Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

10 September 2015*

(Reference for a preliminary ruling — Commercial policy — Anti-dumping duty imposed on imports of ceramic tiles originating in China — Implementing Regulation (EU) No 917/2011 — Validity — Regulation (EC) No 1225/2009 — Articles 3(2), 3(3), 3(5), 3(6), 17 and 20(1) — Determination of the injury and of the causal link — Errors of fact and manifest errors of assessment — Obligation to exercise due care — Examination of the evidence sent by a sampled importer — Obligation to state reasons — Rights of the defence)

In Case C-569/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the förvaltningsrätten i Malmö (Sweden), made by decision of 4 November 2013, received at the Court on 6 November 2013, in the proceedings

Bricmate AB

v

Tullverket,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 3 December 2014,

after considering the observations submitted on behalf of:

— Bricmate AB, by C. Dackö, U. Käll and M. Johansson, advokater,

— the Council of the European Union, by S. Boelaert and A. Norberg, acting as Agents, B. O'Connor, Solicitor, and S. Gubel, avocat,

— the European Commission, by M. França and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 May 2015,

* Language of the case: Swedish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ 2011 L 238, p. 1).

2 The request has been made in proceedings between Bricmate AB and Tullverket (the Swedish Customs Service) concerning the collection by the latter of anti-dumping duty imposed on imports by Bricmate of ceramic tiles originating in China.

EU legal framework

The basic regulation

3 Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; 'the basic regulation') provides in Article 1(1) that '[a]n anti-dumping duty may be applied to any dumped product whose release for free circulation in the [European Union] causes injury'.

4 Article 3 of the basic regulation, headed 'Determination of injury', provides in paragraphs 1 to 3, 5 and 6 as follows:

'1. Pursuant to this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the [Union] industry, threat of material injury to the [Union] industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both:

(a) the volume of the dumped imports and the effect of the dumped imports on prices in the [Union] market for like products; and

(b) the consequent impact of those imports on the [Union] industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the [European Union]. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the [Union] industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

...

5. The examination of the impact of the dumped imports on the [Union] industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past

dumping or subsidisation, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting [Union] prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the [Union] industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.'

5 Article 17 of the basic regulation, headed 'Sampling', provides in paragraph 1 that '[i]n cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available'.

6 Article 17(2) to (4) of the basic regulation sets out the rules governing the selection of samples and those governing the calculation of the dumping margin to be carried out in that case.

7 Article 20 of the basic regulation, headed 'Disclosure', provides in paragraph 1:

'The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.'

The provisional regulation

8 On 16 March 2011, the European Commission adopted Regulation (EU) No 258/2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China (OJ 2011 L 70, p. 5; 'the provisional regulation').

9 In Part B of the provisional regulation, relating to the product concerned and the like product, recitals 27 to 32, under the heading 'Like product', were worded as follows:

'(27) One party claimed that the product imported from China and that produced by the Union industry were not comparable.

(28) It is recalled that the Commission based the price comparisons on product types distinguished on the basis of product control numbers ("PCN") based on eight characteristics.

(29) The party in question presented its arguments during a hearing before the Hearing Officer. According to the arguments the lack of comparability was due to different technology, material, polishing and design used for production of Union and Chinese tiles. Technologically advanced lines produced high quality tiles with screen printing and several colours. The company explained that there were different printing technologies for screen printing, roto-printing and inkjet printing.

(30) Despite requests for detailed submission elaborating on all these aspects of product comparability, the party failed to substantiate its claims. Also the argument on improving the comparability has not been supported by any evidence. Further, the party itself acknowledged that the product types that would be covered by adding the four suggested criteria, would represent only 0.5% of the tiles' market. As stated in the report produced by the Hearing Officer, which summarised the position of the company concerned, the remaining 99.5% products falling under the same PCNs were similar.

(31) As mentioned above the party did not substantiate the need to introduce the additional criteria nor their potential impact on prices. Hence, in view of the negligible market share of the product types concerned and the explicit acknowledgment by the party that 99.5% of the tiles were comparable under the PCN concerned, the claim to add additional criteria to the PCN structure had to be provisionally rejected.

(32) It is concluded that the product concerned, the product produced and sold on the domestic market of China and on the domestic market of the USA, which served provisionally as the analogue country, as well as the product manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic uses. They are therefore provisionally considered as alike within the meaning of Article [1](4) of the basic Regulation.'

10 Part D of the provisional regulation, relating to the determination of injury, contained recitals 68 to 111. In particular, recitals 71 and 72, set out in point 2 of Part D, under the heading 'Union consumption', stated:

'(71) The Union consumption was established by adding imports based on Eurostat data to the sales of Union producers on the Union market. Data concerning total Union sales of the product concerned has been based on verified data provided by both national and European associations of producers. The extrapolations were made on the basis of the associations' and Prodcom [Community production] data to arrive to total Union sales.

