Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

3 December 2019 *

(Dumping — Imports of stainless steel cold-rolled flat products originating in China and Taiwan — Definitive anti-dumping duty — Implementing Regulation (EU) 2015/1429 — Article 2(3) and (5) of Regulation (EC) No 1225/2009 (now Article 2(3) and (5) of Regulation (EU) 2016/1036) — Article 2(1) and (2) of Regulation No 1225/2009 (now Article 2(1) and (2) of Regulation 2016/1036) — Calculation of the normal value — Calculation of the production cost — Sales of the like product intended for consumption on the domestic market of the exporting country)

In Case T-607/15,

Yieh United Steel Corp., established in Kaohsiung City (Taiwan), represented by D. Luff, lawyer,

applicant,

v

European Commission, represented by J.-F. Brakeland and A. Demeneix, acting as Agents,

defendant,

supported by

Eurofer, Association européenne de l'acier, ASBL, established in Luxembourg (Luxembourg), represented by J. Killick, G. Forwood and C. Van Haute, lawyers,

intervener,

APPLICATION pursuant to Article 263 TFEU seeking the annulment in part of Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 224, p. 10),

THE GENERAL COURT (Second Chamber),

composed of E. Buttigieg (Rapporteur), acting as President, B. Berke and M.J. Costeira, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 18 June 2019,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicant, Yieh United Steel Corp., is a company established in Taiwan, which, inter alia, manufactures and distributes stainless steel cold-rolled flat products ('the product concerned').

2 The applicant manufactures the product concerned using hot-rolled coils as a raw material, which are either produced directly by the applicant or purchased from Lianzhong Stainless Steel Co. Ltd ('LISCO'), a related company which produces hot-rolled coils and is established in China. The product concerned is sold by the applicant to EU customers and customers on its domestic market, which include unrelated downstream producers and distributors of the product concerned, and its related downstream producer, the company Yieh Mau.

3 Following a complaint lodged on 13 May 2014 by Eurofer, Association européenne de l'acier, ASBL ('Eurofer'), the European Commission published, on 26 June 2014, a Notice of initiation of an anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2014 C 196, p. 9), pursuant to 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), replaced by Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21); 'the basic regulation').

4 The investigation of dumping and injury covered the period from 1 January to 31 December 2013 ('the investigation period'). The examination of trends relevant for assessing injury covered the period from 1 January 2010 to 31 December 2013.

5 On 22 September 2014, the applicant and its related companies lodged their replies to the Commission's anti-dumping questionnaire. From 17 to 20 November 2014, a verification visit was carried out at the applicant's premises in Taiwan.

6 On 24 March 2015, the Commission adopted Implementing Regulation (EU) 2015/501 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 79, p. 23; 'the provisional regulation'). The provisional regulation imposed a provisional anti-dumping duty of 10.9% on the applicant's product concerned.

7 By letter of 25 March 2015, the Commission disclosed its provisional findings to the applicant, setting out the considerations and essential facts on the basis of which it had been decided to impose a provisional anti-dumping duty ('the provisional disclosure document').

8 In the provisional disclosure document, the Commission addressed, in particular, the issue of its refusal to deduct the value of recycled scrap from the cost of production of the product concerned and the issue of its refusal to take into consideration, for the purposes of determining the normal value, certain of the applicant's sales in the exporting country.

9 On 20 April 2015, the applicant submitted its comments on the provisional disclosure document.

10 On 23 June 2015, the Commission sent its definitive disclosure document to the applicant. On 3 July 2015, the applicant submitted comments thereupon.

11 On 26 August 2015, the Commission adopted Implementing Regulation (EU) 2015/1429 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 224, p. 10; 'the contested regulation'), which amended the provisional regulation and imposed an anti-dumping duty of 6.8% on the imports to the European Union of the product concerned manufactured, in particular, by the applicant.

Procedure and forms of order sought

12 By application lodged at the Court Registry on 27 October 2015, the applicant brought the present action.

13 By decision of 23 December 2015, the case was assigned to the First Chamber of the General Court.

14 By document lodged at the Court Registry on 18 March 2016, Eurofer applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission.

15 By document lodged at the Court Registry on 18 April 2016, the applicant applied for certain information in the application, the defence and the reply to be treated as confidential with regard to Eurofer if the latter were to be granted leave to intervene. It included a non-confidential version of those pleadings as an annex to its application for confidential treatment.

16 By document lodged at the Court Registry on 19 May 2016, the Commission applied for certain information in the rejoinder to be treated as confidential and attached a non-confidential version of the rejoinder to its application.

17 By order of 20 July 2016, the President of the First Chamber of the General Court granted Eurofer leave to intervene. Since, in accordance with Article 144(2) of the Rules of Procedure of the General Court, the applicant and the Commission had requested the confidential treatment of certain information contained in the pleadings referred to in paragraphs 15 and 16 above, that order provisionally restricted disclosure of those pleadings to the intervener to the aforementioned non-confidential versions submitted by the applicant and the Commission, pending the submission of any observations by the intervener on the application for confidential treatment.

18 By document lodged at the Court Registry on 22 August 2016, the applicant applied for certain information in the rejoinder to be treated as confidential with regard to the intervener, and attached a consolidated non-confidential version of the rejoinder to its application.

19 By document lodged at the Court Registry on 12 September 2016, the intervener challenged in part the application for confidential treatment of the application, the defence and the reply.

20 By decision of 6 October 2016, the case was assigned to the Second Chamber of the General Court pursuant to Article 27(5) of the Rules of Procedure.

21 By document lodged at the Court Registry on 9 January 2017, the applicant applied for certain information in its observations on the statement in intervention to be treated as confidential with regard to the intervener, and attached a non-confidential version of those observations to its application.

22 By document lodged at the Court Registry on 1 April 2017, the intervener challenged in part the application for confidential treatment of the applicant's observations on the statement in intervention.

23 By order of 27 September 2017, *Yieh United Steel* v *Commission* (T-607/15, not published, EU:T:2017:698), the President of the Second Chamber of the General Court granted in part the applications for confidential treatment submitted by the applicant and the Commission.

24 By document lodged at the Court Registry on 20 March 2018, the applicant applied for certain information in its observations on the supplementary statement in intervention to be treated as confidential with regard to the intervener, and attached a non-confidential version of those observations to its application.

25 By document lodged at the Court Registry on 23 May 2018, the applicant requested an oral hearing.

26 The applicant claims that the General Court should:

– annul Articles 1 and 2 of the contested regulation in so far as they relate to the applicant;

– order the Commission to pay the costs.

27 The Commission and the intervener contend that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs.

Law

28 In support of its action, the applicant relies on two pleas in law alleging infringement of Article 2(3) and (5) of the basic regulation (now Article 2(3) and (5) of Regulation 2016/1036) and infringement of Article 2(1) and (2) of the basic regulation (now Article 2(1) and (2) of Regulation 2016/1036), respectively.

First plea in law: infringement of Article 2(3) and (5) of the basic regulation and misuse of powers

29 The applicant claims that the Commission committed a manifest error in its appraisal of the facts by refusing to accept the deduction claimed for the value of recycled scrap from the cost of production of the product concerned. It is claimed that the Commission unduly refused to examine the applicant's records and cost allocation methods, and that the Commission's alleged calculation error is not covered by the discretion that it enjoys. That refusal had the effect of increasing the applicant's costs of production and the share of product types for which the normal value was constructed on the basis of sales made at prices below the costs of production, resulting in an overall higher normal value.

30 The applicant argues, in the first place, that the Commission infringed Article 2(5) of the basic regulation by refusing to take into consideration the applicant's accounting records or the cost allocation method that it applied to the loss of hot-rolled coils during production of the product concerned.

31 In that connection, the applicant maintains that, contrary to what the Commission asserts, it did include the yield loss in its calculation of the cost of production of the product concerned reported to the Commission. The applicant notes that it explained, in its comments on the provisional disclosure document of 20 April 2015, on the basis of the records submitted in its reply to the questionnaire, that it had adequately included all yield losses at all stages of production in its table of production costs, whether those related to coils which it produced itself or purchased from its related supplier LISCO. The method applied consisted in identifying a 'unit yield loss', in the form of a ratio, for raw

materials used at all stages of production, allocated not to the cost of raw materials but to the production costs of the next stage of production, which was called the 'conversion cost'. The yield loss was thus calculated as a conversion cost rather than as a cost of materials. It is argued that that method of allocating production costs, known as the 'process costing system', is a well-known and widely accepted accounting technique in the world and in Taiwan for the purposes of Article 2(5) of the basic regulation, which the applicant claims to have explained to the Commission both during the verification visit and in its observations on the provisional findings.

32 It is argued that by ignoring the applicant's verified data and cost allocation methods, and by refusing to consider how the applicant accounted for the yield loss in its costs of production, the Commission reached a conclusion with respect to yield loss that was manifestly wrong.

