Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

19 March 2015*

(Dumping — Imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia — Extension to such imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Circumvention — Failure to cooperate — Articles 13 and 18 of Regulation (EC) No 1225/2009 — Obligation to state reasons — Error of assessment)

In Case T-412/13,

Chin Haur Indonesia, PT, established in Tangerang (Indonesia), represented by T. Müller-Ibold and F.-C. Laprévote, lawyers,

applicant,

v

Council of the European Union, represented by S. Boelaert, acting as Agent, and by R. Bierwagen, lawyer,

defendant,

supported by

European Commission, represented by J.-F.Brakeland and M. França, acting as Agents,

and by

Maxcom Ltd, established in Plovdiv (Bulgaria), represented by L. Ruessmann, lawyer, and J. Beck, Solicitor,

interveners,

APPLICATION for the partial annulment of Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ 2013 L 153, p. 1),

THE GENERAL COURT (Seventh Chamber),

composed of M. van der Woude (Rapporteur), President, I. Wiszniewska-Białecka and I. Ulloa Rubio, Judges,

* Language of the case: English.

EN

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 3 September 2014,

gives the following

Judgment

Background to the dispute

1 The applicant, Chin Haur Indonesia, PT, is an undertaking of Taiwanese origin, importing bicycles from Indonesia into the European Union. It challenges the extension of the definitive anti-dumping duty, imposed by Council Implementing Regulation (EU) No 990/2011 of 3 October 2011 on imports of bicycles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2011 L 261, p. 2), to certain Indonesian undertakings.

The principal initial anti-dumping and anti-subsidy procedures

2 By Council Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty (OJ 1993 L 228, p. 1), the Council of the European Communities imposed a definitive anti-dumping duty of 30.6% on imports of bicycles originating in China.

3 Following an expiry review pursuant to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended (replaced by Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343 p. 51, corrigendum OJ 2010 L 7, p. 22), 'the basic regulation'), and in particular pursuant to Article 11(2) of Regulation No 384/96 (now Article 11(2) of the basic regulation), the Council — by Regulation (EC) No 1524/2000 of 10 July 2000 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China (OJ 2000 L 175, p. 39) — decided that the anti-dumping duty of 30.6% should be maintained.

4 Following an interim review pursuant to Article 11(3) of Regulation No 384/96 (now Article 11(3) of the basic regulation), the Council, by Regulation (EC) No 1095/2005 of 12 July 2005 imposing a definitive anti-dumping duty on imports of bicycles originating in Vietnam, and amending Regulation No 1524/2000 (OJ 2005 L 183, p. 1), increased the anti-dumping duty in force to 48.5%.

5 In October 2011, following an expiry review pursuant to Article 11(2) of the basic regulation, the Council, by Implementing Regulation No 990/2011, decided that the anti-dumping duty of 48.5% should be maintained.

6 In April 2012, the European Commission announced the initiation of an anti-subsidy proceeding with regard to imports into the European Union of bicycles originating in China, pursuant to Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ 2009 L 188, p. 93).

7 First, on 22 May 2013, the Commission adopted Decision 2013/227/EU, terminating the anti-subsidy proceeding concerning imports of bicycles originating in the People's Republic of China (OJ 2013 L 136, p. 15), without imposing other anti-subsidy measures. Secondly, on 29 March 2013, the Council adopted Regulation (EU) No 502/2013, amending Implementing Regulation (EU) No 990/2011 (OJ 2013 L 153, p. 17), following an interim review pursuant to Article 11(3) of the basic regulation.

The circumvention procedure

8 On 14 August 2012, the Commission received a request lodged by the European Bicycle Manufacturers Association (EBMA) on behalf of three bicycle manufacturers in the European Union for it to investigate the possible circumvention of the anti-dumping measures imposed on imports of bicycles originating in China and to make imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in those countries or not, subject to registration.

9 On 25 September 2012, the Commission adopted Regulation (EU) No 875/2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation No 990/2011 by imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, and making such imports subject to registration (OJ 2012 L 258, p. 21).

10 The purpose of the investigation was, inter alia, to investigate the alleged change in the pattern of trade following the increase in the anti-dumping duty in 2005. It covered the period from 1 January 2004 to 31 August 2012 ('the investigation period'). More detailed data was collected for the period from 1 September 2011 to 31 August 2012 ('the reporting period') in order to examine the possible undermining of the remedial effect of the measures in force and the existence of dumping.

11 The applicant was informed of the initiation of the investigation into circumvention and, on 26 September 2012, was sent an exemption form, to which it was asked to reply electronically no later than 2 November 2012.

12 On 5 November 2012, the Commission received from the applicant a hard copy reply to the exemption form, in which the applicant asserted, in particular, that it had not carried out any assembly operations in a third country within the meaning of Article 13(2) of the basic regulation.

13 On 27 November 2012, the Commission sent the applicant a letter asking it to make certain documents available to it during the verification visit, in particular the worksheets which it had used to prepare its reply to the exemption form. The applicant acknowledged receipt of that letter on 28 November 2012.

14 On 29 November 2012, the Commission sent the applicant a further letter asking it to send to the Commission, no later than 3 December 2012, further information concerning 13 items missing from its reply to the exemption form. The applicant sent the Commission certain documents on 3 and 4 December 2012.

15 The verification visit took place on 6 and 7 December 2012 at the applicant's premises. On that occasion the applicant gave the Commission a revised exemption form.

16 On 28 January 2013, the Commission informed the applicant of its intention to apply Article 18 of the basic regulation to it. The applicant submitted comments in that connection on 4 February 20l3.

17 On 21 March 2013, the Commission sent the applicant, and the Indonesian and Chinese authorities, the general disclosure document of its conclusions regarding transhipment and assembly operations and stated its intention to propose the extension of the anti-dumping measures on imports of bicycles from China to imports from Indonesia. In Annex B to the general disclosure document the Commission rejected the applicant's request for exemption, in particular because of the unreliability of the data submitted.

18 The applicant disputed the conclusions of the general disclosure document by letter of 9 April 2013. It submitted further comments in this regard on 28 May 2013.

19 On 29 May 2013, the Council adopted Implementing Regulation (EU) No 501/2013 extending the definitive anti-dumping duty imposed by Implementing Regulation No 990/2011 to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ 2013 L 153, p. 1, 'the contested regulation').

Contested regulation

20 In recitals 28 to 33 of the contested regulation, the Council stated, first, that four Indonesian companies, representing 91% of the total imports from Indonesia into the European Union during the reporting period, had submitted a request for exemption in accordance with Article 13(4) of the basic regulation. Secondly, it stated that the data submitted by one company was unverifiable and unreliable. Despite the observations submitted, the Council took the view that the information provided by that company had to be disregarded. Findings with regard to that company were therefore based on the facts available, in accordance with Article 18 of the basic regulation. The three other companies were considered to have cooperated.