(72) Over the period considered, i.e. between 2007 and the [investigation period], the Union consumption decreased by 29%, with the main decrease by 13% between 2007 and 2008. In the [investigation period], consumption decreased by 8% as compared to 2009.'

11 Point 2 of Part D contained Table 1, headed 'Consumption', in which the following was set out:

'Volume (thousand m^2)	2007	2008	2009	[Investigation period]
+ Total imports	157 232	140 715	115 676	119 689
+ Union production sold on the Union market	1 275 486	1 099 092	992 204	895 140
Index (2007 = 100)	*100*	*86*	*78*	*70*
= Consumption	1 432 718	1 239 807	1 107 880	1 014 829
Index (2007 = 100)	*100*	*87*	*77*	*71*
year-on-year decrease		– 13%	– 11%	– 8%'

12 Point 3 of Part D, headed 'Imports from China', included point 3.1, headed 'Volume, market share and prices of imports of the product concerned'. Recitals 73 to 75 set out therein stated:

'(73) The volume, market share and average prices of imports from China developed as set out below. The following quantity and price trends are based on Eurostat data.

Table 2

Imports from China

Volume (thousand m^2)	2007	2008	2009	[Investigation period]
Volume of imports from the country concerned	68 081	65 122	62 120	66 023
Index (2007 = 100)	*100*	*96*	*91*	*97*
Year-on-year basis		– 4%	– 5%	+ 6%
Market share of imports from the country concerned	4.8%	5.3%	5.6%	6.5%
Price of imports from the country concerned (EUR/m^2)	4.7	4.9	4.4	4.5
Index (2007 = 100)	*100*	*105*	*95*	*97*
Year-on-year basis		+ 4%	– 10%	+ 2%

(74) The volume of total imports from China decreased by 3% over the period considered and amounted to around 66 million m^2 during the [investigation period]. The decreasing trend as such is in line with the decreasing trend of consumption but it is far less pronounced and occurred between 2007 and 2009. Between 2009 and the [investigation period], the volumes of imports from China increased by 6%. Also, when analysed from the perspective of the whole period considered, the market share of Chinese imports increased by 35%, from 4.8% in 2007 to 6.5% in the [investigation period].

(75) Prices of Chinese imports decreased by 4% during the period considered, from 4.70 EUR/m^2 to 4.50 EUR/m^2.'

13 Recitals 76 and 77, set out in point 3.2 headed 'Price undercutting', stated:

'(76) For the purposes of analysing price undercutting, the weighted average sales prices of the Union producers to unrelated customers on the Union market, adjusted to an ex-works level, were compared per product type to the corresponding weighted average prices of the imports from China to the first independent customer on the Union market, established on a CIF [cost, insurance and freight] basis with appropriate adjustments for the existing customs duties, post-import costs and level of trade.

(77) The comparison showed that during the [investigation period], imports of the product concerned were sold in the Union at prices which undercut those of the Union industry. When expressed as a percentage of the latter the level of undercutting ranged from 44% to 57%. The calculations were based on the data submitted by the sampled Union producers and sampled exporting producers from China.'

14 Part E of the provisional regulation, relating to the causal link between the dumped imports and the injury suffered by the Union industry ('the causal link between the imports and the injury'), included point 2 concerning the impact of the imports from China, in which recitals 114 and 116 were worded as follows:

'(114) This also coincided with a decrease in Union consumption. However, while the Chinese imports decreased in volume by 9 percentage points between 2007 and 2009, in line with the shrinking consumption (although not at the same pace — consumption shrank by 23 percentage points over the same period), since 2007 the Chinese market share was steadily growing. Moreover, between 2009 and the [investigation period], despite further decrease in consumption by 6 percentage points, Chinese imports increased by 6 percentage points.

...

(116) The increasing market share of the Chinese imports combined with decreasing prices and the increasing price differential between Union and Chinese prices coincided in time with the deterioration of the situation of the Union industry.'

15 In Part F of the provisional regulation, headed 'Union interest', recitals 144 to 146 concerning the interest of importers stated:

'(144) However, the investigation revealed that it is possible for importers and users to switch to products sourced from third countries or from within the Union. This change can occur quite easily since the product under investigation is manufactured in several countries, both in the Union and outside (Turkey, United Arab Emirates, Egypt, Brazil, countries of South-East Asia, and others).

(145) One importer declared that it tried to switch suppliers, as a consequence of the initiation of the investigation, but its efforts were unsuccessful. On the other hand, another importer declared that this process was already ongoing at the time of the investigation and was successful. A third one claimed that it would expand its portfolio to non-Chinese producers and that this would be easily done.

