Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

15 November 2018 *

(Dumping — Imports of ferro-silicon originating in Russia — Definitive anti-dumping duty — Expiry review — Determination of the export price — Single economic entity — Reflection of the anti-dumping duty in resale prices in the European Union — Application of a methodology different from that used in an earlier investigation — Continuation or recurrence of dumping and injury — Article 2(9), Article 3 and Article 11(9) and (10) of Regulation (EC) No 1225/2009 (now Article 2(9), Article 3 and Article 11(9) and (10) of Regulation (EU) 2016/1036))

In Case T-487/14,

**Chelyabinsk electrometallurgical integrated plant OAO (CHEMK)**, established in Chelyabinsk (Russia),

**Kuzneckie Ferrosplavy OAO (KF)**, established in Novokuznetsk (Russia),

represented by B. Evtimov and M. Krestiyanova, lawyers,

applicants,

v

**European Commission**, represented by M. França, J.-F. Brakeland, A. Stobiecka-Kuik and A. Demeneix, acting as Agents,

defendant,

supported by

**Euroalliages**, established in Brussels (Belgium), represented by O. Prost and M.-S. Dibling, lawyers,

APPLICATION under Article 263 TFEU for annulment of Commission Implementing Regulation (EU) No 360/2014 of 9 April 2014 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China and Russia, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ 2014 L 107, p. 13), in so far as it concerns the applicants,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni, President, L. Madise (Rapporteur) and R. da Silva Passos, Judges,

Registrar: S. Spyropoulos, Administrator,

* Language of the case: English.

having regard to the written part of the procedure and further to the hearing on 14 December 2017,

gives the following

## Judgment [1]

### Background to the dispute

1 The applicants, Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuzneckie Ferrosplavy OAO (KF), are companies established in Russia, active in the production of ferro-silicon, an alloy used in the manufacture of steel and iron. RFA International, LP ('RFAI') is a company related to those companies. RFAI is established in Canada and has a branch in Switzerland, which is responsible for the applicants' export sales, particularly in the European Union.

[*omissis*]

### Law

31 The applicants put forward three pleas in law in support of their action. In essence, they submit that, first, the Commission failed to comply with Article 2(9) of the basic regulation when determining their product's export price, by refusing to take into account the fact that the applicants constituted a single economic entity with RFAI. Secondly, the Commission, still when determining the export price of their product, also infringed Article 11(9) and (10) of the basic regulation (now Article 11(9) and (10) of Regulation 2016/1036), by deducting the anti-dumping duties paid during the dumping investigation period corresponding to 2012 from the price of the first resale to an independent buyer in the European Union in order to calculate the constructed export price. The applicants claim that the Commission used in that respect a different methodology from that used in the interim review in order to reject the applicants' claim that the anti-dumping duties were fully reflected in the resale price to an independent buyer in the European Union. The application of the same methodology ought to have resulted in those duties not being deducted from that price when the constructed export price was calculated. Thirdly, the applicants submit that the Commission made a series of manifest errors of assessment when analysing the likelihood of a recurrence of injury in the event that the anti-dumping measures affecting Russian products were allowed to lapse.

32 Before analysing the pleas in law summarised above, it must be recalled that in the realm of measures to protect trade, the Commission enjoys a broad discretion by reason of the complexity of the economic, political and legal situations which it has to examine (judgment of 27 September 2007, *Ikea Wholesale*, C-351/04, EU:C:2007:547, paragraph 40). It follows that review of the assessments of those situations by the Courts of the European Union must be limited, beyond reviewing that there has been no error of law, to verifying whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of assessment of the facts or a misuse of power (see, to that effect, judgments of 7 May 1987, *NTN Toyo Bearing and Others* v *Council*, 240/84, EU:C:1987:202, paragraph 19; of 14 March 1990, *Gestetner Holdings* v *Council and Commission*, C-156/87, EU:C:1990:116, paragraph 63; and of 17 March 2015, *RFA International* v *Commission*, T-466/12, EU:T:2015:151, paragraph 37).

1 Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

***The plea alleging an infringement of Article 2(9) of the basic regulation in the construction of the export price***

33 The applicants submit, alleging an error of law and a manifest error of assessment, that the Commission failed to draw the necessary conclusions from the fact that they formed a single economic entity with RFAI. They refer to recitals 61 to 69 of the contested regulation, from which it is clear that the Commission took account of the fact that RFAI was an importer related to the applicants since it applied the provisions of Article 2(9) of the basic regulation as a result. It should be recalled that, in such a case, those provisions make it possible to construct a reliable export price, at the EU frontier level, on the basis of the price at which the imported products are first resold to an independent buyer in the European Union, with the necessary adjustments.

