Judgment of the General Court (Second Chamber)

25 October 2011 *

In Case T-192/08,

Transnational Company 'Kazchrome' AO, established in Aktobe (Kazakhstan),

ENRC Marketing AG, established in Kloten (Switzerland),

represented initially by L. Ruessmann and A. Willems, and subsequently by A. Willems and S. de Knop, lawyers,

applicants,

v

Council of the European Union, represented initially by J.-P. Hix, and subsequently by J.-P. Hix and B. Driessen, acting as Agents, assisted initially by G. Berrisch and G. Wolf, and subsequently by G. Berrisch, lawyers,

defendant,

* Language of the case: English.

supported by:

European Commission, represented by H. van Vliet and K. Talabér-Ritz, acting as Agents,

and by

Euroalliages, established in Brussels (Belgium), represented by J. Bourgeois, Y. van Gerven and N. McNelis, lawyers,

interveners,

APPLICATION for partial annulment of Council Regulation (EC) No 172/2008 of 25 February 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (OJ 2008 L 55, p. 6), in so far as it applies to the applicants,

THE GENERAL COURT (Second Chamber),

composed of I. Pelikánová, President, K. Jürimäe (Rapporteur) and S. Soldevila Fragoso, Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 7 December 2010,

gives the following

Judgment

Background to the dispute

1 The applicants — Transnational Company Kazchrome AO ('Kazchrome') and ENRC Marketing AG — are companies engaged in the production and sale of ferro-silicon, one of the raw materials used in the manufacture of steel and iron. Kazchrome, which is established in Kazakhstan, sells its entire production to ENRC Marketing, which is established in Switzerland. The latter in turn sells Kazchrome's production throughout the world.

2 Following a complaint filed on 16 October 2006 by Euroalliages (the Liaison Committee of the Ferro-Alloy Industry), the Commission of the European Communities (now

'the European Commission'; 'the Commission') initiated an anti-dumping proceeding, concerning imports of ferro-silicon originating in the former Yugoslav Republic of Macedonia, China, Egypt, Kazakhstan and Russia, pursuant to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended ('the basic regulation') (replaced by 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; corrigendum in OJ 2010 L 7, p. 22) and, in particular, pursuant to Article 5 of the basic regulation (now Article 5 of Regulation No 1225/2009). The notice of initiation of the proceeding was published in the *Official Journal of the European Union* of 30 November 2006 (OJ 2006 C 291, p. 34). The investigation into dumping and injury covered the period from 1 October 2005 to 30 September 2006 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from January 2003 to the end of the investigation period ('the period under consideration').

3 In the course of that proceeding, the applicants submitted a claim to the Commission on 15 December 2006 for the grant of market economy treatment ('MET'), pursuant to Article 2(7)(b) and (c) of the basic regulation (now Article 2(7)(b) and (c) of Regulation No 1225/2009).

4 On 12 January 2007, the applicants sent their replies to the Commission's anti-dumping questionnaire, together with a document regarding injury. On 25 January 2007, the applicants sent the Commission additional comments regarding injury.

5 By letter dated 14 February 2007, the applicants informed the Commission that they were stopping their participation in the investigation but that they were prepared to provide explanations regarding the data which they had already submitted to the Commission. By fax of the same date, the Commission informed the applicants that it

was accordingly cancelling the verification visit planned for the period from 22 February to 2 March 2007. It pointed out that such a cancellation meant that, in the absence of verification, the data submitted by the applicants to the Commission could not be accepted and that, under Article 18 of the basic regulation (now Article 18 of Regulation No 1225/2009), it might be necessary to make the findings of the investigation on the basis of the facts available. By letter dated 20 February 2007, the applicants informed the Commission that, although unable to cooperate fully in the investigation, they wished to assist in that investigation to the extent possible.

6 On 5 July 2007, the Commission informed the applicants that, since it had been unable to verify, at their premises, the information which they had submitted, they would not be granted MET. On 16 July 2007, the applicants sent the Commission their comments on the refusal to grant MET.

7 On 29 August 2007, the Commission published Commission Regulation (EC) No 994/2007 of 28 August 2007 imposing a provisional anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (OJ 2007 L 223, p. 1; 'the provisional regulation'). In particular, the provisional regulation imposed a provisional anti-dumping duty the rate of which was set at 33.9 % for imports of ferro-silicon from Kazakhstan. The Commission stated, in recital 25 in the preamble to the provisional regulation, that the applicants' MET claim had had to be disregarded, since they had not allowed the verification visit.

8 By letter dated 30 August 2007, the Commission disclosed to the applicants the essential facts and considerations on the basis of which the provisional anti-dumping measures had been adopted ('the provisional disclosure document'). By letter of 15 September 2007, the Commission sent the applicants a supplement to the provisional

disclosure document. On 5 October 2007, the applicants sent the Commission their comments on the provisional disclosure document.

9 On 18 December 2007, the Commission sent the applicants a letter setting out the essential facts and considerations on the basis of which it proposed to recommend the imposition of definitive anti-dumping measures ('the definitive disclosure document'). The applicants submitted their comments on the definitive disclosure document by letter sent to the Commission on 3 January 2008.

10 On 25 February 2008, the Council of the European Union adopted Regulation (EC) No 172/2008 of 25 February 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (OJ 2008 L 55, p. 6; 'the contested regulation'). Under the contested regulation, the rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, was set at 33.9 % for the products from Kazakhstan.

Procedure and forms of order sought

11 By application lodged at the Court Registry on 21 May 2008, the applicants brought the present action.

12 By documents lodged at the Court Registry on 1 and 3 September 2008 respectively, Euroalliages and the Commission applied for leave to intervene in the present case in support of the form of order sought by the Council.

13 By document lodged at the Court Registry on 28 October 2008, the applicants requested that, pursuant to Article 116(2) of the Court's Rules of Procedure, certain confidential material in the file be omitted from the communication to Euroalliages. For the purposes of that communication, the applicants produced a non-confidential version of the pleadings and documents in question.

14 By orders of 2 December 2008 and 16 February 2009 respectively, the President of the Second Chamber of the Court granted the Commission and Euroalliages leave to intervene.

15 By letter lodged at the Court Registry on 10 March 2009, Euroalliages stated that it had no objection to the applicants' request for confidential treatment.

16 By letter lodged at the Court Registry on 26 June 2009, the Commission informed the Court that it waived the right to lodge a statement in intervention, but that it would take part in the hearing.

17 The applicants claim that the Court should:

— declare that the action is admissible;

— annul the contested regulation in so far as it applies to them;

— order the Council to pay the costs.

18 The Council, supported by the Commission, contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

19 Euroalliages contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs, including those borne by Euroalliages as a result of its intervention.

Law

20 In support of their claim for annulment, the applicants put forward four pleas in law. By the first plea, they dispute the finding that there is a causal link between the dumped imports and the injury. By the second, they call in question the analysis of the Community interest. By the third; they criticise the institutions' assessment of their cooperation in the investigation, the application of Article 18 of the basic regulation and the treatment of the MET claim. By the fourth plea, they allege infringement of their rights of defence.

A — *The first plea, concerning the causal link between the dumped imports and the injury*

21 The complaints relied on by the applicants in the context of the first plea can be grouped into three categories:

(i) the complaints concerning the interpretation of the legal principles governing the analysis of the causal link between the dumped imports and the injury to the Community industry, the applicants alleging, in the first part of the plea, errors of law in the interpretation of Article 3(6) and (7) of the basic regulation (now Article 3(6) and (7) of Regulation No 1225/2009);

(ii) the complaints concerning the individual analysis by the institutions of a certain number of factors, other than the dumped imports, that could have caused the injury to the Community industry or contributed to it, the applicants alleging in that regard, in the second to eighth parts of the plea, manifest errors of assessment and a number of infringements by the institutions in connection with the individual analysis of certain injury factors;

(iii) the complaints concerning the fact that no collective analysis was carried out of the various injury factors other than the dumped imports, the applicants alleging, in particular, in the first and eighth parts of the plea, a manifest error of assessment on the part of the institutions in that they did not carry out an analysis of those factors, considered collectively.

22 Those three categories of complaint will each be considered in turn.

1. *Interpretation of the legal principles applicable to the analysis of causation (first part of the first plea)*

(a) Arguments of the parties

23 In the first part of the first plea, the applicants submit that the methodology adopted by the Council, in establishing the causal link between the dumped imports and the injury, is flawed by two errors of law.

24 First, the applicants argue that the Council's approach reflects an artificial distinction drawn between the attribution injury analysis and the non-attribution injury analysis. Under Article 3(7) of the basic regulation, a proper causation assessment requires consideration of the other known factors from the start, so that the impact of the imports covered by the investigation procedure will not be confused with the impact of the other factors. Accordingly, the institutions could not conclude that the imports covered by the investigation procedure had caused the injury without first investigating whether other factors had in fact caused it.

25 Second, the applicants submit that it is clear from reports of the Appellate Body of the World Trade Organisation (WTO) and from the case-law of the Court of Justice and the General Court that the effect of the causal factors must be examined collectively.

26 The Council, supported by the interveners, contends that, in order to determine whether the dumped imports caused material injury, it is necessary to consider, first of all, whether the injury was caused by the dumped imports, with particular regard

to the volume and prices of the dumped imports and the undercutting calculation. Only if such a causal link is established is it then necessary to examine whether other factors might have contributed to the injury in a manner that broke the causal link. The Council additionally contends that the collective assessment of the other factors is in no way mandatory in law; that it is not applied in practice; and that it is not a principle endorsed by the European Union ('EU') judicature.

(b) Findings of the Court

27 The first part of the first plea concerns, essentially, the conditions for the application of Article 3(6) and (7) of the basic regulation, under which the Council and the Commission are under an obligation to consider whether the injury on which they intend to base their conclusions actually derived from dumped imports and must disregard any injury deriving from other factors (Case C-358/89 *Extramet Industrie* v *Council* [1992] ECR I-3813, paragraph 16, and Case T-107/04 *Aluminium Silicon Mill Products* v *Council* [2007] ECR II-669, paragraph 72).

28 In the first place, it is necessary to determine whether, as the applicants assert, the provision in question requires the institutions to examine, first, the impact of the dumped imports and of the other known factors on the Community industry, before going on to conclude that there is a causal link between those imports and the dumping, or whether, as the Council contends, it is necessary to examine, first, whether the injury was caused by those imports and, then — if that causal link is established — whether other factors may have contributed to the injury to such an extent that they break the causal link.

29 In order to answer that question, the wording, purpose and context of Article 3(6) and (7) of the basic regulation must be analysed.

30 First, as regards the wording, it can be seen from Article 3(6) of the basic regulation that the institutions must demonstrate that the dumped imports are causing material injury to the Community industry, regard being had to their volume and their price. That is what is known as the 'attribution analysis'. It can be seen, next, from Article 3(7) of the basic regulation that the institutions must examine all the other known factors which are injuring the Community industry at the same time as the dumped imports and ensure that the injury caused by those other factors is not attributed to the dumped imports. That is what is known as the 'non-attribution analysis'.

31 Secondly, as regards the purpose, as both the applicants and the Council have noted in their written pleadings, the purpose of Article 3(6) and (7) of the basic regulation is to ensure that the institutions separate and distinguish the injurious effects of the dumped imports from those of the other factors. If the institutions do not separate and distinguish the impact of the various injury factors, they cannot legitimately conclude that the dumped imports have caused injury to the Community industry.

32 Thirdly, as regards the context, since Article 3(6) and (7) of the basic regulation represent the transposition into EU law, as referred to in recital 5 to that regulation (now recital 3 to Regulation No 1225/2009), of Article 3.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103; 'the Anti-Dumping Agreement'), set out in Annex 1A to the Agreement establishing the WTO (OJ 1994 L 336, p. 3), reference should be made

both to that provision and to its interpretation by the WTO's Dispute Settlement Body.

33 In that connection, it is settled case-law that, in view of their nature and structure, the WTO agreements are not in principle among the rules in the light of which the Court of the European Union is to review the legality of measures adopted by the EU institutions, pursuant to the first paragraph of Article 230 EC (Case C-149/96 *Portugal v Council* [1999] ECR I-8395, paragraph 47, and Case C-76/00 P *Petrotub and Republica* v *Council* [2003] ECR I-79, paragraph 53). However, where the Community has intended to implement a particular obligation assumed in the context of the WTO, or where the EU measure refers expressly to precise provisions of the WTO agreements, it is for the Court of the European Union to review the legality of the EU measure in question in the light of the WTO rules (*Portugal* v *Council*, paragraph 49; *Petrotub and Republica* v *Council*, paragraph 54; and Case C-351/04 *Ikea Wholesale* [2007] ECR I-7723, paragraph 30).

