Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

20 September 2019*

(Dumping — Implementing Regulation (EU) 2017/1146 — Imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in China, manufactured by Jinan Meide Castings Co., Ltd — Definitive anti-dumping duty — Resumption of the procedure following the partial annulment of Implementing Regulation (EU) No 430/2013 — Article 2(7)(a), (10) and (11) of Regulation (EC) No 1225/2009 (now Article 2(7)(a), (10) and (11) of Regulation (EU) 2016/1036) — Normal value — Fair comparison — Non-matching product types — Article 3(1) to (3) and Article 9(4) and (5) of Regulation No 1225/2009 (now Article 3(1) to (3) and Article 9(4) and (5) of Regulation 2016/1036) — Determination of injury)

In Case T-650/17,

Jinan Meide Casting Co. Ltd, established in Jinan (China), represented by R. Antonini, E. Monard and B. Maniatis, lawyers,

applicant,

v

European Commission, represented by J.-F. Brakeland, M. França and N. Kuplewatzky, acting as Agents,

defendant,

ACTION under Article 263 TFEU for the annulment of Commission Implementing Regulation (EU) 2017/1146 of 28 June 2017 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (OJ 2017 L 166, p. 23).

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias (Rapporteur), President, I. Labucka and I. Ulloa Rubio, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 7 March 2019,

gives the following

* Language of the case: English.

Judgment [1]

I. Background to the dispute

1 The applicant, Jinan Meide Casting Co. Ltd, is a company established in China that produces threaded tube or pipe cast fittings, of malleable cast iron, for the domestic market and export.

A. Background to the dispute in Case T-424/13

2 The background to the dispute on which the General Court ruled in the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), as set out in paragraphs 1 to 51 of that judgment, may be summarised as follows.

3 On 16 February 2012, the European Commission published a notice of initiation of an anti-dumping proceeding concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, Thailand and Indonesia (OJ 2012 C 44, p. 33).

4 The investigation of dumping and injury covered the period from 1 January to 31 December 2011 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 2008 to the end of the investigation period.

5 With regard to exports from China, the Commission selected a sample of three exporting producers, representing 88% of the volume of exports made by the cooperating companies. The applicant was one of that sample.

6 The Commission refused to grant those three exporting producers market economy treatment ('MET'), as provided for in Article 2(7)(b) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51) (now Article 2(7)(b) of 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)). However, it granted them individual treatment of their dumping margin, pursuant to the second subparagraph of Article 9(5) of Regulation No 1225/2009 (now the second subparagraph of Article 9(5) of Regulation 2016/1036).

7 The Commission considered that, for the purpose of determining normal value, it was appropriate to choose India as a market economy third country within the meaning of Article 2(7)(a) of Regulation No 1225/2009 (now Article 2(7)(a) of Regulation 2016/1036). Only one Indian producer ('the analogue country producer') agreed to provide the data necessary for the determination of normal value.

8 On 14 November 2012, the Commission adopted Regulation (EU) No 1071/2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ 2012 L 318, p. 10; 'the provisional regulation').

9 On 13 May 2013, the Council of the European Union adopted Implementing Regulation (EU) No 430/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ 2013 L 129, p. 1).

1 Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

10 Article 1(1) of Implementing Regulation No 430/2013 provided:

'A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307191010) and originating in the People's Republic of China ("PRC") and Thailand.'

11 Article 1(2) of Implementing Regulation No 430/2013 provided, in respect of the applicant's exports, that the rate of the definitive anti-dumping duty applicable to the net free-at-Union-frontier price, before duty, of the product described was 40.8%.

B. The action in Case T-424/13

12 By application lodged at the Registry of the General Court on 7 August 2013, the applicant brought an action ('the initial action') seeking the annulment of Implementing Regulation No 430/2013, in so far as it applied to it (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 52).

13 The initial action was based on five pleas in law (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 57).

14 The first plea alleged infringement by the EU institutions of the applicant's rights of defence and of various provisions of Regulation No 1225/2009, in that those institutions had refused to disclose to the applicant the information relevant for the determination of normal value. In the context of the first plea, the applicant raised three complaints. In particular, by the first of them, it complained that the EU institutions had refused it access to the normal value calculations after it had received authorisation from the analogue country producer to examine the data underlying those calculations (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 57).

15 The second plea was based mainly on manifest errors of assessment and errors of law, on the ground that the institutions had rejected claims for adjustments to the normal value, in respect of raw materials and productivity, submitted by the applicant and, in the alternative, on a failure to state reasons (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 57). The third plea was based on manifest errors of assessment and errors of law and on infringement of the principle of non-discrimination, on the ground that the institutions had followed an unreasonable methodology for determining the normal value for non-matching products (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 57). The fourth plea was based on infringement of essential procedural requirements, on the ground that the Commission had notified the conclusions relating to the MET late (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 57). The fifth plea alleged errors of fact and manifest errors of assessment and an infringement of Regulation No 1225/2009, on the ground that the determination of the injury suffered by the European Union industry was based on incorrect data with regard to the volume of dumped imports from China (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 57).

16 In its judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), the Court rejected the fourth plea (paragraphs 59 to 89 of that judgment), as well as the second and third complaints raised in the first plea (paragraphs 108 to 127 of that judgment).

17 By contrast, the Court upheld the first complaint raised in the first plea (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraphs 128 to 221). The Court concluded that Implementing Regulation No 430/2013 had to be annulled, without it being necessary to examine the second, third and fifth pleas in the initial action (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 221).

18 In paragraph 1 of the operative part of the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), the Court decided:

'[To annul] Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia, to the extent that it applies to Jinan Meide Casting Co. Ltd'.

C. Background to the dispute subsequent to the judgment of 30 June 2016, Jinan Meide Casting v Council (T-424/13)

19 On 28 October 2016, the Commission published a notice relating to the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), concerning Implementing Regulation No 430/2013 (OJ 2016 C 398, p. 57; 'the 28 October 2016 notice').