21 In recitals 45 to 58 of the contested regulation, the Council, after examining changes in trade flows between China, Indonesia and the European Union and also changes in production volumes, concluded that there had been a change in the pattern of trade between Indonesia and the European Union, within the meaning of Article 13(1) of the basic regulation, following the increase in anti-dumping duties in July 2005.

22 In recitals 59 to 67 of the contested regulation, the Council examined the nature of the circumvention operations carried out.

23 In recitals 60 to 64 of the contested regulation, the Council analysed the existence of transhipment operations. It concluded, first of all, that the existence of transhipment operations had not been established in respect of the three cooperating companies. On the other hand, as regards the company in relation to which, in the Council's view, the application of Article 18 of the basic regulation was warranted, '[t]he investigation revealed that [it] did not own sufficient equipment to justify the volumes of exports into the Union in the [reporting period]' and, 'in the absence of any other justification, it can be concluded that the company was involved in circumvention practices via transhipment' (recital 62 of the contested regulation). Given the change in the pattern of trade, the findings concerning the company in relation to which the application of Article 18 of the basic regulation was warranted and the fact that not all Indonesian producers/exporters had come forward and cooperated, the Council found the existence of transhipment of Chinese-origin products via Indonesia to be confirmed.

24 In recitals 65 to 67 of the contested regulation, the Council analysed the existence of assembly operations. It concluded, first, that assembly operations had not been established with regard to the three cooperating companies and, secondly, that it could not be established whether the fourth

company, for which Article 18(1) of the basic regulation was applied, was involved in assembly operations. Therefore, the existence of assembly operations within the meaning of Article 13(2) of the basic Regulation, via Indonesia, was not established.

25 In recital 92 of the contested regulation, the Council emphasised that the investigation had not brought to light any due cause or economic justification other than the avoidance of the existing measures relating to the product concerned.

26 In recitals 94 and 95 of the contested regulation, the Council stated, first, that a comparison of the injury elimination level as established in the interim review in 2005 and the weighted average export price during the reporting period had showed significant under-selling. Secondly, it pointed out that the increase in imports into the European Union from Indonesia had been considered significant in terms of quantities. The Council therefore concluded, in recital 96 of the contested regulation, that the existing measures were being undermined in terms of quantities and prices.

27 In recitals 99 to 102 of the contested regulation, the Council examined, in accordance with Article 13(1) of the basic regulation, whether there was evidence of dumping by comparison with the normal value as established during the interim review carried out in 2005. In order to establish the export prices from Indonesia which were affected by circumvention practices, only the exports of the non-cooperating producers/exporters had been considered. Resort was therefore had to the best facts available, namely the average export price of bicycles from Indonesia to the European Union during the reporting period, as reported in Eurostat's Comext database. After making various adjustments to the normal value and the export price, the comparison between those two variables demonstrated, according to the Council, the existence of dumping.

28 In those circumstances, the Council concluded that there was circumvention, within the meaning of Article 13(1) of the basic regulation, by transhipment via Indonesia. It therefore extended the definitive anti-dumping duty of 48.5% provided for in Article 1(2) of Implementing Regulation No 990/2011 to imports of the product concerned consigned from Indonesia, whether declared as originating in that country or not. Further to the findings reported in paragraph 20 above, the Council granted an exemption from the extended measures to three of the four exporters that had applied for exemption.

Procedure and forms of order sought

29 By application lodged at the Court Registry on 9 August 2013, the applicant brought the present action.

30 By a separate document accompanying the application, the applicant also requested that the case be dealt with under the expedited procedure provided for by Article 76a of the Rules of Procedure of the General Court.

31 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Seventh Chamber, to which the present case was accordingly allocated.

32 The application that the case be dealt with under the expedited procedure was granted by decision of the Seventh Chamber of the Court of 8 October 2013.

33 By documents lodged at the Court Registry on 17 October and 8 November 2013 respectively, the Commission and the EBMA applied for leave to intervene in support of the form of order sought by the Council.

34 By order of 11 November 2013, the President of the Seventh Chamber of the Court granted the Commission leave to intervene.

35 By order of 17 December 2013, the Seventh Chamber of the Court dismissed the EBMA's application for leave to intervene.

36 By document lodged at the Court Registry on 19 March 2014, Maxcom Ltd applied for leave to intervene in support of the form of order sought by the Council.

37 By letters of 27 March and 15 May 2014, by way of measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, the Court put questions in writing to the applicant and requested the Council to answer certain questions and to lodge certain documents. The parties complied with those measures of organisation of procedure within the prescribed periods.

38 By order of 16 July 2014, the Seventh Chamber of the Court granted Maxcom leave to intervene.

39 The applicant claims that the Court should:

— annul Article 1(1) and (3) of the contested regulation in so far as those provisions concern the applicant;

— order the Council to pay the costs.

40 The Council, supported by the Commission and Maxcom, contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

Admissibility

41 In the context of its written replies to the measures of organisation of procedure, and then at the hearing, the Council argued that the action was inadmissible in its entirety. On the basis of a press article to which it had access during the judicial proceedings, the Council contends that the applicant is not a genuine Indonesian bicycle producer and that its very existence is doubtful. It deduces from the press article that only the Chinese undertaking F. operated as a producer in Indonesia. In those circumstances, the applicant's exemption request was submitted in the wrong company name. The action should therefore be dismissed in its entirety as inadmissible.

42 The applicant claims that the Council's argument is unfounded and based on facts that do not form part of the file.

43 In that regard, the Court notes that the short press article, only a page of which relates to the applicant, on which the Council relies, is ambiguous and, in any event, cannot establish the Council's claim.

44 It is apparent from the press article in question that the applicant, a Taiwanese firm, has been established in Indonesia since 1990. It is a bicycle parts producer selling its products in South-East Asia, Indonesia, Latin America and Italy. It has also allocated one of its bicycle assembly buildings to the Chinese undertaking F. Following the imposition of the European anti-dumping duties on exports of Chinese bicycles, the applicant leased its plant to the undertaking F., although the exact nature of the relationship between the applicant and undertaking F. was not clearly set out.

45 Consequently, regardless of whether the production of a short press article is capable, in the absence of any other evidence, of calling in question the admissibility of an action, it must be found that the Council's assertions, set out in paragraph 41 above, are not borne out by the press article.

46 Since the Council has adduced no other evidence in that regard, the Court confirms that the action is admissible.

Substance

47 The applicant advances three pleas in law in support of its action. Its first plea, alleging infringement of Articles 13(1) and 18(1) of the basic regulation, concerns alleged legal errors and errors of assessment on the Council's part in relation to the existence of circumvention and the nature of the facts available. The second plea, alleging infringement of Article 18 of the basic regulation, the principle of proportionality and the obligation to state reasons, concerns the finding of non-cooperation. The third plea, alleging infringement of Article 13(1) of the basic regulation and of the principle of equal treatment, concerns the existence of dumping.

