Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

20 January 2022 *

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(Appeal – Dumping – Implementing Regulation (EU) 2017/804 – Imports of certain seamless pipes and tubes originating in China – Definitive anti-dumping duty – Regulation (EU) 2016/1036 – Article 3(2), (3) and (6), and Article 17 – Determination of injury – Examination of the effect of dumped imports on the prices of like products sold on the EU market – Analysis of price undercutting – Application of the product control number (PCN) method – Obligation of the European Commission to take into account the different market segments relating to the product under consideration and all sales of like products by the sampled EU producers)

In Case C-891/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 December 2019,

European Commission, represented initially by T. Maxian Rusche and N. Kuplewatzky, and subsequently by T. Maxian Rusche and A. Demeneix and, finally, by T. Maxian Rusche and by K. Blanck, acting as Agents,

applicant,

the other parties to the proceedings being:

Hubei Xinyegang Special Tube Co. Ltd, established in Huangshi (China), represented by E. Vermulst and J. Cornelis, advocaten,

applicant at first instance,

ArcelorMittal Tubular Products Roman SA, established in Roman (Romania),

Válcovny trub Chomutov a.s., established in Chomutov (Czech Republic),

Vallourec Deutschland GmbH, established in Düsseldorf (Germany),

represented by G. Berrisch, Rechtsanwalt,

interveners at first instance,

THE COURT (Third Chamber),

composed of A. Prechal (Rapporteur), President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi and N. Wahl, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 1 July 2021,

gives the following

Judgment

1 By its appeal, the European Commission seeks to have set aside the judgment of the General Court of the European Union of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission* (T-500/17, not published, 'the judgment under appeal', EU:T:2019:691), by which that court annulled Commission Implementing Regulation (EU) 2017/804 of 11 May 2017 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406.4 mm, originating in the People's Republic of China (OJ 2017 L 121, p. 3, 'the regulation at issue'), in so far as that regulation concerned products manufactured by Hubei Xinyegang Special Tube Co. Ltd ('Hubei').

Legal context

WTO law

2 By Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), the Council of the European Union approved the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994, and also the agreements in Annexes 1 to 3 to that agreement, which include the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the Anti-Dumping Agreement').

3 Article 3 of the Anti-Dumping Agreement, entitled 'Determination of injury', provides:

'3.1 A determination of injury for purposes of Article VI [of the General Agreement on Tariffs and Trade (GATT) 1994] shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 … With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

…

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. …

…'

The basic regulation

4 Recital 3 of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21, 'the basic regulation'), provides:

'In order to ensure a proper and transparent application of the rules of the … Anti-Dumping Agreement, the language of that agreement should be reflected in Union legislation to the best extent possible.'

5 Article 1 of the basic regulation, entitled 'Principles', provides:

'1. An anti-dumping duty may be imposed on any dumped product whose release for free circulation in the Union causes injury.

2. A product is to be considered as being dumped if its export price to the Union is less than a comparable price for a like product, in the ordinary course of trade, as established for the exporting country.

…

4. For the purposes of this Regulation, "like product" means a product which is identical, that is to say, alike in all respects, to the product under consideration, or, in the absence of such a

product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.'

6 Article 2 of that regulation, entitled 'Determination of dumping', is worded as follows:

'…

D. Dumping margin

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Union, or by a comparison of individual normal values and individual export prices to the Union on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Union, if there is a significant difference in the pattern of export prices among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.

…'

7 Article 3 of the basic regulation, entitled 'Determination of injury', provides:

'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 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 those 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 … .

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, that shall entail demonstrating 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 that impact exists to a degree which enables it to be classified as material.

7. Known factors, other than the dumped imports, which at the same time are injuring the Union industry shall also be examined to ensure that the injury caused by those other factors is not attributed to the dumped imports under paragraph 6. …

8. The effect of the dumped imports shall be assessed in relation to the production of the Union industry of the like product when available data permit the separate identification of that production on the basis of criteria such as the production process, producers' sales and profits. …

…'

8 Article 4 of that regulation, entitled 'Definition of Union industry', states:

'1. For the purposes of this Regulation, the term "Union industry" shall be interpreted as referring to the Union producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5(4), of the total Union production of those products; …

…

4. The provisions of Article 3(8) shall be applicable to this Article.'

9 Article 17 of the basic regulation, entitled 'Sampling', provides:

'1. In 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.

2. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen.

…'

Background to the dispute

10 The background to the dispute was set out in paragraphs 1 to 7 of the judgment under appeal and may, for the purposes of the present judgment, be summarised as follows.

11 On 13 February 2016, following a complaint, the Commission initiated an anti-dumping proceeding concerning imports of certain seamless pipes and tubes of iron, other than cast iron, or steel, other than stainless steel, of circular cross-section, of an external diameter exceeding 406.4 mm ('the product under consideration') originating in China.

12 In the course of the investigation, Hubei, a company with registered offices in China that produces and exports to the European Union seamless pipes and tubes, was selected for inclusion in the sample of Chinese exporting producers pursuant to Article 17 of the basic regulation.

13 On 11 November 2016, the Commission adopted Regulation (EU) 2016/1977 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406.4 mm originating in the People's Republic of China (OJ 2016 L 305, p. 1).

14 On 11 May 2017, the Commission adopted the regulation at issue, Article 1 of which provides for the imposition of a definitive anti-dumping duty on all Chinese exporting producers of the product under consideration. In so far as concerns the products manufactured and exported by Hubei, the rate of anti-dumping duty was set at 54.9%.

The procedure before the General Court and the judgment under appeal

15 By application lodged at the General Court Registry on 7 August 2017, Hubei sought annulment of the regulation at issue.

16 By order of 24 January 2018, the President of the Seventh Chamber of the General Court granted ArcelorMittal Tubular Products Roman SA, Válcovny trub Chomutov a.s. and Vallourec Deutschland GmbH ('ArcelorMittal and Others') leave to intervene in support of the form of order sought by the Commission.

17 In support of its application, Hubei put forward four pleas in law. The first plea alleged infringement of Article 3(2) and (3) of the basic regulation and of Article 3, paragraphs 3.1 and 3.2, of the Anti-Dumping Agreement. The second plea alleged infringement of Article 3(6) of the basic regulation and of Article 3, paragraph 3.5 of the Anti-Dumping Agreement. The third plea alleged a manifest error of assessment in the establishment of a causal link, for the purposes of Article 3(6) and (7) of the basic regulation. Finally, the fourth plea alleged a breach of 'the obligation of due diligence and proper administration'. Only the first and second pleas were examined by the General Court and therefore only those pleas are relevant to the present proceedings.

18 By the first part of its first plea, Hubei argued that by analysing, in the context of the determination of injury, price undercutting by reference to the investigation period, namely 2015, the Commission erred in law. That first part was rejected by the General Court in paragraphs 48 to 52 of the judgment under appeal, which are not relevant to the present appeal.

19 However, the General Court upheld the second part of Hubei's first plea, which concerned the methodology adopted by the Commission in the context of the determination of injury to compare the prices of the dumped imports with the prices of products sold by the Union industry for the purposes of the analysis of price undercutting.

20 In that regard, first of all, the General Court held, in essence, in paragraphs 59 to 67 of the judgment under appeal, that, although the Commission had noted the existence of three market segments relating to the product under consideration relating, first, to oil and gas, second, to construction and, third, to electricity production, the Commission did not take account of that segmentation in its analysis of price undercutting and, more generally, in the examination of the effect of the dumped imports on prices in the Union market for like products. Accordingly, the General Court held that the Commission did not base its analysis on all the relevant data in the present case, in breach of Article 3(2) and (3) of the basic regulation.