20 In the third recital of the 28 October 2016 notice, the Commission stated that, in accordance with Article 266 TFEU, the request of the exporting producer concerned for disclosure of the normal value calculations using confidential data of the analogue country producer should be re-examined in the light of the particular circumstances relating to that exporting producer.

21 In the fourth recital of the 28 October 2016 notice, the Commission pointed out that the annulment of Implementing Regulation No 430/2013 concerned one step of the administrative proceeding, namely the disclosure of information to the exporting producer. It therefore considered that, in complying with the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), it had the possibility to remedy the aspects of the proceeding which had led to the annulment, while leaving unchanged those parts which were not affected by the judgment, and that the findings reached in Implementing Regulation No 430/2013 which had not been contested within the time limits for a challenge, or which had been contested but rejected by the Court's judgment or not examined by the Court, and therefore did not lead to the annulment of Implementing Regulation No 430/2013, remained valid.

22 In the fifth and sixth recitals of the 28 October 2016 notice, the Commission stated that, in view of the above, it would reopen the anti-dumping investigation concerning imports of malleable fittings originating in China which had led to the adoption of Implementing Regulation No 430/2013, in so far as it concerned the exporting producer concerned, and resumed that investigation at the point at which the irregularity occurred, by publishing that notice in the *Official Journal of the European Union* and that that reopening was limited in scope to the implementation of the Court's judgment with regard to the applicant.

23 The Commission provided the applicant with several successive versions of the dumping margin calculations and various documents relating to those calculations and the data provided by the analogue country producer (letters dated 23 December 2016, 31 January, 14 February and 12 April 2017 and emails dated 21 April and 29 May 2017).

24 The applicant submitted comments by letters dated 19 January and 2 May 2017.

25 On 8 March 2017, the Commission held a hearing with the applicant and two importers of the product concerned and, on 15 March and 25 April 2017, it held two other hearings with the applicant.

26 On 28 June 2017, the Commission adopted Implementing Regulation (EU) 2017/1146 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (OJ 2017 L 166, p. 23; 'the contested regulation').

27 In recitals 4 to 6 of the contested regulation, the Commission justified the detailed rules for the implementation of the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378) in similar terms to those of recitals 4 to 6 of the 28 October 2016 notice (see paragraphs 20 to 22 above).

28 Article 1(1) of the contested regulation provides:

'A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307191010) and originating in the People's Republic of China and manufactured by Jinan Meide (TARIC additional code B336).'

29 Article 1(2) of the contested regulation provides:

'The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, shall be 39[.]2%.'

II. Procedure and forms of order sought

30 By application lodged at the Registry on 25 September 2017, the applicant brought the present action.

31 On 22 December 2017, the Commission lodged the defence.

32 The reply and the rejoinder were lodged, respectively, on 20 February and on 3 April 2018.

33 By letter of 4 April 2018, the parties were informed that the written part of the procedure had been closed and that they were able to request that a hearing be held under the conditions laid down in Article 106 of the Court's Rules of Procedure. By letter of 6 April 2018, the applicant requested that a hearing be held.

34 On 1 February 2019, by a measure of organisation of procedure, the Court asked the parties a number of questions with a request for a written answer and invited them to produce certain documents. The parties replied to the Court by procedural documents dated 22 February 2019.

35 On 1 March 2019, by a new measure of organisation of procedure, the Court invited the Commission to produce a supplementary document. The Commission replied to that invitation by pleading dated 5 March 2019.

36 The hearing was held on 7 March 2019. At the hearing, the applicant confirmed that, as it had indicated in a written answer to a question put by the Court, it was withdrawing the fifth plea in law of the application.

37 The applicant claims that the Court should:

– annul the contested regulation;

– order the Commission to pay the costs.

38 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

III. Law

39 As stated in paragraph 36 above, the applicant withdrew the fifth plea in law of the application. The present action is therefore based on only four pleas in law. The first plea alleges infringement of Article 2(7)(a) of Regulation No 1225/2009, due to errors by the Commission in the determination of normal value. The second plea alleges an infringement of Article 2(10) of that regulation (now Article 2(10) of Regulation 2016/1036) and of Article 2.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103; 'the anti-dumping agreement'), which is part of Annex 1A of the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3), owing to the Commission's erroneous rejection of some of the applicant's requests for adjustment. The third plea alleges infringement of Article 2(7)(a), Article 2(10) *ab initio* and (a) and Article 2(11) of that regulation (now Article 2(7)(a), Article 2(10) *ab initio* and (a) and Article 2(11) of Regulation 2016/1036), owing to errors by the Commission in determining the normal value of non-matching product types. The fourth plea alleges infringement of Article 3(1) to (3) of the regulation at issue (now Article 3(1) to (3) of Regulation 2016/1036), owing to the Commission's use of incorrect import data and, moreover, infringement of Article 3 and Article 9(4) and (5) of the same regulation (now Article 9(4) of Regulation 2016/1036), as well as a failure to state reasons, on the ground that, in the contested regulation, the Commission did not explicitly adopt injury and causal link findings.

40 At the outset it should be noted that, in recital 19 of the contested regulation, the Commission stated that the law applicable to the reopening of the anti-dumping investigation was Regulation No 1225/2009, which was the substantive law at the time of the adoption of the regulation annulled by the Court. It added that, in any event, Regulation 2016/1036, which repealed and replaced Regulation No 1225/2009 with effect from 19 July 2016, was a codification of the latter regulation and its subsequent amendments. In the application, the applicant agreed with those considerations, provided that the expression 'basic regulation' used in the contested regulation is interpreted as referring to Regulation No 1225/2009.

41 In this respect, according to settled case-law, if the legal basis of an act and the applicable procedural rules must be in force when the act is adopted, compliance with the principles governing the temporal application of the law and the requirements relating to the principles of legal certainty and the protection of legitimate expectations require the application of the substantive rules in force at the date of the facts in issue, even if those rules are no longer in force when an EU institution adopts an act (see, to that effect, judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraph 40 and the case-law cited).

