Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

10 April 2019 *

(Subsidies — Imports of tubes and pipes of ductile cast iron originating in India — Implementing Regulation (EU) 2016/387 — Imposition of a definitive countervailing duty — Indian scheme establishing an export tax on iron ore and a dual railway freight charge placing the transport of iron ore for export at a disadvantage — Article 3(1)(a)(iv) of Regulation (EC) No 597/2009 (replaced by Regulation (EU) 2016/1037) — Financial contribution — Provision of goods — Action consisting of 'entrusting' a private body to carry out a function constituting a financial contribution — Article 4(2)(a) of Regulation No 597/2009 — Specificity of a subsidy — Article 6(d) of Regulation No 597/2009 — Calculation of benefit — Injury to the Union industry — Calculation of price undercutting and the injury margin — Causal link — Access to confidential data of the subsidy investigation — Rights of the defence)

In Case T-300/16,

Jindal Saw Ltd, established in New Delhi (India),

Jindal Saw Italia SpA, established in Trieste (Italy),

represented by R. Antonini and E. Monard, lawyers,

applicants,

v

European Commission, represented by J.-F. Brakeland and G. Luengo, acting as Agents,

defendant,

supported by

Saint-Gobain Pam, established in Pont-à-Mousson (France), represented by O. Prost, A. Coelho Dias and C. Bouvarel, lawyers,

intervener,

APPLICATION under Article 263 TFEU for annulment of Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ 2016 L 73, p. 1), in so far as that regulation concerns the applicants,

* Language of the case: English.

THE GENERAL COURT (First Chamber, Extended Composition)

composed of I. Pelikánová, President, V. Valančius, P. Nihoul, J. Svenningsen (Rapporteur) and U. Öberg, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 4 July 2018,

gives the following

Judgment

Background to the dispute

1 The applicants, Jindal Saw Ltd, a private company governed by Indian law, and Jindal Saw Italia SpA, an Italian company owned by Jindal Saw, are active in the production and sale of, inter alia, tubes and pipes of ductile cast iron intended for the Indian market and for export. During the relevant period in this case, three related companies sold Jindal Saw's products in the European Union, namely, in addition to Jindal Saw Italia, Jindal Saw España SL and Jindal Saw Pipeline Solutions, UK (collectively, 'Jindal Saw's selling entities').

2 On 10 November 2014, Saint-Gobain Pam, Saint-Gobain Pam Deutschland GmbH and Saint-Gobain Pam España S.A. (collectively, 'the complainant') submitted, in accordance with Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Union (OJ 2009 L 343, p.51), as amended by Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 (OJ 2014 L 18, p. 1) (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)), a complaint to the European Commission, pursuant to Article 5 of Regulation No 1225/2009, in order to have it carry out an anti-dumping investigation concerning imports of tubes and pipes of ductile cast iron originating in India.

3 By notice published in the *Official Journal of the European Union* on 20 December 2014 (OJ 2014 C 461, p. 35), the Commission initiated an anti-dumping proceeding concerning the imports in question ('the anti-dumping proceeding').

4 In parallel, on 26 January 2015, the complainant submitted, pursuant to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Union (OJ 2009 L 188, p. 93), as amended by Regulation No 37/2014 ('the basic regulation') (replaced by Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ 2016 L 176, p. 55)), a complaint to the Commission, pursuant to Article 10 of the basic regulation, in order to have it carry out an anti-subsidy investigation, also concerning the imports in question, citing the existence of various subsidies from which Indian producers benefit, including a subsidy related to the acquisition of iron ore.

5 By notice published in the Official Journal on 11 March 2015 (OJ 2015 C 83, p. 4; 'the notice of initiation'), the Commission initiated an anti-subsidy proceeding concerning the imports in question ('the anti-subsidy proceeding').

6 On 24 June 2015, Jindal Saw submitted observations to the Commission on certain aspects of the dumping analysis, the injury caused to the Union industry and the Union interest. Those observations covered both the anti-dumping proceeding and the anti-subsidy proceeding.

7 On 18 September 2015, the Commission adopted Implementing Regulation (EU) 2015/1559 imposing a provisional anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ 2015 L 244, p. 25; 'the provisional anti-dumping regulation'). The product concerned was defined in that regulation as tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India.

8 On 23 October 2015, Jindal Saw submitted its observations on the provisional information in the anti-dumping proceeding, requesting at the same time the organisation of a hearing by the Commission.

9 A meeting was organised on 20 November 2015. On 24 November 2015, Jindal Saw sent an email to the Commission in which it confirmed certain elements discussed during that meeting, in particular those regarding the product concerned as defined in the provisional anti-dumping regulation and the calculation of the price undercutting, and, on 27 November 2015, it submitted to the Commission its observations following that meeting in the context of the anti-dumping proceeding. On 9 December 2015, it communicated to the Commission certain observations in the context of the anti-dumping proceeding and in the context of the anti-subsidy proceeding, in particular concerning (i) the characterisation of the export tax on iron ore as a subsidy, (ii) the injury caused to the Union industry, (iii) the replies to questionnaires made by the users of the product concerned as defined in the provisional anti-dumping regulation and, (iv) the exclusion from the definition of that product of tubes which have no internal coating or outer coating.

10 On 22 December 2015, the Commission informed Jindal Saw of the essential facts and considerations on the basis of which it was intended to impose a definitive anti-dumping duty on imports of that product and of the essential facts and considerations on the basis of which it was intended to impose a definitive countervailing duty on the same imports ('the final disclosure'). Prior to submitting its comments, Jindal Saw requested, by email dated 12 January 2016, further information on four specific points. By email of 13 January 2016, it asked the Commission, in the context of the anti-subsidy proceeding, to disclose the calculations of the 'rounded average' transport cost. The Commission replied to that request by email of 19 January 2016.

11 On 20 January 2016, Jindal Saw submitted its comments on the final disclosure in the context of the anti-dumping proceeding and in the context of the anti-subsidy proceeding.

12 On 27 January 2016, the Commission sent Jindal Saw an additional final disclosure concerning corrections made to the subsidy calculations in the anti-subsidy proceeding. The deadline for submitting comments was 29 January 2016.

13 On 28 January 2016, Jindal Saw attended a meeting organised by the Commission. That meeting focused in particular on the conclusions regarding the subsidy constituted by the export tax on iron ore and the rail freight dual pricing regime for iron ore (Dual Freight Policy, 'the DFP'), calculations related to the alleged subsidy package, the injury caused to the Union industry and the dumped imports. On the same day, the Commission sent a letter to Jindal Saw informing it of certain corrections made to the calculations of the indicators of injury to the Union industry in connection with the anti-dumping and anti-subsidy proceedings. The deadline for submitting comments was 1 February 2016.

14 On 1 February 2016, Jindal Saw sent two emails to the Commission, setting out its comments on, first, the corrections made to certain indicators of injury to the Union industry and, second, the meeting of 28 January 2016. Those emails also contained various requests for information.

15 Following the anti-dumping and anti-subsidy proceedings, the Commission adopted Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ 2016 L 73, p. 1, 'the contested regulation'), and Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ 2016 L 73, p. 53), which is the subject of an action for annulment in *Jindal Saw and Jindal Saw Italia* v *Commission* (T-301/16).

16 In the contested regulation, the product concerned was definitively defined as 'tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of ductile pipes without internal and external coating ..., originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90' ('the product concerned').

Procedure and forms of order sought

17 By application lodged at the Court Registry on 13 June 2016, the applicants brought the present action. The defence, reply and rejoinder were lodged on 27 September 2016, 21 November 2016 and 26 January 2017.

18 Following a change in the composition of the Chambers of the General Court, the case was reassigned to a new Judge-Rapporteur within the First Chamber.

19 Confidentiality requests relating to certain information contained in the application, the reply and the rejoinder were lodged by the applicants on 11 and 21 November 2016 and on 14 February 2017. The Commission lodged a claim for confidentiality in relation to an annex to the defence on 24 October 2016.

20 By document lodged at the Court Registry on 18 October 2016, Saint-Gobain Pam sought leave to intervene, in the present case, in support of the form of order sought by the Commission. By order of 19 January 2017, the President of the First Chamber of the General Court allowed that intervention.

21 On 6 March 2017, the intervener lodged a statement in intervention at the Court Registry. The Commission and the applicants lodged their observations on that statement on 24 March and 19 April 2017.

22 On 20 July 2017, the Court ordered the Commission, pursuant to Article 91(b) of the Rules of Procedure of the Court and subject to the application of Article 103(1) of that regulation, to provide the necessary data to enable the verification of the veracity of certain explanations provided in the defence as regards the implications of the clerical error referred to in recital 284 of the contested regulation ('the clerical error').

23 On 10 August 2017, the Commission produced, in digital form, the data covered by the measure of inquiry ordered by the Court.

24 By decision notified to the parties on 14 September 2017, the lawyers representing the applicants were invited, by way of a measure of organisation of procedure, to consult, under certain conditions, those data in the offices of the Court Registry. That consultation took place on 26 and 27 September 2017.

25 On 18 October 2017, the applicants submitted observations following the consultation by their lawyers of the data at issue ('the observations of 18 October 2017'). On the same date, they lodged an application for confidential treatment, vis-à-vis the intervener, concerning some of those data.

26 On 14 November 2017, the Commission lodged a request for confidential treatment, vis-à-vis the intervener, concerning certain information contained in the observations of 18 October 2017.

27 On 22 November 2017, the Commission submitted comments on the observations of 18 October 2017.

28 On 15 December 2017, the intervener submitted comments on the observations of 18 October 2017 and on the Commission's observations.

29 On 27 April 2018, the General Court invited the main parties to reply, in the context of measures of organisation of procedure, to a number of questions and to produce certain documents. Those parties complied with that request within the prescribed period. They had the opportunity to comment on their respective responses, which was also done within the prescribed period.

30 The applicants claim that the Court should:

– annul the contested regulation in so far as it concerns them;

– order the Commission to pay the costs.

31 The Commission, supported by the intervener, contends that the Court should:

– dismiss the action as unfounded;

– order the applicants to pay the costs.

32 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 4 July 2018.

Law

The admissibility of the observations of 18 October 2017

33 The observations of 18 October 2017 were lodged by the applicants in the context set out below.

34 In the final stage of the administrative procedure, the Commission informed the interested parties of the existence of the clerical error. That error, relating to certain indicators of injury to the Union industry, consisted in the taking into consideration of certain export sales of the Union industry as sales made in the Union. Consequently, the Commission corrected the data concerning the sales in the Union of the Union industry and revised data relating to other indicators that had been influenced, by repercussion, by the clerical error.

35 In the application, the applicants argued that the Commission had not carried out all the revisions necessitated by the correction of the clerical error.

36 In the defence, the Commission explained in detail that the clerical error had occurred in the transcription of certain figures, contained in a computerised spreadsheet, drawn up using a spreadsheet programme and annexed to the replies to the questionnaire of a Union producer, in a specific computerised spreadsheet and that that error had no effect on the indicators other than those which had been corrected, the other indicators having been established in separate computerised spreadsheets.

37 According to the Commission, the only indicators of injury which had been influenced, and which were revised, were those for which automatic links had been created, in the calculation formulae included in that specific spreadsheet, with the data that were the subject of the clerical error.

38 The Commission proposed to make the data concerned, which are confidential within the meaning of Article 29 of the basic regulation, available to the Court, subject to the application of Article 103 of the Rules of Procedure, to enable the applicants to verify the merits of the explanations set out in paragraphs 36 and 37 above.

39 Following the measure of inquiry ordered by the Court on 20 July 2017, the Commission lodged at the Court Registry a USB stick containing the data whose production was sought. By decision notified on 14 September 2017, read together with that measure of inquiry, the lawyers representing the applicants were invited, subject to the signing of a confidentiality undertaking, to consult the documents contained in that USB stick in the offices of the Court Registry, exclusively in order to be able to check the veracity of certain explanations provided in the defence as regards the implications of the clerical error.

40 In the observations of 18 October 2017, lodged following that consultation, the applicants do not contest the veracity of those explanations, but claim to have discovered, in the documents consulted, five further errors, which support some of their complaints.