21 In reaching that conclusion, the General Court relied, inter alia, on the report of the Appellate Body established by the WTO Dispute Settlement Body in the dispute 'China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan' (WT/DS 454/AB/R and WT/DS 460/AB/R, report of 14 October 2015, 'the Appellate Body's HP-SSST report') and on its own judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317).

22 Secondly, in paragraphs 68 to 75 of the judgment under appeal, the General Court held, in essence, that in so far as the Commission did not take into account, in the analysis of price undercutting, a certain volume of the product under consideration produced by the sampled EU producers, namely 17 of the 66 product types, referred to as 'product control numbers' ('PCN' or 'PCNs'), representing 8% of the sales volume of those producers, which were not exported by the sampled Chinese exporting producers, it failed to take account of all the relevant data in the case at issue, in breach of Article 3(2) and (3) of the basic regulation.

23 Finally, the General Court held, in paragraphs 77 to 79 of the judgment under appeal, that the findings that it had reached could not be called into question by the evidence put forward by the Commission after the hearing.

24 In paragraphs 82 to 89 of the judgment under appeal, the General Court also upheld the second plea raised by Hubei by holding, in essence, that, having found in the context of the first plea that the Commission had failed to take account of all the relevant factors for the purposes of determining price undercutting and of the effect of imports on prices in the Union market for like products, it had to be held that, as a result, the Commission's conclusion as to the existence of a causal link, for the purposes of Article 3(6) of the basic regulation, was founded on an incomplete factual basis, as a result of which the Commission failed to take into account, in the analysis of the causal link, all the relevant data in the case at issue.

25 Accordingly, the General Court upheld the first and second pleas in law and, consequently, annulled the regulation at issue, in so far as it concerned Hubei, without examining the two other pleas put forward by Hubei.

Forms of order sought by the parties

26 The Commission claims that the Court should:

– set aside the judgment under appeal;

– reject as unfounded in law the first and second pleas in the application at first instance;

– refer the case back to the General Court for reconsideration of the remaining pleas; and

– reserve the costs of the proceedings at first instance and on appeal.

27 Hubei claims that the Court should:

– dismiss the appeal;

– in the alternative, refer the case back to the General Court for reconsideration of the third and fourth pleas of the application at first instance; and

– order the Commission to pay the costs of the appeal and of the proceedings at first instance.

28 ArcelorMittal and Others claim that the Court should:

– set aside the judgment under appeal;

– dismiss the first and second pleas raised at first instance as unfounded in law;

– refer the case back to the General Court for reconsideration of the third and fourth pleas raised at first instance;

– order Hubei to pay the costs of the appeal; and

– reserve the costs as to the remainder.

The appeal

29 In support of its appeal, the Commission puts forward six grounds of appeal, alleging, (i) that the General Court incorrectly held that it was required to carry out an analysis of price undercutting by market segment, (ii) that the General Court incorrectly held that the PCN method was not appropriate to take account of the market segmentation, (iii) misinterpretation of the duty to state reasons and distortion of the evidence by the General Court, (iv) misinterpretation of Article 3(2) and (3) of the basic regulation, (v) breach of Article 17 of that regulation, and (vi) an error in law in that the General Court applied an excessively strict standard of judicial review in its examination of the Commission's analysis of price undercutting.

Preliminary observations

30 As a preliminary point, it should be noted, in the first place, that it is apparent from recital 3 of that regulation that, in order to ensure a proper and transparent application of the rules of the Anti-Dumping Agreement, the language of that agreement should be reflected in EU legislation to the best extent possible. As the General Court pointed out in paragraph 54 of the judgment under appeal, which is not criticised by the Commission in its appeal, the provisions of Article 3(2) and (3) of the basic regulation are substantially the same as those of Article 3, paragraphs 3.1 and 3.2, of the Anti-Dumping Agreement, which were the subject of a special interpretation in the Appellate Body's HP-SSST report.

31 In that regard, it should be recalled that the primacy of international agreements concluded by the European Union over secondary EU legislation requires that the latter be interpreted, as far as possible, in a manner consistent with those agreements (see, in particular, judgment of 10 November 2011, *X and X BV*, C-319/10 and C-320/10, not published, EU:C:2011:720, paragraph 44 and the case-law cited).

32 Furthermore, the Court has already held that the general international law principle of compliance with treaty commitments (*pacta sunt servanda*), laid down in Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331), means that the Court must, for the purposes of interpreting and applying the Anti-Dumping Agreement, take account of the interpretation that the WTO Dispute Settlement Body has given to the various provisions of that agreement (see, by analogy, judgment of 6 October 2020, *Commission* v *Hungary (Higher Education)*, C-66/18, EU:C:2020:792, paragraph 92).

33 The Court has already referred to WTO Panel and Appellate Body reports in support of its interpretation of certain provisions of agreements annexed to the agreement establishing the WTO (see, in particular, judgment of 10 November 2011, *X and X BV*, C-319/10 and C-320/10, not published, EU:C:2011:720, paragraph 45 and the case-law cited).

34 Accordingly, the General Court correctly held, in essence, as is apparent in particular from paragraphs 53 and 54 of the judgment under appeal, that in the present case nothing prevented it from referring to the Appellate Body's HP-SSST report on the interpretation of Article 3, paragraphs 3.1 and 3.2, of the Anti-Dumping Agreement in order to interpret the provisions of Article 3(2) and (3) of the basic regulation, which are substantially the same.

35 In the second place, it should be noted that it is settled case-law that, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic and political situations which they have to examine (judgment of 18 October 2018, *Gul Ahmed Textile Mills* v *Council*, C-100/17 P, EU:C:2018:842, paragraph 63 and the case-law cited).

36 It is also settled case-law that that broad discretion covers, inter alia, the determination of injury caused to the Union industry in an anti-dumping proceeding. 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 causing injury to the Union industry in an anti-dumping investigation (judgment of 10 September 2015, *Bricmate*, C-569/13, EU:C:2015:572, paragraph 46 and the case-law cited).

37 The Court of Justice has also repeatedly held that the General Court's review of the evidence on which the EU institutions based their findings does not constitute a new assessment of the facts replacing that made by the institutions. That review does not encroach on the broad discretion of those institutions in the field of commercial policy, but is restricted to showing whether that evidence was able to support the conclusions reached by the institutions. The General Court must therefore not only establish whether the evidence put forward is factually accurate, reliable and consistent but also ascertain whether that evidence contained all the relevant information which had to be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions reached (judgment of 10 July 2019, *Caviro Distillerie and Others* v *Commission*, C-345/18 P, not published, EU:C:2019:589, paragraph 16 and the case-law cited).

The first to third grounds of appeal

38 By its first to third grounds of appeal, the Commission, supported by ArcelorMittal and Others, disputes paragraphs 59 to 67 of the judgment under appeal by which the General Court held, in essence, that the Commission, by failing to take account of the segmentation of the market for the product under consideration in its analysis of price undercutting and, more generally, of the effect of the dumped imports on prices in the Union market for like products, did not base its analysis on all the relevant data in the case at issue, in breach of Article 3(2) and (3) of the basic regulation.

Arguments of the parties

– The first ground of appeal, alleging that the General Court incorrectly held that the Commission was required to carry out an analysis of price undercutting by market segment

39 By the first part of its first ground of appeal, the Commission claims that the General Court infringed Article 1(2) and (4), Article 3(2), (3) and (8) and Article 4 of the basic regulation by holding that it was required to carry out a separate examination of price undercutting for each market segment of the product under consideration.