(146) It is therefore provisionally concluded that the imposition of measures would not hamper Union importers from buying similar products from other sources. Further, the aim of the anti-dumping duties is not to seal off specific trade channels but to restore the level playing field and counteract unfair trade practices.'

Regulation No 917/2011

16 After the administrative procedure which led to the adoption of provisional measures is set out in Part A, Regulation No 917/2011 deals, in Part B, with the 'Product concerned and the like product'. That part comprises recitals 42 to 46 of the regulation, which state:

'(42) Following the imposition of the provisional measures, one interested party indicated that there had been changes in the CN codes covering the product concerned contained in the Regulation imposing provisional measures as compared to those of the notice of initiation and enquired concerning the reasons for these differences and whether they entailed a change in product scope.

(43) In this context it is underlined that the differences between the CN codes indicated in the Regulation imposing provisional measures and those mentioned in the notice of initiation are not linked to a change of the product definition or the scope of the investigation. The amendments do not change the types of tiles covered but relate simply to the need to take account of the general changes to the Combined Nomenclature, as provided for by Commission Regulation (EU) No 861/2010, which became applicable on 1 January 2011 ...

(44) An interested party asked that certain ceramic mosaics be excluded from the product scope. The party alleged that, should measures be imposed, this category of product concerned would lose competitiveness against other products with which it is substitutable and that, in any event, dumping is not taking place in this particular segment.

(45) Concerning this claim, the investigation revealed that since ceramic mosaics and other types of ceramic tiles have the same basic physical and technical characteristics, a revision of the product scope is not warranted. As for the absence of dumping in this segment, which was not supported by any evidence, the analysis of dumping and injury has to mirror the situation for the entire product concerned. In these circumstances, the claim is rejected.

(46) In view of the above and in the absence of any further comments regarding the product concerned and the like product, recitals 25 to 32 of the [provisional regulation] are hereby confirmed.'

17 Part D of Regulation No 917/2011, relating to the determination of the injury caused to the Union industry, comprises recitals 99 to 137.

18 In Part D, point 1 relating to Union production and the Union industry includes point 1.1, headed 'Union consumption', where recital 100 states:

'In the absence of any comments or findings regarding the Union consumption, the conclusions in recitals 71 and 72 of the provisional Regulation are hereby confirmed.'

19 Point 2 of Part D deals with imports from China and includes, in particular, recitals 107 and 108. They are worded as follows:

'(107) As concerns the developments in price and volume of imports from China, it holds true that the variations are limited when considered in absolute terms. Chinese imports decreased by 3% in the period considered. However, the conclusion as to the volume of Chinese imports had to be put in the context of an overall decrease in consumption in the Union market. The fact that the Chinese imports dropped by only 3% in this period when the overall consumption fell by 29% clearly had an impact on their presence in the Union market. Keeping imports stable thus allowed the Chinese imports to gain market share in a period where other operators lost out.

(108) As for the evolution of Chinese prices, the average import prices indicated in recital 73 of the provisional Regulation were based on Eurostat statistics. Questions have been raised as concerns the accuracy of the average import prices to certain Member States but no changes to official statistics have been confirmed. In any event, it is recalled that the Eurostat data was used only to establish the general trends and that even if the Chinese import prices were to be adjusted upwards, the injury picture as a whole would still remain the same with high margins for undercutting and underselling. In this context it should be noted that for the calculation of both injury and dumping margins Eurostat data was not used. Only verified data from visited companies have been used in order to determine the level of the margins. Therefore, even if the discrepancies to the statistics were to be found, this would not have any impact on the level of the margins disclosed.'

20 Part E of Regulation No 917/2011, relating to the causal link between the imports and the injury, comprises recitals 138 to 169.

21 Part F of Regulation No 917/2011, headed 'Union interest', contains five points. Point 2, headed 'Interest of importers', states in recitals 174 and 175:

'(174) Regarding this claim, it is recalled that a large part of imports is not affected by duties as it is of non-Chinese origin. The characteristics of the product, being produced all over the world in comparable qualities, suggest that these products are interchangeable and that therefore a number of alternative sources are available, despite the allegations made. Even for importers that rely on Chinese imports, which the investigation found to be dumped and sold at prices which significantly undercut those of the products originating in the Union, the investigation found that importers can apply to their selling prices mark-ups in excess of 30%. This, together with the fact that importers have been found to have realised profits of around 5% and their possibility to pass on at least part of potential cost increases to their customers, suggests that they are in a position to cope with the impact of measures.

(175) Furthermore, and as concluded in recital 144 of the provisional Regulation, the imposition of measures would not hamper Union importers from increasing their import shares of products from the other non-dumped sources available to them both in the Union and in other third countries.'

