Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

28 September 2023 *

Table of contents

* Language of the case: English.

(Appeal – Dumping – Imports of tartaric acid originating in China – Determination of normal value – Regulation (EU) 2016/1036 – Article 2(7) – Protocol on the Accession of the People's Republic of China to the World Trade Organization (WTO) – Article 15 – Determination of the state of vulnerability of the Union industry – Determination of a threat of injury)

In Case C-123/21 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 26 February 2021,

Changmao Biochemical Engineering Co. Ltd, established at Changzhou (China), represented by K. Adamantopoulos, dikigoros, P. Billiet, advocaat, and N. Korogiannakis, dikigoros,

appellant,

the other parties to the procedure being:

European Commission, represented initially by K. Blanck, M. Gustafsson and E. Schmidt, then by K. Blanck and E. Schmidt, and finally by E. Schmidt, acting as Agents,

defendant at first instance,

Distillerie Bonollo SpA, established at Formigine (Italy),

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

Caviro Extra SpA, formerly Caviro Distillerie Srl, established at Faenza (Italy),

represented by R. MacLean, avocat,

interveners at first instance,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen, Vice-President of the Court, P.G. Xuereb (Rapporteur), A. Kumin and I. Ziemele, Judges,

Advocate General: T. Ćapeta,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 8 September 2022,

having regard to the observations presented pursuant to the second paragraph of Article 24 of the Statute of the Court of Justice of the European Union by:

– the Council of the European Union, represented by B. Driessen and P. Mahnič, acting as Agents, and by N. Tuominen, avocată,

– the European Parliament, represented by P. Musquar, A. Neergaard and A. Pospisilova Padowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 November 2022,

gives the following

Judgment

1 By its appeal, Changmao Biochemical Engineering Co. Ltd ('Changmao') seeks to have set aside the judgment of the General Court of the European Union of 16 December 2020, *Changmao Biochemical Engineering* v *Commission* (T-541/18, EU:T:2020:605) ('the judgment under appeal'), by which the General Court dismissed its action for annulment of Commission Implementing Regulation (EU) 2018/921 of 28 June 2018 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 (EU) 2016/1036 of the European Parliament and of the Council (OJ 2018 L 164, p. 14) ('the contested regulation'), in so far as it concerns it, or, in the alternative, in its entirety.

The legal framework

International law

2 By Council Decision 94/800/EC (of 22 December 1994) concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), the Council of the European Union approved the Agreement establishing the World Trade Organization (WTO), signed in Marrakesh on 15 April 1994, and the agreements contained in Annexes 1 to 3 thereto ('the WTO Agreements'), which include the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 11) ('the GATT 1994') and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103) ('the Anti-Dumping Agreement').

The GATT 1994

3 Article VI(1) of the GATT 1994 states:

'The contracting parties recognise that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country;

…'

The Anti-Dumping Agreement

4 Article 2 of the Anti-Dumping Agreement, entitled 'Determination of dumping', provides:

'2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country …, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

…’

The Protocol on the Accession of China to the WTO

5 On 11 December 2001, by the Protocol on the Accession of the People’s Republic of China to the WTO (‘the Protocol on the Accession of China to the WTO’), the latter became a party to the WTO.

6 Under Article 15(a) and (d) of the Protocol on the Accession of China to the WTO:

‘Article VI of the GATT 1994, the [Anti-Dumping Agreement] and the [Agreement on Subsidies and Countervailing Measures (OJ 1994 L 336, p. 156)] shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
   (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;
   (ii) the importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

…

(d) Once [the People’s Republic of] China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member’s national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should [the People’s Republic of] China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.’

European Union law

7 The provisions governing the adoption of anti-dumping measures by the European Union, in force when the contested regulation was adopted, are contained in 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’). The Basic Regulation repealed and replaced 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).

8 Recital 9 of the Basic Regulation states:

'It is desirable to set out clear and detailed guidance as to the factors which may be relevant for the determination of whether the dumped imports have caused material injury or are threatening to cause injury. In demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by the Union industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Union.'

9 Article 2 of that regulation, entitled 'Determination of dumping', states in paragraph 7 that:

'(a) In the case of imports from non-market-economy countries …, the normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market-economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits. Where appropriate, a market-economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market-economy third country envisaged and shall be given 10 days to comment.

(b) In anti-dumping investigations concerning imports from the People's Republic of China, Vietnam and Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, the normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in point (c), that market-economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When that is not the case, the rules set out under point (a) shall apply.

…'

10 Under Article 3 of that regulation, entitled 'Determination of injury':

'1. Pursuant to this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Union industry, threat of material injury to the Union industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of:

(a) the volume of the dumped imports and the effect of the dumped imports on prices in the Union market for like products; and

(b) the consequent impact of those imports on the Union industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Union. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of those factors can necessarily give decisive guidance.

…

5. The examination of the impact of the dumped imports on the Union industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation; the magnitude of the actual margin of dumping; actual and potential decline in sales, profits, output, market share, productivity, return on investments and utilisation of capacity; factors affecting Union prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically, that shall entail demonstrating that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Union industry as provided for in paragraph 5, and that that impact exists to a degree which enables it to be classified as material.

7. Known factors, other than the dumped imports, which at the same time are injuring the Union industry shall also be examined to ensure that the injury caused by those other factors is not attributed to the dumped imports under paragraph 6. …

8. The effect of the dumped imports shall be assessed in relation to the production of the Union industry of the like product when available data permit the separate identification of that production on the basis of criteria such as the production process, producers' sales and profits. …

9. A determination of a threat of material injury shall be based on facts and not merely on an allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must have been clearly foreseen and must be imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to factors such as:

(a) a significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports;

(b) whether there is sufficient freely disposable capacity on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Union, account being taken of the availability of other export markets to absorb any additional exports;

(c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports;

(d) inventories of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance, but the totality of the factors considered shall be such as to lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.'

11 Under the heading 'Definition of Union industry', Article 4(1) of the Basic Regulation provides as follows:

'For the purposes of this Regulation, the term "Union industry" shall be interpreted as referring to the Union producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5(4), of the total Union production of those products, …

…'

12 Article 5 of that regulation, entitled 'Initiation of proceedings', provides in paragraph 4:

'An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Union producers of the like product, that the complaint has been made by, or on behalf of, the Union industry. The complaint shall be considered to have been made by, or on behalf of, the Union industry if it is supported by those Union producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Union industry expressing either support for or opposition to the complaint. …'

13 Article 6(7) of that regulation is worded as follows:

'The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with Article 5(10), as well as the representatives of the exporting country, may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Union or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and is used in the investigation.

Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.'

14 Under Article 11(2) and (9) of that regulation:

'(2) A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon a request made by or on behalf of Union producers, and the measure shall remain in force pending the outcome of that review.

…

(9) In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17.'

15 Article 18 of the Basic Regulation, entitled 'Non-cooperation', states in paragraph 1:

'In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided for in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, that information shall be disregarded and use may be made of facts available.

Interested parties shall be made aware of the consequences of non-cooperation.'

16 Article 19(2) and (4) of that regulation is worded as follows:

'(2) Interested parties providing confidential information shall be required to provide non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not capable of being summarised. In such exceptional circumstances, a statement of the reasons why such summarisation is not possible shall be provided.

…

(4) This Article shall not preclude the disclosure of general information by the Union authorities, and, in particular, of the reasons on which decisions taken pursuant to this Regulation are based, or disclosure of the evidence relied on by the Union authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure shall take into account the legitimate interests of the parties concerned that their business secrets not be divulged.'

17 Under the terms of Article 20 of that regulation, entitled 'Disclosure':

'(1) The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

(2) The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

…

(4) Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, no later than one month prior to the initiation of the procedures set out in Article 9. Where the Commission is not in a position to disclose certain facts or considerations at that time, they shall be disclosed as soon as possible thereafter.

Disclosure shall not prejudice any subsequent decision which may be taken by the Commission, but where such a decision is based on any different facts and considerations they shall be disclosed as soon as possible.

…'

Background to the dispute

18 Tartaric acid is used, in particular, in the production of wine and other beverages, as a food additive and as a setting retardant for plaster. In the European Union and Argentina, L+ tartaric acid is manufactured from wine-making by-products, wine lees ('natural tartaric acid'). In China, L+ tartaric acid and DL tartaric acid are manufactured by chemical synthesis from benzene ('synthetic tartaric acid'). Synthetic tartaric acid has the same physical and chemical characteristics as natural tartaric acid and is intended for the same basic uses as the latter.

19 Changmao is a Chinese producer-exporter of synthetic tartaric acid. Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA and Caviro Extra SpA, formerly Caviro Distillerie Srl ('Caviro Distillerie') (together 'Distillerie Bonollo and Others'), are producers of natural tartaric acid established in the European Union.

20 On 24 September 2004, the European Commission received a complaint about dumping in the tartaric acid sector from several Union producers.

The procedures preceding the adoption of the contested regulation

21 On 23 January 2006, the Council adopted Regulation (EC) No 130/2006 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).

22 By that regulation, the Council confirmed, inter alia, the market economy treatment (MET) of three Chinese exporting producers, namely Changmao, Ninghai Organic Chemical Factory and Hangzhou Bioking Biochemical Engineering Co. Ltd ('Hangzhou'). Anti-dumping duties of 10.1%, 4.7% and 0% respectively were imposed on goods produced by those three exporting producers. In addition, that regulation imposed an anti-dumping duty of 34.9% on tartaric acid produced by all other Chinese exporting producers.

23 On 13 April 2012, the Council adopted Implementing Regulation (EU) No 332/2012 amending Regulation No 130/2006, and excluding company Hangzhou Bioking Biochemical Engineering Co., Ltd from the definitive measures (OJ 2012 L 108, p. 1).

24 That implementing regulation was adopted following the report of the WTO Appellate Body of 29 November 2005 in the case 'Mexico – Definitive Anti-dumping Measures on Beef and Rice' (WT/DS 295/AB/R, paragraphs 305 and 306), which held, in essence, that an exporting producer

found not to have dumped in an initial investigation should be excluded from the scope of the definitive measure imposed following that investigation and could not be subject to administrative or changed circumstances reviews. In the present case, having found that the initial investigation did not lead to the conclusion that Hangzhou had practised dumping, the Council excluded that producer's exports from the scope of Regulation No 130/2006.

