Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

11 September 2018 *

(Dumping — Imports of ceramic tiles originating in China — Article 11(3) and (5) and Article 17 of Regulation (EC) No 1225/2009 (now Article 11(3) and (5) and Article 17 of Regulation (EU) 2016/1036) — Rejection of a request for a partial interim review, limited to dumping aspects, of the definitive anti-dumping duty established by Implementing Regulation (EU) No 917/2011 — Lasting change in circumstances — Sampling — Individual examination — No cooperation in the investigation that led to the adoption of the definitive measures)

In Case T-654/16,

Foshan Lihua Ceramic Co. Ltd., established in Foshan City (China), represented by B. Spinoit and D. Philippe, lawyers,

applicant,

v

European Commission, represented by M. França, T. Maxian Rusche, N. Kuplewatzky and A. Demeneix, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU for annulment of Commission Implementing Decision C(2016) 4259 final of 11 July 2016 rejecting a request for a partial interim review limited to dumping aspects with regard to the definitive anti-dumping measures imposed on imports of ceramic tiles originating in the People's Republic of China by Council Implementing Regulation (EU) No 917/2011 of 12 September 2011,

THE GENERAL COURT (Fourth Chamber),

composed of H. Kanninen, President, J. Schwarcz (Rapporteur) and C. Iliopoulos, Judges,

Registrar: C. Heeren, Administrator,

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

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicant, Foshan Lihua Ceramic Co. Ltd., established in Foshan (China), is a producer of ceramic tiles.

2 On 12 September 2011, the Council of the European Union adopted Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ 2011 L 238, p. 1) ('the definitive regulation'). The anti-dumping duty rates were based on dumping margins established by the investigation since they were lower than the injury margins.

3 During the investigation that led to the imposition of those definitive measures, the European Commission had recourse to sampling pursuant to Article 17 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51), as amended most recently by Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 (OJ 2014 L 18, p. 1), ('the basic regulation') (replaced by Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21)). The sampled exporting producers granted individual treatment in accordance with Article 9(5) of the basic regulation (now Article 9(5) of Regulation 2016/1036) were made subject to individual anti-dumping duty rates. Cooperating exporting producers not sampled during the investigation and a sampled exporting producer not granted individual treatment were made subject to a rate of anti-dumping duty, calculated in accordance with Article 9(6) of the basic regulation (now Article 9(6) of Regulation 2016/1036), as the weighted average margin of dumping established for the parties in the sample, namely 30.6%. Requests for individual examination were submitted by eight cooperating exporting producers pursuant to Article 17(3) of the basic regulation (now Article 17(3) of Regulation 2016/1036). It was decided to grant individual examination for only one of those exporting producers, as it was not unduly burdensome to do so. That exporting producer represented by far the largest export volume of the eight exporting producers requesting individual examination. However, following final disclosure, it became apparent that that exporting producer had not provided certain necessary information, with the result that the findings in regard to that exporting producer were made on the basis of the facts available, in accordance with Article 18 of the basic regulation (now Article 18 of Regulation 2016/1036). That exporting producer and the non-cooperating exporting producers were made subject to an anti-dumping duty rate established by using the highest of the dumping margins found for a representative product type from a cooperating exporting producer, namely 69.7%.

4 The applicant did not participate in the administrative procedure that led to the adoption of the definitive regulation, with the result that its name is not included in Annex I to the definitive regulation. Its imports of the goods in question are therefore subject to a rate of 69.7%.

5 By letter of 7 September 2013, the applicant submitted to the Commission a request for a partial interim review, limited to dumping aspects, under Article 11(3) of the basic regulation (now Article 11(3) of Regulation 2016/1036). The grounds substantiating that request were, first, a new distribution system implemented by the applicant that included the establishment of a related company and, second, the introduction of a new product type that did not exist during the period between 1 April 2009 and 31 March 2010 ('the investigation period'). The applicant stated in its request for a review that it had not participated in the original investigation since it did not know the final destination of its goods, which it sold during the investigation period solely to one Chinese trading company. In so far as it claimed that it had not exported the goods in question to the European Union during the investigation period, the Commission's services drew the applicant's attention to the

fact that, if that claim were true, the appropriate legal way for being attributed the rate of duty of 30.6% was to request new exporting producer treatment ('NEPT') in accordance with Article 3 of the definitive regulation. That provision reads as follows:

'Where any [Chinese producer] provides sufficient evidence to the Commission that it did not export the goods described in Article 1(1) originating in [China] during the period of investigation (1 April 2009 to 31 March 2010), that it is not related to an exporter or producer subject to the measures imposed by this Regulation and that it has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation, the Council, acting by simple majority on a proposal by the Commission, after consulting the Advisory Committee, may amend Article 1(2) in order to attribute to that producer the duty applicable to cooperating producers not in the sample, i.e. 30.6%.'

