Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

12 March 2020*

(Dumping — Imports of hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine — Termination of the proceedings against imports originating in Serbia — Determination of injury — Cumulative assessment of the effects of imports from more than one country — Article 3(4) of Regulation (EU) 2016/1036 — Termination without measures — Article 9(2) of Regulation 2016/1036 — Final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures or the termination of an investigation or proceedings without the imposition of measures — Article 20(2) of Regulation 2016/1036)

In Case T‑835/17,

**Eurofer, European Steel Association, AISBL**, established in Brussels (Belgium), represented by J. Killick and G. Forwood, lawyers,

applicant,

v

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

defendant,

supported by

**HBIS Group Serbia Iron & Steel LLC Belgrade**, represented by R. Luff, lawyer,

intervener,

APPLICATION pursuant to Article 263 TFEU seeking the annulment in part of Commission Implementing Regulation (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia (OJ 2017 L 258, p. 24),

THE GENERAL COURT (Eighth Chamber),

composed of A.M. Collins, R. Barents and J. Passer (Rapporteur), Judges,

Registrar: S. Bukšek Tomac, Administrator,

* Language of the case: English.

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

gives the following

## Judgment

### Background to the dispute

1 Following a complaint lodged on 23 May 2016 by the applicant, Eurofer, European Steel Association, AISBL, the European Commission initiated an anti-dumping investigation with regard to imports into the European Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine.

2 On 7 July 2016 the Commission published a notice of initiation of an anti-dumping procedure in respect of the imports referred to in paragraph 1 above (OJ 2016 C 246, p. 7) under Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; 'the basic Regulation').

3 The investigation of dumping and injury covered the period from 1 July 2015 to 30 June 2016 ('the Investigation Period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2013 to the end of the Investigation Period.

4 In the notice of initiation of the investigation, the Commission stated that it expected to select a sample of the interested parties in accordance with Article 17 of the basic Regulation. The final sample of EU producers consisted of six such producers located in five Member States accounting for over 45% of production within the European Union, namely:

– ThyssenKrupp Steel Europe AG, Duisburg, Germany;

– Tata Steel IJmuiden BV, Velsen-Noord, Netherlands;

– Tata Steel UK Limited, Port Talbot, South Wales, United Kingdom;

– ArcelorMittal Mediterranée SAS, Fos-sur-Mer, France;

– ArcelorMittal Atlantique Et Lorraine, Dunkirk, France;

– ArcelorMittal España SA, Gozón, Spain.

5 Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the producers in question.

6 On 4 April 2017 the Commission informed all interested parties by means of an information document ('the Information Document') that it would continue the investigation without imposing provisional measures on imports into the European Union of the product in question originating in the countries concerned. The Information Document contained the essential facts and considerations on the basis of which the Commission had decided to continue the investigation without the imposition of provisional measures. Following the disclosure of that document, interested parties made written submissions providing comments on the information and findings disclosed. Interested parties who requested to be heard were also granted a hearing.

7 On 4 May 2017 a hearing in the presence of the Hearing Officer in trade proceedings was held with the applicant. On 8 June 2017 a second hearing was held with the applicant.

8 Between 29 May and 9 June 2017 five additional verification visits were carried out at the premises of the following interested parties in the European Union:

– ThyssenKrupp Steel Europe AG, Duisburg (EU producer);

– HUS Ltd, Plovdiv, Bulgaria (user, member of a consortium named ‘Consortium for Imports of Hot-Rolled Flats’);

– Technotubi SpA, Alfianello, Italy (user, member of the consortium referred to above);

– an Italian user that was not a member of the consortium and which had requested anonymity;

– the applicant.

9 Following the final disclosure on 17 July 2017 (‘Final Disclosure’), another hearing in the presence of the Hearing Officer in trade proceedings was held on 27 July 2017 with the applicant.

10 Following a hearing on 3 August 2017 with an Iranian exporting producer, the Commission revised the dumping calculation and the calculations based on it. The parties were informed of that revision by means of an additional Final Disclosure dated 4 August 2017.

11 On 5 October 2017 the Commission adopted Implementing Regulation (EU) 2017/1795 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia (OJ 2017 L 258, p. 24, corrigendum OJ 2017 L 319, p. 81 ‘the Contested Regulation’).

12 Article 2 of the Contested Regulation provides that ‘the anti-dumping proceeding concerning imports into the Union of the product concerned originating in Serbia is hereby terminated in accordance with Article 9(2) of the basic Regulation’.

## Procedure and forms of order sought

13 The applicant brought the present action by document lodged at the Registry of the General Court on 29 December 2017.

14 On 21 March 2018 the Commission lodged its defence.

15 By documents lodged at the Court Registry on 17 and 18 April 2018, the intervener, HBIS Group Serbia Iron & Steel LLC Belgrade, and the Republic of Serbia respectively sought leave to intervene in the present proceedings in support of the forms of order sought by the Commission.

16 By document lodged on 14 May 2018, the applicant requested, pursuant to Article 144(2) of the Rules of Procedure of the General Court, that certain confidential information contained in Annexes A.25, A.30 and A.31 to the application not be disclosed to the intervener or to the Republic of Serbia, in the event that they should be given leave to intervene in the present proceedings.

17 The applicant lodged its reply on 3 July 2018.

18 By order of 6 July 2018, the Eighth Chamber of the General Court dismissed the Republic of Serbia's application to intervene.

19 By order of 12 July 2018, the President of the Eighth Chamber of the General Court granted the intervener leave to intervene and provisionally limited disclosure of the application to the non-confidential version produced by the applicant, pending the submission of any observations by the intervener on the application for confidential treatment.

20 By document lodged on 31 July 2018, the intervener informed the Court that it had no objections to the confidential treatment of the information identified by the applicant, with the exception of certain information on pages 779 to 781 of Annex A.25 to the application.

21 By document lodged at the Court Registry on 13 September 2018, the intervener lodged a statement in intervention.

22 On 14 September 2018 the Commission lodged its rejoinder.

23 By order of 5 October 2018, the President of the Eighth Chamber of the General Court rejected the application for confidential treatment of the information referred to in paragraph 20 above and ordered that a new non-confidential version of the application be provided to the intervener.

24 By a document lodged at the Court Registry on 25 October 2018, the applicant produced a non-confidential version of the application in accordance with the order of 5 October 2018.

25 By a document lodged at the Court Registry on 23 November 2018, the intervener lodged a supplementary statement in intervention on the non-confidential version of the application.

26 On 20 December 2018 the applicant and the Commission filed their observations.

27 By document lodged at the Court Registry on 30 January 2019, the applicant requested, pursuant to Article 106 of the Rules of Procedure, to be heard in the oral part of the procedure.