25 On 16 April 2012, the Council adopted Implementing Regulation (EU) No 349/2012 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), which maintained the anti-dumping duties imposed by Regulation No 130/2006 on the products of all Chinese exporting producers with the exception of Hangzhou.

26 On 26 June 2012, following a partial interim review procedure initiated in respect of Changmao and Ninghai Organic Chemical Factory, the Council adopted Implementing Regulation (EU) No 626/2012 amending Implementing Regulation No 349/2012 (OJ 2012 L 182, p. 1).

27 By that regulation, the Council denied those two companies MET which they had previously enjoyed and, after determining normal value on the basis of information supplied by a cooperating producer in an analogue country, namely Argentina, applied anti-dumping duties of 13.1% and 8.3% respectively to the products manufactured by those two Chinese exporting producers.

28 On 4 December 2014, following a complaint lodged by several European Union-based producers, including Distillerie Bonollo and Others, targeting Hangzhou, 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 Biochemical Engineering Co. Ltd (OJ 2014 C 434, p. 9).

29 On 9 February 2016, the Commission adopted Implementing Decision (EU) 2016/176 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). By that implementing decision, the Commission concluded that no material injury had been suffered by the Union industry within the meaning of Article 3 of Regulation No 1225/2009 as a result of imports into the European Union of tartaric acid manufactured by Hangzhou. It therefore terminated the anti-dumping proceeding concerning that exporting producer, without imposing anti-dumping duties.

30 Several court proceedings followed the adoption of Implementing Regulation No 626/2012 and Implementing Decision 2016/176.

31 First, the action brought by several Union producers of tartaric acid, including Distillerie Bonollo and Others, against that implementing decision was dismissed by the General Court by judgment of 15 March 2018, *Caviro Distillerie and Others* v *Commission* (T-211/16, EU:T:2018:148). The appeal brought by the same Union producers against that judgment was dismissed by the Court of Justice by judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission* (C-345/18 P, EU:C:2019:589).

32 Second, Implementing Regulation No 626/2012 has been the subject of two separate court proceedings.

33 In the first place, considering that the anti-dumping duties imposed by that implementing regulation were too high, Changmao brought an action before the General Court for annulment. By judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council* (T-442/12, EU:T:2017:372), the General Court annulled that implementing regulation in so far as it applied to Changmao, on the ground that its rights of defence had been infringed. No appeal has been lodged against that judgment of the General Court.

34 On 7 September 2017, the Commission published in the *Official Journal of the European Union* a Notice concerning the judgment of 1 June 2017 in case T-442/12 in relation to Implementing Regulation No 626/2012 (OJ 2017 C 296, p. 16). That notice stated that that institution had decided to reopen the anti-dumping investigation concerning imports of tartaric acid originating in China which had led to the adoption of Implementing Regulation No 626/2012, in so far as it concerned Changmao, and to resume it at the time when the irregularity was found. It was also specified that the scope of that reopening was limited to the enforcement of the judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council* (T-442/12, EU:T:2017:372), in respect of that exporting producer alone. The latter was therefore placed in the situation in which it found itself prior to the entry into force of that implementing regulation, namely that governed by Implementing Regulation No 349/2012, which provided for an anti-dumping duty of 10.1% in respect of its products.

35 In the second place, taking the view, for their part, that the anti-dumping duties imposed by Implementing Regulation No 626/2012 were not sufficiently high to remedy the extent of the dumping practised by Changmao and by Ninghai Organic Chemical Factory and, consequently, to eliminate the injury suffered by the European industry, several Union producers of tartaric acid, including Distillerie Bonollo and Others, brought an action before the General Court for annulment of that implementing regulation. By its judgment of 3 May 2018, *Distillerie Bonollo and Others* v *Council* (T-431/12, EU:T:2018:251), the General Court annulled that regulation on the ground that the method used to calculate normal value had changed in the review investigation, without having demonstrated a change in circumstances in relation to the initial investigation.

36 Changmao's appeal against that judgment was dismissed by the Court of Justice in almost its entirety by judgment of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others* (C-461/18 P, EU:C:2020:979).

The contested regulation and the procedure for its adoption

37 On 19 April 2017, following a request for an expiry review of the anti-dumping measures provided for by Implementing Regulation No 349/2012, made by several Union producers of tartaric acid, including Distillerie Bonollo and Others, representing more than 52% of the total EU production, the Commission published in the *Official Journal of the European Union* the Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of tartaric acid originating in the People's Republic of China (OJ 2017 C 122, p. 8) pursuant to Article 11(2) of the Basic Regulation.

38 By letter dated 20 April 2017, the Commission requested the interested parties to comment on the provisional sample of Union producers that it had selected pursuant to Article 17 of the Basic Regulation. The provisional sample consisted of six producers representing 86% of the total EU production of tartaric acid, including Caviro Distillerie, Industria Chimica Valenzana and Distillerie Mazzari.

39 On 13 June 2017, having regard, first, to a letter from Assodistil, the association of Italian tartaric acid producers, to the effect that Distillerie Mazzari did not wish to cooperate in the review investigation and, second, to the request made by Distillerie Bonollo and Others to be included in the sample, the Commission decided that it was no longer appropriate to sample Union producers of tartaric acid and sent questionnaires to all Union producers.

40 Seven Union producers, excluding inter alia Distillerie Mazzari, responded to those questionnaires.

41 The Chinese exporting producers contacted by the Commission, including Changmao, did not cooperate in the review investigation.

42 By letter of 30 April 2018, the Commission sent Changmao the general disclosure document setting out its analysis of the essential facts and considerations in support of the extension of the anti-dumping measures for a further five years.

43 On 14 May 2018, Changmao sent the Commission its comments on the general disclosure document. Subsequently, by email of 12 June 2018, it asked that institution whether, as a result of its comments, the latter was considering the adoption of a revised general disclosure document.

44 By email of 15 June 2018, the Commission confirmed that its observations had been duly analysed and that a response would be provided in the forthcoming settlement.

45 On 28 June 2018, the Commission adopted the contested regulation.

46 It follows from that regulation, first, as regards the existence of dumping, that the Commission calculated the normal value on the basis of Article 2(7)(a) of the Basic Regulation, applicable to imports from non-market-economy countries. After considering Argentina as an analogue country and inviting the two Argentinian producers to cooperate, it was found that one of those producers had ceased production of the product under review and the other had refused to cooperate. In the absence of satisfactory cooperation from any producer in another potential analogue country, the Commission determined normal value on 'any other reasonable basis', as provided for in the first subparagraph of Article 2(7)(a) of the Basic Regulation. More specifically, the Commission calculated normal value on the basis of information provided in the review request relating to prices charged by an Argentinian producer for domestic sales of the product concerned. In view of the fact that the product concerned manufactured in Argentina was natural tartaric acid, whereas the product from the Chinese exporting producers was synthetic tartaric acid, which was less expensive, the Commission made certain adjustments in order to take account of the differences in the cost of the production methods for those two types of product.

47 Given the lack of cooperation from the Chinese exporting producers contacted, including Changmao, the Commission, in accordance with Article 18 of the Basic Regulation, made its findings 'on the basis of the facts available' and, accordingly, established export prices on the basis of the database referred to in Article 14(6) of that regulation. On the basis of those data, the Commission found, in particular, that the weighted average dumping margin for Changmao and Ninghai Organic Chemical Factory exceeded 70%.

48 Thus, the Commission concluded, first, that dumping had continued during the review investigation period and, second, that there was a strong likelihood of continuation of dumping by the exporting producers subject to measures. In particular, the expiry of measures would be likely to lead to a significant increase in exports to the European Union at significantly dumped prices.

49 Second, as regards injury, it is apparent from the contested regulation, on the one hand, that the Commission considered that the seven Union producers which cooperated in the investigation represented a major proportion of the total EU production of the like product, namely more than 60%. Therefore, the seven producers in question had to be deemed to constitute the 'Union industry' within the meaning of Article 4(1) and Article 5(4) of the Basic Regulation. Following an examination of the injury indicators of the Union industry within the meaning of Article 3(5) of the Basic Regulation, on the basis of verified information collected from cooperating producers, the Commission concluded that the anti-dumping measures adopted had not achieved their full intended effects and that the Union industry remained vulnerable to the injurious effects of dumped imports on the Union market.

50 On the other hand, the Commission examined the likelihood of recurrence of injury should measures be allowed to expire. Given the lack of cooperation from the Chinese exporting producers contacted, the Commission relied on the information available, in accordance with Article 18 of the Basic Regulation. That analysis led it to consider that the expiry of the measures would most likely lead to an increase in dumped imports, which would result in a downward pressure on the Union industry's prices and a deterioration of the already precarious economic situation of that industry. It therefore concluded that the expiry of the measures would in all likelihood lead to a recurrence of injury to the Union industry.

51 Third, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the European Union as a whole and concluded that that was not the case.

52 In the light of the foregoing, the Commission has decided to maintain, by the contested regulation, definitive anti-dumping duties of 8.3% on imports of products manufactured by Ninghai Organic Chemical Factory, 10.1% on imports of products manufactured by Changmao and 34.9% on imports of products from any other Chinese exporting producer, with the exception of Hangzhou.

The procedure before the General Court and the judgment under appeal

53 By application lodged at the Registry of the General Court on 12 September 2018, Changmao sought annulment of the contested regulation.

54 In support of its action, Changmao relied on five pleas in law, alleging, first, that the Commission erred in law by having recourse to the analogue country methodology in order to calculate normal value, second, errors of law and manifest errors of assessment in the determination of the vulnerability of the Union industry, third, manifest errors of assessment concerning the likelihood of recurrence of injury, fourth, infringement of the rights of the defence and of the principle of sound administration and, finally, fifth, failure to state reasons.

55 In the judgment under appeal, the General Court dismissed those five pleas and, consequently, the action for annulment in its entirety.

Forms of order sought by the parties before the Court of Justice

56 Changmao claims that the Court should:

– set aside the judgment under appeal;

– principally, uphold the action at first instance, and thus annul the contested regulation, in so far as it concerns it;

– in the alternative, refer the case back to the General Court for reconsideration; and

– order the Commission and the intervening parties to pay the costs at first instance and on appeal.

57 The Commission contends that the Court should:

– dismiss the appeal as unfounded; and

– order Changmao to pay the costs.

58 Distillerie Bonollo and Others contend that the Court should:

– dismiss the appeal in its entirety as inoperative and, in any event, as unfounded and/or inadmissible; and

– order Changmao to pay the costs which they have incurred in the proceedings on appeal and at first instance.