41 Primarily, the Commission contends that the observations of 18 October 2017 are inadmissible, since they relate to questions outside the scope of the measure of inquiry and the measure of organisation of procedure adopted by the Court. In the alternative, it submits that the correction of the errors identified by the applicants did not change the analysis which it made in the context of the contested regulation.

42 The intervener, from which most of the confidential data in question originates, essentially argues that the basic regulation does not allow the disclosure of confidential data transmitted by an undertaking to the institutions of the Union in the context of an anti-subsidy proceeding without the authorisation of that undertaking. In the alternative, the intervener is seeking fuller access than that which it has already been granted to the data concerned.

43 It should be noted, first of all, that the five errors to which the applicants refer in the observations of 18 October 2017 are unrelated to the clerical error at the origin of the measure of inquiry and the measure of organisation of procedure adopted by the Court and, therefore, to the purpose of those measures.

44 Next, it should be borne in mind that the basic regulation governs in detail the access of interested parties to the data collected in the context of an anti-subsidy investigation. It provides for a complete system of procedural guarantees seeking, on the one hand, to allow the interested parties effectively to defend their interests and, on the other hand, to preserve, when it is necessary, the confidentiality of the information used in the course of that investigation and contains rules allowing those two requirements to be reconciled (see, by analogy, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 96).

45 In that regard, Article 29(1) of the basic regulation lays down the principle that any information which is by nature confidential is to be treated as such by the authorities if such nature is justified by good cause. Paragraph 5 of that article prohibits, inter alia, the Commission from revealing any information received pursuant to that regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier, and, unless otherwise expressly provided for, from disclosing, in particular, any internal documents prepared by the authorities of the Union.

46 The basic regulation also contains a number of provisions that allow the requirements linked to the rights of interested parties to defend their interests effectively to be reconciled with those linked to the necessity of protecting confidential information. First, access by interested parties to information available under Article 11(7) and Article 30 of the basic regulation is restricted by the confidentiality of such information. Secondly, Article 29(2) to (4) of the basic regulation provides for a certain number of arrangements with respect to the confidentiality of the information in order to protect those rights of the interested parties.

47 In this instance, the documents which the applicants' lawyers were authorised to consult exclusively contain commercial data from two of the three companies constituting, in the present case, the Union industry. At issue is confidential data within the meaning of Article 29 of the basic regulation, a point which the parties do not dispute.

48 At issue therefore are documents the disclosure of which the applicants could not claim pursuant to the basic regulation. Access to those documents was conferred only on their lawyers and only in order to enable the verification of the implications of the clerical error committed by the Commission, within the context of a decision of the Court strictly circumscribing that access, so as to ensure respect for the applicants' rights of defence, as follows from the measure of inquiry and the measure of organisation of procedure adopted by the Court.

49 First, the measure of inquiry ordered by the Court was worded precisely. The Commission only had to produce the data which were strictly necessary to check the veracity of certain explanations provided in the defence regarding the origin and the implications of the clerical error.

50 Secondly, the decision notified to the parties on 14 September 2017 provided, in the context of a measure of organisation of procedure, for access to the data in question only to ensure respect for the applicants' rights of defence, in the context of the present proceedings, as regards those explanations, and not to provide the applicants with information beyond the safeguards provided for in the basic regulation for the benefit of the interested parties, which would be contrary to the respect for the confidentiality of such data. It must incidentally be observed that, in the course of the administrative procedure, the applicants' rights were guaranteed by Article 11(7) and Articles 29 and 30 of the basic regulation.

51 It follows from the foregoing that the present case cannot be assimilated to a situation in which the Court decided, pursuant to Article 103(3) of the Rules of Procedure and after weighing up the matters referred to in paragraph 2 of that article, to generally bring to the attention of a main party confidential information or material produced by the other main party. In the present case, the Court gave the applicants' lawyers specific access to the computerised spreadsheets used by the Commission for the establishment of the disputed indicators for the sole purpose of enabling them to verify the veracity of certain explanations provided in the defence with regard to the implications of the clerical error, in particular with regard to the links created in those spreadsheets. Consequently, the applicants cannot claim to have had general access to new information, the discovery of which would enable them to put forward new pleas or complaints to be regarded as admissible under Article 84 of the Rules of Procedure.

52 In this respect, it should also be observed that the applicants themselves did not ask the Court to allow them access to the documents in question for use in a general manner. On the contrary, in the reply, the applicants explicitly requested that such access be given to them for the sole purpose of verifying the veracity of certain explanations provided in the defence as regards the implications of the clerical error.

53 On the basis of all those considerations, the observations of 18 October 2017 should be rejected as inadmissible.

54 There is therefore no need to rule on the intervener's alternative claim seeking fuller access to the data concerned.

Substance

55 In support of the action, the applicants submit, in essence, seven pleas in law alleging various infringements of the basic regulation, namely:

– the first plea, alleging infringement of Article 3(1)(a)(iv) of the basic regulation, read in conjunction with Article 3(1)(a)(iii) of the basic regulation, provisions which are, in essence, identical to Article 1.1(a)(1)(iv) and to Article 1.1(a)(1)(iii), respectively, of the Agreement on subsidies and countervailing measures contained in Annex 1A to the Agreement Establishing the World Trade Organisation (WTO), signed at Marrakesh on 15 April 1994 (OJ 1994 L 336, p. 156; 'the SCM Agreement');

– the second plea, alleging infringement of Article 10 of the basic regulation and of the rights of defence;

– the third plea, alleging infringement of Article 4(1) and (2)(a) of the basic regulation;

– the fourth plea, alleging infringement of Article 3(2), Article 6(d) and Article 15(1) of the basic regulation;

– the fifth plea, alleging infringement of Article 8(1), (2) and (5) of the basic regulation and, consequently, of Article 15(1) of the basic regulation;

– the sixth plea, alleging infringement of Article 8(1), (2) and (4) to (7), Article 9(1) and Article 10(6) of the basic regulation;

– the seventh plea, alleging infringement of Article 30(4) and (5) of the basic regulation and of the rights of defence.

56 It is appropriate to examine in the first place, successively, the second and seventh pleas.

The second plea, alleging infringement of Article 10 of the basic regulation and of the rights of the defence

57 In the context of the second plea, subdivided into two parts, the applicants claim that, by including the DFP in the investigation, although that measure was neither mentioned in the complaint at the origin of the investigation nor in the notice of initiation of the investigation, the Commission infringed Article 10 of the basic regulation and infringed Jindal Saw's rights of defence.

58 By the first part, the applicants maintain that, since Article 10(2)(c) of the basic regulation provides that evidence of the existence of a subsidy must be included in the complaint and that this was not the case in the present case with regard to the DFP, the Commission should have opened a new separate investigation either on the basis of a new complaint or *ex officio*. They add that the Commission cannot reserve the right to examine subsidies which may be found during the course of the investigation other than those mentioned in the notice of initiation.

59 By the second part, the applicants argue that, by including the DFP in the investigation, the Commission infringed Jindal Saw's rights of defence, since Jindal Saw had been informed of the purpose of that investigation only by taking note of the final disclosure and, therefore, did not have the same time limit and notice to submit its comments on the DFP as those which it had concerning the other aspects of the investigation.

60 The Commission, supported by the intervener, disputes the validity of this plea.

61 As regards the first part of the plea, it should be recalled that, in accordance with Article 10(1) of the basic regulation, the initiation of an anti-subsidy investigation requires, in principle, the lodging of a complaint on behalf of the Union industry. Under Article 10(2) of that regulation, such a complaint is to include sufficient evidence of the existence of countervailable subsidies. Article 10(2)(c) of that regulation concerns the provision of 'evidence with regard to the ... nature of the subsidies in question'.

62 The applicants criticise the Commission, in essence, for having included the DFP in the investigation although it had not been mentioned in the complaint, in violation of Article 10(1) and (2) of the basic regulation.

63 However, that objection has no factual basis, since the DFP was referred to in the complaint. Indeed, the complainant cited in the complaint documents issued by the Indian Government in which the export tax on iron ore and the DFP were both mentioned, in order to show that the objective of that government was to discourage the export of iron ore. In addition, the complainant cited the passage from the report of the working group on steel industry concerning the 12th 5-year plan, published in 2011, according to which, '[a]t present, export of iron ore from the country is discouraged through … imposition of an export duty of 20% ad-valorem on iron ore, and … charging of significantly higher railway freight on iron ore meant for export'.

64 Furthermore, as the Commission has pointed out, the applicants confuse the subsidy scheme for the provision of iron ore with a specific instrument linked to that scheme. Both the complaint and the notice of initiation of the investigation make reference to the fact that the Indian Government would have instructed or ordered a private body to execute an action, the provision of high grade iron ore for less than adequate remuneration being expressly mentioned. Neither the complaint nor the notice of initiation was therefore limited to the export tax. Accordingly, the first part of the second plea must be rejected as unfounded.

65 It follows from the foregoing that the second part of the plea also has no factual basis. Given that the complaint concerned the DFP, Jindal Saw became aware of the fact that it was concerned as part of the subsidy scheme in question prior to the notification of the final disclosure in December 2015.

66 In any event, it should be noted that all of the arguments presented by Jindal Saw to the Commission during the administrative procedure concerned the question whether, in general, export restrictions, whatever their exact nature, may or may not constitute a financial contribution.

67 In addition, in its comments on the final disclosure, Jindal Saw did not distinguish between the export tax and the DFP, but again presented arguments relating to the export restrictions in general. Therefore, Jindal Saw's observations on the export restrictions covered both measures which together constitute the subsidy scheme in question.

68 The second part of the second plea and, consequently, the second plea in its entirety must therefore be rejected as unfounded.

The seventh plea, alleging infringement of Article 30(4) and (5) of the basic regulation and of the rights of defence

69 The seventh plea essentially comprises two parts.

70 By the first part of the plea, the applicants claim that the Commission infringed Article 30(4) of the basic regulation and Jindal Saw's right to be heard by not sending Jindal Saw a number of documents which it had requested from the Commission in two emails of 1 February 2016.

71 Relying on the case-law, the applicants note that, where the EU institutions have a wide power of appraisal, respect for the rights guaranteed by the legal order of the Union is even more fundamental and that the right to be properly heard is included among those rights. It cannot be fully excluded that, if Jindal Saw had been given the opportunity to comment on the information that it had requested regarding the injury indicators influenced by the clerical error and the costs of the Union industry, including selling costs, administrative expenses and other general costs of the selling entities of the Saint-Gobain Pam group, the administrative procedure could have resulted in a different and more favourable outcome for it, since, previously, the Commission had already revised its point of view as a result of observations which had been submitted to it by the interested parties.

72 By the second part of the plea, the applicants claim that the Commission infringed Article 30(5) of the basic regulation and Jindal Saw's right to be heard by not having granted it sufficient time to submit its observations following the communication of the modified injury indicators. In that regard, they argue that it cannot be fully excluded that, if Jindal Saw had had a period of time in accordance with the terms of that provision following the communication of the modified injury indicators, it could have made more developed observations capable of leading the Commission to change its point of view.

73 The Commission, supported by the intervener, disputes the validity of this plea.

74 As a preliminary point, it should be observed, in the first place, that, where the interested parties to an anti-subsidy investigation, including the exporting producers concerned, wish to have access to information concerning the facts and considerations likely to form the basis of anti-subsidy measures with a view to defending their interests, the Commission is required to comply with certain procedural principles and guarantees.

75 In that regard, it must be held, first, that Article 30 of the basic regulation sets out certain detailed rules as to the exercise of the right of the parties concerned to be heard, which constitutes a fundamental right recognised by the legal order of the Union. That article provides, in paragraph 2 thereof, for the right to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive countervailing duties. That article also provides, in the second subparagraph of paragraph 4, that, where the Commission intends to take a decision based on facts and considerations different from those previously disclosed, it must disclose them as soon as possible and, in paragraph 5 thereof, that the parties concerned must have, in principle, a minimum period of 10 days to submit their observations; that period may be shorter in the case of an additional final disclosure.