The first plea in law, alleging infringements of Articles 13(1) and 18(1) of the basic regulation

48 The applicant's first plea in law is divided into two parts, concerning, first, the issue of whether a change in the pattern of trade had actually occurred and, secondly, the Council's conclusion that the applicant had engaged in transhipment operations.

– The change in the pattern of trade

49 In the first place, the applicant maintains that the Chinese statistics for the export of bicycles to Indonesia, on which the Council in particular relied in order to establish that a change in the pattern of trade had occurred, are erroneous. In the applicant's view, there is a higher export drawback rate for bicycles than for mere bicycle parts, which gives an incentive to Chinese exporters to classify exports of components as exports of complete bicycles. In those circumstances, the Chinese statistics for bicycle exports are artificially inflated, since most of the bicycles exported were really bicycle parts. The People's Republic of China therefore exported significantly fewer bicycles to Indonesia than shown in table 2 of the contested regulation.

50 In the second place, the applicant considers that the data used to establish a change in the pattern of trade is insufficient to support a finding of transhipment, in that there is no obvious correlation between imports of bicycles from China into Indonesia and exports from Indonesia to the European Union

51 In the third place, the applicant submits that the Council failed to consider alternative explanations for the supposed change in the pattern of trade. Moreover, its analysis of production capacities is inconclusive and relates to the wrong period.

52 The Council contends that all the applicant's arguments are unfounded.

53 In that regard, in the first place it must be noted that it is apparent from the document listing the various drawback rates for bicycles and bicycle parts, submitted by the applicant, that there do indeed seem to be different value added tax ('VAT') drawback rates for bicycle parts and for complete bicycles.

54 However, the applicant has adduced no evidence capable of proving that, as a consequence, the Chinese exporters or the Customs authorities declared exports of mere bicycle parts as exports of complete bicycles. The applicant has presented only documents concerning a limited number of

transactions. Should those documents have any evidential value as regards the existence of that practice, they could not in themselves show that the practice was sufficiently common in order to call in question the statistics used by the Council. In short, the applicant has not shown, in any event, that the practice was sufficiently common in order to call in question the validity of the Chinese statistics.

55 Secondly, the applicant submits that, during its investigation, the Commission could easily have detected the existence of such a practice, since the latter was well known in the industry. In essence, the applicant argues that the Commission failed to fulfil its duty of diligence.

56 In that regard, first, the Council states, without being disproved by the applicant, that none of the other parties concerned by that investigation or by the other investigations conducted at the same time seems to have mentioned the existence of such a practice. In addition, the Indonesian and Chinese authorities, to whom the findings of the anti-circumvention investigation were disclosed, have at no stage questioned the reliability of the statistics used in the light of their own figures. There was therefore no need for the Council to doubt the reliability of those statistics.

57 Secondly, it must be noted that the applicant notified the alleged existence of that practice only on 28 May 2013, that is to say the day before the adoption of the contested regulation and more than 40 days after the expiry of the time-limit for submitting observations on the general disclosure document. It had not mentioned the practice beforehand. The applicant's argument was therefore advanced at a particularly late stage of the investigation.

58 In those circumstances, the applicant has not established the existence of an error of assessment or a failure to observe the principle of diligence on the part of the EU institutions as regards the statistics used.

59 In the second place, it must be found that the figures put forward by the Council, in recitals 45 to 55 of the contested regulation, show the existence of a change in the pattern of trade, within the meaning of Article 13(1) of the basic regulation, between China and the European Union, between China and Indonesia and, lastly, between Indonesia and the European Union.

60 First, it is apparent from recital 45 and Table 1 of the contested regulation that the exports of bicycles from China to the European Union decreased by over 80% during the investigation period. Between the increase of the duties in 2005 and the end of the reporting period, imports also decreased to a third of the 2005 level. Secondly, the exports of bicycles from China to Indonesia increased by over 83% during the investigation period, as is apparent from recital 51 and Table 2 of the contested regulation. Thirdly, the imports of bicycles from Indonesia to the European Union increased by a factor of 2.6 during the investigation period. As is apparent from recital 46 and Table 1 of the contested regulation, although the imports from Indonesia decreased in 2009, they remained at levels well above those of 2004 and 2005 and increased again between 2010 and 2012.

61 Admittedly, as the applicant states, in 2007 the Indonesian imports from China decreased by 10.1%, while the Indonesian exports to the European Union increased by 18.6%. However, such an annual variation cannot call in question the trend emerging from the figures of the EU institutions. As the Council correctly states, a time lag between the change in flows between China and Indonesia and between Indonesia and the European Union may arise, in particular, because of the existence of stocks.

62 In those circumstances, the Council did not err in concluding, on the basis of those figures, that there had been a change in the pattern of trade.

63 In the third place, the applicant submits that the Council failed to take into account alternative explanations to circumvention when examining the trend in exports from Indonesia to the European Union.

64 In that regard, it must be noted that the basic regulation does not confer on the Commission investigating powers enabling it to compel companies to participate in an investigation or to produce information. In those circumstances, the Council and the Commission depend on the voluntary cooperation of the parties in supplying the necessary information within the time-limits set (judgment of 24 May 2012 in *JBF RAK* v *Council*, T-555/10, EU:T:2012:262, paragraph 80).

65 In the present case, first, it must be stated that it is apparent from the documents before the Court that no alternative explanation was put forward during the investigation. In particular, the Council states that the Indonesian authorities have not put forward any observations which would contradict the findings concerning the cause of the change in the pattern of trade.

66 Secondly, it must be noted that the applicant itself, during the administrative and judicial stages, has not put forward an alternative explanation capable of explaining the change in the pattern of trade, other than by the imposition of the initial anti-dumping duty. With the exception of its criticism of the Council's analysis of the changes in production volumes, the applicant simply stated that the Council had failed to take into account alternative explanations to circumvention, without clarifying that statement.

67 As regards the change in production volumes, the applicant submits that the Council's analysis is incomplete, because it relates neither to the investigation period as a whole nor to all the Indonesian exporting companies.

68 It is apparent from recital 56 and Table 3 of the contested regulation that the EU institutions investigated the change in the production volumes of the cooperating companies between 2009 and the end of the reporting period. It is apparent from that analysis that the output of the cooperating Indonesian companies increased by 54% during that period.

