



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 April 2022 *

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* Language of the case: English.

Costs	24
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(Appeal – Dumping – Implementing Regulation (EU) 2015/1429 – Imports of stainless steel cold-rolled flat products originating in the People’s Republic of China and Taiwan – Definitive anti-dumping duty – Regulation (EC) No 1225/2009 – Article 2 – Calculation of the normal value – Calculation of the production cost – Production losses – Refusal to deduct the value of recycled scrap – Determination of the normal value on the basis of sales of the like product intended for domestic consumption – Exclusion from the basis of calculation used to determine the normal value of sales on the domestic market of the exporting country where those sales concern products intended for export)

In Case C-79/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 February 2020,

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

the other parties to the proceedings being:

European Commission, represented initially by J.-F. Brakeland, M. França and A. Demeneix, and subsequently by J.-F. Brakeland and G. Luengo, acting as Agents,
defendant at first instance,

Eurofer, Association européenne de l’acier, ASBL, established in Luxembourg (Luxembourg), represented by J. Killick and G. Forwood, avocats, and by G. Papaconstantinou, dikigoros,
intervener at first instance,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, J. Passer, F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 11 November 2021,

gives the following

Judgment

- 1 By its appeal, Yieh United Steel Corp. ('Yieh') seeks to have set aside the judgment of the General Court of the European Union of 3 December 2019, *Yieh United Steel v Commission* (T-607/15, EU:T:2019:831; 'the judgment under appeal'), by which the General Court dismissed its action for annulment of Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 224, p. 10; 'the contested regulation').

Legal context

WTO rules

- 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 Organisation (WTO), signed in Marrakesh on 15 April 1994, and also the agreements in Annexes 1 to 3 to that agreement, which include 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').
- 3 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 Where there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or when, because of the particular market situation or the low volume of sales on 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.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country, at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities ... determine that such sales are made within an extended period of time ... in substantial quantities ... and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. ...

...'

European Union law

4 On the date of adoption of the contested regulation, the provisions governing the adoption of anti-dumping measures by the European Union were set out in 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, and corrigendum OJ 2010 L 7, p. 22), as amended by Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 (OJ 2012 L 237, p. 1) ('the basic regulation').

5 Article 1 of the basic regulation, entitled 'Principles', provided in paragraphs 1 and 2:

'1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.'

6 Article 2 of the basic regulation, entitled 'Determination of dumping', provides:

'A. NORMAL VALUE

1. The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

...

2. Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5% or more of the sales volume of the product under consideration to the Community. ...

3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

A particular market situation for the product concerned within the meaning of the first subparagraph may be deemed to exist, inter alia, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements.

4. Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

...

5. Costs shall normally be calculated on the basis of records kept by the party under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

If costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they shall be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in the cost allocations under this subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

...'

- 7 Article 6 of the basic regulation, entitled 'The investigation', provided in paragraph 8:

'Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.'

- 8 Article 10 of that regulation, entitled 'Retroactivity', provided in paragraph 4:

'A definitive anti-dumping duty may be levied on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 14(5), the Commission has allowed the importers concerned an opportunity to comment, and:

- (a) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found; ...

...'

Background to the dispute

- 9 In paragraphs 1 to 11 of the judgment under appeal, the background to the dispute is summarised as follows:
- ‘1. [Yieh] is a company established in Taiwan, which, inter alia, manufactures and distributes stainless steel cold-rolled flat products (“the product concerned”).
 2. [Yieh] manufactures the product concerned using hot-rolled coils as a raw material, which are either produced directly by the applicant or purchased from Lianzhong Stainless Steel Co. Ltd ..., a related company which produces hot-rolled coils and is established in China. The product concerned is sold by [Yieh] to EU customers and customers on its domestic market, which include unrelated downstream producers and distributors of the product concerned, and its related downstream producer, the company Yieh Mau.
 3. Following a complaint lodged ... by Eurofer, Association européenne de l’acier, ASBL (“Eurofer”), the ... Commission published, on 26 June 2014, a Notice of initiation of an anti-dumping proceeding concerning imports of [the product concerned] originating in the People’s Republic of China and Taiwan ... pursuant to [the basic regulation].
 - ...
 6. On 24 March 2015, the Commission adopted Implementing Regulation (EU) 2015/501, imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People’s Republic of China and Taiwan (OJ 2015 L 79, p. 23; “the provisional regulation”). The provisional regulation imposed a provisional anti-dumping duty of 10.9% on the ... product concerned [manufactured by] [Yieh].
 7. By letter of 25 March 2015, the Commission disclosed its provisional findings to [Yieh], setting out the considerations and essential facts on the basis of which it had been decided to impose a provisional anti-dumping duty (“the provisional disclosure document”).
 8. In the provisional disclosure document, the Commission addressed, in particular, the issue of its refusal to deduct the value of recycled scrap from the cost of production of the product concerned and the issue of its refusal to take into consideration, for the purposes of determining the normal value, certain of [Yieh’s] sales in the exporting country.
 9. On 20 April 2015, [Yieh] submitted its comments on the provisional disclosure document.
 10. On 23 June 2015, the Commission sent its definitive disclosure document to [Yieh]. On 3 July 2015, [Yieh] submitted comments thereupon.
 11. On 26 August 2015, the Commission adopted [the contested regulation], which amended the provisional regulation and imposed an anti-dumping duty of 6.8% on the imports to the European Union of the product concerned manufactured, in particular, by [Yieh].’
- 10 The contested regulation has not been in force since 16 September 2021.