33 The applicant claims that a balance must be struck between the Commission's obligation to carry out an investigation on time and the legitimate rights of economic operators to see their actual data considered in the course of a neutral and objective investigation, and that the investigative authority must use the producer's cost accounting system when it 'suitably and sufficiently' reproduces the costs incurred for the production of the product concerned.

34 The applicant claims further that the Commission does not dispute the fact that the records produced by the applicant have been audited or that the applicant customarily uses the cost allocation method known as the 'process costing system'. It is argued that the Commission failed to demonstrate how the costs associated with the production and sale of the product concerned are not reasonably reflected in the accounting records, but instead merely expresses doubts to the effect that that method perhaps did not reflect the actual value of each cost item in the present case. Those doubts stem from an irrelevant formula and contradictory use of the applicant's accounting records on the part of the Commission, which does not show how the alternative method that it uses is more reliable and better reflects the actual value of each cost item, thereby infringing Article 2(5) of the basic regulation.

35 The applicant argues more specifically that, in the provisional and definitive disclosure documents and the contested regulation, the Commission stated that the applicant had not accounted for the yield loss of hot-rolled coils purchased from LISCO in the cost of production of the product concerned, which finding already constitutes in itself a manifest error in the assessment of the facts. Furthermore, the explanations that the Commission provided in its provisional and definitive disclosure documents and the contested regulation are also manifestly biased and wrong.

36 In that connection, the applicant submits, first, that the formula used by the Commission in its provisional findings to calculate the volume of hot-rolled coils consumed in the production of the product concerned — whereby that volume is equal to the total cost of raw materials per hot-rolled coil purchased relative to the supply cost of hot-rolled coils — is inadequate bearing in mind the applicant's cost accounting method. That fact invalidates the Commission's erroneous finding that the volume of hot-rolled coils consumed was the same as the volume of production of the product concerned, whereas the volume of raw material consumed would have been higher than the volume of the product concerned had the yield loss been accounted for correctly.

37 Next, the applicant claims that the grounds put forward by the Commission in the provisional findings are also incorrect. First, none of the information provided by the applicant when explaining its cost accounting method was new to the Commission at the time of the provisional disclosure since all cost allocations, including those relating to the yield loss, were clearly shown by the table of production costs which the applicant provided in its reply to the anti-dumping questionnaire, namely the table in Exhibit 54 to the questionnaire. The applicant claims that in its response to the provisional disclosure document, it also provided a new worksheet disaggregating conversion costs to highlight the yield loss. That worksheet was drawn up exclusively from data contained in the provisional disclosure document.

38 Secondly, the unit yield loss that it used to account for the conversion cost was applied, as a value, to all items in the conversion cost, including overheads; the applicant thereby suitably ensured that all costs due to the yield loss, including the overheads loss to produce the 'lost' material, were correctly recorded in its cost accounting system.

39 Thirdly, the applicant argues that, contrary to what the Commission claims, the raw material cost included in the yield loss is not below the amount claimed as scrap deduction, as highlighted by the applicant's explanatory spreadsheet, referred to in paragraph 37 above. The Commission therefore evidently failed to consider the applicant's actual data and cost accounting method regarding yield loss. Furthermore, had the Commission correctly considered the data provided, and had the Commission followed the method that it itself used in its provisional disclosure document to identify consumption of raw material, it would have been able to obtain the actual 'quantity' of raw material consumed in the production of the product concerned.

40 Lastly, the applicant claims that, in the contested regulation, the Commission could have easily calculated the actual 'quantity' of hot-rolled coils consumed in the production of the product concerned on the basis of the available data, by using the method that it had itself applied at the provisional stage, contrary to what the Commission asserts in recital 61 of the contested regulation.

41 The applicant also rejects the Commission's claim that the applicant provided 'piecemeal and fluctuating' information regarding costs of production during the investigation and after the verification visit. The applicant submits that it responded to all items in its reply to the questionnaire, that (i) it subsequently responded on time to all questions the Commission raised before, during and after the verification visit, (ii) it explained why costs of production had changed with the submission, at the Commission's request, of the second table of production costs, (iii) it fully responded to the Commission's supplementary questionnaire, issued on 9 February 2015, after the verification visit and (iv) it again explained its cost allocation method in its observations on the provisional disclosure document, which raised for the first time the refusal to accept deductions for scrap. That method renders any information regarding quantities of hot-rolled coils useless. That information was, however, available to the Commission.

42 Furthermore, the applicant maintains that the Commission's argument that it did not have sufficient data regarding 'quantities' of hot-rolled coils consumed in the production of the product concerned 'that is needed to cross-check the accuracy of [the applicant's] claim' is therefore flawed.

43 First, according to the applicant, information regarding quantities of 'black' coils — that is, those purchased for and consumed in the production of the product concerned — was provided in Exhibit 56 to the reply to the questionnaire. Moreover, the applicant indicated the quantity of 'black' coils sold, which were all produced in-house, in the table in Exhibit 6 entitled 'Reconciliation of sales' (page headed 'Recon by product type'), which was compiled during the verification visit. The Commission could therefore have used a rather simple calculation to obtain the quantity of 'black' coils purchased for and consumed in the production of the product concerned. Accordingly, the required information regarding volume was provided during the administrative procedure. The applicant also distinguished clearly between the 'black' and 'white' (or 'No 1') coils purchased and sold. Secondly, the applicant maintains that it always replied to the Commission's questions during the investigation period, and that specific information pertaining to the quantities of hot-rolled coils that were purchased for and consumed in the production of the product concerned was not requested in the reply to the questionnaire, although Exhibit 56 to that reply provided information on the quantity of 'black' coils. During the verification visit, the applicant also provided information on the quantity of 'black' coils sold after further processing (table in Exhibit 6 'Reconciliation of sales'), allowing the 'black' coils used for downstream production to be identified. After the verification visit, the Commission sent a supplementary questionnaire in which it did not request any additional information regarding quantities of hot-rolled coils purchased or consumed. Thirdly, the information on the volumes of

hot-rolled coils purchased was irrelevant in this case, since the Commission decided in any event not to consider the cost of those purchases and to replace it with the cost of hot-rolled coils produced in-house.

44 The applicant adds that all the information and documents which it provided to the Commission after the verification visit, at the Commission's request, and in its comments on the Commission's findings, were based on data and tables which the Commission had received prior to the verification visit or which the Commission produced itself and which did not require material verification.

45 It is claimed that the Commission is unable to show a document confirming that it clearly requested that the applicant supply the allegedly missing data regarding volumes of hot-rolled coils purchased and consumed and that the applicant refused to provide that data; the applicant actually learned for the first time in the definitive disclosure document that the Commission took issue with the actual quantity of material consumed in the production of the product concerned.

46 More generally, the applicant submits that (i) the Commission never formally requested information on quantities, that this question was not part of the standard questionnaire or the supplementary questionnaire, (ii) the only time the Commission asked for it was during the verification visit, (iii) the applicant provided the information on quantities to which Exhibit 56 to the questionnaire refers, (iv) the Commission never came back to this issue when, during the verification visit, it came up with the idea, which it eventually pursued, of replacing the costs of the purchased hot-rolled coils with the cost of hot-rolled coils produced in-house, and (v) after the verification visit, the Commission only requested that the applicant provide a new table of production costs where the cost of purchased hot-rolled coils was replaced with the cost of hot-rolled coils produced in-house.

47 In conclusion, the Commission's claims that the applicant did not provide sufficient data or failed in its obligation to cooperate are, it is argued, unfounded and cannot justify its refusal to accept the applicant's accounting records and customary cost allocation method that the applicant applied, in clear infringement of Article 2(5) of the basic regulation.

48 In the second place, the applicant claims that, on account of that infringement, the Commission reached the manifestly wrong conclusion that the applicant had not fully included the yield loss of the purchased hot-rolled coils in the cost of production of the product concerned, so that the Commission likewise wrongly rejected a deduction of recycled scrap from the cost of production of the product concerned, thus artificially inflating the normal value in infringement of Article 2(3) of the basic regulation.

49 In that connection, the applicant submits that if, as the Commission maintains, the situation being examined is covered by Article 2(4) of the basic regulation (now Article 2(4) of Regulation 2016/1036), which explains Article 2(3), Article 2(3) is necessarily relevant. Moreover, by placing the emphasis on prices which are 'artificially low', Article 2(3) clearly covers the alleged sales made at a loss. Lastly, only Article 2(3) of the basic regulation provides for the calculation of normal value, and the Commission's calculation error, which artificially increases the normal value, therefore infringes it.

50 In the third place, the applicant claims that by refusing to accept the deduction of recycled scrap metal, the Commission also misused its powers inasmuch as it used the anti-dumping rules to protect EU industry beyond the negotiated balance arrived at by the World Trade Organization (WTO) for the product concerned.