69 In that regard, it must be noted, first of all, that it was legitimate for the EU institutions to rely on the figures of the cooperating Indonesian companies alone, since the figures for the other companies were consequently neither available nor reliable. Next, as the Council rightly noted, it is apparent from the tables to be completed, in annex to the exemption form, that the applicants had to provide information concerning their production volumes as from 2004. The Commission did indeed therefore investigate the production volumes for the whole of the investigation period. In its pleadings, the Council has justified limiting itself to the period from 2009 to August 2012 because the data relating to the first years was not fully complete for all the companies.

70 Consequently, since no justification other than the imposition of an anti-dumping duty has come to light during the investigation and the applicant has not put forward any specific evidence in that regard during the administrative and judicial stages, the Council was properly entitled to conclude that there was no alternative explanation for the change in the pattern of trade.

71 The first part of the first plea in law must therefore be rejected in its entirety as unfounded.

– The carrying out of transhipment operations

72 In the context of the second part of the present plea, the applicant puts forward three claims.

73 In the first place, the applicant submits that the Council committed a manifest error of assessment by concluding, in recital 62 of the contested regulation (see paragraph 23 above), that it did not own sufficient equipment to justify its volumes of exports into the European Union.

74 In the second place, the applicant maintains that the Council erred in law by inferring transhipment merely from the change in the pattern of trade. The Council neither provided evidence of such transhipment operations nor established a causal link between such operations and the supposed change in the pattern of trade.

75 In the third place, the applicant submits that, for want of any other evidence, the information which it provided should have constituted the facts available, within the meaning of Article 18(1) of the basic regulation.

76 The Council disputes all the applicant's arguments.

77 As regards the first claim, the applicant submits that it is indeed an Indonesian bicycle producer and that it cannot therefore be involved in circumvention practices. It states that it is apparent from its reply to the exemption form, in particular, that [*confidential*].[1] It does not deny that it imported a certain number of components from China. Those components were then used in order to manufacture bicycles at its factory based in Tangerang (Indonesia), which employed around [*confidential*]. The applicant states that the manufacturing process carried out at its factory comprised all bicycle production stages.

78 The applicant relies essentially on its reply to the exemption form and an audit report by Bureau V. of 28 November 2011, which was followed up on 16 July 2012, in order to argue that the Council had sufficient information from which to conclude that there was no transhipment.

79 In addition, the applicant submits that the fact, first, that its equipment showed no signs of wear at the time of the verification visit and, secondly, that its factory was not in operation at the time of that visit, has no evidential value, contrary to the Council's contentions. The applicant also states that the Council's assertion in recital 29 of the contested regulation that it was sourcing bicycle parts from a Chinese manufacturer is in contradiction with the finding that it did not manufacture bicycles itself and also the transhipment finding.

80 In that regard, it must be noted that the basic regulation does not confer on the Commission investigating powers enabling it to compel companies to participate in an investigation or to produce information. In those circumstances, the Council and the Commission depend on the voluntary cooperation of the parties in supplying the necessary information within the time-limits set. In that context, the information submitted in the exemption form and the subsequent on-the-spot verification which the Commission may carry out are essential to the operation of the anti-circumvention procedure. The cooperating companies must therefore be precise and accurate in the information and evidence they submit both in their replies to the written and oral questions and during the verification visit (see, to that effect, judgment in *JBF RAK* v *Council*, paragraph 64 above, EU:T:2012:262, paragraph 80 and the case-law cited).

81 In the present case, it must be found that the applicant did indeed provide a certain amount of relevant evidence in the exemption form and the revised exemption form. In particular, it provided aggregated information, in the context of the tables annexed to those forms, in relation to its production capacities, its actual production, its export sales, its turnover, certain financial and accounting information, such as the factory's overheads, stocks, purchases of parts and the origin of those purchases, the manufacturing process and production costs. The applicant also produced financial statements.

1 — Confidential data omitted.

82 However, in the first place, it must be noted that the information provided by the applicant in the first exemption form, submitted on 5 November 2012, turned out to be deficient because it was to a large extent incomplete.

83 The information provided in the exemption form submitted on 5 November 2012 did not enable, in particular, either the respective cost of the bicycle parts or their origin to be determined, which made it impossible at that stage to determine whether the applicant was an Indonesian bicycle producer and therefore grant it an exemption under Article 13(2) of the basic regulation.

84 By its letter of 29 November 2012, the Commission requested the applicant, by means of 13 precise questions, to provide it with the missing information by 3 December 2012 at the latest, that is to say before the verification visit. By its letter of 3 December 2012, the applicant provided information only in relation to two of the Commission's 13 questions, which the applicant does not deny.

85 In the second place, during the verification visit of 6 and 7 December 2012, the applicant provided a revised version of the exemption form in which only certain points had been updated, namely information on bicycle parts purchased in countries other than China. However, the information provided in the revised exemption form remains incomplete, which the applicant moreover does not deny. In particular, as regards the data concerning its exports, the applicant failed to provide, inter alia, the CIF (costs, insurance, freight) values of certain transactions to the European Union. The applicant also failed to declare packaging expenses, warranty expenses and bank charges.

86 The information provided in the revised exemption form also proved contradictory and unverifiable.

87 First, the figures provided in the two tables, annexed to the exemption forms submitted, concerning the origin of the bicycle parts purchased by the applicant, were inconsistent, which the applicant does not deny. However, those figures are essential in the context of a procedure concerning a possible circumvention of anti-dumping duties.

88 Secondly, it is apparent from the documents before the Court that the applicant's staff failed during the verification visit, first, to provide the worksheets used in order to complete the exemption form (see, in that regard, paragraph 112 below) and, secondly, to explain how the figures provided in the exemption forms had been established, which the applicant does not deny. It seems that the figures provided by the applicant were established manually, using just a calculator.

89 Thirdly, it is apparent also from the documents before the Court that the applicant has not been able to produce documents other than its tax declarations, certain customs documents and several copies of invoices. The applicant did not have audited annual accounts or accounting systems enabling the figures put forward in the exemption forms and the completeness of the lists of transactions to be checked easily. It has not for example been possible to correlate production volumes with sales and stocks. It must be pointed out, in that regard, that by its letter of 27 November 2012 the Commission had informed the applicant beforehand that it would have to provide all documents at the verification visit, in particular the worksheets, enabling the Commission to verify the figures put forward in the exemption form.

90 In the third place, after the verification visit, by its letter of 28 January 2013 informing the applicant of its intention to apply Article 18(1) of the basic regulation, the Commission again gave the applicant the opportunity of providing the necessary documents. The applicant's reply of 4 February 2013, a single page long, did not add any substantive new evidence in that regard, since the applicant in essence simply restated that it had cooperated properly. In the reply to the general disclosure document of 9 April 2013, the applicant still did not provide concrete evidence capable of justifying the figures put forward in the exemption form, nor did it do so in its belated letter of 28 May 2013.