28 The applicant claims that the Court should:

– annul Article 2 of the Contested Regulation;

– order the Commission to pay the costs.

29 The Commission contends that the Court should:

– dismiss the action as being inadmissible;

– in the alternative, dismiss the action as being unfounded;

– order the applicant to pay the costs.

30 The intervener contends that the Court should:

– dismiss the action as being inadmissible;

– in the alternative, dismiss the action as being unfounded;

– order the applicant to pay the costs.

**Law**

***Admissibility***

31 The Commission, without formally raising an objection of inadmissibility by a separate document within the meaning of Article 130(1) of the Rules of Procedure and supported by the intervener, claims that the action is inadmissible for two reasons. First, the Commission claims that Article 2 of the Contested Regulation is not severable from the remainder of the regulation. Second, it claims that the applicant has neither standing nor a legal interest in bringing proceedings.

32 It should be borne in mind in that regard that the EU judicature is entitled to assess, according to the circumstances of each case, whether the proper administration of justice justifies dismissing the action on the merits without first ruling on its admissibility (see, to that effect, judgments of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraphs 51 and 52, and of 14 September 2016, *Trajektna luka Split* v *Commission*, T-57/15, not published, EU:T:2016:470, paragraph 84).

33 In the present case, it is appropriate to examine the substance of the action and, as the case may be, not to give a ruling on its admissibility.

***Substance***

34 The applicant relies on three pleas in law in support of its action. The first plea in law alleges that the Commission made a manifest error of assessment and an error of law in deciding not to subject Serbian imports to cumulative assessment in accordance with Article 3(4) of the basic Regulation. The second plea in law alleges that the Commission made a manifest error of assessment and an error of law in finding that protective measures against the Republic of Serbia were ‘unnecessary’, even in the absence of cumulative assessment. The third plea in law alleges that in refusing to disclose data on undercutting and underselling in relation to the Serbian exporter, the Commission infringed: (i) Article 20(2) of that regulation; (ii) the applicant’s right to disclosure and its rights of defence; and (iii) the right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union.

*The first plea in law: the Commission made a manifest error of assessment and an error of law in deciding not to subject Serbian imports to cumulative assessment in accordance with Article 3(4) of the basic Regulation*

35 The applicant contends that since, first, the margins of dumping of 38.7% established in respect of the Serbian imports exceeded the *de minimis* threshold laid down in Article 9(3) of the basic Regulation and, second, the volumes of imports from Serbia represented a market share of 1.04% and therefore exceeded the 1% threshold laid down in Article 5(7) of that regulation, the Commission erred in deciding in the Contested Regulation not to subject the imports from Serbia to cumulative assessment.

36 The applicant adds that the Contested Regulation did not make any finding that there were different conditions of competition between Serbia and the other four countries concerned on the one hand, and different conditions of competition between those five countries and the European Union on the other. In any event, it claims that the alleged ‘price follower’ status of the Serbian exporting producer is irrelevant in terms of Article 3(4)(a) and (b) of the basic Regulation.

37 As regards volumes of imports, the applicant contends that the 1% threshold laid down in Article 5(7) of the basic Regulation applies in the context of Article 3(4)(a) of that regulation, despite the fact that Article 3(4)(a) does not expressly refer to Article 5(7) of that regulation. According to the applicant,

that is confirmed by: (i) the Commission’s explanatory note of 21 September 2000 to the World Trade Organisation (WTO) Committee on Anti-Dumping Practices (Ad Hoc Group on Implementation); (ii) the fact that the Commission consistently applies that threshold; and (iii) the case-law.

38 The 1% threshold laid down in Article 5(7) of the basic Regulation is, according to the applicant, a clear and hard threshold above which volumes are not ‘negligible’.

39 According to the applicant, in the light of the wording of Article 5(7) of the basic Regulation, the approach put forward by the Commission in the Contested Regulation whereby imports very slightly exceeding 1% can be regarded as negligible and escape cumulative assessment, is at odds with the usual meaning of the provisions at issue and with their context and the purposes of the rules of which they form part and, moreover, creates a lacuna in the legislation.

40 The Commission allegedly erred in stating in recital 234 of the Contested Regulation that it could depart from the clear thresholds contained in Article 3(4) and Article 5(7) of the basic Regulation, relying on the broader considerations contained in Article 3(3) of that regulation. Article 3(4) of the basic Regulation makes no reference to Article 3(3).

41 Likewise, the applicant claims that the Commission cannot rely on its broad discretion when assessing complex economic, political and legal situations. Whether or not imports from a country exceed 1% of market share is a simple binary question.

42 The applicant alleges that the Commission also erred in finding that the ‘extra’ volumes of 0.04% were ‘immaterial’. In fact, the legal test is not whether or not the volume exceeding the strict 1% threshold — that is to say 0.04% — is material, but rather whether the imports representing a market share of 1.04%, taken as a whole, can be regarded as negligible. If a volume of imports representing a 1.04% market share and equating to more than 350 000 tonnes of exports whose value exceeded EUR 120 million is sold at dumped prices and undercuts the EU producers by 30%, its impact is unlikely to be negligible.

43 In any event, even if the Commission did have a discretion under Article 3(4) of the basic Regulation to depart from the 1% threshold, the Contested Regulation is, according to the applicant, still based on two completely irrelevant considerations and fails to consider other elements, such as dumping, underselling and price undercutting which are, in contrast, extremely relevant to determining the impact of Serbian imports on the EU industry.

44 The statement that the Serbian exporting producer was a ‘price follower’ is also alleged to be erroneous as it has no factual basis. The applicant claims that the Commission’s findings are in fact based solely on average import prices for a wide range of products and not on product-specific prices. In order to ascertain whether the Serbian exporting producer was a price ‘follower’ or ‘leader’, it was necessary to determine when it raised and lowered its prices in relation to the other exporters. The Contested Regulation does not contain any such analysis.

45 In the applicant’s view, the Commission’s reliance on average import prices is all the more flawed since Serbia had only one exporting producer, whereas two of the other four countries had several producers. The Commission should therefore have looked behind the average prices and considered the underlying prices of individual exporters from the other countries.

46 What is more, it would have been preferable to conduct a product control number by product control number (PCN-by-PCN) undercutting comparison, as the Commission did for the imports originating in the other four countries under investigation. Given that the Commission stated in recital 238 of the Contested Regulation that it did not use such data ‘because undercutting and underselling calculations only g[a]ve a snapshot during the investigation period and so do not allow for a price comparison of the trend over a number of years’, the applicant notes that Article 3(3) of the basic Regulation

expressly states that 'consideration should be given to whether there has been significant price undercutting by the dumped imports'. In that regard, the Commission's assessment did not, according to the applicant, take account of the high margin of dumping of Serbian imports (38.7%).