6 Following a series of exchanges with the Commission, the applicant requested, by letter of 10 February 2015, a suspension of the processing of its request for an interim review pursuant to Article 11(3) of the basic regulation so as not to delay its request for NEPT, which it submitted during that exchange.

7 On 28 January 2016, the applicant requested the Commission to resume processing its request for an interim review. On 13 April 2016, the Commission sent the applicant a general disclosure document designed to set out the essential facts and considerations on the basis of which the Commission intended to refuse that request. By decision of 15 April 2016, the Commission refused the request for NEPT. It found, inter alia, that the investigation had been unable to establish that the applicant had not exported the product in question originating in China to the European Union during the investigation period and that it was not related to an exporter or producer subject to the measures imposed by the definitive regulation. That decision was contested by the applicant in Case T-310/16, *Foshan Lihua Ceramic* v *Commission*. On 22 April 2016, the applicant replied to the general disclosure document. It claimed, inter alia, that, by refusing to initiate an interim review on the ground that the applicant was not among the sampled companies, the Commission's findings were vitiated by an error of law.

8 By decision of 11 July 2016, the Commission refused the applicant's request for an interim review ('the contested decision'). In recital 8 of that decision, the Commission stated:

'As explained in Paragraph 8 of the General Disclosure Document, the Commission applied sampling in the original investigation. Therefore, it examined the situation of a limited number of exporting producers that were selected to be part of this sample in which the applicant was not included. Since the measures in force are based on the examination of the sampled companies, it follows that an allegation of changes in circumstances within the meaning of Article 11(3) of the basic Regulation must relate to the same sampled companies, or to changes that affected all exporting producers in this country. Since the changed circumstances presented by the applicant relate exclusively to its own situation and not to the one of the sampled companies or to all exporting producers in [China], these changes are irrelevant in the framework of an application pursuant to Article 11(3) of the basic Regulation. Indeed, the original investigation has not established an individual dumping margin for the applicant, because the applicant has not requested individual treatment. The applicant cannot rely on Article 11(3) of the basic Regulation in order to obtain now an individual dumping margin. Otherwise, the possibility of sampling would be deprived of its *effet utile*. If its individual dumping margin is lower than the measure to which its exports are subject from the dumping margin established on the basis of the sample, its importers can request refunds on the basis of Article 11(8) of the basic Regulation [now Article 11(8) of Regulation 2016/1036]. Therefore the applicant's claim ... is rejected.'

Procedure and forms of order sought

9 By application lodged at the Court Registry on 13 September 2016, the applicant brought the present action.

10 On 7 December 2016, in its reply in Case T-310/16, *Foshan Lihua Ceramic* v *Commission*, the applicant requested that that case be joined to the present case. On 16 December 2016, the Commission objected to that request for joinder. By decision of 23 January 2017, the President of the Fourth Chamber of the General Court decided not to join the cases in question.

11 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

12 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

13 The applicant relies on a single plea in law alleging infringement of the provisions of both Article 11(3) and (5) and Article 17(3) of the basic regulation (Article 11(5) now being Article 11(5) of Regulation 2016/1036) and Article 6.10.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103; 'the Anti-Dumping Agreement') appearing in Annex 1A to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3). In support of that plea in law, the applicant puts forward, in essence, seven arguments.

14 In the first place, the applicant takes the view, essentially, that it is not apparent from Article 11(3) of the basic regulation that a request for an interim review submitted by an exporting producer not included in the sample must be based on evidence of changed circumstances for all exporting producers. Demonstrating changed circumstances of such a kind would, moreover, it submits, be in almost all cases impossible.

15 In the second place, the applicant claims that it has suffered discrimination, in so far as the sampled exporting producers were not required to adduce such evidence. The applicant disputes, in this regard, the finding that sampled exporting producers and non-sampled exporting producers are in a different situation. The difference between those two groups of exporting producers is not, it submits, due to any different 'specificity, particularity or the nature' of the exporters concerned, but is solely a consequence of the wide discretion of the Commission in establishing the sampling criteria.