42 It follows that, in the present case, if the contested regulation were to be adopted on the basis of Regulation 2016/1036 and in accordance with the procedural rules laid down in that regulation, the lawfulness of that regulation is to be assessed in the light of the rules of substantive law which were applicable to the facts covered by the anti-dumping investigation, namely the rules laid down in

Regulation No 1225/2009. In so far as the pleas in law of the application exclusively concern the application of those rules of substantive law, in the context of the examination of those pleas in paragraphs 44 to 412 below, reference should therefore be made only to Regulation No 1225/2009 ('the basic regulation').

43 In the first place, the Court considers it appropriate to examine the third plea in law.

A. The third plea, alleging infringement of Article 2(7)(a), Article 2(10) ab initio and (a) and Article 2(11) of the basic regulation, owing to errors made by the Commission in determining the normal value of non-matching product types

44 The third plea consists of two parts. The first alleges that the methodology adopted by the Commission to determine the normal value of the non-matching product types ('the contested methodology') is unreasonable and the second alleges that that methodology does not reflect the full degree of dumping being practised, contrary to Article 2(11) of the basic regulation.

1. Preliminary observations

45 At the outset it should be recalled that, pursuant to Article 2(7)(a) of the basic regulation, two methods are possible for determining normal value when the exporting country is a non-market economy country.

46 As the Court of Justice has noted, it follows from the wording and the scheme of the provisions of Article 2(7)(a) of the basic regulation that the main method for determining normal value in such a case is that of 'the price or constructed value in a market economy third country' or 'the price from such a third country to other countries, including [the European Union]'. Failing that, the stated alternative method of determining the normal value is that that value is to be determined 'on any other reasonable basis, including the price actually paid or payable in the [European Union] for the like product, duly adjusted if necessary to include a reasonable profit margin' (judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 24).

47 According to the Court of Justice, the objective of the priority given to the main method prescribed by those provisions is to obtain a reasonable determination of the normal value in the country of export through the choice of a third country in which the price for a like product is formed in circumstances which are as similar as possible to those in the country of export, provided that it is a market economy country. It follows that the application of that main method can be excluded only if it cannot be applied (see, to that effect, judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraphs 25 and 26).

48 Moreover, it is apparent from both the wording and the scheme of Article 2(10) of the basic regulation that an adjustment to the export price or the normal value may be made only to take account of differences in factors which affect the prices and therefore their comparability. That means, in other words, that the purpose of the adjustment is to re-establish the symmetry between normal value and export price, with the result that, if the adjustment has not been validly made, that implies *a contrario* that it has created an asymmetry between those two values (see, to that effect, judgment of 16 December 2011, *Dashiqiao Sanqiang Refractory Materials* v *Council*, T-423/09, EU:T:2011:764, paragraph 42 and the case-law cited).

49 In particular, Article 2(10)(a) of the basic regulation provides that an adjustment is to be made for differences in the physical characteristics of the product concerned and that the amount of the adjustment is to correspond to a reasonable estimate of the market value of the difference. However, that provision does not specify how such a reasonable estimate should be arrived at. Furthermore, it

should be noted that that provision does not require, in order to re-establish the symmetry between the normal value of the like product and the export price of the product concerned, the amount of the adjustment thus assessed to accurately reflect such a market value, but only to constitute a reasonable estimate thereof.

50 As follows from the case-law, within the limits defined, on the one hand, by Article 2(7)(a) of the basic regulation and, on the other hand, Article 2(10) of that regulation, the Commission has a wide discretion both in assessing the normal value of a product and in assessing facts justifying the fairness of the comparison of normal value and export price made, with the vague concepts of reasonableness and fairness to be applied by the Commission in the context of those provisions having to be made concrete by it on a case-by-case basis, depending on the relevant economic context (see, to that effect, judgments of 7 May 1987, *NTN Toyo Bearing and Others* v *Council*, 240/84, EU:C:1987:202, paragraph 19, and of 16 December 2011, *Dashiqiao Sanqiang Refractory Materials* v *Council*, T-423/09, EU:T:2011:764, paragraphs 40 and 41 and the case-law cited).

51 However, in making those assessments, the Commission must ensure that it takes as a basis values and parameters that can be verified as the normal result of market forces, including effective competition (see, to that effect and by analogy, judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraphs 66 to 68).

52 In addition, the methods used must be consistent with the final objective of the calculation of the dumping margin which, as follows from Article 2(11) of the basic regulation, is to reflect the full degree of dumping being practised (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 54).

53 In general, it is for the Courts of the European Union to verify that, in choosing the methods for determining normal value and ensuring a fair comparison between normal value and export prices, the Commission did not fail to take into account essential elements in order to establish the appropriate nature of those choices and that all the elements of the file were examined with all the care required (see, to that effect and by analogy, judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 22).

2. The first part, based on the fact that the Commission adopted an unreasonable methodology to determine the normal value for non-matching product types

54 The applicant claims that the contested methodology is based on the erroneous assumption that the market value of the physical differences is reflected in the export prices whereas, according to the Commission's own findings, the same export prices reflect the dumping at least partially. Furthermore, it claims that that methodology is based on the erroneous assumption that the export prices of the non-matching product types reflect a level of dumping equivalent to that found for those product types for which there was a directly comparable product type ('the directly comparable product types'). According to the applicant, that assumption is unreasonable and unverifiable. The applicant claims that the Commission therefore infringed Article 2(7)(a) and Article 2(10) *ab initio* and (a) of the basic regulation. In addition, at the hearing, the applicant pointed out that there were a large number of alternative methods that the Commission could have used under the applicable provisions.

