Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

18 May 2022*

(Safeguard measures – Market for steel products – Implementing Regulation (EU) 2019/159 – Action for annulment – Interest in bringing proceedings – Standing to bring proceedings – Admissibility – Equal treatment – Legitimate expectations – Principle of sound administration – Duty of care – Threat of serious injury – Manifest error of assessment – Initiation of a safeguard investigation – Competence of the Commission – Rights of the defence)

In Case T-245/19,

Uzina Metalurgica Moldoveneasca OAO, established in Rîbnița (Moldova), represented by P. Vander Schueren and E. Gergondet, lawyers,

applicant,

v

European Commission, represented by G. Luengo and P. Němečková, acting as Agents,

defendant,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, M. Jaeger (Rapporteur) and O. Porchia, Judges,

Registrar: I. Pollalis, Administrator,

having regard to the written part of the procedure, in particular:

– the application lodged at the Registry of the General Court on 10 April 2019,

– the objection of inadmissibility raised under Article 130 of the Rules of Procedure of the General Court by the Commission, by separate document lodged at the Court Registry on 26 June 2019,

– the observations on that plea lodged by the applicant on 20 August 2019,

– the order of 13 February 2020 reserving the decision on the objection of inadmissibility for the final judgment,

* Language of the case: English.

further to the hearing on 21 September 2021,

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, Uzina Metalurgica Moldoveneasca OAO, seeks annulment of Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ 2019 L 31, p. 27; 'the contested regulation'), in so far as it applies to the applicant.

Background to the dispute

2 The applicant, established in the region of Transnistria in Moldova, is a producer of two categories of steel products subject to the safeguard measures imposed under the contested regulation: product category No 13 (Rebars) and product category No 16 (Non Alloy and Other Alloy Wire Rod).

3 On 28 April 2016, in the light of the situation of the Union steel industry, the European Commission adopted Implementing Regulation (EU) 2016/670 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries (OJ 2016 L 115, p. 37).

4 On 23 March 2018, the United States of America introduced import duties under Section 232 of the Trade Expansion Act ('Section 232').

5 On 26 March 2018, in the light of the statistical data collected following the introduction of surveillance measures, the Commission initiated a safeguard investigation in order to examine the situation of several categories of steel products.

6 In so far as its analysis of the data led it to conclude provisionally that the Union steel industry was threatened with serious injury in so far as concerned 23 of the 26 product categories in respect of which an increase in imports was established following the investigation, the Commission adopted Implementing Regulation (EU) 2018/1013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products (OJ 2018 L 181, p. 39; 'the provisional regulation').

7 On 31 January 2019, taking the view that the Union steel industry was threatened with serious injury in respect of 26 categories of steel products, the Commission adopted the contested regulation, which put in place definitive safeguard measures for a period of three years in the form of category-specific tariff-rate quotas the quantitative ceiling of which was set at the average import volume of the countries concerned during the period from 2015 to 2017, increased by 5% to ensure that traditional trade flows are maintained and existing user and importing industry in the Union are sufficiently supported.

8 Contrary to the situation that prevailed in the context of the provisional safeguard measures, the contested regulation established specific tariff-rate quotas per country in respect of countries with a significant supplying interest (that is to say, countries with a share of more than 5% of imports for the product category concerned). A 'residual' tariff-rate quota was also established in respect

of the other exporting countries to the territory of the European Union. The Commission equally considered that when a supplying country had exhausted its specific tariff-rate quota, it should be allowed to have access to the residual tariff-rate quota, in order to ensure the maintenance of traditional trade flows but also to avoid that, as the case may be, parts of the residual tariff-rate quota would remain unused.

9 Thus, exporting countries having a significant interest as suppliers – such as Moldova with respect to product categories Nos 13 and 16 – have the possibility of operating under two separate systems. First, they may continue trade under the country-specific quantitative amount modelled against their individual traditional trade flows between 2015 and 2017, increased by 5%; and, second, once that country-specific quantitative ceiling is reached, they may continue to export to the European Union under the *erga omnes* global quota ceiling. It is only if both ceilings are reached that the 25% above-quota tariff kicks in for those imports.

10 According to the Commission, on the one hand, the measures taken in the present case aim at permitting traditional trade flows to come free of additional protection so that there is enough supply and competition on the Union market and, on the other hand, the tariff-rate quota levels are set in such a way as to prevent any trade diversion arising in the context of the Section 232 measures that could negatively affect Union industry. Thus, the above-quota tariff would, in principle, apply only if trade diversion due to the measures adopted by the United States of America were to trigger a change in the situation from threat of serious injury to serious injury. In that regard, the Commission considers that the country-specific tariff-rate quotas set out in Annex IV.1 to the contested regulation were established in a manner which would minimise the impact of the safeguard measures on regular trade coming from Moldova.

11 From the entry into force of the contested regulation on 2 February 2019 until 30 June 2021, the measures were to be regularly reviewed and progressively liberalised at regular intervals, so that the quantitative thresholds are gradually expanded to allow the Union industry to adapt.

Forms of order sought

12 The applicant claims that the Court should:

– declare the action admissible;

– annul the contested regulation in so far as it applies to the applicant;

– order the Commission to pay the costs.

13 The Commission contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

Law

Admissibility

14 By separate document, the Commission objected to the admissibility of the action on the ground that the applicant did not fulfil either the requirements relating to an interest in bringing proceedings or those relating to standing to bring proceedings.

The Commission lodged its objection of inadmissibility out of time

15 As a preliminary point, the applicant argues that the objection of inadmissibility must be rejected as it was lodged after the expiry of the time limit laid down in Article 81 of the Rules of Procedure of the General Court.

16 The applicant takes the view that, in order to comply with the applicable time limit for lodging an objection of inadmissibility, the Commission should have lodged its objection by 25 June 2019 at the latest. The applicant observes that the objection of inadmissibility was lodged on 26 June 2019.

17 The applicant's argument must be rejected inasmuch as it is based on a misunderstanding of the rules governing the calculation of the time limits applicable to the present proceedings.

18 In accordance with Article 130(1) of the Rules of Procedure, an application for the Court to rule on the admissibility of an action must be made within the period laid down in Article 81 of those rules, that is to say, within two months of service of the application.

19 Furthermore, under Article 58(1)(b) of the Rules of Procedure, a time limit expressed in months is to end with the expiry of whichever day in the last month is the same day of the week, or falls on the same date, as the day during which the event or action from which the time limit is to be calculated occurred or took place. Furthermore, it follows from Article 60 of those rules that the procedural time limits are to be extended on account of distance by a single period of 10 days.

20 In the present case, service of the application was received by the Commission on 16 April 2019, as is apparent from the information before the Court. Thus, pursuant to Article 58(1)(b) of the Rules of Procedure, the two-month time limit referred to in Article 81 of those rules ran until 16 June 2019. That time limit, extended by 10 days on account of distance pursuant to Article 60 of the Rules of Procedure, expired on 26 June 2019.

21 Accordingly, the Commission's objection of inadmissibility, lodged at the Court Registry on 26 June 2019, is not out of time.

Interest in bringing proceedings

22 First, the Commission disputes the applicant's interest in bringing proceedings on the ground that the applicant does not operate within the scope of the contested regulation.

23 The Commission states that the contested regulation produces no binding effect in Moldova for the applicant's day-to-day operations or activities. The Commission takes the view that since the applicant is merely a producer established outside the territory of the European Union, its activities are not covered by the contested regulation, the scope of which is confined to the territory of the customs union.

24 The applicant disputes the Commission's arguments.

25 In that connection, in order to reject that argument, it is sufficient to note that, at the hearing, the Commission acknowledged that it was apparent from the documents provided during the written part of the procedure that the applicant's activities included those of an exporter of certain categories of the products concerned to the European Union.

26 Second, the Commission takes the view that the applicant could not derive any personal benefit from the success of the application, since the annulment of the contested regulation could not remove the injury it alleges. In that respect, the Commission denies that the applicant has a vested and present interest, since the contested regulation does not prevent the export of the product concerned from Moldova to the European Union.

27 In support of its argument, the Commission submits, first, that it is only when the country-specific tariff-rate quota and the residual quota are both exhausted that the 25% above-quota tariff applies. Second, it states that, at the time when the action was brought, the quantitative element of the quotas introduced by the contested regulation in respect of product categories Nos 13 and 16, in so far as it concerned Moldova, had not been exhausted. Consequently, the applicant cannot derive any benefit from the annulment of the contested regulation since it has not yet produced any legal effects vis-à-vis the applicant.

28 Next, the Commission adds that the applicant's claim, for the purposes of demonstrating an interest in bringing proceedings, as to the mere possibility of imposing an above-quota tariff is a speculative argument. In that connection, the Commission states that, on account of the reviews of the quantitative limits laid down in the contested regulation, that result is by no means certain, whereas such certainty is a condition required by the case-law if the interest on which an applicant relies concerns a future legal situation.

29 Lastly, the Commission takes the view that the relevant case-law supports the conclusion that a personal legal consequence arising from the contested regulation can be found only for those entities which are subject to implementing measures putting the contested regulation into effect, namely importers of the product at issue established in the European Union in respect of which customs invoices applying the 25% above-quota tariff are issued by the authorities of Member States. It is therefore not the applicant which would have to pay the above-quota tariff on the import into the European Union of the product concerned.

30 Consequently, the Commission concludes that a successful action by the applicant cannot bring about an advantage consisting in the removal of any legal consequences resulting from the contested regulation that would arise after the exhaustion of the quantitative limit set by that regulation.

31 The applicant disputes the Commission's arguments.

32 It is settled case-law that an interest in bringing proceedings is an essential and fundamental prerequisite for any legal proceedings. An action for annulment brought by a natural or legal person is thus admissible only in so far as that person has an interest in the annulment of the contested measure. An applicant's interest in bringing proceedings presupposes that the annulment of the contested act is capable alone of having legal consequences, that the action is therefore appropriate, by its result, to obtain a benefit for the party which brought it and that that party can show a vested and present interest in the annulment of that act (see judgment of 12 November 2015, *HSH Investment Holdings Coinvest-C and HSH Investment Holdings FSO* v *Commission*, T-499/12, EU:T:2015:840, paragraph 24 and the case-law cited).

33 It is apparent from the mechanism put in place by the contested regulation that the legal rules applicable to the export of the applicant's products to the European Union is less favourable than that which applied to it prior to the adoption of that regulation.