34 The applicants state that the Commission nonetheless deducted from the price of the first resale to an independent buyer in the European Union all of RFAI's costs and related profit margin, whereas it should have limited the deductions to the costs and profits relating to the phase following importation into the European Union. RFAI, it is submitted, carries out for the applicants all the commercial operations connected with the export of their product, including those connected with the product leaving Russia and beyond conveyed to the EU frontier, which should not have been taken into account.

[*omissis*]

42 It must, first of all, be stated that the existence of a single economic entity between a third-country exporting producer and an entity tasked with importing its products and their first sale in the European Union does not preclude the application of Article 2(9) of the basic regulation in order to determine a reliable export price at the EU frontier. On the contrary, such a situation is the most developed case of association between an exporter and an importer, and one which justifies, in the words of that provision, an export price at the EU frontier level being constructed on the basis of the price at which the imported products are first resold to an independent buyer in the territory of the Member States, applying the appropriate adjustments provided for in the second and third subparagraphs of that provision. It is, therefore, of no account, in the light of Article 2(9) of the basic regulation, that the Commission did not adopt a position in the contested regulation on the existence of a single economic entity between RFAI and the applicants, because it noted there, in recital 61 thereof, that they were associated, within the meaning of Article 2(9). The applicants do not deny moreover that that provision applies to their situation, but criticise the way in which the adjustments were made by the Commission, which allegedly failed to take appropriate account of the fact that they formed a single economic entity with RFAI and of the functions the latter carried out apart from its role as importer of the applicants' products in the phase following their arrival at the EU frontier.

43 Nonetheless, the applicants have failed to adduce evidence which would allow the distinctions, which they claimed, to be upheld.

44 As regards the adjustments in respect of selling, general and administrative costs, Article 2(9) of the basic regulation does indeed imply by its nature, as very clearly confirmed in the second subparagraph thereof, that only operations between the arrival at the EU frontier and the first resale to an independent buyer on the territory of the EU Member States are to be taken into account, since the purpose of that provision is to determine by means of a reverse calculation a reliable export price at the EU frontier level. The costs linked to operations before arrival at that frontier or concerning imports and exports in third countries must, therefore, be excluded from those adjustments.

45 However, while the information from the profit and loss account concerning the dumping investigation period corresponding to 2012, provided by the applicants or RFAI in response to the Commission's questionnaire or more precise information provided subsequently during the investigation, referred to in [*omissis*] above, are indeed detailed in the sense that they identify a number of items — (for

example, turnover, cost of products, export transport, export insurance, salaries and bonuses) according to the nature of the products (ferro-silicon under investigation and other products) and according to the destination of those products (independent customers in the European Union, related customers in the European Union, export to independent customers outside the European Union, export to related customers outside the European Union) — they do not make it possible to exclude with certainty, as regards the ferro-silicon under investigation sold to independent customers in the European Union, expenditure not covered by the operations between the arrival at the EU frontier and the first resale to an independent buyer on the territory of the EU Member States. In particular, for a number of items of expenditure mentioned in the reply, there is nothing to indicate the extent to which they also concerned operations prior to arrival at the EU frontier (for example, commissions, salaries and bonuses, financial expenses or income). As indicated in [*omissis*] above, the applicants indeed acknowledge that the breakdown between the costs of the various operations is not apparent in the light of the information provided during the investigation, while maintaining that the Commission ought itself to have requested from them information on that breakdown which they did not have to provide spontaneously. However, as was in essence held in the judgments of 4 May 2017, *RFA International* v *Commission* (C-239/15 P, not published, EU:C:2017:337, paragraphs 34 to 44), and of 17 March 2015, *RFA International* v *Commission* (T-466/12, EU:T:2015:151, paragraphs 44 and 57 to 64 and the case-law cited), where the exporter and importer are associated, as in the present case, it is for the interested party who intends to dispute the extent of the adjustments made on the basis of Article 2(9) of the basic regulation, on the ground that the adjustments determined in respect of selling, general and administrative costs for importation into the European Union are excessive, itself to supply specific evidence and calculations justifying those claims and, in particular, the alternative rate in relation to turnover that it suggests in order to represent the amount of those costs which it considers appropriate. That is in particular relevant when the interested party argues that the Commission has in its possession only overall data likely to cover not only the operations between the arrival at the EU frontier and the first resale to an independent buyer on the territory of the EU Member States, but also the operations prior to that arrival.