59 On 13 June 2022, the Court invited the Council and the European Parliament, pursuant to the second paragraph of Article 24 of the Statute of the Court of Justice of the European Union, to attend the hearing in order to answer questions relating to the first ground of appeal.

The appeal

60 In support of its appeal, the appellant relies on four grounds, the first alleging that the General Court erred in law in holding that the review of the legality of the European Union's acts adopted under Article 2(7) of the Basic Regulation could not be carried out in the light of the Protocol on the Accession of China to the WTO, the second and third alleging errors of law and manifest errors of assessment committed in determining both the vulnerability of the Union industry and the likelihood of recurrence of injury to that industry, in breach, in particular, of the principle of sound administration, and, finally, the fourth alleging breach of the rights of the defence.

The first ground of appeal

61 The first ground of appeal is divided into two parts. By the first part of that ground, the appellant complains, in essence, that the General Court erred in law in holding, in paragraphs 64 and 65 of the judgment under appeal, that the exception to the principle that the EU Courts cannot review the legality of acts of the EU institutions in the light of their conformity with the rules of the WTO Agreements, recognised by the Court of Justice in its judgment of 7 May 1991, *Nakajima* v

Council (C-69/89, EU:C:1991:186), was not applicable in the present case. By the second part of that ground of appeal, the appellant complains that, in paragraph 74 of the judgment under appeal, the Court wrongly rejected the possibility of a third exception to the abovementioned principle.

The first part of the first ground of appeal

– *Arguments of the parties*

62 By the first part of the first ground of appeal, Changmao claims, in essence, that the General Court erred in law in finding, in paragraphs 64 and 65 of the judgment under appeal, that the legality of the European Union's acts adopted pursuant to Article 2(7) of the Basic Regulation could not be reviewed in the light of the Protocol on the Accession of China to the WTO. In particular, the General Court erred in law in finding, relying on paragraph 48 of the judgment of 16 July 2015, *Commission* v *Rusal Armenal* (C-21/14 P, EU:C:2015:494), that Article 2(7) constitutes the expression of the EU legislature's intention to adopt, in that area, an approach specific to the European Union's legal order, even after the People's Republic of China's accession to the WTO.

63 In that regard, Changmao claims, first, that, on the contrary, that provision reflects the intention of the EU legislature to implement a specific obligation entered into in the context of the Protocol on the Accession of China to the WTO, within the meaning of the case-law arising from the judgment of 7 May 1991, *Nakajima* v *Council* (C-69/89, EU:C:1991:186, paragraphs 29 to 32), consisting, in essence, of an undertaking not to make use of the 'analogue country' derogation method in respect of Chinese exporting producers until the end of the transitional period provided for in Article 15 of that protocol.

64 That interpretation is corroborated, moreover, by the legislative history of Article 2(7) of the Basic Regulation and, in particular, by recitals 54 and 55 of the Proposal for a Council Decision establishing the Community position within the Ministerial Conference set up by the Agreement establishing the World Trade Organization on the accession of the People's Republic of China to the World Trade Organization (COM(2001) 517 final) (OJ 2002 C 51 E, p. 314) and by the subsequent Council Decision of 19 October 2001 (2001/0218 (CNS) and 2001/0216 (CNS)). In the judgment under appeal, the General Court omitted to reply to the appellant's arguments concerning the legislative history of Article 2(7).

65 Second, according to Changmao, the case-law arising from the judgment of 16 July 2015, *Commission* v *Rusal Armenal* (C-21/14 P, EU:C:2015:494), is not applicable in the present case, since that judgment not only related to the specific situation of the Republic of Armenia, but also governed situations prior to the date of expiry of the transitional period provided for in the Protocol on the Accession of China to the WTO. Furthermore, it applies only to non-market-economy countries that were not members of the WTO.

66 As regards the review of EU acts in the light of WTO law, Changmao considers that the first exception, referred to in the judgment of 7 May 1991, *Nakajima* v *Council* (C-69/89, EU:C:1991:186), and set out in paragraph 60 of the judgment under appeal, by means of the reference made to the case-law arising from the judgments of 16 July 2015, *Commission* v *Rusal Armenal* (C-21/14 P, EU:C:2015:494, paragraphs 40 and 41), and of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraph 87), is satisfied in the present case. In that regard, it submits that Article 2(7) of the Basic Regulation constitutes an

exception to the basic rules for the determination of dumping and that, although that provision does not refer to the Protocol on the Accession of China to the WTO, it should be interpreted in accordance with EU law. Furthermore, that exception could not be applied to imports from China after the expiry of the transitional period provided for in Article 15 of that protocol, so that, after that expiry, the basic rules set out in Article 2(1) to (6) of the Basic Regulation should apply to those imports.

67 Thus, according to Changmao, Article 15(a) and (d) of that protocol ceased to apply on 11 December 2016, so that the People's Republic of China would no longer be subject to the application of the 'analogue country' rules from that date, which is corroborated, moreover, by the report of the WTO Appellate Body of 15 July 2001 in the case 'European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China' (WT/DS/397). Consequently, since, in the present case, the notice of initiation of the Commission procedure entered into force on 19 April 2017, it should be considered that, as from the expiry of the transitional period provided for in the Protocol on the Accession of China to the WTO, the European Union must, as a general rule, use the Chinese costs of production and domestic market prices in order to determine the normal value for Chinese exporting producers.

68 Distillerie Bonollo and Others, the Parliament, the Council and the Commission contest the merits of this first part of the first ground of appeal.

– *Findings of the Court*

69 As a preliminary point, it should be noted that the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, second, those provisions appear, as regards their content, to be unconditional and sufficiently precise. It is therefore only when both those conditions are met that such provisions may be relied upon before the EU Courts as a criterion in order to assess the legality of an EU act (judgment of 16 July 2015, *Commission* v *Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraph 37 and the case-law cited).

70 With regard to the WTO Agreements, of which the Protocol on the Accession forms an integral part, the Court has already been able to state, first, that those agreements are not such as to create rights for individuals which they may rely on directly before the courts by virtue of EU law (see, by analogy, judgments of 14 December 2000, *Dior and Others*, C-300/98 and C-392/98, EU:C:2000:688, paragraphs 43 and 44, and of 15 March 2012, *SCF*, C-135/10, EU:C:2012:140, paragraph 46).

71 Second, it follows from settled case-law that, taking account of their nature and structure, the Agreement establishing the WTO and the agreements listed in Annexes 1 to 4 to that agreement are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the EU institutions (judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 83 and the case-law cited).

72 In that regard, the Court noted, in particular, that to accept the courts of the European Union have the direct responsibility for ensuring that EU law complies with the WTO rules would deprive the European Union's legislative or executive bodies of the discretion which the equivalent bodies of the European Union's commercial partners enjoy. It is not in dispute that some of the contracting

parties, which are amongst the most important commercial partners of the European Union, have concluded from the subject matter and purpose of the agreements referred to in the previous paragraph that they are not among the rules applicable by their courts when reviewing the legality of their rules of domestic law. Such lack of reciprocity, if admitted, would risk introducing an anomaly in the application of the WTO rules (judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 84 and the case-law cited).

73 The Court also held that the system resulting from the WTO Agreements accords importance for negotiation between the parties. As regards, more particularly, the application of those agreements in the European Union's legal order, it noted that, under the terms of its preamble, the Agreement establishing the WTO, including its annexes, remains founded on the principle of negotiations undertaken on 'reciprocal and mutually advantageous arrangements' and thus differs, as far as the European Union is concerned, from agreements concluded by the European Union with third countries which introduce a certain asymmetry of obligations or create special relations of integration with the European Union (see, to that effect, judgment of 23 November 1999, *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraphs 36 and 42 and the case-law cited).

74 It is only in two exceptional situations, which are the result of the EU legislature's own intention to limit its discretion in the application of the WTO rules, that the Court has accepted that it is for the Courts of the European Union, if necessary, to review the legality of an EU measure and of the measures adopted for its application in the light of those agreements or a decision of the WTO Dispute Settlement Body establishing non-compliance with those agreements (judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 85 and the case-law cited).

75 That concerns, first, the situation in which the European Union intended to give effect to a specific obligation assumed under the agreements referred to in paragraph 71 of the present judgment and, second, the situation in which the act of the European Union at issue expressly refers to specific provisions of those agreements (see, to that effect, in particular, judgment of 22 June 1989, *Fediol* v *Commission*, 70/87, EU:C:1989:254, paragraphs 19 to 22; of 7 May 1991, *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraphs 29 to 32; and of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 86 and the case-law cited).

76 With regard to Article 2(7) of the Basic Regulation on the determination of the normal value of imports from a non-market economy country which is a member country of the WTO, it must be recalled, in the first place, that the Court has already held that that provision is the expression of the EU legislature's intention to adopt, in that area, an approach specific to the EU legal order (judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 88 and the case-law cited).

77 In that regard, it should be noted that, for the reasons given by the Advocate General in points 89 to 91 of her Opinion, the appellant's argument that the Court's case-law, cited in the preceding paragraph of the present judgment, is not applicable in the present case cannot succeed.

78 Furthermore, the Court stated that the assessments resulting from the case-law cited in paragraph 76 of the present judgment were not called into question by the fact that recital 3 of the Basic Regulation states that the rules of the Anti-Dumping Agreement should be transposed into EU law 'to the best extent possible'. That expression must be understood as meaning that,

although the EU legislature intended to take account of the rules of the Anti-Dumping Agreement when adopting that regulation, it did not, however, express the wish to transpose each of those rules into that regulation. The conclusion that the purpose of Article 2(7) of the Basic Regulation is to give effect to the specific obligations contained in Article 2 of the Anti-Dumping Agreement cannot therefore in any event be based in isolation on the wording of that recital (see, to that effect, in particular, judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 89 and the case-law cited).

79 In that regard, it should be noted that the Court has already held, in essence, that, in order for the intention of the EU legislature to implement in EU law a specific obligation entered into in the context of the WTO Agreements to be established, it is not sufficient for the preamble to an EU act to support only a general inference that the legal act in question was to be adopted with due regard for international obligations entered into by the European Union. By contrast, it is necessary to be able to deduce from the specific provision of EU law contested that it seeks to implement into EU law a particular obligation stemming from the WTO Agreements (see, to that effect, judgment of 16 July 2015, *Commission* v *Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraphs 44 to 46 and the case-law cited).