51 The Commission and the intervener dispute the applicant's arguments.

52 As a preliminary point, it should be noted that, as the Court of Justice has pointed out, the determination of the normal value of a product constitutes one of the essential steps required to prove the existence of dumping. In that connection, it is apparent from both the wording and the

scheme of the first subparagraph of Article 2(1) of the basic regulation (now the first subparagraph of Article 2(1) of Regulation 2016/1036) that, in the determination of the normal value, it is the price actually paid or payable in the ordinary course of trade which must, as a matter of priority, be taken into consideration in principle to establish the normal value. Under the first subparagraph of Article 2(3) of the basic regulation (now the first subparagraph of Article 2(3) of Regulation 2016/1036), that principle may be derogated from only when there are no sales of the like product in the 'ordinary course of trade' or when such sales are insufficient or do not permit a proper comparison. Those derogations from the method of establishing the normal value on the basis of actual prices are exhaustive in nature (see judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraphs 20 and 21 and the case-law cited).

53 The Court of Justice has also observed that the purpose of the concept of ordinary course of trade is to ensure that the normal value of a product corresponds as closely as possible to the normal price of the like product on the domestic market of the exporter. Where a sale is concluded on terms and conditions that are incompatible with commercial practice for sales of the like product on that market at the relevant time for determining whether or not dumping has occurred, that sale does not constitute an appropriate basis on which to determine the normal value of the like product on that market (judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 28).

54 However, neither the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103; 'the Anti-Dumping Agreement') set out in Annex 1 A of the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3), nor the basic regulation contains a definition of the concept of 'ordinary course of trade'. Admittedly, the basic regulation explicitly mentions, in Article 2, two cases of sales which, under certain conditions, cannot constitute such sales. In the first place, the third subparagraph of Article 2(1) of the basic regulation (now the third subparagraph of Article 2(1) of Regulation 2016/1036) states that prices between parties which appear to be associated or to have concluded a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined, exceptionally, that those prices are unaffected by that relationship (see judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 23 and the case-law cited). In the second place, under the first subparagraph of Article 2(4) of the basic regulation (now the first subparagraph of Article 2(4) of Regulation 2016/1036), sales of the like product on the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs may be disregarded in determining normal value only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time (see judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraphs 23 and 24 and the case-law cited).

55 Article 2 of the basic regulation does not thereby provide an exhaustive list of the methods making it possible to determine whether the prices were charged in the ordinary course of trade. In that regard, the Court has stated that the ordinary course of trade is a concept which relates to the character of the sales themselves. It is designed to exclude, for the determination of the normal value, situations in which sales on the domestic market are not made under conditions corresponding to the ordinary course of trade, in particular where a product is sold at a price below production costs or where transactions take place between parties which are associated or have a compensatory arrangement with each other (see judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 25 and the case-law cited).

56 In the present case, it is common ground that, in order to compare the normal value of the product concerned with the export prices of that product, 784 types of the product concerned, manufactured by the applicant and identified by product control numbers, were used by the Commission in the investigation. That investigation revealed that, for 21 types of product, the volume of sales on the domestic market was lower than 5% of the volumes exported to the European Union, with the result

that the domestic sales at issue were not representative within the meaning of Article 2(2) of the basic regulation. Moreover, the finding that, for a minority of the applicant's domestic sales, the Commission considered that, contrary to the applicant's allegations, the sale price was below the costs of production within the meaning of Article 2(4) of that regulation, is the result of the Commission's rejection of the request for deduction of recycled scrap from the costs of production concerned which had been made by the applicant in the table in Exhibit 54 to the reply to the anti-dumping questionnaire.

57 As is clear from paragraphs 30, 48 and 50 above, the applicant submits in support of the present plea in law that, by refusing to deduct the value of recycled scrap from the cost of production of the product concerned, the Commission infringed Article 2(3) and (5) of the basic regulation and misused its powers.

58 As regards, in the first place, the alleged infringement of Article 2(3) of the basic regulation, it must be recalled that, in accordance with that provision, where there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison, the normal value of the like product is to be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative. That provision provides that a particular market situation for the product concerned within the meaning of the preceding sentence may be deemed to exist, inter alia, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements (judgment of 15 September 2016, *PT Musim Mas* v *Council*, T-80/14, not published, EU:T:2016:504, paragraph 64).

59 Furthermore, as noted in paragraphs 52 to 55 above, the aim of the concept of ordinary course of trade referred to in Article 2(3) of the basic regulation is to exclude, for the purposes of determining normal value, situations in which sales on the domestic market are not made under normal trade conditions, particularly when a product is sold at a price below the costs of production within the meaning of the first subparagraph of Article 2(4) of the basic regulation.

60 The circumstance that the normal value was, in the present case, constructed for a certain number of commercial transactions declared by the applicant does not result from a finding of a 'particular market situation for the product concerned' pursuant to Article 2(3) of the basic regulation, contrary to what the applicant suggests. It is rather the direct consequence of the Commission's finding that the product concerned was sold at prices below unit cost of production (fixed and variable), plus selling, general and administrative costs within the meaning of the first subparagraph of Article 2(4) of the basic regulation, following the Commission's rejection of the request for deduction of scrap submitted by the applicant.

61 Consequently, an infringement of Article 2(3) of the basic regulation, in so far as it lists the different situations determining the obligation, for the authority responsible for the investigation, to construct the normal value of the exporting producer's product concerned cannot, in any event, be established for the purposes of annulling the contested regulation, irrespective of the finding of infringement of Article 2(4) of that regulation. As noted, in particular, in paragraph 60 above, the contested regulation excludes certain domestic sales from the determination of the normal value on the ground that those sales were not beneficiaries within the meaning of Article 2(4) of the basic regulation; whereas, for the remainder, the applicant does not dispute, in the present action, the method followed by the Commission for the construction of the normal value, as laid down in Article 2(3) of the basic regulation.

62 As regards, in the second place, the alleged infringement of Article 2(5) of the basic regulation, it should be recalled that the Commission's finding that the sales of the product at issue were not beneficiaries for the purposes of Article 2(4) of the basic regulation was the consequence of its refusal to accept, in the absence of sufficient evidence, the request for deduction from the cost of production

of the product concerned of the value of scrap metal recycled from the loss of hot-rolled coils, which is yielded during production of the product concerned. The applicant takes the view that that refusal infringes Article 2(5) of the basic regulation in addition to Article 2(3) of that regulation, inasmuch as the Commission wrongly refused to take into consideration the applicant's accounting records and the cost allocation method applied to yield losses.

63 It is apparent from the first subparagraph of Article 2(5) of the basic regulation (now the first subparagraph of Article 2(5) of Regulation 2016/1036) that the costs of production are normally to be calculated on the basis of the records kept by the party under investigation, provided that those records are in accordance with the generally accepted accounting principles of the country concerned and reasonably reflect the costs associated with the production and sale of the product in question.

64 Under the second subparagraph of Article 2(5) of the basic regulation (now the second subparagraph of Article 2(5) of Regulation 2016/1036), if costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they are to be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

65 The third subparagraph of Article 2(5) of the basic regulation (now the third subparagraph of Article 2(5) of Regulation 2016/1036) adds that consideration is to be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised.

66 It therefore follows from the wording of the first subparagraph of Article 2(5) of the basic regulation that the records kept by the party under investigation are the prime source of information in order to establish the costs of production of the product concerned and that the use of the data included in those records constitutes the rule and the adaptation or replacement of that data on another reasonable basis is the exception. Since a derogation from or exception to a general rule must be interpreted narrowly, it must be considered that the exception arising from Article 2(5) of the basic regulation must be interpreted narrowly (see, to that effect, judgment of 15 September 2016, *PT Musim Mas* v *Council*, T-80/14, not published, EU:T:2016:504, paragraphs 68, 69 and 83).

67 Furthermore, as regards the burden of establishing the existence of factors justifying the application of the first subparagraph of Article 2(5) of the basic regulation, where the institutions consider that they must disregard the costs of production contained in the records of the party under investigation and replace them with another price deemed reasonable, the institutions must rely on direct evidence, or at least on circumstantial evidence pointing to the existence of the factor for which the adjustment was made (judgment of 15 September 2016, *PT Musim Mas* v *Council*, T-80/14, not published, EU:T:2016:504, paragraph 82).