34 As it is, recital 5 to the basic regulation shows that one of the purposes of that regulation is to transpose into EU law, as far as possible, the rules laid down in the 1994 Anti-Dumping Agreement, which include, in particular, those relating to determining whether there has been injury and whether there is a causal link between the dumped imports and the injury (see, to that effect, *Petrotub and Republica* v *Council*, paragraph 33 above, paragraph 55).

35 It follows that the provisions of the basic regulation must, so far as is possible, be interpreted in a manner consistent with the corresponding provisions of the Anti-Dumping Agreement (see, to that effect, Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 20, and *Petrotub and Republica* v *Council*, paragraph 33 above, paragraph 57).

36 In addition, although the interpretations of the Anti-Dumping Agreement by the WTO's Dispute Settlement Body cannot bind the Court in its assessment as to whether the contested regulation is valid (see, to that effect, Case C-377/02 *Van Parys* [2005] ECR I-1465, paragraph 54), there is nothing to prevent the Court from referring to them, where — as in the present case — a provision of the basic regulation has to be interpreted (see, to that effect, Case T-45/06 *Reliance Industries* v *Council and Commission* [2008] ECR II-2399, paragraph 107).

37 In that context, it should be noted that, in its report on the case *US — Hot-Rolled Steel*, adopted on 23 August 2001 (WT/DS184AB/R, paragraph 226), the WTO's Appellate Body found that, in order to comply with 'the non-attribution language' in Article 3.5 of the Anti-Dumping Agreement, investigating authorities had to make an appropriate assessment of the injury caused to the domestic industry by the other known factors, and they had to separate and distinguish the injurious effects of the dumped imports from the injurious effects of those other factors.

38 In the light of the foregoing, it must be concluded that, under Article 3(6) and (7) of the basic regulation, no obligation is imposed on the institutions regarding the form of the attribution and non-attribution analyses which they must carry out, or the order in which they must do so. On the contrary, under Article 3(6) and (7), those analyses must be carried out in such a way as to enable the injurious effects of the dumped imports to be separated and distinguished from the injurious effects caused by other factors.

39 Accordingly, it must be found that the dispute between the parties on this point is of a semantic rather than a substantive nature. The manner in which the Council describes, in its written pleadings, the methodology applied to the attribution and non-attribution analyses is of little consequence, so long as the methodology actually

applied by the Council and the Commission in the circumstances enabled them to ensure that the injury caused by factors other than the dumped imports had not been attributed to those imports. Thus, in recitals 112 to 114 to the provisional regulation and recitals 85 and 86 to the contested regulation, the Council and the Commission examined, first, the effect of the dumped imports. They went on, in recitals 115 to 136 to the provisional regulation and in recitals 87 to 101 to the contested regulation, to analyse the effects of the other factors. Then, in recitals 137 to 140 to the provisional regulation and recitals 102 to 104 to the contested regulation, they set out a brief summary of the attribution and non-attribution analyses and based their conclusions as to the causal link on that summary. Although the injury factors other than the dumped imports were only considered at the second stage, the institutions did not draw their final conclusion as to the attribution of injury until that second stage was concluded, so that the injurious effects of the dumped imports were separated and distinguished from the injurious effects caused by other factors.

40 It follows that, in the present case, the causation analysis, referred to in recitals 111 to 140 to the provisional regulation and recitals 83 to 104 to the contested regulation, is not flawed by an error of law in that the institutions carried out the attribution analysis first and then the non-attribution analysis.

41 In the second place, it must be determined whether, as the applicants claim, the injury factors other than the dumped imports must be examined collectively or whether, as the Council contends, they must be examined individually. As with the previous question, this question must be considered in the light of the wording, purpose and context of Article 3(6) and (7) of the basic regulation.

42 First, with regard to the wording, it should be pointed out that Article 3(6) and (7) of the basic regulation, as set out in paragraph 30 above, does not specify whether the injury factors other than the dumped imports must be analysed collectively or individually.

43 Secondly, as stated in paragraph 31 above, the purpose of Article 3(6) and (7) of the basic regulation is to ensure that the injurious effects of the dumped imports are separated and distinguished from the injurious effects of the other factors, so that the injury caused by those other factors is not attributed to the dumped imports. In order to achieve that objective, the other factors must in certain circumstances be analysed collectively. That is the position, in particular, if, after carrying out an individual analysis, the institutions conclude that each of those other factors has had a negative effect on the situation of the Community industry even though on their own the effects cannot be regarded as significant. As the applicants stated in their written pleadings, if some ten factors other than the dumped imports caused 99% of the injury, but no individual factor has had a significant impact on the Community industry, the institutions would still consider that the dumped imports had caused material injury, since none of the ten other factors on their own would be considered to have caused the injury. Such an analysis cannot be regarded as consistent with the purpose of Article 3(6) and (7) of the basic regulation.

44 Thirdly, an analysis of the context of Article 3(6) and (7) of the basic regulation confirms that the other factors must be analysed collectively in certain circumstances. As has been stated, the purpose of Article 3(6) and (7) of the basic regulation is to transpose into EU law Article 3.5 of the Anti-Dumping Agreement. In its final report on the case *EC — Pipe Fittings*, adopted on 18 August 2003 (WT/DS219/AB/R, paragraphs 190 and 192), the WTO's Appellate Body found that, although Article 3.5 did not require, in each and every case, an examination of the collective effects of the other causal factors, there could be cases where, because of the specific factual circumstances therein, the failure to undertake an examination of the collective impact of the other causal factors would result in the investigating authority improperly

attributing the effects of the other causal factors to the dumped imports. In the view of the WTO's Appellate Body, an investigating authority is not required to examine the collective impact of the other causal factors, provided that, in the specific factual circumstances of the case, it fulfils its obligation not to attribute to the dumped imports the injuries caused by the other causal factors.

45 It follows that it must be found — as the applicants have argued — that the effects of the injury factors other than the dumped imports must be analysed collectively in certain circumstances. That is particularly true where the institutions have concluded that a large number of injury factors other than the dumped imports may have contributed to the injury, but that, individually, their impact could not be regarded as significant.

46 Accordingly, it must be held that the interpretation of Article 3(6) and (7) of the basic regulation argued for by the Council — not in the contested regulation, but exclusively in its written pleadings — is wrong. That does not mean, however, that the contested regulation is vitiated by an error of law which could justify its annulment. In the contested regulation, the Council simply analysed the various injury factors individually and never suggested that a collective analysis of those factors was not required. It cannot be found, therefore, that there is an error of law vitiating the contested regulation unless it is also found that, in the present case, a collective analysis was actually required.

47 It is clear from paragraph 45 above that the applicants' complaints concerning the individual analysis of each of the other known injury factors must be examined first, before it can be determined whether a collective analysis was required in the circumstances. Accordingly, no finding can be made that, by confining itself to an individual analysis of the injury factors, the Council has erred in law until it has been

determined — see paragraphs 49 to 215 below — whether the individual analysis of each of the other known injury factors is flawed by illegality and whether the circumstances of the case required a collective analysis of the other injury factors to be carried out.

48 However, it is already appropriate to reject the first part of the first plea in so far as it alleges an error of law in relation to the institutions' methodology for analysing causation.

2. *The individual analysis of the injury factors other than the dumped imports (second to eighth parts of the first plea)*

49 First of all, it is necessary to recall the principles laid down by case-law in the light of which the applicants' various complaints concerning the individual analysis of the various injury factors other than the dumped imports should be examined.

50 In accordance with the case-law cited in paragraph 27 above, the Council and the Commission are under an obligation to consider whether the injury on which they intend to base their conclusions actually derives from the dumped imports and must disregard any injury deriving from other factors.

51 In addition, it is settled law that the question whether a Community industry has suffered injury and, if so, whether that injury is attributable to the dumped imports and

whether other known factors contributed to the injury to the Community industry involves the assessment of complex economic matters in respect of which the institutions enjoy a wide discretion. Consequently, review by the Courts of the European Union of the assessments made by the institutions must be confined to ascertaining whether the procedural rules have been complied with, whether the facts on which the contested decision is based have been accurately stated and whether there has been any manifest error of assessment of the facts or any misuse of powers (see, to that effect, *Aluminium Silicon Mill Products* v *Council*, paragraph 27 above, paragraph 71, and Case T-462/04 *HEG and Graphite India* v *Council* [2008] ECR II-3685, paragraph 120).

(a) The second part of the first plea, concerning changes in steel demand and in prices on the Community and world markets

Arguments of the parties

52 The applicants claim that recital 85 to the contested regulation is flawed by a manifest error of assessment and infringes Article 3(6) and (7) of the basic regulation, since the pressure on Community prices cannot be attributed to the dumped imports, but should be attributed to the price trends on the world market and to changes in steel demand.

53 First, ferro-silicon prices follow the same trend in all major world markets and the Community price trend reflects global market dynamics. In the applicants' submission, since prices on all markets were decreasing, in particular between 2005 and the

end of the investigation period, it is manifestly unreasonable to assert that, in the absence of the dumped imports, prices in the Community would have increased to cover the Community industry's increasing costs, while allowing a reasonable profit.

54 Second, the low level of ferro-silicon prices is determined not by the dumped imports but by the changes in demand. The Council itself recognised, in the contested regulation, that ferro-silicon prices follow fluctuations in demand. Nevertheless, the Council — wrongly — analysed the trend in Community ferro-silicon prices by comparing these with the trend in world crude steel production, whereas Community ferro-silicon prices are determined by Community steel production. The trend in Community ferro-silicon prices exactly reflected the trend in steel demand, and those prices fell in proportion to the stagnation and decrease in Community demand. Thus, in the applicants' submission, even if there had been no undercutting by the dumped imports, the Community industry would have sustained losses because of the simultaneous increase in costs and decrease in demand.

55 Third, the applicants point out that, during the investigation period, ferro-silicon was sold at a higher price in the Community than in the other markets. In a global market where prices tend towards equilibrium, there is no basis for arguing that prices on the market with the highest prices were unfairly undercut or depressed.

56 The Council, supported by the interveners, disputes the applicants' arguments.

Findings of the Court

57 The second part of the first plea relates, in essence, to the institutions' assessment of the global trend in ferro-silicon prices and in steel sector demand as other known factors which could have caused the injury to the Community industry or contributed to it.

58 In that connection, it should be noted that, in recital 85 to the contested regulation, the Council found that, because of the dumped imports, the Community industry was unable to increase its sales prices to the necessary level to cover its full costs. Additionally, in recitals 87 to 90 to the contested regulation, the Council set out the reasons for which it had decided to reject the contention that the low level of ferro-silicon prices was linked, not to dumped imports, but to the dynamics of the global market, which itself changes according to the fluctuating demand of the steel industry. First of all, the Council stated that, in market economies, the prices were generally set by the levels of supply and demand, but that there could be other factors such as the presence of dumped imports. Next, the Council stated that, while it was certainly true that global demand for ferro-silicon, in particular from the steel industry, had influenced the price setting at certain times during the period under consideration, there had been periods during which ferro-silicon prices had fallen despite growing demand. Lastly, the Council stated that, even on the Community level, ferro-silicon prices were falling at certain times, despite growing demand from the steel sector.

59 The applicants dispute that finding on the basis of three arguments: (i) since prices on the global market had decreased, in particular between 2005 and the end of the investigation period, Community prices could not have risen even in the absence of dumped imports; (ii) Community ferro-silicon prices followed the fluctuations in

Community steel production and decreased at the same time as the demand from the Community steel industry stagnated or fell; and (iii) prices on the Community market are the highest in the world, which rules out any undercutting or depression of prices.

60 However, none of those three arguments goes to prove that the Council made a manifest error of assessment and infringed Article 3(6) and (7) of the basic regulation.

61 Thus, in the first place, as regards the argument based on price trends in the world market, the applicants refer, in support of that argument, to a table reproduced in the application initiating proceedings, which, in their view, shows that ferro-silicon prices follow the same trend in all major world markets and that the Community price trends merely reflect global market dynamics. Although that table shows that, overall, Community ferro-silicon prices follow the same trend as the prices in the United States and Japan, it in no way proves that prices on the global market were falling throughout the whole of the period under consideration, that is to say, from 1 January 2003 to 30 September 2006 or, at the very least, between January 2005 and the end of the investigation period on 30 September 2006. On the contrary, it is apparent from that table that prices rose between 2003 and 2004 and during the investigation period. Those trends are confirmed by the data relating to average prices in the Community, referred to in recital 96 to the provisional regulation and not disputed by the applicants. Accordingly, the applicants cannot maintain that, given the general slump in ferro-silicon prices, it was unreasonable to assert that, in the absence of the dumped imports, prices in the Community would have increased to cover the Community industry's increasing costs, while allowing a reasonable profit.