The procedure before the General Court and the judgment under appeal

- 11 By application lodged with the Court Registry on 27 October 2015, Yieh brought an action for annulment of the contested regulation.
- 12 In support of its action, Yieh relies on two pleas alleging, respectively, infringement of Article 2(3) and (5) of the basic regulation and misuse of powers and infringement of Article 2(1) and (2) of the basic regulation.
- 13 By its first plea, alleging infringement of Article 2(3) and (5) of the basic regulation and misuse of powers, Yieh submitted that, in rejecting its request for deduction of the value of recycled scrap from the cost of production of the product concerned, the Commission had committed a manifest error in its assessment of the facts.
- 14 In that plea, Yieh alleged that the Commission infringed Article 2(5) of the basic regulation by refusing to take into consideration Yieh's accounting records or the cost allocation method that it applied to the loss of hot-rolled coils during production of the product concerned.
- 15 On account of that infringement, the Commission reached the manifestly incorrect conclusion that Yieh had not fully included the loss of the hot-rolled coils in the cost of production of the product concerned, so that the Commission also wrongly rejected a deduction of the value of recycled scrap from the cost of production of the product concerned, thus artificially inflating the normal value in infringement of Article 2(3) of the basic regulation.
- 16 Lastly, according to Yieh, the Commission's refusal to deduct the value of recycled scrap constituted a misuse of powers.
- 17 By its second plea in law, alleging infringement of Article 2(1) and (2) of the basic regulation, Yieh claimed that the Commission had, first, infringed Article 2(1) of that regulation by refusing, without adequate justification, to take into consideration, for the purposes of determining the normal value, sales of the product concerned to its independent customer in Taiwan made in the ordinary course of trade and, secondly, infringed Article 2(2) of that regulation by rejecting the sales in question solely on the ground that the product concerned had not been exported by that customer after those sales, although the Commission had not demonstrated that Yieh had not intended the sales to be for domestic consumption.
- 18 By order of 20 July 2016, the President of the First Chamber of the General Court granted Eurofer leave to intervene in support of the form of order sought by the Commission.
- 19 By the judgment under appeal, the General Court rejected the two pleas in law relied on by Yieh and, consequently, dismissed the action in its entirety.

Claims of the parties before the Court of Justice

- 20 By its appeal, Yieh claims that the Court should:
 - set aside the judgment under appeal;

- uphold the action at first instance and thus annul the contested regulation in so far as it concerns the appellant, and
- order the Commission and the intervener to pay the costs of the proceedings at first instance and on appeal.

21 The Commission contends that the Court should:

- dismiss the appeal, and
- order Yieh to pay the costs.

22 Eurofer contends that the Court should:

- dismiss the appeal;
- in the alternative, dismiss the action brought at first instance;
- in the further alternative, refer the case back to the General Court, and
- order Yieh to pay the costs, including those of the intervener and at first instance.

The appeal

23 In support of its appeal, Yieh relies on three grounds of appeal, alleging (i) infringement of Article 2(3) of the basic regulation in that the General Court wrongly ruled out the application of that provision; (ii) infringement of Article 2(5) of that regulation in so far as the General Court did not adequately balance the Commission's verification needs in the context of its investigation and Yieh's interests and (iii) infringement of Article 2(2) of that regulation in that the General Court held that the Commission could exclude sales on the domestic market of the exporting country ('domestic sales') from the calculation of normal value without having to establish the vendor's specific intention or knowledge as to the final export of the product concerned.

First ground of appeal, alleging infringement of Article 2(3) of the basic regulation

Arguments of the parties

24 The first ground of appeal, which relates to paragraphs 60 and 61 of the judgment under appeal, is divided into two parts.

– The first part

25 By the first part of the first ground of appeal, Yieh claims that the General Court committed a manifest error in its interpretation of its argument based on Article 2(3) of the basic regulation, which led it wrongly to rule out the application of that provision.

- 26 Paragraph 60 of the judgment under appeal is thus vitiated by a manifest error, in that the General Court required that an infringement of Article 2(4) of the basic regulation had to be established before an infringement of Article 2(3) of that regulation could be invoked.
- 27 According to Yieh, Article 2(4) of the basic regulation is not relevant in the present case.
- 28 The General Court also wrongly held, in paragraph 60 of the judgment under appeal, that the unprofitability of the sales concerned was the only reason which led the Commission to construct the normal value.
- 29 It follows, in particular, from recital 74 of the provisional regulation, first, that the normal value was constructed for product types for which there were insufficient or no sales, or no sales in the ordinary course of trade, and, secondly, that the Commission did not use a constructed normal value for the product types for which unprofitable sales were found but rather a weighted average sales price.
- 30 Yieh also disputes the assertion, set out in paragraph 61 of the judgment under appeal, that ‘[Yieh] does not dispute, in the present action, the method followed by the Commission for the construction of the normal value, as laid down in Article 2(3) of the basic regulation’.
- 31 Yieh claims to have expressly challenged, in paragraph 44 of its application before the General Court, the method of constructing the normal value as applied by the Commission, in so far as it refused to grant Yieh’s request to deduct the value of recycled scrap from the cost of production of the product concerned, on the basis of Article 2(3) of the basic regulation.
- 32 The Commission maintains that, in the absence of sufficient evidence, it had no choice but to refuse to deduct the value of recycled scrap from the cost of production of the product concerned, since it was not in a position to establish reliably, on the basis of the checks required by Article 6(8) of the basic regulation, whether the loss declared included the material costs claimed or the amount of the deduction of the value of recycled scrap.
- 33 Furthermore, the Commission disputes Yieh’s reading of paragraphs 60 and 61 of the judgment under appeal.
- 34 Eurofer claims that the first part of the first ground of appeal is inadmissible on the ground that, as the General Court correctly noted in paragraph 61 of the judgment under appeal, Yieh’s argument based on the incorrect construction of the normal value had not been put forward at first instance.
- 35 It also points out that Yieh has failed to put forward arguments demonstrating a manifest error on the part of the General Court in its examination of the substance of that argument. It thus points out that the Commission’s refusal to deduct the value of recycled scrap from the cost of production of the product concerned for the purposes of the constructed normal value calculation is justified by the risk of a double deduction and of an artificial reduction of the costs.

– *The second part*

- 36 By the second part of the first ground of appeal, Yieh submits that the General Court wrongly held that Article 2(3) of the basic regulation was not a standalone provision. Thus, in paragraph 60 of the judgment under appeal, the General Court made the finding of an infringement of that provision subject to findings made previously under Article 2(4) or Article 2(5) of that regulation.