16 In the third place, according to the applicant, it is apparent from paragraph 189 of the judgment of 9 June 2016, *Growth Energy and Renewable Fuels Association* v *Council* (T-276/13, EU:T:2016:340) that an exporting producer must be granted individual treatment except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Although it has not granted the applicant individual treatment, the Commission does not claim that the applicant's interim review request of September 2013 would prevent the timely completion of the review investigation. The

Commission, in the applicant's view, thus infringed Article 17(3) of the basic regulation and Article 6.10.2 of the Anti-Dumping Agreement. In addition, contrary to what the Commission claims, the basic regulation does not set out any time limit for submitting a request for individual examination.

17 In the fourth place, the applicant submits that it is apparent from Article 11(5) of the basic regulation that Article 17(3) of that regulation also applies to interim review procedures. The grounds for refusing the interim review request on the basis of the *effet utile* of the sampling are therefore, it argues, incorrect.

18 In the fifth place, the special group established in the context of the WTO decided, in its report entitled 'United States — Anti-dumping Measures on Certain Shrimp from Viet Nam' and adopted on 11 July 2011 (WT/DS404/R, paragraph 7.181), with regard to interim review procedures, that the application of the first sentence of Article 6.10.2 of the Anti-Dumping Agreement is triggered only if non-selected exporters or producers make so-called voluntary responses. The applicant's request for an interim review should, it argues, be considered to be a voluntary response within the meaning of that provision.

19 In the sixth place, the applicant claims, in its reply, that, following its request and demonstration of individual and specific changed circumstances, the Commission ought at least to treat it as a now cooperating exporter and, in accordance with Article 9(6) of the basic regulation, apply the rate of anti-dumping duty based on the weighted average margin of dumping established for the exporting producers included in the sample.

20 In the seventh place, the applicant claims that it has already put forward its arguments regarding Article 17(3) of the basic regulation in its reply to the general disclosure document, but that the Commission failed to respond to those arguments in the contested decision, thereby infringing the applicant's right to a fair hearing and its rights of defence. In addition, by refusing to grant the applicant NEPT and by refusing its request for an interim review, the Commission has made it impossible for the rules in force to be correctly applied to the applicant.

21 The Commission disputes the applicant's arguments.

22 In this respect, it should be remembered that, as set out in the first subparagraph of Article 11(3) of the basic regulation, the need for the continued imposition of measures may be examined, inter alia, following a request by an exporter or importer or by the EU producers which contains sufficient evidence substantiating the need for such an interim review. In the present case, the request was made by the applicant in its capacity as an exporting producer. In addition, it is common ground between the parties that that request was limited in scope to dumping.

23 It is apparent from the second subparagraph of Article 11(3) of the basic regulation that, in essence, where the request is made by an exporter and is limited in scope to dumping, the need for an interim review requires that request to contain sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping.

24 According to case-law, as regards the processing of a request for a review limited in scope to dumping, the Council may, in accordance with those provisions, find that there are significant changes in the circumstances with regard to the dumping and is entitled, after confirming that those changes are lasting, to conclude that it is appropriate to amend the anti-dumping duty at issue (see judgment of 28 April 2015, *CHEMK and KF* v *Council*, T-169/12, EU:T:2015:231, paragraph 37 and the case-law cited).

25 Thus, it is apparent from the wording of the second and third subparagraphs of Article 11(3) of the basic regulation (now the second and third subparagraphs of Article 11(3) of Regulation 2016/1036) that the objective of the interim review is to verify the need for the continued imposition of the

anti-dumping measures and that, in this regard, where the review request made by an exporter is limited to dumping, the institutions must first assess the need for the continued imposition of the existing measure and, on that basis, find a not only significant but also lasting change of circumstances with regard to the dumping (judgment of 28 April 2015, *CHEMK and KF* v *Council*, T-169/12, EU:T:2015:231, paragraph 43).