62 In the second place, as regards the argument based on the fluctuations in demand in the steel sector and on the analysis of Community ferro-silicon prices as compared with global crude steel production, the applicants reject the graph produced by the institutions in the definitive disclosure document, showing the changes in Community ferro-silicon prices against the changes in world crude steel production, and refer, in support of their argument, to a graph reproduced in an annex to the application which shows the changes in Community ferro-silicon prices against the changes in Community steel production. Contrary to the assertions made by the applicants, that graph does not show that Community ferro-silicon prices mirrored the fluctuations in Community steel production and decreased at the same time as the demand from the Community steel industry stagnated or fell.

63 Thus, it should be noted first that, as the Council observes, that graph shows that the Community prices have not always mirrored the fluctuations in Community steel production. For example, the graph shows that, in 2004, when Community steel production increased, prices continued to fall. Similarly, the graph shows that, in 2006, steel production decreased while prices increased. Those examples confirm that the graph produced by the applicants is not sufficient to substantiate their claim that the fall in demand caused the reduction in prices.

64 Second, it should be noted that the graph does not show a fall in demand throughout the period under consideration. It thus shows an increase in steel production between the third quarter of 2003 and the second quarter of 2004, between the fourth quarter of 2004 and the second quarter of 2005 and during the first three quarters of the investigation period, that is to say, from 1 October 2005 to 30 September 2006. The graph also shows that Community ferro-silicon prices increased between the third quarter of 2003 and the second quarter of 2004 and throughout the investigation period. In the light of those positive trends, it is not sufficient simply to assert that Community prices fell at the same time as the Community steel industry's demand stagnated or decreased in order to show that the Council made a manifest error of assessment in maintaining that the dumped imports were the reason why the

Community industry was unable to increase its sales prices to the level necessary to cover its costs. The applicants ought to have shown — which they failed to do — that the increase in steel production during the periods referred to had been too small to generate a price increase enabling Community ferro-silicon producers to pass on the increase in production costs to consumers.

65 In the third place, as regards the argument that the level of prices in the Community is such that it cannot be claimed that those prices were unfairly undercut or depressed, it should be borne in mind that the undercutting or depression of prices are legal concepts referred to in Article 3(3) of the basic regulation (now Article 3(3) of Regulation No 1225/2009). In general terms, when determining whether there is undercutting for the purposes of that provision, the institutions compare Community prices with adjusted import prices, so as to obtain an undercutting margin expressed as a percentage. Similarly, when it is found that Community prices have been depressed or have not increased sufficiently, the institutions compare — again in general terms — import prices with a target Community price, that is to say, the price which would have been have been achieved in the absence of the dumped imports, in order to obtain an injury elimination level, also expressed as a percentage. In the present case, it emerges from recitals 87 to 89 and 112 to the provisional regulation that the institutions determined the undercutting of prices in accordance with Article 3(3) of the basic regulation. Thus, in recital 89 to the provisional regulation, the Commission stated that it had calculated undercutting margins between 4% and 11%, depending on the exporting producer concerned, with the exception of the three exporting producers for which no undercutting was found. No argument is put forward by the applicants that could call in question the institutions' calculation of the undercutting margins. The simple statement that Community prices are the highest in the world does not call that calculation into question.

66 In the light of the foregoing, it must be concluded that none of the applicants' arguments goes to prove that that the Council made a manifest error of assessment in stating that the dumped imports — and not the dynamics of the global market and fluctuations in steel sector demand — were the reason why the Community industry had not been able to increase its sales prices to the level necessary to cover its full costs.

67 Consequently, the second part of the first plea must be rejected as unfounded.

(b) The third part of the first plea, concerning the effects of the Community industry's 'self-inflicted' injury

The first complaint, concerning the production switches by certain Community producers

— Arguments of the parties

68 The applicants submit that the Council did not take due account of the impact on the Community industry of the voluntary production switches made by Huta Laziska S.A., OFZ a.s. and Vargön Alloys AB in 2004, a year which the contested regulation characterises as 'exceptionally prosperous'.

69 First, according to the applicants, the institutions made a manifest error of fact which had an important effect on the analysis of causation, since, although it is apparent from recital 135 to the provisional regulation that in 2004 two Community ferro-silicon producers had switched their production to manganese alloys, it emerges from recital 93 to that same regulation that it was not until 2005 that the reduction in ferro-silicon production was taken into account. The decision to scale back ferro-silicon production at a time when market conditions were favourable led to increased costs per unit of ferro-silicon produced, decreased production output and sales, and a greater scarcity on the market. In addition, the failure to take into account the production switches for 2004 resulted in a misleading picture of the trend in the production capacity, production and profitability of the Community industry.

70 Second, according to the applicants, the institutions made a manifest error of assessment by stating that the production switches were a reaction to the dumped imports. On the one hand, 2004 was an exceptional year during which the Community industry increased its profitability to the highest level of the period under consideration and attained a return on investment of nearly 20 % and, on the other, Huta Laziska chose to switch production to silico-manganese, a lower energy consuming product with higher profitability. Consequently, in the applicants' submission, the injury suffered by the Community industry in 2005 and during the investigation period is explained by those voluntary production switches which led to an increase in production costs which itself led to further production cut-backs.

71 The Council, supported by the interveners, disputes the applicants' arguments.

— Findings of the Court

72 The present complaint relates, essentially, to the manner in which the institutions analysed the impact on the Community industry of a switch made in 2004 by certain Community producers, converting furnaces producing ferro-silicon to the production of silico-manganese.

73 In that connection, it should be noted that the Commission analysed the impact of that switch in recitals 135 and 136 to the provisional regulation. It stated there that, despite the costs involved in switching production, part of the production was switched in 2004 because at the time there was a lack of manganese alloys on the EC market and yet a sufficient supply of ferro-silicon. The Commission concluded from this that the decision by some Community producers to cut back production had not been taken on a voluntary basis, but had been caused by the dumped imports which had prevented the Community industry from making profitable ferro-silicon sales. In addition, in recital 93 to the provisional regulation, the Commission adjusted, with effect from 2005, the data relating to production capacity — referred to in the table on production capacity and capacity utilisation — in order to take account of the switch in production in relation to the furnaces.

74 The applicants dispute both recital 93 and recitals 135 and 136 to the provisional regulation.

75 In the first place, as regards the applicants' argument alleging an error of fact in relation to recital 93 to the provisional regulation, the Council stated, in answer to a written question addressed to it by way of a measure of organisation of procedure, that the production had been switched at the beginning of December 2004. At the hearing, the Council also acknowledged that the capacity which had been switched could not have been used for the production of ferro-silicon in December 2004. Accordingly, it must be found that the figures relating to production capacity should

have been adjusted, not from 2005, but from 2004. It follows that recital 93 to the provisional regulation is flawed by substantive inaccuracy.

76 Nevertheless, the Court does not concur with the applicants' view as to the inferences to be drawn from that inaccuracy. First, it should be pointed out — as the Council observed at the hearing — that, in view of the fact that production capacity did not decrease until December 2004, the overall adjustment of that capacity for the whole of 2004 would have represented only a very small volume equivalent to one-twelfth of the adjustment for 2005. Secondly, even assuming that production capacity had also been adjusted for 2004, the economic situation of the Community ferro-silicon market for 2004 would have been as follows: an increase in demand; an increase in the volume of dumped imports; a decrease in production; a small decrease in production capacity; a fall in the sales and market share of the Community industry; and an increase in the Community industry's prices, its profit margin and its return on investments. In other words, with the exception of production capacity, production, sales and market share, all the economic indicators would have improved. Admittedly, in certain circumstances, it is plausible that the decision by certain Community producers to switch their production may have been the result of a commercial choice designed to achieve a higher level of profitability on the silico-manganese market, and not the result of the presence of the dumped imports on the ferro-silicon market, undermining the Community industry's profitability. However, it is equally plausible that the decision taken by certain Community producers to switch production may have taken into consideration not only the prospect of increased profitability on the silico-manganese market, but also the presence of low-cost dumped imports which had already increased greatly in volume in 2004 and which made the potential profitability of the ferro-silicon market less attractive than that of the silico-manganese market.

77 Consequently, the error of fact vitiating recital 93 to the provisional regulation cannot have distorted the analysis of causation.

78 In the second place, as regards the applicants' argument that the institutions made a manifest error of assessment in stating, in recital 136 to the provisional regulation, that the production switches were a reaction to the dumped imports, it has been established in paragraph 76 above that, while it is plausible that the switches may have been the result of a commercial decision designed to achieve a higher level of profitability on the silico-manganese market — and not the result of the presence of the dumped imports on the ferro-silicon market, undermining the Community industry's profitability — it is equally plausible that the decisions to switch production may have been based not only on the prospect of increased profitability on the silico-manganese market, but also on the presence of low-cost dumped imports on the ferro-silicon market.

79 Consequently, it must be concluded that none of the arguments raised by the applicants goes to prove that the institutions made a manifest error of assessment.

80 In view of the foregoing, the present complaint must be rejected as unfounded.

The second complaint, concerning the disruption of production by certain Community producers

— Arguments of the parties

81 The applicants submit that the Council did not take due account of the effects, on the Community industry, of disruptions to production consciously brought about by certain Community producers, and mistakenly attributed those effects to the imports at issue.

82 First, the Council made a manifest error of assessment in refusing, in recital 101 to the contested regulation, to take account of the effects of the disruption of production brought about by Huta Laziska, on the ground that the determination of causation was to be made at the level of the Community industry as a whole, even though the factor in question had an impact on the performance of the Community industry as a whole. In that regard, the applicants point out that: (i) Huta Laziska stopped production on a number of occasions during the period under consideration, owing to problems with its energy supplier; (ii) Huta Laziska was forced to switch production to less energy intensive and more profitable products such as silico-manganese; and (iii) in the context of Council Regulation (EC) No 1420/2007 of 4 December 2007 imposing a definitive anti-dumping duty on imports of silico-manganese originating in the People's Republic of China and Kazakhstan and terminating the proceeding on imports of silico-manganese originating in Ukraine (OJ 2007 L 317, p. 5), the institutions analysed developments in the situation at Huta Laziska separately.

83 Secondly, the institutions made a manifest error of assessment in failing to take account of the effects of the disruptions to production brought about, on the one hand, by FerroAtlántica SL, during periods of high energy consumption, when that producer maximised its profits by selling energy, and, on the other, by Vargön Alloys, which ended its ferro-silicon production during the investigation period. As regards FerroAtlántica, the applicants raise the point in their reply that, in its defence, the Council asserted, for the first time, that stopping ferro-silicon production during hours of peak electricity consumption had always been part of the company's business model. What is more, according to the applicants, that assertion is contradicted in recital 81 to the contested regulation, in which the Council stated that reductions in production owing to electricity cuts did not occur on a regular basis.

84 The Council, supported by the interveners, disputes the applicants' arguments.

— Findings of the Court

85 The present complaint relates to the manner in which the institutions analysed the impact on the Community industry of the disruptions to production at three Community producers, Huta Laziska, FerroAtlántica and Vargön Alloys.

86 In essence, the applicants complain that, in recital 101 to the contested regulation, the Council did not correctly analyse the effects of the disruptions to production at Huta Laziska and that it failed to take account of the disruptions at FerroAtlántica and Vargön Alloys.

87 In the first place, as regards the alleged error of assessment in the Council's examination of Huta Laziska's situation, the Council stated in recital 101 to the contested regulation that the cause of the injury had to be analysed at the level of the Community industry as a whole and that, even if the data pertaining to this producer could be excluded from the injury assessment, the trends observed for the remainder of the Community industry would remain highly negative and continue to show material injury.