- 37 Such a denial that Article 2(3) of the basic regulation was a standalone provision was not only contrary to the decision-making practice of the WTO relating to the corresponding provision of Article 2(2) of the Anti-Dumping Agreement, but, moreover, did not allow Yieh to challenge solely the calculation method used by the Commission to determine the constructed normal value.
- 38 Furthermore, the scope of the Commission's examination of the question of the deduction of the value of recycled scrap from the cost of production of the product concerned should differ depending on whether that examination is carried out under Article 2(3) of the basic regulation or Article 2(4) of that regulation. Article 2(4) is not relevant in the present case because of the profitable nature of the domestic sales. Therefore, the Commission's task under Article 2(3) of the basic regulation cannot be identical to that in connection with Article 2(4) of that regulation, suggested by the General Court in paragraphs 78 to 80 of the judgment under appeal.
- 39 The Commission and Eurofer dispute Yieh's interpretation of paragraph 60 of the judgment under appeal. The General Court held, not that Article 2(3) of the basic regulation is not a standalone provision, but rather that the construction of the normal value was the consequence of the Commission's application of Article 2(4) of the basic regulation.

Findings of the Court

- 40 By its first ground of appeal, which relates to paragraphs 60 and 61 of the judgment under appeal, which is divided into two parts which overlap to a large extent and which can therefore be examined together, Yieh alleges that the General Court infringed Article 2(3) of the basic regulation.
- 41 In that regard, it must be stated that, as the Commission also submits, the various criticisms made by Yieh in its first ground of appeal concerning paragraphs 60 and 61 of the judgment under appeal are based largely on a misreading of those paragraphs. Since, in those paragraphs, the General Court, in response to the specific arguments put forward by Yieh, correctly articulated the interaction between the provisions of Article 2(3) and those of Article 2(4) and (5) of the basic regulation, it must be held that those paragraphs are not vitiated by an error of law.
- 42 Contrary to Yieh's contention in the first part of its first ground of appeal, it cannot be inferred from paragraphs 60 and 61 of the judgment under appeal that the General Court, in those paragraphs, 'discarded the application' of Article 2(3) of the basic regulation.
- 43 Furthermore, contrary to Yieh's assertion in the second part of its first ground of appeal, it also cannot be inferred from paragraphs 60 and 61 that the General Court took the view that Article 2(3) of the basic regulation was not 'a standalone provision' in that it made the finding of an infringement of that provision subject to findings first being made under Article 2(4) or Article 2(5) of that regulation that those provisions had been infringed, which, according to Yieh, would not have enabled it to challenge only the method of calculation used by the Commission to determine the constructed normal value even though it put forward such a complaint before the General Court.
- 44 In that regard, it is important that paragraphs 60 and 61 of the judgment under appeal be placed in the context in which the General Court examined the first plea in law of the action, namely, in essence, as is apparent from paragraphs 29, 48, 49 and 56 of the judgment under appeal, in the light of Yieh's argument that the Commission's refusal, contrary to Article 2(5) of the basic

regulation, to deduct the value of recycled scrap from the cost of production of the product concerned had the effect of ‘artificially increasing’ the normal value of that product contrary to Article 2(3) of that regulation, which would have the effect of increasing the share of product types for which the normal value was constructed on the basis of sales made at prices below the costs of production.

- 45 In paragraphs 52 to 55 of the judgment under appeal, the General Court rightly refers to the case-law resulting from the judgment of 1 October 2014, *Council v Alumina* (C-393/13 P, EU:C:2014:2245), concerning the interaction between, inter alia, the provisions of Article 2(3) of the basic regulation and those of Article 2(4) of that regulation.
- 46 In a situation such as that in the present case, that interaction is manifested as follows.
- 47 If, during its investigation, the Commission finds that certain domestic sales are not profitable since they were made at prices below the ‘cost of production’, that is to say, unit production costs (fixed and variable), plus selling, general and administrative costs, over an extended period, in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time, those sales are considered not to have taken place in the course of ‘the ordinary course of trade’ and therefore must be disregarded as a basis for the calculation of the normal value pursuant to Article 2(4) of the basic regulation. In that situation, Article 2(3) of that regulation was applicable, which provided that, for the product types concerned, another normal value, the ‘constructed’ value, was to be calculated on the basis of that cost of production plus a reasonable profit margin.
- 48 In that context, in paragraph 60 of the judgment under appeal, the General Court found that the Commission’s use, for certain domestic sales, of a constructed normal value does not result from a finding of a ‘particular market situation’ relating to the fact that the prices are ‘artificially low’ within the meaning of Article 2(3) of the basic regulation. That finding, which is essentially factual in nature, is not disputed by Yieh in its appeal.
- 49 It should be noted that, in paragraph 60, with regard specifically to the interaction referred to in paragraph 47 of the present judgment, the General Court rightly states that the use of a constructed normal value ‘is the direct consequence’ of the Commission’s finding that certain domestic sales were made at prices below production costs, within the meaning of the first subparagraph of Article 2(4) of the basic regulation, ‘following the Commission’s rejection of the request for deduction of scrap submitted by the applicant’.
- 50 As confirmed in paragraph 56 of the judgment under appeal, in paragraph 60 of that judgment, the General Court made a finding of fact, namely that, in the present case, the use by the Commission, for a ‘minority’ of domestic sales, of a constructed normal value, in accordance with Article 2(3) of the basic regulation, stems directly from the fact that, following the rejection by the Commission of the request for deduction of the value of recycled scrap from the cost of production of the product concerned which Yieh had requested, those domestic sales were considered to have been made at prices below the cost of production, within the meaning of Article 2(4) of that regulation, although they were profitable and would not have been disregarded under that provision if the Commission had granted that request for deduction and had accordingly reduced the cost of production of the product in the amounts claimed and, therefore, the normal value.