34 Thus, in the light of the foregoing, and without it being necessary to rule on the probative value of the figures put forward by the parties to the dispute as to the exhaustion of the quotas, it must be acknowledged that the annulment in part of the contested regulation by a decision favourable to the applicant could, in itself, have legal consequences and would be appropriate, by its result, to obtain a benefit for the applicant which, accordingly, has an interest in bringing proceedings.

Standing to bring proceedings

35 According to settled case-law, the fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are accorded standing to institute proceedings against an act which is not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see judgments of 16 May 2019, *Pebagua* v *Commission*, C-204/18 P, not published, EU:C:2019:425, paragraph 26 and the case-law cited, and of 11 July 2019, *Air France* v *Commission*, T-894/16, EU:T:2019:508, paragraph 24).

36 In the present case, the applicant takes the view, in essence, that it is directly and individually concerned by the contested regulation in so far as, since it is the only major Moldovan exporting producer of the product concerned, it is naturally part of the limited class of traders who were identified or identifiable at the time when the contested regulation was adopted.

37 The Commission contends that the applicant is neither directly nor individually concerned by the contested regulation and that it must therefore be concluded that it cannot bring an action for annulment of that regulation under the fourth paragraph of Article 263 TFEU.

– *Direct concern*

38 The condition that the measure forming the subject matter of the proceedings must be of direct concern to a natural or legal person requires the fulfilment of two cumulative criteria, namely the contested measure must, first, directly affect the legal situation of the individual and, second, leave no discretion to the addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the

application of other intermediate rules (see judgment of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 58 and the case-law cited).

39 The Commission maintains that, in the present case, the applicant's situation does not satisfy the conditions relating to direct concern.

40 In the first place, in order to demonstrate that the contested regulation has no effect on the applicant's legal situation, the Commission relies on four arguments. First, unless and until the quota component of the contested regulation is exhausted and the above-quota tariff is imposed, no legal effect can arise from that regulation. Second, even if such a legal effect were to arise from the mere existence of that regulation, the applicant would not be legally affected, as that act produces no legal effects in Moldova, but merely within the European Union. Third, the legal effects arising from the contested regulation may result only from the implementation of that regulation by the customs authorities of the Member States and therefore will only be produced on an importer who is informed of the level of the customs debt. Fourth and in any event, the applicant did not actually export the product categories concerned during the investigation, but merely acted as a producer of those products, thereby precluding any direct legal effect.

41 In the second place, in order to demonstrate the existence of implementing measures, the Commission states, first, that it is irrelevant whether those measures are of a mechanical nature and, second, that, in the field of the application of the common commercial policy, the existence of implementing measures is of particular importance, since the effects of the contested regulation only materialise through those measures. It adds that a natural or legal person may, accordingly, challenge the measure before the national courts.

42 The applicant disputes the Commission's arguments.

43 First of all, any argument put forward by the Commission relating to the lack of direct concern on account of the applicant merely acting as a producer must be rejected, in accordance with the considerations set out in paragraph 25 above.

44 Next, the contested regulation produces direct effects on the applicant's legal situation. It determines the legal framework and the conditions under which the applicant may export to the European Union, in terms both of volume and pricing, since its products are now subject to a quota system and no longer subject to free movement within the European Union, which requires neither the allocation of quantities nor authorisation from the Commission. Under such a quota system, the applicant's entitlement to use the duty-free quota is subject to the Commission's allocation of such quota to its products.

45 Lastly, it must be recalled, first, that the condition relating to the absence of implementing measures should not be confused with the requirement that a contested act be of direct concern to the applicant (see, to that effect, order of 4 December 2013, *Forgital Italy* v *Council*, T-438/10, not published, EU:T:2013:648, paragraph 54) and, second, that, in the analysis of the applicant's direct concern, the mere existence of implementing measures is not sufficient to preclude such concern, since the relevant legal criterion is that absence of any discretion left to the addressees of the act at issue, who are entrusted with the task of implementing it (see, to that effect, order of 14 January 2015, *Solar World and Others* v *Commission*, T-507/13, EU:T:2015:23, paragraph 40).

46 In the present case, the contested regulation leaves no discretion to the competent authorities of the Member State in the implementation of safeguard measures (see, by analogy, judgments of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 59, and of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Conseil*, T-643/11, EU:T:2014:1076, paragraph 28 (not published)), since the competent authorities are required to levy an additional 25% duty once the tariff-rate quotas have been exhausted (see Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ 2015 L 343, p. 558) and Articles 1 and 3 of the contested regulation).

47 It must therefore be concluded that the applicant is directly concerned by the contested regulation.

– *Individual concern*

48 Since the conditions of direct concern and individual concern are cumulative (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 76), the applicant must also be regarded as individually concerned by the contested regulation in order for its action to be admissible.

49 The Commission argues that the applicant's situation does not satisfy the conditions relating to individual concern.

50 First, the Commission states that (i) the contested regulation is an act of general application which requires that implementing measures (taken by the customs authorities of the Member States) take effect, and which concerns an almost infinite number of persons (*erga omnes*), and (ii) the contested regulation is of equal concern to anyone in Moldova and to anyone in the European Union wishing to export or import the product concerned from or through Moldova. Consequently, the Commission takes the view that the contested regulation takes effect by virtue of an objectively determined situation which does not have any individualising characteristics.

51 Second, the Commission states that the contested regulation is not of a hybrid nature, in the sense that it contains individual decisions personalising the applicant and thus creating a 'class'. The Commission observes that, although that nature has been recognised in the case of anti-dumping and anti-subsidy regulations, that recognition is based on specific characteristics of those regulations (namely the individual and personal establishment of the anti-dumping or countervailing duty rate for each trader or exporting producer on the basis of its own individual data alone), which are not found in regulations imposing safeguard measures, the purpose of which is to protect the Union steel market against a surge in imports.

52 Third, the Commission submits that the contested regulation does not in any way 'fix' a class, and that such a class is also not 'fixed' by the customs authorities of the Member States implementing that regulation. It states that the fact that certain categories of steel products originating from a number of countries are covered by the contested regulation does nothing more than establish, in an objectively defined manner, the legislative requirements for importing such products into the European Union. That being the case, whether or not that regulation more or less precisely determines the number, or even the identity, of the economic operators to whom the measure applies does not alter the form of the measure, which remains a measure of general application,

or individualise that 'class' in any way. Anyone who is prepared and able to export the product concerned from Moldova can at any moment join the 'class' of exporters and traders of product categories Nos 13 and 16 and may equally do so on the importer side in the European Union.

53 The Commission takes the view that that assessment is confirmed by the fact that it is impossible to annul that measure with respect to an individual or an individualised category of persons, inasmuch as the safeguard measure operates on the basis of imports coming from all countries, as opposed to individual companies or specific countries.

54 Fourth, according to the Commission, even if there were a so-called 'class' in Moldova, there is no indication that the applicant represents the interests of all of that 'class'. In that context, the Commission disputes not only the fact that the applicant is an exporting producer, but also the fact that, as the applicant asserts, all references to imports from Moldova in the contested regulation are de facto references to the applicant.

55 Fifth, the Commission argues that the case-law according to which mere participation in a procedure conducted by the EU institutions does not mean that the person involved is concerned by the act ensuing at the end of the procedure is applicable to safeguard investigations. Consequently, even the applicant's 'active' participation in the investigation does not imply its individualisation by the contested regulation. It is the national implementing measure adopted by the customs authorities of the Member States that individualises the economic operator concerns and which permits it to challenge the measure concerned before the courts of the Member States.

56 The applicant disputes the Commission's arguments.

57 It is settled case-law that the fourth paragraph of Article 263 TFEU authorises natural and legal persons to institute proceedings against a measure of general application, such as a regulation, only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee of a decision (judgments of 25 July 2002, *Unión de Pequeños Agricultores* v *Commission*, C-50/00, EU:C:2002:462, paragraph 36, and of 10 April 2003, *Commission* v *Nederlandse Antillen*, C-142/00, EU:C:2003:217, paragraph 65). In other words, the infringements alleged by the applicant must be such as to distinguish it individually in the same way as the addressee of the measure would be (see, to that effect, order of 8 May 201, *Carvalho and Others* v *Parliament and Council*, T-330/18, not published, EU:T:2019:324, paragraph 48 and the case-law cited).

58 In the first place, the Commission's objections based on the nature of a regulation introducing safeguard measures must be rejected.

59 First of all, the fact that the contested regulation has *erga omnes* effect by its very nature does not exclude the possibility that such an act may contain measures applying individually to certain economic operators (see, to that effect, order of 30 April 2003, *VVG International and Others* v *Commission*, T-155/02, EU:T:2003:125, paragraphs 40 to 42). Consequently, even though the contested regulation is applied by virtue of an objectively determined situation, the applicant may nevertheless rely on factors capable of distinguishing it individually in the same way as the addressee of the act.

60 Next, the fact that, in the case of a regulation introducing safeguard measures, the factor which made it possible to recognise the hybrid nature of the anti-dumping and anti-subsidy regulations, namely the use of the operators' own figures, which are then distinguished individually, does not preclude the existence of particular attributes peculiar to the applicant or of a factual situation differentiating it from all other persons and distinguishing it individually in the same way as an addressee.

61 In that respect, the Commission's argument that participation in an investigation does not mean that the participating undertaking is individually concerned by the measure must be rejected. While mere participation is not sufficient in itself, it is not, however, irrelevant in the context of assessing individual concern (see, to that effect, judgment of 11 July 1996, *Sinochem Heilongjiang* v *Council*, T-161/94, EU:T:1996:101, paragraphs 47 and 48). In the present case, as the Commission acknowledges, the applicant was the only producer in Moldova to cooperate for the purposes of the investigation which culminated in the imposition of the measures at issue.

62 Lastly, in so far as concerns the Commission's considerations relating to the existence of implementing measures (see paragraph 55 *in fine* above), it should be observed that an applicant's individual concern is to be assessed in the light of criteria laid down in the case-law cited in paragraph 57 above, and that such an assessment does not refer to the existence of implementing measures. Consequently, those considerations are ineffective.