88 In that connection, it should first of all be noted that — as the applicants observed —the analysis of causation does not necessarily have to be carried out at the level of the Community industry as a whole, with no possibility of taking into consideration injury caused to a single Community producer by a factor other than the dumped imports. It has been noted, in paragraph 30 above, that in the non-attribution analysis envisaged in Article 3(7) of the basic regulation, the institutions must examine, at the same time as the dumped imports, all the other known factors which are causing injury to the Community industry and then ensure that the injury caused by those other factors is not attributed to the dumped imports. Article 3(7) of the basic regulation

does not state that that examination must take account only of injury caused by the other factors to the Community industry as a whole. In the light of the purpose of that provision — which, as has been noted in paragraph 31 above, is to ensure that the institutions separate and distinguish the injurious effects of the dumped imports from those of the other factors — it is possible that, in certain circumstances, injury caused individually to a Community producer by a factor other than the dumped imports must be taken into consideration, where it has contributed to the injury observed in relation to the Community industry as a whole.

89 Next, it is true that, in recital 101 to the contested regulation, the Council stated somewhat bluntly that the cause of the injury had to be analysed at the level of the Community industry as a whole, a statement which could be taken to mean that an injury factor affecting a Community producer individually may never be taken into consideration. Nevertheless, contrary to the assertions made by the applicants, the injury which the disruption to production caused to Huta Laziska was properly taken into consideration in recital 101. Thus, as noted in paragraph 87 above, the Council stated in that recital that, even if the data pertaining to Huta Laziska were excluded from the injury assessment, the trends observed for the Community industry would continue to show material injury. However, the applicants are not seeking to prove that the latter consideration is flawed by a manifest error of assessment. They simply state that the difficulties experienced by Huta Laziska with its electricity supplier caused the disruptions to production, a point which the Council agreed to take into consideration in recital 101 to the contested regulation.

90 Lastly, with regard to Regulation No 1420/2007, as has been noted in paragraphs 50 and 51 above, it is for the institutions, in exercising their discretion, to examine whether the Community industry has suffered injury, and whether that injury is

attributable to the dumped imports or other factors have contributed to the injury. That discretion must be exercised on a case-by-case basis, by reference to all the relevant facts (see, to that effect, Case C-156/87 *Gestetner Holdings* v *Council and Commission* [1990] ECR I-781, paragraph 43). In any event, contrary to the assertions made by the applicants, the examination of Huta Laziska's situation in Regulation No 1420/2007 does not differ appreciably from its examination in the contested regulation. As in the contested regulation, there is no separate section on Huta Laziska in Regulation No 1420/2007. Furthermore, as in the contested regulation, Huta Laziska's situation is examined in Regulation No 1420/2007 in the section on the contribution to the injury of the changes in production costs. Only one difference between Regulation No 1420/2007 and the contested regulation can be identified. Whereas, in the contested regulation, the Council acknowledged — hypothetically and solely in order to exclude any impact on the assessment of the injury to the Community industry as a whole — that the injury to Huta Laziska may have been the result of the dispute with its electricity supplier, the Council accepted in Regulation No 1420/2007 that that dispute and the increase in electricity costs might have had some impact on Huta Laziska's performance, but that, overall, changes in production costs had not contributed to the injury suffered by the Community industry.

91 It follows that none of the arguments raised by the applicants goes to prove that recital 101 to the contested regulation is flawed by a manifest error of assessment.

92 In the second place, as regards the alleged manifest error of assessment in examining the disruptions to production at FerroAtlántica and Vargön Alloys, it should be pointed out, first, that, in relation to FerroAtlántica, the applicants stated at the hearing that, in their view, the disruptions to production brought about by that company had given rise to a 'self-inflicted injury' in so far as the increase in the price of

electricity had led FerroAtlántica to prioritise energy sales over ferro-silicon sales. However, it should be pointed out that the only document on which the applicants base their allegation of a manifest error of assessment on the part of the institutions is a letter from FerroAtlántica to Euroalliages dated 26 February 2007. In that letter, FerroAtlántica stated that, owing to its tariff system, ferro-silicon production was stopped during peak hours of electricity consumption and the electricity produced by it during those hours was sold. That letter in no way proves that FerroAtlántica stops production whenever electricity prices increase. Consequently, the applicants have failed to adduce any evidence to prove that FerroAtlántica's scaling down of production, during peak hours of electricity consumption, had contributed to the injury suffered by the Community industry as a whole and that the Council should have taken it into consideration.

93 Secondly, as regards Vargön Alloys, the applicants simply assert that that company stopped production during the investigation period. Although, in a document appended to the application, they assert that that stoppage was because of the level of electricity prices, they have failed to adduce any evidence in support of that assertion. They have therefore in no way proved that Vargön Alloys itself contributed to its own injury or that its reasons for stopping production did not lie with the dumped imports. Consequently, it cannot be maintained that the Council made a manifest error of assessment in failing to attribute specific developments to Vargön Alloys' situation.

94 In the light of the foregoing, the present complaint, put forward in the third part of the first plea, must be rejected as unfounded.

The third complaint, concerning the use of the theoretical nominal production capacity

— Arguments of the parties

95 The applicants submit that the Council made manifest errors of assessment and infringed Article 3(7) of the basic regulation and their rights of defence in refusing to use actual production capacity rather than theoretical nominal production capacity.

96 In the first place, the Council made a manifest error of assessment when, first, it disregarded elements, such as the production switches and interruptions in electricity supply, which had a material effect on the important injury factors, namely, production capacity and production capacity utilisation.

97 Secondly, the applicants point out that it is incorrect to assert — as the Council does — that, even if actual production capacity had been used, the trends observed concerning production capacity and capacity utilisation and the conclusions as to the existence of injury would have remained unchanged. Even if the trends observed as regards production capacity and capacity utilisation remained unchanged, the fact that, for example, capacity utilisation increases from 50 % to 95 % is important, since such an increase means that the Community industry is unable to meet demand.

98 Thirdly, in the applicants' submission, the Council's assertion that theoretical nominal utilisation capacity can be used, because production stoppages or reductions did not occur on a regular basis, constitutes a serious error of fact and a manifest error of assessment. The applicants maintain that production stoppages or reductions occurred on a regular basis and should have been taken into account. That is true of the production stoppages practised by Ferroatlántica during hours of peak electricity consumption, which are inherent in its business model and thus occurred on a regular basis. Similarly, ferro-silicon furnaces undergo annual maintenance, during which they cannot be used. The applicants also submit that it is a manifest error of assessment to calculate production capacity considering only events that occur on a regular basis. Thus, when its electricity supplies were reduced, Huta Laziska had severely reduced production capacity on a number of occasions, which prevented it from producing ferro-silicon, regardless of market circumstances.

99 In the second place, in the applicants' submission, basing the analysis of causation on theoretical nominal utilisation capacity, rather than on actual utilisation capacity, necessarily infringes the non-attribution principle as laid down in Article 3(7) of the basic regulation, because it leads to the disguising of the true cause of changes in production figures.

100 In the third place, the applicants submit that the contested regulation infringes their rights of defence, since the assertion that trends would remain unchanged even if actual utilisation capacity were taken into account is unsubstantiated.

101 The Council, supported by the interveners, disputes the applicants' arguments.

— Findings of the Court

102 In the present complaint, the applicants submit in essence that, by using the theoretical nominal utilisation capacity instead of actual production capacity: (i) the institutions made manifest errors of assessment and an error of fact; (ii) they infringed Article 3(7) of the basic regulation; and (iii) they infringed the applicants' rights of defence.

103 In the first place, as regards the manifest errors of assessment and the error of fact which the institutions are alleged to have made, it should be noted that, in recitals 92 and 93 to the provisional regulation, the Commission stated that it had established the production capacity on the basis of the theoretical nominal capacity of the production units of the Community industry, but that it had adjusted the production capacity in order to take account of the fact that two producers in the Community had switched part of their production from ferro-silicon to other ferroalloys during the period under consideration. In addition, in paragraph 81 to the contested regulation, the Council responded to the criticisms levelled against the methodology applied in recital 93 to the provisional regulation and, more specifically, to the suggestions made by certain interested parties, in the course of the administrative procedure, that a figure taking into account closures for maintenance and electricity cuts should be applied. The Council referred in that regard to the investigation, which — in its view — had shown that the closures of the machinery for maintenance or electricity cuts were of a temporary nature and had not occurred on a regular basis during the period under consideration. The Council also stated that, even if adjustments were made to production capacity, the trends concerning the production capacity and capacity utilisation and the conclusions reached on the existence of material injury would remain unchanged.

104 The applicants submit that those considerations are flawed by a manifest error of assessment, in particular since they do not take account of disruptions and production switches. It should be noted that the applicants' contention lacks precision, since

they do not specify which disruptions and switches they are referring to. Assuming, however, that they are referring to the events considered when the two previous complaints were examined — the production switch and disruption to production at Huta Laziska and the disruptions to production at FerroAtlántica and Vargön Alloys — it should be noted, first of all, that the applicants do not dispute that Huta Laziska's decision in 2004 to switch production from ferro-silicon to silico-manganese was taken into consideration in the table on production capacity and capacity utilisation — referred to in recital 93 to the provisional regulation — by means of an adjustment of production capacity for 2005 and the period under investigation.

105 Next, as regards the disruptions to production at Huta Laziska in 2005 and 2006 — because of a dispute with its electricity supplier — and at Vargön Alloys in 2006 — according to the applicants, because of the increase in electricity costs — the institutions' action is not only sensible, but also free from any manifest error of assessment. It is clear from recital 81 to the contested regulation that the institutions decided not to adjust figures relating to production capacity, because the disruptions in question were of a temporary nature. The institutions' approach is correct, since, first, contrary to the assertions made by the applicants, it is clear from the case-file that those disruptions were indeed of a temporary nature. Secondly, if the figures relating to production capacity had to reflect the temporary closures of the machinery such as those referred to here, they would not be put to their proper use, which is to give an indication of the Community industry's production capacity, not to indicate the fluctuations in production reflected by the production figures. Nevertheless, in order for the institutions' approach not to be flawed by a manifest error of assessment, such temporary closures of machinery must be taken into consideration in the course of the non-attribution analysis provided for in Article 3(7) of the basic regulation.

106 In the present case, the institutions stated, in recital 81 to the contested regulation, that, even if adjustments had been made to production capacity, the conclusions as to the existence of material injury to the Community industry would remain unchanged. Although the applicants claim that that statement is incorrect, they do not adduce any evidence which proves that that is the case. They simply assert that, even if the trends observed as regards production capacity and capacity utilisation remained unchanged, the fact that, for example, capacity utilisation increases from 50 % to 95 % is important, since such an increase means that the Community industry is unable to meet demand. In addition to the fact that the situation referred to by the applicants is purely theoretical, the fact that the Community industry is unable to meet demand, in circumstances such as the present, where a number of economic indicators reflect injury suffered by the Community industry, does not give any indication as to the origin of that injury, and is therefore not in itself capable of proving that the injury was not caused by the dumped imports.

107 Lastly, as regards the disruptions to production at FerroAtlántica, it has been established, in paragraph 92 above, that the applicants had failed to adduce any evidence to prove that those reductions in production, which had occurred on a regular basis, had contributed to the injury suffered by the Community industry as a whole. Although, as the applicants have observed, an adjustment of the production capacity in order to take account of those disruptions could perhaps have changed the Community industry's capacity utilisation rate, showing that the latter was less able to meet demand, it has been noted in paragraph 106 above that, where a number of economic indicators reflect injury to the Community industry, the fact that the Community industry is unable to meet demand is not in itself capable of proving that the injury was not caused by the dumped imports.

108 In the light of the foregoing, it must be concluded that none of the arguments raised by the applicants goes to prove the existence of manifest errors of assessment concerning the use of the theoretical nominal capacity.

109 In the second place, as regards the alleged infringement of Article 3(7) of the basic regulation, it cannot — contrary to the applicants' submissions — be claimed that basing the analysis of causation on theoretical nominal utilisation capacity, rather than on actual utilisation capacity, is necessarily in breach of the non-attribution principle. It should be noted that, although switching the means of production to another market, as occurred here, must undoubtedly lead to the adjustment of the figures relating to production capacity, it has been pointed out, in paragraph 105 above, that those figures did not have to reflect all the temporary stoppages of the production machinery, since those stoppages appeared in the production figures. On the other hand, in such circumstances, the institutions must ensure that the obligations referred to in Article 3(7) of the basic regulation are complied with and properly carry out a non-attribution analysis which must separate and distinguish the injury caused, where relevant, by those temporary stoppages, from the injury caused by the dumped imports.