- 51 That finding of fact, in so far as it concerns only a ‘certain number of commercial transactions declared by [Yieh]’, cannot, contrary to what Yieh claims, be interpreted as meaning that a normal value was constructed only in cases of unprofitable sales. There is therefore no contradiction between paragraph 60 of the judgment under appeal and recital 74 of the provisional regulation, which states that a constructed value was also used in the case of insufficient domestic sales, within the meaning of Article 2(2) of the basic regulation.
- 52 Although, by its first ground of appeal, Yieh calls into question that finding of fact, it should be recalled, as a preliminary point, 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 lies on points of law only. The General Court has exclusive jurisdiction, first, to find the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, secondly, to assess those facts. The appraisal of those facts and the assessment of that evidence does not, therefore, save where they have been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, to that effect, judgments of 26 September 2018, *Philips and Philips France v Commission*, C-98/17 P, not published, EU:C:2018:774, paragraph 40, and of 11 November 2021, *Autostrada Wielkopolska v Commission and Poland*, C-933/19 P, EU:C:2021:905, paragraphs 92 and 93 and the case-law cited).
- 53 Furthermore, where an appellant alleges a distortion of the evidence by the General Court, he or she must, pursuant to 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 his or her view, led to such distortion. In addition, according to the Court of Justice’s settled case-law, that distortion must be obvious from the documents in the Court’s file, without any need to carry out a new assessment of the facts and the evidence (judgment of 11 November 2021, *Autostrada Wielkopolska v Commission and Poland*, C-933/19 P, EU:C:2021:905, paragraph 94 and the case-law cited).
- 54 The Court inferred from this that it has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that that evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value to be attached to the evidence produced before it. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (judgment of 2 June 2016, *Photo USA Electronic Graphic v Council*, C-31/15 P, not published, EU:C:2016:390, paragraph 51 and the case-law cited).
- 55 In the second place, it should be noted that it is settled case-law that, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic and political situations which they have to examine (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).

- 56 It is also settled case-law that judicial review of that broad discretion must be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a 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).
- 57 As the General Court stated in paragraph 68 of the judgment under appeal, that limited judicial review covers, in particular, the choice between different methods of calculating the dumping margin and the assessment of the normal value of a product.
- 58 The Court of Justice 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 the 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 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).
- 59 In the light of that case-law, the finding of fact made by the General Court in paragraph 60 of the judgment under appeal can be called into question only if it is shown that its substantive inaccuracy is apparent from the documents submitted to the General Court. In the present case, Yieh has not shown that that is the case.
- 60 Furthermore, Yieh has neither claimed nor proved a distortion of the facts by the General Court in its assessment of those facts.
- 61 Nor has it demonstrated that the General Court could be criticised for having failed to find that the Commission, in accordance with the case-law referred to in paragraph 56 of the present judgment, committed a manifest error of assessment of those facts.
- 62 Moreover, it is not apparent from recital 74 of the provisional regulation that, as Yieh submits, the Commission did not use a constructed normal value for the product types for which non-profitable sales were found, but rather a weighted average sales price. That recital merely states that a constructed normal value was also used in view of ‘the absence of sales in the ordinary course of trade’.
- 63 Finally, contrary to Yieh’s assertions, the General Court, in paragraph 61 of the judgment under appeal, did in fact examine Yieh’s argument alleging infringement of Article 2(3) of the basic regulation.
- 64 In that paragraph, the General Court inferred from the exclusion, in the contested regulation, of certain domestic sales from the determination of normal value, on account of the finding that they were not profitable under Article 2(4) of the basic regulation, that ‘an infringement of Article 2(3) [of that regulation], in so far as it lists the different situations determining the obligation, for the authority responsible for the investigation, to construct the normal value of the exporting producer’s product concerned cannot, in any event, be established for the purposes of annulling the contested regulation, irrespective of the finding of infringement of Article 2(4) of

that regulation’. The Court added that ‘whereas, for the remainder, [Yieh] does not dispute, in [the present action at first instance], the method followed by the Commission for the construction of the normal value, as laid down in Article 2(3) of the basic regulation’.

- 65 Although, in paragraph 61 of the judgment under appeal, the General Court does not hold that the complaint alleging infringement of Article 2(3) of the basic regulation should be rejected, that rejection is clearly set out in paragraph 111 of that judgment after, in paragraphs 62 to 110 of that judgment, the General Court carried out a comprehensive examination and rejected the complaint alleging infringement of Article 2(5) of that regulation.
- 66 In the light of the foregoing, the first ground of appeal must be rejected.

Second ground of appeal, alleging infringement of Article 2(5) of the basic regulation

Arguments of the parties

- 67 By its second ground of appeal, Yieh submits that the General Court did not properly balance its interests and the Commission’s verification needs in its investigation, which constitutes an infringement of Article 2(5) of the basic regulation.
- 68 However, the General Court itself recognised, in accordance with Annex II to the Anti-Dumping Agreement and the related decision-making practice, the need for such a balance between the Commission’s verification needs and Yieh’s rights under Article 2(5) of the basic regulation.
- 69 In the present case, according to Yieh, the General Court tipped the balance in favour of the Commission’s verification needs by concluding that, because of the importance of the question of the profitability of domestic sales in the anti-dumping investigation, the Commission was entitled to obtain very precise information on Yieh’s costs and that it was entitled to disregard Yieh’s cost accounting method for the purposes of accounting for scrap metal yield loss.
- 70 Furthermore, the General Court, by rejecting, in paragraph 94 of the judgment under appeal, the argument that the collection of precise data relating to volumes of hot-rolled coils would have entailed a disproportionate burden for Yieh, failed to carry out a factual assessment of that burden and failed to weigh it against the needs of the investigation.
- 71 The Commission and Eurofer dispute the admissibility of some of the arguments put forward by Yieh in respect of its second ground of appeal and maintain that, in any event, that ground of appeal is unfounded.

Findings of the Court

- 72 By its second ground of appeal, Yieh criticises the General Court’s examination, in paragraphs 69 to 111 of the judgment under appeal, of its plea alleging infringement of Article 2(5) of the basic regulation and directed against the Commission’s refusal to accede to its request to deduct a specific value of recycled scrap from the costs of production of the product concerned.