40 It follows from those provisions that it is sufficient for the Commission to analyse price undercutting at the level of the 'like product', within the meaning of Article 1(4) of the basic regulation, by examining its impact on the 'Union industry', within the meaning of Article 4 of that regulation.

41 On the other hand, there is nothing in those provisions to indicate an obligation to carry out an analysis of price undercutting separately for each market segment of the product under consideration.

42 By imposing such an obligation, the General Court required an analysis of price undercutting based on the concept of the relevant product market which is specific to EU competition law. That concept is very different from that of 'like product' used by the EU legislature in the context of anti-dumping legislation, in particular for the purposes of the analysis of price undercutting.

43 By the second part of its first ground of appeal, the Commission complains that the General Court incorrectly based the requirement of an analysis of price undercutting separately for each market segment on two precedents, namely the Appellate Body's HP-SSST report and the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317).

44 Accordingly, the General Court distorted the facts underlying those precedents which are entirely different to those underlying the present case.

45 First, in the situations at issue in those two precedents, no price undercutting was found at the level of the like product whereas, in the regulation at issue, the Commission found price undercutting at that level.

46 Second, contrary to the situation at issue in the Appellate Body's HP-SSST report, in which dumped imports and domestic sales were concentrated in different market segments, in the regulation at issue the Commission found a concentration of domestic sales and dumped imports in the same market segments and at similar levels.

47 By the third part of its first ground of appeal, the Commission criticises the General Court for having incorrectly interpreted the regulation at issue or, in the alternative, for having made an incorrect legal characterisation of the facts when it held, in paragraph 67 of the judgment under appeal, that the facts, stated in paragraphs 59, 61, 62 and 64 of that judgment, constituted exceptional circumstances requiring an analysis of price undercutting by market segment.

48 As a preliminary point, Hubei maintains that the appeal is ineffective in so far as the Commission challenges the judgment under appeal since it requires an analysis of price undercutting separately for each market segment. The General Court did not require such an analysis, but merely held, in paragraphs 45, 66 and 67 of the judgment under appeal, that the regulation at issue infringed Article 3(2) and (3) of the basic regulation in that, in the light of the facts available to it, the Commission did not take account of the segmentation of the market for the product under consideration in its analysis of price undercutting. Furthermore, in so far as the Commission calls into question the relevance of certain findings of fact made by the General Court without alleging distortion of evidence, its arguments are inadmissible.

49 As to the substance, Hubei maintains that the first part of the first ground of appeal is unfounded. It follows from the reference, in Article 3(2)(a) and Article 4(1) of that regulation, to 'like products', that the concept of 'like product' is capable of covering several product types and, therefore, several segments, which is borne out by the case-law of the Court.

50 Furthermore, the Appellate Body set up by the WTO Dispute Settlement Body stressed the importance of examining the existence of different market segments in the analysis of price undercutting, and the judgment under appeal is consistent with those findings.

51 According to Hubei, while there is no obligation to establish the existence of price undercutting for each product type or market segment, the Commission is required to examine all the relevant evidence, including the question of how the existence of various market segments might have an overall effect on the analysis of the effect of dumped imports on prices and, in particular, on price undercutting.

52 As regards the second part of the first ground of appeal, Hubei argues that the basis on which the General Court annulled the regulation at issue is the breach of the obligation, imposed on the Commission under Article 3(2) and (3) of the basic regulation, to base its analysis of price undercutting on all the relevant data and, consequently, the breach of the obligation to determine injury on positive evidence and on an objective examination.

53 The General Court rightly referred to two precedents, namely the Appellate Body's HP-SSST report and the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317), to assert that, where there are different market segments with substantial price differences, it is necessary to take account of the effect of that segmentation on the analysis of price undercutting.

54 Furthermore, several of the Commission's allegations concerning those two precedents are incorrect.

55 Lastly, the Commission's assertion that, in the present case, both the Chinese imports and the products sold by the Union industry were concentrated in the same market segment does not appear in the regulation at issue, as the General Court correctly noted. Hubei has argued since the administrative procedure that the Chinese imports were concentrated in a market segment other than that in which the products manufactured by the Union industry were concentrated.

56 Hubei claims that the third part of the first ground of appeal must also be rejected. First, the interested parties addressed the issue of the existence of various market segments, not in the context of the definition of the product under consideration, but in the context of injury and causation. Second, as regards the adjustment that the Commission made in order to calculate the injury margin on account of the economic situation and profitability of the largest company in the sample of EU producers referred to in recital 8 to Regulation 2016/1977, Hubei argues that those factors clearly have a significant effect on the analysis of the injury.

– The second ground of appeal, alleging that the General Court incorrectly held that the PCN method was not appropriate to take account of the market segmentation

57 By its second ground of appeal, the Commission disputes paragraphs 60 and 67 of the judgment under appeal in which the General Court, in essence, considered that the PCN method was not appropriate to take account of the market segmentation. In so doing, the Commission argues that the General Court misinterpreted recital 24 of the regulation at issue and the explanations provided during the administrative procedure and in the Commission's oral and written observations before the General Court. In the alternative, the Commission argues that the General Court distorted the evidence put before it in that regard.

58 The Commission argues that the PCN method is the most detailed analysis that can be performed to compare the product under consideration with the like product. That method, which, moreover, is not used by the European Union's main trading partners, is a much more detailed analysis than an analysis at the level of the market segments for the like product. The

construction of the PCN takes account of all the characteristics of the product under consideration and thus enables the Commission to match each pipe or tube manufactured by the sampled Chinese producers with the most comparable pipe or tube manufactured by a sampled Union producer. Accordingly, the first digit of the PCN refers to one of the three market segments concerned. There is nothing to support the conclusion that, by using PCNs, the Commission failed to take account of certain features specific to the product under consideration or to the market, including price variations. By its design and functioning, the PCN method ensures an analysis by market segment.

59 Hubei maintains that, in the judgment under appeal, the General Court merely stated that, given the facts before the Commission, applying the PCN method was in itself insufficient to take account of the market segmentation.

60 Admittedly, that method enabled the Commission to determine whether Chinese imports falling under a given PCN or product type within a specific market segment undercut the sale prices of the sampled EU producers for the same PCN or product type belonging to the same market segment. However, as the General Court correctly stated in paragraph 67 of the judgment under appeal, the PCN method did not enable the Commission to establish the impact of the dumped imports in a given segment on the sale prices of the Union industry for products belonging to other segments.

– *The third ground of appeal, alleging misinterpretation of the duty to state reasons and distortion of the evidence*

61 By the first part of its third ground of appeal, alleging misinterpretation of the duty to state reasons as laid down in Article 296 TFEU, the Commission complains that the General Court held, in paragraphs 77 to 79 of the judgment under appeal, that certain items of evidence submitted by it after the hearing further to a request by the General Court, demonstrating that there was price undercutting for the three market segments of the product under consideration and that the sales of the sampled EU producers were concentrated, like the dumped imports, in the construction sector, could not be taken into account since they had been submitted at a late stage of the proceeding before the General Court and related to grounds which were not contained in the regulation at issue.

62 By the second part of its third ground of appeal, the Commission argues that the General Court distorted the evidence that was available to it by holding, in paragraph 78 of the judgment under appeal, that an analysis by market segment had only been performed *ex post*. The distinction between the various market segments had been deliberately internalised in the analysis carried out using the PCN method, the functioning of which the General Court simply ignored, misunderstood or misconstrued.