47 Moreover, according to the applicant, the reason put forward by the Commission in recital 238 of the Contested Regulation (see paragraph 46 above) is inconsistent with the Commission's own reasoning in recitals 235 and 236 of that regulation in which it actually relied on the average prices during the IP.

48 Further, the Contested Regulation does not take account of the overall increase in the level of imports from 0.48% in 2013 to 1.04% in the IP.

49 The Commission and the intervener dispute those arguments.

50 Under Article 3(4) of the basic Regulation, where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports are to be cumulatively assessed only if (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like EU product.

51 Article 3(4) of the basic Regulation therefore envisages three conditions, namely a margin of dumping which is more than *de minimis*, a non-negligible volume of imports and the existence of appropriate conditions of competition, all of which must be met to permit a cumulative assessment of imports from more than one country that are simultaneously subject to anti-dumping investigations. By contrast, if one of those three conditions is not met, that is sufficient to preclude a cumulative assessment.

52 In the present case, it is apparent from recitals 228 to 240 of the Contested Regulation that the Commission's conclusion that imports from Serbia should not be assessed cumulatively with imports from the other four countries is based on the following considerations:

– the margins of dumping established in relation to the imports from the countries concerned, including Serbia, exceeded the *de minimis* threshold defined in Article 9(3) of the basic Regulation;

– volumes of imports from Serbia were found to be negligible;

– Serbian export prices were different from those of the other four countries concerned.

53 First, as regards the volumes of imports from Serbia, it is apparent from recital 232 of the Contested Regulation that these were found to be negligible within the meaning of Article 3(4) of the basic Regulation, given that the volume of imports from Serbia decreased from 427 558 tonnes in 2015 to around 354 000 tonnes over the IP, that is to say, a market share of merely 1.04%.

54 Recital 232 of the Contested Regulation explains as follows:

'It is the Commission's practice to consider "negligible" a market share below the 1% threshold established by the basic Regulation at initiation stage. However, the Commission found in this case that 1[.]04% is still negligible because 0[.]04% should be regarded as immaterial, in particular when, in relative terms, Serbian import volumes are considerably lower than the volumes from each of the four other countries. Indeed, Serbia's import volumes were almost half the volumes from Brazil, the second lowest country in terms of import volumes.'

55 In recital 234 of the Contested Regulation, in response to the applicant's argument that 'Serbian exports should be cumulatively assessed with the imports from the four other countries as Serbian exports exceeded the 1% *de minimis* threshold [and] the 1% threshold d[id] not allow for any exception, however small its additional percentage would be' (recital 233 of the Contested Regulation), the Commission added:

'The decision as to whether or not imports should be assessed cumulatively must be based on all the criteria set out in Article 3(3) of the basic Regulation. Article 3(4) of the basic Regulation does not accord any particular weight to any of these individual criteria. While it is true that imports from a country cannot be cumulated if their volume is negligible, the converse does not mean that they *ipso facto* do have to be cumulated. Moreover, the basic Regulation does not explicitly fix any negligibility thresholds. While Article 5(7) of the basic Regulation may serve as guidance concerning negligible import volumes, Article 3(4) does not incorporate by reference those thresholds. Rather, the wording gives sufficient flexibility to the Commission to carry out a case-by-case analysis taking into account that the "extra" volumes of 0.04% were immaterial.'

56 The volumes of imports (in tonnes) and market shares (established by comparing volumes of imports with EU consumption on the free market) for Serbia and the other four countries are set out in Table 3 of the Contested Regulation (see recital 232 of that regulation).

57 Secondly, as regards the import prices set out in Table 4 of the Contested Regulation, the Commission noted in recital 235 of that regulation that, on the one hand, 'even if the Serbian average sales prices also decreased during the period considered, their average sales price during the investigation period [(EUR 365/tonne)] [was] the highest during the IP, and [was] significantly higher than the average sales prices for Brazil, Iran, Russia and Ukraine, [which ranged] between [EUR 319/tonne and EUR 346/tonne]' and, on the other hand, 'the Serbian average sales prices [were] significantly higher than the average sales prices of the four other countries concerned'.

58 The Commission added, in recital 236 of the Contested Regulation, that 'the price setting, combined with the negligible volume, suggest[ed] that the Serbian exporting producer [was] rather a price follower than a price setter for the product concerned'. According to the Commission, 'this [was] also exemplified by the fact that its price decrease between 2015 and the investigation period [was] lower also in relative terms, compared to the price decrease of the four other countries concerned'.

59 In that regard, the Commission argued in the written procedure that the first plea should be dismissed as being ineffective, since the applicant did not dispute the conclusion that it had reached, based on an assessment set out in recitals 235 and 236 of the Contested Regulation under Article 3(4)(b) of the basic Regulation and which was sufficient to justify the Contested Regulation, since the three conditions laid down in Article 3(4) of the basic Regulation are cumulative.

60 However, first, it is clear that, contrary to the Commission's assertion during the written procedure, the title of the first plea put forward by the applicant in the present case was not limited to Article 3(4)(a) of the basic Regulation but simply referred to Article 3(4) of that regulation. Second, while the applicant maintains that the Contested Regulation failed to make a finding that there were different conditions of competition between Serbia and the other four countries, on the one hand, and different conditions of competition between those five countries and the European Union on the other, that is precisely because it both disputes the assessment in recitals 235 and 236 of that regulation and also regards that assessment as irrelevant in terms of Article 3(4)(a) and (b) of the basic Regulation. Third and last, it must be noted that the Commission did not make a clear and unambiguous finding that, in respect of imports from Serbia, a cumulative assessment was not appropriate in view of the conditions of competition, whereas it made a very precise finding in respect of the other four countries (see recital 241 of the Contested Regulation).

61 Furthermore, in its reply to a question put by the Court at the hearing, the Commission accepted that the prices charged by the exporters could also play a role in the examination of the second condition of Article 3(4) of the basic Regulation (non-negligible volume of imports) and stated that recitals 235 and 236 of the Contested Regulation could thus also be understood as a 'qualitative assessment' strengthening the 'quantitative assessment' of the negligibility of the volumes of imports from Serbia which is set out in recitals 232 to 234 of that regulation, and stated that, from that standpoint, the claim that the present plea should be dismissed as being ineffective 'bec[ame] moot'.