55 The Commission replies that the average normal value was corrected by the market value of the physical differences, in accordance with Article 2(10)(a) of the basic regulation. It asserts that, in the light of the definition of market value by the International Valuation Standards Council (IVSC), the market value must be considered to be reflected in the export prices. According to the Commission, it must be presumed that the first independent customer pays the market value and that the export price

is the price paid on the EU market. The Commission further asserts that its method made it possible to reduce the impact of product types with a high dumping margin and that, consequently, the overall dumping margin was lowered to the benefit of the applicant. In its written replies to the Court's questions and at the hearing, the Commission emphasised that the contested methodology was applied, following the applicant's requests and taking into account the impossibility of making an individual determination, product type by product type, of the differences in physical characteristics. It submits, in essence, that the lawfulness of that methodology must be examined in the light of Article 2(10) of the basic regulation and not in the light of Article 2(7)(a) or Article 2(11) thereof, which concern different steps in the determination of the dumping margin.

56 Before examining the applicant's arguments, it is necessary to go back to the content of the contested methodology and the proportion of the applicant's export volume affected by the application of that methodology.

57 As follows from recital 68 of the provisional regulation, the Commission had initially calculated the applicant's dumping margin on the basis of a comparison between the weighted average normal value of each directly comparable like product type established for the analogue country and the weighted average export price of the corresponding type of product concerned. Therefore, it had not included in that calculation transactions falling under the non-matching product types. Subsequently, it accepted the applicant's request to take those transactions into account in the calculation of the dumping margin, which, according to the uncontested information contained in the application, represented 44% of its total export volume to the European Union. Thus, recital 18 of Implementing Regulation No 430/2013 states that, for not directly comparable product types, the normal value was based on the arithmetical average normal value for the directly comparable product types, adjusted by the market value of the differences in the physical characteristics pursuant to Article 2(10)(a) of the basic regulation.

58 According to point 2.2.3 of the Annex to the Commission's information document of 23 December 2016, entitled 'Calculation of the dumping margin of Jinan Meide Casting CO., Ltd "JMCC"' ('the 23 December 2016 document'), the Commission implemented the contested methodology in the following manner.

59 The Commission determined that the linear average export price of all directly comparable product types was 16 Chinese yuan (CNY)/kg (around EUR 2.12/kg). The linear average of the normal value for the corresponding similar product types was determined as CNY 20.91/kg (approximately EUR 2.77/kg). Next, in order to determine an adjustment for physical differences between directly comparable product types and non-matching product types, the Commission calculated the ratio between the average export sales price of each non-matching product type and the linear average export price of the directly comparable product types. It then applied those ratios, as a percentage, to the linear average of the normal value and thus obtained the normal value of each non-matching product type, adjusted for physical differences.

60 For example, the average unit export price of the non-matching product type with product control number 0002FF00BN was CNY 11.83/kg (approximately EUR 1.57/kg), which is equivalent to 73.92% of the linear average export price of the directly comparable product types. The Commission applied that ratio of 73.92% to the linear average of the normal value of those product types and thus obtained the normal value for the non-matching product type at issue, adjusted for physical differences, of CNY 15.46/kg (approximately EUR 2.05/kg).

61 The applicant contested the validity of that methodology in the administrative procedure preceding the adoption of Implementing Regulation No 430/2013 and before the Court, in connection with the third plea in law of its initial action (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraphs 57 and 123). However, as was pointed out in paragraph 17 above, the Court upheld the first complaint raised in the first plea, relating to the Commission's refusal to

disclose the normal value calculations, without examining the second, third and fifth pleas in the action. Although the applicant repeated its observations in connection with the reopening of the procedure, the Commission did not re-examine that issue, with the result that it recalculated the applicant's dumping margin by applying the contested methodology once again.

62 However, it should be noted that, as can be deduced from point 2.2.3 of the 23 December 2016 document and, as confirmed by the parties in a written reply to a question put by the Court, for the purpose of calculating normal value and the dumping margin, in addition to directly comparable product types and non-matching product types, the Commission identified a third category of product types, namely 'quasi-matching' product types.

63 In this respect, as regards the category of 'quasi-matching' product types, it follows from the indications in point 2.2.3 of the 23 December 2016 document that it includes product types sold by the applicant which differ from directly comparable product types only by the fact that their surface is not galvanised. The product types belonging to that category had their normal value adjusted on the basis of the normal value of the corresponding galvanised like product type. For a product type with a black surface (B), normal value was set at 80% of the normal value of the corresponding galvanised like product type. For the other surfaces (A, E and M), the same normal value of the galvanised like product type in its entirety was used.

64 According to the indications of the parties in their written replies to the questions put by the Court, the distribution of the 1 528 product types sold for export among the three categories set out in paragraph 62 above is as follows.

65 In the first place, 202 product types, representing 55% of the applicant's total export volume, were considered to be directly comparable product types. For those product types, the dumping margin was therefore determined by calculating the normal value, as indicated in recitals 17 and 19 of Implementing Regulation No 430/2013, on the basis of the domestic sales of the analogue country producer made in the ordinary course of trade or on the basis of constructed value. In the second place, 343 product types, representing 17% of that total volume, were considered to be 'quasi-matching' product types, for which the dumping margin was determined by adjusting the normal value on the basis of the methodology described in paragraph 63 above. In the third place, the remaining product types, namely 983 product types representing 28% of the same total volume, were considered to fall within the category of non-matching product types, for which normal value was calculated and adjusted in accordance with the contested methodology.

66 It therefore follows from the above that the contested methodology was applied for the purpose of determining the dumping margin of part of the applicant's exports representing between a quarter and a third of their total volume, that is, a significant proportion of that volume. The use of that methodology is therefore likely to have had a significant impact on the calculation of the dumping margin determined for all those exports.

67 It is necessary to examine, first of all, the applicant's argument that the contested methodology is based on the claim that the applicant's export prices reflect the market value of the differences in physical characteristics, which would be in contradiction with the Commission's finding that those export prices are at least partially dumped.