46 In those circumstances, the applicants cannot validly complain that the Commission took into account the data supplied during the investigation concerning the dumping investigation period corresponding to 2012, in particular those of the profit and loss account, for the purposes of determining the adjustments to be made in terms of the selling, general and administrative costs of importation into the European Union in order to construct the export price on the basis of the first resale to an independent buyer, without having deducted from the latter a proportion attributable to operations prior to the arrival at the EU frontier. In that regard, as the Commission stated in its written response to a written question from the Court, which is not challenged by the applicants, the final disclosure document that preceded the adoption of the contested regulation contained the rate of turnover representative of those selling, general and administrative costs which the Commission envisaged adopting. While some of the applicants' observations in response to that document related to constituent elements of those costs and led to certain adjustments explained in recitals 84 to 87 of the contested regulation, concerning in particular loan interest or taxes paid in Switzerland (which themselves resulted in the downwards revision of RFAI's net turnover rate selected to represent those costs) it must be found that those observations did not indicate precisely how the costs should be allocated between operations prior to arrival at the EU frontier and operations between that point and the first resale to an independent buyer on the Member States' territory, whereas the applicants could have provided such indications. It must be pointed out incidentally that although the new rate of turnover representative of selling, general and administrative costs selected following the applicants' observations is not included in the contested regulation itself for reasons of confidentiality, it was communicated and explained to the applicants within two days of the contested regulation being adopted, as the Commission set out in its response to the question from the Court. In addition, as regards the costs allocation claimed by the applicants, even if it were claimed in good time, the contention set out in the reply that more than half the value of the items of cost selected by the Commission should be allocated to the operations which took place before arrival at the EU frontier is far too vague and unsubstantiated to be upheld. The few examples of the types of cost mentioned

by the applicants which concerned both types of operation, before and after arrival at the EU frontier, are indeed insufficient for the purposes of determining the allocation of those costs between those operations.

47 As regards, next, the profit margin of 6% of RFAI's net turnover adopted by the Commission, corresponding to the profit margin of independent importers, representing RFAI's profit also to be taken into account in respect of the adjustments in order to construct the export price on the basis of price of the first resale to an independent buyer in the European Union, the applicants' argument that only a proportion of that margin is linked to the operations following the arrival at the EU frontier and should be accepted cannot succeed either. Although, as the applicants argue, the second subparagraph of Article 2(9) of the basic regulation refers in a general manner to 'profits accruing', in respect of the adjustments to be made in constructing a reliable export price, without imposing a priori a particular methodology to determine that profit margin, and although the applicants argued, in response to the final disclosure document that preceded the adoption of the contested regulation, that only about a half of RFAI's total profit should be allocated to the operations after arrival at the EU frontier, those factors cannot reduce the 6% rate chosen in order to evaluate RFAI's profit, linked to those operations, on the basis of its net turnover.

48 First, the distinction claimed by the applicants is not a priori justified as a matter of principle as regards a profit margin which, as in the present case, is derived from observing the activity of independent importers which, except in special cases, take over the products at the EU frontier.

49 Secondly, even if RFAI's profit margin itself were taken as the starting point, the ratio which the applicants propose using — approximately half that margin — was explained by them unconvincingly, on the basis of an extrapolation based on the observation that the cost of their exported products represented 90% of their export turnover, with that cost and turnover supposed to represent the proportion of the operations linked to exportation to the European Union and the proportion of the operations carried out following the arrival at the EU frontier, respectively. That methodology leads to the same factors being counted for both types of operation, since the turnover, achieved by the resale to the independent buyers in the European Union, necessarily includes the cost of the exported product, which it must as a rule cover.