26 In the context of the application of Article 14(1) of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1984 L 201, p. 1), according to which a review was to be held where an interested party so requested, provided that, inter alia, that party submits evidence of changed circumstances sufficient to justify the need for such review, the Court of Justice noted that the review procedure was to be undertaken if there is a change in the circumstances on the basis of which the values applied in the regulation imposing the anti-dumping duties were established (judgment of 24 February 1987, *Continentale Produkten Gesellschaft Erhardt-Renken* v *Commission*, 312/84, EU:C:1987:94, paragraph 11). It is by reference to that case-law that the General Court held, in the context of the application of Article 11(3) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) (subsequently Article 11(3) of the basic regulation), that the purpose of the review procedure was therefore to adapt the duties imposed to take account of an evolution in the factors which gave rise to them and the procedure therefore presupposed that those factors had altered (judgment of 29 June 2000, *Medici Grimm* v *Council*, T-7/99, EU:T:2000:175, paragraph 82).

27 It follows that a request for an interim review, provided for under Article 11(3) of the basic regulation, that is limited to dumping aspects and lodged by an exporting producer must include evidence offered in support that the factors that formed the basis for setting the dumping margin used to establish the anti-dumping duty applicable to the exporting producer who lodged the request have changed in a significant and lasting manner.

28 In the present case, as the applicant did not take part in the investigation that led to the adoption of the definitive regulation, the applicant is to be considered, pursuant to both Article 18(1) of the basic regulation (now Article 18(1) of Regulation 2016/1036) and paragraph 6 of the notice of the opening of the initial proceeding (OJ 2010 C 160, p. 20), to have failed to cooperate with the investigation. According to those same provisions, the conclusions relating to non-cooperating exporting producers are based on the available data, with the consequence that such conclusions may be less favourable than if those exporting producers had cooperated.

29 Specifically, it is clear, from recitals 66 and 77 of Commission Regulation (EU) No 258/2011 of 16 March 2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in [China] (OJ 2011 L 70, p. 5) and from recitals 92 and 93 of the definitive regulation, that non-cooperating exporting producers, such as the applicant, were subjected to a rate of anti-dumping duty established using the highest of the dumping margins found for a representative product type from a cooperating exporting producer, namely 69.7%.

30 It follows that any exporting producer coming within that category must show that the circumstances which formed the basis for the setting of the latter rate have changed in a significant and lasting manner. As the setting of that rate is based on data relating to the sampling, the applicant can discharge its burden of proof, as the Commission rightly states, by also showing either that the factors forming the basis for the setting of the dumping margin used to establish the rates of the anti-dumping duty that apply to the companies included in the sampling had changed in a significant and lasting manner, or that such changes had affected all exporting producers of the exporting country.

31 To the extent that the applicant has raised, in its request for an interim review limited to dumping aspects, only the establishment of a new distribution system which included the establishment of a related company and the introduction of a new type of product that did not exist during the investigation period, it put forward information relating only to its own situation, a fact, moreover, which is expressly acknowledged by the applicant.

32 It follows that the Commission was fully entitled to conclude that the applicant had failed to submit the evidence necessary to justify the opening of a partial interim review limited to dumping aspects and, consequently, to refuse its request.

33 That conclusion is not called into question by the applicant's various arguments.

34 In the first place, as to the argument alleging discrimination against the applicant when compared with other undertakings included in the sample, first, it must be recalled that, according to consistent case-law, compliance with the principles of equality and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see judgment of 13 December 2007, *Asda Stores*, C-372/06, EU:C:2007:787, paragraph 62 and the case-law cited). The applicant, however, which did not cooperate in the initial investigation, is not in any way in the same situation with regard to the setting of the dumping margin as the exporting producers which did take part in that investigation. As the legislature laid down, in Article 18(1) of the basic regulation, that the rate of the anti-dumping duty was set for non-cooperating exporting producers on the basis of the available data, it follows that those data might be less favourable than if they had cooperated. The method for setting that rate in the initial procedure logically has an impact on the conditions in which such an exporting producer can request a partial interim review limited to dumping aspects, as has been pointed out in paragraphs 22 to 32 above.

35 Second, the applicant has failed to establish that it has been discriminated against in the context of the alleged discrimination against cooperating exporting producers who were not sampled, as against cooperating exporting producers who were sampled. As the applicant did not take part in the initial investigation, it did not request to be included in the sample. As its line of argument does not relate to its own situation, its potential justification cannot lead to the annulment of the contested decision in so far as it relates to the applicant. Therefore, the applicant has no legal interest in raising that line of argument (see, to that effect, judgment of 28 February 2017, *JingAo Solar and Others* v *Council*, T-157/14, not published, EU:T:2017:127, paragraphs 64 to 72).