80 Furthermore, it must be noted, as the Advocate General also pointed out in points 70 and 85 of her Opinion, that, first, none of the recitals of the Basic Regulation refers to the Protocol on the Accession of China to the WTO. Second, it cannot be inferred from the preparatory documents for that regulation that the EU legislature had any intention of implementing any obligation assumed under that protocol.

81 Furthermore, contrary to Changmao's submission, the General Court did not err in law in failing to take into account, in the context of the interpretation of Article 2(7) of the Basic Regulation, the preparatory documents leading to the adoption of the Protocol on the Accession of China to the WTO.

82 Finally, with regard to the appellant's arguments concerning the WTO Appellate Body report of 15 July 2001, it should be noted that, in paragraph 77 of the judgment under appeal, the General Court rejected that argument, holding, first, that the possibility for an economic operator to rely before the EU Courts on the fact that EU legislation is incompatible with a report of the WTO Dispute Settlement Body cannot be accepted outside the cases referred to in paragraph 60 of the judgment under appeal, concerning the substantive rules of the WTO, referring in that regard to the judgments of 10 November 2011, *X and X BV* (C-319/10 and C-320/10, EU:C:2011:720, paragraph 37), and of 18 October 2018, *Rotho Blaas* (C-207/17, EU:C:2018:840, paragraph 46), and, second, that the applicant had not put forward any arguments enabling it to be found that, by adopting Article 2(7) of the Basic Regulation, the European Union intended to give effect to a specific obligation resulting from the report of the WTO Dispute Settlement Body or that it expressly referred to that report in the Basic Regulation. The appellant has not indicated before the Court of Justice how that position of the General Court is vitiated by error.

83 In those circumstances, the General Court cannot be criticised for having erred in law, in paragraphs 64 and 65 of the judgment under appeal, by holding that the exceptional situation recognised by the Court of Justice in the case-law arising from the judgment of 7 May 1991, *Nakajima* v *Council* (C-69/89, EU:C:1991:186, paragraphs 29 to 32), was not applicable in the present case. Accordingly, it is without committing an error of law that it held that the Protocol

on the Accession of China to the WTO could not be relied on to challenge the validity of Article 2(7) of the Basic Regulation and, by the same token, the legality of the contested regulation adopted on the basis thereof.

84 It follows that the first part of the first ground of appeal must be dismissed as unfounded.

The second part of the first ground of appeal

– *Arguments of the parties*

85 By the second part of its first ground of appeal, Changmao claims that the General Court erred in law by dismissing, in paragraph 74 of the judgment under appeal, its argument relating to the existence of a 'third exception' to the principle that the EU Courts cannot review the legality of acts of the EU institutions in the light of their conformity with the WTO Agreements, so as to enable it to rely directly on the provisions of an international agreement, such as the Protocol on the Accession of China to the WTO, in a situation where 'the international agreement in question allows a derogation from the general rule and EU law makes use of that power, as in the present case'.

86 Distillerie Bonollo and Others, the Parliament, the Council and the Commission consider that the second part of the first ground of appeal is unfounded. Distillerie Bonollo and Others further submit that that part should be dismissed as inadmissible.

– *Findings of the Court*

87 Under Article 169(2) of the Rules of Procedure of the Court of Justice, the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested. Consequently, according to settled case-law, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or the relevant ground of appeal will be declared inadmissible (judgment of 28 April 2022, *Changmao Biochemical Engineering* v *Commission*, C-666/19 P, EU:C:2022:323, paragraph 186 and the case-law cited).

88 In particular, a plea in law, or a part of a plea in law, which is not sufficiently clear and precise to enable the Court of Justice to carry out its review of legality, does not satisfy those requirements and must be declared inadmissible, in particular because the essential elements on which that plea or part of the plea is based are not apparent in a sufficiently coherent and comprehensible manner from the text of that appeal, which is worded in an obscure and ambiguous manner in that regard (see, to that effect, judgment of 28 April 2022, *Changmao Biochemical Engineering* v *Commission*, C-666/19 P, EU: C:2022:323, paragraph 187 and the case-law cited).

89 Although Changmao identifies precisely the paragraph in the judgment under appeal which it intends to criticise in the second part of its first ground of appeal, it must be observed that the considerations which it puts forward in support of that part do not contain any clear and comprehensible legal argument, within the meaning of the case-law cited in paragraphs 87 and 88 of the present judgment, making it possible to demonstrate what the 'third exception' which it advocates consists of.

90 The second part of the first ground of appeal must therefore be dismissed as inadmissible.

91 The first ground of appeal must therefore be dismissed in its entirety.

The second ground of appeal

Arguments of the parties

92 The second ground of appeal, which relates to paragraphs 103, 106, 109 to 112, 114, 116, 117, 120 and 121 of the judgment under appeal, alleges a manifest error of assessment in that the General Court failed to find an infringement of Article 3(1), (2) and (5) and Article 11(2) and (9) of the Basic Regulation and of the principle of sound administration as a result of the Commission's failure to take into account, in the context of its assessment of the state of the tartaric acid industry in the European Union, first, the results of the commercial activity of the principal producer of tartaric acid in the European Union, namely Distillerie Mazzari, and, second, the fact that the negative results of certain producers in the European Union were due to ill-advised investment decisions on their part.

93 Changmao complains, principally, that the General Court failed to find that, in assessing the vulnerability of the Union industry, the Commission should have taken account of the data relating to Distillerie Mazzari, as the largest producer of natural tartaric acid in the European Union.

94 In that regard, it claims, in the first place, that the General Court, in holding, in paragraphs 103, 106 and 109 to 112 of the judgment under appeal, that it was sufficient for the Commission, in determining the state of vulnerability of the Union industry, to take account only of the information provided by the seven Union producers which had decided to cooperate in the review investigation giving rise to the contested regulation, without taking into consideration the data concerning Distillerie Mazzari, on the ground that the latter had refused to cooperate in the investigation, committed a manifest error of assessment. The General Court thus failed to find an infringement of Article 3(1), (2) and (5) of the Basic Regulation. Such a methodology involves a process of self-selection in the Union industry and, consequently, a significant risk of distortion of the investigation and its outcome.

95 The appellant complains that the General Court held, in paragraph 106 of the judgment under appeal, that, in the absence of cooperation from Distillerie Mazzari, the Commission was unable to obtain reliable data concerning that producer. More specifically, it complains that the General Court did not consider that the Commission should have taken into account, in the context of the determination of the Union industry's vulnerability, the data concerning Distillerie Mazzari which it already had at its disposal under the investigation which led to the adoption of Implementing Decision 2016/176, since the respective investigation periods of that implementing decision and of the contested regulation overlapped substantially, as they both related in particular to the years 2013 and 2014.

96 Moreover, for the review investigation period which did not correspond to that of the investigation which led to the adoption of Implementing Decision 2016/176, namely that relating to the years 2015 and 2016, the Commission could easily have obtained information concerning that producer by means of its publicly available financial statements, which clearly show a

pre-tax profitability of 8.4% in 2015 and 8.1% in 2016, in sharp contrast to the conclusions of the contested regulation on the profitability of cooperating Union producers, namely – 4% in 2015 and 0.8% in 2016.

97 Thus, the General Court wrongly held, in paragraphs 109 and 112 of the judgment under appeal, that the Commission could not have had information concerning Distillerie Mazzari for the entire period of the investigation leading up to the adoption of the contested regulation and that, consequently, it was not possible to know with certainty what its conclusions would have been had it had that information. It was also wrong to hold, in paragraphs 110 and 111 of the judgment under appeal, that the Commission was not supposed to include in the selection of the producers of tartaric acid deemed to constitute the Union industry in that sector producers that had decided not to cooperate in the investigation.

98 In the second place, the appellant claims that the General Court erred in law by holding, in paragraph 114 of the judgment under appeal, that circumstances had changed between the investigation which led to the adoption of Implementing Decision 2016/176 and that which led to the adoption of the contested regulation, in that Distillerie Mazzari had decided no longer to cooperate in the investigation, so that the use of a different methodology to assess the state of vulnerability of the Union industry was justified. According to Changmao, Distillerie Mazzari's failure to cooperate did not constitute a change in circumstances, within the meaning of Article 11(9) of the Basic Regulation, such as to justify the use of a different calculation methodology from that used in the initial investigation which led to the imposition of the anti-dumping duty. Moreover, the Commission did not find any such change in circumstances in the contested regulation.

99 In the third place, the appellant claims that the General Court erred in law by holding, in paragraphs 116 and 117 of the judgment under appeal, that the Commission did not fail to examine all the relevant factors for the purposes of establishing the state of vulnerability of the Union industry and that it had therefore acted with due diligence and in accordance with the principle of sound administration. It is clear from the contested regulation that, in making that determination, the Commission relied solely on the data supplied by the Union producers who had decided to cooperate in the investigation, without taking account of the data concerning Distillerie Mazzari which it already had at its disposal in connection with the investigation that led to the adoption of Implementing Decision 2016/176, or of the data referred to in paragraph 96 of the present judgment, which it could easily have had at its disposal had it exercised all due diligence in gathering all the relevant information.

100 In the light of the foregoing, Changmao claims that the General Court erred in dismissing the second plea in law in support of the action at first instance, alleging that the Commission had not carried out an objective examination based on all the information available in order to determine the state of vulnerability of the Union industry, in breach of Article 3(1), (2) and (5) and Article 11(2) and (9) of the Basic Regulation, of its duty of care and of the principle of sound administration.

101 In the alternative, the appellant submits that, even if the Court of Justice were to find that the General Court did not err in law in holding that the Commission was not required to take account of the data relating to Distillerie Mazzari, the tartaric acid industry in the European Union is not, in any event, in a vulnerable situation. In that regard, it submits, first, as follows: 'even by taking into account only the Commission's injury indicator data, the EU [c]onsumption decreased by 11% (correct number would be 25%), the EU production increased by 22%, the sales

of all nine [Union] tartaric acid] producers increased by 15-25% ([r]ecital 118 of the [c]ontested [r]egulation), their market share increased by 32% ([r]ecital 121 of the [c]ontested [r]egulation); the sales of the seven cooperating [Union] producers increased by 33% ([r]ecital 117 of the [c]ontested [r]egulation), their market share increased by 46% ([r]ecital 120 of the [c]ontested [r]egulation); while EU [tartaric acid] imports from [China] decreased by 47% ([r]ecital 101 of the [c]ontested [r]egulation), their market share decreased by 40%, [China tartaric acid] imports subject to measures decreased by 49% and their market share decreased by 42% ([r]ecital 102 of the [c]ontested [r]egulation). Regarding average unit prices, the [China tartaric acid] prices subject to [measures] decreased by 33%, but the EU prices decreased by more than 47% while their production costs decreased by 44%. Therefore, the Union [tartaric acid i]ndustry is not in a vulnerable condition, even without taking into account Distillerie Mazzari's performance and certainly not due to the declining presence in the [European Union] of [tartaric acid] imports from [China]'.