63 As regards the first part of the third ground of appeal, Hubei maintains that the Commission incorrectly relied on the judgment of 10 September 2015, *Fliesen-Zentrum Deutschland* (C-687/13, EU:C:2015:573), in order to claim that the General Court misinterpreted the duty to state reasons as laid down in Article 296 TFEU.

64 As is apparent from paragraph 73 of that judgment, it was delivered in the context of a particular situation in which an importer that had not participated in the administrative procedure alleged a breach of the duty to state reasons as regards allegations which it had not itself made. Hubei

maintains that its position is fundamentally different in that, from the start of the administrative procedure, it had asserted that the existence of various market segments was important in the analysis of price undercutting.

65 It is settled case-law that the EU institutions are under an obligation to set out the facts and the legal considerations which are of decisive importance in the background to the decision at issue and that the reasons for a measure must appear in the actual body of the measure.

66 Finally, Hubei argues that it is incorrect to state that it knew from the administrative record that the sales of the sampled EU producers and the dumped imports were concentrated in the same segment, namely construction, and that price undercutting had been found in all three segments. For reasons of confidentiality, it was not given access to price-undercutting calculations relating to the other Chinese producers.

67 As regards the second part of the third ground of appeal, Hubei claims that, in paragraph 78 of the judgment under appeal, the General Court did not criticise the Commission for having failed to apply the PCN method by segment, but for having failed to carry out an analysis by segment. Accordingly, the General Court criticised the Commission on account of the fact that the PCN method had only enabled it to establish price undercutting in a given segment, and had not enabled it to analyse the effect of the undercutting found in one segment on the sale prices of EU producers in another segment.

Findings of the Court

– *Preliminary observations*

68 As a preliminary point, it is necessary to set out, first of all, what the General Court specifically criticised the Commission for in the judgment under appeal as regards its analysis of price undercutting in the present case, since, on that point, the parties disagree as to the exact scope of that judgment.

69 In that regard, as also observed, in essence, by the Advocate General in point 59 of his Opinion, it is apparent from paragraphs 65 to 67 of the judgment under appeal that the General Court accepted that, in the context of the price-undercutting analysis, the Commission, in applying the PCN methodology, to a certain extent took account of the market segmentation of the product under consideration. The General Court took the view, however, that, in the light of four factual elements of the case characterising that segmentation, namely the difficulty of interchangeability on the demand side between products falling within different segments, the price variation between different segments, the concentration of the largest sampled undertaking in Union industry in the oil and gas sector, and the concentration of imports from the sampled Chinese exporting producers in the construction segment, the use of that method was not sufficient to take proper account of the market segmentation for the purposes of the analysis of the effects of the dumped imports on the Union industry prices and that, accordingly, the Commission had not based its analysis on all the relevant data in the case at issue.

70 More specifically, in paragraph 67 of the judgment under appeal, the General Court criticised the Commission, in view of those four items of information characterising the segmentation in the instant case, for not, at the very least, ensuring, in the context of its price-undercutting analysis,

that the decrease in the prices of the Union industry did not come from a segment in which the Chinese imports had a weak presence or level of undercutting, assuming that it existed, which could not be regarded as 'significant' in the sense of Article 3(3) of the basic regulation.

71 As the Advocate General also observed in point 60 of his Opinion, in paragraph 67 of his Opinion, the General Court implicitly but necessarily found that, if that were the case, that fall in prices on the Union market could not be regarded as the consequence of the dumped imports.

72 It should further be pointed out that, according to Article 3(2) of the basic regulation, the determination of injury is to involve an objective examination of the volume of the dumped imports, their effect on prices in the Union market and their impact on the Union industry. Article 3(3) of that regulation provides that, as regards the effect of the dumped imports on prices, consideration should be given to whether there has been a significant price undercutting as compared with the price of a like product of the Union industry.

73 As the General Court observed in paragraph 33 of the judgment under appeal, the basic regulation does not impose any particular method for analysing price undercutting.

74 However, as the Commission points out, it is apparent from the very wording of Article 3(3) of that regulation that the method used to determine possible price undercutting must, in principle, be applied at the level of the 'like product', within the meaning of Article 1(4) of that regulation, even though that product may, as in the present case, consist of different product types falling within several market segments (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, paragraphs 58 and 59).

75 Accordingly, the basic regulation does not, in principle, impose any obligation on the Commission to carry out an analysis of the existence of price undercutting at a level other than that of the like product.

76 That interpretation is confirmed by paragraph 5.180 of the Appellate Body's HP-SSST report according to which the investigating authority is not required, under Article 3, paragraph 3.2, of the Anti-Dumping Agreement, to establish price undercutting for each of the product types under investigation or for the entire range of products constituting the like domestic product.

77 However, as confirmed in that same paragraph 5.180, since, under Article 3(2) of the basic regulation, the Commission is required to carry out an 'objective examination' of the effect of the dumped imports on prices in the Union industry for like products, that institution is required to take account in its analysis of price undercutting of all the relevant positive evidence, including, where applicable, evidence relating to the various market segments of the product under consideration.

78 Therefore, in order to ensure that the analysis of price undercutting is objective, the Commission may, in certain circumstances, be required to carry out such an analysis at the level of the market segments of the product in question, even though the broad discretion enjoyed by that institution to determine, inter alia, the existence of injury in accordance with the case-law referred to in paragraph 36 of the present judgment extends, as the Advocate General further observed in point 167 of his Opinion, at the very least, to decisions on the choice of method of analysis, to the data and evidence to be gathered, to the method of calculation to be used in order to determine the undercutting margin and to the interpretation and evaluation of the evidence gathered.

79 Finally, it should be noted that this is the case, in the first place, in a situation such as that at issue in the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317), characterised by the fact that the imports subject to the anti-dumping investigation were overwhelmingly concentrated in one of the market segments relating to the product in question.

80 As the General Court held, in essence, in paragraphs 127 and 129 of that judgment, in such a situation of particularly marked segmentation of the imports concerned, Article 3 of the basic regulation does not preclude the EU institutions from assessing injury separately at the level of the segment concerned, provided, however, that the like product as a whole is duly taken into account.

81 In the second place, as further observed, in essence, by the Advocate General in point 77 of his Opinion, for the purposes of interpreting Article 3(2) and (3) of the basic regulation, the lessons learned from the Appellate Body's HP-SSST report may be summarised as meaning that, in a particular situation characterised by a high concentration of domestic sales and dumped imports in separate segments and by price differences that are very significant between those segments, in order to ensure the objectivity of the analysis of the existence of price undercutting, the Commission, even if it has broad discretion as to the method for carrying out that analysis, may be required to take account of the market shares of each product type and those price differences.

82 As is apparent from paragraphs 5.180 and 5.181 of that report, where the authority responsible for an anti-dumping investigation is under an obligation to examine objectively the effect of the dumped imports on domestic prices, it cannot disregard evidence to suggest that those imports have no effect on those prices, or only a limited effect.

83 It is in the light of those considerations that the first to third grounds of appeal must be examined, starting with the examination of the third ground of appeal in the light of its potentially significant impact on the first and second grounds of appeal.

– *The third ground of appeal*

84 By its third ground of appeal, the Commission complains that the General Court held, in paragraphs 77 to 79 of the judgment under appeal, that account could not be taken of certain factual elements relating to the segmentation of the market for the product under consideration put forward by the Commission after the hearing.

85 As further noted by the Advocate General in points 80 and 81 of his Opinion, it is apparent from the documents before the Court that, following the discussions which took place at the hearing before the General Court, the Commission provided, in accordance with a request made by that court, figures resulting from the application of the PCN method, from which it was apparent, first, that, of the three segments at issue, the dumped imports and the sales of the Union industry were present at almost equivalent levels, that they were mainly concentrated in the construction segment with a share of 75.1% and 71.6% respectively, that they both reached a significant level in the oil and gas segment, namely 17.3% and 15.3% respectively, and that they were both present to a lesser, but not insignificant, extent in the power generation segment, namely 7.4% and 13.1% respectively, and, second, that price undercutting had occurred in the three segments at issue.