50 In those circumstances, the Commission was entitled to find, in recital 69 of the contested regulation, that it lacked the evidence which would have enabled it, if necessary, to adopt a lower profit margin for RFAI. The Commission was, therefore, perfectly justified in choosing as a profit margin, in respect of the adjustments in order to construct the export price, the margin of independent importers, as acknowledged in the judgment of 5 October 1988, *Canon and Others* v *Council* (277/85 and 300/85, EU:C:1988:467, paragraph 32), since the data provided by entities associated with the producer, who are responsible in particular for importation into the European Union, may be influenced by that association, as was stated in particular in the judgment of 17 March 2015, *RFA International* v *Commission* (T-466/12, EU:T:2015:151, paragraph 68 and the case-law cited). The Commission could, therefore, properly choose the 6% profit margin used during the original investigation, having regard to the absence of cooperation of such importers in the review investigation, as set out for example in recitals 15 and 62 of the contested regulation.

51 The judgments of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP* (C-191/09 P and C-200/09 P, EU:C:2012:78), and of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP* v *Council* (T-249/06, EU:T:2009:62), relied on by the applicants in support of their first plea in law, in no way call into question the approach selected by the Commission, both for evaluating the selling, general and administrative costs and the profit margin. In those judgments, the Court of Justice and the General Court held, in essence, in paragraphs 51 to 56 and paragraphs 177 and 178 of those judgments respectively, that, in the case of a single economic entity comprising the producer but also a legally distinct entity controlled by it and responsible for sales functions to independent buyers, it was necessary, both for determining normal value and the export price, to take

account of the price paid by the first independent buyer, but also the costs which would as a matter of course be met by the producer's internal sales department if the latter had not had recourse for its sales to a legally distinct entity, in order to avoid those costs being omitted in the determination of those different prices. Those substantive considerations are equally as valid, as regards the export price, in the context of its construction under Article 2(9) of the basic regulation and in the context of the adjustments which may be made to it in order to arrive at a fair comparison with normal value under Article 2(10) of the basic regulation, which was the context in which those considerations were formulated in the abovementioned judgments. Consequently, it is not incompatible with those judgments to deduct the selling, general and administrative costs and a profit margin corresponding to the activity of an importer of the products at issue into the European Union, from the price of their first resale to an independent buyer on the Member States' territory in order to calculate a reliable export price when importation is, as in the present case, carried out by an entity legally distinct from the producer, but which, as the applicants maintain, constitutes a single economic entity with it. That assessment is without prejudice to the allocation of the burden of proof regarding the appropriateness of the adjustments to be made when applying Article 2(9) and Article 2(10) of the basic regulation respectively, which was considered in the judgment of 4 May 2017, *RFA International* v *Commission* (C-239/15 P, not published, EU:C:2017:337, paragraphs 40 to 44).

[*omissis*]

***The plea alleging an infringement of Article 11(9) and (10) of the basic regulation in the construction of the export price***

53 The applicants submit that, in calculating the constructed export price, the Commission should not have deducted the anti-dumping duties paid by RFAI during the dumping investigation period corresponding to 2012, since they were fully reflected in the resale prices in the European Union. The Commission therefore infringed Article 11(10) of the basic regulation which states that where it is decided, in the context of a review, to construct the export price in accordance with Article 2(9) of the basic regulation, the Commission must calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the European Union. In addition, in its assessment of the actual impact of anti-dumping duties on the resale prices, the Commission did not assess the actual impact on the basis of the resale price identified at the time of the investigation that led to the initial regulation, but on the basis of current production costs in Russia. In so doing, the Commission did not use the same methodology as that used in the review investigation that led to the interim regulation, and this without providing reasons. Consequently, the Commission also infringed Article 11(9) of the basic regulation, which provides that, in all review investigations carried out pursuant to Article 11, the Commission must, provided that circumstances have not changed, apply the same methodology as in the investigation that led to the duty, with due account being taken of Article 2 of that regulation.

54 The applicants recall that, in [Council Implementing Regulation (EU) No 60/2012 of 16 January 2012 terminating the partial interim review pursuant to Article 11(3) of [the basic regulation] of the anti-dumping measures applicable to imports of ferro-silicon originating, inter alia, in Russia (OJ 2012 L 22, p. 1)], the Commission stated, in recital 25:

'The investigation has established that the weighted average resale prices of ferro-silicon in the Union have increased in comparison with the prices in the original investigation and the current resale export prices are largely more than 22.7% [the anti-dumping duty rate] higher than such prices in the original investigation. Therefore, it can be concluded that the anti-dumping duty is duly reflected in the applicant's resale prices. As a result … in the calculation of the constructed export prices in accordance with Article 2(9) of the basic regulation, no deduction of the anti-dumping duties has been carried out.'