62 Consequently, that plea should not be dismissed as being ineffective, but rather, on the contrary, the substance of that plea should, in the first place, be examined with regard to the second condition laid down in Article 3(4) of the basic Regulation (non-negligible volume of imports).

63 In that regard, it must be pointed out, first of all, that, unlike the first part of Article 3(4)(a) of the basic Regulation, which defines the first condition (the margin of dumping) precisely, by reference to the *de minimis* level provided for in Article 9(3) of that regulation, namely 2%, the second part of Article 3(4)(a) of the basic Regulation, in relation to the second condition, makes no cross-reference and simply requires that the volume of imports from each country not be 'negligible', without further defining that term.

64 It is true that Article 5(7) of the basic Regulation provides that proceedings are not to be initiated against countries whose imports represent a market share of below 1% unless such countries collectively account for 3% or more of Union consumption. Furthermore, in the judgment of 25 January 2017, *Rusal Armenal* v *Council* (T-512/09 RENV, EU:T:2017:26, paragraphs 104 and 105), the Court held, in the context of imports representing a market share of 5.26%, that that provision was specifically intended to make explicit the circumstances in which the share of imports in EU consumption was too low for those imports to be regarded as causing dumping and that that provision therefore complemented Article 3(4)(a) of that regulation.

65 However, on the one hand, and as the applicant also acknowledges, as regards the second condition (non-negligible volume of imports), Article 3(4)(a) of the basic Regulation makes no cross-reference to Article 5(7) of that regulation nor to any other provision of the basic Regulation.

66 On the other hand, the Commission is correct in asserting that Article 5(7) of the basic Regulation and Article 3(4) of that regulation concern different stages of the investigation. Indeed, the last sentence of Article 5(7) of that regulation provides that, in the situation referred to in that provision, proceedings are not even to be initiated. By contrast, Article 3(4) of the same regulation concerns imports which are subject to an investigation commenced by the Commission following the initiation of proceedings (see Article 6(1) of the basic Regulation).

67 Therefore, while, as the Commission correctly stated in recital 234 of the Contested Regulation, Article 5(7) of the basic Regulation may serve as guidance concerning negligible import volumes, that does not mean that, in the context of Article 3(4) of the basic Regulation, imports from the country at issue representing a market share exceeding 1% cannot be regarded as negligible.

68 In that context, it should be recalled that, according to settled case-law, in the sphere of the common commercial policy, and most particularly, in the realm of measures to protect trade, and in particular when determining injury, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they must examine. It follows that the EU judicature must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate or whether there has been a manifest error of assessment or a misuse of powers (see, to that effect, judgment of 18 September 2012, *Since Hardware (Guangzhou)* v *Council*, T-156/11, EU:T:2012:431, paragraphs 134 and 136 and the case-law cited).

69 In the present case, the volume of imports from Serbia represented a market share of 1.04% during the IP and was therefore very close to the situation where, as a rule, Article 5(7) of the basic Regulation prohibits the Commission from initiating the investigation (namely 'a market share of below 1%'). Furthermore, it follows from recital 232 of the Contested Regulation that the volumes of imports from Serbia were considerably lower than the volumes from each of the other four countries. In particular, as is apparent from the same recital, they were almost half of those from Brazil, the second lowest country in terms of volumes of imports.

70 In those circumstances, the accuracy of which is not disputed by the applicant, it does not appear that the Commission committed a manifest error of assessment of the facts or a misuse of powers as referred to in the case-law cited in paragraph 68 above.

71 It is true that, in the explanatory note referred to in paragraph 37 above, the Commission explained to the WTO bodies that, as regards the conditions for a cumulative assessment of the effects of imports, '[the European Union] establish[ed] negligible levels of imports by reference to Article 5(7) of the [basic Regulation]' and that 'in other words, imports [were] considered to be negligible where their market share [was] below 1%, unless, in the case of investigations concerning more than one country, the market share of those countries collectively accounts for 3% or more'.

72 Furthermore, the Commission in its practice regularly refers to Article 5(7) of the basic Regulation in the context of Article 3(4) of the basic Regulation.

73 Indeed, in addition to the examples mentioned by the applicant in which the Commission referred either directly to Article 5(7) of the basic Regulation by stating that the volumes of imports of each country are 'not negligible in the sense of [that provision]' or to the threshold of 1% of Union consumption, stating that 'the import volumes of the two abovementioned producers were minimal during the Investigation Period: significantly less than 1% of EU consumption', the Commission also referred to that provision in the same way in several other cases (see, for example, as regards the first situation, recital 127 of Commission Implementing Regulation (EU) 2015/763 of 12 May 2015 imposing a provisional anti-dumping duty on imports of certain grain oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ 2015 L 120, p. 10), and recital 217 of Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1); as regards the second situation, recital 76 of Commission Decision 2006/781/EC of 15 November 2006 terminating the anti-dumping proceeding concerning imports of cathode-ray colour television picture tubes originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand (OJ 2006 L 316, p. 18); and, as regards the third situation, recital 115 of Commission Implementing Regulation (EU) 2019/576 of 10 April 2019 imposing a provisional anti-dumping duty on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ 2019 L 100, p. 7), recital 168 of Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2017 L 22, p. 14 ), and recital 109 of Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ 2016 L 37, p. 1)).

74 Furthermore, also in other cases, while the Commission did not refer expressly to Article 5(7) of the basic Regulation, it did refer to a *de minimis* level or threshold, which was therefore very probably the threshold laid down in that provision (see, for example, recital 89 of Council Implementing Regulation

(EU) No 585/2012 of 26 June 2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, and terminating the expiry review proceeding concerning imports of certain seamless pipes and tubes of iron or steel originating in Croatia (OJ 2012 L 174, p. 5), and recital 236 of Council Regulation (EC) No 1256/2008 of 16 December 2008 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia following a proceeding pursuant to Article 5 of Regulation (EC) No 384/96, originating in Thailand following an expiry review pursuant to Article 11(2) of that regulation, originating in Ukraine following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of the same Regulation, and terminating the proceedings in respect of imports of the same product originating in Bosnia and Herzegovina and Turkey (OJ 2008 L 343, p. 1)).

75 By contrast, cases in which the Commission has simply declared that the volumes of imports at issue were not negligible within the meaning of Article 3(4) of the basic Regulation, without referring to Article 5(7) of that regulation or to a *de minimis* level or threshold, are rather rare, particularly in its recent practice (see, for example, recital 105 of Commission Regulation (EC) No 1742/2000 of 4 August 2000 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 199, p. 48), recital 65 of Commission Regulation (EC) No 1472/2000 of 6 July 2000 imposing a provisional anti-dumping duty on imports of polyester staple fibres originating in India and the Republic of Korea (OJ 2000 L 166, p. 1) and recital 32 of Commission Regulation (EC) No 178/98 of 23 January 1998 imposing a provisional anti-dumping duty in imports of potassium permanganate originating in India and the Ukraine (OJ 1998 L 19, p. 23)).