- 73 In that regard, Yieh complains, first, that the General Court failed properly to balance its interests against the Commission's verification needs in the context of its investigation, which constitutes an infringement of that provision.
- 74 Secondly, Yieh submits that the General Court, in rejecting in paragraph 94 of the judgment under appeal its argument that the collection of information concerning the exact volume of hot-rolled coils purchased to manufacture precisely the product concerned would have entailed a disproportionate burden for it, failed to carry out a factual assessment of that burden and failed to weigh it against the needs of the investigation.
- 75 In that regard, it must first be stated that, with the exception of paragraph 94 of the judgment under appeal, the second ground of appeal does not refer to any particular paragraph of that judgment.
- 76 According to the settled case-law of the Court, it follows from the second subparagraph of Article 256(1) 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 that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal. In that regard, it is required, under Article 169(2) of that regulation, that the pleas in law and legal arguments relied on identify precisely those points in the grounds of the judgment of the General Court which are contested (judgment of 28 February 2018, *mobile.de v EUIPO*, C-418/16 P, EU:C:2018:128, paragraph 35 and the case-law cited).
- 77 Compliance with that last requirement is all the more important in the present case because the plea in question potentially concerns a wide range of assessments of an essentially factual nature, made under Article 2(5) of the basic regulation and set out in paragraphs 69 to 111 of the judgment under appeal in the context of detailed reasoning.
- 78 It follows that the second ground of appeal, in so far as it does not refer to any paragraph of the judgment under appeal other than paragraph 94 thereof, is inadmissible.
- 79 Next, in so far as it refers to paragraph 94 of the judgment under appeal, it is clear from the very wording of that paragraph that the General Court examined in that paragraph and then rejected the argument, raised by Yieh in response to a written question put by the General Court and at the hearing, that, first, tracing information concerning the exact volume of hot-rolled coils purchased to produce precisely the product concerned would have entailed a disproportionate burden and, secondly, in the absence of any insistence on the part of the Commission, it could legitimately take the view that that information in question was no longer necessary.
- 80 In that regard, the General Court found in paragraph 94 that, first, the Commission did not, at any point in time, express the slightest intention of withdrawing its request for that information and, secondly, the applicant did not demonstrate the diligence to seek clarification from that institution as to whether the request for information had indeed been withdrawn as presumed. It also added in paragraph 94 that the Commission had rightly observed that it had not gone back to that request for information in its supplementary questionnaire, drawn up after the verification visit since that questionnaire related solely to export sales and did not affect the request in question.

- 81 Paragraph 94 of the judgment under appeal must, moreover, be understood in the context of the detailed reasoning set out in paragraphs 69 to 111 of that judgment, by which the General Court emphasised that, according to its assessment of the evidence, the Commission could not be criticised for having rejected the request for deduction of the value of recycled scrap from the cost of production of the product concerned on the ground that, in the absence of complete and reliable information relating to the volumes of hot-rolled coils purchased in order to produce the product concerned, information it had moreover requested, it had not been in a position to verify the accuracy of that deduction.
- 82 In paragraph 105 of the judgment under appeal, the General Court summarised its assessment of Yieh's various arguments challenging the Commission's refusal to grant its request for deduction of the value of recycled scrap from the cost of production of the product concerned, pointing out that, although Yieh had indeed provided certain supplementary information, even after the on-the-spot verification visit and after the adoption of the provisional regulation, it had never, by contrast, provided information concerning the exact quantity of hot-rolled coils consumed in the manufacture of the product concerned that the Commission could consider to be indispensable to the completion of its verification task in so far as, *inter alia*, the request for deduction of the value of recycled scrap from the cost of production of the product concerned was linked to the volume of hot-rolled coils consumed in the manufacture of the product concerned.
- 83 However, those various essentially factual assessments made by the General Court, including in paragraph 94 of the judgment under appeal, cannot be called into question by Yieh on the basis of a complaint alleging an inadequate balancing of the interests at stake.
- 84 As noted in paragraph 52 of this judgment, the appraisal of the facts by the General Court does not, save where the facts are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal.
- 85 In the present case, since Yieh has not demonstrated such distortion, its ground of appeal alleging an inadequate balancing by the General Court, in paragraph 94 of the judgment under appeal, of the interests at stake is inadmissible on appeal.
- 86 In the light of the foregoing, the second ground of appeal must be rejected as inadmissible in its entirety.

Third ground of appeal, alleging infringement of Article 2(2) of the basic regulation

Arguments of the parties

- 87 By its third ground of appeal, Yieh submits that the General Court infringed Article 2(2) of the basic regulation by holding, in essence, in paragraphs 129 to 135 of the judgment under appeal, that the Commission could refuse to take into account, for the purposes of determining the normal value, domestic sales on the ground that the products concerned were not destined for consumption on that market but were destined for export without that institution being required to demonstrate specific intention or awareness on the part of the exporting producer as to that destination at the time of sale.

- 88 First, Yieh disputes that the analysis of the various language versions of Article 2(2) of the basic regulation, carried out in paragraphs 129 and 130 of the judgment under appeal, can confirm the General Court's conclusion that that provision does not require the Commission to prove the exporting producer's awareness or intention as to the final destination of the products concerned at the time of sale.
- 89 Secondly, Yieh disputes the contextual and teleological interpretation of the basic regulation adopted by the General Court in paragraphs 132 and 135 of the judgment under appeal. It submits that, although it follows from the basic regulation that dumping, injury and circumvention, within the meaning of that regulation, may be established irrespective of the exporting producer's intention, the fact remains that there is a subjective element in the application of an anti-dumping measure where it is necessary to penalise 'unfair' conduct on the part of the exporting producers concerned. Furthermore, other provisions of the basic regulation and other trade defence instruments, in particular the 'anti-subsidy rules', require the investigating authority to verify the subjective knowledge and intention of the exporting producers.
- 90 Thirdly, the reasoning followed by the General Court, in paragraph 134 of the judgment under appeal, whereby it was held that the need to prove the vendor's intention or effective knowledge, at the time of the sale, as to the final destination of the product concerned is tantamount to allowing the taking into account, for the purposes of determining the normal value, of the prices of exported products which are likely to distort that value.
- 91 The Commission and Eurofer dispute Yieh's arguments and contend that the third ground of appeal must be rejected since the General Court's analysis is not vitiated by any error of law.

Findings of the Court

- 92 As a preliminary point, it should be noted that it follows from the rule, laid down in Article 2(1) of the basic regulation, that 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country', and from the rule, set out in Article 2(2) of that regulation, that 'sales of the like product intended for domestic consumption shall normally be used to determine the normal value', that domestic sales are not to be taken into account for the purpose of determining normal value where the products concerned by such sales are not intended for consumption on the domestic market but for another purpose such as export.
- 93 The question therefore arises whether, as Yieh maintains, the expression 'intended for consumption', within the meaning of Article 2(2) of the basic regulation, implies the existence of a subjective element.
- 94 According to the 'subjective' approach, as advocated by Yieh in its third ground of appeal, that expression must be understood as meaning that domestic sales could be excluded from the basis of calculation used to determine normal value only if the Commission shows that, at the time of their conclusion, the seller intended that the product concerned should subsequently be exported or that it had actual knowledge of that export.