102 According to Changmao, even assuming that the vulnerability of the Union industry was established, the Commission should, in any event, have concluded that it was 'self-inflicted', owing to the investments made by certain Union producers in order to increase their production capacity, while consumption on that market was falling, which led to a certain pressure on prices, while reducing the profitability of that industry, the return on investments and cash flow. It also points out that, in Implementing Decision 2016/176, the Commission concluded that the Union industry was performing well in terms of profitability, return on investment and cash flow, even though the investigation period preceding that implementing decision and that leading up to the adoption of the contested regulation overlapped significantly.

103 In addition, the appellant claims that, in the light of a parallel reading of Implementing Decision 2016/176 and the contested regulation, for the period of overlap of the respective investigations underlying them, the Commission's conclusions concerning certain economic indicators relating to the Union industry, in particular those relating to the 'consumption' of tartaric acid in the European Union and the 'production capacity' of that product on the Union market, are not consistent. In that regard, it states, first, that the data set out in Table 1 in the contested regulation, indicating the total consumption of tartaric acid in the European Union for the years 2013 and 2014, are different from those mentioned in Table 1 in Implementing Decision 2016/176. Second, the data in Table 8 in the contested regulation, relating to the production of tartaric acid in the European Union during the period 2013-2014, are different from the data on the production of tartaric acid in the European Union for the same period, as set out in Table 4 in Implementing Decision 2016/176. The data used for those two macroeconomic indicators undoubtedly have an impact on all the other injury indicator data which are derived from consumption and production data, such as market shares and sales, mentioned in Table 11 and recital 98 of the contested regulation, as well as on the indicator relating to the profitability of the Union industry.

104 On the basis of those factors, Changmao claims that the General Court erred in law by holding, in paragraphs 120 and 121 of the judgment under appeal, that it was necessary, in assessing the impact on the vulnerability of the Union industry of the factors referred to in paragraphs 102 and 103 of the present judgment, to take account of the broad discretion available to the Commission in that regard.

105 Distillerie Bonollo and Others and the Commission consider that the second ground of appeal should be dismissed as partly inadmissible and partly unfounded.

Findings of the Court

106 It should be noted at the outset that, in order for the EU institutions to be able to determine whether there is a threat of material injury to the Union industry in the economic sector concerned, it is necessary to know the current situation of that industry. It is only in the light of that situation that those institutions will be able to determine whether the imminent increase in future dumped imports will cause material injury to that industry in the event that no trade defence measures are taken. Thus, the assessment of the vulnerability of that industry constitutes the first stage of analysis in the context of the determination of whether there is a threat of injury (see, to that effect, judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel*, C-186/14 P and C-193/14 P, EU:C:2016:209, paragraph 31).

107 Pursuant to Article 3(2) of the Basic Regulation, the determination of injury to an Union industry is based on positive evidence and involves an objective examination, on the one hand, of the volume of the dumped imports and the effect of those imports on prices in the Union market for like products and, on the other, of the consequent impact of those imports on the Union industry.

108 Article 4(1) of the Basic Regulation defines the concept of 'Union industry' in reference to 'the Union producers as a whole of the like products' or 'those of [those producers] whose collective output of the products constitutes a major proportion, as defined in Article 5(4), of the total Union production of those products'. The latter provision indicates, in particular, that an investigation will not be initiated where the Union producers expressly supporting the complaint account for less than 25% of the total production of the like product produced by the Union industry.

109 In that regard, the Court has already held that the 25% threshold refers to 'the total production of the like product produced by the Union industry' and relates to the percentage of that total production accounted for by the Union producers supporting the complaint. Only that 25% threshold is therefore relevant in determining whether those producers account for 'a major proportion' of the total production of the like product produced by the Union industry, within the meaning of Article 4(1) of the Basic Regulation (see, to that effect, judgment of 15 November 2018, *Baby Dan*, C-592/17, EU:C:2018:913, paragraph 79 and the case-law cited).

110 By referring to that threshold, Article 4(1) of the Basic Regulation thus merely specifies that a combined production of the Union producers supporting the complaint which does not reach 25% of the total EU production of the like product cannot, in any event, be considered sufficiently representative of the EU production. In the event that the combined output of those producers exceeds that threshold, anti-dumping duties may be imposed or maintained if the EU institutions concerned succeed in establishing, taking into account all the relevant factors of the case, that the injury resulting from the imports of the dumped product is injuring a major proportion of the total EU production of the like product (see, to that effect, judgment of 15 November 2018, *Baby Dan*, C-592/17, EU:C:2018:913, paragraph 80 and the case-law cited).

111 It follows that the definition of the Union industry, within the meaning of Article 4(1) of the Basic Regulation, may be limited solely to the Union producers which supported the complaint giving rise to the anti-dumping investigation (see, to that effect, judgment of 15 November 2018, *Baby Dan*, C-592/17, EU:C:2018:913, paragraph 81 and the case-law cited).

112 In the present case, it should be noted, first, that the production of the Union producers referred to in paragraph 13 of the judgment under appeal, which were at the origin of the complaint which led to the review investigation, represented 52% of the total production of the product concerned and therefore exceeded the threshold of 25% laid down in Article 4(1) of the Basic Regulation, read in the light of Article 5(4) of that regulation. It is also apparent from paragraph 30 of the judgment under appeal that the seven producers which cooperated in the investigation and which the Commission took into account in determining the vulnerability of the Union industry and the threat of injury represented 60% of total EU production.

113 Second, it is necessary to reject Changmao's arguments that, in essence, the General Court erred in law when it held, in paragraphs 103, 106 and 109 to 112 of the judgment under appeal, that it was sufficient for the Commission, in the context of determining the state of vulnerability of the Union industry, to take account solely of the information supplied by the seven Union producers which had decided to cooperate, without taking into consideration the data concerning Distillerie Mazzari, in its capacity as the largest producer of natural tartaric acid in the European Union. In so far as, in accordance with the case-law cited in paragraphs 109 to 111 of the present judgment, the definition of the Union industry may be limited to the Union producers which supported the complaint giving rise to the anti-dumping investigation, that circumstance alone is not such as to invalidate the methodology followed in adopting the contested regulation, within the meaning of Article 4(1) of the Basic Regulation. Furthermore, that circumstance also cannot allow a finding that the General Court erred in law because it did not find that the Commission had failed to examine all the relevant factors in order to establish the state of vulnerability of the Union industry and that, consequently, it had not acted with due diligence and in accordance with the principle of sound administration.

114 Third, the General Court cannot be criticised for failing to find that the Commission infringed Article 3(2) of the Basic Regulation. The fact that the definition of the Union industry is limited to the Union producers which supported the complaint giving rise to the anti-dumping investigation and which cooperated in the investigation does not, in itself, and in the absence of any other factor of such a kind as to call into question the representativeness of those producers, allow it to be considered that the determination, in the contested regulation, of the state of vulnerability of the Union industry is not based on positive evidence and does not involve an objective examination within the meaning of Article 3(2) of the Basic Regulation.

115 It follows that, in holding, in paragraphs 103, 106 and 109 to 112 of the judgment under appeal, that it was sufficient for the Commission, in determining the state of vulnerability of the Union industry, to take account only of the information provided by the seven Union producers which decided to cooperate in the review investigation which gave rise to the contested regulation, without taking into consideration the data concerning Distillerie Mazzari, the General Court did not err in law.

116 In those circumstances, it is necessary to reject as inoperative Changmao's other arguments set out in paragraphs 95 to 97 of the present judgment, criticising the General Court, in essence, first, for failing to find that the Commission was able to obtain information concerning Distillerie Mazzari for the whole of the period of investigation leading up to the adoption of the contested regulation and, second, by holding that that institution was not supposed to include, in the selection of producers of tartaric acid deemed to constitute the Union industry in that sector, producers that had decided not to cooperate in the investigation, since those arguments cannot lead to the annulment of the judgment under appeal.

117 As regards Changmao's argument referred to in paragraph 98 of the present judgment, it should be noted that it is based on an erroneous reading of paragraph 114 of the judgment under appeal. In that paragraph, the General Court did not consider that Distillerie Mazzari's failure to cooperate constituted a change in methodology, within the meaning of Article 11(9) of the Basic Regulation, in relation to the methodology used in the proceeding which led to the imposition of the anti-dumping duty, but it confined itself to finding, in response to the allegation to that effect made before it by Changmao, that that circumstance could not be regarded as an unjustified change in methodology for assessing the state of the Union industry in the light of Implementing Decision 2016/176.

118 It should be pointed out, moreover, that Article 11(9) of the Basic Regulation concerns only the method or methods for calculating 'normal value' (see, to that effect, judgment of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraphs 142 to 153 and the case-law cited), and does not therefore govern the determination of the state of vulnerability of the Union industry, so that the appellant's argument should, in any event, be rejected as unfounded.

119 With regard to Changmao's argument referred to in paragraph 101 of the present judgment, it should be borne in mind that, in accordance with the Court of Justice's settled case-law, an appellant cannot rely, for the first time before the Court, on pleas in law and arguments which it did not raise before the General Court. To allow a party to raise such pleas and arguments for the first time before the Court of Justice would be tantamount to authorising it to bring before the Court, whose jurisdiction in relation to appeals is limited, a case of wider ambit than that which came before the General Court. In the context of an appeal, the Court of Justice's jurisdiction is therefore confined to a review of the findings of law on the pleas and arguments debated before the General Court (see, to that effect, judgment of 16 March 2023, *Commission* v *Jiangsu Seraphim Solar System* and *Council* v *Jiangsu Seraphim Solar System and Commission*, C-439/20 P and C-441/20 P, EU:C:2023:211, paragraph 83 and the case-law cited).

