Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

15 March 2018*

(Dumping — Imports of tartaric acid originating in China and produced by Hangzhou Bioking Biochemical Engineering Co., Ltd — Implementing Decision (EU) 2016/176 — Non-imposition of a definitive anti-dumping duty — Article 3(2), (3) and (5) and Article 17(1) and (2) of Regulation (EC) No 1225/2009 — Sampling — No material injury — Manifest error of assessment — Determination of injury — Profitability of the Union industry)

In Case T-211/16,

Caviro Distillerie Srl, established in Faenza (Italy),

Distillerie Bonollo SpA, established in Formigine (Italy),

Distillerie Mazzari SpA, established in Sant'Agata sul Santerno (Italy),

Industria Chimica Valenzana (ICV) SpA, established in Borgoricco (Italy),

represented by A. Bochon, lawyer, and R. MacLean, Solicitor,

applicants,

v

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

defendant,

ACTION under Article 263 TFEU seeking annulment of Article 1 of Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co., Ltd (OJ 2016 L 33, p. 14),

THE GENERAL COURT (Ninth Chamber),

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

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 September 2017,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicants, Caviro Distillerie Srl, Distillerie Bonollo SpA, Distillerie Mazzari SpA and Industria Chimica Valenzana (ICV) SpA, are EU producers of tartaric acid representing more than 25% of the total production of that substance.

2 On 30 October 2004 the European Commission published in the *Official Journal of the European Union* a notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China (OJ 2004 C 267, p. 4). That proceeding led to the adoption of Council Regulation (EC) No 130/2006 of 23 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China (OJ 2006 L 23, p. 1). Under Article 1(1) and (2) of that regulation, a definitive anti-dumping duty was imposed on imports of tartaric acid falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) originating in China, providing for a rate between 0% and 34.9%. The regulation granted Hangzhou Bioking Biochemical Engineering Co., Ltd ('Hangzhou Bioking') market economy treatment. A zero duty rate was applied to imports of tartaric acid produced by Hangzhou Bioking.

3 In line with the report from the Appellate Body of the World Trade Organisation (WTO) entitled 'Mexico — Definitive Anti-dumping Measures on Beef and Rice' (WT/DS295/AB/R, 29 November 2005, AB-2005-6), Council Implementing Regulation (EU) No 332/2012 of 13 April 2012 amending Regulation No 130/2006 (OJ 2012 L 108, p. 1) excluded Hangzhou Bioking from the definitive measures imposed by Regulation No 130/2006 and, in particular, from subsequent reviews of those measures.

4 The original measures mentioned in paragraph 2 above were subsequently subject to various reviews, the last of which resulted in Council Implementing Regulation (EU) No 349/2012 of 16 April 2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2012 L 110, p. 3). That implementing regulation maintained all anti-dumping measures against all Chinese importers with the exception of Hangzhou Bioking.

5 On 15 June 2011 the applicants and a fifth undertaking, Comercial Quimica Sarasa, SL, lodged an anti-dumping complaint under Article 5 of 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) ('the basic regulation') relating solely to imports of tartaric acid produced by Hangzhou Bioking. On 29 July 2011 the Commission published in the *Official Journal of the European Union* a notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking (OJ 2011 C 223, p. 11). Following withdrawal of the complaint, the Commission, by Decision 2012/289/EU of 4 June 2012 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking (OJ 2012 L 144, p. 43), terminated the proceeding without imposing anti-dumping measures.

6 In parallel, on 29 July 2011 — at the request of the same five complainants — the Commission opened another investigation into two Chinese producers of tartaric acid for the purpose of a partial interim review under Article 11(3) of the basic regulation relating to the dumping margins of those two producers, which the complainants considered to be too low (OJ 2011 C 223, p. 16).

7 On 21 October 2014 the applicants lodged another anti-dumping complaint with the Commission, in consequence of which, on 4 December 2014, that institution published in the *Official Journal of the European Union* a notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking (OJ 2014 C 434, p. 9).

8 For the purpose of assessing the dumping and injury, the Commission examined the period from 1 October 2013 to 30 September 2014 ('the investigation period'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2011 to 30 September 2014 ('the period considered').

9 In the notice of initiation of 4 December 2014, the Commission stated that it had selected a provisional sample of EU producers, in accordance with Article 17 of the basic regulation. At a later stage, the Commission explained that the sample in question had been selected on the basis of the highest sales volumes in the European Union and consisted of three EU producers, selected from the seven undertakings which had taken part in the investigation, representing 56% of the total production of tartaric acid in the European Union and located in Italy and Spain: the two Member States where the EU producers were established. The three producers included in the provisional sample were two of the applicants, namely Caviro Distillerie and Distillerie Mazzari, established in Italy, and a Spanish company, Comercial Quimica Sarasa.

10 Since ICV was not included in the provisional sample, it claimed that that sample did not sufficiently represent the situation of small EU producers. The Italian trade association Associazione Nazionale Industriali Distillatori di Alcoli e Acquaviti (National Association of Industrial Distillers of Alcohol and Spirits) (AssoDistil), also objected to the composition of that sample. The Commission nonetheless took the view that since EU producers of tartaric acid are all small and medium-sized enterprises, the addition of one small EU producer to the sample would not fundamentally change its representativeness and would not have any significant impact on the injury indicators examined on the basis of the data from the sample. It considered that, in any event, the macroeconomic indicators, such as sales volume, were based on data from the Union industry as a whole, that is to say, all EU producers, including the EU producer in question. The Commission therefore confirmed the sample that it had provisionally selected.

11 During the investigation, the three companies included in the sample were subject to verification visits at their premises, as was Hangzhou Bioking.

12 On 14 December 2015 the Commission sent the applicants a general disclosure document in which it concluded that, despite the existence of a dumping margin of 42.8%, the imports from Hangzhou Bioking were not causing material injury to the Union industry. By letter of 4 January 2016, the applicants submitted their observations on that document. They also requested a hearing, which took place on 13 January 2016.

13 Following the dumping investigation, the Commission adopted Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking (OJ 2016 L 33, p. 14) ('the contested decision'), in which it concluded that the Union industry had not suffered any material injury within the meaning of Article 3 of the basic regulation.