68 It should be noted that, in view of the information in paragraphs 57 to 59 above, the contested methodology can be described as a combination of two steps, namely, on the one hand, the determination of normal value in accordance with the main method provided for in Article 2(7)(a) of the basic regulation (see paragraphs 46 and 47 above) and, on the other hand, the application of an adjustment for physical differences, under the conditions laid down in Article 2(10)(a) of the same regulation. In sum, as follows from that information, the Commission considered that the differences between the export prices charged by the applicant for the non-matching product types and the same

prices for the directly comparable product types constituted a reasonable estimate of the value of the physical differences between those product types for the purpose of making a normal value adjustment.

69 The applicant does not call into question, as such, the lawfulness of the first step of that methodology, namely the reference to the average unit price of the like product on the Indian market for the determination of normal value, but calls into question only the lawfulness of the second step, namely the use of the ratio between the price of each non-matching product type and the average unit export price of directly comparable product types to determine the amount of the normal value adjustment for the purpose of a fair comparison, within the meaning of Article 2(10) of the basic regulation.

70 It must be stated that the applicant's argument is based on a correct premiss. Indeed, a price likely to be affected by dumping cannot form the basis for a reasonable estimate of the market value of differences in physical characteristics within the meaning of Article 2(10)(a) of the basic regulation, since such a price may not be the result of normal market forces.

71 Therefore, it seems paradoxical for the Commission to adjust the normal value of a given like product type by means of a value potentially affected by dumping, while it seeks to establish that normal value on the basis of its value in a market economy third country with the objective of identifying a price formed in circumstances which are as comparable as possible to those in the exporting country.

72 Indeed, by definition, it is not possible for the Commission to assume that such a value, which is potentially affected by dumping, was formed under market economy conditions. Thus, at that stage of the procedure, the Commission cannot exclude that that value may be the result of an artificial undervaluation leading to an amount lower than that at which that value would have been fixed if it had resulted only from forces freely exerted on the market.

73 Furthermore, it must be noted that the use, for the purpose of a fair comparison, of an adjustment to the normal value corresponding to an amount determined on the basis of export prices for which the Commission specifically seeks to assess the undervaluation due to dumping does not reflect a consistent approach.

74 In this respect, it should be noted that, in order to be able to determine the dumping margin in a reasonable and objective manner, the calculation of the normal value of a given product type must be based, in principle, on data independent of the export prices for which the Commission specifically seeks to assess, by establishing that normal value, the undervaluation to which they are subject.

75 The normal value is the reference value against which the export price potentially affected by dumping is compared. That comparison is distorted if, in the calculation of such a reference value, a constitutive element of the export price to be compared is introduced.

76 It is true that the Commission was entitled to make an adjustment to the normal value in this case since the normal value had been determined on the basis of the average unit value of the directly comparable product types on the Indian market. As the Commission stated in a written answer to a question put by the Court, the uniform application of that average unit value for the determination of the normal value of all non-matching product types was not appropriate in this case, as it had found that the variation in the average export prices of the different non-matching product types was significant, ranging from less than CNY 10/kg (around EUR 1.32/kg) to more than CNY 100/kg (around EUR 13.2/kg). Thus, in the absence of an adjustment, such a uniform application of the average unit value would not have ensured comparability between the normal value and the export price of each non-matching product type.

77 However, the Commission has not demonstrated that the use of a constituent element of the export prices of the non-matching product types, in order to correct the normal value to which those prices are compared, was such as to re-establish the symmetry between those prices and that normal value in accordance with the objective of Article 2(10) of the basic regulation. In particular, there was no indication that the ratio between the export price of each non-matching product type and the average unit export price of the directly comparable product types correctly reflected the value of the physical differences between the latter category of product type and the non-matching product type in question.

78 It is true that it cannot be excluded that, in some cases, the difference between the export prices of certain specific non-matching product types and the export prices of directly comparable product types may correspond to the market value of the physical characteristics of the non-matching product types in question. Furthermore, Article 2(10)(a) of the basic regulation does not require that the adjustment fully reflect that value, but only that it constitute a reasonable estimate.

79 That said, in the present case, the contested methodology is based on the presumption that that price difference corresponds to the market value of the physical differences for all non-matching product types.

80 As the applicant has pointed out, without being challenged on this point by the Commission, that presumption necessarily implies the assumption that exports of all those product types are affected by dumping at a level equivalent to that found for directly comparable product types.

81 Indeed, the presumption that the price difference between the two categories of product types at issue corresponds to the market value of the differences in physical characteristics is tantamount to assuming that, if there were no such differences in physical characteristics, the non-matching product types would be sold for export at the same price as the directly comparable product types.

82 Such a presumption therefore implies, by definition, that the dumping margin likely to affect the prices of those two product type categories is at the same level. Otherwise, the price differences between the two categories of product types at issue may result, at least in part, from the differences in the dumping margin and therefore cannot be considered with sufficient reliability to reflect only the differences in physical characteristics.

83 That being said, as the applicant rightly claims in the context of the second argument made in connection with this part of the plea, the assumption of equivalent dumping margins for the two categories of product types at issue cannot be considered to be reasonable or verifiable.

84 On the one hand, it is difficult to reconcile that assumption with the use of the calculation of the dumping margin by product type, which assumes, on the contrary, that that dumping margin may be different according to the type of product concerned and that it is necessary to make that calculation in order to properly reflect the full degree of dumping being practised, pursuant to Article 2(11) of the basic regulation (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 54).

85 On the other hand, the table of detailed calculations of the applicant's dumping margin, product type by product type, which is annexed to the document which the Commission disclosed to the applicant on 29 May 2017 and forwarded to the Court as part of a measure of organisation of procedure ('the 29 May 2017 table'), does not allow that assumption to be substantiated.

86 That table shows that, for the directly comparable or 'quasi-matching' product types, there is a particularly large range of dumping margins between negative values below -50% and positive values close to 500%. The Commission has not provided any evidence to support the hypothesis that this would be different for the non-matching product types.