76 Secondly, according to settled case-law, the requirements stemming from respect for the rights of defence must be observed not only in the course of proceedings which may result in the imposition of penalties, but also in investigative proceedings preceding the adoption of anti-subsidy regulations, which may directly and individually affect the undertakings concerned and entail adverse consequences for them. In particular, in the context of the communication of information to the undertakings concerned during an investigation procedure, the respect for their rights of defence presupposes that those undertakings should have been placed in a position during that procedure in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation

concerning the existence of subsidisation and the resultant injury (see, by analogy, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 76 and the case-law cited).

77 While, admittedly, respect for the rights of the defence is of paramount importance in anti-subsidy investigation proceedings (see, by analogy, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 77 and the case-law cited), the existence of an irregularity with regard to the respect of those rights can lead to the annulment of a regulation establishing a countervailing duty only to the extent that there is a possibility that, as a result of that irregularity, the administrative procedure might have resulted in a different result, thereby materially affecting the rights of defence of the party concerned (see, to that effect and by analogy, judgment of 1 October 2009, *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, EU:C:2009:598, paragraph 107).

78 However, it must be recalled that that party cannot be required to demonstrate that the Commission's decision would have been different, but simply that such a possibility cannot be totally ruled out, since that party would have been better able to defend itself if there had been no procedural error complained of (see, to that effect and by analogy, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 78 and the case-law cited).

79 On the other hand, it is for the party concerned to establish specifically how it would have been better able to ensure its defence in the absence of that procedural irregularity, without merely pleading that it was impossible for it to provide comments on hypothetical situations (see, by analogy, judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 145 and the case-law cited).

80 In the second place, it should be noted that, in the present case, in the final disclosure, the Commission provided the interested parties with all the facts and considerations which it considered essential and on the basis of which it intended to introduce countervailing duties, including figures on injury indicators and the analysis of the trends that those indicators would have demonstrated. Specifically, the Commission had noted that sales of the Union industry had decreased by more than 6% and that that industry had lost around 2.5% of market share in a declining market. Moreover, still in respect of that industry, the Commission had indicated that a profitability considered to be low coupled with a loss of sales and market shares in the Union had placed it in a difficult economic and financial situation, and concluded, on the basis of an overall analysis of all injury indicators which it considered relevant and because of that economic and financial situation considered to be difficult, that the Union industry had suffered material injury within the meaning of Article 8 of the basic regulation.

81 The first complaint alleges infringement (i) of the second subparagraph of Article 30(4) of the basic regulation, which must be read in the light of paragraph 2 of the same article, and (ii) of the rights of defence owing to the failure to provide requested information in both emails from Jindal Saw of 1 February 2016 concerning, first, the communication of the injury indicators amended following discovery of the clerical error and, secondly, various costs of the Union industry.

82 As regards, in the first place, the failure to communicate the information requested by Jindal Saw concerning the corrections made to the indicators of injury to the Union, it should be observed that, first of all, in its written communication of 28 January 2016 informing Jindal Saw of certain corrections made to the indicators of injury to the Union industry, the Commission expressly mentioned which injury indicators had undergone changes as a result of the discovery of the clerical error, namely those relating, first, to the overall consumption in the Union, second, to the market share of the exporting producers, third, to the market share of the Union industry and, fourth, to that industry's sales prices. Next, an annex attached to that written communication set out the figures

concerned, presented in the form of ranges as in the final disclosure document. Finally, the Commission expressly stated in that written communication that those amendments had led neither to a change in the conclusions concerning the trends nor to a change in the final conclusions which had previously been disclosed to the interested parties.

83 It follows from those findings that the changes made by the Commission following the correction of the clerical error did not in themselves constitute essential facts and considerations within the meaning of Article 30(2) of the basic regulation, since those amendments did not make changes in the trends on which the injury assessment was based. Therefore, the Commission was not required by the basic regulation, in particular the second subparagraph of Article 30(4) of that regulation, to inform Jindal Saw of those amendments nor, a fortiori, was it obliged to act on Jindal Saw's claim seeking to obtain further information in this connection. It therefore has not infringed Article 30(2) and (4) of the basic regulation.

84 As regards, moreover, the alleged infringement of the right to be heard, it must be held that, by its written communication of 28 January 2016, the Commission had submitted all necessary elements enabling Jindal Saw to express its views on the changes made following the correction of the clerical error, which Jindal Saw indeed did in its first email of 1 February 2016. In that regard, it should be noted, in addition, that, in the proceedings before the Court, the applicants have not submitted any new observations compared to those which had already been submitted to the Commission on 1 February 2016. It must therefore be held that the Commission adopted the contested regulation after Jindal Saw was able to submit any relevant observations and that the applicants have not shown in the present proceedings that Jindal Saw would have been better able to ensure its defence in the administrative procedure.

85 As regards, in the second place, the failure to communicate information concerning certain costs of the Union industry, it should be noted that, admittedly, it would have been good administration on the part of the Commission to reply to that request, if only to make it known that it was confidential data to which it could not give access to Jindal Saw. However, the lack of a specific response to that request for information does not have the consequence that the Commission infringed the second subparagraph of Article 30(4) of the basic regulation, read in the light of paragraph 2 of that article, as the additional information requested by Jindal Saw did not constitute new facts and essential considerations.

86 It was already clear from the provisional anti-dumping regulation, adopted on 18 September 2015 in the context of the parallel anti-dumping investigation concerning the same product as the product concerned as well as the same exporting producers and which included an identical evaluation of the injury to the Union industry, that, for the calculation of the profitability of that industry, the Commission had taken into account not only the selling costs, administrative expenses and other general costs of the producing entities of that industry, but also the costs of the selling entities of that industry. In this respect, recital 92 of the provisional anti-dumping regulation stated that '[t]he Commission [had] established the profitability of the cooperating Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales' and that '[m]ost of the sales of the [like] product in the EU [had been] made through the sales [entities] of the cooperating EU producers and their costs and profitability were taken into account'.

87 The fact that Jindal Saw did not identify or correctly grasp the scope of those explanations provided in the provisional anti-dumping regulation and repeated in the final disclosure relating to the anti-subsidy proceeding, according to which the costs of the selling entities of the Union industry were taken into account for the calculation of the profitability of that industry, does not mean that the clarifications made in that respect by the Commission at the meeting of 28 January 2016 constituted new facts and essential considerations. Therefore, the Commission did not infringe Article 30(2) and (4) of the basic regulation in this respect.

88 It also follows from the fact that the information concerned, relating to the inclusion of the costs of the selling entities of the Union industry in the calculation of the profitability of that industry, had been known since 19 September 2015, the date of the publication in the Official Journal of the provisional anti-dumping regulation, that Jindal Saw had the necessary information to properly make its observations as to that calculation.

89 The first complaint must therefore be rejected as being unfounded.

90 As regards the second complaint, relating to the infringement of Article 30(5) of the basic regulation, in that Jindal Saw did not have a period of 10 days, or at least sufficient time to comment on the changes made to certain injury factors, it should be noted that it does not follow from that provision that the Commission is required to grant to the interested parties a deadline to comment on any changes it made as a result of their comments on the final disclosure. Such an obligation would have existed only if the Commission's written communication of 28 January 2016 had contained essential facts and considerations within the meaning of Article 30(2) of the basic regulation, which was not the case.

91 In any event, it should be observed that, in the proceedings before the Court, the applicants did not put forward any further arguments in relation to the correction of the clerical error than those which Jindal Saw had already put forward in its first email of 1 February 2016.

92 Accordingly, there is nothing to suggest that the anti-subsidy proceeding could have led to a different result if Jindal Saw had had more time to present its comments in this respect.

93 Moreover, it may be noted that, even after consulting the documents containing data potentially influenced by the clerical error in the context of the measure of organisation of procedure decided upon by the Court, the applicants did not put forward any new argument in relation to that error, accepting that the correction of that error did not require further amendments than those which had been made by the Commission and communicated to Jindal Saw on 28 January 2016.

94 The second complaint must therefore be rejected as unfounded and, accordingly, the seventh plea must be rejected in its entirety.

The first plea, alleging infringement of Article 3(1)(a)(iv) of the basic regulation

95 In the context of the first plea, the applicants dispute, in essence, that the export restrictions in question, namely the export tax on iron ore and the DFP, constitute a 'financial contribution' within the meaning of Article 3(1)(a) of the basic regulation, which is, in essence, identical to Article 1.1(a)(1) of the SCM Agreement. This plea is put forward in two parts.

– The first part of the first plea, alleging the application of a wrong legal standard for a finding of 'entrustment' and manifest errors of assessment

96 In the first part of this plea, the applicants put forward three complaints to maintain, in essence, that the Commission applied a wrong legal standard to conclude that there was an action by the Indian Government consisting of 'entrusting', within the meaning of Article 3(1)(a)(iv) of the basic regulation, Indian iron ore producers to provide iron ore to the domestic industry of the product concerned and has, moreover, committed certain errors of assessment.

97 As a preliminary point, it should be observed that, under Article 3(1)(a) of the basic regulation, a 'financial contribution' exists if a government 'entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (i), (ii) and (iii) which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments'.

98 It follows from the contested regulation that only the concept of 'entrusting', which is not defined in the basic regulation, is concerned in this case.

99 However, it should be noted, first, that, according to recital 5 of the basic regulation, its objectives include 'transposing' into EU law, 'to the best extent possible', the rules of the SCM Agreement and, secondly, that Article 3 of the basic regulation, entitled 'Definition of a subsidy', and Article 1 of that agreement are largely identical in their wording and fully identical in terms of their substance.

100 Although the Courts of the European Union have not yet had the opportunity to interpret Article 3(1)(a)(iv) of the basic regulation, the Dispute Settlement Body of the WTO has had to apply the relevant provision of the SCM Agreement on several occasions.

101 In this respect, it should be observed that the provisions of the basic regulation must be interpreted, as far as possible, in the light of the corresponding provisions of the SCM Agreement (see, by analogy, judgment of 11 July 2017, *Viraj Profiles* v *Council*, T-67/14, not published, EU:T:2017:481, paragraph 88).

102 Accordingly, Article 3 of the basic regulation, which seeks to implement the content of Article 1 of the SCM Agreement, must be interpreted, as far as possible, in the light of the latter provision.

103 Moreover, although the interpretations of the SCM Agreement adopted by the WTO Dispute Settlement Body are not capable of binding the Court in its assessment of the validity of the contested regulation, there is nothing to preclude the Court from referring to it when it comes to interpreting the provisions of the basic regulation which correspond to provisions of the SCM Agreement (see, by analogy, judgment of 11 July 2017, *Viraj Profiles* v *Council*, T-67/14, not published, EU:T:2017:481, paragraph 89 and the case-law cited).

104 By the first complaint, the applicants argue essentially that, by imposing export restrictions, the Indian Government intervened only in the exercise of its general regulatory powers and did not exercise those powers in order to cause Indian iron ore producers to supply iron ore to the domestic industry of the product concerned at a less than adequate price. The concrete effect of export restrictions, in particular on the exercise by Indian iron ore producers of their decision-making freedom in the definition of their business strategy, is unknown and uncertain.

105 The Commission, supported by the intervener, disputes the validity of that complaint.

106 It should be observed that the aim of Article 3(1)(a) of the basic regulation is to define the concept of 'financial contribution' so as to exclude the government measures that do not fall within one of the categories listed in that provision. It is from that point of view that Article 3(1)(a)(i) to (iii) of the basic regulation lists specific situations which must be regarded as containing a financial contribution by a government, namely the direct or indirect transfer of funds, foregone government revenue or the provision of goods or services. Article 3(1)(a)(iv) of the basic regulation provides in its second indent that the act, for a government, of entrusting a private body to carry out one or more of the type of functions listed therein is equivalent to the grant by that government of a financial contribution within the meaning of Article 3(1)(a) of the basic regulation.