55 In this case, in their comments on the final disclosure document that preceded the adoption of the contested regulation, the applicants provided the Commission with conclusive evidence that the resale prices of their products in the European Union had increased in a higher proportion than the anti-dumping duty of 22.7% between the investigation period that led to the initial regulation and the dumping investigation period corresponding to 2012 that led to the contested regulation. They increased by more than 100% between the two periods.

56 In reply to the arguments raised by the Commission in its defence, the applicants further state, in essence, that Article 11(10) of the basic regulation requires only that the resale prices to the first independent buyer in the European Union include the anti-dumping duty in order for that duty not to be deducted from those prices in calculating the constructed export price; this would necessarily be the case in the absence of any compensatory arrangement with that buyer, when the resale price charged exceeds the resale price used during the investigation that led to the initial regulation by more than the level of the anti-dumping duties. The applicants also reply, as regards the question of the change of methodology in constructing an export price, that the change in production costs does not constitute a change in circumstances within the meaning of Article 11(9) of the basic regulation warranting the use of a new methodology for calculating that price.

[*omissis*]

59 The Court points out that the contested regulation stems from an expiry review pursuant to Article 11(2) of the basic regulation (now Article 11(2) of Regulation 2016/1036). Article 11(10) of that regulation states that when the Commission decides, in that context, to construct the export price in accordance with Article 2(9), it must calculate that price with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the European Union, which the applicants claim is established. In addition, Article 11(9) of the basic regulation provides, in particular, that, in all review investigations carried out pursuant to Article 11, the Commission must, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2. The applicants further maintain that in the present case the circumstances have not changed.

60 In that regard, it has been held that the exception to using the same methodology for the review investigation and the initial investigation had to be interpreted strictly, reflecting the wording and purpose of the provision authorising that exception (see, to that effect, judgment of 18 September 2014, *Valimar*, C-374/12, EU:C:2014:2231, paragraphs 40 to 43 and the case-law cited)

61 In the present case, the applicants do not, however, claim that for the expiry review investigation the same methodology should be applied as in the initial investigation, but rather the same methodology as in the review investigation that led to the interim regulation. The question is whether the anti-dumping duties, which by definition were not in force during the initial investigation period, have been reflected in the resale price.

62 Without it being necessary to rule on the applicability of Article 11(9) of the basic regulation, as such, to the present case, it must be noted that, in the context of applying Article 11(10) of that regulation, in particular in order to ascertain whether the anti-dumping duties must be deducted from the price of the first resale to an independent buyer in the European Union in order to calculate the constructed export price, the same principles as those derived in the context of applying Article 11(9) may be applied. In those different cases, it is a question of ensuring solid analysis in the comparison of complex economic situations in order not only to justify the merits of the measures adopted under the anti-dumping legislation, but also to ensure, between the operators likely to be the subject of those measures, compliance with the general EU law principle of equal treatment.

63 In that regard, a considerable change in the costs of producing the products the subject of an expiry review, between the initial investigation period or an interim review period and the expiry review period, constitutes a change in circumstances justifying, if necessary, a change in methodology in order to construct an export price after the application of anti-dumping duties to the product concerned, which meets the objective mentioned in paragraph 62 above. Indeed, while ensuring the solidity, in the economic analysis, of the comparison of the situation between two periods justifies, as a rule, the application of the same methodology, that is not the case if the relevant parameters have sufficiently changed to render the application of the methodology previously used inappropriate for the purpose of giving a reliable result, in this case in order to assess whether or not the anti-dumping duties were duly reflected in the resale prices and subsequent selling prices in the European Union (see, to that effect and by analogy, judgment of 18 September 2014, *Valimar*, C-374/12, EU:C:2014:2231, paragraphs 50 and 59). As the Commission contends, if the production costs have significantly increased between the two periods compared, an increase in the resale prices in the European Union, even if considerable, does not necessarily guarantee that the anti-dumping duties have been duly reflected, that is to say fully reflected, in the establishment of those prices. Production costs may have increased more than prices. In that case, even if the new prices are higher than the former prices plus anti-dumping duties, the interested parties do not duly incorporate the anti-dumping duties given the change in their production costs.