22 Article 1(1) of Regulation No 917/2011 provides:

'A definitive anti-dumping duty is hereby imposed on imports of glazed and unglazed ceramic flags and paving, hearth or wall tiles; glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing, currently falling within CN codes 6907 10 00, 6907 90 20, 6907 90 80, 6908 10 00, 6908 90 11, 6908 90 20, 6908 90 31, 6908 90 51, 6908 90 91, 6908 90 93 and 6908 90 99, and originating in the People's Republic of China.'

The dispute in the main proceedings and the question referred for a preliminary ruling

23 On 7 May 2010, the Commission received a complaint that imports of ceramic tiles originating in China were being dumped and thereby causing material injury to the Union industry.

24 Consequently, on 19 June 2010 it published a notice of initiation of an anti-dumping proceeding concerning imports of ceramic tiles originating in the People's Republic of China (OJ 2010 C 160, p. 20). The investigation of dumping and of injury to the Union industry covered the period from 1 April 2009 to 31 March 2010. The examination of trends for the purpose of assessing the injury to that industry and the causal link between the imports and the injury covered the period from 1 January 2007 to 31 March 2010. The investigation covered all ceramic tiles imported under

headings 6907 and 6908 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended ('the CN').

25 Bricmate is a Swedish importer of ceramic tiles from China. In the anti-dumping proceeding, Bricmate was selected, along with six other companies, to be part of the sample of independent importers. In that connection, it provided detailed information to the Commission on 10 September 2010 in response to the Commission's questionnaire. Bricmate then supplemented that information on 10 December 2010.

26 On 16 March 2011, the Commission adopted the provisional regulation. On 15 April 2011, Bricmate submitted to the Commission its observations on that regulation. By letter dated 1 July 2011, the Commission replied to those observations and sent Bricmate a general disclosure document on the basis of which it proposed to recommend to the Council of the European Union that definitive anti-dumping measures be imposed.

27 On 11 July 2011, Bricmate submitted its observations on the general disclosure document, which it then supplemented, following the intervention of the Hearing Officer, on 15 July 2011. By letter dated 27 July 2011, the Commission responded to Bricmate's observations, and Bricmate submitted its comments on that response on 23 August 2011.

28 On 12 September 2011, the Council adopted Regulation No 917/2011.

29 On 28 November 2011, Bricmate brought an action pursuant to the fourth paragraph of Article 263 TFEU for the annulment of that regulation before the General Court of the European Union. By its order in *Bricmate* v *Council* (T-596/11, EU:T:2014:53), the General Court dismissed that action as inadmissible, since the applicant was not individually concerned by the regulation whose annulment was sought and that regulation entailed implementing measures.

30 On the basis of Regulation No 917/2011, Tullverket issued, between 31 October 2011 and 28 May 2012, 32 tax assessments applying the anti-dumping duty to imports by Bricmate of ceramic tiles originating in China.

31 By its action brought before the referring court, Bricmate sought the annulment of those assessments, arguing that Regulation No 917/2011 is invalid. In support of the claim that that regulation is invalid, the company put forward two pleas in law. The first plea is divided into two parts, the first of which relates to the alleged flaws in the Eurostat statistics that the Commission relied on. The second part of that plea relates to an alleged failure by the EU institutions to examine the alleged flaws. The second plea relates to inappropriate conduct of the Commission towards Bricmate during the investigation.

32 The referring court states that it cannot preclude that the arguments put forward by Bricmate may be held to be well founded.

33 Thus, by paragraphs (a) and (b) of the question submitted by it for a preliminary ruling, the referring court asks whether Regulation No 917/2011 is invalid on the ground that the statistics used by the Commission in its investigation are incorrect and that the Council and the Commission therefore relied on a flawed premiss in establishing the injury to the Union industry and the causal link.

34 By paragraph (c) of its question, the referring court seeks to ascertain whether, in stating, in recital 108 of Regulation No 917/2011, that no changes to official statistics had been confirmed, the EU institutions infringed their obligation to exercise due care and Article 3(2) and (6) of the basic regulation. In that regard, it relies on Bricmate's statements that it had complained to the Commission that Eurostat's statistics were incorrect.

35 By paragraphs (d) to (f) of its question, the referring court asks whether, by not taking into account the arguments relied on by Bricmate relating both to the differences in the manufacturing processes for ceramic tiles originating in China and those originating in Europe and to the supply of those products in the Union market, the Commission infringed its obligation to state reasons, within the meaning of Article 296 TFEU, Bricmate's rights of defence and Articles 17 and 20(1) of the basic regulation.