76 Nevertheless, as the Commission correctly observes, the lawfulness of a regulation imposing anti-dumping duties or, as in the present case, terminating the proceedings without imposing anti-dumping duties, must be assessed in the light of legal rules, and in particular, the provisions of the basic Regulation, not on the basis of the Commission's and the Council's alleged previous decision-making practice (see, to that effect, judgment of 18 October 2016, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-351/13, not published, EU:T:2016:616, paragraph 107).

77 As regards the explanatory note referred to in paragraph 37 above, the Commission is also correct to argue that that document cannot be categorised as a guideline from which a self-imposed limitation of its discretion can be inferred within the meaning of the case-law cited in paragraph 138 of the judgment of 25 October 2005, *Groupe Danone* v *Commission* (T-38/02, EU:T:2005:367). Indeed, it is apparent from that document, which is addressed to a WTO committee, that the Commission's objective was not to limit the discretion it enjoys under the basic Regulation, but merely to inform the WTO bodies of its usual practice.

78 Furthermore, since the basic Regulation provides that, below the 1% threshold laid down in Article 5(7) of that regulation, for investigations concerning only one country, proceedings are not to be initiated (Article 5(7) of that regulation) and injury is normally to be regarded as negligible (Article 9(3) of that same regulation), it is logical for the Commission to use that threshold as a reference point for the purposes of assessing whether the volume of imports is negligible within the meaning of Article 3(4) of the regulation at issue but not, however, to hold that that threshold is applicable in the context of that provision.

79 Moreover, two of the three measures mentioned by the intervener in paragraph 28 of its statement in intervention, even if their context is different (review proceedings and examination of causation), do demonstrate that the Commission had already shown it is prepared to regard imports over 1% market share as low or negligible (see, inter alia, recitals 51, 52 and 79 of Council Implementing Regulation (EU) No 1342/2013 of 12 December 2013 repealing the anti-dumping measures on imports of certain iron or steel ropes and cables originating in the Russian Federation following an expiry review pursuant

to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2013 L 338, p. 1), and recitals 162 to 166 of Commission Regulation (EC) No 540/2002 of 26 March 2002 imposing a provisional anti-dumping duty on imports of certain welded tubes and pipes, of iron or non-alloy steel originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine (OJ 2002 L 83, p. 3)).

80 Therefore, the Commission did not commit a manifest error of assessment when it took the view in the present case that the volume of imports from Serbia remained negligible within the meaning of Article 3(4) of the basic Regulation, despite the increase in the level of imports from 0.48% in 2013 to 1.04% during the IP. Indeed, while it follows from Article 3(3) of that regulation that, as far as the volume of dumped imports is concerned, an examination should be made of whether there has been a significant increase of those imports, either in absolute quantities or relative to production or consumption in the European Union, where, as in the present case, such an increase (even if significant in relative terms) results in a volume which remains negligible, that increase cannot affect the legality of the decision taken by Commission under Article 3(4)(a) of that regulation.

81 In addition, the Commission was fully entitled to consider, in recital 248 of the Contested Regulation, that the fact that Serbian average sales prices during the IP were significantly higher than those of the other four countries concerned was an indication that that low volume of imports could not cause injury to the EU industry.

82 In that respect, it must be noted that the issue of whether a volume of imports is negligible within the meaning of Article 3(4)(a) of the basic Regulation (which sets out conditions for the effects of imports of a product from more than one country to be subject to cumulative assessment, where such imports are simultaneously subject to anti-dumping investigations) cannot be reduced to a simple issue of how large that volume is (even in relative terms, compared to the EU market or compared to volumes of imports from other third countries) but rather extends to its quality, that is to say other factors which indicate the effects which that volume is capable of having.

83 It must be stated that the Commission was correct in asserting, in its reply to a question put by the Court at the hearing, that, where prices associated with imports from a country, the volume of those imports amounting to an insignificant market share, are high, that fact alone can support a finding that the volume is negligible, without it being necessary to analyse those prices in more detail, as claimed by the applicant in the present case (see paragraphs 42 to 44 above).

84 It must be added that, in the present case, the prices associated with imports from Serbia were higher than those of the other four countries throughout the entire period under examination (see Table 4 of the Contested Regulation).

85 In those circumstances, the applicant's arguments relating to the second condition (non-negligible volume of imports) must be rejected and, consequently, since the conditions laid down in Article 3(4) of the basic Regulation are cumulative, the first plea in its entirety must be rejected, there being no need to examine, in the second place, whether on the basis of the factors set out in recitals 235 and 236 of the Contested Regulation, the Commission could also conclude that a cumulative assessment of the effects of the imports was not appropriate in the light of the conditions of competition within the meaning of Article 3(4)(b) of the basic Regulation.

*Second plea in law: the Commission made a manifest error of assessment and an error of law in finding that protective measures against the Republic of Serbia were 'unnecessary', even in the absence of cumulative assessment*

86 The applicant submits that even if the Commission was correct not to carry out a cumulative assessment of Serbian imports and those from the other four countries, it ought to have examined whether the dumped Serbian imports on their own contributed to material injury to the EU industry.

87 According to the applicant, having regard in particular to recital 16 of the basic Regulation, Article 9(2) of that regulation should be interpreted in the light of the overall objective of the European Union's anti-dumping regime, which is to prevent material injury to the EU industry through dumping by exporting producers from third countries.

88 Since, according to Article 9(3) of the basic Regulation, 'for proceedings initiated pursuant to Article 5(9) [of that regulation] injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5(7) [of that regulation]', there is no basis in Article 9(3) of the same regulation for concluding that imports which are slightly above the 1% threshold laid down in Article 5(7) of that regulation can a priori be considered to be imports which cause negligible injury. According to the applicant, it can be inferred only that imports which are negligible, because they are below that threshold, may or may not be considered to be imports which cause negligible injury.

89 In that regard, Article 3 of the basic Regulation provides important guidance on the determination of injury. Indeed, the applicant states that it called for an independent injury assessment concerning imports from Serbia in its observations on the additional Final Disclosure dated 4 August 2017.