- 95 Conversely, according to the ‘objective’ approach adopted, in essence, by the General Court in paragraphs 136 to 142 of the judgment under appeal, in order to be able to exclude certain domestic sales from the basis of calculation used to determine normal value, it is sufficient for the Commission to have sufficient objective evidence to show that the sales in question are in fact export sales.
- 96 In that regard, in paragraphs 128 and 129 of the judgment under appeal, the General Court correctly took as the starting point for its reasoning the finding that the English-language version of Article 2(2) of the basic regulation, in so far as it contains the words ‘intended for consumption’, is worded in such a way as to suggest that the vendor’s intention is the relevant criterion, which seems to support the subjective approach referred to in paragraph 94 above. It may be added that the Swedish-language version, in so far as it uses the concept ‘*avsedd*’, corresponds in that regard to the word ‘intended’ used in the English-language version.
- 97 On the other hand, the fact that in most of the language versions, in particular in the eight versions, including the French-language version, to which the General Court refers and to which the versions in Portuguese and Romanian which use the words ‘*destinado*’ and ‘*destinat*’, respectively, may be added, concepts referring to the destination of the product and not, or not necessarily, to the intention or knowledge of the exporting producer are used, militates in favour of the objective approach referred to in paragraph 95 of the present judgment.
- 98 In that regard, as the Advocate General observed in point 51 of his Opinion, the expression ‘intended for domestic consumption’ used in Article 2(2) of the basic regulation means, according to its usual meaning, that, in order for sales in the exporting country to be included in the basis of calculation used to determine the normal value, the products which are the subject of those sales must be ‘marked for’, ‘reserved for’ or ‘directed toward’ domestic consumption.
- 99 Where there are such disparities between the various language versions of Article 2(2) of the basic regulation, particularly as regards the expression ‘intended for consumption’, that provision must, according to the Court’s settled case-law, be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see, to that effect, judgment of 29 April 2021, *Banco de Portugal and Others*, C-504/19, EU:C:2021:335, paragraph 41).
- 100 It is therefore necessary to examine the various contextual and teleological factors put forward by the General Court in paragraphs 130 to 135 of the judgment under appeal in support of an objective interpretation of the expression ‘intended for consumption’ within the meaning of Article 2(2) of the basic regulation, some of which are criticised by Yieh.
- 101 However, as a preliminary point, it should be recalled that, according to settled case-law, the primacy of international agreements concluded by the European Union over secondary EU legislation requires that the latter be interpreted, as far as possible, in a manner consistent with those agreements (see, inter alia, judgment of 20 January 2022, *Commission v Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 31 and the case-law cited).
- 102 Moreover, the Court has already referred to WTO Panel and Appellate Body reports in support of its interpretation of certain provisions of agreements annexed to the agreement establishing the WTO, signed in Marrakech on 15 April 1994 (see, inter alia, judgment of 20 January 2022, *Commission v Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 33 and the case-law cited).

- 103 That said, it should be noted, in the first place, that, as the General Court correctly observed in paragraph 130 of the judgment under appeal, Article 2.1 of the Anti-Dumping Agreement, the terms of which correspond to those of Article 2(2) of the basic regulation, uses, in the three official languages of the WTO Secretariat ‘destined for consumption’ in the English-language version, ‘*destiné à la consommation*’ in the French-language version and ‘*destinado al consumo*’ in the Spanish-language version.
- 104 In the second place, the General Court was also correct to hold, in essence, in paragraph 131 of the judgment under appeal, that, although proof of the intention or effective knowledge of the exporting producer as to the subsequent export of the product concerned is sufficient to conclude that the sale cannot be classified as a sale intended for domestic consumption and cannot, therefore, be included in the basis of calculation used to determine the normal value, it cannot be inferred from this that the absence of effective knowledge on its part of the fact that the product concerned is destined for export necessarily leads to the sale in question being regarded as intended for domestic consumption and therefore as having to be included in that basis of calculation even though that product was exported.
- 105 Thus, contrary to the subjective approach advocated by Yieh, proof of intention or effective knowledge on the part of the exporting producer, at the time of sale, as regards the subsequent export of the product concerned is not a condition which must necessarily be satisfied for the purposes of exclusion, by the Commission, of the relevant sale from the basis of calculation used to determine the normal value.
- 106 In that context, as is apparent in essence from paragraph 131 of the judgment under appeal, the mere observation made by the WTO Panel in footnote 339 to its report of 16 November 2007 in the dispute ‘European Communities – Anti-Dumping Measure on Farmed Salmon from Norway’ (WT/DS 337/R), that where a producer sold to an unrelated exporter (or a trader) ‘knowing that the product [would] be exported’, that sale could not be classified as a sale intended for domestic consumption, cannot support the subjective approach put forward by Yieh.
- 107 It is true that, as the Advocate General also noted in point 43 of his Opinion, it follows from that observation that actual knowledge on the part of the exporting producer that the product concerned is destined for export is not irrelevant for the purposes of the application of Article 2(2) of the basic regulation, since that knowledge alone must necessarily lead to the sales in question being excluded from the basis of calculation used to determine the normal value.
- 108 However, as the Advocate General also observed, in essence, in point 44 of his Opinion, it cannot be inferred from such an observation, which is of a specific and factual nature, that proof of actual knowledge of the export of the product concerned is a condition which must, in each case, be satisfied in order for the investigating authority to be required to exclude a sale from the determination of the basis of calculation used to determine normal value on the ground that the product concerned is destined for export.
- 109 In the third place, as the General Court correctly observed in paragraph 132 of the judgment under appeal, the concepts of ‘dumping’, ‘injury’ and ‘circumvention’, as defined in the basic regulation, require the fulfilment of objective conditions which are, in principle, independent of any specific intention or knowledge on the part of the operator.