68 Lastly, it should also be noted that, in the sphere of measures to protect trade, the institutions enjoy a wide discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see judgment of 23 September 2009, *Dongguan Nanzha Leco Stationery* v *Council*, T-296/06, not published, EU:T:2009:347, paragraph 40 and the case-law cited). Consequently, review by the EU Courts of assessments made by the institutions must be limited to establishing 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 those facts or a misuse of power (see judgments of 28 October 2004, *Shanghai Teraoka Electronic* v *Council*, T-35/01, EU:T:2004:317, paragraphs 48 and 49 and the case-law cited, and of 4 October 2006, *Moser Baer India* v *Council*, T-300/03, EU:T:2006:289, paragraph 28 and the case-law cited). That limited judicial review covers, in particular, the choice between the different methods of calculating the

dumping margin and the assessment of the normal value of a product (see judgment of 23 September 2009, *Dongguan Nanzha Leco Stationery* v *Council*, T-296/06, not published, EU:T:2009:347, paragraph 41 and the case-law cited).

69 It is in the light of those considerations that the Court must examine whether the Commission's refusal to accept the deduction of recycled scrap, as claimed by the applicant, from the cost of production of the product concerned infringes Article 2(5) of the basic regulation.

70 First, it is clear that, as is apparent from the case-law recalled in paragraphs 66 and 67 above, Article 2(5) of the basic regulation did not require the Commission to accept unconditionally and without carrying out the necessary checks the information relating to the costs of production and the scrap deduction contained in the applicant's accounting records.

71 That conclusion is confirmed by Article 6(8) of the basic regulation (now Article 6(8) of Regulation 2016/1036) which provides that, except in the circumstances provided for in Article 18 of the basic regulation (now Article 18 of Regulation 2016/1036), the information which is supplied by interested parties and upon which findings are based is to be examined for accuracy as far as possible (see, by analogy, judgment of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 32), and notwithstanding the applicant's claim that (i) the cost allocation method, known as the 'process costing system', which the applicant claims to have used for the purposes of calculating the costs of production of the product concerned, is widely known and accepted, and (ii) the accounting records were kept in accordance with the accounting principles generally accepted in Taiwan. Similarly, Article 6.6 of the Anti-Dumping Agreement provides that, except in circumstances provided for in Article 6.8, the authorities are, during the course of an investigation, to satisfy themselves as to 'the accuracy of the information supplied by interested parties upon which their findings are based'. That obligation to carry out checks is, in the context of the imposition of anti-dumping measures, the expression of a more general principle which requires any authority, notwithstanding its broad discretion, to conduct a precise examination and to base its assessment on evidence of sufficient quality (see, by analogy, judgment of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, not published, EU:T:2014:1076, paragraph 101).

72 In that context, it should be recalled, inter alia, that it follows from Article 6(2) of the basic regulation (now Article 6(2) of Regulation 2016/1036) that a questionnaire is prepared and sent to interested parties by the Commission's services, for the purposes of obtaining the information necessary for the anti-dumping investigation and that those parties are required to provide those services with the information that will enable it to complete the anti-dumping investigation (judgment of 14 December 2017, *EBMA* v *Giant (China)*, C-61/16 P, EU:C:2017:968, paragraphs 50 and 51).

73 That finding is further confirmed by Article 16(1) and (3) of the basic regulation (now Article 16(1) and (3) of Regulation 2016/1036), under which (i) the Commission is authorised to carry out visits in order, in particular, to verify the information provided concerning dumping and injury and (ii) the undertakings concerned are to be advised of the nature of the information to be verified and any other information which needs to be provided during such visits, though this should not preclude requests made during the verification visit for further details to be provided in the light of information obtained. It follows, in particular, that the information contained in the records of the undertaking concerned must be cross-checked.

74 One of the tools available to the investigating authority for fulfilling its obligation under Article 6(8) of the basic regulation is the on-the-spot verification visit pursuant to Article 16 of that regulation, should that authority deem it appropriate. Article 6.7 of the Anti-Dumping Agreement provides that, 'in order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other [Member States] as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member [State] in question, and unless that [State] objects to the investigation'.

75 As the Court has already held, the replies of those parties to the questionnaire referred to in Article 6(2) of the basic regulation, and the subsequent on-the-spot verification which the Commission may carry out under Article 16 of that regulation, are essential to the operation of the anti-dumping procedure (see judgment of 30 April 2015, *VTZ and Others* v *Council*, T-432/12, not published, EU:T:2015:248, paragraph 29 and the case-law cited).

76 It should also be recalled that, in accordance with Article 18(3) of the basic regulation (now Article 18(3) of Regulation 2016/1036), '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'. Moreover, it follows from Article 18(3) and (6) of the basic regulation (now Article 18(3) and (6) of Regulation 2016/1036) that the information which the interested parties are required to provide to the Commission must be used by the EU institutions for the purpose of establishing the findings of the anti-dumping investigation and that those parties must not omit relevant information. Whether an item of information is necessary must be ascertained on a case-by-case basis (judgment of 14 December 2017, *EBMA* v *Giant (China)*, C-61/16, EU:C:2017:968, paragraph 52).

77 Moreover, as the EU Courts have already observed, it is admittedly for the Commission, as the investigating authority, to establish that the product concerned has been dumped, that there has been injury and that there is a causal link between the dumped imports and the injury. However, in so far as there is no provision in the basic regulation conferring on the Commission the power to compel producers or exporters which are the subject of a complaint to participate in the investigation or to produce information, that institution depends on the voluntary cooperation of the parties in supplying the necessary information (see, by analogy, judgment of 30 April 2015, *VTZ and Others* v *Council*, T-432/12, not published, EU:T:2015:248, paragraph 29).

78 It follows from the foregoing considerations that the verification is intended to enable the Commission to perform its task and, particularly, to understand and verify the methods used in compiling data and, more generally, to ensure the 'accuracy' of the information provided by the undertaking subject to verification which must, exhaustively and to the best of its abilities, answer the questions put by the Commission and must not omit to provide all the information and relevant explanations so as to enable the Commission to carry out the necessary cross-checking in order to verify the accuracy of the information provided and reach reasonably correct conclusions in timely fashion and, in any event, before such verification is completed, failing which the information and explanations can no longer be taken into account. As the intervener rightly observes, that is the case in particular with regard, as in the present case, to figures that may be compiled on the basis of different situations and the verification of which is essential to ensuring the integrity of the process, when, furthermore, it is common ground, inter alia, that the applicant had declared a low profit of [*confidential*] [1] on domestic sales of the product concerned.

79 In that latter respect, it should be recalled more specifically that, as has been noted, inter alia, in paragraphs 54 and 55 above, pursuant to the first subparagraph of Article 2(4) of the basic regulation, sales of the product concerned on the domestic market of the exporting country at prices below unit costs of production (fixed and variable) plus selling, general and administrative costs may, in certain circumstances, be treated as not being in the ordinary course of trade. The concept of the ordinary course of trade is meant to exclude, for the purpose of determining the normal value, situations in which sales on the domestic market are not made under ordinary trade conditions, in particular where a product is sold at a price below production costs (see judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 25 and the case-law cited).

1 Confidential information omitted

80 The verification of the profitability of sales on the domestic market is therefore a key element of the anti-dumping investigation. To that end, in particular, the anti-dumping questionnaire provides two specific sections, headed 'Production costs' (section F) and 'Profitability' (section G), respectively. The on-the-spot verification allows the Commission to carry out other checks further to the responses received in the interim from the undertaking under inspection.

81 The Commission takes the view that the investigation revealed that the accounting technique used by the applicant to take into account the scrap deduction allowed it to deduct, first, the material losses incurred during the production process and, secondly, parts of those material losses which has been converted into scrap metal, which ultimately led to a double deduction of the latter losses from the costs of production. Although the applicant attempted to explain its cost accounting system during the on-the-spot verification visit, it was only after the adoption of the provisional regulation, in its observations on the provisional findings of 20 April 2015, that the applicant explained that, in its analytical accounting system, the material loss of scrap was actually part of the manufacturing overheads, with the result that they did not appear in the general cost of production.

82 The Commission submits in that connection that the very peculiar cost allocation method used by the applicant — which is based 'on the primary costs', in that it allocates, according to the applicant's own explanations, the unit yield loss to the various conversion cost items such as labour costs, depreciation electricity costs or other conversion costs — results in the mixing of data on well-defined production costs and more general data on overheads, with the risk of double deduction of the yield loss and artificial reduction of the costs that that comprises, and makes it impossible to verify accurately whether the records do reasonably reflect the costs associated with the production.

83 Moreover, the Commission observes that, for the purposes of verifying the genuineness of the applicant's claim that the cost of production of the product concerned should be lowered on account of the scrap deduction of the scrap claimed, it faced further problems. On the one hand, as is also set out in recital 76 of the provisional regulation, the findings of which are confirmed in recital 62 of the contested regulation, the Commission observes that it was unable to take into consideration the information relating to the purchase price of the significant volume of hot-rolled coils purchased by the applicant from its related supplier LISCO, in that those prices had not been established in line with the arm's length principle. That finding is not disputed by the applicant. On the other hand and above all, as is indicated in recital 61 of the contested regulation, the applicant did not, at any point in time during the administrative procedure, provide reliable and precise information on the actual quantities of hot-rolled products purchased that were consumed in the process of manufacturing the product concerned, but it referred to its accounting methods, whereas it is common ground that the applicant also sells hot-rolled coils, which were consequently not all used in that process.