14 Indeed, in recitals 140 and 141 of the contested decision, the Commission observed that injury indicators such as production, sales volume and market share showed negative trends during the period considered, but that those trends had not had a negative impact on the overall financial situation of the Union industry. The Commission considered that, on the contrary, some indicators such as the Union industry's profitability, cash flow, return on investment and employment had displayed a positive trend during the period considered. The Commission emphasised that, while

recognising that the Union industry had, to a certain extent, been negatively impacted by the dumped imports from Hangzhou Bioking, the investigation had not established that the Union industry had suffered material injury within the meaning of Article 3 of the basic regulation. Consequently, by Article 1 of the contested decision the Commission terminated the anti-dumping proceeding concerning imports into the European Union of tartaric acid produced by Hangzhou Bioking.

Procedure and forms of order sought

15 By application lodged at the Court Registry on 4 May 2016, the applicants brought the present action.

16 By decision of the President of the General Court, the present case was assigned to a new Judge-Rapporteur, sitting in the Ninth Chamber.

17 Acting on a proposal from the Judge-Rapporteur, the General Court (Ninth Chamber) decided to open the oral part of the procedure.

18 By a measure of organisation of procedure of 19 July 2017 the General Court, pursuant to Article 89(3)(a) of its Rules of Procedure, requested the parties to answer questions orally at the hearing.

19 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 28 September 2017. At that hearing, the Commission informed the Court that it was not in a position to disclose certain information to the applicants because of its confidential nature. Pursuant to Article 91(b), Article 92(3) and Article 103 of the Rules of Procedure, the Ninth Chamber requested the Commission to produce that information, stating that it would not be communicated to the applicants at that stage. Having examined that information, the Court, in accordance with Article 103 of the Rules of Procedure, concluded that it was relevant in order for it to rule in the case and that it could not remain confidential vis-à-vis the applicants. As the Commission had not requested confidential treatment of that information vis-à-vis the public, the Court made that information public and the Ninth Chamber heard the observations of the parties regarding that information.

20 The applicants claim that the Court should:

– declare the action admissible;

– annul Article 1 of the contested decision;

– order the Commission to pay the costs they have incurred in the present proceedings.

21 The Commission contends that the Court should:

– dismiss the action as unfounded;

– order the applicants to pay the costs.

Law

22 In support of the action, the applicants rely on two pleas in law. The first plea alleges a manifest error of assessment in selecting the sample of producers and infringement of Article 3(2) and Article 17(1) of the basic regulation. The second plea alleges manifest errors of assessment and infringement of Article 3(2), (3) and (5) of the basic regulation inasmuch as the Commission concluded that the Union industry had not suffered material injury.

First plea in law: infringement of Article 3(2) and Article 17(1) of the basic regulation, inasmuch as the Commission committed a manifest error of assessment in selecting the sample of EU producers

23 The applicants submit that, when the Commission selected the sample in question, it failed to comply with the requirements laid down in Article 17(1) of the basic regulation, particularly the requirement to ensure that the selected sample is representative. The effect of that infringement was to distort the findings relating to the microeconomic indicators — such as sales prices, profitability per unit, cash flow, investments and return on investment — for determining injury, with the result that that determination was not objective within the meaning of Article 3(2)(b) of the basic regulation.

24 While not challenging the actual sampling initiative taken by the Commission, as was confirmed at the hearing, the applicants submit that the use of sampling constitutes an exception to the principle that the data of all producers should be examined. At the hearing, the applicants added that the requirement of representativeness laid down in Article 17(1) of the basic regulation did not mean that the sample had to cover the largest sales volume, but that it was a question of selecting the producers whose sales volumes represented the situation of the Union industry. According to the applicants, such a requirement stems from paragraph 90 of the judgment of 10 September 2015, *Fliesen-Zentrum Deutschland* (C-687/13, EU:C:2015:573).

25 In the first place, according to the applicants, when the Commission put together the sample of EU producers, by including only three of the largest producers with the highest sales volumes in the European Union, it failed to conduct a proper and objective examination of the data. That sample was not representative of the situation of the Union industry because it included a disproportionate contribution by the EU's largest producer, namely Distillerie Mazzari.

26 First, the applicants submit that Distillerie Mazzari stood out from the sample in question, 'with a total production volume of around 30% of the total EU industry'. Second, since the sales volumes of the three sampled producers accounted for approximately 56% of the total production of tartaric acid in the European Union, with Distillerie Mazzari accounting for 29%, the other six EU producers accounted for only 44% of the remaining production, or, on average, 7.3% each. As a result of excluding the other producers, the sample was not representative as it was skewed in favour of the largest producer.

27 In addition, first, it is apparent from the particular circumstances thereof that the present case is not a 'large scale' case within the meaning of Article 17 of the basic regulation, since it involves one Chinese exporter, nine EU producers and one EU importer. Therefore, according to the applicants, there was no reason why a larger sample could not have been used. Indeed, the Commission has selected a larger sample in other anti-dumping proceedings. Second, the verification of the three sampled EU producers was completed within the first four months of the investigation, with the result that the Commission was not under any time pressure. Third, the applicants stated from the beginning of the investigation that the sample used would not culminate in a sufficiently representative evaluation.

28 In the second place, there is a correlation between the selection of the sample and the determination of injury. In that regard, it follows from the judgment of 21 March 2012, *Marine Harvest Norway and Alsaker Fjordbruk* v *Council* (T-113/06, not published, EU:T:2012:135, paragraphs 72 to 74), that an error in determining the sample constitutes an error in determining injury. Thus, in the present case, the profits generated by Distillerie Mazzari were sufficient to offset the combined losses sustained by the other two sample participants both in 2013 and during the investigation period, with the result that the sample of EU producers was not representative of the situation of the Union industry. In that connection, the applicants argue that the profitability of Caviro Distillerie fell from 3% in 2011 to -1.62% in 2013 and to -1.73% during the investigation period. Comercial Quimica Sarasa, the other company included in the sample, followed the same trend between 2011 and 2013 as well as during the investigation period. In their reply, the applicants also state that the level of profitability of EU producers, which was 17.6% in 2010, fell to 2% in 2011. According to the applicants, such a reduction confirms the injurious effect of the dumping carried out by Hangzhou Bioking during that period.