87 Moreover, like the applicant, the Court finds that, as is illustrated by the description of the contested methodology in point 2.2.3 of the 23 December 2016 document (see paragraph 59 above) and as confirmed by the simplified example of that methodology in the application, the application of that methodology should in principle result in an identical rate for the average dumping margin of the directly comparable product types and that of each of the non-matching product types.

88 Indeed, as the applicant has explained, on the basis of the theoretical assumption that (i) the average normal value and the average export price of the directly comparable product types are 13 and 10 respectively and (ii) that the export price of a given non-matching product type is 7, the application of the Commission's methodology results in the ratio of that price of 7 to the average export price of 10 — that is, a rate of 70% — being applied to the average normal value of 13 in order to obtain the normal value, after adjustment, of the relevant non-matching product type, that is, 9.1. As the applicant points out, that calculation results, in the simplified form set out in the application and which is not challenged by the Commission, in a dumping margin for the non-matching product type which is identical to the average dumping margin of the directly comparable product types, namely 30% in the fictitious example used by the applicant.

89 The example provided by the Commission in point 2.2.3 of the 23 December 2016 document, which is based on the figures actually used to establish the adjusted normal value of non-matching products, produces a similar result.

90 As was mentioned in paragraph 59 above, the Commission determined an average unit price of the product concerned for export of CNY 16/kg and an average unit price of the like product on the Indian market of CNY 20.91/kg. If the average dumping margin of the directly comparable product types was calculated solely on the basis of the comparison between those two prices, it would be 30.7%.

91 As the Commission points out, the application of the contested methodology to determine the adjusted normal value of the non-matching product type with product control number (PCN) 0002FF00BN, whose average unit export price was CNY 11.83, results in an amount of CNY 15.46. It must be noted that that calculation would result in a dumping margin for the non-matching product type at issue at the rate of 30.7%, that is, the same rate as the average dumping margin referred to in paragraph 90 above.

92 It is true that, as follows from a written reply from the Commission to a question put by the Court, the calculation of the dumping margin for each product type and for the product concerned as a whole is more complex than in the above examples and involves additional operations.

93 Indeed, as explained by the Commission, for each product type, the difference between the export sales price and the normal value is multiplied by the quantity exported to obtain the total amount of dumping. That amount of dumping is then related to the total amount of exports to obtain the dumping margin for the product type at issue, which is expressed as a percentage of the cost, insurance, freight (CIF) price at the EU border and before duty. As shown in the 29 May 2017 table, the same operations are carried out for the determination of the dumping margin for the whole product concerned after adding the dumping amounts of each product type.

94 Furthermore, as the applicant stated in the application, in practice, for a given product type, the export price which is used in the fair comparison between the normal value and that price is the ex-works price of the product concerned, whereas the export price to which the amount of dumping is related in order to determine the dumping margin for that product type is a CIF price, that is, a price including all costs of transport to the EU border.

95 That being said, the 29 May 2017 table shows that those differences between the simplified examples of the applicant and the Commission and the dumping margin calculations carried out in practice by the Commission did not significantly alter the result of the contested methodology. It is apparent from that table that the dumping margins calculated for the 983 non-matching product types are within a value range of between 24% and 28%. However, the small magnitude of those dumping margins is not comparable to that found for the dumping margins of directly comparable and 'quasi-matching' product types, which, as was noted in paragraph 86 above, range from negative values below -50% to positive values close to 500%.

96 It follows from all of the foregoing that the Commission has not demonstrated that, by the contested methodology, it made a reasonable estimate of the market value of the differences in physical characteristics between the non-matching product types and the directly comparable product types. Therefore, it did not demonstrate that the application of that methodology resulted in a fair comparison between the normal value and export prices. Furthermore, it did not demonstrate that the adjustment to the normal value of the non-matching product types made in this way preserved the reasonable determination of that normal value, that is, a determination based on values and parameters which can be considered to be the normal result of market forces. The application of the erroneous contested methodology is therefore not in accordance with Article 2(7)(a) or Article 2(10) *ab initio* and (a) of the basic regulation.

97 It is true that an error in the reasoning of the author of the contested act or the method it used cannot be sufficient to warrant the annulment of that act if, in the particular circumstances of the case, that error could not have had a decisive effect on the outcome (see, to that effect and by analogy, judgments of 9 July 2008, *Alitalia* v *Commission*, T-301/01, EU:T:2008:262, paragraph 307 and the case-law cited, and of 15 December 2010, *CEAHR* v *Commission*, T-427/08, EU:T:2010:517, paragraph 161 and the case-law cited).

98 However, it must be noted that this is not the case here.

99 First, as follows from paragraph 66 above, given the significant proportion of the applicant's export volume concerned by the application of the contested methodology, it cannot be excluded that it had a significant impact on the rate of the applicant's dumping margin adopted in paragraph 1 of the operative part of the contested regulation.

100 Secondly, the reasonableness of the estimate of the value of the physical differences between the non-matching product types and the directly comparable product types and the fairness of the comparison resulting from the adjustment based on that estimate cannot be assessed in the light of the existence or non-existence of more appropriate alternative methodologies.

101 Indeed, as the Court of Justice has found, while it follows from a combined reading of Article 2(10) and (11) of the basic regulation that the calculation of the dumping margin must be made on the basis of a fair comparison, the notion of 'fairer comparison' appears nowhere in those provisions. In any event, since a method cannot be considered to be a means of ensuring a fair comparison, it cannot be argued that the use of another method for calculating the normal value would not have ensured a fairer comparison (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 71). Those considerations apply *mutatis mutandis* to the notion of reasonable estimate in Article 2(10)(a) of the basic regulation.

102 In the present case, invited by the General Court in connection with a question with a request for a written answer to indicate whether it had considered methodologies other than the contested methodology, in relation to the non-matching product types, the Commission indicated that it had chosen the latter after having excluded three possibilities. First, in view of the very large number of product types exported by the applicant (around 1 500), in particular non-matching product types

(almost 1 000), the Commission excluded an individual determination of the normal value of each non-matching product type. Secondly, for the same reasons, the Commission also considered it impossible to identify products with close similarities. Thirdly, as was stated in paragraph 76 above, the Commission also rejected the possibility of applying a uniform normal value for all non-matching product types due to the significant variation in export prices of those different product types.