84 In that connection, the Commission claims, first, that the table of production costs, which is the subject of Exhibit 54 supplied by the applicant in response to the anti-dumping questionnaire, does not indicate the total 'quantity' of hot-rolled coils 'purchased and consumed' in the manufacturing process of the product concerned, when the applicant also sells hot-rolled coils.

85 The Commission claims, secondly, that the revised table of the costs of production of the product concerned — which the applicant provided at the end of the on-the-spot verification visit on 17 November 2014, in response to a request made at the beginning of that visit for information on the quantity of hot-rolled coils purchased from LISCO inasmuch as (i) the initial table of the cost of production of the product manufactured with rolls purchased from LISCO and the cost of production of the product manufactured using rolls produced in-house and where (ii) the applicant had failed to declare separately the cost of production of hot-rolled coils and the cost of production of the product concerned produced using those rolls — referred only to the 'acquisition value' of the rolls purchased, and not to the quantity thereof as had been requested.

86 The Commission claims, thirdly, that in the second revised table of production costs supplied by the applicant on 21 November 2014, after the on-the-spot verification visit — during which the Commission had asked the applicant to indicate, in the table in Exhibit 54 disclosed in the reply to the anti-dumping questionnaire, where it could find the information relating to the actual volume of hot-rolled coils 'purchased and consumed in the manufacture of the product concerned', by explaining that it needed to replace the data concerning the purchase of hot-rolled coils with those relating to in-house production — the unit costs of production were lower than those submitted in the anti-dumping questionnaire and verified on the spot and, accordingly, could not be used by the Commission as they could no longer be verified.

87 It should be noted in that connection that the applicant does not dispute the fact that it did not, at any point in time, state the exact quantity of hot-rolled products purchased from its related supplier LISCO, which were used specifically in the manufacture of the product concerned.

88 As noted in paragraph 78 above, and even assuming that the applicant did supply, in timely fashion, all the necessary explanations concerning the cost allocation method that it used and that that method can be deemed to be widely accepted and known, the Commission was, in any event, entitled to ask the applicant to supply it with all the essential information that the Commission considered necessary with a view to understanding the methods used in compiling the data at issue and verifying the accuracy of the scrap deduction claimed and, more specifically, the information relating to all quantities of hot-rolled coils that had been used specifically for the manufacture of the product concerned and which constituted the main factor arising in the costs of production of the product concerned, without which the information expressed in value could not be verified by cross-checking and no accurate reconciliation of sales could be made. As the Commission and the intervener both rightly contend, and as is clear from recital 61 of the contested regulation, the information expressed in value presented in the accounts must be verified as far as possible with reliable quantitative data to ensure that the accounts present fairly the actual situation of the company and to be able to verify, in the present case, the validity of the cost allocation method applied by the applicant.

89 The arguments put forward by the applicant to justify the failure to provide information on the exact volume of hot-rolled coils purchased and used specifically for the production of the product concerned cannot be accepted.

90 First, contrary to the applicant's claim, information relating to the volume of 'total purchases of materials used in the production of the product under investigation' was indeed requested in section F, headed 'Cost of Production', sub-section 2, headed 'Production process and cost of production of the product under investigation', paragraph 6 of the anti-dumping questionnaire, whereas, as is clear from paragraph 102 below, the applicant provided, on that basis, Exhibit 56 on the consumption volume of hot-rolled coils in the light of all products produced from those rolls, without restricting that exhibit to the rolls consumed in the manufacture of the product concerned only.

91 Moreover, as noted in paragraph 85 above, in so far as, inter alia, the applicant grouped together the cost of production of the product concerned that it manufactured using hot-rolled coils produced 'in-house' and the cost of production of the product concerned that it manufactured using 'purchased' hot-rolled coils in the same table in Exhibit 54, and as it failed to declare separately the cost of production of hot-rolled coils and the costs of production of the product concerned manufactured from those rolls, the Commission was entitled, without committing a manifest error, to consider that it was impossible for it to verify that all costs were accurately reflected in the cost of production declared, and that special attention was to be given to the accurate allocation of costs by referring to the information relating to the volumes consumed.

92 Contrary to the argument put forward by the applicant, the fact — set out in the provisional findings and in recital 76 of the provisional regulation — that, in the light of the links between the applicant and its supplier LISCO, the Commission had to replace the purchase cost of the hot-rolled coils

purchased from LISCO with the cost of production of the hot-rolled coils manufactured in-house for the purposes of determining the cost of production of the product concerned, in no way resulted in exempting the applicant from providing all the necessary and reliable information, at the express request of the Commission, on the volume of hot-rolled coils purchased and consumed in the manufacture of the product concerned.

93 In the absence of that information, the Commission had in fact to rely on a ratio of quantities of hot-rolled coils, irrespective of the use made thereof, in order to assess the scrap deduction claimed, and replace the unknown quantities purchased from LISCO intended specifically for the production of the product concerned. Moreover, the replacement of the cost of the purchases of hot-rolled coils from LISCO required that the exact volume of the rolls in question be known, inasmuch as the cost of production in-house was applied to that volume. Lastly, as the Commission again rightly observes, in so far as the production process leading from the hot-rolled coil to the cold-rolled flat product is the same whether the hot-rolled coil is purchased or produced in-house, and as, accordingly, the costs/scrap ratio should also be the same in both cases, it is essential to have data on the volume of rolls purchased in order to verify that both production processes lead to the same results and therefore confirm the validity of the data relating to the volume of hot-rolled coils produced in-house.

94 Furthermore, the Court must also reject the argument raised by the applicant in response to a written question put by the General Court and at the hearing, that tracing information concerning the exact volume of hot-rolled coils purchased to manufacture precisely the product concerned would have entailed a disproportionate burden on the applicant in the absence of any insistence on the part of the Commission, and that the applicant could legitimately take the view that the information in question was no longer necessary, if only in so far as (i) the Commission did not, at any point in time, express the slightest intention of withdrawing its request for that information and (ii) the applicant did not demonstrate the diligence to seek clarification from that institution as to whether the request for information had indeed been withdrawn as presumed. As the Commission again rightly observes, it did not go back to that request for information in its supplementary questionnaire, drawn up on 9 February 2015 after the verification visit, for the simple reason that that questionnaire related solely to export sales and did not affect the request in question.

95 The Commission submits that, having consequently been unable to verify the accuracy of the scrap deduction claimed in the absence of complete and reliable information that it had requested in relation to volumes, and in order properly to perform its task of verifying the accuracy of the data provided by the applicant in accordance with the requirements arising, in particular, from Article 6(8) of the basic regulation, it calculated more specifically, on the basis of the data and explanations provided by the applicant, the quantity of recyclable scrap generated in the manufacture of the product concerned by first calculating the total amount corresponding to the product manufactured from hot-rolled coils purchased or produced in-house in respect of three categories of the product concerned, representing together 87.5% of the total production by volume. It is clear from the Commission's explanations that the volume of hot-rolled coils actually consumed in the manufacturing process of the product concerned was calculated by dividing the total value of the hot-rolled coils purchased and consumed in the manufacturing process of the product concerned — as the applicant itself indicated by the applicant in Exhibit 54 to the reply to the anti-dumping questionnaire — by the weighted average price thereof during the investigation period. According to the Commission, the comparison between the two amounts showed that the volume of hot-rolled coils consumed was almost equivalent to the volume of the product concerned produced, a conclusion which applied to both the hot-rolled products purchased and those produced in-house. The conclusion that, in the light of the data provided, the scrap deduction sought had consequently already been made and could not therefore be accepted a second time so as not to create a double deduction of the relevant amount of the costs of production of the various types of product concerned, was explained in recital 77 of the provisional regulation and in Annex 2 to the provisional findings.

96 In its observations on the provisional findings, the applicant disputed the latter conclusions by explaining, for the first time, that the scrap losses — namely the value of the hot-rolled coils transformed into scrap — had been accounted for as forming part of the manufacturing overheads, and by providing a third version of the table on production costs showing scrap losses in a separate column and transferring certain overheads to that new column. Thus, as is apparent from recital 60 of the contested regulation, according to the applicant's explanations, the production loss is equivalent to the total of the material cost not converted into final product, plus the manufacturing overheads allocated to the production loss.