86 In paragraphs 77 to 79 of the judgment under appeal, the General Court held, in essence, that it could not take those data into account since, having been submitted at a late stage in the proceedings before the General Court, they could not supplement the statement of reasons in the regulation at issue.

87 In that regard, it should be noted that, according to the Court's settled case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to carry out its review (see judgment of 9 January 2003, *Petrotub and Republica* v *Council*, C-76/00 P, EU:C:2003:4, paragraph 81, and of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 75).

88 According to that case-law, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to specify all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 9 January 2003, *Petrotub and Republica* v *Council*, C-76/00 P, EU:C:2003:4, paragraph 81, and of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 76).

89 Similarly, in the case of a regulation, the statement of reasons may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other. Consequently, it is not possible to require that the EU institutions should set out the various facts, which may be very numerous and complex, on the basis of which the regulation was adopted, or a fortiori that they should provide a more or less complete evaluation of those facts (judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 77).

90 In the present case, in paragraph 79 of the judgment under appeal, the General Court pointed out that the Commission had not put forward in the regulation at issue the fact that the sales of the sampled EU producers were concentrated on the construction sector, even though it is apparent from recital 104 of that regulation that the association of Chinese exporting producers specifically maintained that the imports from China focused on that sector while the EU producers were more involved in the oil and gas and electricity production segments.

91 The Commission cannot be criticised for not having put forward that fact in the regulation at issue in response to the argument raised by that association since, according to the case-law referred to in paragraph 89 above, the statement of reasons required by Article 296 TFEU does not require that institution to specify exhaustively the various facts, which may be very numerous and complex, in the light of which a regulation imposing anti-dumping duties was adopted, nor, a fortiori, to provide a more or less complete assessment thereof.

92 In addition, since, as regards the analysis of price undercutting, the essential objective pursued by the Commission was apparent from the regulation at issue, that regulation did not have to include specific reasons for each of the numerous factual arguments relied on in relation to that analysis (see, by analogy, judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 78).

93 As also noted, in essence, by the Advocate General in point 85 of his Opinion, the data provided by the Commission after the hearing include additional details and information on the grounds already contained in the regulation at issue, which, moreover, undisputedly constitute sufficient grounds, on the basis of which the Commission concluded that the analysis based on the PCN method had demonstrated that there was, in the present case, price undercutting at the level of the like product.

94 In particular, in recital 108 of the regulation at issue, the Commission explained as follows why the PCN method made it possible to take into account, when comparing the products and therefore, in particular, in the context of the price undercutting analysis, the market segmentation of the product under consideration:

'As regards the segments, the Commission pointed out that the relevant differences between product types are reflected in the [PCN], which ensures that only comparable products are compared with each other. The key characteristics of the segments are distinguished by the PCN: alloy and high-alloy steels (power generation segment), non-alloy steels (construction) and the specific product categories of line pipe, casing, tubing and drill pipes (oil and gas segment).'

95 Since the essential part of the Commission's reasoning concerning the analysis of the price undercutting, including specifically the taking into account of the market segments of the product under consideration, was already apparent from the grounds of the regulation at issue, there was nothing to prevent the General Court, in the present case, from requesting clarification from the Commission in order to obtain additional explanations which that court considered necessary in order fully to understand that analysis in the light of Hubei's criticisms thereof.

96 It follows that the General Court erred in law in holding that it could not take into consideration the data resulting from the application of the PCN method referred to in paragraph 85 above, when that court had itself requested the Commission to provide them after the hearing. Since that information is therefore part of the file, that information must be taken into account in the assessment of the first and second pleas in law.

97 As a result, the third ground of appeal must be upheld.

– *The first and second grounds of appeal*

98 By the first part of its first ground of appeal, the Commission complains, in essence, that the General Court required a price undercutting analysis for each segment of the market of the product under consideration, in breach of Article 3(3) of the basic regulation, which provides for such an analysis only at the level of the like product. By the second part of that ground of appeal, the Commission complains that the General Court based the requirement of an analysis of price undercutting for each market segment on two precedents, namely the Appellate Body's HP-SSST report and the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317), even though the lessons to be learned from those precedents are not applicable in the present case. By the third part of its first ground of appeal, the Commission criticises the

General Court for having held that the facts, listed in paragraphs 59, 61, 62 and 64 of the judgment under appeal, constituted exceptional circumstances requiring an analysis of price undercutting by market segment.

99 By its second ground of appeal, the Commission disputes paragraphs 60 and 67 of the judgment under appeal in which the General Court, in essence, considered that the PCN method was not appropriate to take account of the segmentation of the market of the product under consideration in the context of the price-undercutting analysis.

100 Those two grounds of appeal should be dealt with together since they largely overlap, inasmuch as they both constitute criticism of paragraph 67 of the judgment under appeal.

101 In that regard, it follows from paragraphs 60, 66 and 67 of the judgment under appeal that, according to the General Court, despite the application of the PCN method, the Commission did not take account of the segmentation of the market for the product under consideration in the context, in particular, of its analysis of price undercutting, whereas the specific facts of the case, listed in paragraphs 59, 61, 62 and 64 of that judgment, required such an analysis at the level of each market segment of the product under consideration and that, accordingly, the Commission did not base its analysis on the whole of the product market concerned.

102 As is apparent from the case-law referred to in paragraphs 35 and 36 above, the corollary to the broad discretion enjoyed by the Commission in an anti-dumping proceeding by reason of the complexity of the economic and political situations which it must examine and which relates, in particular, to the determination of the existence of injury caused to the Union industry is that, as regards the assessment of the facts by that institution, judicial review must be limited to verifying that there has been no manifest error of assessment.

103 As regards the analysis of price undercutting, the General Court did not find that the Commission, in applying the PCN method, manifestly erred in its assessment of the facts in not taking account of the segmentation of the market for the product under consideration.

104 It follows from recitals 24 and 108 of the regulation at issue that, as regards market segments, the Commission stated that the relevant differences between product types were taken into consideration in the PCN, which made it possible to ensure that only comparable products are compared with each other and that the main characteristics of the market segments are distinguished by PCN.

105 In particular, as the Advocate General also noted, in essence, in points 92 and 93 of his Opinion, the first digit of each PCN referred to the segment encompassing the type of product under consideration, and the Commission compared, PCN by PCN, the prices of dumped imports and the prices of EU producers.

106 Therefore, by applying the PCN method, the Commission did indeed take account of the market segments of the product under consideration for the purposes, in particular, of the analysis of price undercutting and, consequently, it cannot be criticised for having manifestly erred in its assessment in the implementation of that analysis.

107 It follows, as the Commission submits in the third part of its sixth ground of appeal, that, on that point, the General Court exceeded the limits of judicial review by which it is required, as regards the determination of injury and, in particular, the analysis of price undercutting, to observe the

broad discretion enjoyed by the Commission in that regard, which, as the Advocate General further noted in point 167 of his Opinion, extends, at the very least, to decisions on the choice of method of analysis, to the data and evidence to be gathered, to the method of calculation to be used in order to determine the undercutting margin and to the interpretation and assessment of the evidence gathered.

108 As regards Hubei's argument, already raised before the General Court, that the use of the PCN method is insufficient since it does not make it possible to establish the effect of the imports in a given segment on Union industry sale prices for products in other segments, it must be stated that the General Court did not uphold it.

