'covers articles not yet assembled as well as articles which have been disassembled and to the extent to which the parts not yet assembled allow of the assembly of a complete article they are covered by the provisions governing that article (namely the complete article) even though the Common Customs Tariff contains a specific heading for parts and fittings'.

53 — Loc. cit., paragraph 17 of the judgment.

54 — Loc. cit., paragraph 19 of the judgment.

the stator and the rotor resembles neither internally nor externally a MPM and cannot, without the addition of various other important parts (see paragraph 23 above), actually perform its central task of converting electrical energy into mechanical energy. Without these parts, it cannot, in my view, be regarded as having the 'essential character' of an electric motor. I draw support for this view from the recent judgment of the Court in *GoldStar Europe*, [55] to which the Commission referred at the hearing. Faced with the problem of deciding whether, in adopting a tariff subheading for goods, which had previously been regarded as 'parts' of video recorders, and which were described as the 'mechanical assembly for a video recording or reproducing apparatus ... equipped with recording and reproducing heads (Mecadeck)', the Commission had validly exercised its powers under Articles 8 and 9 of Regulation No 2658/87 [56] to adopt measures for the classification of goods in the combined nomenclature, the Court did not accept the Commission's argument based on Rule 2(a) that 'a mecadeck constitutes the essential part of a video recorder because it contains all the components of the apparatus which are characteristic of its function, namely video recording and reproduction'. [57] The Court held that:

'It must be observed that although the mecadeck are essential as regards the specific manner in which a video recorder functions, the electronic components are also indispensable. The essential character of a video recorder is to be found in the combination of the mechanical and electric components.' [58]

59. In my opinion the essential character of a MPM consists in the combination of all the various important parts which are necessary to enable it to function as an electric motor. Furthermore, to the extent to which the application of Rule 2(a) to an anti-dumping duty depends on the purpose of that duty and the uses to which the relevant imports are put, I believe that in the circumstances of the present case, where the plaintiff manufactures special motors, with the aid of highly precise equipment and a specially-trained workforce and which have been designed by its engineers, in order to meet the individual requirements of its customers, it seems very difficult to state that the combination of a stator with a rotor can be regarded as possessing the essential character of a complete or finished MPM. I conclude, therefore, that in the event of the Court feeling obliged to answer the national court's second question, it should reply that a stator and winding together with a rotor and shaft do not enjoy the essential character of a complete or finished MPM affected by the anti-dumping duty.

55 — Cited in footnote 29 above.

56 — Cited in footnote 5 above.

57 — See *GoldStar Europe*, cited in footnote 29 above, paragraph 23 of the judgment.

58 — Ibid., paragraph 26 of the judgment.

60. In the light of my conclusions concerning the first two questions, it is clear that no anti-dumping duty has been imposed by the Regulations on imported parts, and the third question should be answered accordingly.

V — Conclusion

61. Accordingly, I am of the opinion that the questions referred by the Finanzgericht Rheinland-Pfalz should be answered as follows:

(1) Article 2(1) of Commission Regulation (EEC) No 3019/86 of 30 September 1986 and Article 1(1) and (2) of Council Regulation (EEC) No 864/87 of 23 March 1987 must be interpreted as imposing anti-dumping duty only on imports of complete or finished (even if presented unassembled or disassembled) standardized multi-phase electric motors. Rule 2(a) of the General Rules for the Interpretation of the Combined Nomenclature does not apply so as to include incomplete or unfinished multi-phase electric motors within the scope of the anti-dumping duty established by those regulations.

(2) In the event that the provisions referred to above should be interpreted, by virtue of Rule 2(a) of the General Rules for the Interpretation of the Combined Nomenclature, as applying to incomplete or unfinished goods, a stator and winding together with a rotor and shaft do not enjoy the essential character of a complete or finished standardized or special multi-phase electric motor.

(3) The said provisions do not provide for any anti-dumping duty to be applied to imported parts of standardized multi-phase electric motors.