97 In that connection, first, it should be noted that those explanations on the applicant's method of allocating production costs were provided for the first time only in response to the provisional findings, irrespective even of whether that method is, as the applicant maintains, 'well known and widely accepted' and whether the accounting documents at issue are kept 'in accordance with the generally accepted accounting principles of the country concerned' within the meaning of the first subparagraph of Article 2(5) of the basic regulation (now the first subparagraph of Article 2(5) of Regulation 2016/1036). It was for the applicant to provide to the Commission, from the beginning of the procedure and to the best of its ability, all the information necessary for a proper understanding of that method so as not to run the risk of obstructing the proper conduct of the anti-dumping procedure and with a view to allowing the Commission to carry out the necessary checks in timely fashion.

98 Secondly, the Commission noted, by analysing the data supplied further to the provisional findings, that, aside from the fact that the declared amount of reductions in manufacturing overheads in the new table was equivalent to the total amount of declared losses, the scrap value newly claimed as a deduction of costs — that is, an amount of [*confidential*] new Taiwan dollars (TWD) — was actually higher than the value of the raw materials included in the yield losses, that is to say, the scrap losses, in the amount of TWD [*confidential*].

99 It must be held that, in the light of the data and explanations available to the Commission, it is not apparent that the latter's assessments, summarised in paragraphs 95 to 98 above, are vitiated by manifest error, with the effect that the Commission could, without committing a manifest error, find that the information provided in the observations on the provisional findings were both late and unreliable.

100 Furthermore, and in any event — as has been noted, inter alia, in paragraphs 83 to 87 above — neither in the observations on the provisional findings nor in the observations on the definitive findings did the applicant directly provide the exact information requested on the actual quantities of hot-rolled coils purchased and used for the production of the product concerned, despite the express request to that end made by the Commission at the beginning of the verification visit and notwithstanding the fact that, contrary to the applicant's claims, the Commission had warned it, on the first day of the verification visit, of the consequences of the absence of that information.

101 The applicant's argument that it provided all the information necessary for the Commission to determine for itself with sufficient precision the quantity of hot-rolled coils purchased and used specifically in the manufacture of the product concerned must also be rejected.

102 Contrary to the assertions made in the reply, neither Exhibit 56 to the reply to the questionnaire, which provides information on the total volume of hot-rolled products purchased, nor the table in Exhibit 6, headed 'Reconciliation of sales' and resulting from the verification, contains information on the volume of hot-rolled coils which were 'consumed in the manufacture of the product concerned', when, particularly, it is common ground that the applicant also manufactures products other than the product concerned and, in particular, hot-rolled coils (19 000 tonnes on its domestic market) and uses 'black' hot-rolled coils to manufacture 'white' hot-rolled coils, that is, 'black' coils which have been annealed and pickled. In that connection, the intervener rightly observes that it is apparent from the

information provided by the applicant, particularly from Exhibit 10 resulting from the verification that, over the course of the verification period, the applicant manufactured 200 000 tonnes of 'white' hot-rolled coils, which is a significant volume compared to the quantities of cold-rolled steel coils produced (550 000 tonnes) or sold.

103 The explanation provided for the first time in the reply, to the effect that the hot-rolled coils purchased from LISCO are 'black coils', as indicated in Exhibit 56 to the reply to the anti-dumping questionnaire, that is, semi-finished products of which the few products which were sold and not consumed in the manufacture of the product concerned are listed in the table in Exhibit 6 headed 'Reconciliation of sales' and resulting from the verification, with the effect that all the other 'black coils' were consumed in the manufacture of the product concerned, must, in any event, be rejected as out of time, since the Commission was no longer able to verify the accuracy of the data in that table, whereas there was nothing to prevent the applicant from providing those clarifications, in particular, in response to the provisional or definitive findings and to the Commission's repeated requests for accurate information on the different hot-rolled coils consumed in the manufacture of the product concerned. The Commission adds that the tables in Exhibit 56 to the reply to the anti-dumping questionnaire fail to set out the sales of 'black coils', since the number corresponding to the 'Sales' lines is 0 for the four quarters of 2013, which conclusion cannot be altered by the mere submission of the aforementioned table in Exhibit 6 during the verification, and that, by comparing the data relating to the applicant's total consumption of hot-rolled coils over the investigation period as set out in the tables in the aforementioned Exhibit 56 (TWD [*confidential*]) and those relating to the consumption of hot-rolled coils declared in the aforementioned Exhibit 54 (TWD [*confidential*]), the consumption indicated in the former is clearly greater than that set out in the latter, which indicates that the consumption of hot-rolled coils did not relate solely to the manufacture of the product concerned, the Commission's request for information on the volumes consumed in order to verify the accuracy of the information provided by the applicant was clearly warranted.

104 It must be found that it is not apparent that the Commission committed a manifest error in drawing up those assessments in the light of the explanations that were at its disposal.

105 In any event, it follows from the foregoing that, although the applicant did indeed provide supplementary information, even after the on-the-spot verification visit, and further supplementary information following the adoption of the provisional regulation, it failed to provide at any moment in time the exact quantity of hot-rolled coils consumed in the manufacture of the product concerned that the Commission could consider to be indispensable to the completion of its verification task in so far as, inter alia, the question of the scrap deduction claimed is linked to the volume of hot-rolled coils consumed in the manufacture of the product concerned. In order to refuse to provide the information in question, the applicant merely claims that, aside from the fact that that information was not necessary, the Commission could have calculated that quantity itself on the basis of the data available.

106 However, Article 6(2) of the basic regulation cannot be interpreted as meaning that it would allow the interested parties not to mention all necessary information immediately in their replies to anti-dumping questionnaires along with all the necessary explanations to allow the Commission to complete its task, which consists in verifying the accuracy of the data provided in so far as concerns both the volumes of products consumed and the methods used for allocating costs as values and to reveal such indispensable information or explanations only in the light of the progress of the investigation (see, to that effect, judgment of 22 May 2014, *Guangdong Kito Ceramics and Others* v *Council*, T-633/11, not published, EU:T:2014:271, paragraph 61).

107 Although it is clear from the case-law recalled in paragraph 77 above that, in the context of the basic regulation, it is for the Commission, as the investigating authority, to determine whether the product involved in the anti-dumping procedure has been dumped and causes injury when put into free circulation in the European Union, and it may not therefore offload part of the burden of proof which it bears in that regard, the fact remains that the basic regulation does not give the Commission any

power of investigation allowing it to compel the producers or exporters complained of to participate in the investigation or to produce information. In those circumstances, the Commission depends on the voluntary cooperation of the parties in supplying the necessary information within the time limits set. In that context, the replies of those parties to the questionnaire referred to in Article 6(2) of the basic regulation, and the subsequent on-the-spot verification visit which the Commission may carry out under Article 16 of that regulation, are essential to the operation of the anti-dumping procedure. The risk that, where the undertakings concerned in the investigation do not cooperate, the institutions may take into account information other than that supplied in reply to the questionnaire is inherent in the anti-dumping procedure and is designed to encourage the honest and diligent cooperation of those undertakings (judgment of 30 April 2015, *VTZ and Others* v *Council*, T-432/12, not published, EU:T:2015:248, paragraph 29).

108 Admittedly, it is for the EU Courts to satisfy themselves that the institutions took account of all the relevant circumstances and appraised the facts of the matter with all due care, so that normal value may be regarded as having been determined in a reasonable manner (see judgment of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP* v *Council*, T-249/06, EU:T:2009:62, paragraph 41 and the case-law cited).

109 However, in the present case, the Commission did not apply Article 18(1) of the basic regulation (now Article 18(1) of Regulation 2016/1036) but merely rejected those parts of the applicant's reply to the anti-dumping questionnaire, the accuracy of which could not be verified in timely fashion by the Commission in the light of the explanations provided by the applicant. In those circumstances, the Commission was able to find, without committing a manifest error of assessment, that the data in question contained contradictions and lacunae and that, despite all the diligence that it showed in its examination of that data, there remained doubts as to their reliability, with the effect that, in the circumstances of this case, the Commission could validly refuse to accept the claim to deduct scrap metal from the cost of production of the product concerned.

110 Lastly, it must be added that, as is clear from the foregoing, the applicant has failed to adduce sufficient evidence to render implausible the assessments of the facts in the contested regulation concerning the refusal to deduct the value of scrap metal from the manufacturing cost of the product concerned. Such evidence is necessary in order to establish that an EU institution has committed a manifest error of assessment such as to justify the annulment of a measure (see, by analogy, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 62).

111 In those circumstances, it must be held that the Commission was entitled, without committing a manifest error of assessment or erring in its interpretation of Article 2(5) of the basic regulation, to reject the claim to deduct recycled scrap metal from the cost of production of the product concerned, having been unable accurately to verify whether the costs associated with the production and sale of the product concerned were reasonably reflected in the accounting records. Although the applicant maintains that the infringement of Article 2(5) of the basic regulation gives rise to an infringement of Article 2(3) of that regulation, that complaint must, accordingly, also be rejected.