36 In the second place, with regard to the arguments alleging infringement of Article 11(5) and Article 17(3) of the basic regulation (see paragraphs 16 and 17 above), firstly, it must be borne in mind that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the legislation of which it is part (see judgment of 18 September 2014, *Valimar*, C-374/12, EU:C:2014:2231, paragraph 42 and the case-law cited).

37 Secondly, it follows from Article 11(5) of the basic regulation that 'the relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time-limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4'. Thus, Article 11(5) of the basic regulation does not extend to review procedures all the provisions with regard to the procedures and conduct of investigations that apply in the context of the initial investigation. Article 11(5) of the basic regulation sets a framework for applying those provisions to review procedures according to their relevant characteristics.

38 Thirdly, it is settled case-law that a review procedure differs, in principle, from the original investigation procedure, which is governed by other provisions of the basic regulation. The objective difference between those two types of procedure lies in the fact that imports subject to a review

procedure are those on which definitive anti-dumping duties have already been imposed and in respect of which sufficient evidence has generally been adduced to establish that the expiry of those measures would be likely to result in a continuation or recurrence of dumping and injury. On the other hand, where imports are subject to an initial investigation, the purpose of that investigation is precisely to determine the existence, degree and effect of any alleged dumping (judgment of 27 January 2005, *Europe Chemi-Con (Deutschland)* v *Council*, C-422/02 P, EU:C:2005:56, paragraphs 48 to 50; see also judgment of 28 April 2015, *CHEMK and KF* v *Council*, T-169/12, EU:T:2015:231, paragraphs 59 and 60 and the case-law cited).

39 In such circumstances the Court of Justice has previously held that some of the provisions governing the original investigation were not intended to apply to the review procedure, in the light of the general scheme and purposes of the system laid down by the basic regulation (see judgment of 28 April 2015, *CHEMK and KF* v *Council*, T-169/12, EU:T:2015:231, paragraph 59 and the case-law cited).

40 In the present case, suffice it to note that applying Article 17(3) of the basic regulation in such a way as to provide for individual examination also in the context of the assessment of a request for interim review by an exporting producer which did not cooperate in the initial investigation runs counter to the purpose of the interim review procedure, as set out in paragraphs 22 to 27 above. Such an approach does not make it possible to assess whether the factors which formed the basis for setting the dumping margin used to establish the anti-dumping duty applicable to the exporting producer have changed in a significant and lasting manner. Data resulting from the analysis of the information relating to the exporting producers sampled would then be compared with the particular data for the exporting producer in question.

41 Consequently, in the context of the assessment of the need to open an interim review procedure on the basis of the two alleged changes of circumstance put forward by the applicant, recourse to individual examination is not relevant. Otherwise, the applicant could circumvent the obligations relating to the burden of proof that apply to it for the purposes of the application of Article 11(3) of the basic regulation in view of its status as a non-cooperating undertaking during the original investigation.

42 It follows that the general scheme and the objectives of the system established by the basic regulation preclude the applicant from relying on Article 11(5) and Article 17(3) of the basic regulation for the purposes of requesting an individual anti-dumping duty rate at the end of the procedure initiated by it pursuant to Article 11(3) of that same regulation. The applicant's invocation of Article 6.10.2 of the Anti-Dumping Agreement in support of its arguments also cannot succeed, given that, aside from the sentence 'Voluntary responses shall not be discouraged', that provision is transposed by Article 17(3) of the basic regulation, and the applicant has not submitted that that provision has been incorrectly transposed.

43 Those conclusions are bolstered, first, by the wording and scheme of Article 17 of the basic regulation, in particular paragraph 3, according to which the individual examination provided for in that provision is to be applied only in the context of examinations where the Commission has used sampling. It provides that 'in cases where the examination has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated'. The examination of a request for interim review is separate from the examination that led to the imposition of definitive anti-dumping measures (see paragraph 38 above) and is not a continuation of it, contrary to what was submitted by the applicant during the hearing. The separate nature of those two examinations is also further corroborated by the relationship between them, as set out in the basic regulation. Firstly, in accordance with the first subparagraph of Article 11(3) of the basic regulation, an interim review can be requested by an exporting producer only after one year has passed following the introduction of definitive measures; secondly, the investigation period for an interim review is to come after the period for the initial investigation (judgments of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraph 72, and of 13 September 2013, *Cixi Jiangnan Chemical Fiber*

and Others v *Council*, T-537/08, not published, EU:T:2013:428, paragraph 71, and Opinion of Advocate General Jääskinen in Joined Cases *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2015:628, point 29); and, thirdly, the investigation for the interim review can be limited to, inter alia, dumping or injury, whereas the initial investigation must be comprehensive.