29 In the third place, during the administrative procedure, the Commission should have taken account of AssoDistil's concerns regarding the representativeness of the proposed sample. Whilst it is true that Article 17(1) of the basic regulation allowed the Commission to select EU producers simply because they had the largest volume of production or sales in the European Union, the Commission should nevertheless have ensured that the sample was objectively representative. In that regard, an objective examination cannot be carried out if the sample does not accurately reflect the broader situation of the Union industry as a whole. The result is an infringement of Article 3(2) of the basic regulation, given that the Commission did not carry out an objective examination of the impact of the dumped imports on the Union industry.

30 Thus, in the light of the information in its possession because of the complaint and the replies it had subsequently received from EU producers, the Commission should have known that a larger sample was required.

31 Furthermore, AssoDistil's proposal to include ICV in the sample was only intended to illustrate how the sample could have been made properly representative because it was doubtful that such representativeness existed in the case at hand.

32 So far as concerns the Commission's assertion that it was for the applicants to indicate which sample would be appropriate in their view, first of all, the applicants consider that it is for the Commission to choose the sample. Next, they argue that they have the right to contest the validity of the proposed sample. Lastly, they maintain that they did not state that the largest producer of tartaric acid, Distillerie Mazzari, should be excluded. In their view, the inclusion of that producer should have been counterbalanced by the inclusion of a larger number of small producers.

33 The Commission disputes the applicants' arguments.

34 It should be borne in mind that, according to settled case-law, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see judgment of 11 February 2010, *Hoesch Metals and Alloys*, C-373/08, EU:C:2010:68, paragraph 61 and the case-law cited). In that regard, respect for the rights guaranteed by the European Union legal order in administrative procedures is of even more fundamental importance and those guarantees include, in particular, the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 189 and the case-law cited).

35 The EU judicature must therefore review not only whether errors of law exist, but also whether the relevant procedural rules have been complied with, whether the facts on which the disputed choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers (see, to that effect, judgment of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP* v *Council*, T-249/06, EU:T:2009:62, paragraph 39 and the case-law cited).

36 This is so, in particular, as regards the determination of injury to the Union industry, which requires an appraisal of complex economic situations (see, to that effect, judgment of 10 September 2015, *Bricmate*, C-569/13, EU:C:2015:572, paragraph 46 and the case-law cited).

37 Consequently, whilst, in the sphere of measures to protect trade, in particular anti-dumping measures, the EU judicature cannot interfere in the assessment reserved to the competent EU authorities, its task is nevertheless to satisfy itself that the institutions have taken account of all the relevant circumstances and appraised the facts of the matter with all due care (see judgment of 18 September 2012, *Since Hardware (Guangzhou)* v *Council*, T-156/11, EU:T:2012:431, paragraph 184 and the case-law cited).

38 Article 3(2) of the basic regulation provides that a determination of injury is to be based on positive evidence and must involve an 'objective examination' of the volume of the dumped imports, their effect on prices in the EU market for like products, and their impact on the Union industry.

39 Furthermore, it follows from Article 4(1) and Article 5(4) of the basic regulation that the determination of injury must be conducted at the level of the Union industry as a whole (judgment of 19 December 2013, *Transnational Company Kazchrome and ENRC Marketing* v *Council*, C-10/12 P, not published, EU:C:2013:865, paragraphs 50 and 51).

40 However, pursuant to Article 17(1) and (2) of the basic regulation, the Commission is authorised in large-scale cases to limit the investigation to a reasonable number of parties by using the sampling method. In that regard, Article 17(1) of the basic regulation provides for two sampling methods. The investigation may be limited to a reasonable number of parties, products or transactions which are statistically representative on the basis of the information available at the time of the selection, or to the largest volume of production, sales or exports which can reasonably be investigated within the time available (see, to that effect, judgments of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 86, and of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 30).

41 It follows that, where they select the second sampling method, the EU institutions have some discretion, relating to the prospective assessment of what it is reasonably possible for them to accomplish in the conduct of their investigation within the prescribed time limit (judgment of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 31). In addition, Article 17(2) of that regulation states that the final selection of parties made under the sampling provisions is to rest with the Commission (judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 87).

42 It is in the light of those principles that the merits of the applicants' arguments must be examined.

43 In the present case, the Commission maintains that it used the second method provided for in Article 17(1) of the basic regulation, pursuant to which the investigation may be limited to the largest volume of production, sales or exports which can reasonably be investigated within the time available. As can be seen from recital 15 of the contested decision, the Commission selected the provisional EU sample 'on the basis of the highest sales volumes in the Union'.

44 So far as concerns the representativeness of the sample, it should be noted that it is for the Commission to ensure that various factors are present, such as, inter alia, the proportion of total Union production and the geographical spread of the producers (see, to that effect, judgment of

10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraphs 90 and 91). It should also be noted that, under Article 4(1) of the basic regulation, in order to obtain a reliable representation of the economic situation of the Union industry, the Commission's analysis must be based on the Union industry as a whole (see, to that effect, judgment of 20 May 2015, *Yuanping Changyuan Chemicals* v *Council*, T-310/12, not published, EU:T:2015:295, paragraph 115).

45 In the present case, it is apparent from recitals 92 and 94 of the contested decision that 'three Union producers [out of nine] were selected in the sample representing around 56% of the total Union production of the like product'. At the hearing, the Commission asserted, without being contradicted in that regard, that the selected sample consisted of the three largest producers, in terms of sales volumes, of those who agreed to take part.

46 In addition, recital 15 of the contested decision states that the Commission, first, 'relied on all the available information concerning the Union industry, such as the complaint, information received from a National Association of Industrial Distillers and Spirits in Italy (AssoDistil) and other known Union producers participating in the standing exercise under Article 5(4) of the basic regulation' and, second, 'selected the sample ... while ensuring that both producing Member States, Italy and Spain, were represented in the sample'.

47 It is true that the Commission could also, as called for by the applicants, have included other Union industry producers, whose sales volumes are, allegedly, lower, in the sample in question. It is also true that, under Article 17(2) of the basic regulation, preference is to be given to choosing a sample in consultation with, and with the consent of, the parties concerned.