63 In the second place, in so far as concerns the analysis, by the Commission, of the figures which led it to find that the applicant is not the sole exporter of the product concerned in Moldova, first, it should be noted that, without having been specifically challenged on that point, the applicant stresses the marginal nature of imports from Moldova in categories of steel products other than categories Nos 13 and 16. Consequently, although the fact of being the biggest exporting producer of the products subject to safeguard measures is not, in itself, such as to distinguish the applicant individually (see, to that effect, judgment of 17 January 2002, *Rica Foods* v *Commission*, T-47/00, EU:T:2002:7, paragraph 39), it is not irrelevant, inasmuch it forms part of a set of factors constituting a particular situation which distinguishes the applicant, with regard to the measure at issue, from all other economic operators (see, by analogy, judgment of 16 May 1991, *Extramet Industrie* v *Council*, C-358/89, EU:C:1991:214, paragraph 17).

64 Second, in so far as concerns the analysis of the figures which led it to consider that the applicant is not the sole exporter of product categories Nos 13 and 16 in Moldova, the Commission was invited to express its views, at the hearing, both on the documents provided by the applicant during the written part of the procedure seeking to prove the contrary, and on the explanations relating to supposed inconsistencies which it had identified. Although the Commission was able to express reservations as to the veracity of that information, it nevertheless admitted that it had not made any further checks. It must be concluded from this that the Commission has failed to adduce evidence running counter to the evidence put forward by the applicant in that connection.

65 In the third place, in the light of the considerations, set out in paragraph 64 above, relating to the applicant's situation, the Commission's contention that it is impossible to annul the contested regulation in part must be rejected, inasmuch as such an annulment in part would be possible since it would concern the tariff-rate quotas specifically established in respect of product categories Nos 13 and 16 coming from Moldova.

66 In the fourth place, in so far as concerns the Commission's objection to the existence of a closed class on account of the fact that any actual or potential importer, established in the territory of the European Union, of products coming from Moldova and falling within the categories covered by the safeguard measures would also be affected by the contested act, it is necessary to identify the body of evidence capable of distinguishing the applicant individually within the meaning of the relevant case-law (see, to that effect, judgment of 16 May 1991, *Extramet Industrie* v *Council*, C-358/89, EU:C:1991:214, paragraph 17).

67 In that context, it should be observed that (i) the contested regulation provides for a specific tariff-rate quota for each of the two product categories falling within the scope of the applicant's economic activity, (ii) the contested regulation establishes those tariff-rate quotas for each country and, more specifically, allocates such quotas to Moldova (see Annex IV to the contested regulation), (iii) without having been validly challenged by the Commission, the applicant has adduced documentary evidence and figures (along with justifications relating to the objections concerning the reliability and consistency of that information) seeking to demonstrate that it is the sole exporting producer of products in categories Nos 13 and 16 in Moldova, (iv) the applicant actively participated in the safeguard investigation, and (v) the information used in the contested regulation concerning Moldova, although provided by Eurostat, is the same as that furnished by the applicant in so far as its status as the sole exporting producer of products in categories Nos 13 and 16 in that country has not been validly rebutted.

68 In the light of the foregoing, the applicant may be regarded as (i) being part of a closed group, (ii) identifiable in the contested regulation, (iii) having participated in the investigation in preparation for the introduction of safeguard measures, and (iv) the only operator whose commercial data were used to set the tariff-rate quotas in respect of Moldova.

69 It is therefore clear from the information before the Court, as discussed at the hearing, that there is a set of factual and legal elements constituting a particular situation which distinguishes the applicant, in the light of the contested regulation, from all other economic operators and, therefore, which shows that the applicant is individually concerned within the meaning of the fourth paragraph of Article 263 TFEU.

70 Accordingly, without it being necessary to examine the other arguments put forward by the applicant in that context, it must be found that the applicant is individually concerned by the contested regulation.

71 The action must therefore be declared admissible.

Substance

72 The applicant raises eight pleas in support of its action.

73 As a preliminary point, it claims that the lawfulness of the decisions made by the Commission concerning compliance with the conditions for imposing safeguard measures under Article 16 of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on the common rules for imports (OJ 2015 L 83, p. 16; 'the Basic Safeguards Regulation') should be reviewed in the light of the General Agreement on Tariffs and Trade (GATT) 1994 and of the World Trade Organization (WTO) Agreement on Safeguards as well as related WTO case-law

or, at the very least and in the alternative, that those agreements and that case-law may constitute useful interpretative tools in delineating the conditions and requirements that should be met in order to justify the imposition of safeguard measures.

Preliminary observations on the scope of judicial review

74 It must be recalled that, according to the case-law of the Court of Justice, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see, to that effect, judgments of 19 July 2012, *Council* v *Zhejiang Xinan Chemical Industrial Group*, C-337/09 P, EU:C:2012:471, paragraph 106 and the case-law cited, and 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 47 and the case-law cited).

75 It follows that the judicial review of the appraisals conducted by those institutions must be limited to verifying whether procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see, to that effect, judgment of 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 47).

The first plea, alleging manifest errors of assessment and infringement of the principles of equal treatment and non-discrimination

76 By its first plea, the applicant submits that the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway, as Member States of the European Economic Area (EEA) ('the relevant EEA Member States'), were excluded from the scope of the contested regulation. It takes the view, in essence, that Moldova is in a comparable situation in so far as concerns the reasons put forward to justify that exclusion. Moldova should therefore have been treated in the same way.

77 In the applicant's submission, first, like the EEA Agreement, the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (OJ 2014 L 260, p. 4), established close economic integration between the European Union and Moldova, in particular in so far as concerns trade in goods, including the product concerned by the contested regulation.

78 Second, the applicant argues that there is no expansion or fragmentation of the Moldovan industry that could have any meaningful impact on import levels into the European Union, since the applicant is the only exporting producer of the product concerned in Moldova.

79 Third, it is submitted that Moldova's share of total imports into the European Union is lower than that of the relevant EEA Member States.

80 The relevant EEA Member States and Moldova are therefore, in the applicant's view, in a comparable situation in terms of close economic integration with the EU market, overall import figures and the low risk of trade diversions. However, they were treated differently without any objective justification.

81 In that connection, the applicant adds, first, that, in the light of Article 2(2) of the WTO Agreement on Safeguards, Article 15(5) of the Basic Safeguards Regulation should be interpreted as requiring the application of the principle of non-discrimination in the context of safeguard investigations. Second, it states that there is no evidence to support the finding that the steel markets of the relevant EEA Member States are more closely integrated into the EU market than the Moldovan market is.

82 The Commission disputes the applicant's arguments.

83 As a preliminary point, it should be noted that the applicant's first plea is based on the premiss that there is a principle requiring the Commission to treat different third countries equally with regard to the application of safeguard measures. The applicant takes the view that such a principle is apparent from Article 15(5) of the Basic Safeguards Regulation, read in the light of Article 2(2) of the WTO Agreement on Safeguards, since the latter provision reflects the most-favoured-nation principle enshrined in Article 1(1) of the GATT 1994. Thus, according to the applicant, safeguard measures should be implemented in line with the principle of non-discrimination.

84 In view of the applicant's answer to a question put at the hearing seeking to clarify the content of the first plea, it is apparent that, in order to reject that plea, it is not in fact necessary to rule on the infringement of the most-favoured-nation clause, as is claimed by the applicant. It is, however, necessary to examine whether, by treat treating Moldova differently to the relevant EEA Member States, the Commission infringed the principle of non-discrimination as a fundamental principle of EU law.

85 In that respect, it is apparent from the written pleadings that the parties do not place themselves on the same footing as regards the assessment of the comparability of the situations.

86 The applicant's analysis consists of examining Moldova's situation in the light of criteria referred to in the provisional regulation in order to exclude the relevant EEA Member States from the scope of those measures. Thus, it takes the view that the relevant EEA Member States and Moldova are in a comparable situation in terms of close economic integration with the EU market, overall import figures and the low risk of trade diversions.

87 However, in making a comparison limited to those criteria, the applicant has failed to take into account that the Commission's approach in the provisional regulation is based above all on the premiss that the relevant EEA Member States are concerned. In recital 80 of the provisional regulation, it is expressly stated that, 'as a result of the EEA Agreement …, the Union has established a close economic integration with the markets of EEA countries'. This does indeed concern 'the markets', without that being limited solely to the steel market. Thus, it is incorrect to interpret the Commission's reasoning underlying the exclusion of the relevant EEA Member States by disregarding the context arising from the agreement in question. In referring to recital 80 of the provisional regulation, the contested regulation supports that interpretation by recalling, in recital 193 thereof, that, inter alia, the close integration of the markets of the EEA Member States justifies that exclusion.

88 That assessment is, moreover, confirmed in the light of the approach taken in recital 193 *in fine* of the contested regulation concerning Botswana, Cameroon, Eswatini, Fiji, Ghana, Ivory Coast, Lesotho, Mozambique, Namibia and South Africa. Those countries are also excluded from the

scope of the contested regulation 'in order to comply with bilateral obligations'. However, any third State which has entered into bilateral 'obligations' with the European Union is not, on that ground alone, excluded from the scope of that regulation.

89 Thus, in so far as the comparability of the situations must take into account the context of the relations between the European Union and the third State concerned, the Commission cannot be criticised for having taken the view that Moldova's situation was not comparable to that of the relevant EEA Member States.

90 There is in fact no apparent error of assessment in the finding that the EEA Agreement – which demonstrates the existence of a long-standing relationship which has given rise to deep and continuous integration of the markets and aims to create, in the most complete way possible, the free movement of goods, persons, services and capital, so as to extend the internal market established in the European Union to the relevant EEA Member States (see, to that effect, judgment of 24 November 2016, *SECIL*, C-464/14, EU:C:2016:896, paragraph 125 and the case-law cited) – and the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part – by way of which a deep and comprehensive free trade area was created, but came into force only in July 2016 – differ in terms of their respective scope, objectives and institutional mechanisms.

91 In the light of the foregoing, the first plea must be rejected as unfounded.

The second plea in law, alleging infringement of Article 18 of the Basic Safeguards Regulation

92 By its second plea, the applicant claims, in essence, that the Commission infringed Article 18 of the Basic Safeguards Regulation by not excluding imports originating in Moldova (as a developing country) from the scope of the safeguard measures.