36 In that regard, the referring court states that Bricmate, selected by the Commission to form part of the sample of independent importers in the anti-dumping proceeding, drew attention to the importance of the ceramic tile cutting process in China and indicated that seven sorts of tile sets could not be found in the European Union. The CN tariff headings used in the anti-dumping proceeding and the calculations of the injury to the Union industry are both said to disregard those specific features. The referring court takes the view that the EU institutions did not clearly set out how the information provided by Bricmate was taken into account when the provisional regulation and Regulation No 917/2011 were adopted, Bricmate's arguments indeed being contradicted by those institutions to some extent. In particular, the referring court states that neither the information relating to the limited supply of tiles and the alleged differences in the cutting process nor Bricmate's opinions were taken into consideration. In that regard, it follows from the judgment of the General Court in *Gul Ahmed Textile Mills* v *Council* (T-199/04, EU:T:2011:535, paragraph 77) that, when the EU institutions use a sample, they must take account of the data concerning the exports of all the undertakings in the sample. By disregarding the information provided by Bricmate, the Commission is said to have infringed the rules on sampling set out in Article 17 of the basic regulation.

37 In those circumstances, the förvaltningsrätten i Malmö (Administrative Court, Malmö) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is [Regulation No 917/2011] invalid on any one of the following grounds:

(a) that the investigation of the EU institutions contains manifest errors of fact,

(b) that the investigation of the EU institutions contains manifest errors of assessment,

(c) that the Commission has failed in its obligation to exercise due care and has disregarded Article 3(2) and (6) of [the basic regulation],

(d) that the Commission has disregarded its obligations under Article 20(1) of [the basic regulation] and has disregarded [Bricmate]'s rights of defence,

(e) that the Commission, contrary to Article 17 of [the basic regulation], has failed to take into account the information which [Bricmate] supplied, and/or

(f) that the Commission failed in its duty to state reasons (pursuant to Article 296 [TFEU])?'

The application for reopening of the oral procedure

38 Following the delivery of the Advocate General's Opinion, Bricmate, by document lodged at the Court Registry on 17 June 2015, applied for the oral part of the procedure to be reopened. In support of that application, Bricmate submits, in essence, that at the hearing the Commission admitted that it was aware during the final phase of the anti-dumping investigation that the statistics at issue were incorrect. That awareness is a new factor that was not discussed by the parties or examined in the Opinion.

39 It must be recalled that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court of Justice make no provision for the parties to submit observations in response to the Advocate General's Opinion (see judgment in *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 30 and the case-law cited).

40 Pursuant to the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (see judgment in *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 29 and the case-law cited).

41 That said, the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, under Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice (judgment in *Nordzucker*, C-148/14, EU:C:2015:287, paragraph 24).

42 That is not the position in the present case. Bricmate set out, during both the written and the oral part of the procedure, all of its factual and legal arguments in support of its claims. In particular, as regards the alleged new factor raised at the hearing, it should be noted that it was discussed during those parts of the procedure. Accordingly, the Court considers, after hearing the Advocate General, that it has before it all the necessary information to give judgment and that that information has been the subject of debate before it.

43 In the light of the foregoing, the Court considers that it is not appropriate to reopen the oral part of the procedure.

Consideration of the question referred

Article 3(2) and (6) of the basic regulation, errors of fact and manifest errors of assessment, and breach of the obligation to exercise due care

44 By paragraphs (a) to (c) of its question, the referring court asks, in essence, whether Regulation No 917/2011 is invalid in that the EU institutions (i) committed errors of fact and manifest errors of assessment in the anti-dumping investigation since they relied on incorrect Eurostat statistics for the purposes of establishing the injury to the Union industry and the causal link between the imports and the injury and (ii) infringed their obligation to exercise due care and Article 3(2) and (6) of the basic regulation when they stated, in recital 108 of Regulation No 917/2011, that no changes to official statistics had been confirmed.

45 In particular, as regards the errors of fact, the referring court raises the issue whether the EU institutions made an error with respect to the volume of imports of goods classified under heading 6908 90 99 of the CN because the volume of Chinese imports was overstated in Regulation No 917/2011 by 1.3 million m^2 for 2009 and for the investigation period. It also wishes to know whether the EU institutions erred with respect to the import of goods under heading 6907 90 99 of the CN, now heading 6907 90 80 of the CN, so that for 2009 and for the investigation period the volume of those imports was overstated by 10%.

46 It should be recalled that it is settled case-law that the determination of the existence of injury caused to the Union industry requires an appraisal of complex economic situations and the judicial review of such an appraisal must therefore be limited to verifying whether relevant procedural rules have been

complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers. That is particularly the case as regards the determination of the factors injuring the Union industry in an anti-dumping investigation (see judgments in *Ikea Wholesale*, C-351/04, EU:C:2007:547, paragraph 41; *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 29; *Valimar*, C-374/12, EU:C:2014:2231, paragraph 51; and *TMK Europe*, C-143/14, EU:C:2015:236, paragraph 34).