48 However, first, as recalled in paragraph 41 above, it is apparent from that provision that the final selection of parties, types of products or transactions made under the sampling provisions is ultimately to rest with the Commission.

49 Second, it is for the applicants to adduce evidence enabling the Court to find that the Commission, as a result of the composition of the sample of the Union industry selected, committed a manifest error of assessment when determining injury (see, to that effect, judgment of 18 September 2012, *Since Hardware (Guangzhou)* v *Council*, T-156/11, EU:T:2012:431, paragraph 137 and the case-law cited). The Court held in a previous case that, as the applicant, who did not accept that the sample of EU producers was representative, had adduced no evidence to show that the prices charged in Italy and Spain by French, German and United Kingdom producers were different from those charged by those same producers in France, Germany and the United Kingdom, it had not shown that the EU institutions had committed a manifest error in limiting their investigation of the injury suffered by the Union industry to price differences in France, Germany and the United Kingdom (see, to that effect, judgment of 14 July 1995, *Koyo Seiko* v *Council*, T-166/94, EU:T:1995:140, paragraph 59).

50 In that regard, the applicants submit that the alleged non-representativeness of the sample in question compromised the reliability of several microeconomic indicators used by the Commission in the investigation in question, leading it to commit manifest errors of assessment and to infringe Article 3(2)(b) of the basic regulation. The indicators relating to Union sales prices, profitability per unit of sales in the European Union, cash-flow, investments and return on EU producers' investments are therefore inaccurate.

51 In the present case, first, it must be pointed out that the parties concerned were consulted regarding the selection of the sample, in accordance with Article 17(2) of the basic regulation. In addition, it is apparent from recital 109 of the contested decision that, for the purposes of determining injury, the Commission distinguished between macroeconomic and microeconomic indicators. As regards the macroeconomic indicators, such as sales volume, they were based on the data of the Union industry as a whole, that is, all the EU producers. The applicants' assertions regarding the sampling are thus not capable of undermining the Commission's findings relating to macroeconomic injury.

52 As regards the microeconomic data, it is apparent from recital 109 of the contested decision that they were examined on the basis of data obtained from the replies of the sampled EU producers to the Commission's questionnaire. Regarding that data, it should be observed that, as the Commission has emphasised, in order to arrive at a single figure for each of the microeconomic indicators, it calculated the weighted average, so as to take into account the actual market share, in terms of production or sales volumes, of each producer included in the sample. Had a simple calculation of the average been used, each of those three producers would have been given identical weight, namely 33%, regardless of its actual market share in terms of production or sales volumes, which would not reflect the true relative weights of the different Union industry producers. Because, through the calculation of the weighted average, a relative weight was assigned to the data of each producer included in the sample, it must be concluded that the method applied concerning the microeconomic data was appropriate.

53 Second, it is apparent from recital 17 of the contested decision that one EU producer not included in the provisional sample claimed, like AssoDistil, that the sample did not sufficiently represent the situation of small EU producers, because the injurious effect of dumped imports from Hangzhou Bioking had mainly affected small undertakings.

54 However, it should be noted, as is explained in recital 18 of the contested decision, that adding a small EU producer to the sample would not have had any significant impact on the injury indicators examined on the basis of the data from the sample. Indeed, it is apparent from the figures put forward by the Commission that including ICV in the sample, as was suggested by the complainants during the administrative procedure, would have only slightly altered the weighted average profit margin of the sample, which would then have been established in 2014 at a figure higher than 9.5% rather than 10%. Regarding the change in that margin, it would have risen, if that producer had been included, from a percentage higher than 5% in 2011 to a percentage higher than 9% in 2014, rather than increasing from 2% to 10% during those same years in accordance with the sample chosen by the Commission.

55 Third, it must be pointed out that, as was confirmed at the hearing, the applicants do not put forward any evidence to show that adding another producer would have altered the Commission's conclusion in the contested decision that there was no injury. Indeed, the applicants confine themselves to asserting that a sample with a much bigger producer obtaining high profits would lead to the conclusion that there was no injury, 'while the other dozen, two dozen, three dozen or more smaller [producers] all made losses'. However, that line of argument does not reflect the reality of the Union industry, as that industry consists, in the present case, of nine producers, seven of which took part in the investigation. Moreover, the applicants' assertion relating to the small producers' loss-making situation is not substantiated by any evidence and, in any event, does not specify whether it was already possible to observe that situation during the period considered.

56 Regarding the applicants' argument that there was nothing to prevent the Commission from using a larger sample, as it has done in other anti-dumping proceedings, it is sufficient to state that the applicants themselves have acknowledged, including during the hearing, that they do not have any evidence showing that adding another, smaller EU producer would have been capable of altering the Commission's conclusion regarding injury to the Union industry.

57 Regarding the applicants' assertion that the good profits obtained by Distillerie Mazzari 'offset by a considerable extent the losses shown by the other two sample participants in 2013 and the investigation period', because Caviro Distillerie's profitability fell from 3% in 2011 to -1.62% in 2013 and to -1.73% during the investigation period, and Comercial Quimica Sarasa's profitability displayed the same trend between 2011 and 2013 and during the investigation period, it should be noted that, even assuming those drops in profitability during those periods to be established, the fact that companies that had displayed a decline in profitability were kept in the sample in question shows that the Commission carried out an objective examination of the facts in the contested decision.

58 Consequently, even if the Commission had changed the composition of the sample in question, there is nothing to suggest that the conclusion relating to profitability and injury would have changed in the present case.

59 Moreover, concerning the applicants' argument that the significant drop in profitability between 2010 and 2011 confirms the 'injurious impact of the dumping that Hangzhou Bioking was practising at that time', it should be pointed out that, as was correctly noted by the Commission, neither the contested decision nor other Union acts establish the existence of dumping by Hangzhou Bioking during that period. Indeed, as can be seen from recital 28 of the contested decision, 'the investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014'.

60 In those circumstances, it must be held that the applicants have not adduced sufficient evidence to establish that the Commission committed a manifest error of assessment in its selection of the sample of the Union industry.