44 In the present case, when dealing with the applicant's request for an interim review, the Commission did not use sampling, pursuant to Article 17(1) of the basic regulation (now Article 17(1) of Regulation 2016/1036). It dealt with that request directly on the basis of the information that it contained. Article 17(3) of the basic regulation was therefore not applicable in that procedure.

45 Second, contrary to what it argues in its submissions, the applicant cannot request an individual examination in accordance with Article 17(3) of the basic regulation at any time and thereby require the Commission to review the anti-dumping duty rate applicable to its imports. The anti-dumping duty rates can be changed only pursuant to Article 11 and 12 of the basic regulation (Article 12 now being Article 12 of Regulation 2016/1036). The applicant's request was made on the basis of Article 11(3) of the basic regulation, and it has already been held in paragraphs 41 and 42 above that application of Article 17(3) of that regulation was not relevant in that context in the present case.

46 Finally, with regard to the use of sampling in the initial investigation, it follows from the fourth subparagraph of Article 11(4) of the basic regulation (now the fourth subparagraph of Article 11(4) of Regulation 2016/1036) that a new exporting producer cannot request a review pursuant to the preceding subparagraphs of that same paragraph. The reason for this is to avoid a situation in which such exporting producers are placed in a more favourable position than exporting producers which cooperated with the initial investigation, but were not sampled, and which are consequently made subject to an anti-dumping duty rate calculated in accordance with Article 9(6) of the basic regulation. There is no reason to believe that the EU legislature wished to allow an exporting producer which did not cooperate with the initial investigation to be subject to an individual anti-dumping duty rate at the end of a review procedure if it has excluded that possibility for new exporting producers.

47 In the third place, it is only in its reply that the applicant raised the argument that the Commission could, as a minimum, have treated it as a cooperating exporting producer from then on and, for that reason, grant it the benefit of the anti-dumping duty rate applicable to cooperating exporting producers pursuant to Article 9(6) of the basic regulation. When questioned on this point during the hearing, the applicant admitted that this was a new plea in law alleging breach of the latter provision, without putting forward any argument that that plea in law was based on matters of law and fact which had come to light in the course of the procedure or that it should be seen as a development of an argument raised in the application. Consequently, it is inadmissible pursuant to Article 84 of the Rules of Procedure of the General Court.

48 In the fourth place, with regard to the claims based on the interpretation of Article 6.10.2 of the Anti-Dumping Agreement, in the report of the special group established in the context of the WTO headed 'United States — Anti-dumping Measures on Certain Shrimp from Viet Nam' and adopted on 11 July 2011 (WT/DS404/R, paragraph 7.181), it need only be stated that it follows neither from the passage of that report cited by the applicant nor from any other passage of that report relating to the interpretation of that article that the authorities responsible for anti-dumping investigations, such as the Commission, are obliged to open an interim review procedure, such as the one provided for in the context of EU law in Article 11(3) of the basic regulation, on the basis of information relating solely to the alleged change in circumstances affecting an exporting producer which did not participate in the initial investigation in which sampling was used. It also does not follow from that report that, in a situation such as that in the present case, such an exporting producer can rely on Article 6.10.2 of the Anti-Dumping Agreement in the context of a request by it for the opening of an interim review that is justified on the basis of information relating only to itself.

49 In the fifth place, the applicant complains that the Commission failed to react in the contested decision to its arguments derived from Article 17(3) of the basic regulation. However, as has been held above, in the present case that provision has no bearing on the interpretation and application of Article 11(3) of the basic regulation, as has been pointed out in paragraphs 22 to 32 above. Refraining from responding expressly to arguments based on a provision that does not apply in the present case does not constitute an infringement by the Commission of the right to a fair hearing or of the rights of the defence.

50 The single plea in law must therefore be rejected.

Costs

51 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

52 As the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Foshan Lihua Ceramic Co. Ltd to pay the costs.

Kanninen Schwarcz Iliopoulos

Delivered in open court in Luxembourg on 11 September 2018.

E. Coulon
Registrar

H. Kanninen
President