112 As regards, in the third place, the applicant's claim that the Commission misused its powers by refusing to accept the deduction of the value of recycled scrap metal from the manufacturing cost of the product concerned, it should be recalled that a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (judgment of 14 July 2006, *Endesa* v *Commission*, T-417/05, EU:T:2006:219, paragraph 258). Not only does it follow from the foregoing that the Commission committed neither an error of law nor a manifest error of assessment of the facts by its refusal to accept the deduction claimed, but the applicant has failed to explain its claim relating to an alleged misuse of powers or to support that claim with any specific evidence whatsoever.

113 In the light of all the foregoing considerations, the first plea in law must be rejected in its entirety.

Second plea in law: infringement of Article 2(1) and (2) of the basic regulation

114 The applicant claims that its sales of the product concerned to its independent customer, [*confidential*] — which is also a distributor of the product concerned — of up to 120 000 tonnes over the course of the investigation period, which the applicant did not intend for export and of which it did not know the end destination, were domestic sales that the Commission ought to have taken into account for the purposes of determining the normal value in accordance with Article 2(1) and (2) of the basic regulation.

115 The applicant takes the view that the Commission infringed Article 2(1) of the basic regulation by refusing, without adequate justification, to take into consideration, for the purposes of determining the normal value, the sales of the product concerned to its independent customer in Taiwan made in the ordinary course of trade.

116 The applicant argues that the Commission also infringed Article 2(2) of the basic regulation by ignoring the terms of that provision in rejecting domestic sales simply because they were exported by the independent customer after the sale. Assuming that recital 59 of the contested regulation can be understood to mean that the refusal to take account of those sales to its independent domestic customer is based on the sole fact that those sales of the product concerned were subsequently exported, such a criterion is inconsistent with Article 2(2) of the basic regulation, according to which the Commission should have demonstrated that the applicant did not 'intend' the sales to be for domestic consumption. According to the applicant, the sales were intended to be used by an independent domestic trader and it had no means of verifying whether those sales would be subsequently exported.

117 The applicant submits that the word 'intended' used in the English version of Article 2(2) of the basic regulation refers to the intention of the seller at the time it makes the sale and negotiates and determines the price of the sale depending on the destination of the product. In the applicant's view, an intention to assign a sale to domestic consumption can be assumed when the sale is made to a domestic unrelated customer without the seller having any specific intention, without there being any prospect, or without the seller knowing that the sale will be exported. The intention, or at least the subjective knowledge of the exporter at the time of the sale, also constitutes the relevant criterion in the case-law of WTO.

118 That interpretation, which, it is claimed, is based on objectively verifiable indicators, is also allegedly consistent with the inherent logic of the functioning of the basic regulation, which seeks to capture genuine price differences between domestic sales and export sales.

119 Specifically regarding the criterion of 'prospect' or 'anticipation', the applicant argues that this is used, inter alia, to identify the existence of export subsidies in both WTO law and EU regulations. The identification of whether or not the sale of a product is an export sale follows a similar logic, which can be objectively verified, namely whether or not a sale to an independent purchaser on the domestic market is tied to actual or anticipated exportation. It is claimed, in that connection, that it cannot be inferred from the existence of the applicant's export rebate policy that it anticipated the fact that the contentious sales [*confidential*] would be re-exported since such export rebate policy — called a 'further manufacturing/exportation rebate' — does not relate to the product concerned in that it does not apply to the simple resale of the product concerned and is therefore irrelevant in the present case, but it encourages the export of the product concerned after transformation. Furthermore, the applicant claims that it is unaware of whether and how the sales benefiting from this type of rebate will be resold

to any market. The circumstances of the case do not imply that the applicant must have anticipated that its export rebate would be used for purchases of products that would eventually be exported as such, in contradiction with the applicant's own rebate policy.

120 In respect of the criterion of 'knowledge', the applicant submits that the Commission's practice makes it plain that it uses that criterion to identify export sales for the purposes of Article 2(8) of the basic regulation (now Article 2(8) of Regulation 2016/1036), even though the word 'intended' does not appear in that provision, with the result that that criterion may a fortiori be relevant in domestic sales. That knowledge may be proven through objective evidence, depending on the facts of the case. It is claimed that in the present case, it is common ground that the applicant was unaware that the products that it sold to the purchaser in question would be re-exported, which also explains why the applicant invoiced those sales to [*confidential*] with 5% value added tax (VAT) charged as opposed to 0% VAT for export sales.

121 Lastly, the applicant argues that the Commission's interpretation enables it to impose unpredictable anti-dumping duties on a producer, irrespective of the latter's pricing policy, which is inconsistent with the overall purpose of predictability pursued by the basic regulation and WTO law.

122 Consequently, the applicant claims that, by stating, in recital 56 of the contested regulation, that 'that lack of knowledge about the final destination of a sale is not decisive' and by not contesting the fact that the applicant had no knowledge of the end destination of the product sold by its independent customer at the time of the sale, the Commission infringed Article 2(2) of the basic regulation by refusing to take the sales in question into account for the purposes of determining the normal value.

123 The Commission and the intervener dispute the applicant's arguments.

124 It should be observed, first, that in accordance with Article 2(1) of the basic regulation, the normal value of the product concerned is normally based on the 'the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country' and that, under Article 2(2), it is the sales of the like product 'intended for domestic consumption' that are normally used to determine normal value, provided that the volume of those sales represents 5% or more of the volume of sales of the product under consideration to the European Union.

125 Furthermore, as has been noted in paragraph 53 above, the purpose of the concept of ordinary course of trade is to ensure that the normal value of a product corresponds as closely as possible to the normal price of the like product on the domestic market of the exporter. Where a sale is concluded on terms and conditions that are incompatible with commercial practice for sales of the like product on that market at the relevant time for determining whether or not dumping has occurred, that sale does not constitute an appropriate basis on which to determine the normal value of the like product on that market (judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 28).

126 The applicant claims, in essence, that the Commission infringed Article 2(1) and (2) of the basic regulation by considering, without adequate justification, that certain sales of the product concerned to independent buyers, made in the ordinary course of trade, in the exporting country had to be excluded for the purposes of determining the normal value on the sole ground that the products in question had subsequently been exported. Having regard, in particular, to the wording of Article 2(2) of the basic regulation, under which the sales of the product concerned 'intended for domestic consumption' are normally used to determine normal value, the Commission could validly have excluded those sales from the calculation of the normal value only after having established that the vendor had, at the time of the sale, knowledge of the export of the products concerned or anticipated that the purchaser would re-sell those products for export.

127 As regards interpreting provisions of EU law, it is necessary to consider not only their wording but also the context in which they occur and the objectives pursued by the rules of which they form part (judgments of 19 September 2000, *Germany* v *Commission*, C-156/98, EU:C:2000:467, paragraph 50; of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 54; and of 26 July 2017, *Jafari*, C-646/16, EU:C:2017:586, paragraph 73).

128 Concerning, more specifically, the wording of a provision of EU law, it is also settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 27 and the case-law cited).

129 In the first place, it should be noted that there is, in the present case, divergence between the various language versions of the provision in question. Although, in the English version of Article 2(2) of the basic regulation, the sales of the product concerned that are to be taken into account as domestic sales with a view to determining the normal value are those of which the product in question is 'intended' for domestic consumption — which could be read as indicating that the vendor's intention is the relevant criterion — other language versions of that provision, such as the French, German, Dutch, Spanish, Italian, Danish, Finnish or Czech versions, use the word 'destiné', 'zum Verbrauch', 'bestemde', 'destinado', 'destinato', 'bestemt', 'tarkoitetun' and 'ke' (literally, 'destined'), respectively, which refers to the destination of the product concerned without making reference to the intention of the producer as to that destination at the time of the sale.

130 In the second place, it should be observed that, as in the versions of Article 2(2) of the basic regulation referred to in paragraph 129 above, which refer to the destination of the sales and not to the intention of the seller in relation to the destination thereof, Article 2.1 of the Anti-Dumping Agreement uses, in its three official languages, 'destined for consumption' in English, 'destiné à la consommation' in French and 'destinado al consumo' in Spanish. It is apparent from the case-law that the provisions of the basic regulation must, so far as is possible, be interpreted in the light of the corresponding provisions of the Anti-Dumping Agreement (judgment of 22 May 2014, *Guangdong Kito Ceramics and Others* v *Council*, T-633/11, not published, EU:T:2014:271, paragraph 38; see also, to that effect, judgment of 9 January 2003, *Petrotub and Republica* v *Council*, C-76/00 P, EU:C:2003:4, paragraph 57).