93 The applicant takes the view that, although the Commission defined the product concerned under assessment as consisting of 26 product categories taken all together, the analysis of the thresholds that trigger the exclusion of developing countries was carried out for each of the product categories separately, contrary to the requirements of Article 18 of the Basic Safeguards Regulation. The applicant claims that this provision does not confer any discretion on the Commission and it is therefore not free to pick and choose the dataset which best suits its interests. In that regard, the applicant states that, contrary to the Commission's claims, the Commission never carried out a real product category-specific analysis, inasmuch as it merely carried out such an analysis for illustrative purposes rather than as part of a reasoned and adequate examination of the import and injury trends for each of the 26 product categories.

94 The applicant adds that its interpretation of Article 18 of the Basic Safeguards Regulation is consistent with the requirement to observe parallelism between the scope of a safeguard investigation and the scope of a safeguard measure, as established by the WTO Appellate Body. In the present case, the applicant observes that, since the investigation concerned the 26 product categories taken together, the scope of the safeguard measures should cover the 26 product categories taken together. As the non-application of those measures to developing countries is a constituent element of the scope of the protective measures, that exclusion should also be based on the scope of the investigation, namely the 26 product categories taken together.

95 The applicant concludes that a lawful application of Article 18 of the Basic Safeguards Regulation would have resulted in the Republic of Moldova being excluded from the scope of the definitive safeguard measures introduced by the contested regulation in respect of all product categories.

96 The Commission disputes the applicant's arguments.

97 As a preliminary point, it should be observed that it is clear from the general scheme of Chapter V of the Basic Safeguards Regulation that safeguard measures are to be applied proportionately and exceptionally.

98 Article 18 of the Basic Safeguards Regulation concerns the application of those measures. It provides as follows:

'No safeguard measure may be applied to a product originating in a developing country member of the WTO as long as that country's share of Union imports of the product concerned does not exceed 3%, provided that developing country members of the WTO with less than a 3% import share collectively account for not more than 9% of total Union imports of the product concerned'.

99 In the present case, although, in its examination of the substantive requirements for imposing safeguard measures, the Commission defined the 'product concerned' as comprising the 26 product categories taken together, it carried out a more detailed analysis in the context of the application of those measures.

100 Thus, in accordance with the requirement recalled in paragraph 97 above, the Commission examined the most appropriate measures, pursuant to Article 16 of the Basic Safeguards Regulation, which lead it to analyse each product category in order to determine the tariff-rate quotas (see, in that connection, Annex III.2 to the contested regulation, read in conjunction with recital 191 of that regulation). In that context, as stated in recitals 190 and 191 of the contested regulation, the Commission took into account the 3% threshold referred to in Article 18 of the Basic Safeguards Regulation. In that way, it avoided making imports originating in developing countries which are members of the WTO subject to safeguard measures in respect of all product categories when, in reality, those imports concerned only a small number of categories. Such an approach thus makes it possible to achieve a result that is proportionate to the objectives pursued, unlike that to which the interpretation of Article 18 of the safeguard regulation, advocated by the applicant, would otherwise have given rise.

101 Moreover, even if it were necessary to take into consideration the applicant's claims regarding the breach, on the Commission's part, of the obligation of parallelism between the scope of a safeguard investigation and that of a safeguard measure, those claims would be unfounded.

102 Compliance with such an obligation requires that the decision to impose safeguard measures be based on a perfect match with the 'product concerned'. In the present case, the Commission did indeed proceed in such fashion, since the examination of the substantive criteria was carried out in relation to the 26 product categories taken together, which the applicant does not dispute.

103 The fact of having applied the threshold referred to in Article 18 of the Basic Safeguards Regulation on the basis of each product category taken separately is therefore a reflection of the flexibility recognised in WTO case-law on the application of Article 9 of the WTO Agreement on Safeguards, as cited by the Commission in its written pleadings, and more specifically the findings of the WTO Panel set out in its report in *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric* (WT/DS 415, 416, 417, 418/R, 21 January 2012,

paragraphs 7.367 to 7.391), concerning the relevant elements in that connection contained in the report of the WTO Appellate Body in *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea* (WT/DS 202/AB/R, 15 February 2002, paragraph 181).

104 Consequently, the evidence adduced by the applicant does not support a finding that the Commission committed a manifest error of assessment in the application of Article 18 of the Basic Safeguards Regulation in the present case. Accordingly, the second plea in law must be rejected.

The third plea in law, alleging infringement of the principles of sound administration and protection of legitimate expectations, manifest error of assessment and infringement of Article 16 of the Basic Safeguards Regulation

105 The applicant claims that the Commission erred by failing to examine whether the conditions for imposing safeguard measures were met for each product category taken separately. The applicant's third plea is divided into three parts.

– *The first part of the third plea, alleging that the Commission infringed the principle of protection of legitimate expectations by conducting a single assessment in respect of the 26 product categories*

106 The applicant submits that, in the notice of initiation of the safeguard investigation, the scope of the investigation was defined by reference to 'products' in the plural, and that the Commission had announced that it wished to carry out its analysis on the basis of each individual product category. In that connection, it disputes the Commission's claims concerning the presence, in that notice, of numerous clear and unequivocal indications as to the intention to treat the product categories under investigation as a single group of products. The applicant therefore takes the view that, by failing to do so, the Commission breached the principle of the protection of legitimate expectations.

107 Furthermore, the applicant adds that the legitimate expectations created by the notice of initiation were maintained and confirmed in two subsequent documents. It thus argues that up until the adoption of the provisional measures, the interested parties received precise, unconditional and consistent information, according to which the analysis would be carried out for each product category separately, allowing them to entertain legitimate expectations.

108 The Commission disputes the applicant's arguments.

109 In the first place, it should be borne in mind that it is clear from the contested regulation that the Commission carried out an examination relating to the 26 product categories taken as a whole, supplemented by more detailed analyses at the level of certain product categories (see paragraph 99 above).

110 In the second place, that approach is reflected in the wording used in Section 2 of the notice of initiation of the safeguard investigation. After stating on several occasions that its analysis is based on 'the total imports of the products concerned', the Commission states, at the end of the second paragraph of Section 2, that 'the investigation will examine the situation of the products

concerned, including the situation of each of the product categories individually'. That wording can be understood only as meaning that 'the situation of the products concerned' refers to an overall analysis.

111 Consequently, the applicant's assertions are factually incorrect.

112 Accordingly, even if the principle of the protection of legitimate expectations were applicable in the context of a notice of initiation of a safeguard investigation, the notice at issue in the present case could not at any time have given rise to such an expectation as regards the application of a separate and individual method of analysis of the products subject to the safeguard investigation.

113 In the light of the foregoing, it must be held that the first part of the third plea is unfounded.

– The second part of the third plea in law, alleging that the Commission breached the principle of sound administration, committed a manifest error of assessment and infringed Article 16 of the Basic Safeguards Regulation by defining the product concerned as a single group for the 26 product categories

114 The applicant asserts that the fact that the Commission conducted an examination of the 26 product categories taken together (i) cannot be justified since those products are not interrelated, and (ii) leads to distortion of the findings on increased imports, threat of serious injury and causality, since the conditions for imposing safeguard measures are not necessarily met category by category.

115 The Commission disputes the applicant's arguments.

116 First, as regards the interrelationship between the products in question, the applicant essentially claims, first of all, that apart from two product categories which may be used as raw materials, the categories of steel products cannot, for the most part, be used for manufacture; next, that those products are not interchangeable from a commercial point of view and do not satisfy the same consumer requirements; and, lastly, that since the various categories of steel products are not manufactured with the same equipment, the amount of the investment required in order to ensure that imports of products not subject to safeguard measures replace imports of products subject to such measures means that there is no credible threat of that occurring. According to the applicant, in so far as, contrary to what the Commission contends, the latter failed to take account of those factors, it committed a manifest error of assessment and infringed the principle of sound administration.

117 In that context, it should be noted that, in recital 15 of the provisional regulation, the Commission stated that many EU producers are active in the production of most product categories, thus demonstrating that steel producers are able to adapt their production to various types of product category.

118 In that connection, the applicant confines itself to replying that although EU producers may produce more than one product category, this does not mean that production chains can easily be disrupted and re-directed. However, the applicant has failed to adduce any prima facie evidence in support of its assertion seeking to rule out the interrelationship between product categories.

119 Second, as regards the fact that the Commission's aggregated analysis led to false findings as to the conditions to be met under Article 16 of the Basic Safeguards Regulation, the applicant puts forward the argument that, as a result of that approach (i) fluctuations in the trends in imports are levelled out inasmuch as, while imports may have decreased for certain product categories, that decrease would be compensated by higher increases for others, and (ii) it cannot be confirmed that imports of the product concerned actually have the effect of causing or threatening to cause serious injury to the Union industry, given that imports on one market may not have the same effects as imports on another market. In that connection, the applicant disputes the Commission's contention that that argument is based on a false premiss, since the Commission also considered the product categories separately.

120 However, as has been observed in paragraphs 117 and 118 above, the interrelationship between the product categories cannot be ruled out. On account of that interrelationship, the Commission cannot be criticised for having examined the effects of the increase in imports on an aggregated basis and for having found there to be a threat of serious injury in the light of all product categories.

121 Consequently, the applicant has failed to adduce sufficient evidence to establish a manifest error of assessment concerning that aspect of the Commission's analysis.

122 In the light of the foregoing, it must be held that the second part of the third plea is unfounded.

– *The third part of the third plea, alleging that the Commission committed a manifest error of assessment and infringed Article 16 of the Basic Safeguards Regulation by stating that the aggregated analysis of the 26 product categories taken all together was supported by a separate analysis of three different product families*

123 The applicant takes the view that, contrary to the Commission's contentions, the analysis of the trends in imports and injury at the level of three product families (namely flat products, long products and tubes) yields a different result, which should have prompted the Commission to examine more thoroughly those product categories in respect of which safeguard measures were justified.

124 Consequently, by stating that the aggregated analysis carried out at the level of the 26 product categories was supported by a separate analysis of 3 different product families, the Commission committed a manifest error of assessment amounting to an infringement of Article 16 of the Basic Safeguards Regulation.

125 The Commission disputes the applicant's arguments.

126 First, in so far as concerns the analysis relating to the increase in imports, inasmuch as the applicant develops its arguments primarily in the context of its fourth plea, reference is made to paragraphs 140 and 144 below.

127 Second, in so far as concerns the analysis of injury to the Union industry, the applicant submits figures from which it is apparent (i) that, in respect of flat products and long products, the market shares decreased and profitability increased, and (ii) that, in respect of tubes, the market share remained stable, although profitability decreased. Those figures correspond to the findings set out by the Commission in recitals 77 and 84 of the contested regulation in the context of its analysis for each of the three product families.