64 Article 11(10) of the basic regulation in no way implies, in so far as it relates to the issue of whether 'the duty is duly reflected in resale prices', that only the equivalent of the anti-dumping duty should be incorporated into the new resale price over and above the resale price previously charged in order to benefit from a positive response. An additional duty in relation to the costs normally incurred is 'duly reflected' only if it is added to those other costs. If those other costs increase, but the resale price increases by a lesser amount, the duty is in fact only partially added to those costs or not at all, even if the equivalent of the duty has been added to the resale price previously charged. The Commission Notice concerning the reimbursement of anti-dumping duties (OJ 2014 C 164, p. 9), put forward by the applicants at the hearing, in no way contradicts that analysis. The same is true of the judgment of 18 November 2015, *Einhell Germany and Others* v *Commission* (T-73/12, EU:T:2015:865), also relied on by the applicants at the hearing. In particular, paragraph 155 of that judgment states, read in context, that a methodology other than the comparison of resale prices in the European Union charged before the institution of the anti-dumping duties and those charged subsequently may be appropriate to determine whether or not those duties are reflected in the new resale prices in the European Union.

65 The Court points out that the change in production costs may, for the purposes of determining whether the anti-dumping duty is duly reflected in the resale price, if necessary be taken into account in the context of an interim review investigation, an expiry review investigation or a refund investigation, not only on the occasion of an 'anti-absorption investigation' as provided for in Article 12 of the basic regulation (now Article 12 of Regulation 2016/1036) as the applicants implied at the hearing. Although those different types of investigation correspond to different procedural contexts and may indeed result in different measures, in so far as the substantive issue of whether or not the anti-dumping duties are reflected is concerned the parameters of analysis are identical.

66 In the present case, in the context of the interim regulation, the Commission did not note a change in the production costs between the investigation period that led to the initial regulation and the period chosen for the purposes of the interim review. It could, therefore, in the light of its discretion, simply verify that the new resale prices in the European Union charged by RFAI on behalf of the applicants were largely more than 22.7%, the value of the anti-dumping duties, higher than those found in the first of those periods, in order to conclude from this that those duties were duly reflected in those new prices and not to deduct them in constructing the export price.

67 By contrast, in the context of the investigation that led to the contested regulation and in recital 83 thereof, the Commission found that the production costs had increased significantly without being disproved as to the substance by the applicants, in particular in the present action. In those circumstances, in order to determine whether the anti-dumping duties were duly reflected in the resale prices in the European Union charged by the RFAI on behalf of the applicants during the dumping investigation period corresponding to 2012, the Commission was justified in not taking as the basis of analysis the resale prices found during the investigation that led to the initial regulation, but rather the production costs recorded in 2012, even if that constituted a change in methodology as is apparent from recital 83 of the contested regulation.

68 In a situation where, as the Commission noted in recital 83 of the contested regulation, only in 1% of cases the resale prices in the European Union cover the cost of the products, inclusive of the anti-dumping duty, it is far from proven that those duties are in fact duly reflected in those prices.

69 Even the increase in the resale prices in the European Union of 100% between the investigation period that led to the initial regulation and the dumping investigation period corresponding to 2012, put forward by the applicants, is insufficient in that context to show that the anti-dumping duties were fully reflected during the second of those periods. It is sufficient, as indicated in essence in paragraph 63 above, if the production costs have increased by more than 100%, that is to say have more than doubled, for the prices charged not to reflect the anti-dumping duties duly, given the change in production costs. That is a priori proven by the fact, found by the Commission, that in 99% of cases the cost of the products, inclusive of anti-dumping duty, was not covered by the resale prices in the European Union in 2012.

70 The Commission was, therefore, right in deducting the anti-dumping duty from the resale price of the first independent buyer in the European Union in order to calculate the constructed export price for the dumping investigation period corresponding to 2012, since it was not proven that the anti-dumping duty was duly reflected in the first of those prices.

[*omissis*]

**Costs**

100 Under Article 134(1) 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. As the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the Commission.

101 Under Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in paragraphs 1 and 2 of that article to bear its own costs. In the present case, it is appropriate to decide that Euroalliages must bear its own costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuzneckie Ferrosplavy OAO (KF) to bear their own costs and to pay those incurred by the European Commission;**

**3. Orders Euroalliages to bear its own costs.**

Gervasoni Madise da Silva Passos

Delivered in open court in Luxembourg on 15 November 2018.

E. Coulon
Registrar

S. Gervasoni
President