91 In the fourth place, as regards Bureau V.'s audit report of 28 November 2011, which was followed up on 16 July 2012, it must be found that that report does not, in any event, show that that applicant itself produced bicycles of Indonesian origin or that it could meet the criteria of Article 13(2) of the basic regulation, as the Council correctly states.

92 That report does not concern the question of whether or not the applicant engaged in practices, processes or work for which there was insufficient due cause or economic justification other than the imposition of the initial anti-dumping duty. The report shows at most that, at the date of publication, the applicant was involved in the production of bicycles, which is not contested. In that regard, it must be noted that the audit report relates essentially to working conditions and effective organisation. It does not therefore contain any relevant data on changes in production volumes and on the origins of the components in particular.

93 In addition, the photos and the video provided by the applicant to the Court also fail to prove that it was a producer of Indonesian bicycles and, therefore, that it was not involved in circumvention within the meaning of Article 13 of the basic regulation, since they do not enable the origin of the raw materials in particular to be determined precisely.

94 Consequently, the exemption forms, the audit report from Bureau V. and the photos submitted at various points of the judicial proceedings, on which the applicant relies, cannot prove that the applicant was indeed an Indonesian exporter or that it met the criteria laid down in Article 13(2) of the basic regulation.

95 None the less, it must be found that, on the basis of the documents before the Court, the Council did not have sufficient evidence from which it could expressly conclude, in recital 62 of the contested regulation, that the applicant did not have sufficient production capacity, in the light of the volumes exported into the European Union, nor therefore that it was involved in transhipment operations, that it to say the consignment of the product subject to the measures via third countries.

96 In that regard, in the first place, it must be pointed out that the Council's reasoning is based in large measure on the findings of the Commission's agents during the verification visit.

97 According to the Commission's agents, it became apparent, in particular, that the applicant did not have the machinery to produce the parts in the volumes that it was claiming to produce. They noted that the applicant's production site was locked when they arrived and that certain machines were new or had probably not been used recently. In addition, there were no cutting or welding machines. The Commission's agents asked unsuccessfully to see the raw material for the alloy rims and the raw frames. However, they found boxes of complete bicycles, bearing the sign 'made in Indonesia', with no mention of the applicant's Chinese supplier, and other boxes filled with frames bearing no origin. The team noticed that all the frames seen were delivered by suppliers and already painted. Lastly, the applicant's employees were unable to explain the production process.

98 None of those findings, either individually or taken together, points convincingly to the existence of transhipment.

99 Since the undertaking's activity slowed down markedly after the anti-circumvention proceedings were initiated, no conclusions can be drawn from the fact that the factory was in a good state and the stocks of raw materials were low at the time of the verification visit. In that regard, the applicant has indeed stated that it had sold certain components of its production chain in the light of the fall in its activity. It also stated, with supporting invoices, that certain production machines had been purchased recently, following a fire in its factory on 23 April 2009. It therefore reinvested on two occasions, in May 2009 and July 2011, in particular in assembly lines.

100 Admittedly, certain findings, such as the fact that the applicant's Chinese supplier was not mentioned anywhere or that certain boxes were filled with frames bearing no origin helped generate uncertainty as to the applicant's actual activities, which was borne out moreover by the fact the applicant failed to justify the figures provided in the exemption forms. However, those factors do not in any way show that there was transhipment by the applicant.

101 As regards the fact that the applicant's employees encountered during the verification visit were not able to clarify the production process, which is moreover disputed by the applicant, it must be found that it is apparent from the Council's written replies to the written questions of the Court that the Commission's team met only employees in the sales department, not production specialists.

102 In the second place, the Council relied, as regards the findings of fact set out in paragraph 97 above, almost exclusively on the mission report of the Commission's agents, to the exception of any other material evidence. However, most of the report's findings are disputed by the applicant, in particular as regards the fact that the assembly lines did not operate or that certain stocks of raw materials did not exist. Admittedly, in its pleadings and at the hearing, the Council did indeed refer to certain photos submitted by the applicant or taken by the Commission's agents during the verification visit. None the less, those photos give no indication as to whether the applicant was engaged in transhipment.

103 In the third place, the Council also bases its reasoning on the fact that the applicant failed to provide evidence showing that it was indeed an Indonesian producer or that it met the criteria laid down in Article 13(2) of the basic regulation. Although that finding has been upheld in paragraph 94 above, it cannot follow from this in itself that the applicant was engaged in transhipment operations.

104 In the light of the foregoing considerations in paragraphs 95 to 103, the Council did not have sufficient evidence in order to conclude that the applicant did not have sufficient production capacity to justify the volumes exported to the European Union and that it was therefore engaged in transhipment.

105 Admittedly, it cannot be ruled out that the practices, processes or work for which there is insufficient due cause or economic justification other than the imposition of the initial anti-dumping duty, within the meaning of the second subparagraph of Article 13(1) of the basic regulation, included the engagement of the applicant in transhipment operations. However, contrary to what the Commission stated at the hearing, the fact that the applicant was unable to show that it was indeed an Indonesian producer or that it satisfied Article 13(2) of the basic regulation did not enable the Council to conclude by default that the applicant was engaged in transhipment, such a power being apparent neither from the basic regulation nor the case-law.

106 In those circumstances, the second part of the first plea in law must be upheld, and there is no need to deal with the applicant's other claims.

The second plea in law, alleging infringements of Article 18 of the basic regulation, of the principle of proportionality and of the obligation to state reasons

107 The second plea in law is divided into four parts intended to show that the Council made errors of law and of assessment, in recitals 29 to 33 of the contested regulation, in taking the view that the applicant had not cooperated within the meaning of Article 18 of the basic regulation. By the first part of the plea, the applicant maintains that it cooperated to the best of its ability, which the Council failed to take into account in breach of Article 18 of the basic regulation. By the second part of the plea, also alleging infringement of Article 18 of the basic regulation, the applicant disputes the finding of non-cooperation. By the third part of the plea, the applicant submits that the Council infringed its obligation to state reasons by failing in particular to explain which available facts, within the meaning of Article 18(1) of the basic regulation, it took into account. By the fourth part of the plea, the

applicant submits that the Council failed, in breach of Article 18(3) of the basic regulation, to take into account the information provided by it throughout the investigation. In addition, the failure to take into consideration all the information provided by the applicant constitutes an infringement of the principle of proportionality.

108 The Council disputes all the applicant’s arguments.

109 The Court considers that it is necessary to deal, first of all, with the second part of the plea and then in turn with the first, third and fourth parts.

– The finding of non-cooperation

110 The applicant puts forward a number of arguments in support of the second part of the second plea in law, intended to show that the finding of non-cooperation is erroneous. It submits, in particular, that the failure to submit worksheets was not, in itself, sufficient to lead to a finding of non-cooperation.