107 It follows that, as the Commission has pointed out, the second indent of Article 3(1)(a)(iv) of the basic regulation is, in essence, an anti-circumvention provision, which aims to ensure that governments of third countries are not able to escape the rules on subsidies by adopting measures which, in appearance, do not strictly fall within the scope of Article 3(1)(a)(i) to (iii) of the regulation, but have, in practice, equivalent effects.

108 Consequently, in order to ensure full effectiveness in the second indent of Article 3(1)(a)(iv) of the basic regulation, it is to be understood by the term 'entrust' within the meaning of that provision any action of the government which amounts, directly or indirectly, to conferring on a private body the responsibility of performing a function of the type referred to in Article 3(1)(a)(i) to (iii) of that regulation.

109 In the present case, the Indian Government established restrictions on the export of iron ore in the form of an export tax and the DFP. It must be held that it is possible to determine sufficiently precisely the level at which the increase of exports of a product must be fixed so that it is no longer economically attractive for domestic producers to export that product. In this way, that government could obtain, through those restrictions, a result in practice equivalent to that which it would have obtained if it had given directly to the Indian mining companies the responsibility of supplying iron ore on the domestic market.

110 In order to establish the existence of a financial contribution, the Commission carried out an analysis based on a five-step test established in the panel report of the WTO Dispute Settlement Body adopted on 23 August 2001 in the dispute entitled 'United States — Measures treating export restraints as subsidies' (WT/DS 194/R), interpreting Article 1.1(a)(1)(iv) of the SCM Agreement in the context of export restrictions.

111 On the basis of that analysis, the Commission considered, in recital 177 of the contested regulation, that the Indian Government had entrusted the mining companies to carry out that government's policy to create a compartmentalised domestic market and to provide iron ore to the domestic iron and steel industry, in recital 180 of that regulation, that all Indian mining companies should be treated as private bodies, in recital 219 of that regulation, that those companies had provided iron ore on the domestic market for less than adequate remuneration, in recital 221 of the same regulation, that the provision of raw materials located within a country to national companies is a function which is normally vested in the government of a country and, finally, in recital 225 of the regulation in question, that an indirect intervention in the market through the establishment of export restraints is a practice 'normally followed by governments'.

112 By the analysis at issue, made in recitals 135 to 229 of the contested regulation, the Commission established that, through the export restrictions in question, the Indian government had sought to obtain from Indian mining companies what is referred to in Article 3(1)(a)(iii) of the basic regulation, that is, in the present case, the provision of iron ore on the Indian market. Indeed, instead of buying iron ore and supplying it themselves on that market, that government introduced a system to obtain from Indian producers of iron ore which they provide on that market through export restraints which rendered the export of iron ore commercially unattractive.

113 The fact that the Indian Government designed and introduced such a system in 2007 and 2008 is highlighted by various factors mentioned by the Commission in the contested regulation. Thus, it was stated in recital 145 of that regulation that, in 2005, a group of experts formed by the Indian Ministry of Steel had concluded in its report (the 'Dang Report') that it was appropriate for India to preserve, nurture and leverage the advantage consisting in assured access to indigenous iron ore supplies.

114 Moreover, it is clear from the evidence referred to in recitals 153, 157 and 158 of the contested regulation that the Indian Government followed the evolution of exports of Indian iron ore and checked whether the export restrictions in question produced the desired effect, namely the supply of iron ore on the Indian market, periodically adjusting the level of those restrictions, in particular the rate of the export tax on iron ore, to ensure that the desired effect is achieved.

115 It is also apparent from recital 158 of the contested regulation that the report of the working group on steel industry concerning the 12th 5-year plan, published in November 2011, showed the explicit intention of the Indian Government to use high tax levels in order to discourage exports of iron ore, if needed to further increase the export tax rate and to also consider the possibility of introducing additional measures if that proved necessary.

116 It is on the basis of those considerations and having regard to the existence of significant initial investments and high fixed costs that the Indian iron ore producers had to assume that the Commission concluded in recital 169 of the contested regulation that, '[t]hus, iron ore producers [were] encouraged by the [Government of India] to maintain production to supply the domestic market even if a rational supplier would [have] adapt[ed] its output in a situation where exports have been dis-incentivised' and, in recital 171 of that regulation, that that government had therefore entrusted Indian iron ore producers to provide goods to the domestic users of iron ore, namely steel manufacturers.

117 It is therefore wrong for the applicants to argue that the Indian Government intervened on the market only in connection with its regulatory powers and that the effect of that intervention was unknown and unpredictable. On the contrary, as is apparent from paragraphs 112 to 116 above, the export restrictions in question were designed and introduced with the explicit aim of providing iron ore on the Indian market, and were then monitored and adjusted in order to achieve that aim. Moreover, that government itself acknowledged the success of its targeted export restraints policy, as is stated in paragraph 173 of the contested regulation. Thus, when the Standing Committee for Coal and Steel of the Indian Ministry of Steel, for the purposes of its 38th report of 29 August 2013, wanted to know 'how far … the [then applicable] rate of export duty on iron ore [had] been successful in discouraging export of iron ore and whether it needed further revision', that ministry stated, inter alia, that it '[had] been taking up the matter regularly with the [Indian] Ministry of Finance for levying of appropriate export duty on iron ore in order to discourage its export effectively and to improve availability of iron ore for the domestic iron and steel industry at affordable price' and that '[i]mposition of higher export duty on iron ore is as per the policy of [the] Government [of India]'.

118 Furthermore, the applicants' argument, according to which the fact that, for some months of the investigation period, the price of iron ore on the Indian market was higher than its price on the world market and the fact that, after the investigation period, Jindal Saw imported the iron ore which it used show that the export restrictions in question may or may not have results depending on the market circumstances and the exercise of free choice by the actors in the market, cannot succeed. Indeed, the financial contribution by the Government of India consists of the supply of iron ore itself. The fact that, for some months of the investigation period, iron ore was sold on the Indian market at a higher price than on the world market is a matter which concerns not the existence of that financial contribution, but possibly the existence of a benefit. As stated by the applicants themselves, the existence of a financial contribution and that of a benefit must be distinguished. Furthermore, the fact that an economic operator eligible for a financial contribution chooses not to benefit from it does not in itself affect the existence of that contribution.

119 Finally, there is no indication that the export restrictions in question have been introduced in order to collect public revenue, which confirms the analysis that, by the tax and tariff measures in question, the Government of India sought to implement the policy of providing iron ore on the Indian market.

120 The first complaint must therefore be rejected.

121 By the second complaint, the applicants submit that Article 3(1)(a)(iv) of the basic regulation must be interpreted as meaning that, necessarily, a more active role of the government than mere acts of encouragement is required for its action to persons or entities on the domestic market to be considered as the act of 'entrusting' a private body to carry out certain functions, within the meaning of that provision. That is not the case here.

122 In that regard, the applicants claim that, by examining whether the Government of India's support to the domestic industry of the product concerned actually constituted the objective of a government policy and not merely a side-effect of the exercise of its general regulatory powers, the Commission relied on the wrong legal standard. It should have examined whether the supply of iron ore by Indian mining companies to that industry was 'inadvertent' or whether that supply constituted a mere 'by-product of governmental regulation', in accordance with the wording used in paragraph 114 of the report of the Appellate Body of the WTO Dispute Settlement Body adopted on 20 July 2005 in the dispute entitled 'United States — Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea' (WT/DS 296/AB/R).

123 The Commission, supported by the intervener, disputes the validity of that complaint.

124 As regards, first of all, the applicants' argument that the Government of India did not play a more active role than providing mere acts of encouragement, it is sufficient to note that, in adopting the export restrictions in question in a specific context characterised by the existence of significant initial investments and high fixed costs which did not enable Indian mining companies to reduce their production, the Government of India restricted the freedom of action of those companies by limiting, in practice, their ability to decide the market on which to sell their products.

125 On this point, the applicants have not submitted any argument casting doubt on the Commission's analysis. The fact that the Government of India continuously established and adjusted the export restrictions in question so as to ensure that the objective pursued through those restrictions was attained cannot be regarded as a mere encouragement towards domestic producers of iron ore. On the contrary, those actions of the Government of India led those producers to sell their goods on the Indian market.

126 In this respect, it should be observed that, while a delegation is usually carried out by formal means, it could also be informal and that, in addition, there may be other means than a delegation, be they formal or informal, that the government could use for the same purposes, as was stated in paragraph 110 of the report of the Appellate Body in the 'US — DRAMS' dispute (see paragraph 122 above).

127 In the present case, the act, by the Government of India, of establishing export restraints on iron ore and adjusting them on a continuous basis to ensure that it achieves the same result as if it had itself supplied iron ore on the Indian market constitutes such an informal delegation. Therefore, in observing that fact, the Commission indeed found that that government had played an active role which could not be assimilated to mere acts of encouragement.

128 It is thus apparent that the applicants' argument that the Government of India confined itself to mere acts of encouragement and did not play an active role is based on an incorrect interpretation of the contested regulation.

129 The second complaint must therefore be rejected.

130 By the third complaint, the applicants submit that the Commission wrongly examined whether the export restrictions in question constituted an act of 'entrusting' a private body to carry out one of the functions referred to in Article 3(1)(a)(i) to (iii) of the basic regulation by relying solely on the

reactions of the companies affected and on the effects of those restrictions on the market. According to the applicants, the Commission should have examined only the concrete measures taken by the Government of India, without taking into account the effects of those measures on the Indian market.

131 The Commission, supported by the intervener, disputes the validity of that complaint.

132 The argument put forward by the applicants in the context of the present complaint is also based on a misreading of the contested regulation. As is apparent from paragraphs 112 to 116 above, the Commission did not solely rely on the reactions of the businesses affected by export restrictions and their impact on the Indian market. It analysed the action of the Government of India and the link between the explicit policy of that government and the conduct of private operators. The specific measures implemented by that government which have been taken into account in that analysis are not only legal acts adopting the export restrictions in question but also the continuing action of market surveillance and examination of the effects of those export restrictions and the consequential amendments made to the export restrictions in question to ensure that the intended objective is achieved. It is therefore wrong for the applicants to argue that the Commission based its analysis only on the reactions of the undertakings concerned to those restrictions and the effects of those restrictions on the market.

133 The arguments which the applicants derive in this regard from the case-law of the WTO Dispute Settlement Body which they invoke, in a general manner, in support of the first part of the first plea are not capable of calling into question all the foregoing considerations. Indeed, the facts or the legal issues central to the three disputes to which they refer are not comparable to the facts of the present case, with the result that those reports are not relevant in the context of this case.

134 Thus, firstly, with respect to the 'US — Export Restraints' dispute (see paragraph 110 above), that dispute dealt with the question of whether United States countervailing duty laws, which, in Canada's view, assimilated government regulatory action limiting the export of goods, that is to say an export restriction, to a 'financial contribution' within the meaning of Article 1.1(a)(1) of the SCM Agreement, were compatible with the latter article. Therefore, that dispute did not concern specific export restrictions examined in the light of political declarations concerning the purpose of ensuring the supply of the product concerned on the domestic market with a view to supporting a particular industry.

135 Secondly, with respect to the panel report of the WTO Dispute Settlement Body adopted on 16 November 2012 in the dispute entitled 'China — Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States' (WT/DS 414/R), confirmed by the report of the Appellate Body, where it concerned import restrictions in the form of voluntary restraint agreements, the link between the action of the government and the purported financial contribution was not comparable to that identified in the present case, as to the type of measure and the nature of the financial contribution concerned in that dispute. In that case, the People's Republic of China considered that voluntary restraint agreements restricting imports to the United States of the product concerned had resulted in a transfer of wealth from domestic buyers of that product to the domestic industry producing the product, which might be considered to be a financial contribution within the meaning of Article 1.1(a)(1)(iv) of the SCM Agreement, given the effect of the measure on the private parties, which led them to make a transfer of funds in the form of a payment of higher prices. The panel established for that dispute took the view that the fact that a government measure such as a border measure has the indirect effect of increasing prices on the market could not lead to the conclusion that, by that measure, the government entrusted the private purchasers to make direct transfers of funds to the industry selling the product on the relevant market, or directed them to do so.