128 Those trends appear to be consistent with those observed in the context of the aggregated analysis and set out in recitals 68 and 72 of the contested regulation.

129 The elements on which the applicant's arguments are based, such as the improvement in the profitability of flat products, do not call into question the analysis as a whole, since it must not be forgotten that, in recital 90 of the contested regulation, the Commission found that, despite that temporary improvement, the Union industry was still in a fragile situation and under the threat of serious injury if the increasing trend in imports continued, with the ensuing price depression and profitability drop below sustainable levels.

130 Thus, in so far as concerns the threat of serious injury, the selection of data on the basis of which the applicant concludes that the three product families follow different trends fails to demonstrate the existence of a manifest error of assessment as to the Commission's finding, set out in recital 87 of the contested regulation, that the analysis carried out showed, both globally and for each of the three product families, that the Union industry was in a difficult economic situation until 2016, and only partially recovered in 2017.

131 In the light of the foregoing, it must be held that the third part of the third plea is unfounded, subject to the assessment which will be made of the merits of the applicant's analysis of the increase in imports submitted in the context of its fourth plea.

The fourth plea in law, alleging manifest error of assessment, breach of the duty of care and infringement of Article 9(1)(a) and Article 16 of the Basic Safeguards Regulation

132 The applicant submits that the contested regulation does not show that there was a recent, sudden, sharp and significant rise in imports of the product concerned, as required by Article 9(1)(a) and Article 16 of the Basic Safeguards Regulation.

133 First, in the light of the global analysis carried out by the Commission in the contested regulation, the applicant takes the view that the only sudden, sharp or significant increase in imports which could be claimed occurred between 2013 and 2016, that is to say, three years prior to the adoption of that regulation. Consequently, the increase in imports found by the Commission is not sufficiently recent to justify the imposition of safeguard measures. It is argued that this assessment of the 'recent' nature is consistent with WTO case-law. In that connection, the applicant observes that it is also apparent from that case-law that (i) that it is not sufficient that imports have increased at a given time in the past and that they have remained stable to justify the imposition of safeguard measures, and (ii) that the analysis of trends during the most recent period must substantiate the sudden and recent nature of the increase in imports, which is not apparent from the qualitative analysis of the trends in imports in the present case.

134 Consequently, the Commission committed a manifest error of assessment and infringed Article 9(1)(a) and Article 16 of the Basic Safeguards Regulation by finding that the increase in imports of the product concerned into the European Union justified the imposition of safeguard measures.

135 Furthermore, the applicant adds that the interpretation proposed by the Commission renders meaningless the requirement that the increase in imports be recent and sudden, and is contrary to the aim of safeguard measures, as understood, in particular, by WTO case-law.

136 Second, in the light of the analysis based on the three product families carried out by the Commission in the contested regulation, the applicant takes the view that those three families followed very different trends during the period from 1 July 2017 to 30 June 2018, referred to as the most recent period ('the MRP'). Consequently, the applicant observes that, as the analysis by product family showed mixed trends, it does not support the global analysis.

137 By relying on WTO case-law, which emphasises the importance of intermediate trends in reaching the conclusion that imports increased within the meaning of Article 2.1 of the WTO Agreement on Safeguards, the applicant submits that, where there are found to be mixed trends between different product categories comprising a single product concerned, there is nothing to support the conclusion that imports of the single product concerned increased and that safeguard measures are legally justified. In that context, in the light of the specific features of the present case, the applicant disputes the relevance of the Commission's claims that WTO case-law contradicts the applicant's position.

138 In the light of the foregoing, the applicant takes the view that, by failing to draw the relevant conclusions from its analysis by product family, the Commission committed a manifest error of assessment and also breached its duty of care by failing carefully to establish and review all the relevant factual and legal elements at its disposal.

139 The Commission disputes the applicant's arguments.

140 First, it is necessary to examine the applicant's claims relating to the errors allegedly committed by the Commission in carrying out its analyses, foremost amongst which is the lack of corroboration between the global analysis and the analysis based on the three product families.

141 On the one hand, having regard to recitals 32 and 33 of the contested regulation, it is apparent from the global analysis that imports increased by 71% in absolute terms and that the market shares rose from 12.7% to 18.8% in relative terms. The most significant increase took place in the period from 2013 to 2016. Subsequently, imports continued to increase at a slower rate, before increasing yet again during the MRP.

142 On the other hand, having regard to recitals 34 and 35 of the contested regulation, it is apparent from the analysis by product family that the three product families (flat products, long products and tubes) increased in absolute terms by 64%, 97% and 60%, respectively, between 2013 and the MRP. During the same period, imports also increased in relative terms with market shares increasing respectively from 14.2% to 20.9%, 8.6% to 14% and 20.4% to 25.7%.

143 In the light of the foregoing, it may be concluded, first of all, that the two methods of analysis lead to similar results; next, that the Commission did indeed carry out an analysis both of extreme and intermediate trends; and, lastly, that the trends in imports during the MRP were indeed taken into account.

144 In that context, it should be noted that the applicant's argument is based on a partial analysis of the data highlighting timeframes too limited to be significant. By way of example, the applicant claims that imports of flat products decreased between 2017 and the MRP. However, although the volume actually decreased from 20 299 000 tonnes to 20 202 000 tonnes (a reduction of 97 000 tonnes), the market share nevertheless remained constant (20.9%) and, above all, the volume remained at a very high level compared with the period from 2013 to 2015 (+1 811 000 tonnes compared with 2015).

145 Second, it is necessary to examine the applicant's claims relating to the alleged failure to satisfy the criteria which the rise in imports must meet in order to justify the introduction of safeguard measures.

146 In that regard, as the applicant observes, Article 16 of the Basic Safeguards Regulation uses the expression 'such greatly increased quantities', and Article 9(1)(a) of that regulation refers to a 'significant' increase. By its report of 14 December 1999 in *Argentina – Safeguard Measures on Imports of Footwear [Argentina – Footwear (EC)]*, the WTO Appellate Body pointed out that it was necessary for 'the increase in imports [to] have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury'. In recitals 39 and 47 of the contested regulation, the Commission, relying in particular on that case-law, confirmed that the increase in imports in question satisfied those conditions.

147 It is sufficient to point out that it follows from the foregoing that the Commission has a certain margin for manoeuvre as regards the assessment of the recent nature of the increase in imports, in so far as it is not bound by a precise timeframe as regards the identification of the increase in imports in question, and that its examination of the increase in those imports at both quantitative and qualitative levels has revealed that it was sudden, sharp and recent enough to cause or threaten to cause serious injury.

148 In the present case, having regard to the trends in the imports in question (see paragraphs 127 and 141 above), the Commission was entitled to conclude that the increase at issue satisfied the requisite criteria.

149 Furthermore, the interpretation of the 'recent' criterion advocated by the applicant would render ineffective the supervisory measures which supplement the system put in place for the development of safeguard measures in accordance with Article 16 of the Basic Safeguards Regulation.

150 In the light of the foregoing, the fourth plea in law must be rejected as unfounded.

151 In accordance with paragraphs 126 and 131 above, the third plea must also be rejected in its entirety as unfounded, in so far as the applicant's line of argument relating to the increase in imports, raised in the context of its third plea, but elaborated upon in the context of its fourth plea, has been rejected.

The fifth plea, alleging manifest error of assessment, breach of the principle of sound administration, breach of the duty of care and infringement of Article 5(2), Article 9(2) and Article 16 of the basic regulation

152 By its fifth plea, which is divided into four parts, the applicant claims that the contested regulation does not demonstrate the existence of a threat of serious injury (first part), that that threat is wrongly based exclusively on trade diversion (second part), that the Commission did not, in any event, rely on the facts in order to determine that threat (third part) and that the Commission should have taken into consideration the injury indicators communicated by the European Steel Association (Eurofer) in order to assess that threat (fourth part).

– The first part of the fifth plea, alleging that the Commission committed a manifest error of assessment and infringed Article 9(2) and Article 16 of the Basic Safeguards Regulation by considering that the situation of the Union industry could reveal a threat of serious injury

153 By the first part of the fifth plea, the applicant claims, in essence, that the Commission should not have found a threat of serious injury on the basis of the data and information available to it.

154 In support of its challenge, first, the applicant states that, of the 11 injury indicators examined by the Commission, only 3 show a slightly negative trend (market shares, stocks and employment), which is not the sign of an industry in a 'fragile' or 'vulnerable' situation, as this is understood in WTO case-law, but instead reveals a strong and robust industry, as is apparent in particular from the examination of the key indicator of profitability.

155 The Commission disputes that argument.

156 As a preliminary point, it should be noted that, in its defence, the Commission disputed the admissibility of the first part of the fifth plea, on the ground that the arguments put forward by the applicant did not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure. However, in the rejoinder, the Commission seemed to go back on its assessment, taking the view that the explanations given by the applicant in its reply made it possible to understand better the arguments on which the first part of the fifth plea was based. When questioned at the hearing about the maintenance of its objections relating to the admissibility of that line of argument, the Commission stated that it left it to the discretion of the Court, which was noted in the minutes of the hearing.

157 It is apparent from the exchanges between the parties, during both the written and oral parts of the procedure, that the applicant's arguments relating to the first part of the fifth plea were set out in a sufficiently clear and precise manner to enable the Commission to respond thereto and for the Court to exercise its power of review. Accordingly, the Commission's objections to the admissibility of the first part of the fifth plea must be rejected and the merits of that plea examined.

158 In that connection, it is necessary to qualify the relevance of the applicant's assessments, on account of their fragmentary and isolated nature. The applicant observes that, on the one hand, consumption and domestic sales increased and, on the other hand, production also increased while production capacity and capacity utilisation remained stable. However, those findings must be considered in the light of the fact that it is apparent from the analysis carried out by the Commission in recitals 63 to 89 of the contested regulation that, first, although production increased, that increase was lower than domestic consumption; next, EU sales prices decreased throughout the period under consideration, with the exception of a recovery at the very end of that period; and, lastly, profits remained lower than the target profits throughout the period considered (and only increased in 2017 on account of a reduction in production costs and the effectiveness of the trade defence measures taken by the European Union). It is necessary to add to those observations the fact that the market share decreased.