103 Furthermore, in the same written reply and at the hearing, the Commission considered that it was not appropriate to consider relying on prices of product types distributed by the analogue country producer on the Indian market but not produced by the producer itself. It claimed that it had no information on the prices of those product types, that it was possible that those product types, imported from China, had been dumped and that their use in this case would essentially amount to a comparison of Chinese exports to the European Union and Chinese exports to India. It further argued at the hearing that Article 2(7)(a) of the basic regulation did not allow it to apply, for part of the product types concerned, the main methodology for determining normal value provided for in those provisions and the alternative methodology for the other part. In the Commission's view, it was therefore not possible to use the EU producers' prices for non-matching product types. The Commission further argued that, should it have been able to use those prices, it would in any event have had to make adjustments in view of the large number of product types sold for export by the applicant.

104 However, it should be observed that, even if the Commission were justified in taking the view that all those alternative methods would either have been inappropriate or impossible to implement or would not necessarily have avoided the use of adjustments such as those applied under the contested methodology, it follows from paragraph 96 above that the Commission did not demonstrate that the application of the contested methodology made it possible to make a fair comparison between the normal value and export prices and that it preserved the reasonable nature of the determination of that normal value.

105 In any event, the Commission has not demonstrated the absence of any possible alternative methodology.

106 In this respect, as the Court of Justice has stated, in a case such as the present case, where the analogue country producer neither produces nor sells a certain product type, the EU institutions may either decide to exclude that product type from the definition of 'the product under consideration' or construe the normal value for that product type so as to take into consideration export transactions of that same product type for the purposes of calculating the dumping margin (see, by analogy, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 70).

107 Moreover, assuming that, in the present case, the large number of non-matching product types made it difficult to apply either of those solutions, it should be noted that, invited by the Court to express its views in this connection at the hearing, the Commission did not demonstrate that it would not have been able to make methodological choices in accordance with the applicable rules if it had examined at an earlier stage of the anti-dumping investigation the issues of calculating the normal value of non-matching product types and any necessary adjustments.

108 It should be recalled that, as was stated in paragraph 57 above, in the provisional regulation, the Commission had initially excluded non-matching product types from the calculation of normal value and it was only after having taken note of the applicant's comments in this respect that, within the framework of Implementing Regulation No 430/2013, the institutions decided to take those product types into account in the calculation.

109 The Commission's explanations at the hearing do not show that, prior to the adoption of the provisional regulation, it could not have considered other methods to take into account the non-matching product types in the calculation of the dumping margin, since it was in a position to ascertain at that stage, on the basis of a comparison of the analogue country producer's data and the applicant's data, that the analogue country producer produced only a limited number of the product types sold for export by the applicant.

110 In particular, the Commission did not provide any concrete evidence to exclude the possibility that, in order to make a reasonable estimate of the market value of the physical differences in order to make the necessary adjustments to the normal value of the non-matching product types, it used the data available at the time with regard to producer prices in the European Union (see recital 109 of the provisional regulation).

111 Admittedly, as the Commission has explained, in the light of the case-law referred to in paragraphs 46 and 47 above, the wording of Article 2(7)(a) of the basic regulation precluded it from using, in order to determine the normal value of part of the product types concerned, the main methodology provided for in those provisions and, at the same time, the alternative methodology for the other part, which includes in particular the possibility of using prices in the European Union. Similarly, the Commission is entitled to argue that it could exclude the use of the main methodology only if it could not be applied.

112 However, the wording of Article 2(7)(a) of the basic regulation does not preclude, once the normal value has been obtained by applying the main methodology provided for in those provisions, an adjustment to that normal value being made within the framework of Article 2(10) of that regulation using prices other than the domestic prices of the analogue country or export prices from the analogue country, provided that they result from normal market forces, in particular competitive pressure.

113 It follows from those same provisions that the legislator has not ruled out that 'the price actually paid or payable in [the European Union] for the like product, duly adjusted if necessary to include a reasonable profit margin' may serve, under certain conditions, as a reasonable basis for determining normal value. It therefore does not appear to be excluded, a fortiori, that, for the purpose of a fair comparison, a reasonable estimate of the market value of the physical differences can be based, in the absence of other data available, on the difference between the price of the non-matching product type at issue and the average price of the directly comparable product type at one or more Union producers.

114 It follows from all the foregoing that the first part of the third plea is well-founded and is such as to lead to the annulment of the contested regulation.

115 That finding is not called into question by the Commission's arguments.

116 In the first place, contrary to its argument, the Commission did not comply with the provisions of Article 2(10)(a) of the basic regulation by determining the market value of the physical differences between the product types under consideration on the basis of the export price of the non-matching product types, which is, according to its argument, the price paid in the European Union for that good by the first independent customer.

117 In this respect, in the Commission's view, the presumption that the market value of a good is reflected in the price paid by the first independent customer is confirmed by the definition of the concept of market value in accordance with the international valuation standards defined by the IVSC. According to that definition, market value is 'the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion'.

118 For the reasons set out in paragraphs 70 to 75 above, the fact that the export price of the non-matching product types constitutes the price paid by the first independent customer in the European Union is clearly not sufficient to be considered as a reasonable estimate of the market value. In view of the objective of Article 2(7)(a) and (10) of the basic regulation, that notion does not only imply that the price in question is paid by an independent customer in the context of an arm's length transaction as defined by the IVSC, but that it must also be possible to ensure that that price is the normal result of market forces. However, this cannot be the case here since that price is likely to be affected by dumping.

119 In the second place, the Commission's argument that the application of the contested methodology had the effect of reducing the applicant's dumping margin is not relevant. Assuming that this is the case, it should be noted that that methodology was applied to 28% of the applicant's export volume, that is, a significant proportion of it. Therefore, it cannot be excluded that, should the estimate of the market value of the physical differences between the like product type and the non-matching product types have been based on a reasonable methodology and in accordance with the applicable provisions, that dumping margin would have been reduced even more significantly.