61 Therefore, the first plea in law must be rejected.

Second plea in law: manifest errors of assessment and infringement of Article 3(2), (3) and (5) of the basic regulation, inasmuch as the Commission concluded that the Union industry had not suffered material injury

62 The applicants consider that the Commission committed manifest errors of assessment and infringed Article 3(2), (3) and (5) of the basic regulation in concluding — in recitals 140 to 142 of the contested decision — that the EU tartaric acid industry had not suffered material injury during the period considered.

63 In their preliminary observations, the applicants emphasise that the determination of injury requires an objective examination of all relevant factors having an influence on the situation of the industry in question. In the present case, no objective examination of the injury indicators could have led to the conclusion that the dumped imports were not causing any injury to the EU tartaric acid industry. The applicants submit, in essence, that, in the findings of a lack of injury set out in recitals 140 and 141 of the contested decision, the Commission highlighted the factors displaying a positive trend, but did not take sufficient account of the factors displaying negative trends.

64 In the first place, regarding import trends in terms of volumes and prices, the applicants maintain, first of all, that a finding was made in recitals 41 to 45 of the contested decision that Hangzhou Bioking was operating outside the scope of normal market economic conditions and exploiting artificially low and distorted raw material prices to reduce unfairly its final export prices to the European Union. Next, the applicants consider that the level of dumping perpetrated of 42.8%, as indicated in recital 88 of the contested decision, is high. Under Article 3(5) of the basic regulation, the magnitude of the actual margin of dumping is a factor that has to be taken into consideration in order to assess injury. Lastly, the applicants argue that the weighted average price undercutting margin for the dumped imports from Hangzhou Bioking on the EU market — which, as is apparent from recital 107 of the contested decision, is 10.3% — is substantial.

65 In the second place, concerning the volumes of dumped imports, the exporter in question increased its dumped volumes on the EU market by 25% during the period considered, with a spike of a 36% increase in 2013. In addition, the applicants indicate that this constant increase in dumped volumes occurred against an overall decline in EU consumption of tartaric acid, since at the end of the investigation period that consumption had fallen by 11%.

66 Regarding the effect of the dumped imports on prices in the European Union, the applicants argue that, although it is true that Hangzhou Bioking raised its prices by 35% during the period considered, as is apparent from recital 104 of the contested decision, the fact remains that those price increases started from a very low base level. That explains the existence of a weighted average undercutting margin of 10.3% for the dumped imports from Hangzhou Bioking on the EU market, as was noted in recital 107 of the contested decision. In addition, between 2013 and the end of the investigation period, while the Union industry's prices fell by 56%, as was indicated in recitals 124 and 125 of the contested decision, Hangzhou Bioking's prices fell by only 8%, as is apparent from recital 105 of that decision.

67 In response to the Commission's argument emphasising that the 35% increase in average import prices compared with the Union industry's prices is a positive factor, the applicants claim that it is necessary to examine the actual prices of the imports and not the trend. If, as the applicants suspect, the price for imports was extremely low in 2011, the subsequent relative increase is irrelevant, especially in the light of the finding, at the end of the investigation, of price undercutting of 10%. Furthermore, it is apparent from the information supplied in the complaint that Hangzhou Bioking's price undercutting was far higher before the investigation period.

68 In the third place, the applicants argue that the Commission, in breach of the rule that no one or more of those factors can necessarily give decisive guidance, failed to attach sufficient importance during the investigation to the other factors referred to in Article 3(5) of the basic regulation, namely the impact of the imports on EU producers' sales volumes and market shares. They claim that, on the contrary, the Commission placed too much importance on the trends in profitability per unit and the criteria relating to cash flow and return on investment. In so doing, it committed a manifest error of assessment.

69 In that regard, the applicants assert that the contested decision provides no explanation or analysis as to how the declining performance of the Union industry was offset by improvements in general profitability. In the general disclosure document of 14 December 2015, the Commission expressed itself clearly and in a way that was noticeably more succinct as regards those factors.

70 Thus, first of all, the applicants criticise the Commission for failing to attach sufficient importance during the investigation to the Union industry's sales volumes which, during the period considered, fell by 30%, as was noted in recital 115 of the contested decision. That decrease in volumes was almost three times greater than the decline in EU consumption over the period considered. Where there is a decrease in the sales volumes of the Union industry, it is for the Commission to ascertain what profits are actually being made and to examine them in depth, since this is a relevant factor in the overall examination of the situation of the Union industry. Accordingly, the contested decision does not in fact explain the interaction of the various key factors.

71 Next, the applicants consider that the 21% decrease in the Union industry's market share during the period considered, noted in recital 115 of the contested decision, was equally alarming when 'in the same period, imports from [Hangzhou] Bioking [had] increased by 25% in volume and the corresponding market share [of that company had] increased by 41%', according to recital 117 of the contested decision. Consequently, the Commission's argument that the increase in the Union industry's sales prices mirrored the trend in raw material costs is undermined by the fact that, since 2012, the Union industry had been rapidly losing sales volumes and market shares.

72 Against that background, the growth of the Union industry was severely negative, as is apparent from recital 117 of the contested decision. Similarly, the entire industry, with the exception of Distillerie Mazzari, sustained heavy losses during the investigation period.

73 In addition, in their submissions based on export statistics obtained from Chinese customs, the applicants estimated that Hangzhou Bioking's sales volumes were approximately 9 700 tonnes in 2013 and 8 925 tonnes during the investigation period. Imports from other Chinese exporters also occurred

during the period considered. However, during the investigation period, Hangzhou Bioking increased its market share from 25% to 35%, that market share being attributed to one single Chinese exporter alone.

74 Lastly, the Commission attached no weight whatsoever to the imminent expansion of Hangzhou Bioking's production volumes, as is apparent from recitals 165 and 166 of the contested decision, particularly as regards its effect on the Union industry's profitability. According to the applicants, such profitability and the other positive financial indicators could be expected to deteriorate in both the short and near term, eliminating the last positive economic indicators of the industry used by the Commission to assess the injury suffered by the EU tartaric acid industry. Since the Commission was aware of that fact but failed to attach any importance to it when determining injury, it committed a manifest error of assessment.

75 Instead, the Commission relied solely on factors relating to profitability, cash flow and return on investment, which showed positive trends, to conclude that the Union industry had not suffered material injury, while other economic factors evidenced, in the applicants' view, the fact that the Union industry was collapsing under the weight of dumped imports. In so doing, the Commission committed manifest errors of assessment.