- 110 In particular, as regards the calculation of the dumping margin, Article 2(2) of the basic regulation, concerning the determination of the normal value, like Article 2(8) of that regulation, concerning the determination of the export price, does not refer to the interested party's knowledge of the destination of the product concerned.
- 111 While it is true that, as Yieh points out and as the General Court found in paragraph 132 of the judgment under appeal, Article 10(4) of the basic regulation included a subjective criterion, in that the retroactive application of an anti-dumping duty required that 'the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found', it is, as the Commission rightly submits, an exception expressly provided for in the basic regulation, which confirms the objective nature of an anti-dumping investigation.
- 112 In any event, even that provision, in so far as it also applies where the importer 'should have been aware' of the elements referred to therein, does not necessarily require actual knowledge on the part of the exporting producer and therefore does not support the subjective argument put forward by Yieh.
- 113 Moreover, contrary to Yieh's submissions, the subjective interpretation which it advocates cannot be based on the fact that the Commission is required to take into account the individual conduct of exporters cooperating in the investigation.
- 114 Although the need for an individual assessment for each exporting producer of the dumped imports has, *inter alia*, the consequence that an individual dumping margin must be calculated for each exporter, provided that it has cooperated in the investigation, that does not mean that those imports should be assessed on a subjective basis.
- 115 In the fourth place, the General Court correctly held, in paragraph 133 of the judgment under appeal, that an interpretation of Article 2(2) of the basic regulation to the effect that it is not necessary to seek specific or effective intention or knowledge on the part of the seller as to the final destination of the product in question is also consistent with the purpose of the anti-dumping investigation.
- 116 That investigation seeks, in essence, to ensure that, on the basis of the replies of cooperating operators to the anti-dumping questionnaire, any on-the-spot verifications and the observations of the parties concerned, the Commission can objectively establish a set of factors before being able to impose an anti-dumping duty, in particular the existence of dumping after determining the normal value of the product concerned in accordance with Article 2 of the basic regulation.
- 117 As the General Court observed in paragraph 134 of the judgment under appeal, that purpose might be jeopardised if, as Yieh submits, the existence of specific or actual intention or knowledge on the part of the seller as to the final destination of the product concerned had to be systematically demonstrated by the Commission.
- 118 Such proof runs the risk, in practice, of often being impossible to adduce, which would ultimately be tantamount to allowing the taking into account, for the purposes of determining the normal value in accordance with Article 2 of the basic regulation, of the prices of exported products which is likely to distort or compromise the correct determination of the normal value.
- 119 Contrary to Yieh's submissions, the General Court's reasoning in paragraph 134 of the judgment under appeal cannot be regarded as circular.

- 120 In that regard, it should be noted that the interpretation of the basic regulation advocated by Yieh might, in practice, make it difficult or even impossible to pursue an anti-dumping investigation effectively.
- 121 Furthermore, an analysis of the purpose of Article 2(2) of the basic regulation also confirms that the subjective interpretation of the words ‘intended for consumption’ in that provision, as put forward by Yieh, cannot be accepted.
- 122 Article 2(2) of the basic regulation is intended to ensure that the normal value of a product corresponds, at best, to the normal price of the like product on the domestic market of the exporting country. Where a sale is concluded on terms and conditions that are incompatible with commercial practice for sales of the like product on that market at the relevant time for determining whether or not dumping has occurred, that sale does not constitute an appropriate basis on which to determine the normal value of the like product on that market (see, to that effect, judgment of 1 October 2014, *Council v Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 28).
- 123 In the fifth and last place, the General Court rightly held, in paragraph 135 of the judgment under appeal, that an interpretation of Article 2(2) of the basic regulation to the effect that it is not necessary to seek a specific or actual intention or knowledge on the part of the vendor as to the final destination of the product concerned is compatible with the principles of foreseeability and legal certainty invoked by Yieh, whereas the subjective interpretation advocated by Yieh requires proof of the existence of a subjective element which runs the risk of being random or, as was noted in paragraph 120 above, impossible to establish.
- 124 However, an approach based on a purely objective interpretation of the concept of ‘sales of the like product intended for domestic consumption’, within the meaning of Article 2(2) of the basic regulation, implies that the mere proof that, at any time after the initial sale of the products concerned by the exporting producer on the domestic market, a trader downstream in the distribution chain has exported those products, is sufficient for the Commission to be able to consider that those products were, at the time of their initial sale, ‘intended’ for export and were therefore, as the General Court stated in paragraph 143 of the judgment under appeal, ‘actually export sales’ which must therefore be excluded from the basis of calculation for determining the normal value.
- 125 Such a purely objective interpretation, in that it attaches no importance to the existence of a link between the characteristics of the initial sale by the exporting producer including, first and foremost, the price, and subsequent export by its customer or another operator downstream in the distribution chain of the product concerned, has the effect, as Yieh maintains, that the principles of foreseeability and legal certainty are not fully respected, since that interpretation would allow the Commission to impose anti-dumping duties irrespective of the pricing policy of the exporting producer and would oblige the exporting producer to be held accountable for the marketing policies of its independent customers which that producer is not, in principle, able to control.
- 126 In that regard, although, for the reasons set out in paragraphs 103 to 123 of this judgment, the purely subjective interpretation of the concept of ‘sales of the like product intended for domestic consumption’ within the meaning of Article 2(2) of the basic regulation cannot be accepted, it does not, however, follow that a purely objective interpretation of that concept must necessarily be adopted.