109 By contrast, in paragraph 67 of the judgment under appeal, the General Court criticised the Commission for failing, at the very least, to verify that, in view of the clear segmentation of the market for the product under consideration in the present case, the decrease in the Union industry prices did not come from a segment in which the Chinese imports had a low presence or a level of price undercutting which could not be regarded as significant.

110 As is apparent from the data provided by the Commission in response to the General Court's request, referred to in paragraph 85 of the present judgment, the use of the PCN method made it possible to establish that the dumped imports and the products sold by the Union industry were entirely comparable in the three market segments, and that price undercutting took place over each of those three segments, with the result that, in the present case, there was no clear segmentation such as that at issue in the Appellate Body's HP-SSST report and the case giving rise to the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317).

111 In those circumstances, although, in the light of the principles recalled in paragraphs 77 to 80 of the present judgment, the Commission may, in certain exceptional circumstances relating to a clear segmentation of the market for the product under consideration involving significant price variations between market segments, be required to carry out an additional analysis of price undercutting such as that referred to in paragraph 67 of the judgment under appeal, consisting of a comparison of the prices in each segment in addition to the analysis carried out on the basis of the PCN method, that is to say, a PCN-by-PCN comparison – albeit that the Commission must retain a broad discretion in order to define the specific method for analysing price undercutting – such an analysis was not, in any event, required in the present case in the light of the data supplied by the Commission at the express request of the General Court following the hearing.

112 It may be added that, as regards, in particular, the existence of a significant price differential between the three market segments, it is apparent from recitals 24 and 108 of the regulation at issue that, in the present case, they were primarily linked to the use, for products in the electricity production sector, of high-alloy steel, whereas, for the manufacture of products in the other two sectors, non-alloy steel was used.

113 In addition, it is apparent from recitals 24 and 108 of that regulation, as also noted, in essence, by the Advocate General in point 105 of his Opinion, that, by applying the PCN method, the cost and price differential linked to alloy and high-alloy steel was taken into account in the comparisons on account of the PCN construction, in particular the first characteristic taken into account in the PCN, namely the product type, distinguishing between non-alloy, alloy and high-alloy steel.

114 Accordingly, in the present case, since that price differential between different segments of the market for the product under consideration had already been taken into account in the context, in particular, of the analysis of price undercutting using the PCN method, they did not require the Commission to carry out the supplementary analysis referred to in paragraph 67 of the judgment under appeal.

115 It follows from the foregoing that the first and second grounds of appeal are well founded. In addition, it must be held that, consequently, the third part of the sixth ground of appeal is also well founded in so far as, in that part, the Commission complains that the General Court exceeded the limits of its power of judicial review in holding, in paragraphs 59 to 66 of the judgment under appeal, that the Commission, in not carrying out an analysis of price undercutting by market segment, did not take account of all the relevant data, without, however, having found that the Commission manifestly erred in its assessment.

The fourth ground of appeal

116 By its fourth ground of appeal, the Commission, supported by ArcelorMittal and Others, disputes the judgment under appeal in so far as, in paragraphs 68 to 76 of that judgment, the General Court held, in essence, that the Commission, in breach of Article 3(2) and (3) of the basic regulation, did not take account, in its assessment of the price undercutting and, more generally, the effect of the dumped imports on prices in the Union market for like products, of a certain volume of the like product manufactured by sampled EU producers, namely that relating to 17 out of the 66 product types sold by those producers but not exported by the sampled Chinese exporting producers, and, accordingly, did not take account of all the relevant data in the instant case in that assessment, as required by those provisions.

Arguments of the parties

117 By the first part of its fourth ground of appeal, the Commission criticises the General Court for having held, in paragraphs 68 to 76 of the judgment under appeal, that it had infringed Article 3(2) and (3) of the basic regulation in not taking account, in its assessment of the price undercutting, of 17 product types out of the 66 sold by the sampled EU producers but which were not sold by the sampled Chinese exporting producers.

118 In holding that all the product types sold by the Union industry must be taken into account for the purposes of the analysis of the price undercutting, the General Court misunderstood the nature of that analysis since, according to the very wording of Article 3(3) of the basic regulation, it must be carried out at the level of the like product and not at the level of each product or PCN type.

119 The Commission asserts that it was indeed at the level of the like product that it established the existence of price undercutting. First, it calculated price undercutting margins at PCN level and then determined the weighted average of price undercutting for all PCNs. Although, as regards certain PCNs, no price undercutting or else a negative undercutting is found to have occurred, that does not mean that an anti-dumping duty cannot also be imposed on those PCNs. It is sufficient that, on average, at the level of the like product, price undercutting is established.

120 By the second part of its fourth ground of appeal, the Commission claims that the General Court erred in law in finding that the analysis of the effects on the Union industry prices of the dumped imports, to be carried out pursuant to Article 3(2) and (3) of the basic regulation, required that the 17 PCNs sold by the sampled EU producers, but not exported to the European Union by the sampled Chinese producers, be taken into account.

121 The Commission submits, in the first place, that the potential impact of those PCNs on the Union industry prices is not part of that analysis but, as the case may be, part of the separate 'non-attribution' analysis that must be carried out by the Commission at a later stage, under Article 3(7) of that regulation, a provision whose infringement has not, however, been alleged by Hubei.

122 It is in the context of such a non-attribution analysis that the question of whether it was possible that the Union industry suffered price decreases as a result of that industry's sales of the 17 PCNs not exported by the Chinese exporting producers, addressed in paragraphs 72 to 74 of the judgment under appeal, arises.

123 In the second place, the Commission submits that, in paragraph 71 of the judgment under appeal, the General Court incorrectly referred to paragraph 5.180 of the Appellate Body's HP-SSST report in order to state that there is nothing to suggest that the analysis provided for in Article 3(2) and (3) of the basic regulation may not take account of a certain volume of the like product which is not the subject of price undercutting.

124 As regards the first part of the fourth ground of appeal, Hubei maintains, as regards the argument that the price undercutting must be established at the level of the like product, that, at paragraph 74 of the judgment under appeal, the General Court correctly held that, without providing specific reasons, the Commission may not, after establishing price undercutting for certain types of products, extend that finding to other types of products for which no price undercutting has been demonstrated or, therefore, to the like product as a whole.

125 Thus, the General Court is alleged to have taken account of the concerns expressed by the Court in paragraph 60 of the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269), namely that, if it were open to the EU institutions to exclude from the calculation of the dumping margin export transactions to the European Union relating to certain types of the product in question, this would amount to granting them the possibility of influencing the outcome of the dumping margin calculation, by leading to the exclusion of one or more types or models of that product.

126 Such a risk of manipulation also exists, in Hubei's submissions, if, in the analysis of price undercutting, the Commission was not required to take account of all the sales of the sampled producers in the European Union. That would enable the applicant to find that only some of the Union industry's sales had been undercut and to extend that finding to all those sales, without having to explain what the effects of those sales on prices were.

127 As regards the second part of the fourth ground of appeal, Hubei claims that the Commission's argument that the analysis of the effects on prices and the determination of the causal link constitute steps completely independent of each other is ineffective, since the Commission did not dispute paragraph 86 of the judgment under appeal, in which the General Court found that there was a link between the determination of price undercutting and the establishment of a causal link.

128 In any event, Article 3(2) of the basic regulation, in so far as it refers to the impact of the dumped imports on the Union industry, includes the requirements relating to causation and non-attribution which are subsequently developed in Article 3(6) and (7) of that regulation.