110 In the third place, as regards the infringement of the applicants' rights of defence, the case-law of the Court of Justice shows that the requirements stemming from the right to a fair hearing must be observed not only in the course of proceedings which may result in the imposition of penalties, but also in investigative proceedings prior to the adoption of anti-dumping regulations which may directly and individually affect the undertakings concerned and entail adverse consequences for them (Case C-49/88 *Al-Jubail Fertilizer* v *Council* [1991] ECR I-3187, paragraph 15). In particular, the undertakings concerned should have been placed in a position during the administrative procedure in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence

presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (*Al-Jubail Fertilizer* v *Council*, paragraph 17).

111 In that connection, it should be pointed out that — as the Council observes — paragraph 80 of the definitive disclosure document was, in essence, identical to recital 81 to the contested regulation, which states that the trends would have remained unchanged, even if adjustments had been made to production capacity. However, the applicants did not, in their comments on the definitive disclosure document, ask for the figures underlying that assertion to be disclosed to them. Consequently, they cannot claim that their rights of defence have been infringed.

112 In the light of the foregoing, the present complaint must be rejected as unfounded.

The fourth complaint, concerning the investments made by the Community industry in 2005 and during the investigation period

— Arguments of the parties

113 The applicants submit that the Council acted in breach of the non-attribution principle as laid down in Article 3(7) of the basic regulation, in so far as it failed to take account, in the contested regulation, of the effects of substantial investments made by the Community industry in 2005 and during the investigation period, amounting, over the investigation period, to more than a third of the Community industry's total losses. In that regard, the applicants state that, in recital 99 to the provisional regulation, the institutions indicated that the Community industry had invested almost EUR 10 million in 2005, and EUR 6 million during the investigation period, for the

upgrading of production equipment. In the applicants' submission, in view, in particular, of the magnitude of those investments as compared with the industry's profitability, the effects of those investments should have been considered even if they were depreciated over longer periods of time and regardless of whether complying with mandatory environmental legislation was an injury which the Community industry inflicted on itself.

114 First, the Council, supported by the interveners, replies that the applicants exaggerate the size of the investments and their effect on profitability. The total investments made during the investigation period cannot be compared with the total losses during that period. In the Council's view, since the investments in question were investments in production machinery and were depreciated over many years, only a small fraction of the investments made in 2005 and during the investigation period affected the profit figure. Secondly, since the investments were made in order to comply with mandatory environmental legislation, they cannot be considered to be 'self-inflicted injury'. Thirdly, account was taken, in recitals 99, 100 and 109 to the provisional regulation and in recital 82 to the contested regulation, of the effect of those investments on the injury indicators. Fourthly, the applicants have not put forward any evidence demonstrating a manifest error of assessment on the part of the institutions in concluding that the investments in question did not constitute 'self-inflicted' injury.

— Findings of the Court

115 The applicants submit, in essence, that the institutions infringed Article 3(7) of the basic regulation in failing to take account of the effects of substantial investments

made by the Community industry in 2005 and during the investigation period, amounting, over the investigation period, to more than a third of the Community industry's total losses.

116 In that connection — as the applicants observed — it is clear from recital 99 to the provisional regulation that considerable investments were made in 2005 and during the investigation period. Nevertheless, neither the Commission in the provisional regulation, nor the Council in the contested regulation, undertook a non-attribution analysis in relation to those investments. Thus, contrary to the Council's contention, those regulations do not contain any argument as to whether or not the investments in question constitute 'self-inflicted injury'. As it is, given the amounts which they represent — almost EUR 10 million in 2005 and EUR 6 million during the investigation period — those investments may have contributed to the injury suffered by the Community industry. Consequently, it must be found that the institutions infringed Article 3(7) of the basic regulation by failing to separate and distinguish the effects of those investments from the effects of the dumped imports.

117 That conclusion cannot be called in question by the Council's arguments. First, contrary to the assertions made by the Council, the fact that the investments were made in order to comply with mandatory environmental legislation did not mean that it was permissible for the institutions to disregard their obligation to carry out a non-attribution analysis. It matters little whether or not the injury is categorised as 'self-inflicted', since the investments could have affected the Community industry and Article 3(7) of the basic regulation prohibited the institutions from attributing an injury to the dumped imports which should not have been attributed to them.

118 Secondly, it is true that — as the Council notes — the total investments made during the investigation period cannot be compared with the losses recorded during that period. However, the fact remains that the institutions failed to carry out a proper non-attribution analysis with regard to the investments.

119 Although the Council infringed the non-attribution rule in Article 3(7) of the basic regulation, such an infringement gives grounds for annulling the contested regulation only if it calls in question the lawfulness of the regulation by invalidating the institutions' entire analysis of causation (see, to that effect, Case T-35/01 *Shanghai Teraoka Electronic* v *Council* [2004] ECR II-3663, paragraph 167). The applicants have not put forward any argument to that effect.

120 The Court considers that that infringement does not affect the lawfulness of the contested regulation. As the Council points out, the investments in question were investments in production machinery which were depreciated over many years and only part of which affected the Community industry's profitability in 2005 and during the investigation period. In that connection, in answer to the written question put to it by the Court by way of a measure of organisation of procedure, the Council stated, on the basis of precise figures and explanations, that the investments made in 2005 accounted for 4.7 %, at most, of the Community industry's loss of profitability in 2005. Consequently, the investments cannot be regarded as having made a considerable contribution to the injury suffered by the Community industry in 2005 and during the investigation period.

121 It follows that the infringement found cannot call into question the lawfulness of the contested regulation and that the present complaint must be rejected, as must the third part of the first plea in its entirety.

(c) The fourth part of the first plea, concerning the impact of the increase in the cost of raw materials

Arguments of the parties

122 The applicants submit that the institutions failed to take due account of the effects of the increase in the cost of raw materials on the injury suffered by the Community industry, thereby committing manifest errors of assessment.

123 In the first place, the Council made a manifest error of assessment by asserting, in recital 99 to the contested regulation, that production cost increases observed in the alloy sector had occurred on a worldwide scale, thereby affecting the sector equally worldwide. In the applicants' view, while production costs may increase globally, such increases do not have the same effect all over the world.

124 First, the Council failed to take account of the fact that Community producers had a higher production cost base than the rest of the world's producers. In the applicants' submission, even if all producers are faced with a similar production cost increase, the producers starting from a higher cost level will be injured more quickly and to a greater degree than the other producers. Thus, in the applicants' view, contrary to the Council's assertion in the contested regulation, a third country producer will not necessarily be compelled to raise its prices to the same extent as a Community producer facing the same cost increase, since the third country producer starts from a position of higher profitability at a given sales price.

125 As it is, first of all, the institutions had information showing that the Community producers had a higher ferro-silicon production cost structure than producers in the countries covered by the anti-dumping proceeding. The applicants ask the Court to order the production of that information. Next, the applicants presented evidence during the administrative proceeding that, during 2005 and the investigation period, Community ferro-silicon prices were the highest in the world and the Community industry's production costs surpassed those prices by an increasing margin. Lastly, the applicants submit that, during 2005 and the investigation period, when the Community industry's costs increased dramatically, prices on all world markets decreased in line with the fall in consumption. Despite selling at the highest prices in the world, the Community industry became loss making in 2005 and during the investigation period owing to the increase in its production costs.

126 Secondly, the applicants claim that the institutions did not take account of the fact that, even if prices on all markets were equal in macro-economic terms, owing to micro-economic differences Community producers would still be more affected by increases in input costs than producers in the countries concerned by the anti-dumping investigation. Most producers in those countries are vertically integrated, shielding them from price volatility on global markets, and none of the Community producers is vertically integrated in a comparable way. In addition, Community producers do not benefit from the same economies of scale as producers in the countries concerned by the anti-dumping investigation. For example, Erdos Xijin Kuangye Co Ltd, one of the Chinese ferro-silicon producers, has a production capacity which is almost twice that of all Community producers taken together. The production cost per unit is accordingly generally lower in third countries.

127 In the second place, the institutions made a manifest error of assessment by stating, in recital 132 to the provisional regulation, in reply to the argument that rising production

costs had caused injury, that energy prices all over the world had increased, in some instances to a higher degree than in Europe. The non-attribution requirement is not met merely by comparing electricity prices worldwide or in the countries concerned by the anti-dumping investigation with those prevailing in Europe. In the applicants' submission, the institutions were obliged to identify the impact on the Community industry of increasing electricity prices and to isolate that impact from the impact of the ferro-silicon imports. More specifically, first, the institutions failed to consider either the Eurostat data or their own investigations into the Community electricity market, both of which showed that energy costs had increased substantially in the Member States where the Community ferro-silicon producers were established. Second, since electricity prices vary greatly within the European Union, the institutions should have compared the actual figures of the Community producers with those of the producers in the countries concerned by the anti-dumping investigation. Third, the level of electricity prices worldwide is irrelevant, since only the increase in electricity prices in countries with ferro-silicon production as compared with that of the Community industry is relevant. Fourth, in the applicants' submission, even though energy prices in third countries might have been increasing, those prices nevertheless remained below those borne by the Community industry, allowing ferro-silicon producers established in third countries to continue operating at a profit while the Community industry sustained losses.

128 In the third place, in recital 92 to the contested regulation, the Council made a manifest error in the interpretation of the Commission staff working document entitled 'Analysis of economic indicators of the EU metals industry: the impact of raw materials and energy supply on competitiveness' ('the Commission working document'), on which it relied in order to reject the argument that the Community industry suffers from a lack of competitiveness owing to its cost structure. In the applicants' submission, that document clearly shows that the Community metals industry is increasingly

put under pressure by competitors with a different production cost structure. In particular, the document indicates that Community producers' sales of the most energy intensive ferro-alloys — namely, silicon metal and ferro-silicon — are vulnerable owing to their lack of cost competitiveness.

129 The Council, supported by the interveners, disputes the applicants' arguments.

Findings of the Court

130 This part of the first plea relates to the manner in which the institutions analysed the impact of the increase in the cost of raw materials on the injury to the Community industry. In essence, the applicants submit that three manifest errors of assessment were made. In their submission, these errors vitiate recitals 92 and 99 to the contested regulation and also recital 132 to the provisional regulation.

131 In the first place, as regards recital 99 to the contested regulation, it should be noted that that recital is worded as follows:

'With regard to cost increases, the Community industry alleged that cost increases observed in the alloy industry usually occur on a worldwide scale thereby affecting equally the worldwide industry. An analysis of the price development of major cost items over the period considered shows that costs have increased (electricity, quartzite and electrode paste). However, the investigation has shown that even if these

increases were partly compensated by sale price increases the presence of low-priced dumped imports did not allow the Community industry to pass on the full effect of its increases in costs in its sales price'.

132 The applicants submit that the Council made a manifest error of assessment by asserting that the production cost increases observed in the alloy sector occurred on a worldwide scale and thereby affected the sector equally worldwide.

133 In that connection, it should be noted that — contrary to the assertions made by the applicants — the Council did not in any way assert, in recital 99 to the contested regulation, that the production cost increases observed in the alloy sector occurred on a worldwide scale and thereby affected the sector equally worldwide. It is clear from the wording of that recital that the Council simply reported that assertion, using the terms in which it had been expressed by the Community industry.

134 Moreover, the Council in no way relied on the Community industry's assertion in order to justify the conclusion, which had been set out in recital 133 to the provisional regulation, that the increase in production costs had not broken the causal link between the dumped imports and the injury. Thus, in recital 99 to the contested regulation, the Council took note of the increase in certain production costs, but concluded that that increase was only partly offset by sale price increases, because of the presence of the dumped imports. In other words, the Council is contending that although production costs increased, the injury suffered by the Community industry stemmed not from that increase, but from the fact that it was impossible to pass on the full effect of that increase in the sales prices owing to the presence of the dumped imports.

135 The applicants do not put forward any argument to show that in so reasoning the Council made a manifest error of assessment, since they simply seek to show that it was incorrect to assert that the cost increases had affected the sector equally worldwide. Consequently, the applicants' argument in relation to recital 99 to the contested regulation must be rejected, and it is not necessary to order the production of any documents.

136 In the second place, as regards the argument relating to recital 132 to the provisional regulation, it should be recalled that the Commission noted in that recital, first, that electricity costs constituted a major portion of the costs of production of the product concerned and, second, that the investigation had revealed that energy prices had increased all over the world, including in the countries concerned, in some instances to a higher degree than in the European Union. In recital 133 to the provisional regulation, the Commission found, against this background, that the energy issue could not break the causal link between the dumped imports and the injury to the Community industry.

137 The applicants dispute those recitals on the ground that, in order to observe the non-attribution rule laid down in Article 3(7) of the basic regulation, the Commission could not simply state, in a general and unsubstantiated manner, that energy prices had increased all over the world, in some instances to a higher degree than in the European Union. The two reasons given by the applicants in support of that assertion are not, however, convincing.