90 The applicant claims that, despite that, the Commission made a very cursory assessment of whether measures against the Republic of Serbia were necessary. It failed to examine, as it should have done, whether imports originating in Serbia on their own could have contributed to material injury, taking into account the various considerations set out in Article 3 of the basic Regulation, that is to say the high margin of dumping (38.7%), the data on undercutting and underselling, and the overall increase in the level of imports (from 0.48% in 2013 to 1.04% over the IP). It is clear from recitals 240 and 248 of the Contested Regulation that the only reason the Commission gave for concluding that measures were unnecessary against imports from Serbia was that those imports were *de minimis*. That is erroneous, given that, the applicant claims, those imports represented a 1.04% market share, which exceeded the clear 1% threshold.

91 According to the applicant, the average prices, referred to in that context in recital 248 of the Contested Regulation, do not show the full picture, since the single Serbian producer was actually selling at prices comparable to those of some of the other producers which were found to have caused injury to EU producers and on which anti-dumping duties were imposed.

92 According to the applicant, the fact that the Serbian exporting producer might have been a 'price follower' is irrelevant. Injury is caused by the setting of prices at levels which undercut EU prices for competing products. If, as a matter of fact, Serbian prices undercut EU prices, then in the applicant's view, it makes no difference whether the Serbian producer was following the (dumping) prices of other exporters or driving the fall in prices. Either way, the EU industry is injured. If there is dumping, injury and a causal link, then the Commission must impose duties, on a non-discriminatory basis, on all imports from all sources. It cannot claim, in particular after the Serbian producer came under the control of a company owned by the People's Republic of China, that the issue of the Serbian prices would be automatically solved by imposing measures on the four other countries concerned because the Serbian exporting producer is purportedly a 'price follower'.

93 The applicant argues that the cursory and partial nature of the examination of imports from Serbia tends to confirm the overall impression that the Commission's decision to terminate the proceedings against Serbia was not driven by the relevant legal principles, but by other (political) considerations, which are completely irrelevant to the analysis that should be carried out under the basic Regulation. The fact that no other reasons were set out in the Contested Regulation is, it is alleged, also contrary to Article 296 TFEU.

94 The Commission, supported by the intervener, disputes those arguments.

95 As set out in the first sentence of Article 9(2) of the basic Regulation, where protective measures are unnecessary, the investigation or proceedings are to be terminated.

96 Under Article 9(3) of the basic Regulation, in the version in force at the date when the Contested Regulation was adopted, for proceedings initiated pursuant to Article 5(9) of that regulation, injury is normally to be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5(7) of that regulation. Those same proceedings are to be terminated immediately where it is determined that the margin of dumping is less than 2%, expressed as a percentage of the export price, provided that it is only the investigation that is to be terminated where the margin is below 2% for individual exporters and they are to remain subject to the proceedings and may be reinvestigated in any subsequent review carried out in respect of the country concerned pursuant to Article 11 of the basic Regulation.

97 In the present case, the applicant submits, in essence, first, that the decision to terminate the proceedings in respect of imports from Serbia is based on a cursory and partial examination of those imports and, second, that the failure to provide reasons other than those set out in the recitals of the Contested Regulation constitutes an infringement of Article 296 TFEU.

98 As regards the complaint alleging infringement of Article 296 TFEU, it is settled case-law that the statement of reasons required by that provision must clearly and unequivocally show the reasoning of the EU institution which adopted the contested measure, so as to inform the persons concerned of the justification for the measure adopted and thus to enable them to defend their rights and the European Union Courts to exercise their powers of review (see judgment of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 139 and the case-law cited).

99 The statement of reasons need not give details of all relevant factual or legal aspects, and the question whether it fulfils the applicable requirements must be assessed with reference not only to the wording of the measure but also to its context, and to the whole body of legal rules governing the matter in question. It is sufficient if the institution which adopted the measure sets out the facts and legal considerations which have decisive importance in the context of the regulation (see, to that effect, judgment of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 140 and the case-law cited).

100 In particular, the institutions are not obliged to adopt a position on all the arguments relied on by the parties concerned; it is sufficient to set out the facts and the legal considerations having decisive importance in the context of the decision (see judgment of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 141 and the case-law cited).

101 In the present case, recital 240 of the Contested Regulation, which follows the analysis of the margins of dumping, the volumes of imports from Serbia and Serbian export prices, states that ‘therefore, the Commission concluded that the imports from Serbia should not be cumulatively assessed with the imports from the four other countries’, that ‘as a consequence of the finding that imports from Serbia were *de minimis*, protective measures [were] unnecessary with regard to the imports of [hot-rolled flat products] originating in Serbia’, and that ‘thus, in accordance with Article 9(2) of the basic Regulation, the proceeding should be terminated with regard to the imports from Serbia’.

102 In addition, the first indent of recital 248 of the Contested Regulation states that ‘Serbian import volumes were found to be *de minimis*. As a consequence they are negligible and cannot be found to cause injury to the EU industry’, and that ‘the fact that Serbian average sale prices during the [IP] were significantly higher than the average sales prices of the four other countries concerned [was] yet another indication that this low volume of imports cannot cause injury to the EU industry’.

103 It must be observed that recitals 240 and 248 of the Contested Regulation clearly and unequivocally show the Commission's reasoning as regards the need to adopt protective measures in relation to imports from Serbia, within the meaning of Article 9(2) of the basic Regulation.

104 The question whether the Commission could decide to terminate the proceedings in respect of imports from Serbia on the sole basis of the factors identified in particular in recitals 240 and 248 of the Contested Regulation or whether, in that context, it should have examined other factors, such as the (high) margin of dumping, data on undercutting and underselling and the overall increase in the level of those imports and, as a result, should have stated reasons in that regulation in respect of those other factors, relates to the substance, and therefore to the scope of the examination of the complaint alleging a cursory and partial examination of those imports, as set out in paragraph 97 above.

105 Furthermore, it must be pointed out that in recitals 237 to 239 of the Contested Regulation, the Commission expressly stated its reasons for failing to take into account data on undercutting and underselling in respect of the Serbian exporting producer. As regards the Serbian exporting producer's margins of dumping and the overall increase in the level of imports, it follows from recital 230 and Table 3 of that regulation, first, that the Commission was aware that those margins exceeded the *de minimis* threshold defined in Article 9(3) of the basic Regulation and, second, that the Commission was not unaware of the increase in the level of imports.

106 The complaint alleging infringement of Article 296 TFEU must therefore be rejected.

107 As regards the complaint alleging a cursory and partial examination of imports from Serbia, it follows from recital 240 and Article 2 of the Contested Regulation that the Commission's decision to terminate the anti-dumping proceeding concerning imports from Serbia is based on Article 9(2) of the basic Regulation and on the finding that 'imports from Serbia were *de minimis*'.