- 127 In order to ensure, inter alia, that the principles of foreseeability and legal certainty are fully respected, the concept of ‘sales of the like product intended for domestic consumption’, within the meaning of Article 2(2) of the basic regulation, must be interpreted as meaning, as the Advocate General has also observed in point 58 of his Opinion, that the Commission may exclude a domestic sale from the basis of calculation used to determine normal value only if it establishes the existence of an objective link between that sale and a destination of the product concerned other than domestic consumption.
- 128 As the Advocate General also observed in point 58 of his Opinion, such an interpretation of that provision is also necessary because of its purpose, which, as recalled in paragraph 122 above, is intended to ensure that the normal value of a product corresponds, at best, to the normal price of the like product on the domestic market of the exporting country.
- 129 It follows that the Commission is entitled to exclude a sale from the basis of calculation used to determine the normal value on the ground of export of the product in question only if it shows that it follows from the objective circumstances surrounding that sale, including, first and foremost, the price, that the products concerned by that sale have a destination other than consumption on the domestic market of the exporting country, such as export.
- 130 If the Commission establishes the existence of such circumstances relating to the initial sale, it may be considered that the exporting producer in question should reasonably have known, at the time of conclusion of the sale, that, in all likelihood, the final destination of the product concerned was export and not consumption on the domestic market of the exporting country.
- 131 Such ‘imputed’ knowledge, a concept which it must be noted is fundamentally different from that of actual intent or knowledge, may, for example, be inferred from objective evidence showing that the exporter sold the products concerned on the basis of its export price list or that the exporting producer knew or should reasonably have known that its customer was exclusively or principally active in the export trade in the products concerned.
- 132 Therefore, as the Advocate General observed in point 53 of his Opinion, it is quite possible that, independently of any proof of intention or actual knowledge on the part of the exporting producer as to whether the products concerned are intended for export, it can be inferred from certain objective evidence relating to sales or to the purchaser who acquires those products that they are intended for, that is to say, ‘marked for’ or ‘directed toward’ export.
- 133 That is precisely the case here, as is apparent from paragraphs 136 to 142 of the judgment under appeal, in which the General Court examined the specific approach which the Commission adopted in the contested regulation and which led it to exclude, from the basis of calculation used to determine the normal value, the sales made by Yieh, in Taiwan, to its independent customer, amounting to 120 000 tonnes of the product concerned.
- 134 As the General Court noted in paragraph 136 of the judgment under appeal, in the provisional regulation, the Commission had initially adopted a ‘prudent’ approach, consisting of excluding from that basis of calculation the entirety of Yieh’s sales of the product concerned to certain distributors established in Taiwan.
- 135 However, as is apparent from paragraph 137 of the judgment under appeal, the Commission subsequently, as it stated in recital 59 of the contested regulation, replaced that ‘overall’ approach with an approach consisting of excluding from the basis of calculation used to determine the

normal value only domestic sales for which it had ‘sufficient objective evidence of their actual export’. By contrast, according to paragraph 137 of the judgment under appeal, it is also apparent from recital 59 of the contested regulation that ‘subjective elements such as intention or knowledge, or the lack of knowledge, did not, in the present case, play any role in the objective assessment carried out by the Commission, contrary to the existence of discounts associated with exports which was, in particular, used as relevant evidence’.

- 136 In the latter regard, as the General Court stated, in essence, in paragraphs 138 and 140 of the judgment under appeal, by reference to recital 64 of the provisional regulation, the Commission’s investigation revealed that, in the present case, a significant number of sales declared by Yieh as domestic sales had been subject to an export rebate intended to provide an incentive for distributors to export the products at issue after their processing involving, at most, minor operations without the resulting product being altered to such an extent as no longer to come under the definition of the product concerned.
- 137 In paragraph 141 of the judgment under appeal, the General Court added, *inter alia*, that it was apparent from the documents in the case file that that rebate concerned, by way of example, 40% of Yieh’s sales to its biggest customer in Taiwan in December 2013.
- 138 In paragraph 142 of the judgment under appeal, the General Court also pointed out that, as is apparent from recital 59 of the contested regulation, ‘further objective evidence ... of the actual export of products in sales reported as domestic sales’ could have been gathered.
- 139 In particular, in paragraph 142, the General Court noted that the investigation had shown that Yieh’s biggest customer in Taiwan ‘had sold only a negligible quantity of the product concerned on the domestic market’ of the exporting country, from which it can be inferred, as the Advocate General also observed in point 68 of his Opinion, that that customer was primarily active in the export sector for the product concerned, a fact of which Yieh could not reasonably have been unaware.
- 140 The General Court held, in paragraph 143 of the judgment under appeal, that Yieh had failed to demonstrate that the Commission had committed an error of law or a manifest error of assessment by refusing to take into account Yieh’s sales to its independent customer for the purposes of determining the normal value on the ground that there was ‘objective evidence that those sales were actually export sales – and particularly when it is established that part of the sales in question was subject to an export rebate system, such as that applied by [Yieh] – and was, accordingly, concluded at prices lower than the price of the product concerned destined for consumption on the domestic market, bearing in mind that those prices favoured the export of the product concerned’.
- 141 In that regard, in the light of the interpretation of the concept of ‘sales of the like product intended for domestic consumption’, within the meaning of Article 2(2) of the basic regulation, set out in paragraph 129 of the present judgment, it must be held that the fact that part of Yieh’s domestic sales was subject to an export rebate scheme is an objective circumstance surrounding those sales and relating, in particular, to their price, from which it follows that the products concerned by those sales were intended for export and not for consumption on the domestic market.

- 142 Therefore, in accordance with what is stated in paragraph 130 above, Yieh should reasonably have known, at the time those sales were concluded, that the final destination of the product concerned was, in all likelihood, export and not consumption on the domestic market of the exporting country.
- 143 Similarly, in the light of paragraphs 129 and 130 of the present judgment, it follows from the objective circumstance referred to in paragraph 142 of the judgment under appeal and recalled in paragraph 139 of the present judgment, that Yieh's largest customer in Taiwan was primarily active in the export sector for the product concerned, that Yieh's sales to that customer concerned, as a general rule, products intended for export and not for consumption on the domestic market and that, therefore, Yieh should reasonably have been aware, at the time the sales in question were concluded, of the final destination of the product concerned, namely, in all likelihood, export.
- 144 Consequently, the General Court did not err in law in holding, in paragraph 144 of the judgment under appeal, that 'the Commission could legally and without committing any manifest error of assessment exclude the sales in question from the [basis of calculation used to determine] the normal value pursuant to Article 2(1) and (2) of the basic regulation'.
- 145 In the light of the foregoing, the third ground of appeal must be rejected and, accordingly, the appeal must be dismissed in its entirety.

Costs

- 146 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of the Rules of Procedure, 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.
- 147 Since the Commission and Eurofer have applied for costs and Yieh has been unsuccessful, Yieh must be ordered to bear its own costs and to pay those incurred by the Commission and Eurofer.

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

1. Dismisses the appeal;

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

Prechal

Passer

Biltgen

Wahl

Arastey Sahún

Delivered in open court in Luxembourg on 28 April 2022.

A. Calot Escobar
Registrar

A. Prechal
President of the Second Chamber