76 More specifically, as regards the Union industry's profitability, the applicants consider that this was the only key economic factor that was reported as showing a positive trend, as is apparent from recital 140 of the contested decision, although a host of other factors show negative trends. Section 4.5.4 of the contested decision concerning the conclusions on injury does not provide any explanation or analysis as to how profitability offsets the impact of other factors, even though the applicants had expressed some criticism in that connection during the administrative procedure. Consequently, the contested decision did not explain the interaction of the various key factors or, in particular, how improved levels of profitability could repair the injury caused to the Union industry.

77 In the fourth place, it is clear from the contested decision that the Union industry was being pushed out of less profitable segments of the market by Hangzhou Bioking's dumped prices and, as a result, experienced a drop in sales volumes. Contrary to the Commission's assertions, the applicants do not claim that the Commission's conclusions must be based on a segment of the Union industry selected by them. The applicants state that, taken as a whole, all the economic indicators show that Hangzhou Bioking's dumped imports caused injury.

78 In the fifth place, the applicants consider that the Commission committed a manifest error of assessment in failing to take proper account of the significance of the Union industry's defensive strategy to combat dumping. Thus, in other anti-dumping proceedings, the Commission ignored the increase in profitability per unit because the Union industry had lost a proportion of its sales volumes and market shares. Since the same situation existed in the proceeding at hand, the Commission ought to have taken account of the fact that the Union industry had decided, between 2012 and the end of the investigation period, that it could not engage in aggressive price competition in view of the sales volumes achieved by Hangzhou Bioking and, instead, had to concentrate its sales efforts on customers prepared to pay a higher price for its better quality product.

79 In the sixth place, by stating in recital 146 of the contested decision that 'the dumping margin of an exporting producer is not as such a conclusive economic indicator of injury', the Commission infringed Article 3(5) of the basic regulation, pursuant to which that institution is required to take account of 'the magnitude of the actual margin of dumping'. Contrary to the Commission's assertions, the question is not whether, in the present case, that margin of dumping was conclusive, but rather whether it was given sufficient weight or indeed any proper weight in the injury assessment process. According to the applicants, the basic regulation requires the Commission to take account of the

margin of dumping, which should always be calculated over a shorter period. Consequently, no appraisal of 'trends over time' is required in order to assess the magnitude of dumping under the basic regulation.

80 In addition, the same reasoning applies as regards the issue of price undercutting, which must be assessed under Article 3(3) of the basic regulation. The contested decision makes no reference to that factor, except in recitals 141 and 150 where it is dismissed without any serious consideration of its impact even though the price undercutting margin had been established at 10.3%.

81 In the seventh place, the Commission did not examine the impact of Hangzhou Bioking's dumped imports on the Union industry's sales volumes. The price pressure exerted through the dumped imports resulted in a 76% decrease in prices between 2013 and the end of the investigation period, as well as a massive drop in sales volumes and market shares. Similarly, the trend in import sales volumes achieved by Hangzhou Bioking goes in the opposite direction to the trend in EU consumption. The applicants emphasise that, between 2011 and 2014, although EU consumption dropped by 11%, Hangzhou Bioking was able to increase its imports in absolute terms by 25%, indicating that that company was capable of defying market forces. Furthermore, according to the applicants, at the end of the period considered, the Union industry's sales volumes fell by 30% while consumption decreased by 11%. Therefore, the remaining 19% of sales volumes was lost directly to Hangzhou Bioking.

82 In the eighth and last place, regarding the Commission's comments concerning the decrease in the Union industry's production capacity, the applicants concede that production volumes fell by 14% while demand decreased by 11%. However, since the Union industry succeeded in maintaining or improving its export sales volumes, the drop in production levels was less severe. According to the applicants, the Commission's explanations regarding the Union industry's production level and EU consumption should, in any event, be rejected, since there is no correlation between those two factors: the former constantly declined throughout the whole of the period considered while the latter increased between 2011 and 2013 before decreasing again during the following period.

83 The Commission disputes the applicants' arguments.

84 As a preliminary point, as has been recalled in paragraph 38 above, pursuant to Article 3(2) of the basic regulation, the objective examination of the determination of injury to the Union industry must cover the volume of the dumped imports and the effect of those imports on prices in the EU market for like products on the one hand and the impact of those imports on the Union industry on the other.

85 Regarding the volume of those imports and their effect on prices in the EU market for like products, Article 3(3) of the basic regulation sets out the factors to be taken into account during that examination, while specifying that no one or more of those factors can give decisive guidance per se.

86 Article 3(5) of the basic regulation specifies that the examination of the impact of the dumped imports on the Union industry concerned includes an evaluation of all relevant economic factors and indices having a bearing on the state of that industry. That provision contains a list of factors which may be taken into account and states that that list is not exhaustive and that decisive guidance is not necessarily given by any one or more of those factors (judgments of 28 November 2013, *CHEMK and KF* v *Council*, C-13/12 P, not published, EU:C:2013:780, paragraph 56; of 19 December 2013, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, C-10/12 P, not published, EU:C:2013:865, paragraph 20; and of 16 April 2015, *TMK Europe*, C-143/14, EU:C:2015:236, paragraph 32). That provision thus gives the EU institutions a broad discretion in the examination and evaluation of the various items of evidence (see, to that effect, judgment of 27 September 2007, *Ikea Wholesale*, C-351/04, EU:C:2007:547, paragraph 61).

87 Accordingly, from a combined reading of those provisions, it must be determined whether the Commission could, without committing a manifest error of assessment, conclude that there was no material injury to the Union industry.

88 At the outset, concerning the assertion that the Commission placed too much importance on economic indicators relating to the overall financial situation, such as the Union industry's profitability, cash flow and return on investment, the applicants consider that the critical factors are the Union industry's sales volumes, production levels and capacity utilisation rate within the European Union. They also refer to other factors, such as the magnitude of dumping, price undercutting by Hangzhou Bioking, increased import volumes in absolute terms, inventory levels, productivity, growth, wages and investments, which the Commission should have taken into account.