47 In the present case, with respect to the volume of imports of goods classified under heading 6908 90 99 of the CN, the Commission acknowledged in its written observations the inaccuracy of the figure of 66 023 000 m^2 for the volume of Chinese imports during the investigation period, set out in recital 73 of the provisional regulation. The Commission now states that the volume of those imports is 64 821 000 m^2. However, recital 108 of Regulation No 917/2011 refers to the figures indicated in recital 73 of the provisional regulation. As a result, for the investigation period, Regulation No 917/2011 overstates the volume of Chinese imports by 1 202 000 m^2.

48 Next, with respect to imports of goods classified under heading 6907 90 99 of the CN, it is apparent from the Eurostat statistics sent to the Court by the Commission that, for 2009, the additional quantity of those goods from China imported into Spain amounted to 881 734 m^2 and not 7 373 291 m^2 as indicated by the Eurostat statistics used by the Commission and, for the month of November 2009, the additional quantity imported amounted to 64 940 m^2 and not 6 565 771 m^2 as indicated by the Eurostat statistics used by the Commission.

49 Accordingly, it must be held that, with respect to the determination of the volume of imports, the Commission concedes the existence of substantive inaccuracies.

50 It should therefore be determined whether those inaccuracies may lead to Regulation No 917/2011 being held invalid.

51 In that regard, Bricmate argues that those inaccuracies compromised the reliability of several macroeconomic indicators used by the EU institutions in the anti-dumping proceeding in question, leading them to commit manifest errors of assessment. The indicators relating to the volume of imports from China, consumption in the Union, the market share of imports originating in China, the market share of the Union industry, the average price of those imports and the difference between the prices of those imports and the prices in the Union are therefore alleged to be incorrect.

52 However, it should be noted that the objective examination regarding the determination of injury caused to the Union industry, provided for in Article 3(2) of the basic regulation, must relate, first, to the volume of the dumped imports and the effect of the dumped imports on prices in the Union market for like products, and, secondly, to the consequent impact of those imports on the Union industry.

53 Thus, as regards the determination of that volume or those prices, Article 3(3) of the basic regulation sets out the factors to be taken into account in that examination, while specifying that one or more of those factors cannot in themselves give decisive guidance (see judgment in *Neotype Techmashexport* v *Commission and Council*, C-305/86 and C-160/87, EU:C:1990:295, paragraph 50).

54 The same is true with respect to the impact of the dumped imports on the Union industry. It follows from Article 3(5) of the basic regulation that the EU institutions have the task of evaluating all relevant economic factors and indices which have a bearing on the state of that industry, and one or more of those factors does not necessarily give decisive guidance. That provision thus gives those institutions discretion in the examination and evaluation of the various items of evidence (see, to that effect, judgment in *Ikea Wholesale*, C-351/04, EU:C:2007:547, paragraph 61).

55 Finally, with respect to the causal link, under Article 3(6) of the basic regulation the EU institutions must demonstrate that the volume and/or price levels identified pursuant to Article 3(3) are responsible for an impact on the Union industry as provided for in Article 3(5) and that that impact exists to a degree which enables it to be classified as material.

56 Accordingly, those provisions read together show that it is necessary to determine whether it follows from all the relevant factors that the EU institutions have demonstrated the existence of material injury to the Union industry.

57 In the present case, it is apparent from recital 108 of Regulation No 917/2011 that, even though, after the general disclosure document was sent, the interested parties disputed the accuracy of the average import prices of the products at issue in respect of certain Member States, the EU institutions nevertheless concluded that 'the injury picture as a whole would still remain the same with high margins for undercutting and underselling'.

58 It should be noted that, although the substantive inaccuracies established affected some indicators, there were significant price-undercutting margins. The substantive inaccuracies in question did not affect those margins. In addition, it should be pointed out that other microeconomic indicators, such as stocks, sales prices, profitability, cash flow, return on investment, wages and production costs, were also supported by data from the sampled Union producers and that — without issue having been taken on this point — they were not affected by the substantive factual inaccuracies established.

59 Furthermore, the use of corrected figures by the EU institutions in their written observations ('the corrected figures') has no significant impact on the determination of the injury actually caused to the Union industry and on the causal link between the imports and the injury.

60 It is apparent from the corrected figures that the volume of imports from China between 2007 and the investigation period ('the period considered') decreased by 15% and not 3% as set out in recitals 73 and 74 of the provisional regulation. In recital 107 of Regulation No 917/2011, the EU institutions correctly concluded that, given that consumption in the European Union decreased by approximately 29%, which represents 30% under the corrected figures, it follows from the reduction in the volume of Chinese imports in conjunction with the reduction in consumption in the European Union that Chinese importers were none the less able to increase their market share in the Union market.

61 As regards the Chinese imports' share of the Union market, the EU institutions acknowledge that, according to the corrected figures, it increased by 21%, and not 35% as shown by recital 73 of the provisional regulation, taken up in this regard by recital 107 of Regulation No 917/2011. However, the fact remains that their market share must still be considered significant and that the EU institutions were correct in stating in recital 107 that that market share was increasing.