159 While it is true that the applicant has stressed the continued growth in profitability and the improvement in cash flow, it must, however, be noted that, in recital 97 of the contested regulation, the Commission specifically states that, 'despite the fact that in 2017 the profitability

levels had significantly improved from previous years (where the Union industry was either loss-making or break-even), this situation could rapidly be reversed if imports would continue to increase (or surge, as a result of inter alia, the US Section 232 measures)'.

160 Thus, it is apparent from that assessment that the profitability levels attained could not be considered in isolation, since, even though they improved compared to the previous year, the established risk of trade diversion was an essential factor which would have a negative impact on the economic situation of the Union industry if measures were not adopted. In that context, account had to be taken of the fact that the imminent trade diversion would, in the absence of measures, have had a negative impact on the economic situation of the Union industry, with the result that recovery could rapidly have reversed.

161 In the light of the foregoing, it cannot be found that there was a manifest error of assessment on the part of the Commission concerning the determination of the situation of the Union industry.

162 Second, the applicant takes the view that the injury trend for the Union industry between 2013 and the first half of 2018 does not support the finding that there is a 'threat of serious injury', in particular within the meaning of WTO case-law. Furthermore, it adds that the most recent information in the case file indicates that the additional imports did not have the effect alleged by the Commission.

163 The Commission disputes those arguments.

164 In that connection, it is sufficient to recall that, in so far as it has been found, in paragraphs 158 to 161 above, that the applicant's analysis was to be rejected in favour of that proposed by the Commission, the applicant's arguments concerning the way in which forward-looking elements are taken into account are now irrelevant.

165 In the light of the foregoing, no manifest error of assessment by the Commission can be identified since the latter concluded that the situation of the Union industry could reveal a threat of serious injury.

166 Consequently, the first part of the fifth plea must be dismissed as unfounded.

– The second part of the fifth plea, alleging that the Commission committed a manifest error of assessment and infringed Article 9(2) and Article 16 of the Basic Safeguards Regulation in only basing its finding of a threat of serious injury on a potential trade diversion

167 By the second part of the fifth plea, the applicant claims that, because the Commission based its findings solely on trade diversion, it should not have found there to be a threat of serious injury within the meaning of Article 9(2) of the Basic Safeguards Regulation.

168 According to the applicant, the Commission does not base the threat of serious injury on the level of imports at the time of the adoption of the contested regulation or continued imports at that level, but rather on an unjustified and theoretical increase in imports in the future, resulting from a diversion of trade flows from the effect of the United States measures taken under Section 232. By proceeding thus, the Commission equated a hypothetical threat of increased imports to a threat of serious injury. In doing so, it committed a manifest error of assessment and infringed Article 9(2) and Article 16 of the Basic Safeguards Regulation. In that connection, the applicant observes that that assessment is confirmed by WTO case-law.

169 The Commission disputes the applicant's arguments.

170 As a preliminary point, it should be noted that, in recital 90 of the contested regulation, the Commission concluded that the Union industry was 'under the threat of serious injury if the increasing trend in imports continues with the ensuing price depression and profitability drop below sustainable levels'. The applicant claims that that statement is unfounded and contradicted by the evidence in the case file, in so far as the applicant has demonstrated, in the context of the first part of its fifth plea, that the situation of the Union industry in 2017 and during the first two quarters of 2018 did not show that, at the level of imports during that period, the Union industry was on the point of collapse and that serious injury was therefore clearly foreseeable or imminent.

171 Since the first part of the fifth plea in law has been rejected, the premiss of the applicant's arguments in the context of the second part of that plea is incorrect. Thus, it is necessary to examine the second part of the fifth plea only in the light of the claims that the evidence adduced by the Commission in support of the demonstration of a possible increase in imports constitutes a manifest error of assessment.

172 It is apparent from the information before the Court that, in order to demonstrate the existence of a threat of serious injury, the Commission did not rely solely on the finding of a possible trade diversion, but took other factors into account. Recitals 99 and 100 of the contested regulation contain an analysis of the rate of increase of exports and of the likelihood of further increased exports based on an analysis of the most recent data available. Furthermore, the statistics presented and analysed in points 5.6.1 and 5.6.2 of the contested regulation show the continuous increase in imports and the fact that the first signs of trade diversion could already be observed over the months following the entry into force of the Section 232 measures taken by the United States of America.

173 Consequently, the Commission in fact relied on evidence from which it could be found that not only was there a trade diversion, but also that there was a likelihood of an increase of imports normally intended for the American market which could then be diverted to the European Union.

174 No manifest error of assessment can thus be inferred from the detailed body of evidence on which the Commission's analysis is based.

175 Moreover, even if it were necessary to take into account the WTO Agreement on Safeguards, it can be observed that the Commission's approach is consistent with the provisions of Article 4(1)(b) of that agreement, since the demonstration of the existence of a possible increase in imports is not based, in the present case, on mere allegations, conjecture or remote possibilities.

176 Accordingly, the second part of the fifth plea must be rejected as unfounded.

– The third part of the fifth plea, alleging that the Commission committed a manifest error of assessment and infringed Article 9(2) and Article 16 of the Basic Safeguards Regulation by failing to conduct a comprehensive fact-based assessment of its threat of serious injury determination

177 In the third part of its fifth plea, the applicant puts forward three arguments in order to demonstrate that, even if the threat of increased imports could constitute a threat of serious injury, the Commission has not satisfactorily established, in the light of WTO case-law in particular, that there is an actual, material risk of substantial trade diversion likely to cause serious injury.

178 First, the applicant claims that the Commission did not consider the existence of other export markets capable of offsetting any potential trade diversion from the United States. Contrary to what it alleges, the considerations on which the Commission relies in order to prove the contrary are mere assertions lacking probative value.

179 Second, it is not apparent from the analysis of the figures in the case file that the trade diversion found could have threatened to cause serious injury, since such diversion would be limited. In that connection, the applicant takes the view that the Commission's assertions to the contrary are not substantiated by the facts.

180 Third, the Commission's analysis of the trends in imports into the European Union and to the United States during the first months of 2018 was carried out in absolute terms and those imports were not necessarily made on such terms or conditions as to threaten to cause serious injury. Consequently, the Commission did not present the facts which allowed it to conclude that additional imports would cause price depression and profitability drops. In that regard, the applicant adds that the Commission has failed to provide any explanation as to the reasons justifying its conclusion that the allegedly sharp increases in imports threatened to cause serious injury.

181 The Commission disputes the applicant's arguments.

182 First, in so far as concerns the claim that the Commission did not examine the fact that, irrespective of any closure of the US market, trade diversion would be limited and unlikely to cause a threat of serious injury, it should be noted, on the one hand, that it is apparent both from recitals 35 and 67 of the provisional regulation and from recitals 107 and 173 of the contested regulation that that complaint is unfounded, inasmuch as the reasoning followed by the Commission necessarily takes other markets into account. On the other hand, in the light of what is stated in paragraphs 172 to 174 above, it is necessary to reject the complaint made against the Commission that those recitals are mere assertions which are not substantiated by any evidence and, more specifically, that there is no evidence that trade flows to the US correspond – in terms of product scope and exporting countries – to trade flows to the European Union.

183 Second, in so far as concerns the claim that any trade diversion from the United States is too limited to constitute a threat of causing serious injury, the applicant disputes the calculations made by the Commission. However, pursuant to the principles referred to in paragraphs 74 and 75 above, it is of little importance that another analysis, such as that put forward by the applicant, may be carried out, since the review by the EU judicature, in the present case, is confined to identifying a manifest error of assessment vitiating the analysis on which the contested regulation is based. However, no such error is apparent from the information before the Court. Recitals 107 and 179 of the contested regulation state that the Commission carried out simulations taking into account various criteria and corroborated its economic model with the most recent data available. The approach followed by the Commission also enabled it to find that there had been trade diversion in the first half of 2018, which was sufficient to justify its findings as to the threat of serious injury.

184 Third, in so far as concerns the claim that the finding that the increase in imports would lead to price depression and a profitability drop such as to threaten to cause serious injury is not substantiated by any evidence, it should be recalled that it has been accepted that the Commission adduced evidence, to the requisite legal standard, that the Union industry was in a

fragile situation (see paragraphs 158 to 161 above) and it is therefore necessary to assess, in the light of that situation, the merits of the determination, made by the Commission, of a threat of serious injury caused by increased imports. In that context, the Commission cannot be criticised for any manifest error of assessment on the ground that it considered that, in view of the very low profits made during the period under consideration, the additional pressure represented by the acceleration of the increase in imports found following the adoption by the United States of America of the Section 232 measures would lead to price depression and a profitability drop, with the result that it would threaten to cause serious injury. In that connection, the applicant's submissions relating to the improvement in profitability must be rejected for the same reasons as those set out in paragraphs 158 to 161 above, read in conjunction with paragraph 165 above.

185 In the light of the foregoing, the third part of the fifth plea must be rejected as unfounded.

– The fourth part of the fifth plea, alleging that the Commission committed a manifest error of assessment, infringed the principle of sound administration, breached its duty of care and acted contrary to Article 5(2) of the Basic Safeguards Regulation by failing to take into account the positive development of injury indicators for the first half of 2018

186 By the fourth part of the fifth plea, the applicant claims that the Commission infringed the principle of sound administration, breached its duty of care and infringed Article 5(2) of the Basic Safeguards Regulation when it decided not to take into consideration the injury indicators communicated by Eurofer for the first half of 2018.

187 According to the applicant, none of the reasons put forward by the Commission can justify that failure to take into account that information, since it was legally entitled to consider that updated information, with or without verification, to request further information, and to rely on facts available, where and if necessary.

188 The applicant takes the view, first of all, that those indicators demonstrate that the Union industry has improved its competitive position and that, consequently, they constitute positive evidence of the absence of a threat of serious injury.

189 Next, the applicant disputes the Commission's assertion that, even if it had considered the injury indicators for the first half of 2018, the ultimate finding would have been the same. In that regard, the applicant emphasises that the trend towards increased profitability over the period from January 2018 to June 2018 could not confirm the Commission's ultimate finding, which is based on the assumption that an increase in import volumes would lead to price depression and a profitability drop.

190 Lastly, the applicant argues that, contrary to the Commission's submissions, it is clear from the case-law that the Court has jurisdiction in the present case to review whether the Commission acted in accordance with the principle of sound administration.