108 In recital 248 of the Contested Regulation, the Commission added that 'the fact that Serbian average sale prices during the [IP] were significantly higher than the average sales prices of the four other countries concerned [was] yet another indication that this low volume of imports cannot cause injury to the EU industry'.

109 While that may appear 'cursory and partial', in particular because the Commission's decision under Article 9(2) of the basic Regulation was based on the same factors as those forming the basis of its decision under Article 3(4) of the basic Regulation, it does not render Article 2 of the Contested Regulation unlawful, for the following reasons.

110 Article 9(2) of the basic Regulation provides that the investigation or proceedings are to be terminated 'where protective measures are unnecessary', without specifying the circumstances in which such measures are to be regarded as unnecessary.

111 Accordingly, Article 9(2) of the basic Regulation allows the Commission a certain margin of discretion.

112 In addition, as has already been stated in paragraph 68 above, it is settled case-law that in the sphere of the common commercial policy, and most particularly in the realm of measures to protect trade, and in particular when determining injury (which, in accordance with Article 3(1) of the basic Regulation, must be material), the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they must examine. The EU judicature must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate or whether there has been a manifest error of assessment or a misuse of powers.

113 It is true that, generally, the decision on whether or not an anti-dumping duty should be imposed in a particular case should be based on a detailed analysis of, inter alia, whether dumping has taken place (Article 2 of the basic Regulation) and whether injury has been caused (Article 3 of the basic Regulation).

114 However, it follows from the text of the basic Regulation that such detailed analysis is not always necessary and that it may be appropriate to terminate an investigation or proceedings, inter alia, on the sole basis of the margin of dumping or volumes of imports. Indeed, under Article 9(3) of the basic Regulation, the proceedings are to be terminated immediately where it is determined that the margin of dumping is less than 2% expressed as a percentage of the export price. According to the same provision, injury is normally to be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5(7) of that regulation.

115 In the present case, first, it follows from recitals 240 and 248 of the Contested Regulation that it was precisely one of those factors, namely the volume of imports from Serbia, which played a central role in the Commission's reasoning.

116 Second, it follows from recital 232 of the Contested Regulation that the volume of imports from Serbia represented a market share of 1.04% during the IP.

117 A market share of 1.04% during the IP, the factual accuracy of which is not contested by the applicant, is very close to the threshold (1%) below which injury caused by imports from a third country is, under Article 9(3) of the basic Regulation, read in conjunction with Article 5(7) of that regulation, normally regarded as negligible.

118 Moreover, as has already been stated in paragraph 108 above (see also paragraphs 57, 58 and 81 above), it follows from the Contested Regulation (see recitals 235, 236 and 248) that the Serbian average sales prices were higher than those of the other four countries concerned and that in that regard the Commission took the view that that was an indication that the low volume of imports could not cause injury to the EU industry.

119 It follows that, contrary to what might be suggested by the wording alone of recital 240 of the Contested Regulation, the finding that protective measures were unnecessary with regard to imports from Serbia was not based solely on the '*de minimis*' level of the volumes of those imports, but on the interaction between that factor and the factor set out in paragraph 118 above.

120 It must be stated that, for reasons analogous to those set out in paragraphs 83 and 84 above, that interaction could justifiably cause the Commission to find that it was unnecessary to adopt protective measures with regard to volumes of imports which, although they exceeded the threshold laid down in Article 9(3) of the basic Regulation, remained very close to that threshold, as in the present case.

121 In those circumstances, it has not been shown that the Commission exceeded its margin of discretion in the application of Article 9(2) of the basic Regulation.

122 Accordingly, the complaint based on a cursory and partial examination of imports from Serbia and, therefore, the second plea in law in its entirety must be rejected as being unfounded.

*The third plea in law: in refusing to disclose data on undercutting and underselling in relation to the Serbian exporter, the Commission infringed: (i) Article 20(2) of the basic Regulation; (ii) the applicant's right to disclosure and its rights of defence; and (iii) the right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights*

123 As a preliminary point, the applicant asserts that Article 3(3) of the basic Regulation states that price undercutting is a factor which must be considered when assessing the effect of the dumped imports on prices, which is relevant to determining injury. Price undercutting and underselling are therefore, in the applicant's view, relevant to the question of whether measures against the Republic of Serbia were 'unnecessary' within the meaning of Article 9(2) of that regulation.

124 The applicant states that it requested disclosure of that information on several occasions: namely on 10 April 2017, following the Information Document that indicated that the proceedings against the Republic of Serbia might be terminated on the ground that the Serbian exporting producer was a 'price follower'; on 2 May 2017, in its comments on that information document; and on 30 May 2017, in an email to the Commission's case team. The applicant points out that on 7 August 2017, in its comments on the Final Disclosure, it reiterated its argument that there was no legal basis for excluding the Republic of Serbia because imports from Serbia were not *de minimis*, as they exceeded the 1% threshold set by law, and that the Commission had failed to disclose evidence to support its finding that the Serbian exporting producer was a 'price follower', a finding which formed the basis for the termination of the proceedings against the Republic of Serbia.

125 Moreover, the applicant submits that at the hearing of 4 May 2017 the Hearing Officer expressed agreement with the applicant both on its request for disclosure of the injury margin calculations and of the 'Serbian undercutting'. Furthermore, the report of the hearing of 27 July 2017 also stated that 'as regards exclusion of [the Republic of Serbia], the Hearing Officer could not understand why undercutting for Serbia was not disclosed, as it would help the industry to understand the reasons underpinning the decision'.

126 The applicant claims that, despite that, the Commission systematically refused to disclose the evidence at issue throughout the proceedings that led to the adoption of the Contested Regulation.

127 The reasons stated for refusing to disclose the calculation of the 'Serbian undercutting', set out in recital 238 of the Contested Regulation, are, in the applicant's view, erroneous for two reasons.

128 First, the applicant maintains that the disclosure of average prices is no substitute for undercutting data. Undercutting is done on a product by product (PCN by PCN) basis, which makes an accurate comparison of prices possible. By contrast, the higher average prices set out in recital 235 of the Contested Regulation could either show that Serbian imports undercut and undersold less than imports from the other four countries, or that there is a higher value mix in Serbian exports, which cannot be established as the requested undercutting and underselling analysis was not disclosed. It is impossible to determine whether the Commission has compared like-to-like products without a more detailed breakdown of the product by product comparison.

129 Second, the applicant claims that the reason why the Commission did not look at undercutting during the IP cannot be reconciled with its own reasoning in recitals 235 and 236 of the Contested Regulation, where the Commission actually relied on the average prices during the IP to conclude (erroneously) that Serbian volumes of imports were negligible and that the Serbian exporting producer was a 'price follower'.