62 As regards the Union industry's market share, the EU institutions concede, in their written observations, that it did not decline by one percentage point, as was indicated in recital 87 of the provisional regulation, but remained stable during the period considered. However, it should be noted that other macroeconomic indicators concerning the Union industry, such as that industry's production, production capacity, sales, employment and productivity of the workforce, did — without this having been disputed — decline.

63 With respect to the average price of Chinese imports, according to the corrected figures, it increased by 10% during the period considered, rather than decreased by 3% as was stated in recital 73 of the provisional regulation. However, it should be noted that, as was apparent from recital 115 of the provisional regulation, the difference between the prices of Chinese imports and those of the Union industry reached 50% during the period considered. Although that difference remained stable, as found by the investigation, it is still significant. Moreover, according to recital 113 of Regulation

No 917/2011, the investigation revealed undercutting levels of between 43.2% and 55.7%. Since those figures are derived from the data provided by the sampled companies, they are not affected by the inaccuracies of the Eurostat data.

64 In those circumstances, it must be held that the corrected figures do not call into question the overall conclusion reached, following an examination of all the economic indicators, by the EU institutions, with the result that the EU institutions were correct in establishing the existence of injury to the Union industry and the causal link between the imports and the injury.

65 Finally, Bricmate submits that the substantive factual inaccuracies alleged by the interested parties were not examined or corrected, although they were relied on in the observations submitted by those parties and sent to the EU institutions before Regulation No 917/2011 was adopted. Accordingly, the EU institutions infringed their obligation to exercise due care and Article 3(2) and (6) of the basic regulation.

66 In that regard, in respect of the volume of imports classified under heading 6908 90 99 of the CN, it is apparent from the information submitted to the Court that, after the substantive inaccuracy relating to that volume was notified to the Commission during the dumping investigation, that institution examined its impact on the determination of the injury caused to the Union industry. Thus, it follows from paragraph 77 of the general disclosure document of 1 July 2011 that the Commission concluded that the discrepancies in the statistics had little impact on the overall determination of injury. It therefore decided that it was neither necessary nor expedient to amend the data used in the anti-dumping investigation. It follows that the EU institutions did examine with the required care the material resulting from the contentions concerning this inaccuracy of Eurostat's data.

67 So far as concerns the inaccuracy relating to the imports of goods classified under heading 6907 90 99 of the CN, it must be stated that, during the investigation, another interested party informed the Commission of the errors contained in the Eurostat statistics on the average price of the Chinese imports. On 9 June 2011, the Commission thus contacted Eurostat staff to verify whether the data, including the data relating to the Kingdom of Spain, were accurate. The Eurostat staff replied that a few weeks were required to confirm or correct the statistics, as it was for the Spanish authorities to take one or other of those actions. That party also informed the Commission, by letter received on 15 July 2011, that there were inconsistencies in the data relating to the Kingdom of Spain for 2009. However, it is not apparent from the documents before the Court that the Commission verified the substance of the alleged inaccuracy before the adoption of Regulation No 917/2011.

68 Since the accuracy of the Eurostat data was disputed, it was incumbent upon the Commission to assess on its own initiative the impact of those inaccuracies on the determination of the injury. The Commission could not merely send a single request for information to Eurostat staff and await the response of the Spanish authorities. On the contrary, the Commission had the task, pursuant to Article 3(2) of the basic regulation, of providing positive evidence and conducting an objective examination of the data concerning the prices of imports from China. The lack of response from Eurostat staff or the communication of inconclusive answers did not therefore in any way absolve the Commission from conducting that assessment. Accordingly, it must be held that the EU institutions did not examine with the required care the data contained in the Eurostat statistics.

69 However, this failure to examine the data relating to the average prices and volumes of imports from China is not such as to invalidate the conclusions reached by the EU institutions since, as has already been pointed out in paragraph 55 et seq. of the present judgment, on the basis of the corrected figures the trends of the corrected indicators for determination of the injury to the Union industry and of the causal link between the imports and the injury remain overall the same. The EU institutions were thus entitled to conclude that there was injury to the Union industry and a causal link between the imports and that injury.

70 Accordingly, it must be held, first, that the EU institutions did not commit a manifest error of assessment and, secondly, that the failure to examine with due care the data on the prices and volumes of imports from China does not call into question the finding of the existence of an injury to the Union industry and of the causal link between the imports and the injury.