138 First, the applicants submit that the Commission should have analysed the Eurostat data and the results of its own investigations into the electricity market which, in the applicants' submission, showed that electricity costs had increased substantially in the Member States where the Community ferro-silicon producers are established. The applicants do not, however, provide any evidence in support of that assertion.

139 Second, the applicants submit that the Commission should have compared the figures for the Community producers with those for the exporting producers covered by the anti-dumping investigation. The applicants do not, however, adduce any evidence to prove that such a statistical comparison would have shown that the increase in the cost of energy in the Community was such as to cause the injury to the Community industry. The applicants' argument relating to recital 132 to the provisional regulation must therefore be rejected.

140 In the third place, as regards the argument relating to recital 92 to the contested regulation, it should be noted that in that recital the Council dealt with the issue of the competitiveness of the Community industry and with the Commission's working document which, in the applicants' submission, proves that the Community industry suffers from a lack of competitiveness owing to the high costs which it must bear. In recital 92, the Council found that the Commission did not draw any conclusion in that document with regard to any lack of competitiveness on the part of the European ferro-alloys industry. On the contrary, according to the Council, this working document indicates that the ferro-alloy producers are facing growing imports from third countries, such as China, Russia, Ukraine, Brazil and Kazakhstan, which could become a threat to the long-term sustainability of the EU ferro-alloys industry if a level playing field with third-country competitors is not rapidly ensured.

141 The applicants submit that the Council misinterpreted the working document. In particular, they submit that in that document the Commission confirmed, inter alia, that the Community sales of ferro-silicon were vulnerable owing to their lack of cost competitiveness.

142 In that connection, it should be noted that — as the Council observed — the Commission working document states that the Community metals industry is increasingly put under pressure by competitors with a different production cost structure, which benefit from lower cost access to raw materials and/or energy.

143 However, the Court does not concur with the applicants' interpretation that the Community ferro-silicon producers are vulnerable because of their cost structure. Thus, the applicants refer to a passage from the working document which states that 'EU ferro-alloys producers, in particular of silicon metal and ferro-silicon, are facing growing imports from third countries, e.g. China, Russia, Ukraine, Brazil and Kazakhstan' and that '[t]his might become a threat to the long-term sustainability of the EU ferro alloys industry if a level playing field with third country competitors is not rapidly ensured.' However, it is not apparent either from the wording of those sentences, or from their context, that Community ferro-silicon sales are vulnerable owing to a lack of cost competitiveness on the part of the Community producers. First, it would be contrary to common sense to interpret the reference to creating a level playing field with third-country competitors as meaning that the Community producers are vulnerable because of their cost structure. It is much more reasonable to assume that the Commission intended to refer to the abnormally low prices charged by the third-country exporting producers. Second, at the end of the paragraph containing the reference in question, the Commission referred to anti-dumping measures concerning ferro-molybdenum, which suggests that when the Commission made the reference to creating a level playing field with third-country competitors, it meant the possible adoption of anti-dumping measures.

144 Consequently, it must be found that none of the arguments relied on by the applicants goes to prove that the Council misinterpreted the Commission working document, in recital 92 to the contested regulation, and made a manifest error of assessment as to the impact of the production costs structure borne by the Community industry on the injury suffered by the latter.

145 It follows from all of the above considerations that the fourth part of the first plea must be rejected as unfounded.

(d) The fifth part of the first plea, concerning the effects of the contraction in demand in 2005

Arguments of the parties

146 The applicants submit that recital 81 to the provisional regulation is flawed by a manifest error of assessment, in that it states that Community ferro-silicon consumption remained stable during the period under consideration, with the exception of 2003 and 2004 when it increased by 6% owing to the exceptional demand from the steel industry. In so doing, the Council characterised wrongly the impact of the changes in demand and mistakenly attributed the price decreases to the dumped imports, in breach of Article 3(7) of the basic regulation.

147 In the applicants' submission, Community consumption did not remain stable during the period under consideration. Thus, the applicants point out that, between 2004 and 2005, Community consumption decreased by 4.4%. This contraction in demand reflected stagnation followed by a slump in demand that had an important negative effect on Community prices. In that regard, the applicants submit that, in a transparent and competitive market such as the ferro-silicon market, prices are determined primarily by fluctuations in global supply and demand and to a certain extent by production costs. During periods of increased demand and/or contracting supply, prices rise, whereas during periods of contracting demand and/or increasing supply, prices fall, a point expressly recognised by the Court in *Aluminium Silicon Mill Products* v *Council*, paragraph 27 above, with regard to another ferro-alloy, silicon metal. Ferro-silicon prices in the Community market thus decreased while the production costs

borne by Community producers surpassed market prices, consequently entailing significant losses for the Community industry.

148 The Council, supported by the interveners, disputes the applicants' arguments.

Findings of the Court

149 By this part of the first plea, the applicants dispute, in essence, the institutions' assessment of the impact of the changes in demand during the period under consideration. They submit, in particular, that recital 81 to the provisional regulation is flawed by a manifest error of assessment.

150 It should be recalled that recital 81 to the provisional regulation contains a table of the figures for Community consumption for the period under consideration and the following comment from the Commission: 'Community consumption of FeSi remained rather stable during the period considered with the exception of 2003 and 2004 when it increased by 6 % due to the exceptionally large demand from the steel industry'. It should also be noted that, in recital 124 to the provisional regulation, the Commission stated the following, in the context of its non-attribution analysis:

'… the apparent consumption of FeSi on the Community market with the exception of 2004 was rather stable over the period considered. Therefore, the material injury suffered by the CI cannot be attributed to a contraction in demand on the Community market'.

151 The applicants submit that those statements are incorrect, since consumption on the Community market did not remain stable during the period under consideration, but decreased by 4.4% between 2004 and 2005.

152 In that connection, first of all, it should be noted that — as the Council observed — the applicants do not dispute the accuracy of the figures given in recital 81 to the provisional regulation. As the Council notes, the dispute between the parties relates only to the interpretation of those data.

153 Next, it should be noted that the applicants misinterpret the observations made by the Commission in recital 81 to the provisional regulation. Thus, contrary to the applicants' submissions, the Commission did not simply assert that consumption in the Community had remained stable, but noted that it had risen between 2003 and 2004 owing to the increase in demand from the steel sector. In addition, it follows from recital 124 to the provisional regulation that, in the course of the non-attribution analysis, the Commission did take account of the variation in consumption in 2004 but found that, despite that variation, consumption had to be regarded as stable overall, which meant that the injury to the Community industry could not be attributed to a contraction in demand on the Community market. It must therefore be found that the Commission fulfilled its obligation under Article 3(7) of the basic regulation to separate and distinguish the injury caused specifically by contraction in demand or changes in the patterns of consumption.

154 Lastly, none of the arguments raised by the applicants goes to prove that the Commission's conclusion in recital 124 to the provisional regulation constitutes a manifest error of assessment. The applicants simply put forward their interpretation of the figures given in recital 81 to the provisional regulation, but do nothing to explain how the way in which the institutions interpreted those figures constitutes a manifest error of assessment. In that connection, it is plausible, as the applicants submit, that

the 4.4% reduction in consumption in the Community between 2004 and 2005 had a negative effect on Community prices. Nevertheless, it is also plausible to interpret the figures given in recital 81 to the provisional regulation in the same way as the institutions, that is, as showing a relatively stable demand throughout the investigation period, in which case the variations in 2004 and 2005 can be construed as reflecting exceptional demand from the steel sector in 2004, followed by a return to normal in 2005. In that case, it is reasonable to find that the injury to the Community industry, as emerges from the data for the whole of the period under consideration, cannot be attributed to the variations in consumption in 2004 and 2005. Accordingly, it must be found that the applicants have not shown that the institutions made a manifest error of assessment.

155 The fifth part of the first plea must therefore be rejected as unfounded.

(e) The sixth part of the first plea, concerning the effects of third-country imports

Arguments of the parties

156 The applicants submit that the institutions acted in breach of the non-attribution principle since they did not take due account of the effects of imports from third countries other than those covered by the investigation procedure ('the other third countries'). The applicants claim that the Commission merely asserted, in the provisional

regulation, as confirmed by the contested regulation, that the effect of the imports from the other third countries could not be considered to be of any material significance as compared with the volume and prices of the dumped imports — which is not sufficient to observe the non-attribution principle.

157 According to the applicants, although, in recitals 116, 118 and 120 to the provisional regulation, the institutions identified certain effects brought about by the imports from the other third countries, they did not isolate them for the purposes of making a proper attribution of the causes of the injury. First, in recital 116 to the provisional regulation, the Commission stated that the prices of imports from the other third countries undercut the Community industry's prices by 2.3 % to 5.7 %. A comparable undercutting margin was the basis, in Regulation No 1420/2007, for the imposition of anti-dumping duties. Secondly, in recitals 118 and 120 to the provisional regulation, specifically concerning imports from Iceland and Venezuela, the Commission confirmed that those imports had negatively affected the situation of the Community industry. Thus, the institutions were obliged to consider the cumulative effects of all injurious third country imports, as well as of all other known injury factors, and not to attribute those effects to the imports at issue.

158 In the reply, the applicants add that the Council overlooked the fact that a major portion of the increase in volume of the dumped imports was intended to fill the 'void' left on the market by the withdrawal of certain third country producers during the period under consideration.

159 The Council, supported by the interveners, disputes the applicants' arguments.

Findings of the Court

160 By this part of the first plea, the applicants dispute, in essence, the institutions' assessment of the impact of the imports from the other third countries on the injury to the Community industry. They submit, in particular, that recitals 116, 118 and 120 to the provisional regulation are flawed by a manifest error of assessment, in that in those recitals the Commission identified certain effects brought about by those imports, but did not correctly isolate them.

161 It should be recalled that, in recital 116 to the provisional regulation, the Commission found that overall imports from all other third countries had decreased over the period under consideration by around 45 %; that their market share had declined from 54.8 % to 30 %; that, over the same period, the prices of those imports had increased by 7 %; and that the average price of those imports was above that of the dumped imports throughout the period under consideration and between 2.3 % to 5.7 % lower than that of the Community industry over the same period. In recitals 117 to 120 to that regulation, the Commission analysed the impact on the injury of the imports from Norway, Iceland, Brazil and Venezuela, respectively. It found that neither the imports from Brazil nor those from Norway had contributed to the injury suffered by the Community industry. By contrast, the Commission concluded that, while the imports from Iceland and from Venezuela could have had a negative effect on the situation of the Community industry, that effect could not be considered to be of any material significance when compared with the volume and prices of the dumped imports. In recital 121 to the provisional regulation, the Commission deduced from the content of recitals 116 to 120 to that regulation that imports from the other third countries had not materially contributed to the injury suffered by the Community industry.

162 The arguments put forward by the applicants do not go to prove that that line of reasoning constitutes a manifest error of assessment.

163 In the first place, as regards the applicants' argument in relation to recital 116 to the provisional regulation, it should be noted that they simply assert that an undercutting margin of 2.3 % to 5.7 % was the basis, in Regulation No 1420/2007, for the imposition of anti-dumping duties, which, in their submission, shows that the Commission was not entitled to conclude that imports from the other third countries had not contributed to the injury.

164 In that regard, first, it should be recalled — as noted in paragraph 90 above — that it is for the institutions, in exercising their discretion, to examine whether the Community industry has suffered injury and whether that injury is attributable to the dumped imports or other factors have contributed to the injury, and that such discretion must be exercised on a case-by-case basis, by reference to all the relevant facts. In any event, it should be noted that, in Regulation No 1420/2007, the undercutting margin on the basis of which the anti-dumping measures were imposed was 4.5 %. In that regulation, the Council did not refer to the range of values cited by the applicants. Further, more significantly, in Regulation No 1420/2007, the Council relied on a number of other factors in concluding that it was necessary to adopt those measures. Accordingly, no conclusion can be drawn from the fact that, in Regulation No 1420/2007, the Council calculated an undercutting margin of 4.5 % and imposed anti-dumping measures.

165 Second, it should be noted that — as the Council observed — in recital 116 to the provisional regulation, the Commission did not refer to the undercutting margin of imports from the other third countries, but stated that the price of those imports was lower than that of the Community industry during the period under consideration. As has been noted, in paragraph 65 above, undercutting is a legal concept provided for in Article 3(3) of the basic regulation, in accordance with which the institutions compare Community prices with adjusted import prices in order to obtain an

undercutting margin expressed as a percentage. Consequently, no analogy may be drawn between an undercutting margin and a simple price comparison.