131 Admittedly, as the applicant notes, the WTO Panel observed in the footnote No 339 of its Report of 16 November 2007, in the dispute 'European Communities — Anti-Dumping Measure on Farmed Salmon from Norway' (WT/DS 337/R), that 'where a producer [sold] to an unrelated exporter (or a trader) knowing that the product [would] be exported, that sale [could not] … qualify as a sale intended for domestic consumption'. However, it cannot be inferred from that observation alone that, as the applicant claims, the lack of effective knowledge of the final destination of the product concerned for export would necessarily have led to the sale in question being considered as intended for domestic consumption even when, as in the present case, the product concerned was exported. The same considerations apply, moreover, to the applicant's argument in relation to recital 20 of Commission Regulation (EC) No 1023/97 of 6 June 1997 imposing a provisional anti-dumping duty on certain imports of flat pallets of wood originating in Poland and accepting undertakings offered from certain exporters in connection with those imports (OJ 1997 L 150, p. 4) which states, with regard to the determination of the export price, that 'given that the producer was aware of the final destination of the pallets, the latter were considered as sold for export to the Community by the producer in question'.

132 In the third place, the interpretation that it is not necessary to seek a specific intention or knowledge on the part of the vendor as to the final destination of the product concerned is confirmed by an analysis of the context of the provision in question. Neither the concept of 'dumping' within the meaning of Article 2 of the basic regulation nor that of 'injury' laid down in Article 3 of that regulation (now Article 3 of Regulation 2016/1036), nor the concept of 'circumvention', which is the subject of Article 13 of the same regulation (now Article 13 of Regulation 2016/1036) implies, as a condition for their application, the finding of specific intention on the part of the interested party, but each requires the fulfilment of objective conditions irrespective of any specific intention or knowledge on the part of that party. Furthermore, neither Article 2(2) nor Article 2(8) of the basic regulation, on the determination of the export price, contains any reference to the criterion of the 'knowledge' of the interested party, unlike Article 10(4) of the basic regulation (now Article 10(4) of Regulation 2016/1036) which, for the purposes of the retroactive application of an anti-dumping duty, explicitly provides that 'the importer was aware of, or [ought to] have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found'.

133 In the fourth place, it is clear that this interpretation is also in line with the purpose of the anti-dumping investigation which consists, for the EU institutions, in seeking objective evidence, by using the tools put at their disposal by the basic regulation and on the basis of the voluntary cooperation of economic operators, namely, in particular, the replies to the anti-dumping questionnaire, any on-the-spot verification visitss and the observations of the interested parties on the information documents, as has been recalled in paragraph 107 above, in order to establish the existence of any dumping after having determined the normal value of the product concerned in accordance with Article 2 of the basic regulation.

134 In that context, making the exclusion of sales of products which have been exported from the determination of the normal value of the product concerned subject to proof of the intention or effective knowledge of the vendor, at the time of the sale, as to the final destination of the product concerned — inasmuch as that evidence runs the risk in practice of often being impossible to adduce — would ultimately be tantamount to allowing the taking into account, for the purposes of determining the normal value in accordance with Article 2 of the basic regulation, of the prices of the exported products likely to distort or compromise the correct determination of the normal value.

135 In the fifth place, it should be added that this interpretation is also compatible with the principles of foreseeability and legal certainty invoked by the applicant. The application of a criterion based on the specific intention or knowledge of the vendor would make taking into account the sale price of the exported products for the purposes of determining the normal value contingent on a subjective element, the existence of which runs the risk of being random or, as has proved to be the case, impossible to establish.

136 In the present case, it should be noted more particularly that, at the provisional regulation stage, working on the basis of the interpretation that there was no need to establish the specific intention or knowledge of the vendor as to the final destination of the product concerned, the Commission had excluded certain sales declared as domestic sales from the calculation of the normal value, after having noted, in particular in recital 63 of that regulation, that a calculation, based on the production data from the five cooperating companies and statistics on imports and exports of the product in question in Taiwan during the investigation period, had confirmed that, amongst the domestic sales declared by the cooperating exporter-producers with the investigation, approximately 50% were indirect export sales that were not intended for domestic consumption. More specifically, it followed from the data set out in the provisional findings that although, during the investigation period, the level of production declared by the five cooperating exporter-producers amounted to [*confidential*] tonnes of the product concerned and that the official export statistics indicated a quantity of 717 671 tonnes of the same product, the quantity of domestic sales reported by the same exporter-producers amounted to [*confidential*] tonnes, that is, more than double the difference between the first two figures. In order to ensure that the normal value was solely based on the prices established for domestic

consumption, the Commission stated, at the provisional regulation stage, that it was adopting a prudent approach by consequently excluding from the calculation of the normal value the entirety of the sales of the product concerned to 'distributors' established in Taiwan, in the amount of [*confidential*] tonnes, as opposed to the sales to 'end users in Taiwan' which were taken into account.

137 Thereafter, the Commission replaced the overall risk-based approach, which took into account the broad categories of purchasers of the product concerned, with an approach based on the existence of objective evidence of exports of the product concerned by the distributor concerned. According to recital 59 of the contested regulation, instead of excluding sales to distributors altogether, the Commission excluded from the calculation of the normal value solely domestic sales for which it had sufficient objective evidence of their actual export. Thus, according to the same recital, the Commission examined the reported sales at issue and classified them as domestic or for export on the basis of the specific situation and data of each of the exporting producers concerned. Lastly, it is apparent from that recital that subjective elements such as intention or knowledge, or the lack of knowledge, did not, in the present case, play any role in the objective assessment carried out by the Commission, contrary to the existence of discounts associated with exports which was, in particular, used as relevant evidence.

138 In that connection, it should be noted, first, that the investigation revealed, inter alia, that a certain number of sales declared by the applicant as domestic sales had been subject to an export rebate on the basis of a system applied for a few months during the investigation period and intended to give an incentive to local services centres (distributors) that exported their steel products, as the Commission stated in recital 64 of the provisional regulation.

139 The applicant's argument that that rebate, headed 'Other import/export rebate', is not relevant evidence, particularly inasmuch as it is not an export rebate for the product concerned but inasmuch as it covers sales of unfinished products which require processing prior to their export as processed products, cannot be accepted.

140 It must in fact be noted, as has the Commission and as is apparent, inter alia, from the applicant's letter of 9 February 2015, in reply to a question put by the Commission during the investigation, that this rebate covers volumes of sales of the product concerned which is destined for export after processing in accordance with the purpose of the rebate system in question and that, accordingly, it does not cover the volumes of the product concerned which is intended for domestic consumption in Taiwan. Moreover, that processing goes hand in hand with the export of the product in question and, as is also apparent from recital 14 of the provisional regulation, [*confidential*] carries out only minor processes on those products, such as polishing or slitting, without the resulting product being altered to such an extent as no longer to come under the definition of the product concerned.

141 Secondly, the applicant stated in its reply to the anti-dumping questionnaire that it applied such a rebate to exports, and evidence of the application of such a rebate was identified in the applicant's domestic sales ledger during the on-the-spot verification visit. Furthermore, as the applicant itself stated in its letter of 9 February 2015, in response to a question put by the Commission during the investigation, that rebate related, for example, to 40% of the applicant's sales to its biggest customer in Taiwan, the distributor [*confidential*], over the course of December 2013.

142 Thirdly and above all, as is also apparent from recital 59 of the contested regulation, further objective evidence was found of the actual export of products in sales reported as domestic sales. The Commission noted in that connection that this was the case for sales to [*confidential*], which is also a distributor of the product concerned, with the effect that it ultimately excluded from domestic sales only the 120 000 tonnes sold during the investigation period by the applicant to its customer [*confidential*] which, according to the investigation report, had sold only a negligible quantity of the product concerned on the domestic market.

143 In the light of the foregoing considerations, it must be held that the applicant has failed to demonstrate that the Commission committed an error of law or a manifest error of assessment by refusing to take into account the applicant's sales to its customer [*confidential*] for the purposes of determining the normal value on the ground that there was objective evidence that those sales were actually export sales — and particularly when it is established that part of the sales in question was subject to an export rebate system, such as that applied by the applicant — and was, accordingly, concluded at prices lower than the price of the product concerned destined for consumption on the domestic market, bearing in mind that those prices favoured the export of the product concerned.

144 Consequently, the Commission could legally and without committing any manifest error of assessment exclude the sales in question from the determination of the normal value pursuant to Article 2(1) and (2) of the basic regulation.

145 In the light of all the above considerations, the second plea in law must be rejected and, accordingly, the action must be dismissed in its entirety.

Costs

146 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. Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay the costs incurred by the Commission and by the intervener, in accordance with the form of order sought by them.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Yieh United Steel Corp. to bear its own costs and to pay those incurred by the European Commission and by Eurofer, Association européenne de l'acier, ASBL.**

Buttigieg Berke Costeira

Delivered in open court in Luxembourg on 3 December 2019.

E. Coulon
Registrar

H. Kanninen
President