The breach of the obligation to state reasons, of the rights of the defence, of Articles 17 and 20(1) of the basic regulation and of the requirements arising from Article 296 TFEU

71 The referring court asks, in essence, whether Regulation No 917/2011 is invalid since the Commission, by not taking into account the arguments raised by Bricmate, in its capacity as a sampled importer, relating, first, to the differences in the manufacturing processes of Chinese ceramic tiles and ceramic tiles from the European Union and, secondly, to the limited supply of certain types of ceramic tiles on the market of the European Union, infringed its obligation to state reasons, Bricmate's rights of defence, Articles 17 and 20(1) of the basic regulation and the requirements arising from Article 296 TFEU.

72 Bricmate argues that the EU institutions infringed their obligation to state reasons, since they did not clearly explain how the information which it provided relating to the tile cutting process was taken into consideration. In particular, in its response to the questionnaire of 10 September 2010, it drew attention to the importance of the tile cutting process and indicated seven sorts of tile sets that it could not obtain on the Union market. Bricmate states that neither the tariff headings of the CN for the products concerned that were used in the context of the anti-dumping proceeding nor the calculations of the injury to the Union industry take account of those differences. According to Bricmate, an adjustment was needed to take account of those differences, and this should have led to a reduction of the injury margin. In addition, the Union industry was not able, in Bricmate's opinion, to supply small ceramic tiles.

73 Relying on the judgment in *Gul Ahmed Textile Mills* v *Council* (T-199/04, EU:T:2011:535, paragraph 77), Bricmate notes that when the EU institutions use sampling pursuant to Article 17 of the basic regulation, they must take into account the data concerning the exports of all the undertakings in the sample. The same principle must also apply to the data or information gathered from the various undertakings sampled, including the sample of independent importers.

74 Bricmate also argues that the Commission infringed Article 20(1) of the basic regulation by failing to disclose the essential facts and considerations on the basis of which the provisional regulation was adopted. Next, the Commission, by rejecting Bricmate's arguments regarding a shortage of small ceramic tiles on the basis of other information, is alleged to have breached its obligation to state reasons and, accordingly, infringed that company's rights of defence. The Commission failed to disclose what that other information consisted of and the Commission's response, received by Bricmate on 27 July 2011, did not make it possible for it to obtain any further information because it was sent late.

75 Finally, Bricmate submits that, in denying the existence of a serious shortage of small ceramic tiles in the Union market, the Commission disregarded the evidence provided to it by Bricmate in its letter of 15 April 2011. By disregarding the information provided by Bricmate, which it supplied in its capacity as a selected importer, the Commission is said to have breached the rules governing sampling in Article 17 of the basic regulation and thus to have committed a manifest error of assessment.

76 First, with respect to the taking into account of Bricmate's contentions regarding the information it provided in relation to the differences in the cutting process for ceramic tiles, it must be held that those contentions were examined by the Commission during the administrative procedure. The Commission stated, in recital 27 of the provisional regulation, that one party had argued that the products imported from China were not comparable to those produced by the Union industry. In

recitals 28 to 32 of the provisional regulation, the Commission explained how it had conducted the examination of the comparability of the products concerned, which led it to believe that those products were to be provisionally considered alike.

77 As is clear from recital 43 of Regulation No 917/2011, 'the differences between the CN codes indicated in the [provisional regulation] and those mentioned in the notice of initiation are not linked to a change of the product definition or the scope of the investigation. The amendments do not change the types of tiles covered but relate simply to the need to take account of the general changes to the [CN]'. In addition, it follows from recital 45 of Regulation No 917/2011 that the contention relating to the difference between ceramic mosaics and the other types of ceramic tiles was examined in the investigation, which revealed that they had the same basic physical and technical characteristics. It also follows from that recital that 'the [alleged] absence of dumping in this segment ... was not supported by any evidence, the analysis of dumping and injury [having] to mirror the situation for the entire product concerned'.

78 Secondly, with regard to the alleged shortage of small ceramic tiles on the Union market, from which it would follow that the products concerned are not in competition, since they are not on the same segments of the market for ceramic tiles, it is apparent from the documents before the Court that, since the Commission did not have any evidence confirming the existence of such a shortage, it duly replied to that effect to Bricmate in the letters which it sent to it on 1 and 27 July 2011. It also follows both from recitals 144 to 146 of the provisional regulation and from recitals 174 and 175 of Regulation No 917/2011 that that issue was the subject of an analysis by the EU institutions. In particular, it is clear from the latter recitals that the products in question are interchangeable and that importers from the European Union can use a number of alternative sources of supply, since ceramic tiles, such as those involved in the dumping, are also manufactured in other countries. It follows that it must be held that the information forwarded by Bricmate was duly examined.

79 Accordingly, the EU institutions did not infringe their obligation to state reasons or Articles 17 and 20(1) of the basic regulation, nor did they disregard Bricmate's rights of defence.

80 In the light of all the above considerations, the answer to the question referred is that consideration thereof has disclosed no factor of such a kind as to affect the validity of Regulation No 917/2011.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Consideration of the question referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China.

[Signatures]