111 In that regard, it must be noted at the outset that the first sentence of Article 18(1) of the basic regulation authorises the institutions to use the facts available in cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in that regulation, or in which it significantly impedes the investigation. The use of facts available is also authorised if any interested party supplies false or misleading information. It is apparent from the wording of that provision that these four conditions are alternatives, so that if just one of them is satisfied, the institutions may use the facts available as the basis for their provisional or final findings (judgment of 22 May 2014 in *Guangdong Kito Ceramics and Others* v *Council*, T-633/11, EU:T:2014:271, paragraph 44).

112 In the present case, it must be found, in the first place, that the failure to cooperate is not based solely, in the contested regulation, on the failure to submit worksheets enabling the reply to the exemption form to be reconciled with the exporter’s financial and accounting documents. It is also based on the delays in the submission of the information requested, the contradictory and unreliable nature of that information and the difficulties encountered during the verification visit. It has been established, in the context of the first plea in law, that the data provided by the applicant proved incomplete, contradictory and unverifiable. The applicant did not therefore allow access to the necessary information, within the meaning of the case-law cited in paragraph 111 above.

113 In the second place, the applicant states that the discrepancies in the production figures were due to delays between recording periods and the actual rate of production. It submits that its letter of 4 February 2013 is capable of supporting that assertion. However, it suffices to note that there is no evidence in that regard in that letter.

114 In the third place, the applicant states that at least part of the information that it provided was correct, since the Council itself acknowledged that the figures communicated as regards export sales were accurate. It is indeed clear from recital 31 of the contested regulation that the Council endorsed the finding that those figures were correct. However, first, in the Council’s view, those figures concern total export sales, not simply exports to the European Union, which were impossible to reconcile, which the applicant does not deny. Secondly, the fact that the figures concerning exports are correct and verifiable does not imply that the figures concerning the origin of the exported products must themselves be ratified.

115 In the fourth place, the fact that the applicant’s sales manager was also employed at the same time by a Chinese producer which was its main supplier of bicycle parts cannot indeed in itself support a finding of non-cooperation within the meaning of Article 18 of the basic regulation. However, the applicant’s explanations as to the status of that employee were particularly confused, which is relevant to the

assessment of the applicant's cooperation. It must also be noted that in its exemption form the applicant had stated that it was not related to Chinese undertakings. Given that the fact the applicant's sales manager was also employed by a Chinese bicycle company was potentially relevant for the purposes of establishing circumvention via Indonesia, it was, in any event, reasonable for the Commission to question the applicant in that regard and for that fact to be referred to in the contested regulation.

116 In the fifth place, the applicant submits that the failure to cooperate relates only to assembly operations, not transhipment operations. It states, in that regard, that the allegedly insufficient cooperation relates only to the value of the parts of Chinese origin. In the applicant's view, that information was only necessary to determine whether it was engaged in assembly operations, that is whether it was complying with the rules relating to the share of parts imported from China in the total value of the manufactured product, in accordance with Article 13(2) of the basic regulation. Since the circumvention via Indonesia was, in the contested regulation, solely based on transhipment operations, the finding of non-cooperation relates, in the applicant's view, to findings which are irrelevant for the purposes of the claim of circumvention raised by the Council.

117 In that regard, first, it must be noted that it is apparent from the exemption form submitted by the applicant that it sought to show that it met the criteria laid down in Article 13(2) of the basic regulation. It was therefore legitimate for the Commission, in Annex B to the general disclosure document, to give reasons for its decision not to grant the applicant an exemption by stating that it had been unable to perform the calculations relating to those criteria on the basis of the information submitted. It must be noted, in that regard, that the investigation concerned the existence of circumvention via Indonesia, not the existence of a particular form of circumvention. In recital 9 of Regulation No 875/2012 opening the anti-circumvention investigation, the Commission mentioned moreover, as regards Indonesia, possible transhipment and assembly operations.

118 Secondly, it must be noted that the applicant has failed to show that it was indeed a producer of bicycles of Indonesian origin or that it satisfied the criteria laid down in Article 13(2) of the basic regulation, that is to say, that it was unable to prove the origin of the bicycles that it exported in significant numbers to the European Union. The information submitted by the applicant was, in any event, insufficient, since the purpose of the investigation was to determine whether the applicant had participated in circumvention of the initial anti-dumping duty via Indonesia, regardless of the subsequent characterisation of those practices by the Council.

119 In those circumstances, that claim must be rejected as unfounded.

120 The second part of the second plea must therefore be rejected as unfounded as a whole.

– The effects of the applicant's cooperation

121 By the first part of the plea, the applicant submits that the Council failed, in breach of Article 18 of the basic regulation, to take into account the fact that it had cooperated to the best of its ability. The applicant states in that regard, in particular, that it submitted an exemption request and a revised exemption form, and that it agreed to receive the Commission's team during the verification visit. In addition, the cooperation took place in difficult circumstances, in that the applicant had limited administrative resources and was not familiar with the Commission's administrative procedures.

122 In that regard, in the first place, it should be noted that recourse to the facts available is justified where an undertaking refuses to cooperate or where it supplies false or misleading information, the second sentence of Article 18(1) of the basic regulation not requiring that conduct to be intentional. The degree of effort displayed by an interested party in submitting certain information does not necessarily reflect the substantive quality of the information submitted, and in any case is not the only

determinant thereof. Thus, where the requested information is not ultimately obtained, the Commission is entitled to resort to the facts available in respect of the requested information (judgment of 4 March 2010 in *Sun Sang Kong Yuen Shoes Factory* v *Council*, T-409/06, ECR, EU:T:2010:69, paragraphs 103 and 104).

123 In addition, it must be borne in mind that it is for the EU institutions to decide whether, for the purposes of checking the information supplied by an interested party, it is necessary to corroborate that information by a verification visit at the premises of that party and that, where an interested party impedes verification of the information which it has supplied, Article 18 of the basic regulation applies and the facts available may be used. Although a refusal to allow a verification visit to go ahead runs counter to the objective of honest and diligent cooperation which Article 18(1) of the basic regulation seeks to ensure, the fact of agreeing to a verification visit cannot in itself result in a finding of cooperation (see, to that effect, judgment of 25 October 2011 in *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, T-192/08, ECR, EU:T:2011:619, paragraphs 273 and 275).

124 In those circumstances, the submission of an exemption form, and then a revised exemption form, and receiving the Commission's team during the verification visit is not sufficient to lead to a finding of cooperation or an obligation on the EU institutions to take into account deficient information. In addition, the data requested by the Commission, in the present case, cannot be considered to impose a particularly heavy administrative burden. Indeed, according to the Council, there were 16 people employed in the applicant's sales and administration department, which the applicant does not deny.