130 Furthermore, the Commission cannot, in the applicant's view, validly argue that it did not need to disclose the data on undercutting and underselling because it did not rely on that information. Such a position would render illusory the rights of the defence, despite respect for those rights being of crucial importance in anti-dumping investigations. According to the applicant, an analogy can be drawn with

competition investigations in which the EU Courts have stated that it is not for the Commission to decide on its own whether or not certain documents are exculpatory of the undertaking concerned. The principle of equality of arms and its corollary in competition cases, namely the principle that the information available to the Commission and the defence should be the same, requires that the undertaking under investigation should be able to assess the probative value of the documents.

131 According to the applicant, disclosure of the information at issue and an impartial examination of that information would have led to a different outcome. In the applicant's view, had it been possible for it to be aware of the 'Serbian undercutting' calculation, it would have been able to disprove the claim that the exporting producer was a 'price follower', showing that injury caused by it to the EU industry was not negligible within the meaning of Article 9(3) of the basic Regulation. The applicant claims that it could have used that information to present a compelling argument before the Commission that the proposed approach was erroneous and was not justified by the evidence in the public file.

132 The applicant adds that it could also have informed the Member States of its concerns. Indeed, it is notable that the Member States expressed an unprecedented degree of concern in respect of the Commission's proposal in the present case, a proposal which the committee established under Article 15(1) of the basic Regulation initially rejected by qualified majority.

133 The Commission and the intervener dispute those arguments.

134 Under Article 20(2) of the basic Regulation, the parties mentioned in Article 20(1), including the complainants, may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

135 In the present case, it follows from recitals 228 to 240 (and 248) of the Contested Regulation that the Commission's finding, first, that imports from Serbia should not be assessed cumulatively with imports from the other four countries and, second, that the proceedings should be terminated in respect of imports from Serbia, is based on the three considerations set out in paragraph 52 above.

136 It is apparent from the file submitted to the Court that the applicant was informed of those considerations both on 4 April 2017, by means of the Information Document (see paragraphs 129 to 137 of that document, submitted as Annex A.30 to the application), and on 17 July 2017, in the Final Disclosure (see paragraphs 188 to 195 of the Final Disclosure, submitted as Annex A.31 to the application), and that it was afforded the opportunity during the administrative procedure to make its views known on the truth and relevance of those considerations (see, inter alia, recitals 23, 24 and 32 of the Contested Regulation).

137 It follows that, in accordance with Article 20(2) of the basic Regulation, the applicant was informed of the essential facts and considerations on the basis of which it was intended to recommend the termination of the proceedings in respect of imports from Serbia without the imposition of measures, and was afforded the opportunity to make its views known, and that its rights of defence have therefore been respected in the present case.

138 It must be recalled, in that regard, that respect for the rights of the defence cannot require the institutions of the European Union to support the point of view of the person concerned. In order for the undertakings' submission of views to be effective it is necessary only that they have been submitted in good time so that the EU institutions may take cognisance of them and assess, with all the requisite attention, their relevance for the content of the measure being adopted (see, to that effect, judgment of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, EU:T:2014:1076, paragraph 43 and the case-law cited).

139 Furthermore, it follows from the above that the Commission was entitled, without committing any error, to terminate the proceedings in respect of imports from Serbia on the sole basis of the considerations set out in paragraph 52 above.

140 As regards the applicant's argument based on an analogy with competition case-law, more specifically the judgment of 29 June 1995, *ICI* v *Commission* (T-36/91, EU:T:1995:118), in which the Court held, in paragraph 111, that 'it was not for the Commission to decide on its own whether the documents seized in the course of the investigation of the present cases were exculpatory or not [of the undertakings concerned]', that 'the principle of equality of arms and its corollary in competition cases, namely the principle that the information available to the Commission and the defence [ought to] be the same, required that the applicant should be able to assess the probative value of the documents emanating from [the undertaking in question] which the Commission had not annexed to the statement of objections' and that it could not be accepted that 'when the Commission investigated the infringement, it was the only party that had the documents [in question] and was therefore able to decide all by itself whether or not to use them in order to prove the infringement, whereas the applicant had no access to them and so could not likewise decide whether or not to use them in its defence', that argument must be rejected.

141 It is true that it is clear from the case-law that the requirements stemming from respect for the rights of the 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-dumping 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 dumping and the resultant injury (see judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 65 and the case-law cited).

142 However, in the present case, neither the applicant nor, indeed, its members are in a situation comparable to that of an undertaking which risks having a penalty or an anti-dumping duty imposed on it. It follows that the applicant cannot usefully rely on the case-law to which it refers.

143 As regards the alleged failure to have regard to the principle of good administration, it follows from settled case-law that the Commission is required during an administrative procedure in the matter of defence against dumped imports from non-EU countries to respect the fundamental rights of the European Union, which include the right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights. According to the case-law relating to the principle of sound administration, where the EU institutions have a discretion, respect for the safeguards established by the EU legal order in administrative procedures is of even more fundamental importance. Those safeguards include, in particular, the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, judgment of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 189 and the case-law cited).

144 However, it has already been pointed out in paragraphs 113 and 114 above that, while in general the decision in a particular case as to whether or not to impose an anti-dumping duty should be based on detailed analysis, inter alia, of whether dumping has occurred (Article 2 of the basic Regulation) and of whether injury has been caused (Article 3 of the basic Regulation), such detailed analysis is not always required and it may be appropriate to terminate an investigation or proceedings, in particular, on the sole basis of the margin of dumping or volumes of imports.

145 In the present case, it follows from examination of the second plea that the Commission was correct in deciding to terminate the proceedings concerning imports from Serbia on the sole basis of volumes of imports and average sales price data, and without analysing data on undercutting and underselling.

146 Accordingly, it is clear that the Commission examined all the relevant factors in the present case and consequently did not fail to have regard to the principle of sound administration.

147 Therefore, the third plea must also be rejected.

148 That conclusion cannot be called into question by the undercutting and underselling margins for the Republic of Serbia which the applicant requests be produced. Such a request must therefore also be rejected.

149 Consequently, the action must be dismissed in its entirety, there being no need to give a ruling on its admissibility.

**Costs**

150 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.

151 Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission and the intervener, in accordance with the forms of order sought by those parties.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Eurofer, European Steel Association, AISBL, to bear its own costs and to pay those incurred by the European Commission and HBIS Group Serbia Iron & Steel LLC Belgrade.**

Collins Barents Passer

Delivered in open court in Luxembourg on 12 March 2020.

E. Coulon
Registrar

S. Gervasoni
President