89 In the present case, in the first place, it should be noted that, as is apparent from sections 4.5.2 and 4.5.3 of the contested decision, the Commission examined all the factors mentioned above. Regarding the macroeconomic indicators, it is apparent from recitals 111 to 123 of the contested decision that the Commission analysed production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, the magnitude of the dumping margin and recovery from past dumping. As regards the microeconomic indicators, average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investment, and ability to raise capital were all examined.

90 Accordingly, the Commission concluded, in recital 140 of the contested decision, that 'injury indicators such as production, sales volume and market share showed negative trends during the period considered' without those trends having however had 'a negative impact on the overall financial situation of the Union industry'. That recital adds that, '[on] the contrary, the Union industry's profitability showed a steady positive trend during the period considered and even exceeded the target profit during the investigation period'. In addition, according to that recital, 'other financial indicators such as cash flow and return on investment also increased over the period considered'. Moreover, as the Commission argued at the hearing, those injury indicators were also examined in section 4.5.5 of the contested decision, in which the Commission responded to the comments of the parties concerned and which forms an integral part of the statement of reasons for that decision.

91 Thus, against the background of the Commission's broad discretion when assessing economic data, it must be held that that institution examined the relevance of all the factors and weighed up the positive and negative trends of the factors in question.

92 Furthermore, regarding the assertions relating to import trends in terms of volumes and prices, it should be noted, as has been emphasised by the applicants, that the contested decision notes in recital 47 thereof that the Chinese domestic market of maleic anhydride is considered to be distorted as a whole. In addition, it is common ground that the dumping margin established was 42.8% and was thus above the *de minimis* level, as can be seen from recitals 88 and 122 of the contested decision. Lastly, it is true that the average weighted price undercutting margin was 10.3%, as can be seen from recital 107 of the contested decision.

93 However, contrary to the applicants' assertions, such findings do not enable it to be established that there is material injury within the meaning of Article 3 of the basic regulation.

94 Regarding, in particular, the magnitude of the dumping margin, it may, admittedly, be taken into account, pursuant to Article 3(5) of the basic regulation, in the context of the evaluation of all relevant economic factors and indices having a bearing on the state of the Union industry. However, the Commission was correct to stress, in recital 146 of the contested decision, that the dumping margin of a producer is not as such a conclusive economic indicator of injury. As the Commission emphasised at the hearing, none of the factors set out in that provision is in itself decisive in the overall determination of injury carried out by that institution.

95 In the second place, regarding the evaluation of each economic factor considered in isolation, concerning the evaluation of prices, it is apparent from Table 3 of the contested decision that the average import price of the dumped product increased by 35% during the period considered. However, Table 7 of the contested decision indicates that, during the period considered, the Union industry's average unit sales prices increased by 19%. It therefore follows that Hangzhou Bioking's prices increased more than the Union industry's sales prices, such that the difference between those two prices was reduced. Similarly, it should be noted, as can be seen from Table 7 and recital 127 of the contested decision, that, during the period considered, the increase in the Union industry's average unit sales prices, namely 19%, was more pronounced than the increase in its cost of production of 9%. In that regard, as the Commission has correctly emphasised, such a finding tends to support the view that no price pressure was exerted by the imports from Hangzhou Bioking.

96 In addition, as regards the applicants' assertion that the relative price increase is irrelevant, it should be noted that price is one of the factors set out in Article 3(2), (3) and (5) of the basic regulation for determining injury to the Union industry. The Commission contends that the undercutting margin decreased before and after the investigation period. The Commission was therefore correct to consider that such a decrease was a positive trend that had to be taken into consideration in the injury assessment.

97 Regarding the change in volume of the imports in question and the change in market shares, it is true that the imports from Hangzhou Bioking increased by 25% during the period considered, such that, taking into account the 11% decrease in total EU consumption during that same period (Table 1 of the contested decision), Hangzhou Bioking's market share increased by 41% (see recitals 101 and 102 of the contested decision). However, as the Commission emphasised in recital 148 of the contested decision, market shares and import volumes were not the only elements that had been analysed in order to establish whether the Union industry had suffered material injury or not. To that end, as can be seen from Table 2 and recital 101 of the contested decision, the volumes of imports of the product concerned dumped into the European Union by Hangzhou Bioking increased by 25% during the period considered, while Table 10 indicates that the profitability of EU producers increased considerably during the period considered, reaching 10% during the investigation period. In that context, despite the increase in the volume of imports from Hangzhou Bioking, the profitability of EU producers increased.

98 Furthermore, regarding the Union industry's market share, its development arguably constitutes a significant factor for assessing material injury to that industry (judgment of 14 March 2007, *Aluminium Silicon Mill Products* v *Council*, T-107/04, EU:T:2007:85, paragraph 65). In the present case, the Union industry's market share decreased by 21% over the period considered and was established, at the end of that period, as can be seen from the measure of inquiry adopted by the Court (see paragraph 19 above), at 44%. The Commission could not therefore reasonably consider, in recital 148 of the contested decision, that that market share had remained at a relatively high level during the period considered.

99 Concerning the applicants' assertion that the Commission did not attach any significance to the impact of the imminent expansion of Hangzhou Bioking's production volumes on the Union industry's profitability and on the other financial indicators, which will deteriorate in the near future, it should be borne in mind that the determination of injury following the initiation of a proceeding requires, pursuant to Article 3(1) of the basic regulation, that it be established that there is 'material injury to the [Union] industry, threat of material injury to the [Union] industry or material retardation of the establishment of [the Union] industry'. Since the complaint lodged by the EU producers was based on — in their view already established — material injury to the Union industry, the Commission examined whether such injury could be established during the period considered. As can be seen from recitals 6 and 141 of the contested decision, the Commission's analysis dealt only with material injury to the Union industry within the meaning of that provision, and not with Chinese exporters' future production capacity. However, the applicants' line of argument is based on the potential future

expansion of Chinese exporting producers' production capacity, which is relevant in the context of an investigation concerning a 'threat of material injury' within the meaning of Article 3(1) of the basic regulation. Consequently, the applicants' arguments relating to a prospective analysis of the Union industry are, in this context, ineffective.