125 In the second place, it must be noted that Article 18(3) of the basic regulation provides that where the information submitted by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding, that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability. It is evident from the wording of that provision that the four conditions are to be applied cumulatively. Accordingly, if just one of them is not satisfied, that provision cannot be applied and the information in question cannot be taken into account (judgment in *Guangdong Kito Ceramics and Others* v *Council*, paragraph 111 above, EU:T:2014:271, paragraph 100).

126 In the present case, since the applicant has not provided the necessary information, within the meaning of Article 18(1) of the basic regulation, capable of showing that it was indeed a producer of Indonesian origin or that it satisfied the criteria laid down in Article 13(2) of the basic regulation, as has been established in paragraphs 80 to 94 above, Article 18(3) of the basic regulation could not apply. In addition, even if, first, the applicant provided the necessary information and, secondly, it did in fact cooperate to the best of its ability, it has already been established that the information provided was not verifiable.

127 The first part of the second plea in law must therefore be rejected as unfounded.

– The statement of reasons

128 The applicant submits, in the first place, that the Council should have drawn a distinction between cooperation in relation to the claim of assembly and cooperation in relation to the claim of transhipment. The Council failed to specify whether the information provided related to the claim of transhipment or to the claim of assembly and the contested regulation is thus vitiated by a failure to state reasons.

129 In the second place, the applicant argues that, after rejecting all the information provided, the Council failed to clarify the facts available, within the meaning of Article 18(1) of the basic regulation, on the basis of which it reached its finding of circumvention. The applicant also submits that the Council ought to have explained why the facts available used were the best facts.

130 It must be borne in mind that the statement of reasons of a measure of an EU institution must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for it and defend their rights and to enable the Court to exercise its power of review (judgment of 27 September 2005 in *Common Market Fertilizers* v *Commission*, T-134/03 and T-135/03, ECR, EU:T:2005:339, paragraph 156). In addition, the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, to that effect, judgments of 29 February 1996 in *Belgium* v *Commission*, C-56/93, ECR, EU:C:1996:64, paragraph 86, and 27 November 1997 in *Kaysersberg* v *Commission*, T-290/94, ECR, EU:T:1997:186, paragraph 150).

131 In the present case, the Council observed those principles, for the reasons set out below.

132 In the first place, as regards the applicant's argument that the Council ought to have distinguished between cooperation as regards the assembly claim and cooperation as regards the transhipment claim, it must be noted that it has been established in paragraph 117 above that the investigation concerned the existence of circumvention via Indonesia, not the existence of a particular form of circumvention. In addition, the evidence to be taken into account in order to assess cooperation was similar as regards transhipment and assembly. There was therefore no need, contrary to what the applicant claims, to separate the assessment of the applicant's cooperation as regards the claim of assembly and the claim of transhipment.

133 In addition, it must be found that the reasoning set out in recitals 29 to 33 of the contested regulation is correctly substantiated, in the light of the case-law cited in paragraph 130 above.

134 It is apparent from recital 29 of the contested regulation that the Council took the view that the data communicated by the applicant was not reliable. First of all, the applicant did not keep the working sheets used to fill in the exemption form. In those circumstances, it was not able to show that the figures were correct. Next, inaccuracies were found in the figures submitted when the calculations were carried out during the verification visit on the basis of the documents available at the applicant's premises. Lastly, the investigation revealed that the sales manager of the company was in fact at the same time employed by a Chinese producer of bicycles which was the main supplier of bicycle parts to the applicant.

135 It is apparent from recitals 30 and 31 of the contested regulation that, after informing the applicant of its intention to disregard the information submitted, the Commission granted it the opportunity of providing its comments. In those comments, the applicant stated that it was cooperative and had provided all the documents requested, apart from the worksheets which had allegedly never been requested before. The Council states, in that regard, that the worksheets had been requested prior to the on the spot verification. As regards the applicant's argument that the verification calculations carried out on-the-spot were erroneous because of the incorrect explanations of a single worker, the Council states that explanations had been requested from several workers, who had not been able to indicate the source of the numbers stated in the exemption form nor how the numbers had been compiled.

136 The Council therefore concluded, in recitals 32 and 33 of the contested regulation, that the information provided by the applicant had to be disregarded and that the findings with regard to it were based on the facts available in compliance with Article 18 of the basic regulation.

137 In the second place, it must be found that the exact nature of the facts available was indeed not expressly set out by the Council in the contested regulation.

138 However, it is apparent, in particular, from recitals 28 to 33, 45, 46, 50, 51, 55, 56, 92 and 98 to 102 of the contested regulation that the facts available include all the data used by the Council in order to conclude that there was circumvention by the applicant. This includes, in particular, (i) the information enabling it to be concluded that there was a change in the pattern of trade, (ii) the absence of a credible alternative explanation and (iii) the data from the Eurostat Comext database used as a basis, first, for finding that remedial effect of the initial anti-dumping duty was being undermined, and, secondly, that there was evidence of dumping in relation to the normal values previously established. In addition, the facts available include all the relevant evidence of the case, including the complaint (recitals 10 to 17 of the contested regulation).

139 In the third place, as regards the argument that the Council ought to have stated in what way the facts available that were used were the best possible, it must be noted that such an obligation is apparent from neither Article 18(1) of the basic regulation nor from the case-law. Article 18(1) of the basic regulation provides that the Council may base its conclusions on the facts available when the facts submitted are deficient (see paragraph 111 above). Since the facts submitted in the present case were deficient, the Council was not therefore required to state why the facts available used were better than the facts submitted. In addition, it must be noted that the applicant has not argued that other facts available are better than the facts available used by the Council. The applicant's argument must therefore be rejected as unfounded.

140 In those circumstances, the third part of the second plea in law must be rejected as unfounded.

– The taking into account of the additional information provided by the applicant

141 By the fourth part of the second plea in law, the applicant maintains that the Council infringed Article 18(3) of the basic regulation and the principle of proportionality by disregarding all the information provided without considering whether some of the information could be used in connection with the claim of transhipment. It emphasises that it provided the information in good time and that it was easily verifiable, in so far as the claim of transhipment was concerned.

142 In the first place, as regards the alleged infringement of Article 18(3) of the basic regulation, it has been noted, in paragraph 125 above, that in order for Article 18(3) to apply, the four cumulative conditions must be met relating in particular to the fact that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information submitted is verifiable. However, in the present case, it has been established, in the context of the first plea in law, that the information provided by the applicant was incomplete, contradictory and unverifiable, which precluded the application of Article 18(3) of the basic regulation, irrespective of the type of circumvention considered.