120 In the third place, the Commission's argument that, in essence, the lawfulness of the contested methodology must be assessed only in the light of the requirements of Article 2(10)(a) of the basic regulation, and not in the light of the requirements of Article 2(7)(a) or (11) of that regulation, on the ground that that methodology is only in relation to the fair comparison stage cannot be accepted.

121 On the one hand, by definition, the adjustment to the normal value made in accordance with the contested methodology has an impact on the level at which that normal value was determined and, consequently, on the determination of the dumping margin. Consequently, if the application of that methodology has the effect of resulting in a determination of those two parameters which is not in accordance either with the objectives of Article 2(7)(a) of the basic regulation or with those of Article 2(11) of the same regulation, an infringement of those provisions may, or must, be found by the EU judicature.

122 On the other hand, in any event, the applicant invoked an infringement of Article 2(10), *ab initio* and (a) of the basic regulation. As has been explained in paragraph 77 above, the Commission has not demonstrated that, by applying the contested methodology, it had re-established the symmetry between normal value and the export price of the non-matching product types.

123 In the fourth place, the Commission's argument that, in the context of the main methodology provided for in Article 2(7)(a) of the basic regulation, it was not obliged to rely on a 'reasonable basis' within the meaning of the alternative methodology provided for in that article is manifestly irrelevant. Indeed, as the Court of Justice has found, the reference in the context of the provisions of that article relating to the alternative methodology to 'any other reasonable basis' implies a fortiori that, in the context of the main methodology, the basis on which the Commission determines the normal value must be reasonable (see, to that effect, judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 25). In addition, as has been repeatedly noted, Article 2(10)(a) requires that the estimate of the market value of the physical differences used for the purpose of the fair comparison be reasonable.

124 In the fifth place, the Commission cannot rely on the fact that it applied the contested methodology following the applicant's request to take into account, in the context of the dumping margin, export transactions relating to non-matching product types.

125 As was recalled in paragraphs 57 and 108 above, in the provisional regulation, the Commission had simply excluded those transactions from the calculation of the dumping margin. As the applicant points out in the second part of this plea in law, according to the Court of Justice, such an exclusion is contrary to the objective of the different methods of calculating the dumping margin which, in accordance with the objective of Article 2(11) of the basic regulation, is to reflect the full degree of

dumping being practised. Thus, according to the Court of Justice, the corollary from such an exclusion is that it is impossible for the Commission to measure the impact that those transactions might have on that calculation, and, therefore, it cannot ensure that the dumping margin calculated reflects the full degree of dumping being practised (judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 55).

126 Moreover, as the applicant correctly stated at the hearing, it only asked the Commission to take into account transactions relating to non-matching product types when determining the normal value. By contrast, it did not ask the Commission to use the contested methodology to calculate the normal value of those product types. On the contrary, as follows from the Court's examination of the third complaint raised in the first plea in law of the initial action, before the adoption of Implementing Regulation No 430/2013, the applicant had objected to the adoption of that methodology and had even proposed to use an alternative method (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 123).

127 It follows from all the foregoing that the first part of the third plea must be upheld.

3. The second part, based on the fact that the Commission infringed Article 2(11) of the basic regulation by adopting a methodology which leads to the de facto exclusion of transactions relating to non-matching product types

128 The applicant claims that, by adopting a methodology that results in an assumption of dumping for the non-matching product types at the same level as that for the directly comparable product types, the dumping margin eventually obtained does not reflect the full degree of dumping being practised, contrary to Article 2(11) of the basic regulation. It asserts that that methodology results in the de facto exclusion of transactions relating to those product types and is based on the erroneous assumption that those transactions had no real impact on the overall dumping margin. In its reply, it states that the Commission's position on this point contradicts the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269).

129 The Commission replies that no product type has been excluded. Moreover, the Commission asserts that, in any event, even if it were found that the methodology applied did exclude de facto non-matching product types, that methodology is not an infringement of Article 2(11) of the basic regulation since it follows from the case-law and Article 2.4.2 of the anti-dumping agreement that non-comparable export transactions may be excluded to ensure a fair comparison.

130 In this respect, on the one hand, it should be noted at the outset that, since this part of the plea is based on the claim that the contested methodology led the Commission to exclude de facto transactions relating to non-matching product types, it can only be rejected.

131 Indeed, even if the contested methodology led the Commission to calculate the same or at least a very similar dumping margin for all those product types, the fact remains that the inclusion of those product types had an impact on the overall dumping margin. In this respect, it should be recalled that, as was explained in paragraph 93 above, in order to obtain the overall dumping margin, the Commission adds the dumping amounts obtained for each product type and thus arrives at the total dumping amount for the product concerned as a whole, which it then relates to the total amount of export transactions made by the applicant. Therefore, even if they corresponded, for each of them, to the same or a very similar dumping margin, the dumping amounts obtained for the non-matching product types, which were added to the dumping amounts for the other product types, necessarily

had an impact on the overall dumping margin. It cannot be excluded that, as the Commission maintains, the contested methodology even contributed to lowering the level of that overall dumping margin.

132 However, on the other hand, in so far as this part of the plea amounts to arguing that the contested methodology is contrary to the objective of Article 2(11) of the basic regulation, since the result of the application of that methodology does not reflect the full degree of dumping, it must be upheld on the basis of the reasoning set out in paragraphs 83 to 86 above.

133 It follows from all the foregoing that the third plea must be upheld in its two parts, with the result that the contested regulation must be annulled. It is therefore in principle not necessary to examine the other pleas in law.

…

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Annuls Commission Implementing Regulation (EU) 2017/1146 of 28 June 2017 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd;**

2. **Orders the European Commission to pay the costs.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 20 September 2019.

E. Coulon
Registrar

D. Gratsias
President