136 Thirdly, with respect to the panel report of the WTO Dispute Settlement Body adopted on 16 January 2015 in the dispute entitled 'United States — Countervailing Duty Measures on Certain Products from China' (WT/DS 437/R), that dispute concerned Article 11.3 of the SCM Agreement, which deals with the examination of evidence submitted by the domestic industry, in order to determine whether it is sufficient to justify the initiation of an anti-subsidy investigation, in this case in the United States.

137 The panel found that the dispute concerned the issue whether the investigating authority had acted in a manner compatible with Articles 11.2 and 11.3 of the SCM Agreement by initiating an anti-subsidy investigation on the basis of a claim and evidence indicating that there was a financial contribution due to export restrictions applied by the public authorities of a foreign country and effects of those restrictions on domestic prices in that country. However, in that dispute, the complaint contained no evidence regarding monitoring and adjustments of the restrictions concerned.

138 It follows from the foregoing that, having regard to the situation assessed by the panel in that dispute, the report established in that dispute is, in principle, irrelevant in the context of the present case, where the finding of an action of entrusting domestic producers of iron ore to provide their products on the internal market is based not only on the export restrictions themselves and the existence of a specific support policy of the iron and steel industry, but also on a body of evidence of a continuous adjustment of the measures to achieve the intended objective.

139 In addition, the applicants consider as erroneous the conclusions drawn by the Commission, on the one hand, in recital 186 of the contested regulation, concerning the effects of the policy of the Government of India on the Indian market, where it states that that policy led to an 'impressive reduction' in the volume of iron ore exports, whereas, between the time of the introduction of the export restrictions in question, namely the years 2007 and 2008, and the year 2015, the Indian production of iron ore would have declined more sharply than exports, and, on the other hand, in recital 190 of that regulation, where it states, in essence, that the export restrictions at issue had created an oversupply of iron ore on the Indian domestic market, while overproduction would have been reduced by more than half during the same period.

140 In that regard, first, it must indeed be observed that the figures in recitals 183 and 184 of the contested regulation show that the Indian production of iron ore decreased between 2007 and 2015. However, that production has always been surplus compared to the Indian consumption of iron ore during the same period, with the result that, despite its decrease, that production has been constantly maintained at a level sufficient to cover domestic consumption, which was consistent with the objectives pursued by the Government of India by the establishment of the export restrictions in question.

141 Secondly, it should be pointed out that domestic consumption of iron ore has been rising almost continually since the introduction of those restrictions and that the additional consumption concerned iron ore produced in India, since the imports of that product remained almost constant. Since the domestic production of iron ore decreased during the same period and taking into account the higher price level on the world market, the fact that that increase in domestic consumption was fully absorbed by the domestic production of iron ore produced in India appears paradoxical because, in an undistorted market situation, given the level of the prices of iron ore on the world market, it would have been more profitable for Indian producers of iron ore to export their products than to sell them on the domestic market.

142 Moreover, the applicants ignore the fact that the decline in domestic production of iron ore in India resulted from court decisions to close mines due to illegal mining activities and environmental violations in some states in India, as the Commission explained in recital 187 of the contested regulation. The fact that the overproduction of iron ore in India, namely, by reference to recital 190 of that regulation, the surplus of domestic production compared to the sum of domestic consumption

and exports minus imports, decreased following those mine closures does not render erroneous the Commission's finding concerning the overproduction on the market, since that existed throughout the period under consideration.

143 Consequently, it is necessary to reject the third complaint and, therefore, the first part of the first plea in its entirety.

– The second part of the first plea, alleging a confusion in the application of Article 3(1)(a) of the basic regulation between the concepts of 'financial contribution' within the meaning of that provision and of 'benefit' within the meaning of point 2 of that article

144 The applicants claim that the Commission infringed Article 3(1)(a)(iv) of the basic regulation and committed a manifest error of assessment by confusing the concept of 'financial contribution' within the meaning of point 1 of Article 3 and the concept of 'benefit' within the meaning of point 2 of that article. In this regard, they submit, first, that those concepts cover two distinct legal elements which, together, make it possible to determine whether a subsidy is to be deemed to exist and, secondly, that, in order to establish the existence of a financial contribution, there is no need to have recourse to the concept of 'less than adequate remuneration' referred to in Article 6(d) of the basic regulation, which concerns the calculation of the benefit conferred on the beneficiary of a financial contribution. Therefore, they criticise the fact that, in the contested regulation, all the Commission's assessment relating to the alleged existence of an action of the government to 'entrust' Indian iron ore producers to supply iron ore to the domestic industry of the product concerned was attached to the sole question whether the Indian iron ore producers had supplied that ore 'for less than adequate remuneration' to the domestic industry of the product concerned, although that question was only relevant as to whether a benefit had been conferred on the recipients of the goods claimed.

145 In support of that part of the plea, the applicants rely on the report of the Appellate Body of the WTO Dispute Settlement Body adopted on 23 March 2012 in the dispute entitled 'United States — Measures Affecting Trade in Large Civil Aircraft Plaintiff Civilians — Second Complaint' (WT/DS 353/AB/R) and the panel report of the WTO Dispute Settlement Body adopted on 11 April 2005 in the dispute entitled 'Korea — Measures Affecting Trade in Commercial Vessels' (WT/DS 273/R).

146 The Commission, supported by the intervener, disputes the validity of that part of the plea.

147 It should be noted first of all that, as is apparent from recitals 181 to 219 of the contested regulation, which appear in the part of that regulation devoted to examining the existence of a financial contribution, the Commission analysed in detail the evolution of the Indian iron ore market. In recital 190 of that regulation, the Commission observed that, '[n]otwithstanding a reduction in production of iron ore, the Indian market show[ed] a constant and irrational overcapacity compared to the sum of domestic consumption and exports minus imports', which '[had] led to an excess supply of iron ore on the domestic market as acknowledged and sought by the [Government of India]'. In recital 192 of that regulation, the Commission observed that 'the objective of the export tax on iron ore was not to stop altogether the exports, but to reduce them, while increasing availability [of iron ore] on the domestic market'.

148 Following those findings, in recital 200 of the contested regulation, the Commission stated that it had analysed the possible impact of the excess supply of iron ore caused by the export restrictions in question on the domestic price of iron ore in India.

149 It follows from the foregoing that, in its analysis of the existence of a financial contribution, it was only after having found that the export restrictions in question had led to an excess supply of iron ore on the Indian market that the Commission analysed, in addition to that market review, the possible impact of those restrictions on the domestic price of iron ore in India.

150 Next, it is apparent from an overall reading of recitals 230 to 271 of the contested regulation, under the heading 'Benefit', that the Commission made a thorough analysis of the criterion of benefit, which differs clearly from the analysis which it made regarding the existence of a financial contribution, which the applicants admitted during the oral part of the proceedings following a question from the Court.

151 Furthermore, it should be noted that the applicants' reliance on the case-law of the Dispute Settlement Body of the WTO is based on quotations taken out of context. First, with regard to the Appellate Body's report in the dispute 'United States — Large Civil Aircraft Plaintiff Civilians (Second Complaint)' (see paragraph 145 above), it should be observed that, in the report of the panel constituted in that case, established on 31 March 2011 (WT/DS 353/R), that panel considered it necessary to create a new test to verify whether the measures at issue in that case constituted 'financial contributions' within the meaning of Article 1.1(a)(1)(i) of the SCM Agreement. That new test involved determining whether the services provided under public contracts were to the advantage of whoever paid for them (the government) or of whoever received the payment for the services. After having applied that new test, the panel concluded that the services in question were supplied to the advantage of whoever received the payment for that supply, and not to the benefit of the government which paid for them, and that, for that reason, it was a 'financial contribution' within the meaning of that provision.

152 In that case, the application of such a test could not distinguish the question of whether there was a financial contribution from that of whether there was a benefit, with the result that, if it were found that there was an advantage for the government, there was by definition no financial contribution, and vice versa. For that reason, the Appellate Body rejected the application of that test, considering that the approach adopted by the panel risked confusing two distinct elements of the definition of a subsidy contained in Article 1.1 of the SCM Agreement.

153 Secondly, in the same vein, in the dispute 'Korea — Commercial Vessels' (see paragraph 145 above), the passages from the panel report in that dispute cited by the applicants concerned a situation in which the Union considered as evidence of an action of 'entrusting' or 'directing' by the Korean authorities the fact that financial institutions had participated in the restructuring of companies in difficulty instead of seeking to increase their cash flows, in particular by liquidating those companies. In this situation, while the alleged financial contribution was the restructuring, a 'benefit' existed only if the restructuring had not taken place under conditions that were in line with normal market conditions. Therefore, there was no possibility to separate the assessment of the existence of a financial contribution from that of the existence of a benefit.

154 Furthermore, it should be noted that, in the present case, unlike the situation at issue in the two disputes relied on by the applicants (see paragraph 145 above), the removal from the Commission's analysis of the existence of a financial contribution of considerations relating to the effects of the export restrictions in question on prices on the Indian market, namely, the considerations whose relevance the applicants dispute in the context of the examination of the existence of a financial contribution, would not change the Commission's analysis that the export restrictions in question involved an increase in the supply of iron ore on the Indian market, which the Commission considers to be equivalent to a supply of iron ore.

155 Consequently, the second part of the first plea and, consequently, the first plea in its entirety must be rejected.

The third plea, alleging infringement of Article 4(1) and (2)(a) of the basic regulation

156 By the third plea, which comprises two parts, the applicants submit, in the alternative to the first plea, that the Commission infringed Article 4(1) and (2)(a) of the basic regulation in holding that the subsidy in question was specific. They refer in this connection to the report of the Appellate Body of the Dispute Settlement Body of the WTO adopted on 25 March 2011 in the dispute entitled 'United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China' (WT/DS 379/AB/R).

– The first part of the third plea, relating to the non-specific nature of a subsidy consisting in the supply of iron ore

157 In the context of the first part of this plea, the applicants argue that iron ore is the primary element of cast iron and steel, which are two inputs widely used in the economy. Thus, it would not be possible to identify and circumscribe precisely, in India, the number of known and characterised companies or industries that could benefit from an increase in the supply of iron ore for less than adequate remuneration on the Indian market. Moreover, it would not only be the steel industry that would have benefited from the supply of iron ore in India because other important industries, such as the cement, coal washeries and ferroalloy industries, would also be affected.

158 The Commission, supported by the intervener, disputes the validity of that part.

159 It is apparent from the contested regulation that the Commission examined whether the export tax on iron ore and the DFP fulfilled the third and final condition required for a finding of the existence of a countervailable subsidy, namely its 'specificity' within the meaning of Article 4 of the basic regulation.

160 In that regard, the Commission stated in recital 272 of the contested regulation that, having regard to the goods concerned by the measures at issue, they benefited only the iron and steel industry, that is to say a certain industry, and considered that it was not required that a subsidy is further limited to a subset of an industry to be considered specific. However, unlike some other raw materials, such as oil, gas or water, but rather like standing timber, iron ore, especially that of high quality, could not be used by an indefinite number of industries, but would be used by a limited number of entities and industries, in particular the ductile cast iron pipe production industry. The Commission referred in this connection to the report of the Appellate Body of the Dispute Settlement Body of the WTO adopted on 19 December 2014 in the dispute entitled 'United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India' (WT/DS 436/AB/R).

161 It should be observed, as the Commission has done, that the relevant question in respect of determining whether the export restrictions in question are likely to constitute 'specific' subsidies within the meaning of Article 4(2) of the basic regulation is not whether iron and steel are commonly used in the economy in general, but whether iron ore is commonly used in the economy in general.

162 Indeed, the only undertakings which benefit from export restraints on iron ore are Indian companies using iron ore in downstream production, namely, in particular, the steel industry. The fact that iron ore is a fundamental material in the steel industry does not mean that it is a fundamental material for the Indian economy as a whole, such as water, oil and gas, which are used by an indefinite number of industries and companies. Iron ore cannot therefore be compared to those other inputs.