143 The claim alleging breach of Article 18(3) of the basic regulation must therefore be rejected as unfounded.

144 In the second place, it must be borne in mind that in accordance with the principle of proportionality, the legality of EU rules is subject to the condition that the means employed must be appropriate to attainment of 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 (judgment of 5 June 1996 in *NMB France and Others* v *Commission*, T-162/94, ECR, EU:T:1996:71, paragraph 69).

145 In the present case, the applicant submits, in essence, that it was disproportionate to disregard the entirety of the information submitted without assessing whether some of that information could be used concerning the claim of transhipment.

146 In that regard, it is sufficient to note that the applicant failed to provide the information showing that it was indeed an Indonesian exporter or that it satisfied the criteria laid down in Article 13(2) of the basic regulation. The Council therefore disregarded that information without infringing the principle of proportionality.

147 In those circumstances, the fourth part of the second plea in law must be rejected as unfounded

148 The second plea in law must therefore be rejected in its entirety.

The third plea in law, alleging infringements of Article 13(1) of the basic regulation and of the principle of equal treatment

149 In the first place, the applicant submits that the Council committed errors of fact and of assessment by using pricing data from Eurostat’s Comext database. In the applicant’s view, it has been recognised in all the review phases of the anti-dumping regulations relating to imports of bicycles and bicycle parts originating in China that the data from Eurostat’s Comext database was not reliable and could not enable conclusive comparisons to be made.

150 In the second place, the applicant submits that the Council infringed Article 13(1) of the basic regulation and the principle of equal treatment by excluding the applicant’s own export price data, the reliability of which was confirmed in recital 31 of the contested regulation. In the applicant’s view, the taking into consideration of the data of the cooperating companies distorted the figures concerning the existence of dumping.

151 The Council disputes the applicant’s arguments.

152 In that regard, it must be noted that it is apparent from Article 13(1) of the basic regulation that in order for there to be circumvention there must be evidence of dumping in relation to the normal values established during the initial anti-dumping investigation.

153 In addition, it is apparent from the basic regulation that the EU institutions must choose the most appropriate method in order to calculate the dumping and that that choice requires an appraisal of complex economic situations (see, to that effect, judgment of 10 March 1992 in *Minolta Camera* v *Council*, C-178/87, ECR, EU:C:1992:112, paragraph 41).

154 In the present case, in the first place, the Court notes that it has been established that the applicant had not cooperated, within the meaning of Article 18 of the basic regulation, since the data provided were not reliable and were unverifiable.

155 Admittedly, it is apparent from recital 31 of the contested regulation that, as regards the value of the export sales, the reconciliation was indeed accurate. However, as the Council contends and the applicant does not deny, only the aggregated value of all exports could be reconciled and verified with the accounting records. In addition, the information provided was incomplete, since the applicant had at no stage provided the necessary information (see, in that regard, paragraphs 85 and 114 above).

156 In those circumstances, since the Council did not have reliable information with regard to the applicant and the companies that did not come forward, it could rightly rely on the information available.

157 In the second place, the applicant calls in question the use of the data from Eurostat's Comext database for the facts available, within the meaning of Article 18(1) of the basic regulation. It refers to Regulation No 1095/2005, Implementing Regulation No 990/2011 and Regulation No 502/2013, in which the reliability of that data was allegedly called in question.

158 In that regard, first, it must be pointed out that the three regulations cited by the applicant did not concern anti-circumvention proceedings. They concerned, respectively, the imposition of a definitive anti-dumping duty, an expiry review and an interim review.

159 Secondly, it must be noted that the export prices of the producers which had not cooperated were calculated in different ways in those three regulations. In Regulation No 1095/2005, the data of the cooperating companies was used, since the data from Eurostat's Comext database was not considered sufficiently precise in the case of a full review of the conclusions relating to dumping and injury. On the other hand, in Implementing Regulation No 990/2011, the data from the Eurostat Comext database was indeed used, only one undertaking having cooperated. In Regulation No 502/2013, the data from Eurostat's Comext database was used only to a certain extent, since that data was again not considered sufficiently precise for the specific case of an interim review.

160 Contrary to the applicant's claims, the data from Eurostat's Comext database was not therefore considered deficient in the three regulations referred to. In addition, it must be pointed out that the dumping was calculated in various ways according to the object of the investigation and the circumstances of the case.

161 Thirdly, those regulations concerned China and Vietnam, not Indonesia. The applicant has not adduced any evidence capable of proving that those findings are also relevant as regards Indonesia.

162 In those circumstances, the applicant's arguments concerning the reliability of the data from Eurostat's Comext database must be rejected as unfounded.

163 In the third place, as regards the arguments alleging an infringement of the principle of equal treatment, the applicant submits that if the figures used by the Council — that is, in the applicant's view, essentially the figures of the cooperating exporters — did constitute evidence of dumping, the Commission should then have opened an anti-dumping investigation with respect to the other Indonesian producers instead of singling out the applicant as the improbable sole cause of the EU industry's difficulties.

164 In that regard, first, it must be noted that the EU institutions concluded that there was evidence of dumping in relation to the normal values previously established during the earlier anti-dumping investigation, not in relation to the normal value of the sales of those exporters on the national market. The findings set out in the contested regulation did not therefore indicate the need to initiate a separate anti-dumping investigation concerning the Indonesian producers. In addition, it must also be noted that the cooperating producers were able to prove that they did not participate in the circumvention, unlike the applicant.

165 Secondly, the Council stated, in reply to a written question from the Court, that the volumes and value of the exports of the cooperating producers were deducted from the aggregate data concerning the whole of the Indonesian exporters available in Eurostat's Comext database. Consequently, the Council did not use the data of the cooperating producers in order to conclude that there was evidence of dumping, contrary to the applicant's claims.

166 In the light of the foregoing (paragraphs 152 to 165 above), it must be concluded that the applicant has failed to establish that the Council made errors of law or of assessment or that the principle of equal treatment was infringed, as regards the existence of evidence that there was dumping.

167 Consequently, the third plea in law must be rejected in its entirety as unfounded.

168 In the light of all the foregoing, in particular paragraph 106, Article 1(1) and (3) of the contested regulation must be annulled to the extent that it concerns the applicant.

Costs

169 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

170 The Commission and Maxcom are to bear their own costs, in accordance with the first and third subparagraphs of Article 87(4) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Annuls Article 1(1) and (3) of Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, to the extent that it concerns Chin Haur Indonesia, PT;**

2. **Orders the Council of the European Union to pay the costs incurred by Chin Haur Indonesia and to bear its own costs;**

3. **Orders the European Commission and Maxcom Ltd to bear their own costs.**

Van der Woude   Wiszniewska-Białecka   Ulloa Rubio

Delivered in open court in Luxembourg on 19 March 2015.

[Signatures]

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