120 Thus, since that argument was raised only at the appeal stage, it must be rejected as inadmissible.

121 Finally, as regards the arguments referred to in paragraphs 102 and 103 of the present judgment, it should be noted that, in accordance with Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal is limited to points of law. The General Court alone has jurisdiction to establish and assess the relevant facts and to evaluate the evidence. The assessment of those facts and evidence does not therefore constitute, save in the case of their distortion, a question of law subject, as such, to review by the Court in the context of an appeal (judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission*, C-345/18 P, EU:C:2019:589, paragraph 66 and the case-law cited).

122 Where an appellant alleges such a distortion by the General Court, that appellant must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to such distortion. In addition, in accordance with the Court of Justice's settled case-law, distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 28 April 2022, *Changmao Biochemical Engineering* v *Commission*, C-666/19 P, EU:C:2022:323, paragraph 74 and the case-law cited).

123 By the arguments referred to in paragraphs 102 and 103 of the present judgment, the appellant is in fact refuting the assessment made by the General Court of both the facts and the evidence and is thus seeking to obtain from the Court of Justice a new assessment of those facts and evidence, without alleging any distortion in that regard, and thereby disregards the case-law cited in paragraphs 121 and 122 of the present judgment.

124 It follows from the foregoing that the argument referred to in paragraph 104 of the present judgment, which constitutes, in essence, an extension of the argument set out in paragraphs 102 and 103 of the present judgment, must also be rejected as inadmissible.

125 In the light of the foregoing, the second ground of appeal must be dismissed as partly inadmissible and partly unfounded.

The third ground of appeal

Arguments of the parties

126 By its third ground of appeal, which refers to paragraphs 138, 139, 145 to 147, 150 and 152 of the judgment under appeal, Changmao complains that, in the context of the threat of injury analysis, the General Court committed manifest errors in the interpretation and application of Article 3(1), (2) and (5) of the Basic Regulation, Article 11(2) of that regulation and the principle of sound administration. In particular, it complains that the General Court failed to find that, by refusing to take into account, in the context of the determination of a threat of injury, first, the injurious effects which imports from the largest producer of tartaric acid in China and the main exporter of that product to the European Union would have on the Union industry, namely Hangzhou, and, second, the impact of climate change and the differences in end uses between synthetic tartaric acid and natural tartaric acid, the Commission had infringed both the provisions of the Basic Regulation and the general principle of law referred to above. Furthermore, the General Court was wrong not to find an infringement of Article 11(2) of the Basic Regulation, in that the Commission had found, in the contested regulation, that there was a threat of injury, whereas, in Implementing Decision 2016/176, it had found that exports by Hangzhou, which was nevertheless continuing its activities in China under conditions comparable, if not identical, to those of Changmao, did not cause material injury to the Union industry.

127 More specifically, it submits, first, that the General Court, in holding, in paragraphs 138 and 139 of the judgment under appeal, that the Commission had duly taken into account, in the context of its overall assessment of the relevant indices and factors required by Article 3(5) of the Basic Regulation, all the positive evidence and all the factors having a bearing on the state of the Union industry and, consequently, on the existence of a threat of injury, committed a manifest error of assessment.

128 In support of that consideration, Changmao states at the outset that it does not dispute the fact that Hangzhou is not subject to anti-dumping duties, given that the EU institutions found that that exporting producer did not cause injury to the Union industry and that that was confirmed by the General Court in the judgment of 15 March 2018, *Caviro Distillerie and Others* v *Commission* (T-211/16, EU:T:2018:148).

129 That being so, in the context of the analysis of the threat of injury, in so far as that analysis must be based on all the existing positive evidence, the Commission should have taken into consideration the effects on the Union industry of the export activities carried out by Hangzhou, particularly since Hangzhou is by far the largest exporting producer of tartaric acid to the Union market. If that institution had found, in the contested regulation, as it ought to have done, that Changmao's exports to the European Union had followed, for the four years covering the review investigation period, the same trend as Hangzhou's exports, in terms of both prices and volumes exported, it would have concluded that there was no threat of injury.

130 Having regard to those factors, the General Court was wrong to hold, in paragraph 145 of the judgment under appeal, that the Commission could ignore the effects of Hangzhou's exports to the European Union without committing an error. The appellant also criticises the General Court for having, in paragraph 145 of the judgment under appeal, distorted its argument that the Commission wrongly ignored the effects of those exports on the Union industry, in so far as the General Court considered that, by that argument, Changmao was criticising, in essence, the Commission for not including Hangzhou in the review investigation which gave rise to the contested regulation, even though the Commission had made it clear that it was aware that the activities of that exporting producer did not fall within the scope of that regulation.

131 In the second place, Changmao submits that the General Court erred in law by confining itself in paragraph 150 of the judgment under appeal to indicating the differences between the initial investigation, in accordance with Article 5 of the Basic Regulation, and the review investigation, in accordance with Article 11(2) of that regulation, in that, in the first, the Commission had to establish the injury caused to the Union industry by the dumped imports, while, in the second, it had to analyse whether there was a threat of injury if the anti-dumping measures were not continued, without finding that the Commission's respective analyses underlying those two investigations should have been based on the same criteria and factors, both microeconomic and macroeconomic, set out in Article 3(1), (2) and (5) of the Basic Regulation. Furthermore, in paragraph 150 of the judgment under appeal, the General Court distorted its arguments relating, first, to the identical nature of its export activities with those carried out by Hangzhou and, second, to the fact that those two exporting producers were in an entirely comparable situation. It follows that virtually all the considerations which the Commission had identified in the contested regulation with regard to Changmao should have governed, *mutatis mutandis*, Hangzhou's activities, with the exception of those relating to the expansion of production capacity, since, unlike the latter exporting producer, the appellant does not intend to increase its production capacity.

132 In the third and last place, the appellant submits that the General Court erred in law by rejecting, in paragraphs 146 and 147 of the judgment under appeal, its arguments relating to, first, the alleged relevance of the Eurostat data for the years 2017 and 2018, which it had produced at first instance in support of its argument concerning the impact of climate change on the supply of calcium tartrate, which is one of the main raw materials for the manufacture of natural tartaric acid, and, second, the impact of climate change and the differences in end uses between synthetic tartaric acid and natural tartaric acid on the assessment of the market prices of tartaric acid in the European Union and, consequently, on the existence of a threat of damage.

133 In that regard, it points out, in the first place, that it is common ground that the manufacturing processes for tartaric acid produced in China and in the European Union differ, since the Chinese exporting producers produce synthetic tartaric acid, whereas the Union producers manufacture natural tartaric acid. Those respective producers would therefore not be in a

position to compete, at least as regards the use of that product by the European Union's wine and pharmaceutical industries, in which only natural tartaric acid could be used. Consequently, the prices charged by Changmao cannot have an impact on the prices of Union producers as regards, at the very least, those two specific uses of that product.

134 In the second place, Changmao claims that the Court of Justice accepted, in paragraph 41 of the judgment of 4 February 2021, *eurocylinder systems* (C-324/19, EU:C:2021:94), the relevance of subsequent data, such as the Eurostat data referred to in paragraph 132 of the present judgment, in the context of the determination of a threat of injury, having regard to the prospective nature of the underlying analysis.

135 Distillerie Bonollo and Others and the Commission consider that the third ground of appeal should be dismissed as partly inadmissible and partly unfounded.

Findings of the Court

136 It should be borne in mind, in the first place, that, according to the Court's settled case-law, in the field of the European Union's commercial policy, and particularly in the field of trade defence measures, the EU institutions enjoy a wide discretion by reason of the complexity of the economic and political situations which they have to examine (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 35 and the case-law cited).

137 It is also settled case-law that, in the context of an anti-dumping proceeding, that wide discretion relates in particular to the determination of the existence of injury to the Union industry and of the factors underlying such injury. Judicial review of such an assessment must therefore be limited to verifying compliance with the procedural rules, the substantive accuracy of the facts adduced, the absence of a manifest error of assessment of those facts or the absence of misuse of powers (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 36 and the case-law cited).

138 The Court has also repeatedly held that the General Court's review of the evidence on which the EU institutions based their findings does not constitute a new assessment of the facts replacing that made by those institutions. That review does not encroach on the broad discretion of those institutions in the field of commercial policy, but is restricted to showing whether that evidence was able to support the conclusions reached by the institutions. The General Court must therefore not only establish whether the evidence put forward is factually accurate, reliable and its consistent but also ascertain whether that evidence contained all the relevant information which had to be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions reached (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 37 and the case-law cited).

139 Moreover, in reviewing the legality of acts under Article 263 TFEU, the Court of Justice and the General Court cannot under any circumstances substitute their own reasoning for that of the author of the contested act (judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission*, C-345/18 P, EU:C:2019:589, paragraph 17 and the case-law cited).

140 In the second place, it should be noted that the objective examination regarding the determination of injury caused to the Union industry, provided for in Article 3(2) of the Basic Regulation, must relate, first, to the volume of the dumped imports and the effect of the dumped imports on prices

in the Union market for like products, and, second, to the consequent impact of those imports on the Union industry (judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission*, C-345/18 P, EU:C:2019:589, paragraph 19 and the case-law cited).

141 Thus, as regards the determination of that volume or those prices, Article 3(3) of the Basic Regulation sets out the factors to be taken into account in that examination, while specifying that one or more of those factors cannot in themselves give decisive guidance (judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission*, C-345/18 P, EU:C:2019:589, paragraph 20 and the case-law cited).

142 The same is true with respect to the impact of the dumped imports on the Union industry. It follows from Article 3(5) of the Basic Regulation that the EU institutions have the task of evaluating all relevant economic factors and indices which have a bearing on the state of that industry, any one or more of those factors does not necessarily give decisive guidance. That provision thus gives those institutions discretion in the examination and evaluation of the various items of evidence (judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission*, C-345/18 P, EU:C:2019:589, paragraph 21 and the case-law cited).

143 It should also be added that, pursuant to Article 3(7) of the Basic Regulation, known factors other than the dumped imports which are injuring the Union industry at the same time are to be examined to ensure that injury caused by those other factors is not attributed to the dumped imports.

144 The EU institutions are thus under an obligation to examine whether the injury which they intend to uphold actually arises from the dumped imports and to rule out any injury arising from other factors (see, to that effect, judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel*, C-186/14 P and C-193/14 P, EU:C:2016:209, paragraph 55 and the case-law cited).