166 Third, the Commission's finding concerning the level of prices is only one aspect of a line of reasoning developed more fully in recital 116 to the provisional regulation. Although the level of the prices of imports from the other third countries as compared with the level of Community prices may be evidence that those imports contributed to the injury suffered by the Community industry, the other aspects of the Commission's reasoning which caused it to rule out such a contribution may not, however, be disregarded. Thus, the Commission found that the market share of those imports had declined during the period under consideration and that, over the same period, the prices of those imports had increased and had always been above those of the dumped imports. It follows, as the Council observed, that, assuming that consumption did not increase, it is impossible for the imports from the other third countries collectively to have gained market share at the expense of the Community industry, unlike the dumped imports.

167 Accordingly, none of the arguments raised by the applicants goes to prove that recital 116 to the provisional regulation is flawed by a manifest error of assessment.

168 In the second place, as regards the argument relating to recitals 118 and 120 to the provisional regulation, it should be noted that the applicants do not dispute the Commission's finding that, while the imports from Iceland and from Venezuela could have had a negative effect on the situation of the Community industry, that effect cannot be considered to be of any material significance when compared with the volume and prices of the dumped imports. The applicants simply assert that the institutions should have analysed the cumulative effects of the imports from the other third countries and analysed all the other known injury factors collectively.

169 First, as regards the analysis of the cumulative effects of the imports from the other third countries, it should be noted that, contrary to the assertions made by the applicants, such an analysis was indeed carried out by the Commission. That analysis is the first of the three stages in examining the impact of imports from the other third countries. Thus, first of all, in recital 116 to the provisional regulation, the Commission set out the changes in the economic indicators for all the imports from the other third countries. As noted in paragraph 166 above, in view of those changes, the imports from the other third countries cannot be regarded as having collectively gained market share at the expense of the Community industry. Next, in recitals 117 to 120 to the provisional regulation, the Commission examined whether the individual effects of the imports from Norway, Iceland, Brazil and Venezuela, respectively, could have caused injury. As explained in paragraph 161 above, the Commission concluded that although, individually, the imports from Iceland and from Venezuela could have had a negative effect on the situation of the Community industry, that effect could not be considered to be of any material significance when compared with the volume and prices of the dumped imports. Lastly, the Commission drew conclusions from the first two stages of its reasoning and logically found, in recital 121 to the provisional regulation, that the imports from the other third countries had not contributed to the injury.

170 Second, as regards the collective analysis of all the other known injury factors, the point was made in paragraph 47 above that it was necessary to examine the applicants' complaints concerning the individual analysis of each of the other known injury factors before it could be determined whether a collective analysis was required in the circumstances. That question will be considered in paragraphs 204 to 215 below.

171 Consequently, none of the arguments raised by the applicants goes to prove that recitals 118 to 120 to the provisional regulation are flawed by a manifest error of assessment.

172 In the third place, as regards the argument relating to the 'void' left on the market by the withdrawal of certain producers from the other third countries — raised for the first time in the reply — it must be held that that argument is not intended to show that the institutions incorrectly assessed the injury caused by the imports from the other third countries, but rather that the dumped imports did not cause injury to the Community industry since they replaced the imports from the other third countries. Accordingly, the argument is not closely linked to the plea initially raised in the application and does not therefore expand upon it. It follows that, since that argument is not based on matters of law or of fact which have come to light in the course of the proceedings, it must be regarded as a new plea in law for the purposes of Article 48(2) of the Rules of Procedure (see, to that effect, Case T-211/95 *Petit-Laurent* v *Commission* [1997] ECR II-57, paragraphs 43 to 45). The argument must therefore be rejected as inadmissible.

173 In the light of the foregoing, the sixth part of the first plea must be rejected as partly unfounded and partly inadmissible.

(f) The seventh part of the first plea, concerning the pre-existing lack of competitiveness of the Community producers before any injurious dumping took place

Arguments of the parties

174 The applicants submit that the Council made a manifest error of assessment and infringed the non-attribution principle as laid down in Article 3(7) of the basic regulation through its rejection, in recitals 93 and 94 to the contested regulation, of the

argument that most of the Community producers were already unprofitable before any injurious dumping took place, on the ground that the Community industry overall was profitable in 2004. In that regard, the applicants point out that three out of the six Community producers were already loss-making in 2003 and, with the exception of FerroAtlántica, all of them were loss-making during 2004 — an 'exceptionally prosperous year' for the ferro-alloys industry. The Community industry's 3 % aggregate profitability for 2004 was thus attributable solely to FerroAtlántica. Moreover, despite the Community industry's stronger overall performance in 2004 as compared with 2003 and the fact that it increased its prices by 10 %, five out of the six producers experienced a worsened situation for reasons unrelated to the dumped imports. The institutions should at least have taken this fact into account, since it is important for explaining the changes in the Community producers' injury and is a clear indication of the Community industry's lack of competitiveness, in particular as regards its cost structure. That fact is confirmed by the production switches and cutbacks already undertaken by the Community industry in 2004, despite the increase in consumption and the profitability of ferro-silicon sales.

175 In essence, the Council, supported by the interveners, contends that, although the applicants claim that the institutions made a manifest error of assessment in describing the Community industry as profitable in 2003 and 2004, they do not challenge the pre-tax profit margin figures cited in recital 94 to the contested regulation. In addition, the Council contends that the applicants' reference to the situation of individual Community producers in 2003 and 2004 does not support a finding of a manifest error. First, the injury and causation assessment is to be carried out by reference to the Community industry as a whole, and not to that of individual Community producers. Second, the fact that three Community producers, who together represented 24 % to 28 % of total Community production, were incurring losses in 2003 does not mean that the Community industry as a whole suffered from a lack of competitiveness. Third, the Council points out that the year 2004 is characterised by a loss of market share for the Community industry, a 2 % decrease in its sales as compared with 2003, an increase in the dumped imports and in their market share and a decrease in their

prices, which means that some Community producers were already negatively affected by the dumped imports in 2004, even if, overall, the Community industry was able to increase profits.

Findings of the Court

176 By this part of the first plea, the applicants take issue with the fact that, in recitals 93 and 94 to the contested regulation, the Council rejected the argument that the Community industry was already unprofitable before any injurious dumping took place.

177 It should be recalled that, in paragraph 94 to the contested regulation, the Council explained, in answer to that argument, that, as demonstrated in recital 97 to the provisional regulation, the Community industry was profitable in 2003 with a pre-tax profit margin of 2.3 %, which increased to 2.7 % in 2004, and that losses were incurred in 2005 and during the investigation period.

178 Although the applicants do not, as the Council points out, dispute the figures in recital 97 to the provisional regulation — which show that the Community industry overall was profitable in 2003 and 2004 — they do, on the other hand, complain that the institutions failed to take account of the individual situation of three of the six Community producers, in 2003, and that of five of the six Community producers, in 2004.

179 In that connection, it should be noted that the applicants base their arguments on figures which show that five of the six Community producers were loss-making in 2004. Those figures are not disputed by the Council. In addition, the applicants state that three of the six Community producers were unprofitable in 2003. Although the applicants do not adduce any evidence in support of that statement, the Council confirms, in its written pleadings, that this was the case.

180 In that context, it should be borne in mind that — as was indicated in paragraph 88 above — contrary to the assertions made by the Council, the analysis of causation does not necessarily have to be carried out at the level of the Community industry as a whole, with no possibility of taking into consideration injury caused to a single Community producer by a factor other than the dumped imports. An injury caused to a single Community producer by a factor other than the dumped imports must be taken into consideration, where it has contributed to the injury observed in relation to the Community industry as a whole.

181 Since the data produced by the applicants do indeed show that certain producers were unprofitable in 2003 and 2004, the institutions were under a duty to assess the impact of that situation on the injury suffered by the Community industry as a whole, which they failed to do. It follows that the institutions failed to fulfil their obligation to carry out a non-attribution analysis and therefore infringed Article 3(7) of the basic regulation.

182 Nevertheless, as was noted in paragraph 119 above, it is necessary to show that such an infringement is capable of calling in question the lawfulness of the contested regulation by invalidating the institutions' entire analysis of causation. In the present case, the applicants must accordingly prove that the specific situation of some of the Community producers, in 2003 and 2004, caused the injury suffered by the Community

industry as a whole, or contributed to that injury. They must also prove that the losses incurred by five of the six Community producers were not brought about as a result of the dumped imports.

183 For those purposes, the applicants state that the lack of profitability in 2004 of five of the six Community producers is a result of their lack of competitiveness, which, in the applicants' submission, is confirmed by the production switches and cutbacks already undertaken by the Community industry in 2004, despite the increase in consumption and the profitability of ferro-silicon sales. However, the Court considers that it is possible to interpret the figures for 2004 in a different way. Thus, three Community producers, together representing 24 % to 28 % of total Community production, were incurring losses in 2003, and five producers made losses in 2004. However, it should be noted that — as the Council observed — despite the increase in consumption, the year 2004 is characterised by a loss of market share for the Community industry, a 2 % decrease in its sales as compared with 2003, an increase in the dumped imports and in their market share and a decrease in their prices, which may mean that some Community producers were already negatively affected by the dumped imports in 2004, even though, overall, the Community industry was able to increase its profits.

184 Since the deficit experienced by some Community producers in 2003 and 2004 could have been caused by the dumped imports, the infringement found in paragraph 181 above cannot render the contested regulation unlawful.

185 In the light of the foregoing, the seventh part of the first plea must be rejected.

(g) The eighth part of the first plea, concerning the circumstances of individual producers

Arguments of the parties

186 The applicants claim that the institutions made a manifest error of assessment and infringed Article 3(7) of the basic regulation in refusing to carry out an examination of the factors which caused injury to individual Community producers, while impacting on the Community industry as a whole, when the number of those producers was small and their economic situations highly heterogeneous.

187 Thus, first, the applicants point out, as regards Huta Laziska, that it switched part of its production from ferro-silicon to silico-manganese in 2004 in order to increase its profitability. This resulted in a decrease in ferro-silicon production at that company and a reduction in ferro-silicon sales to unrelated parties. Owing to the production cutbacks with unchanged fixed costs, its production costs per ton increased by about 17 % in 2004 and its losses more than tripled, for reasons unrelated to imports. Nevertheless, revenues from sales to unrelated parties increased. In 2005, Huta Laziska first scaled back production, then shut down production during the investigation period, owing to a legal dispute with its electricity supplier. As a consequence, its sales decreased and its production costs per unit increased substantially, as a result of which Huta Laziska lost profitability and market share.

188 Second, as regards OFZ, the applicants point out, first of all, that it re-allocated or dismissed 47 % of its workforce in 2004, which meant that it was unable to meet

expanding demand. In addition, OFZ switched part of its ferro-silicon production to silico-manganese in order to increase its profitability. As a result, its sales to unrelated parties decreased by 19 %. Nevertheless, owing to strong market conditions, it managed to limit revenue losses to 11 %, despite production cost increases of 14 %, which were partially caused by production cutbacks in the face of high fixed costs. Next, the applicants state that, in 2005, OFZ restructured, thereby decreasing production costs and increasing profitability. This necessitated a temporary decrease in its sales and market share.

189 Third, as regards TDR — Metalurgija d.d., the applicants point out that, in 2004, it increased its sales volume to unrelated parties at a higher rate than demand, increased production and profited from higher prices by increasing revenues from sales to unrelated parties. However, owing to an overall increase in production costs of 12 %, it could not return to profitability. When the market deteriorated in 2005, TDR was unable to recover from its bad performance during 2004, an 'exceptionally favourable year'.

190 Fourth, as regards Vargön Alloys, the applicants state that, in 2004, it increased its sales volume to unrelated parties at a higher rate than demand, increased production and profited from higher prices by increasing revenues from sales to unrelated parties. However, its production costs rose by 15 %. The applicants note that, according to the institutions, Vargön Alloys incurred further losses of 45 %. While the institutions failed to provide any clarification on this point, it is apparent that those changes must be attributed to issues specific to that company, and not to the imports at issue. Between 2004 and 2005, Vargön Alloys halved its ferro-silicon production as

a result of electricity price increases. In addition, during the investigation period, it switched part of its ferro-silicon production in order to increase profitability, which resulted in a decrease in ferro-silicon sales and market share.