129 Furthermore, in paragraph 71 of the judgment under appeal, the General Court did not require a non-attribution analysis, but correctly referred to paragraph 5.180 of the Appellate Body's HP-SSST report which confirms, in essence, that it is necessary to establish the effects on prices for the product in question as a whole without excluding the product types for which no price undercutting has been found.

Findings of the Court

130 As a preliminary point, it is necessary to clarify the scope of the criticism expressed by the General Court, in paragraphs 68 to 74 of the judgment under appeal, with regard to the Commission's analysis of price undercutting, namely, in essence, that that institution, in breach of Article 3(2) and (3) of the basic regulation, did not take account, in the context of that analysis, of 17 product types or PCNs out of the 66 sold by the sampled EU producers, representing 8% of the volume of sales.

131 In that regard, first, it is apparent from paragraphs 69 to 71 of the judgment under appeal that, as confirmed by the Appellate Body's HP-SSST report, 'there is nothing to indicate that the analysis provided for in Article 3(2) and (3) of the basic regulation may not take account of a certain volume of the like product which is not the subject of price undercutting', in this case the volume of the 17 product types sold by the Union industry for which there was no corresponding type of product.

132 As the Advocate General also observed in point 126 of his Opinion, it follows that, according to the General Court, the Commission is, in all circumstances, required, in the context of the analysis of the effects of the dumped imports on the Union industry prices, to take into consideration all the sales of the like product by the Union industry.

133 Accordingly, in the present case, the General Court found that the Commission was required, in order to base its analysis on all the relevant data, to take account of all the PCNs sold by the sampled EU producers, including the 17 PCNs not exported by the sampled Chinese exporting producers.

134 Secondly, in paragraphs 73 and 74 of the judgment under appeal, the General Court, in essence, criticised the Commission for having based the link it had found between the analysis of price undercutting and the development of the Union industry prices on an incorrect factual basis, in that it did not take into consideration the 17 PCNs at issue, whereas it could not be ruled out, in the absence of a specific statement of reasons in that regard in the regulation at issue, that those product types 'contributed, to a not insignificant degree, to the decrease in the prices of the sampled EU producers'.

135 As the Advocate General also observed in point 128 of his Opinion, by that criticism, the General Court essentially impugned the Commission for failing to examine the extent to which the prices of those 17 product types might have contributed to a change in the prices of the sampled EU producers, namely the fall in those prices.

– The General Court's error of law in holding that the Commission was required to take into consideration, in the analysis of the effects of the dumped imports on the Union industry prices provided for in Article 3(2) and (3) of the basic regulation, all the product types at issue sold by that industry

136 In order to base the statement of principle, disputed by the Commission, that, in its examination of the effects of the dumped imports on the Union industry prices, in particular in the analysis of price undercutting, Article 3(2) and (3) of the basic regulation requires that institution invariably to take into consideration all the types of the product in question sold by that industry, even those not exported by the exporting producers to the European Union and therefore, by definition, those which are not the subject of dumping, the General Court referred, in paragraph 71 of the judgment under appeal, to paragraph 5.180 of the Appellate Body's HP-SSST report in which that body found that, in the instant case, the Chinese authorities concerned were required 'to assess the significance of price undercutting by the dumped imports in relation to the proportion of domestic production for which no price undercutting was found'.

137 That sentence must be placed in the context of the present case at issue in that report. That case concerned a particular situation in which the Chinese authorities had not analysed and had therefore not found price undercutting for the products in the A market segment, in which domestic sales were concentrated, but merely extended to that segment the findings resulting from the analysis of price undercutting relating to market segments B and C, on which the dumped imports were concentrated.

138 In such a particular situation, the Appellate Body established by the WTO Dispute Settlement Body took the view that those authorities could not exclude from the price undercutting analysis a 'proportion of domestic production for which no price undercutting was found'.

139 However, the present case does not concern such a special situation, but a fundamentally different situation.

140 As has already been stated in the examination of the third ground of appeal in law, it is apparent from the file that, in the present case, the clear segmentation of the market for the product under consideration in which sales by the Union industry are concentrated in another segment of the market for the product under consideration than that on which the dumped imports are concentrated is not at issue here, but rather the situation in which the Commission found that price undercutting actually took place in the three segments in question.

141 Moreover, it is common ground that, as the General Court noted in paragraph 38 of the judgment under appeal, all the Chinese imports could have been the subject of an analysis of price undercutting and that, as stated in paragraphs 68 and 74 of that judgment, 92% of the Union industry's sales volume was taken into account in that analysis.

142 In addition, although, in the present case, the Commission did not take into account, in the price undercutting analysis, a certain volume of national production, namely that of the 17 PCNs at issue, the reason for that, as the General Court moreover stated in paragraph 69 of the judgment under appeal, is that, for those types of the product under consideration, it was not in a position to calculate a price undercutting margin since there were no corresponding types of imported product.

143 Therefore, as the Advocate General stated in point 152 of his Opinion, although, in paragraph 70 of the judgment under appeal, the General Court stated that the prices of the 17 PCNs at issue were, 'by definition, not undercut', and, in paragraph 71 of that judgment, that the present case concerned a situation in which a certain volume of domestic sales was not the subject of price undercutting, such a presentation of the facts is incorrect.

144 The failure to take into account, in the price-undercutting analysis, the 17 PCNs concerned is merely the consequence of the Commission's choice, falling within the broad discretion which it enjoys in that regard, to carry out that analysis by using the PCN method, a method which, moreover, has not, as such, been challenged, as the General Court stated in paragraph 37 of the judgment under appeal.

145 It follows that, in paragraph 71 of the judgment under appeal, the General Court erroneously relied on paragraph 5.180 of the Appellate Body's HP-SSST report to assert that there is a principle that the Commission, in its examination of the effects of dumped imports on the Union industry prices and, in particular, in the price-undercutting analysis, should invariably take into consideration all the product types in question sold by that industry.

146 Hubei submits, however, that this principle can be based on an application by analogy of the teachings from the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269).

147 That argument, which, as is apparent from paragraph 24 of the judgment under appeal, was already raised by Hubei before the General Court, but on which the General Court did not rule, cannot succeed.

148 In paragraph 61 of the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269), the Court held that, in the light of its wording, objective and context, Article 2(11) of the basic regulation cannot be interpreted as allowing export transactions to the European Union relating to certain types of the product under consideration to be excluded from the calculation of the dumping margin and that it follows, on the contrary, from that provision that the EU institutions are required to take into account all those transactions for the purposes of that calculation.

149 In paragraph 60 of that judgment, the Court held that any other interpretation would be tantamount to giving them the opportunity to influence the result of the calculation of the dumping margin by excluding one or more product types or models of the product at issue.

150 However, it must be stated that the conclusions drawn from that judgment, in so far as they concern the interpretation of Article 2(11) of the basic regulation, cannot be transposed to the analysis of the impact on the Union industry prices of the dumped imports required by Article 3(2) and (3) of that regulation.

151 With regard to the wording of Article 2(11), the Court noted, in paragraph 53 of the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269), that – since that provision expressly provides that, when calculating the dumping margin and regardless of the method of comparison of normal value and export price chosen, 'the prices of all export transactions' must be taken into account – EU institutions cannot exclude from the calculation of the dumping margin export transactions relating to certain types of the product in question.

152 The wording of Article 3(2) and (3) of the basic regulation is quite different since it neither indicates nor suggests that the analysis of the impact of dumped imports on the Union industry prices must, in all circumstances, take into account all of that industry's sales.