145 In the present case, it should be noted at the outset that Changmao's arguments concerning paragraphs 138 and 139 of the judgment under appeal are based on a misinterpretation of those paragraphs. In the first of those paragraphs, the General Court merely referred to the Court of Justice's settled case-law, which is also referred to in paragraph 142 of the present judgment, according to which, first, in the context of the overall assessment of all the relevant indices and factors required by Article 3(5) of the Basic Regulation, one or more of the factors mentioned do not necessarily constitute a decisive basis for assessment and, second, Article 3(5) thereof gives the EU institutions a wide margin of discretion in examining and assessing that set of factors and indices. In the second of those paragraphs, the General Court confined itself to referring to the case-law arising from the judgment of 15 December 2016, *Gul Ahmed Textile Mills* v *Council* (T-199/04 RENV, EU:T:2016:740, paragraph 139), from which it follows, in essence, that a finding of material injury is not necessarily incompatible with the fact that some, or even several, of the factors referred to in Article 3(5) of the Basic Regulation show a positive trend, provided, however, that in such a case the EU institution concerned provides a convincing analysis which demonstrates that the positive development of certain factors is outweighed by a negative development of other factors.

146 Next, it should be noted that, by the arguments set out in paragraphs 129 and 130 of the present judgment, Changmao complains, in essence, that the General Court failed to find that, in so far as the Commission failed to take into account, in the context of the determination of a threat of injury, the injurious effects allegedly caused by Hangzhou's exports on the Union industry, that

institution failed to examine all known factors other than dumped imports within the meaning of Article 3(7) of that regulation, contrary to the case-law cited in paragraph 144 of the present judgment.

147 In that regard, it should be noted that, as is apparent from paragraphs 23, 24 and 29 of the present judgment, the Council, relying on the considerations arising from paragraphs 305 and 306 of the WTO Appellate Body report of 29 November 2005 in the case of 'Mexico – Definitive Anti-Dumping Measures on Beef and Rice' (WT/DS 295/AB/R), considered it appropriate, in Implementing Regulation No 332/2012, to exclude exports from Hangzhou to the Union market from the scope of the measures imposed by Regulation No 130/2006. Drawing the consequences of that exclusion, the Commission, by Implementing Decision 2016/176, terminated the anti-dumping proceeding concerning that exporting producer.

148 As noted in paragraph 31 of the present judgment, the action brought by several producers of tartaric acid in the European Union against that implementing decision was dismissed by the General Court by judgment of 15 March 2018, *Caviro Distillerie and Others* v *Commission* (T-211/16, EU:T:2018:148). The appeal brought by those producers against that judgment was dismissed by the Court of Justice by judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission* (C-345/18 P, EU:C:2019:589).

149 Furthermore, as is clear from Changmao's submission referred to in paragraph 128 of the present judgment, it does not intend to contest the fact that Hangzhou was not subject to anti-dumping duties, since its exports had not been considered by the EU institutions to cause material injury to the Union industry.

150 That being so, Changmao considers that the General Court erred in law in holding that, for that reason, the Commission should not have taken into account, in the context of its assessment of the existence of a threat of injury, the negative effects on the Union industry of Hanghzou's exports to the Union market.

151 That argument cannot succeed, since it is unequivocal from Article 3(7) of the Basic Regulation that the EU legislature intended, by means of that provision, to impose an obligation on the EU institutions to examine known factors, other than dumped imports, only in so far as they 'cause injury' to the Union industry. It is clear from the factors set out, in particular, in paragraph 154 of the judgment under appeal, which are not disputed by Changmao, that the EU institutions considered that the exports made by Hangzhou did not cause injury to the Union industry.

152 Nor can the first part of the appellant's argument set out in paragraph 131 of the present judgment succeed, in which it complains, in essence, that the General Court did not consider that the Commission had erred in law by allegedly failing to take account of the initial investigation in which the anti-dumping duty was imposed and of the review investigation which led to the contested regulation in the light of the same criteria and factors, both microeconomic and macroeconomic, as set out in Article 3(1), (2) and (5) of the Basic Regulation. It must be noted that Changmao does not develop any legal arguments in support of that part of its argument. In particular, it does not provide any details as to the criteria and factors which were not analysed by the Commission in the investigation which led to the adoption of the contested regulation, although they were analysed in the initial investigation. Accordingly, in accordance with the case-law cited in paragraph 87 of the present judgment, that part of the argument must be rejected as inadmissible.

153 As regards the second part of the argument referred to in paragraph 131 of the present judgment, in which the appellant criticises the General Court for having, in paragraph 150 of the judgment under appeal, distorted the scope of its argument relating to the alleged comparability of the situations of the latter and of Hangzhou, it is sufficient to note, first, that, in that paragraph 150, the General Court confines itself to referring to the relevant case-law of the Court of Justice and, second, that the appellant does not develop any legal argument to show how, by citing that case-law, the General Court distorted its argument. Consequently, that second part of the argument is based on a misreading of that paragraph and does not satisfy the admissibility requirements referred to in paragraph 87 of the present judgment.

154 In addition, the third part of Changmao's argument referred to in paragraph 131 of the present judgment cannot succeed either, since, having regard to the broad powers available to the Commission in that regard, an economic operator cannot place its legitimate expectations in the maintenance of an existing situation. Furthermore, the appellant could not validly expect the conclusions of the contested regulation to be the same as those adopted by the Commission in Implementing Decision 2016/176 concerning Hangzhou.

155 With regard, finally, to the appellant's arguments summarised in paragraphs 132 to 134 of the present judgment, in which it complains, in essence, that the General Court rejected the relevance of the Eurostat data for 2017 and 2018, which it had produced at first instance in support of its claim concerning the effect of climatic conditions on the prices of natural tartaric acid in the European Union, it should be noted that those arguments rely on the premiss that producers of natural tartaric acid and those of synthetic tartaric acid are not in a situation of competition, in particular because only natural tartaric acid could be used in the wine and pharmaceutical industries in the European Union. As is clear from paragraph 18 of the present judgment, synthetic tartaric acid has the same physical and chemical characteristics as natural tartaric acid and is, in principle, intended for the same basic uses as the latter. Furthermore, as is clear from paragraph 147 of the judgment under appeal, it is sufficient to point out that, under recitals 30 and 31 of the contested regulation, the two types of product are considered to be alike for the purposes of the review where they have the same basic physical and chemical characteristics and overlapping uses. Thus, since Changmao's arguments rely on the erroneous premiss that natural tartaric acid and synthetic tartaric acid are not in a situation of competition, they must be rejected as unfounded.

156 It follows that the third ground of appeal must be dismissed as partly inadmissible and partly unfounded.

The fourth ground of appeal

157 The fourth ground of appeal, which refers to paragraphs 172 to 177 and 187 to 189 of the judgment under appeal, is essentially divided into two parts, the first alleging infringement of the rights of the defence and of the principle of sound administration, and the second alleging misinterpretation of Article 296 TFEU.

The first part of the fourth ground of appeal

– *Arguments of the parties*

158 By the first part of its fourth ground of appeal, Changmao claims, in essence, that the General Court erred in law by holding, in paragraphs 172 to 177 of the judgment under appeal, that the Commission had communicated to Changmao, in good time, all the considerations essential to the observance of its rights of defence.

159 Contrary to what the General Court held in paragraph 172 of the judgment under appeal, the Commission did not set out in detail, in paragraphs 109 to 139 of the general disclosure document referred to in paragraph 42 of the present judgment, all the essential facts and considerations on which that institution subsequently, in the contested regulation, based its analyses concerning the state of the Union industry and the existence of a threat of injury. The Commission, moreover, refused to disclose to the appellant certain essential information indicating how it had carried out those analyses, as well as the considerations which led it to disregard the data relating to Distillerie Mazzari, in its capacity as the largest and most prosperous producer in the European Union. According to the appellant, in holding, in that paragraph of the judgment under appeal, that the latter's disagreement with the Commission's analyses could not be relied on in support of a plea alleging breach of the rights of the defence, the General Court distorted its arguments.

160 The General Court also distorted, in paragraph 173 of the judgment under appeal, its arguments concerning the exclusion of the data relating to Distillerie Mazzari from the assessments concerning the state of vulnerability of the Union industry and the existence of a threat of injury. In that regard, Changmao states, first, that, contrary to what the General Court stated in that paragraph of the judgment under appeal, it had been able, in its capacity as an 'interested party' in the investigation which led to the adoption of the contested regulation, to consult the Commission's non-confidential files, which is corroborated, moreover, by the official record of the consultations. That being the case, the vast majority of the non-confidential documents were classified as 'limited' and did not allow it to make informed observations.

161 Second, the appellant points out that it was only by means of the general disclosure document, which was provided to it on 30 April 2018, that it was informed of the Commission's decision not to take account of the data relating to Distillerie Mazzari. Neither the letter of the association of Italian tartaric acid producers, referred to in paragraph 39 of the present judgment, nor the Commission's decision not to sample Union producers suggested that that institution was going to disregard those data entirely.

162 In addition, Changmao complains that the General Court also distorted, in paragraph 174 of the judgment under appeal, its arguments relating, first, to the effects of Hangzhou's exports to the Union industry on its state of vulnerability and, second, to the determination of the existence of a threat of injury. In that regard, Changmao states that, while it was indeed aware of the existence of Implementing Decision 2016/176, it could in no way have anticipated that the data relating to Hangzhou would not be taken into account by the Commission as decisive positive evidence in the context of its prospective analysis of the likelihood of recurrence of injury. Moreover, the Commission refused to inform it of the considerations that led it not to use, in the contested regulation, the positive evidence that it already had in the investigation that led to the adoption of the implementing decision, in relation to Hangzhou.

163 Furthermore, the General Court was wrong to fail to find that the Commission had refused to share with Changmao, during the administrative procedure, any evidence or any explanation of the concerns which Changmao had set out in its observations on the general disclosure document. Moreover, contrary to what the General Court held in paragraph 175 of the judgment under appeal, the Commission did not provide it with any explanation of the significant discrepancy which Changmao had identified between Implementing Decision 2016/176 and the contested regulation as regards the indices relating to the consumption and total production of tartaric acid in the European Union, for the years 2013 and 2014, even though those elements would have been decisive in assessing the state of vulnerability of the Union industry and the existence of a threat of injury.