163 Besides, even if it is possible that the export restrictions in question may indirectly benefit downstream undertakings in the steel industry, users of iron and steel, in so far as that industry has passed on to those undertakings the benefit linked to the subsidisation of the supply of iron ore, this cannot have the result that the support for the steel industry itself is considered not to be specific within the meaning of the basic regulation.

164 Moreover, the fact that a subsidy benefits a whole industry does not mean that it could not be regarded as a 'specific' subsidy within the meaning of Article 4(2) of the basic regulation. As set out in that provision itself, a subsidy may be specific not only to an enterprise, but also to an 'industry or group of enterprises or industries'.

165 As regards the applicants' argument that other important industries, such as the cement, coal washeries and ferroalloy industries, would also be affected, it must be observed that it is based on mere assertions without the applicants giving any indication as to the importance of consumption in those other industrial sectors, with the result that it cannot be excluded that that consumption is very low.

166 In any event, it should be observed in this respect that, in accordance with the WTO Dispute Settlement Body panel report adopted in the dispute entitled 'United States — certain flat steel products — India' (WT/DS 436/R), as confirmed with regard to the question of specificity by the Appellate Body's report in the same dispute (WT/DS 436/AB/R) (see paragraph 160 above), also relating to measures adopted by the Government of India concerning iron ore, a subsidy on iron ore may be considered as specific.

167 In its report, the panel found that, 'once it [was] established that access to the subsidy [was] limited, that subsidy [was] specific within the meaning of Article 2 [of the SCM Agreement]' and that, 'if access [was] limited by virtue of the fact that only certain enterprises [could] use the subsidised product, the subsidy [was] specific'.

168 It must therefore be held that, in the present case, measures of the Government of India, which concern only iron ore, are 'specific' within the meaning of Article 4 of the basic regulation, as the WTO Dispute Settlement Body has already held so far as concerns Article 2 of the SCM Agreement. Accordingly, the first part of the third plea must be rejected as unfounded.

– The second part of the third plea, relating to the non-specific nature of a subsidy consisting of an export tax on iron ore

169 In the context of the second part of this plea, the applicants submit that there are very many export taxes in India. Therefore, the industries that could benefit from the policy of support to downstream industries allegedly conducted by the Government of India through export restrictions are innumerable. Consequently, the Commission cannot conclude that the export restrictions in question are specific without having undertaken an analysis of the other export taxes in force in India and the possible interventions of the public authorities linked to those other taxes.

170 The Commission, supported by the intervener, disputes the validity of that part of the plea.

171 It should be noted that the second part of that plea is based on the alleged existence, in India, of export taxes for many products. It should be observed, in the first place, that the export restrictions in question consist not only in an export tax, but consist of two measures, namely the export tax on iron ore and the DFP, and that those two measures constitute the implementation of a policy of the Government of India to subsidise Indian steel.

172 In the second place, assuming that the Government of India did introduce many subsidies based on a targeted export restriction mechanism to support various industrial sectors, it is still necessary to consider that the specificity requirement would apply to each of those subsidies in particular, and not to the fact that the Government of India makes only limited use of subsidies.

173 Accordingly, it was sufficient for the Commission to analyse the classification as subsidy of the measures at issue, in particular the export tax on iron ore, without having to further analyse other export taxes on other products. As the Commission has pointed out, any export tax is designed autonomously, concerns different products and can benefit different economic operators, with the result that only a specific analysis of each export tax can establish whether or not it constitutes a specific subsidy.

174 In any event, the applicants have not demonstrated in any way that the restrictions in question, relating to iron ore, would form part of a horizontal policy of support for all Indian industries active in the downstream sectors of the products subject to comparable measures.

175 Consequently, the second part of the third plea must be rejected as being unfounded and, therefore, the third plea must be rejected in its entirety.

The fourth plea, alleging infringement of Article 3(2), Article 6(d) and Article 15(1) of the basic regulation

176 The fourth plea, which is in two parts and which, like the third plea, is presented in the alternative to the first plea, concerns the assessments contained in the contested regulation relating to the existence of a benefit.

– The first part of the fourth plea, alleging infringement of Article 3(2) and the second subparagraph of Article 15(1) of the basic regulation

177 In order to examine that part, it should be recalled at the outset that Article 3 of the basic regulation provides that a subsidy is deemed to exist if the conditions in paragraphs 1 and 2 are fulfilled, that is to say if there is a 'financial contribution' from the authorities in the country of origin or export and if a 'benefit' is thereby conferred. Articles 6 and 7 of that regulation lay down the procedures for calculating the 'benefit' conferred on the recipient. Finally, Article 15 of that regulation provides in the second subparagraph of paragraph 1 that no compensatory measures are to be imposed, in particular, if it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved.

178 In the context of the first part, the applicants put forward two complaints. By the first complaint, alleging an infringement of Article 3(2) of the basic regulation, they argue, principally, that the calculation of the benefit, as carried out by the Commission, showed that, for 5 of the 12 months of the investigation period, Jindal Saw had paid more than adequate remuneration for the iron ore which it had acquired, in the sense that it had paid a price higher than the comparison price adopted by the Commission. Moreover, the subsidy margin would have decreased after the investigation period, with the result that an updated calculation would probably show a 'negative benefit'. Consequently, the applicants consider that the Commission should not have considered that a benefit had been conferred on Jindal Saw.

179 The Commission, supported by the intervener, disputes the validity of that complaint.

180 In this respect, it is important to note that it is clear from the very wording of Article 5 of the basic regulation that the amount of countervailable subsidies must be calculated in terms of the benefit conferred on the recipient 'which is found to exist during the investigation period for subsidisation'. It follows that the whole of the investigation period must be taken into account for the assessment of the benefit. This implies, in particular, when it concerns, as in the present case, a financial contribution relating to goods with fluctuating prices, that what is relevant is whether a benefit has been conferred taking into account the investigation period as a whole, and not whether a benefit was conferred at each point in time during that period. Indeed, it is in no way apparent from that regulation that, in order to be considered as a subsidy, the measure in question should confer a benefit on a continuous

basis. What matters in the present case is therefore whether the calculation of the benefit for the whole investigation period highlighted the existence of a positive subsidy margin to the advantage of Jindal Saw, as is apparent from recital 265 of the contested regulation.

181 For the same reasons related to the fact that iron ore prices fluctuate, it is also irrelevant, for the assessment of the legality of the contested regulation, that a more recent calculation may show that the financial contribution in question no longer provided any benefit to Indian exporting producers at a given time, since only the benefit conferred during the investigation period should be taken into account.

182 It must therefore be noted that the contested regulation is properly based on the finding that the financial contribution in question conferred an advantage on Jindal Saw during the investigation period, with the result that the first complaint is unfounded.

183 By the second complaint, submitted in the alternative, the applicants maintain that the Commission infringed the second subparagraph of Article 15(1) of the basic regulation and that it committed a manifest error of assessment by imposing countervailing measures although the alleged subsidy was not received by Jindal Saw, since, after the investigation period, it imported almost all of the iron ore which it purchased, which the Commission has verified. Thus, it should not have considered, on the basis of its findings relating to the investigation period, that Jindal Saw would receive a subsidy in the near future, whereas, at the time of the imposition of countervailing measures, no subsidy existed.

184 As for the prospect of Jindal Saw obtaining its supplies once again from the Indian market, the Commission did not demonstrate that the level of iron ore prices on the world market constituted the main reason why Jindal Saw no longer bought iron ore in India and that an increase in prices on the world market would lead it to buy iron ore again on the Indian market. On this point, the applicants explain that Jindal Saw had to pay the transport costs associated with its iron ore imports in order to transport them to the plant, which would mean that importing iron ore at the Australian free-on-board (FOB) price was more expensive than supplying it on the Indian market. In addition, the Commission could not exclude the possibility that prices on the world market would fall in the near future.

185 As regards the applicability in the present case of the second subparagraph of Article 15(1) of the basic regulation, the applicants submit that the scope of that provision, with regard to the second situation it covers, is not restricted to cases of 'one-off, non-recurring subsidy', as the Commission claims. They refer in this connection to the WTO Dispute Settlement Body panel report adopted on 17 December 2007 in the dispute entitled 'Japan — Countervailing Duties on Dynamic Random Access Memories from Korea' (WT/DS 336/R).

186 The Commission, supported by the intervener, disputes the validity of that complaint.

187 According to the second subparagraph of Article 15(1) of the basic regulation, no compensatory measures are imposed, in particular, if it has been demonstrated that the subsidies no longer confer any benefit on the exporters concerned.

188 In the present case, having regard to the nature of the financial contribution at issue, the benefit conferred by the latter because of the payment of a less than adequate price for the supply of iron ore may vary in importance or even temporarily cease to exist, since that advantage depends, in practice, on the fluctuating prices of iron ore on the world market, of which the Australian market is a representative. However, it should be noted that the export restrictions which constitute that financial contribution are permanent. Consequently, the possible disappearance of the benefit at some point in time does not provide any information about its future existence. It would therefore be inconsistent to prevent the imposition of countervailing duties because, at the time when they should be imposed, a fluctuation in 'adequate' prices would result in the provisional disappearance of the benefit that would have been legally established for the investigation period.

189 Indeed, as the Commission has pointed out, for as long as the regulations which establish the export restrictions in question continue to exist, it cannot be excluded that, in the near future, international prices will increase again, in response to the fluctuations in international demand and supply of iron ore, or that the Indian prices will fall, with the consequence that there would be a benefit again.

190 Contrary to what the applicants allege, the panel's report in the 'Japan — DRAMS' dispute (see paragraph 185 above) does not support their argument. That dispute concerned non-recurring subsidies and the question arose whether those subsidies still produced effects at the time of the imposition of countervailing measures. As noted by the panel, there was no reason to consider that the investigating authority was obliged to carry out a new investigation at the time of that imposition, in order to confirm the continuation of the subsidy whose existence had been found during the period covered by the investigation, which would run counter to the very purpose of the use of periods covered by the investigation.

191 As to the question whether, as the applicants maintain, it was for the Commission to prove, first, that the respective levels of iron ore prices on the world market and on the Indian market were the main reason why Jindal Saw no longer provided iron ore in India and, secondly, that an increase in the prices of iron ore on the world market would lead Jindal Saw to re-acquire the iron ore which it uses on the Indian market, it should be observed that the Commission must indeed demonstrate that a subsidy exists during the investigation period. However, if, after that period, a beneficiary claims that the subsidy no longer exists or, at least, that it no longer benefits from it, the burden of proof is reversed.

192 Therefore, if, as in the present case, a company claims that it does not seek to procure raw material at the best price obtainable, which would be against all economic logic, it is required, at the very least, to submit convincing explanations to establish that fact, which the applicants have not, since they have not indicated why Jindal Saw would have given up obtaining its supplies from the Indian market in the event that, as a result of the export restrictions in question, iron ore prices in that market would again be lower than those practised on the world market.

193 In the light of those factors, it is also necessary to reject the second complaint of the first part of the fourth plea as unfounded and, accordingly, it is necessary to reject the first part of the plea in its entirety.

– The second part of the fourth plea, alleging infringement of Article 3(2) and Article 6(d) of the basic regulation and, consequently, the third subparagraph of Article 15(1) of the same regulation

194 In the context of the second part of the fourth plea, which comprises three complaints, the applicants claim that, by incorrectly calculating the benefit allegedly conferred by the financial contribution in question, the Commission infringed Article 3(2) and Article 6(d) of the basic regulation and, consequently, the third subparagraph of Article 15(1) of that regulation.

195 As was pointed out in paragraph 177 above, Article 3 of the basic regulation provides that a subsidy is deemed to exist if there is a 'financial contribution' by a government and if a 'benefit' is thereby conferred. Articles 6 and 7 of that regulation lay down the procedures for calculating the 'benefit' conferred on the recipient.

196 As regards a financial contribution consisting in the provision of goods by a government, Article 6(d) of the basic regulation provides, in essence, that that provision confers a benefit if it is made for less than adequate remuneration.