191 The Commission disputes the applicant's arguments.

192 As a preliminary point, it should be observed that, several times in its written submissions, the applicant has based its analysis on the updated injury indicators provided by Eurofer, the relevance of which is the subject of the fourth part of the fifth plea.

193 However, the applicant's analysis is based on the profitability factor. As has been stated in paragraphs 158 to 161 above, read in conjunction with paragraph 165 above, the significance of that factor must be placed in context and it cannot, in itself, lead to the identification of a manifest error of assessment. Consequently, the fourth part of the fifth plea is ineffective.

194 In any event, the numerous reasons put forward by the Commission to justify the fact that it did not take into account the injury indicators communicated by Eurofer for the first two quarters of 2018 do not reveal a manifest error of assessment, despite the applicant's objections. In that connection, the incompleteness of those data is characteristic. Eurofer indicators did not, in fact, cover the product concerned as a whole. Consequently, even if the applicant takes the view that the product categories covered represented the vast majority of the volumes of the product concerned and that, since the lack of information on the other product categories was probably due to the non-communication of those data by the European Steel Tube Association (ESTA), the Commission was entitled to use the facts available, in accordance with Article 5(6) of the Basic Safeguards Regulation, it cannot be inferred that the Commission was under an obligation to do so. The Commission is in fact entitled to consider that, in the light of that incompleteness, the data are not relevant, without that constituting a manifest error of assessment or any breach of the duty of care or of the principle of sound administration.

195 In the light of the foregoing, the fourth part of the fifth plea in law must be rejected and, accordingly, the fifth plea must be rejected in its entirety.

The sixth plea in law, alleging manifest error of assessment and infringement of Article 16 of the Basic Safeguards Regulation

196 By its sixth plea, which is divided into three parts, the applicant seeks to demonstrate that the Commission infringed Article 16 of the Basic Safeguards Regulation by failing to establish a causal link between the increase in imports found and the identified risk of serious injury threatening the Union industry.

– *The first part of the sixth plea, alleging that, since the threat of serious injury was linked to future imports, the Commission committed a manifest error of assessment in establishing a causal link between that threat and the increase in imports, in breach of Article 16 of the Basic Safeguards Regulation*

197 In the first part of the sixth plea, the applicant claims that it is apparent from the contested regulation that the Commission did not find that current imports as at the date of the contested regulation caused or threatened to cause serious injury, but that that threat was based on imports which had not yet taken place, which is contrary, in particular, to WTO case-law.

198 According to the applicant, the Commission thus infringed Article 16 of the Basic Safeguards Regulation by relying on 'a future and theoretical increase in imports'.

199 The Commission disputes the applicant's arguments.

200 As a preliminary point, it should be observed that the Commission based its finding on an assessment of current and future imports. It is clear from its analysis that, although the threat of serious injury is, in the present case, represented by future imports, the potential of which is

apparent from the body of evidence referred to in paragraphs 172 to 174 above, it exists because of the specific situation of the Union industry on account of the imports found at the time of the adoption of the contested regulation.

201 The approach taken by the Commission to the application of Article 16 of the Basic Safeguards Regulation therefore complies with Article 9(2) of that regulation, which specifically provides that, in the event of a threat of serious injury, the Commission is to examine the rate of increase of exports to the European Union in order to determine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury.

202 In other words, without the effects caused by current imports, future imports may not be problematic. Thus, on account of current imports, a threat of serious injury emerges in the face of the projections envisaged as to the rate of increase of exports to the European Union.

203 The applicant takes the view that it is clear from Article 16 of the Basic Safeguards Regulation that only current imports must cause or threaten to cause serious injury.

204 The premiss of the arguments put forward by the applicant in this part of the plea rests, therefore, on a misinterpretation of the nature of the causal link between the increase of imports found and the identified risk of serious injury threatening the Union industry.

205 In the light of the foregoing, the first part of the sixth plea must be rejected as unfounded.

– The second part of the sixth plea, alleging that there is no causal link, with the result that the Commission committed a manifest error of assessment in breach of Article 16 of the Basic Safeguards Regulation

206 By the second part of its sixth plea, the applicant claims that the Commission failed to establish of a causal link and so fell short of the requirements of Article 16 of the Basic Safeguards Regulation.

207 More specifically, the applicant argues that the information before the Court shows that, far from threatening to cause serious injury, current import levels, even during the MRP, did not prevent the Union industry from competing and achieving comfortable profits. Under WTO case-law, the Commission should have provided, in such a situation, satisfactory, adequate, reasoned and reasonable explanations as to why that data nevertheless showed causation, which it failed to do.

208 In addition, the applicant disputes the lack of relevance, alleged by the Commission, of the figures provided by Eurofer regarding the profitability criterion and states that, even on the basis of the figures referred to in the contested regulation, it is apparent that there is no correlation between the increase in imports and a deterioration in the Union industry's situation between 2013 and 2017.

209 The Commission disputes the applicant's arguments.

210 As a preliminary point, it should be observed that the applicant's arguments concerning the lack of a causal link and put forward in support of the second part of its sixth plea are based essentially on the applicant's interpretations relating to the increase in profitability, supported by the figures provided by Eurofer.

211 In that connection, it should be recalled that, first, the profitability criterion does not appear to be decisive (see paragraphs 158 to 161 above, read in conjunction with paragraph 165 above); next, the figures provided by Eurofer cannot be taken into account (see paragraph 194 above); and, lastly, the causal link between the current level of imports, at the time when the contested regulation was adopted, and the threat of serious injury was demonstrated, to the requisite legal standard, by the Commission (see paragraphs 200 to 205 above).

212 In the light of the foregoing, the second part of the sixth plea must be rejected as unfounded.

– *The third part of the sixth plea, alleging that the Commission failed properly to assess the impact of past dumping and subsidisation practices on the injury situation of the Union industry, thereby tainting its causality assessment by a manifest error of assessment, in breach of Article 16 of the Basic Safeguards Regulation*

213 By the third part of its sixth plea, the applicant claims that the Commission failed to take into account the possible impact of past dumping and subsidisation practices, which vitiated its finding as regards the injury assessment, thereby tainting its causality assessment by a manifest error of assessment.

214 More specifically, the applicant submits that the fact that the Commission found, in the contested regulation, that the Union industry was in a difficult economic situation until 2016 is explained, at least in part, by past material injury caused by past dumping and subsidies against which trade defence measures had been adopted. In that connection, the application stresses that the matter of whether or not anti-dumping and countervailing measures serve different purposes and/or target specific products, as compared to safeguard measures, is irrelevant.

215 The Commission disputes the applicant's arguments.

216 First, it should be noted that it is apparent from recital 95 of the contested regulation that, in the assessment of the Union industry's situation, the Commission disregards neither the existence of the past dumping and subsidisation practices in question, nor the effects of the measures taken with regard to them. That taking into account, moreover, justified the fact that Commission was unable to establish the existence of serious harm.

217 Thus, the Commission's reasoning is not vitiated by any manifest error of assessment as to the impact of past dumping and subsidies on its analysis of the causal link between the increase in imports and the threat of serious injury.

218 Second, the Commission cannot be criticised for not having taken those practices into account in more detail, since, even if they allegedly concerned a significant part of the product concerned, as the applicant claims, they concerned only certain product categories originating in certain countries.

219 Consequently, the fact of having taken them into consideration in the manner described in paragraph 216 above is sufficient to rule out any identification of a manifest error of assessment.

220 In the light of the foregoing, the third part of the sixth plea in law must be rejected as unfounded and, accordingly, the sixth plea must be rejected in its entirety.

The seventh plea, alleging infringement of Article 16 and Article 5(1) of the Basic Safeguards Regulation

221 By its seventh plea, the applicant claims that there is no legal basis in the Basic Safeguards Regulation for the Commission to initiate *ex officio* a safeguard investigation. The initiation of such an investigation is warranted only when information (and, ultimately, a request) had been received from a Member State.

222 More specifically, the applicant relies on Article 5(1) of the Basic Safeguards Regulation, contained in Chapter III, to which Article 16 of that regulation refers, read in the light of recitals 7 and 8 of that regulation, in order to claim that only the Member States may initiate a safeguard investigation. First, it submits that the notice of initiation of the investigation expressly states that the investigation was initiated by the Commission *ex officio* and, second, it observes, in the light of various documents before the Court, that the investigation was initiated on the basis of information which was never been established as received from a Member State.

223 Lastly, the applicant adds that the Commission could not initiate the investigation based solely on information received through surveillance measures, since those measures only covered imports for the period from 2015 to 2017, excluding the period from 2013 to 2014 and in the absence of any information on the injury situation of the Union industry. Second, it argues that, irrespective of the powers actually conferred on the Commission under the Basic Safeguards Regulation, no provision allows it to initiate investigations *ex officio*.

224 The Commission disputes the applicant's arguments.

225 In the first place, it should be noted that, contrary to the applicant's claims, the existence of exclusive competence on the part of the Member States to initiate a safeguard investigation is not apparent from Article 5(1) of the Basic Safeguards Regulation, read in the light of recitals 7 and 8 of that regulation.

226 First of all, recital 7 of the Basic Safeguards Regulation states that 'the Commission should be informed by the Member States of any danger created by trends in imports which might call for Union surveillance or the application of safeguard measures'.

227 That recital does not concern the Commission's power to initiate an investigation, but rather the Member States' obligation to provide information in order to enable the Commission to fulfil the obligations conferred on it by the European Parliament and the Council of the European Union, in order to protect the interests of the European Union in the context of the common commercial policy, both as regards the initiation of surveillance of imports of a product originating in a third country, in accordance with Chapter IV of the Basic Safeguards Regulation, and the imposition of safeguard measures in respect of a product imported into the European Union, in accordance with Chapter V of that regulation.

228 However, no exclusivity as to the source of the information enabling the Commission to fulfil its obligations is apparent from the wording of that recital.

229 Next, recital 8 of the Basic Safeguards Regulation states that 'in such instances, the Commission should examine the terms and conditions under which imports occur, the trend in imports, the various aspects of the economic and trade situations and, where appropriate, the measures to be applied'.

230 That recital does not concern the Commission's power to initiate an investigation, but seeks to impose an examination obligation on the Commission in a specific situation, namely when it receives the type of information referred to in recital 7 of the Basic Safeguards Regulation.

231 Although the existence of an obligation limited to a particular situation is apparent from the wording of recital 8 of the Basic Safeguards Regulation, it neither limits nor excludes the possibility for the Commission to carry out such an examination in other situations.