164 Changmao claims that the Commission should have complied with its positive obligations under the principle of sound administration, Article 3(2), Article 11(2), Article 6(7), Article 19(2) and (4) and Article 20(2) and (4) of the Basic Regulation and Article 6(2) and (4) of the Anti-Dumping Agreement, namely the obligation for the Commission, first, to examine all the evidence available, second, to communicate to the interested parties the considerations on which it intended to base its prospective analysis of the existence of a threat of injury and, third, to respond to the comments made by the interested parties during the administrative procedure. Had the Commission complied with those obligations, Changmao would have been able to make useful submissions, which would have led the Commission to reach different conclusions regarding both the state of vulnerability of the Union industry and the existence of a threat of injury.

165 Distillerie Bonollo and Others and the Commission consider that the first part of the fourth ground of appeal should be dismissed as partly inadmissible and partly unfounded.

– *Findings of the Court*

166 It should be noted at the outset that respect for the rights of the defence is of crucial importance in anti-dumping investigations (judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 77 and the case-law cited).

167 According to the Court of Justice's settled case-law, in performing their duty to provide information, the EU institutions must act with all due diligence by seeking to provide the undertakings concerned, as far as is compatible with the obligation not to disclose business secrets, with information relevant to the defence of their interests, choosing, if necessary on their own initiative, the appropriate means for providing such information. In any event, the undertakings concerned must have been placed in a position during the administrative procedure, in which they can effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 48 and the case-law cited).

168 While the duty to provide information incumbent on the EU institutions in anti-dumping matters must be reconciled with the duty to respect confidential information, the fact remains that that duty cannot deprive the rights of the defence of their essential content (see, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraph 29).

169 Furthermore, it follows from the Court's case-law that the existence of an irregularity relating to the rights of the defence can lead to the annulment of the measure at issue only in so far as there is a possibility that, in the absence of that irregularity, the administrative procedure might have led to a different result, thereby specifically breaching the rights of the defence (see, to that effect, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 79 and the case-law cited).

170 In that regard, although a person who relies on such an irregularity cannot be required to show that, in its absence, the act concerned would have been more favourable to his or her interests, he or she must nevertheless prove, in a concrete manner, that such a possibility is not entirely excluded (see, to that effect, by analogy, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 140 and the case-law cited).

171 In the present case, it should be noted that, in the first place, in paragraphs 163 to 170 of the judgment under appeal, the General Court noted the relevant provisions of EU law and the settled case-law relating, first, to respect for the rights of the defence, second, to the duty of care incumbent on the EU institutions under the right to sound administration and, third, to the balance which must be struck between those rights and the protection of confidential data.

172 In the second place, in paragraphs 172 to 175 of the judgment under appeal, the General Court analysed Changmao's various arguments alleging a breach of its rights of defence, holding that those arguments did not justify a finding that the Commission had breached the obligation to disclose all essential evidence and considerations in good time. It duly reasoned, in paragraphs 172 to 175 of the judgment under appeal, why those arguments should be rejected.

173 In the third place, relying on the case-law referred to in paragraph 78 of the judgment under appeal, the General Court, in paragraph 176 of that judgment, rejected as inadmissible Changmao's argument based, inter alia, on breach of the principle of sound administration.

174 It should be noted that, in the arguments set out in support of the first part of its fourth ground of appeal, the appellant merely criticises the solution reached by the General Court without, however, showing that the latter infringed the case-law referred to in paragraph 167 of the present judgment, according to which the EU institutions must act with all due diligence, by seeking to give the undertakings concerned, as far as is compatible with the obligation not to disclose business secrets, with information relevant to the defence of their interests, choosing, if necessary on their own initiative, the appropriate means for providing such information.

175 In so doing, Changmao is in fact asking the Court to substitute its own assessment of the facts and evidence for that made by the General Court, so that that argument, in accordance with settled case-law, is inadmissible (see, to that effect, judgment of 5 May 2022, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, C-718/20 P, EU:C:2022:362, paragraph 56 and the case-law cited).

176 Furthermore, the appellant has not succeeded in demonstrating, in a concrete manner, as required by the case-law referred to in paragraphs 169 and 170 of the present judgment, that the General Court failed to find a procedural irregularity committed during the administrative procedure which could have led to that procedure producing a different result, thereby breaching its rights of defence in a concrete manner.

177 Furthermore, although Changmao relies on the arguments set out in paragraphs 159, 160 and 162 of the present judgment to allege that the General Court distorted the facts, it is sufficient to note that Changmao fails to indicate precisely the evidence on which its argument is based, which was allegedly distorted by the General Court, and does not demonstrate the errors of analysis which, in its assessment, led the General Court to make those distortions, contrary to the requirements of the case-law referred to in paragraph 122 of the present judgment. It confines itself, in reality, to requesting a fresh assessment of the facts and evidence, which falls outside the jurisdiction of the Court of Justice at the appeal stage. Those arguments must therefore be rejected as inadmissible.

178 Finally, as regards the argument referred to in paragraph 164 of the present judgment, it is sufficient to note that, in it, the appellant confines itself to pointing out the errors allegedly committed by the Commission without, however, raising any legal argument to show how the General Court erred in law. Accordingly, in accordance with the case-law referred to in paragraph 87 of the present judgment, that argument must be rejected as inadmissible.

179 In the light of the foregoing, the first part of the fourth plea in this appeal must be dismissed as partly unfounded and partly inadmissible.

The second part of the fourth ground of appeal

– *Arguments of the parties*

180 By the second part of its fourth ground of appeal, the appellant claims that the General Court, by having, in paragraphs 187 to 189 of the judgment under appeal, analysed in the light of Article 296 TFEU its arguments relating, first, to the absence of a legal basis for the application, in the contested regulation, of Article 2(7) of the Basic Regulation, second, the impact of the data relating to Distillerie Mazzari on the state of vulnerability of the Union industry and, third, the effects of Hangzhou's exports to the Union market as regards the determination of a threat of injury, committed a manifest error of interpretation.

181 In that regard, it states that the fourth plea which it raised at first instance did not allege a failure to state reasons in accordance with Article 296 TFEU, but on an infringement of essential procedural requirements. By that plea, Changmao was in fact asking the General Court to find not an infringement of that provision but a failure by the Commission to communicate to it, during the administrative procedure, the essential considerations and evidence on which that institution subsequently relied, in the contested regulation, in order to support its conclusions as to the state of vulnerability of the Union industry and the existence of a threat of injury.

182 Thus, the General Court wrongly held, in paragraphs 187 to 189 of the judgment under appeal, that, by its arguments, Changmao complained that the Commission had infringed its obligation to state reasons under Article 296 TFEU. In so doing, the General Court erred in law.

183 Distillerie Bonollo and Others and the Commission contest the admissibility and merits of the second part of the fourth ground of appeal.

– *Findings of the Court*

184 It should be noted that the second part of the fourth ground of appeal is presented in a confused manner. Although the appellant does not criticise, in itself, the General Court for having breached its obligation to state reasons, it does appear to complain that it did not respond to all the arguments it had raised in its fourth plea of law at first instance, in particular the three arguments mentioned in paragraph 180 of the present judgment.

185 In the first place, in so far as the second part of the fourth ground of appeal could be understood as alleging a breach by the General Court of its duty to state reasons, it should be noted, first, that, in the context of an appeal, the purpose of review by the Court of Justice is, inter alia, to consider whether the General Court addressed, to the requisite legal standard, all the arguments raised by the appellant and, second, that the plea alleging that the General Court failed to respond to arguments relied on at first instance amounts essentially to pleading a breach of the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that Statute, and from Article 117 of the Rules of Procedure of the General Court (judgment of 9 March 2017, *Ellinikos Chrysos* v *Commission*, C-100/16 P, EU:C:2017:194, paragraph 31 and the case-law cited).

186 Moreover, the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case, the General Court's reasoning may therefore be implicit on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (judgment of 9 March 2017, *Ellinikos Chrysos* v *Commission*, C-100/16 P, EU:C:2017:194, paragraph 32 and the case-law cited).

187 It should be noted that the three arguments referred to in paragraph 180 of the present judgment constitute a mere repetition of arguments which had already been raised by Changmao in the context of the various pleas in law put forward at first instance and on which the General Court ruled in the context of its examination of those pleas. Moreover, the grounds of the judgment under appeal in response to those pleas are clear and unequivocal and make it possible to understand the factors on which the General Court based its decision. The fact that the latter reached a result on the merits other than that referred to by Changmao cannot, of itself, vitiate the judgment under appeal by a failure to state reasons (see, by analogy, order of 13 December 2012, *Alliance One International* v *Commission*, C-593/11 P, EU:C:2012:804, paragraph 29 and the case-law cited).

188 Thus, in so far as the appellant complains that the General Court breached its duty to state reasons, the arguments it puts forward in that respect must be rejected as unfounded.

189 In the second place, if it was necessary to construe that, by the second part of the fourth ground of appeal, the appellant complains that the General Court misconstrued the scope of the arguments put forward by the appellant before it, in that, by those arguments, it did not criticise the Commission for having failed to fulfil its obligation to state reasons, but for having infringed a number of provisions of the Basic Regulation, it must be considered that, in that case, the second part of the fourth ground of appeal refers to a distortion, by the General Court, of Changmao's pleadings.

190 In that regard, it is sufficient to note that the appellant does not specify what error of law the General Court committed in analysing its arguments in the light of Article 296 TFEU. It also fails to specify the legal arguments which specifically support its claim.

191 Therefore, in accordance with the case-law cited in paragraph 87 of the present judgment, the arguments based on an alleged distortion by the General Court of Changmao's pleadings must be rejected as inadmissible.

192 In the light of the foregoing, the second part of the fourth ground of appeal must be dismissed as partly unfounded and partly inadmissible.

193 The fourth ground of appeal must therefore be dismissed in its entirety.

194 It follows from all the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

195 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs. In accordance with Article 138(1) of those rules, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

196 In the present case, since Distillerie Bonollo and Others and the Commission have applied for costs to be awarded against Changmao and the latter has been unsuccessful, Changmao must be ordered to bear its own costs and to pay those incurred by Distillerie Bonollo and Others and the Commission.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Changmao Biochemical Engineering Co. Ltd to pay, in addition to its own costs, those incurred by Distillerie Bonollo SpA, Industria Chimica Valenzana (ICV) SpA, Caviro Extra SpA and the European Commission.**

Arabadjiev Bay Larsen Xuereb

Kumin Ziemele

Delivered in open court in Luxembourg on 28 September 2023.

A. Calot Escobar
Registrar

A. Arabadjiev
President of the Chamber