100 In the third place, concerning the applicants' argument that the Commission relied solely on the Union industry's profitability, cash flow and return on investment, because only those indicators showed positive trends, first of all, it should be noted, as has been concluded in paragraph 91 above, that the Commission took all the relevant data into account in the context of its analysis in the contested decision. Next, as has been argued by the Commission, profitability is one of the critical factors in analysing injury. Lastly, as is apparent from recital 135 of the contested decision, '[the Union industry's] profitability increased substantially during the period considered, reaching 10% during the investigation period, and thus exceeding the 8% target profit of this industry'. It should be emphasised that, first, such an increase is significant and that, second, it cannot be regarded in isolation, but rather against the background of the other positive economic indicators, such as cash flow, return on investment and employment, as can be seen from recitals 119 to 139 of the contested decision.

101 In so far as the applicants criticise the Commission for having failed to provide a sufficient statement of reasons for the contested decision as regards explaining how the declining performance of the Union industry was offset by improvements in general profitability, the applicants' line of argument seeks, in reality, to challenge the actual assessment of the economic data carried out by the Commission. The Court considers that an examination of recitals 119 to 139 of the contested decision shows that the Commission did not commit any manifest error of assessment regarding the evaluation of those elements.

102 For the sake of completeness, it must be borne in mind that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent Court of the European Union to exercise its power of review (judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 75).

103 That requirement must be appraised by reference to the circumstances of each case, in particular the content of the measure, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 76).

104 It should also be emphasised that the institutions are not obliged to adopt a position on all the arguments relied on by the parties concerned, but that it is sufficient to set out the facts and the legal considerations having decisive importance in the context of the decision (see, to that effect, judgment of 11 January 2007, *Technische Glaswerke Ilmenau* v *Commission*, C-404/04 P, not published, EU:C:2007:6, paragraph 30).

105 In the present case, the reasons why the Commission considered that certain injury indicators did not have a negative impact on the overall financial situation of the Union industry, while other indicators had displayed a positive trend, are set out in recitals 140, 141, and 148 to 160 of the contested decision. In those recitals, the Commission clearly explained the reasons why it considered that the Union industry had not suffered any material injury as a result of the imports from Hangzhou Bioking. Accordingly, the contested decision is reasoned to the requisite degree in that regard.

106 In the fourth place, concerning the applicants' assertion that the Commission examined only a segment of the Union industry, it should be noted that that complaint has already been examined in the context of the first plea in law. It can be seen from paragraph 60 above that the applicants have not shown how the sample selected by the Commission led it to commit a manifest error of assessment in its determination of material injury to the Union industry.

107 In the fifth place, while it is true that the Union industry has put in place a defensive strategy to combat dumping, the fact remains that the effects of that strategy have been, inter alia, an increase in the level of profitability of the producers concerned. Consequently, the applicants' arguments that the Commission did not take that strategy into account are not sufficient to call in question the validity of the conclusions in the contested decision concerning the lack of material injury.

108 In the sixth place, as regards the argument that the Commission took insufficient account of the dumping margin, as has already been noted in paragraph 94 above, while it is true that that margin must be taken into account in the determination of injury under Article 3(5) of the basic regulation, the fact remains that it is above all an element to be taken into account in determining the existence of dumping, which is a separate condition from that relating to establishing injury in the context of the imposition of anti-dumping measures.

109 Concerning the taking into account of price undercutting in view of the Union industry's prices, it should be noted that the Commission stated in recital 105 of the contested decision that 'the average import price from [Hangzhou] Bioking of the product concerned [had] increased by 35% during the period considered', that 'it [had] increased by 43% between 2011 and 2013, but then [that it had] decreased by 8% between 2013 and the investigation period'. The Commission then established a weighted average undercutting margin of 10.3% for the dumped imports from Hangzhou Bioking on the EU market. On the basis of those elements, making explicit reference in recital 141 of the contested decision to the undercutting of Union industry prices, the Commission concluded that there was no material injury. Therefore, it must be held that the Commission took that factor into account. In so far as the applicants seek to call in question the significance ascribed to that factor, it should be borne in mind that, pursuant to Article 3(5) of the basic regulation, one or more of the factors set out in that provision cannot necessarily give decisive guidance. Consequently, the price undercutting margin is not in itself a conclusive economic indicator of injury.

110 In the seventh place, regarding the applicants' assertion that prices fell by '76% between 2013 and the investigation period', they themselves refer to a decrease in Union industry prices of 56%. In that regard, as can be seen from recital 125 of the contested decision, it is true that the sampled Union producers' average unit sales price decreased by 56% between 2013 and the end of the investigation period. However, it must be pointed out that it increased by 19% during the period considered. In addition, as was stated in recital 127 of the contested decision and as has been noted in paragraph 95 above, the increase in average unit sales price of 19% during the period considered was more pronounced than the increase of 9% in the cost of production during that same period, which indicates that the price pressure exerted by the imports from Hangzhou Bioking did not prevent the Union industry's unit sales price from increasing.

111 In the eighth place, as regards the decrease in production volume, it should be observed that that volume did indeed decrease by 16% during the period considered, but that it remained stable between 2013 and the end of the investigation period, as indicated by Table 4 of the contested decision. However, as has been correctly noted by the Commission, that fact must be appraised in the light of the decrease in consumption of 11% over the period considered, as indicated in paragraph 97 above. In those circumstances, it may be considered that the decrease in the Union industry's production volume during the period considered was largely due to the decrease in consumption.

112 It follows from all of the foregoing that the applicants have not put forward evidence to challenge the Commission's conclusion, based on all the relevant factors, that there was no material injury to the Union industry. Therefore, it must be concluded that the Commission, despite its evaluation of the Union industry's market share (see paragraph 98 above), did not commit any manifest error of assessment in its overall determination of material injury on the basis of all the factors relied on in the context of the second plea in law.

113 Consequently, the second plea in law must be rejected and the action must be dismissed in its entirety.

Costs

114 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, in accordance with the form of order sought by that institution.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Caviro Distillerie Srl, Distillerie Bonollo SpA, Distillerie Mazzari SpA and Industria Chimica Valenzana (ICV) SpA to bear their own costs and to pay those incurred by the European Commission.**

Gervasoni Madise Da Silva Passos

Delivered in open court in Luxembourg on 15 March 2018.

E. Coulon
Registrar

President