232 Lastly, Article 5(1) of the Basic Safeguards Regulation states, inter alia, that 'where it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation, the Commission shall initiate an investigation within 1 month of the date of receipt of information from a Member State and publish a notice in the *Official Journal of the European Union*'.

233 That provision affords a guarantee to a Member State which has provided the Commission with information that the latter will take a decision on the consequences to be drawn from that information as to the initiation of any investigation. Thus, the time limit prescribed is aimed, by definition, at the situation in which the Commission finds itself when it is under the review obligation referred to in recital 8 o the Basic Safeguards Regulation.

234 However, as has been stated in paragraphs 228 and 231 above, that situation is not exclusive of other situations, since otherwise the Commission would be prevented from discharging the obligations entrusted to it.

235 That is the case, at the very least, where, as in the present case, surveillance measures have been implemented.

236 The Commission may decide, in accordance with Article 10 of the Basic Safeguards Regulation, to apply such measures without prior investigation, since the requirement laid down in Article 4(1) of that regulation does not apply to that situation.

237 Thus, Implementing Regulation 2016/670 was adopted, inter alia, on the basis of Article 10 of the Basic Safeguards Regulation.

238 In accordance with recital 12 of Implementing Regulation 2016/670, the objective pursued by the introduction of prior surveillance was the provision of advanced statistical information permitting rapid analysis of import trends from all third countries.

239 As is apparent from the notice of initiation of the safeguard investigation, in the light, in particular, of the information obtained under the monitoring system, the Commission considered that there was sufficient evidence to show that the trends in imports might make it necessary to resort to safeguard measures.

240 In that regard, pursuant to Article 15(1) of the Basic Safeguards Regulation, the Commission, in order to safeguard the interests of the European Union, may, inter alia on its own initiative, impose such measures where substantive conditions are satisfied.

241 However, in accordance with Article 4(1) of the Basic Safeguards Regulation, with the exception of the emergency situations referred to in Article 7 of that regulation, no safeguard measures may be imposed without the initiation of a prior investigation.

242 Consequently, the Commission decided to initiate, on its own initiative, such an investigation into imports of steel products.

243 It follows from the foregoing that if, as the applicant claims, the initiative for initiating a safeguard investigation fell exclusively to the Member States, not only would the power of initiative granted to the Commission under Article 15(1) of the Basic Safeguards Regulation be limited in its effects, but also, above all, the very purpose of the monitoring mechanism would be affected.

244 The interpretation advocated by the applicant, which is tantamount to making the initiation of an investigation dependent on a Member State referring the matter to the Commission, would deprive the study of the data collected under that mechanism of most of its interest.

245 Consequently, the applicant's interpretation of the power to initiate an investigation, within the meaning of Article 5(1) of the Basic Safeguards Regulation, is incompatible with the general scheme of the system laid down by that regulation.

246 In that regard, it may also be added that the applicant's interpretation of Article 5(1) of the Basic Safeguards Regulation appears to be inconsistent in the light of other provisions of that regulation.

247 Thus, Article 7 of the Basic Safeguards Regulation allows the Commission to adopt, inter alia, provisional safeguard measures in emergency situations. In accordance with Article 4(1) of that regulation, the exercise of that power is exempt from compliance with the requirement that an investigation be carried out prior to the imposition of those measures. However, investigation measures are not excluded. Article 7(3) of the Basic Safeguards Regulation states that the Commission is immediately to conduct whatever investigative measures are still necessary. However, the initiation of such an investigation does not depend on the prior referral to the Commission by a Member State. It would be illogical to impose such a condition when, in particular, it was determined that there was sufficient evidence that an increase in imports had caused or threatened to cause serious injury, in accordance with Article 7(1)(b) of the Basic Safeguards Regulation. The same reasoning explains why it is possible for the Commission to initiate an investigation without prior referral by a Member State, where surveillance measures are already in force and make it possible to adduce sufficient evidence to show that the trends in imports might make it necessary to adopt protective measures.

248 Similarly, the Commission is not bound by any requirement whatsoever that a matter be referred to it by a Member State prior to the exercise of the powers conferred on it by, on the one hand, Article 15(1) of the Basic Safeguards Regulation, authorising it to adopt protective measures and, on the other hand, Article 20 of that regulation, authorising it to examine the effects of the safeguard measures in force and to amend the detailed rules thereof, or even to revoke them. All of those actions, which the Commission may carry out on its own initiative, follow a logic according to which the Commission has, prior to exercising its powers, evidence relating to the existence or otherwise of a problematic situation for EU producers, the source of that evidence being irrelevant.

249 A coherent system therefore follows from those provisions, instituting an overall logic enabling the Commission to act on its own initiative where it has sufficient evidence to justify its action.

250 It is therefore necessary to interpret Article 5(1) of the Basic Safeguards Regulation in the light of that logic and, accordingly, to conclude that the possibility for the Commission to act on its own initiative is recognised in the context of the initiation of investigations referred to in that article.

251 Moreover, it should be noted that there is no factual evidence to corroborate the applicant's position. It is common ground that the Member States did not express any objection to that investigation and even cooperated with the Commission in that context, in accordance with Article 5(1) of the Basic Safeguards Regulation.

252 In the second place, the applicant's argument based on any exclusivity as to the source of the information limiting the scope of the investigation is not supported by the relevant legislative provisions. There is no textual argument requiring the Commission to disregard information which it has been able to obtain in addition to that obtained through the authorities of the Member States pursuant to the surveillance measures.

253 In any event, as the Commission points out, the applicant confuses the dataset which triggered the initiation of the investigation (namely the continuous increase in imports of steel products) with those relating to the period which the Commission examined in order to make its determination.

254 In the light of the foregoing, the seventh plea in law must be rejected as unfounded.

The eighth plea in law, alleging infringement of the right to a fair hearing

255 In its eighth plea, the applicant claims that, by failing to disclose certain information during the safeguard investigation, the Commission infringed its right to a fair hearing, which is one of the rights of the defence.

256 More specifically, after recalling the particular importance of observance of the procedural safeguards of the right to a fair hearing in the field of trade defence measures, an area in which the EU institutions enjoy a broad discretion, the applicant submits, first, that by failing to disclose the statistical information for the MRP that was in its possession, the Commission prevented interested parties, including the applicant, from commenting on essential information that notably served as the basis for the assessment that there was an increase in imports. Second, the applicant takes the view that, by significantly delaying the disclosure of the information submitted by Eurofer, the Commission deprived interested parties, including the applicant, of the opportunity to comment and provide their views on the updated injury in the major part of the Union industry. In that regard, the applicant submits that it does not matter that the Commission did not use those data, inasmuch as its argument is based on the level of information which it might have had at its disposal to form its opinion.

257 The applicant adds, in the first place, that, contrary to the Commission's allegations, the Commission, first, was under an obligation to put the applicant in a position during the administrative procedure to make known its views on the correctness and relevance of the facts and circumstances alleged and on the evidence admitted in support of the allegation of the existence of increased imports and a threat of serious injury and, second, failed to keep the file up to date in due time. In the second place, the applicant states that it was not placed in a position in which it could effectively make known its views on, first, the information on the use of the import statistics for the MRP and, second, Eurofer's updated injury indicators.

258 The Commission disputes the applicant's arguments.

259 As a preliminary point, first, it should be observed that it is apparent from the applicant's written pleadings that, although its arguments concerning the information on the use of the import statistics for the MRP initially formed the basis of its arguments as to the alleged unlawfulness

arising from the failure to disclose that information, it subsequently took the view that the unlawfulness arose from the fact that it had not been placed in a position in which it could effectively make known its views. Thus, the issue is no longer a dispute as to the lack of disclosure, but rather of a challenge to the lateness of that disclosure. Consequently, the applicant's arguments regarding that information are essentially the same as its complaint concerning the making available of information relating to Eurofer's updated injury indicators.

260 Second, the Commission's objections relating to the ineffectiveness of the eighth plea on account of the inapplicability of the right to a fair hearing in the present case must be rejected. As the Commission acknowledged in the rejoinder, it became apparent from the exchanges during the written part of the procedure that, by that plea, the applicant is in fact alleging infringement of the rights of the defence owing to the fact that it was not given an opportunity to comment on a certain amount of information during the administrative procedure.

261 In that regard, it should be observed that the detailed rules governing the rights of interested parties to make known their views, to have access to certain information and to be heard are laid down in Article 5(1)(b) and (c) of the Basic Safeguards Regulation and in Article 5(4) and (5) of that regulation.

262 Although it is true, as the Commission points out, that the applicant does not expressly state which provision the Commission infringed, it must nevertheless be recognised that, in order to be able to exercise the rights referred to in paragraph 261 above, the Commission is required to make available to the parties in good time the information supplied to it in the context of the investigation, subject to a number of exceptions.

263 In that context, it is necessary to examine the applicant's claims relating to the late disclosure of information on the use of import statistics for the MRP and the information relating to the updated injury indicators in the light of the Commission's compliance with its obligation to make available to the parties, in good time, the information provided to it in the context of the investigation.

264 In that regard, it is sufficient to note that the applicant had access to the injury indicators provided by Eurofer on 21 December 2018 and to the statistical information for the MRP on 4 January 2019. The contested regulation was adopted on 31 January 2019.

265 Although the applicant did not have a substantial amount of time, it should be borne in mind, first, that that information merely supplemented other information on which it had commented throughout the procedure and, second, that the safeguard measures are emergency measures the adoption of which cannot be indefinitely delayed.

266 Consequently, it must be held that, in the present case, the applicant was put in a position to submit its observations in good time and that the Commission did not infringe its obligation to make available to the parties, in good time, the information provided to it in the context of the investigation.

267 Accordingly, it must be concluded that no infringement of the rights of the defence can be identified.

268 In the light of the foregoing, and without it being necessary to rule on the Commission's objections relating to the ineffective nature of the eighth plea in law on account of the failure to use the updated injury indicators for the first and second quarters of 2018, the eighth plea must be rejected as unfounded.

Costs

269 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.

270 Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. Dismisses the action;

2. Uzina Metalurgica Moldoveneasca OAO is ordered to pay the costs.

Kanninen Jaeger Porchia

Delivered in open court in Luxembourg on 18 May 2022.

E. Coulon M. van der Woude
Registrar President