153 On the contrary, the wording of Article 3(2) and (3) of the basic regulation states that those provisions do not require the Commission to take into consideration all sales of the like product by the Union industry in the analysis of the impact on the Union industry prices of the dumped imports.

154 As the Commission also submits, that is borne out by a fundamental difference between the determination of the dumping margin and the analysis, for the purposes of determining injury, of the impact of the dumped imports on the Union industry prices due to the fact that that analysis entails a comparison of sales not of the same undertaking, as is the case with the determination of the dumping margin which is calculated on the basis of the data of the exporting producer concerned, but of several undertakings, namely the sampled exporting producers and the undertakings forming part of Union industry included in the sample.

155 A comparison of the sales of those undertakings will often be much more difficult in the context of the analysis of price undercutting than in the analysis of the dumping margin since the range of product types sold by those different undertakings will tend to overlap only in part.

156 As further noted by the Advocate General in point 145 of his Opinion, that risk, arising from the fact that certain types of goods cannot be taken into account in the analysis of price undercutting because of the difference in the range of products sold by those various undertakings, is even higher where PCNs are more detailed.

157 Although more granular PCNs have the advantage of comparing product types with more common physical and technical characteristics, that advantage, conversely, has the disadvantage of increasing the possibility that certain product types sold by one or other of the companies concerned have no equivalent and cannot therefore be compared or taken into account in that analysis.

158 Lastly, although the Commission has a broad discretion in deciding on the precise method for analysing price undercutting, which may have the inevitable consequence, as is the case of the PCN method, that certain product types cannot be compared and, therefore, not taken into account in that analysis, that analysis is limited by the obligation, imposed on it by Article 3(2) of the basic regulation, to carry out an objective examination of the effects of dumped imports on the Union industry prices.

159 It must be concluded that the General Court erred in law in the judgment under appeal in holding that, in the context of the analysis of the effects of the dumped imports on the Union industry prices provided for in Article 3(2) and (3) of the basic regulation, and, in particular, in the context of the analysis of price undercutting, the Commission is, in all circumstances, required to take account of all the products sold by that industry, including the types of product at issue that are not exported by the sampled producing exporters.

– The General Court's error of law in holding that the Commission was required to examine, in the context of the analysis of the effects of the dumped imports on the Union industry prices provided for in Article 3(2) and (3) of the basic regulation, the extent to which the prices of the 17 types of the product under consideration may have contributed to the fall in the prices of the sampled EU producers

160 As has already been stated in paragraph 134 above, in paragraphs 73 and 74 of the judgment under appeal, the General Court, in essence, criticised the Commission for having based the link it found between the price undercutting analysis and the development of the Union industry prices on an incorrect factual basis, in that it did not take into consideration 17 of the 66 PCNs, whereas it could not be excluded, in the absence of a specific statement of reasons in that regard in the regulation at issue, that those types of products 'contributed, to a not insignificant degree, to the decrease in the prices of the sampled EU producers'.

161 In that regard, it should be noted that the assessment required by Article 3(2) and (3) of the basic regulation consists of examining the effect on the Union industry prices of 'dumped imports'.

162 That assessment does not include an examination, such as that referred to in paragraph 74 of the judgment under appeal, of the effects on the Union industry prices not of the dumped imports, but of 17 types of the product under consideration sold by that industry, which, by definition, are not part of those imports.

163 In addition, as the Advocate General also noted, in essence, in point 151 of his Opinion, if the examination referred to in paragraph 74 of the judgment under appeal were to lead to a finding that there was in fact a 'not insignificant' impact of the 17 PCNs concerned on the decrease in the Union industry prices, such a finding could be arrived at only on two grounds.

164 Such a finding could be arrived at, first, on account of the fact that the dumped imports produced even more significant effects on the prices of those 17 product types than those determined by the Commission for the other product types, in respect of which price undercutting had been found.

165 In that case, however, the finding as to the existence of injurious effects on the prices of the like product on account of imports on the Union market cannot under any circumstances be called into question as being incorrect. At most, such a finding may indicate that even greater price undercutting has taken place, thereby reinforcing the determination of injury.

166 Second, in so far as that finding is explained by the impact of factors other than the imports, which contributed to the injury caused to the Union industry, within the meaning of Article 3(7) of the basic regulation, the examination of the impact of those other factors forms part of the assessment of the 'non-attribution' provided for by that provision, the infringement of which was not alleged by Hubei in the context of the pleas examined and upheld by the General Court and which cannot therefore justify the action being upheld.

167 Furthermore, as noted by the Commission in the third part of its sixth ground of appeal and as the Advocate General also observed, in essence, in points 169 to 171 of his Opinion, paragraph 74 of the judgment under appeal is vitiated in another respect by an error of law.

168 In paragraph 74 of that judgment, the General Court criticised the Commission for failing to examine the influence that the prices of the 17 types of the product under consideration for which price undercutting could not be found may have had on the development of the EU producers' prices, without having found in that regard a manifest error of assessment attributable to the Commission.

169 In so ruling, the General Court exceeded the limits to which, as is apparent from the case-law referred to in paragraphs 35 to 37 of the present judgment, judicial review by the EU judicature of the lawfulness of an act such as the regulation at issue are subject, by reason of the broad discretion which the Commission must be allowed in respect of the analysis of price undercutting, in accordance with the obligations imposed on it in that regard in Article 3(2) and (3) of the basic regulation.

170 In the light of the foregoing, it must be held that paragraphs 68 to 76 of the judgment under appeal are vitiated by errors of law and that, therefore, the fourth ground of appeal alleging misinterpretation of Article 3(2) and (3) of the basic regulation must be upheld, without it being necessary to examine the fifth ground criticising those same paragraphs in the light of an alleged infringement of Article 17 of that regulation which, even if well founded, would not add anything to that finding.

171 Lastly, as regards the sixth ground of appeal, alleging an error of law, in that the General Court carried out too intensive a judicial review in its examination of the Commission's analysis of the undercutting, the third part thereof is well founded to the extent indicated in paragraphs 167 to 169 of the present judgment. As to the remainder, there is no need to examine this ground of appeal since it relates to paragraphs of the judgment under appeal in respect of which an error of law has already been found in the examination of the fourth ground of appeal.

172 In the light of all the foregoing, since the first to fourth grounds of appeal and the third part of the sixth ground of appeal are well founded, the judgment under appeal must be set aside, without it being necessary to examine the fifth ground of appeal or the first and second parts of the sixth ground of appeal.

The action before the General Court

173 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court of Justice quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits.

174 In the present case, as regards the first and second pleas in law raised by Hubei, it is sufficient to note that, in the light, in particular, of the considerations set out at paragraphs 103 to 115 above and at paragraphs 159 and 162 above, no manifest error of assessment affected the Commission's analysis, in the regulation at issue, in respect of price undercutting, the effects of the dumped imports on prices in the Union market for like products, or the existence of a causal link, pursuant to Article 3(2), (3) and (6) of the basic regulation. Those pleas must therefore be rejected as unfounded.

175 However, the state of the proceedings does not permit judgment to be given as regards the third and fourth pleas, put forward by Hubei in support of its action for annulment, which were not examined by the General Court. The case must therefore be referred back to the General Court.

Costs

176 Since the case is being referred back to the General Court, it is appropriate to reserve the costs.

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

1. **Annuls the judgment of the General Court of the European Union of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission* (T-500/17, not published, EU:T:2019:691);**

2. **Refers the case back to the General Court;**

3. **Reserves the costs.**

Prechal Passer Biltgen

Rossi Wahl

Delivered in open court in Luxembourg on 20 January 2022.

A. Calot Escobar
Registrar

K. Lenaerts
President