197 The same provision lays down applicable rules where, in the country of provision, there are no market conditions which can be used as appropriate benchmarks for determining the appropriate level of remuneration for the product in question. In such a case, either the terms and conditions prevailing in the country concerned are adjusted, on the basis of the actual costs, prices and other factors available in that country, by an appropriate amount reflecting normal market conditions, or the terms and conditions prevailing on the market of another country or on the world market which are available to the recipient are used.

198 In the present case, it follows from recitals 230 and 231 of the contested regulation that the Commission established the existence of the benefit conferred on the recipients by calculating, first, the weighted average purchase price of iron ore purchased during the investigation period by the two Indian exporting producers of the product concerned which cooperated in the investigation. That weighted average purchase price was calculated for each month, on the basis of the price of delivery of iron ore from the mine to the plant in India. That purchase price included transport costs, which had been taken into account on the basis of the average of the respective transport costs of those two exporting producers. The average purchase price was based on the prices and quantities indicated in transaction-by-transaction listing of invoices submitted by the two Indian producers, with certain adjustments considered appropriate (see recitals 232, 254, 257 and 260 of that regulation), in particular as regards average transport costs, in order to be able to establish an average purchase price for the iron ore delivered to the factory gate.

199 Secondly, the Commission established a suitable reference price in order to be able to determine, by comparison, whether a benefit existed. To this end, having found that all transactions on the Indian market were affected by the restrictions on export of iron ore in question and that it was not possible to determine what would have been the purchase price on that market in the absence of such restrictions, it decided to take as a reference the terms and conditions prevailing in the market of another country or on the world market which beneficiaries could access, in accordance with point (ii) of the second subparagraph of Article 6(d) of the basic regulation (see recitals 235 to 240 of the contested regulation).

200 In the present case, the Commission decided to refer to the prices practised in Australia, which is not disputed in the context of the present case. Since the ex-mine prices in Australia were not available and taking into account the fact that the Indian prices included the costs of transport from the mine to the factory, it considered it appropriate to also include the transport costs that should have been paid by the purchaser of Australian iron ore for transport from the Australian mine so that the comparison could be made at the same marketing stage, costs which, due to the unavailability of the corresponding data, were replaced by the costs of transport from the mine to a port (see recital 241 of the contested regulation).

201 Thirdly, on that basis, the Commission made a comparison between 'Indian [average] domestic [purchase] prices of iron ore brought from an Indian mine to a factory in India' (but not unloaded in the factory) and 'Australian domestic [purchase] prices of iron ore brought from a mine to a port' (but not unloaded in the port) (see recital 255 of the contested regulation). In its view, the difference between those two purchase prices multiplied by the quantities of iron ore purchased during the investigation period and consumed for the production of the product concerned represents the 'savings' obtained by the Indian producers of that product purchasing iron ore on the Indian distorted market compared to the price which they would have paid in the absence of distortions. That total amount would represent the benefit conferred by the Government of India on the Indian producers during the investigation period (see recitals 258, 259 and 261 of that regulation).

202 Fourthly, to determine the rate of subsidy for each Indian producer cooperating with the investigation, the Commission compared the full subsidy amount thus obtained as against the total turnover of the product concerned during the investigation period, pursuant to Article 7(2) of the basic regulation, considering that the subsidy had conferred a benefit for the entire production of the product

concerned and not only for the production destined for export (see recital 262 of the contested regulation). The subsidy rate for Jindal Saw was thus established at 3.91% (see recital 271 of the latter regulation).

203 By the first complaint, the applicants claim that the Commission infringed Article 3(2) and Article 6(d) of the basic regulation, in so far as it determined the benefit conferred on Jindal Saw without relying on the real costs provided by the latter in the form of a 'landed price', which comprises the purchase price of iron ore and the costs of transport between the mine and its plants in India. According to the applicants, it was not permissible for the Commission to rely on an average purchase price including a 'standard weighted average transport cost from the mine to the plant' in India.

204 The Commission, supported by the intervener, disputes the merits of that complaint, arguing that the purpose of calculating an average purchase price of iron ore in India including transport costs established on the basis of average transport costs borne by the two Indian exporting producers that cooperated in the investigation was to determine what would have been the price of iron ore from any mine in India and, moreover, that, in the context of a comparison with a suitable reference price charged outside India, the use of any other method would have resulted in an artificial advantage or disadvantage for those exporting producers, based on their actual logistical costs and the distance between their factories and the mines where they source their iron ore.

205 It is therefore necessary to examine whether, in the present case, the Commission was legally entitled to find the existence of a benefit for each of the two Indian exporting producers that cooperated in the investigation taking into account an average price for the purchase of iron ore in India which did not include actual transport costs incurred by each of those exporting producers, but a 'standard weighted average transport cost' calculated on the basis of the transport costs communicated by them.

206 In determining whether Article 6 of the basic regulation, in particular point (d) thereof, must be interpreted as meaning that the Commission is required to take into account, when available, the individual prices paid by each exporting-producer for the calculation of the benefit or whether it is entitled to calculate that benefit on the basis of an average price including transport costs corresponding to an average based on costs incurred by the exporting producers that cooperated in the investigation, it is necessary to make an analysis of the wording, context and purpose of that provision.

207 First of all, it should be noted that Article 6 of the basic regulation is entitled 'Calculation of benefit to the recipient'. The term 'recipient', used in the singular, is again used in the introductory sentence of that article. Furthermore, it is clear from the wording 'benefit to the recipient' that the determination of the existence of a benefit specifically concerns a natural or legal person. It follows that the benefit must be established and calculated for each recipient according to the recipient's situation.

208 Next, it follows from Article 5 of the basic regulation that Article 6 of that regulation lays down guidelines for the calculation of the amount of subsidy in terms of 'benefit to the recipient'. Those guidelines refer to financial contributions granted in the form of equity investments, loans, loan guarantees and the provision of goods or services and the purchase of goods by public authorities. According to those guidelines, a benefit exists if, in practice, the recipient received a financial contribution under more favourable conditions than those to which it has access on the market.

209 As regards, in particular, the supply of goods, Article 6(d) of the basic regulation provides that there is a benefit only if 'the provision ... is made for less than adequate remuneration', '[t]he adequacy of remuneration [being] determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale'.

210 It follows from that wording that the determination of the 'benefit' involves a comparison and that, since it aims to assess the appropriateness of the price paid as against normal market conditions, in principle in the country of provision, that comparison must take into account all the elements of the cost to the recipient of receiving the goods provided by the public authorities. Indeed, there can be a 'benefit' for the recipient only if, thanks to the financial contribution of the public authorities, the recipient is better off than in the absence of a contribution. Therefore, it follows from that provision that, as far as possible, the method used by the Commission to calculate the advantage must make it possible to reflect the benefit actually conferred on the recipient.

211 However, it must be held that the method used in the present case by the Commission in the contested regulation differs from that objective. It does not allow the Commission to verify whether a benefit was actually conferred on each of those exporting producers and whether a specific exporting producer is actually better off as a result of the financial contribution of the government than in the absence of that financial contribution. Thus, taking into account the single average transport costs for those two exporting producers, the Commission is not in a position to exclude the possibility that one of them would not receive any advantage, in particular because the actual transport costs that it incurs are such as to offset any benefit related to the advantageous price of the product itself.

212 It is apparent from points 1 and 2 of Article 3 of the basic regulation that it is only where a government financial contribution confers a real benefit on an exporting producer that a subsidy is deemed to exist for that exporting producer.

213 It follows that, in the light of its wording, objective and context, Article 6 of the basic regulation cannot be interpreted, in a situation such as that in the present case, where there are only three exporting producers identified and where two of them cooperated in the investigation, as allowing the Commission to calculate the benefit conferred on each of the two exporting producers that cooperated in the investigation on the basis of an average purchase price including transport costs corresponding to an average based on costs incurred by those two exporting producers rather than on the basis of the prices actually paid by each of them, including their actual transport costs.

214 In those circumstances, it should be observed that it cannot be excluded that such a calculation of the individual benefit could have led to the finding that Jindal Saw had not obtained a benefit as a result of the imposition of the export restrictions in question and that, therefore, there had not been any subsidy related to those restrictions in respect of that exporting producer, having regard to the conditions laid down in Article 3 of the basic regulation.

215 That finding cannot be called into question by the arguments put forward by the Commission.

216 This is the case, first, of the argument that the use of the method employed was justified by the need to compare a reference price established on the basis of an average with another price which should itself consist of an average price.

217 The fact that the Commission had to use a reference price outside India, pursuant to Article 6(d)(ii) of the basic regulation, did not imply that it had to calculate an average purchase price for iron ore in India from any mine in India.

218 The basic regulation draws no distinction concerning the calculation of the benefit in situations where the Commission must resort to the application of that provision.

219 In that regard, the arguments put forward by the Commission in its answers to the questions put by the Court in the context of measures of organisation of procedure, that the use in Article 6(d) of the basic regulation of the words 'prevailing conditions' and 'conditions prevailing' set out respectively in the first subparagraph and point (ii) of the second subparagraph of Article 6(d) would mean that the reference price does not necessarily have to refer to the specific situation of the exporting producer,

but may refer to conditions prevailing in the market, cannot succeed. The terms involved concern, in both cases, the reference price to be established, and not the prices paid by the recipient of a financial contribution consisting in the supply of goods, which must be compared with the reference price for determining whether the recipient actually obtains a better price than the price which it could have obtained on the market without government intervention. However, it does not follow that only the prices paid by the recipient which reflect the 'prevailing conditions' of the market or the 'conditions prevailing' on the market must be taken into account in determining whether the recipient paid a less than adequate price for the acquisition of goods provided by the government.

220 Secondly, as the applicants have pointed out, the use, for the examination of the existence of a possible benefit for each exporting producer, of the transport costs that it had actually incurred, which are based on its actual logistical costs and the distance between its factories and the mines where it is supplied with iron ore, does not lead to an artificial advantage or disadvantage. Indeed, in the absence of the alleged subsidies, each exporting producer would have had the same advantage or disadvantage, since it would have incurred the same transport costs.

221 Thirdly, it cannot be deduced from the Appellate Body's report in the dispute 'US — Carbon Steel — India' (see paragraph 160 above) that the Commission was obliged to make a comparison on the basis of a single average price for Indian exporting producers.

222 On the contrary, it follows from the Appellate Body's report in that dispute that the investigating authority must be able to adjust the reference price to reflect market conditions. In that dispute, the reference price chosen by the investigation authority reflected a delivery method that affected only very few transactions in the country of supply and thus did not reflect the generally applicable delivery charges for the good in question. The Appellate Body considered that, in such a case, the method used by the investigating authority to calculate the 'benefit' must make it possible to make adjustments to the reference price so that it reflects delivery charges that are more in line with the delivery charges generally applicable for the good in question in the country of supply. It must be stated that nothing in those considerations prevented the Commission from establishing two reference prices in a situation such as that in the present case, where there were only two exporting producers which did not necessarily use the same mode of delivery, which would have allowed it to make a comparison on the basis of a purchase price including, for each exporting producer, the transport costs actually incurred by it.

223 It follows from all the foregoing considerations that the Commission determined the existence of a benefit resulting from the export restrictions in question, as regards Jindal Saw, in breach of Article 6(d) of the basic regulation.

224 In the present case, as is apparent from the finding made in paragraph 214 above, that error might have led to the conclusion that Jindal Saw had obtained an advantage as a result of the imposition of the export restrictions in question in the absence of such a benefit.

225 Indeed, according to the Commission's replies of 25 May 2018 to the questions put by the Court, the transport costs actually incurred by Jindal Saw were higher than those which were taken into account by the Commission, as an average, and included in the calculation of the average purchase price for iron ore in India. That difference in transportation costs means that the price at which Jindal Saw sourced iron ore on the Indian market was, in fact, higher than the average purchase price accepted by the Commission to determine the level of remuneration, which had an inevitable impact on the benefit that could be granted to that exporting producer.

226 In those circumstances, it must be held that that error is liable to call into question the legality of the contested regulation by invalidating the Commission's entire analysis relating to the very existence of a subsidy, with the result that the Commission has not legally justified its conclusion that a countervailing duty should be imposed on imports of the product concerned manufactured by Jindal

Saw (see, to that effect and by analogy, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, T-192/08, EU:T:2011:619, paragraph 119 and the case-law cited).

227 Accordingly, it is necessary to uphold the first complaint in the second part of the fourth plea, without it being necessary to rule on the second and third complaints in this part of the plea, alleging infringement of, respectively, Article 3(2) and Article 6(d) of the basic regulation, in that the Commission wrongly selected at random certain items in the delivery costs of Jindal Saw for the calculation of the standard average transport cost, and the third subparagraph of Article 15(1) of that regulation, in that the Commission fixed the countervailing duty at a level higher than the countervailable subsidies.

The fifth plea, alleging infringement of Article 8(1), (2) and (5) and of the third subparagraph of Article 15(1) of the basic regulation

228 In the context of the fifth plea, which must be examined in so far as it could lead to a more extensive annulment of the contested regulation, the applicants claim that the Commission did not base the determination of the existence of injury to the Union industry on positive evidence and an objective examination. They submit that, for the analysis of the effects of the subsidised imports on prices of a like product of that industry, and more particularly for the determination of the price undercutting of the product concerned in relation to the like product of that industry, the Commission did not carry out the comparison of prices at the same or an appropriate level of trade, in breach of Article 8(1) and (2) of the basic regulation.

229 According to the applicants, the conclusions drawn from the price undercutting of the product concerned were used by the Commission for the determination of injury to the Union industry and the finding of the causal link between the imports of that product and that injury as well as for the calculation of the injury margin. Consequently, the errors made in the calculation of the undercutting would have an impact on those other elements of the contested regulation. In particular, the determination of the injury margin at an excessive level would result in the countervailing duty as set by that regulation exceeding the duty that would be sufficient to remove the injury caused to that industry, in breach of the third subparagraph of Article 15(1) of the basic regulation.

230 The Commission, supported by the intervener, disputes the validity of this plea. It submits that the applicants' line of argument lacks precision. In addition, contrary to what the applicants claim, the undercutting would have been calculated on the basis of a comparison of prices at the same level of trade and at the appropriate stage.

231 The Commission notes that the basic regulation does not define how the undercutting must be calculated and that the case-law does not prescribe any particular methodology for the calculation thereof.

232 The Commission further recalls that all data used for the price undercutting calculation has been provided by the interested parties.

233 The Commission further submits that it is not apparent from the basic regulation, as interpreted by the case-law, that the undercutting calculation should be based on actual prices in such a way as to take account of actual competition in the market and the perspective of the customer, as claimed by the applicants.

234 Finally, the Commission submits that, in any event, the price undercutting of the imports in question is only one of the indicators of the existence of material injury to the Union industry, that the findings relating to the undercutting concerning the other Indian exporting producer which cooperated in the

investigation were not contested and that the analysis of the causal link between the imports in question and the injury sustained by that industry is based on considerations relating not only to prices, but also to volumes, which may themselves constitute a sufficient basis to conclude the existence of a causal link.

235 By the present plea, the applicants submit precisely that the Commission made errors in the calculation of the price undercutting which constitute infringements of Article 8 of the basic regulation and affect the validity of the contested regulation.

236 It should be borne in mind that, in accordance with Article 8(1) of the basic regulation, the determination of the existence of injury to the Union industry is to be based on positive evidence and is to involve an objective examination (i) of the volume of the subsidised imports and the effect of those imports on prices in the Union market for like products, and (ii) of the consequent impact of those imports on that industry.

237 With regard more particularly to the effect of the subsidised imports on prices, Article 8(2) of the basic regulation provides for the obligation to give consideration to whether there has been, for those imports, significant price undercutting as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree.

238 The basic regulation does not contain any definition of the concept of price undercutting and does not lay down any method for the calculation of that concept.

239 The calculation of the price undercutting of the imports in question is carried out, in accordance with Article 8(1) and (2) of the basic regulation, for the purposes of determining the existence of injury suffered by the Union industry by reason of those imports and it is used, more broadly, to assess that injury and to determine the injury margin, namely the injury elimination level. The obligation to carry out an objective examination of the impact of the subsidised imports, as set out in Article 8(1) of the basic regulation, requires a fair comparison to be made between the price of the product concerned and the price of the like product of that industry when sold in the territory of the Union. In order to guarantee the fairness of that comparison, prices must be compared at the same level of trade. A comparison of prices obtained at different levels of trade, that is to say, one which does not include all the costs relating to the level of trade which must be taken into account, would necessarily be misleading in its results and would not allow a correct assessment to be made of the injury to the Union industry. Such a fair comparison is a prerequisite of the lawfulness of the calculation of the injury to that industry (see, to that effect and by analogy, judgment of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraphs 79 and 85).

240 According to recital 293 of the contested regulation, the undercutting margin has, in this case, been calculated as follows:

‘The Commission determined the price undercutting during the investigation period on the basis of the data submitted by the exporting producers and the Union industry by comparing:

(a) the weighted average sales prices per product type of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(b) the corresponding weighted average prices per product type of the imports from the cooperating Indian producers to the first independent customer on the Union market, established on a Cost, Insurance, Freight (CIF) basis, with appropriate adjustments for post-importation costs.’

241 It is apparent from recital 382 of the contested regulation that the prices referred to in recital 293(b) of that regulation relate to the export price as it was constructed in the framework of the anti-dumping proceeding.

242 Moreover, in recital 301 of the contested regulation, the Commission concluded that there was, for the product concerned produced by Jindal Saw and sold in the Union, an undercutting of 30.9% on a weighted average basis, that is to say that the prices at which that product was sold in the Union by Jindal Saw were 30.9% lower than the prices of a like product of the Union industry.

243 Thus, recital 293 of the contested regulation shows that the price comparison was made at the same level of trade, namely by taking into account the prices at an ex-works level for the Union industry's sales and the CIF prices for Jindal Saw's sales. However, following questions put by the Court in the context of measures of organisation of procedure, the Commission stated that, in reality, that comparison had in fact taken into account, on the one hand, in respect of that industry, either the prices at an ex-works level of the production entities, when they sold directly to independent buyers, or the prices at an ex-works level of the selling entities and, on the other hand, in respect of Jindal Saw, it had taken into account the CIF prices, corresponding to the export price as constructed in the context of the parallel anti-dumping proceeding, for the determination of the dumping margin, taking into account various adjustments intended to show the export price of the product concerned before any involvement of Jindal Saw's selling entities.

244 The Commission submits in this respect that the sales made by the selling entities of the Union industry were to be regarded as 'equivalent ex-works' sales, so that they had properly been taken into account as 'ex-works' sales of the like product of that industry for the undercutting calculation. Therefore, a price comparison was made between prices corresponding to the same level of trade.

245 That submission cannot be approved.

246 Even though the Commission stated in recital 293 of the contested regulation and at the hearing that it took into consideration, in the context of the comparison, the Union industry prices at the 'ex-works' level, in fact, it compared the prices of sales to the first independent buyers of that industry to Jindal Saw's CIF prices.

247 Since the Commission used the prices of sales to the first independent buyers for the like product of the Union industry, the requirement to compare the prices at the same level of trade required it to also compare them, with respect to Jindal Saw's products, with the prices of sales to the first independent buyers.

248 In addition, it should be noted that the marketing of products carried out not directly by the producer, but through selling entities, implies the existence of costs and a profit margin specific to those entities, so that the prices charged by them to independent buyers are generally higher than the prices charged by producers in their direct sales to such buyers. The prices charged by the selling entities cannot therefore be assimilated to the prices charged by producers.

249 Therefore, by carrying out, for the price comparison made in the context of the undercutting calculation, the assimilation, referred to in paragraph 244 above, between the prices charged by the selling entities to independent buyers and the prices charged by producers in their direct sales to such buyers, only as regards the like product of the Union industry, the Commission took into account for that product a price which was inflated and therefore unfavourable to Jindal Saw, which performed the majority of its sales in the Union by way of selling entities, and whose situation differed in that regard from that of the other exporting producer which cooperated in the investigation.

250 Furthermore, contrary to what the Commission maintains, it is not apparent from the judgment of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council and Commission* (T-107/08, EU:T:2011:704), that, as regards the product concerned, it was required to take into account the prices at the level of release for free circulation, which would have corresponded, in the present case, to the CIF price for the products of Indian exporting producers.

251 Indeed, it follows from paragraphs 62 and 63 of that judgment that, in that case, the Court considered that the prices used in the undercutting calculation should be prices negotiated with independent buyers, namely prices which could have been taken into account by them in order to decide whether they purchased the Union industry's products or the products of the exporting producers in question, and not the prices at an intermediate stage.

252 It follows from the foregoing considerations that, since the Commission took into consideration the prices of sales made by the selling entities linked to the main Union producer in order to determine the price of the like product of the Union industry while not taking into account the prices of sales of Jindal Saw's selling entities to determine the price of the product concerned produced by Jindal Saw, it cannot be considered that the undercutting calculation was made by comparing prices at the same level of trade.

253 As is apparent from paragraph 239 above, the price comparison at the same level of trade constitutes a prerequisite of the lawfulness of the calculation of the price undercutting of the product concerned. Accordingly, the calculation of the undercutting as carried out by the Commission in the context of the contested regulation must be considered contrary to Article 8(1) of the basic regulation.

254 Consequently, the applicants' challenge to the calculation of the price undercutting in respect of Jindal Saw's products is well founded.

255 It follows from the above that the error made by the Commission in calculating the price undercutting of the product concerned for Jindal Saw's products had the effect of taking into account undercutting of that price, the importance or even existence of which has not been properly established.

256 In recital 338 of the contested regulation, the Commission stressed the importance it attached to the existence of undercutting. In recitals 339 and 340 of that regulation, it considered that selling the product concerned at prices substantially lower than the ones charged by the Union industry, given undercutting of more than 30%, explained, on the one hand, an increase in sales volumes and market shares of that product and, on the other hand, the inability of that industry to increase its sales volumes on the Union market to a level that could ensure sustainable profit levels. In recital 340, it further found that imports at prices significantly undercutting the prices of that industry had significantly depressed prices on the Union market that in turn prevented price increases that would have occurred in the absence of those imports and concluded that there was a coincidence in time between those imports at prices significantly below the prices of the Union industry and the injury suffered by that industry.

257 It follows from the recitals of the contested regulation mentioned in paragraph 256 above that the undercutting as calculated in that regulation is the basis for the conclusion that imports of the product concerned are at the root of the injury to the Union industry. In accordance with Article 1(1) and Article 8(5) of the basic regulation, the existence of a causal link between the subsidised imports and the injury to the Union industry is a necessary condition for the imposition of a countervailing duty.

258 Moreover, as the applicants submit in the context of the third complaint in this part of the plea, it cannot be excluded that, if the price undercutting had been calculated correctly, the injury margin of the Union industry would have been established at a level below that of the subsidy rate. In that case, in accordance with the third subparagraph of Article 15(1) of the basic regulation, the amount of the countervailing duty should be reduced to a rate which would be sufficient to remove that injury.

259 Consequently, the present plea, which must be upheld, concerns assessments which constitute the necessary basis for the imposition of a countervailing duty on imports of the product concerned produced by Jindal Saw, with the result that it is necessary to annul that regulation in so far as it concerns Jindal Saw, in accordance with the case-law referred to in paragraph 226 above, without it being necessary to examine the sixth plea.

Costs

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

261 Under Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in Article 138(1) and (2) to bear its own costs. In the circumstances of this case, the intervener is to bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

1. **Annuls Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India, in so far as it concerns Jindal Saw Ltd;**

2. **Orders the European Commission to bear its own costs and to pay the costs incurred by Jindal Saw and Jindal Saw Italia SpA;**

3. **Orders Saint-Gobain Pam to bear its own costs.**

Pelikánová Valančius Nihoul

Svenningsen Öberg

Delivered in open court in Luxembourg on 10 April 2019.

E. Coulon
Registrar

I. Pelikánová
President

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