191 Fifth, as regards FerroPem SAS and FerroAtlántica, the applicants submit that, between 2003 and 2004, FerroPem sold less ferro-silicon to independent customers but increased production and cleared stocks, which indicates that FerroPem increased its captive use. As a result, in the applicants' submission, FerroPem's revenues from sales to unrelated parties decreased. In addition, since its production costs rose by 24% over the same time span, it is logical that FerroPem suffered a substantial loss of profitability. Owing to increased electricity prices, FerroAtlántica shut down production during hours of peak consumption, thereby enabling its electricity division to make increased profits. Moreover, its acquisition of FerroPem engendered restructuring costs for both companies. Nevertheless, both companies outperformed the market by increasing their sales between 2004 and 2005, a period when overall Community consumption fell. As regards 2005 and the investigation period, FerroAtlántica's Venezuelan division increased its exports to the Community. The FerroAtlántica Group as a whole performed very well and does not appear to have been injured. The applicants submit that, in any event, any such injury cannot be attributed to the dumped imports.

192 The Council, supported by the interveners, disputes the applicants' arguments.

Findings of the Court

193 In the eighth part of the first plea, the applicants take issue, in particular, with the fact that the institutions failed to take account of the factors which caused injury to

individual Community producers, while impacting on the Community industry as a whole.

194 It has been established in paragraph 88 above that, contrary to the assertions made by the Council, the analysis of causation does not necessarily have to be carried out at the level of the Community industry as a whole, with no possibility of taking into consideration injury caused to a single Community producer by a factor other than the dumped imports. An injury caused to a single Community producer by a factor other than the dumped imports must be taken into consideration, where it has contributed to the injury observed in relation to the Community industry as a whole.

195 However, it should be noted that the need to take account of the factors which have caused injury to an individual producer when they have contributed to the injury of the Community industry as a whole does not mean, in the present case, that the institutions were obliged as a matter of course to analyse the individual situation of each Community producer.

196 In that connection, it must be found that the arguments raised by the applicants do not go to prove that the individual situation of the Community producers caused the injury suffered by the Community industry as a whole or even contributed to it.

197 Thus, first, as regards the arguments relating to Huta Laziska's situation, these are essentially the same as some of the arguments raised in support of the third part of the present plea. However, it was found that those arguments were unfounded. It follows that the same arguments must also be rejected as unfounded in the context of this part of the plea.

198 Secondly, as regards OFZ's situation, the facts described by the applicants are intended to show that that company was the subject of restructuring, which contributed to the injury suffered by the Community industry. However, it has been found, in the context of the third part of the present plea, that the switches in production, including those made by OFZ, had been taken into consideration by the institutions. In addition, although the situation for 2004 and 2005 described by the applicants may indeed have contributed to the injury, it is also plausible — as the Council states — that such a situation may have been caused by the presence of low-cost imports on the Community market. Consequently, it cannot be considered that the applicants have shown that OFZ's situation contributed to the injury suffered by the Community industry.

199 Thirdly, as regards TDR's situation, the facts described by the applicants are intended to show that the injury suffered by that company is linked to the increase in production costs. Since such a contention has been rejected in the context of the fourth part of the present plea, the arguments relating to TDR's situation, relied on in this part of the plea, must likewise be rejected as unfounded.

200 Fourthly, as regards Vargön Alloys' situation, the applicants refer to a switch in production by that company and to the increase in production costs. Since the arguments relating to the impact of those factors on the injury suffered by the Community

industry have been rejected in the context of the third and fourth parts of the present plea, the arguments relating to Vargön Alloys' situation, relied on in this part of the plea, must also be rejected.

201 Fifthly, as regards the situation of FerroPem and FerroAtlántica, it should be noted that the applicants describe an economic situation for those companies which is positive overall, and do not show how such a situation could have contributed to the injury suffered by the Community industry. Consequently, the arguments relating to the situation of those two companies cannot succeed.

202 It follows that the eighth part of the first plea must be rejected as unfounded in that it relates to the circumstances of individual producers.

203 In the light of all of the above considerations, the first, second, fourth and fifth parts of the first plea, the first three complaints of the third part of the first plea and the eight part of the first plea — inasmuch as the latter relates to the individual analysis of the injury factors — must be rejected as unfounded. In addition, the sixth part of the first plea must be rejected as partly unfounded and partly inadmissible. Lastly, it must be found that the infringements established in examining the fourth complaint of the third part of the first plea and in the seventh part of that plea do not give grounds for annulling the contested regulation.

3. Failure to undertake a collective analysis of the injury factors (first and eighth parts of the first plea)

(a) Arguments of the parties

204 In the first part of the first plea, the applicants submit that the Council's approach is manifestly inappropriate in so far as it examined whether other factors, considered individually, had been the cause of the injury to the Community industry, whereas in the circumstances it was necessary to examine the collective impact of the other factors. First, a large number of other factors had an impact on the Community industry, and that industry sustained little injury. Secondly, the individual situations of the Community producers are significantly different. Thirdly, a number of parties to the anti-dumping proceeding pointed out during the proceeding that other factors, taken together, explained the material injury suffered by the Community industry.

205 In the eighth part of the first plea, the applicants submit that the institutions should have assessed collectively the impact of the known factors other than the dumped imports. In the applicants' submission, while any such factor taken by itself may not be sufficient to break the causal link between the imports covered by the investigation procedure and the injury, it is possible that all those factors taken together can break that link. If such an analysis had been carried out in the present case, it would have confirmed that the injury to the Community industry was caused by cost and market developments and not by the imports covered by the investigation procedure.

206 Thus, first, the applicants submit that the price trends in 2005 and during the investigation period — namely, prices 15% lower in 2005 than in 2004 and 6% lower during the investigation period than in 2004 — could not validly be blamed on the imports

covered by the investigation procedure, since that trend was part of a global correction of market prices in relation to 2004. According to the applicants, the downturn in prices is the logical consequence of a global downturn in demand in 2005. During a period of contracting demand, it is to be expected that Community producers will face decreasing profits, which means that reduced profits are insufficient in themselves to prove injury.

207 Secondly, the applicants draw attention to the close correlation between increases in production costs and loss of profitability. They accordingly submit that the decreasing profits in 2005 owing to the market contraction were further compounded by the increasing costs, which had already severely affected the profitability of the Community producers in 2004. This had the snowball effect of increasing production costs and loss of profits, an effect which was sustained by production cutbacks. The applicants further note that, in 2005 and during the investigation period, the Community industry's production costs surpassed market prices, even though, in 2005, those prices were the highest in the world. Moreover, the applicants maintain that the increases in production costs are the result of (i) increased input costs, (ii) loss of economies of scale owing to production cutbacks or switches and (iii) other factors unrelated to the imports at issue.

208 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

209 It should first of all be recalled that, in paragraph 43 above, it was established that a collective analysis of the injury factors might be required in certain circumstances, in particular where the institutions have found that a large number of injury factors

other than the dumped imports had contributed to the injury but that, individually, their impact could not be regarded as significant.

210 In the present case, in recitals 115 to 136 to the provisional regulation and recitals 87 to 101 to the contested regulation, the institutions analysed individually 12 injury factors other than the dumped imports: the imports from Norway, Iceland, Brazil and Venezuela; competition from another Community producer; changes in demand; the Community industry's export performance; currency fluctuations; production costs; switches in production; ferro-silicon price-setting; and the competitiveness of the Community industry. The institutions concluded that none of those factors had individually contributed to the injury suffered by the Community industry, with the exception of the imports from Iceland and Venezuela, the impact of which was not, however, considered to be of any material significance.

211 The analysis in paragraphs 49 to 203 above has established that the individual analysis of the injury factors was not flawed by a manifest error, with the exception, however, of two factors — referred to in the context of the fourth complaint of the third part of the first plea and of the seventh part of that plea — which the institutions had failed to analyse, but which the applicants have failed to prove would in the circumstances have contributed to the injury suffered by the Community industry. Consequently, it must be concluded that it was possible for the institutions, without making a manifest error of assessment, not to carry out a collective analysis of the injury factors other than the dumped imports.

212 That conclusion cannot be called in question by the arguments raised by the applicants in connection with the first part of the first plea. First, as regards the argument based on the comments of other parties to the anti-dumping proceeding, made during the investigation procedure, this must be rejected as inadmissible, since essentially the

applicants do not put forward any arguments, but simply refer to those comments, which they annex to the application. Under the first paragraph of Article 21 of the Statute of the Court of Justice — applicable to the General Court by virtue of the first paragraph of Article 53 of that Statute and Article 44(1)(c) and (d) of the Rules of Procedure of the General Court — all applications must indicate the subject-matter of the proceedings and the form of order sought by the applicant, and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the General Court to decide the case. In order to ensure legal certainty and the sound administration of justice, it is necessary, if an action is to be admissible, for the essential facts and points of law on which the action is based to be apparent from the text of the application itself, even if only stated briefly, provided that the statement is coherent and comprehensible (Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraph 20, and Case T-19/01 *Chiquita Brands and Others* v *Commission* [2005] ECR II-315, paragraph 64). Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law, which must appear in the application (order in Case T-154/98 *Asia Motor France and Others* v *Commission* [1999] ECR II-1703, paragraph 49).

213 Secondly, as regards the argument that the situations of the individual producers are significantly different, that argument is, in essence, the same as the arguments raised in support of the eighth part of the first plea, in so far as it relates to the circumstances of the individual producers. Since it has been decided that that part of the first plea must be rejected as unfounded, the argument cannot help to demonstrate that a collective analysis of the injury factors other than the dumped imports was required in the present case.

214 Similarly, that conclusion cannot be called in question by the arguments raised by the applicants in support of the eighth part of the first plea. Those arguments are, in

essence, the same as those raised in support of the third, fourth and fifth parts of the first plea. Since, following examination of those parts of the plea, it has been decided that those arguments were unfounded, they cannot help to demonstrate that a collective analysis of the injury factors other than the dumped imports was required in the present case.

215 Consequently, the first and eighth parts of the first plea must be rejected as unfounded, inasmuch as they rely on the fact that no collective analysis of the injury factors was undertaken. Moreover, in the light of that conclusion, the first part of the first plea must also be rejected, inasmuch as it alleges that an error of law was made regarding the obligation to carry out a collective analysis of the various injury factors.

B — *The second plea, concerning the existence of a Community interest*

1. *The first part of the second plea, concerning the upward trend in ferro-silicon prices after the investigation period*

(a) Arguments of the parties

216 The applicants maintain, first, that the Council made a manifest error in the interpretation of Article 6(1) of the basic regulation (now Article 6(1) of Regulation No 1225/2009). Thus, in recital 106 to the contested regulation, the Council wrongly

invoked that provision in order to assert that it did not have to take developments after the investigation period into account in the Community interest assessment. The applicants argue, however, that Article 6(1) of the basic regulation refers to the dumping and injury assessment only. Article 21 of the basic regulation (now Article 21 of Regulation No 1225/2009), which concerns the Community interest, contains no temporal restrictions. Thus, the Community interest test is a forward-looking test and accordingly its application cannot, by definition, be restricted to data relating to a period ending prior to the start of the investigation. Moreover, it is the regular practice of the institutions to take information from after the investigation period into account, as they did in Regulation No 1420/2007, for example. Furthermore, in Case T-138/02 *Nanjing Metalink* v *Council* [2006] ECR II-4347, paragraph 59, the Court stated that the prohibition on the consideration of factors arising after the investigation period was intended to ensure that the factors on which the determination of dumping and injury is based are not influenced by the conduct of the producers concerned after the anti-dumping proceeding has been initiated. However, according to the applicants, that reasoning does not apply to the assessment of the Community interest, because the latter is not open to manipulation by parties to the investigation.

217 Secondly, the applicants submit that the Council made a manifest error of assessment in asserting, in recital 106 to the contested regulation, that, since production costs had risen in the months following the investigation period, the Community industry had not recovered to the extent that the imposition of anti-dumping measures was no longer warranted, despite the upward trend in ferro-silicon prices. In the applicants' submission, while it is true that the main ferro-silicon production costs continued to increase after the investigation period, the extent of those cost increases was more limited than the extent of ferro-silicon price increases. Thus, whereas ferro-silicon prices increased by 50 % between the investigation period and the adoption of the contested regulation, the price of electricity — which is the main production

cost — increased by approximately 4% in the second half of 2007. This allowed the Community producers to surpass the 5% profit level considered reasonable by the contested regulation. Accordingly, the Community producers recommenced ferro-silicon production.

218 Thirdly, the applicants claim in their reply that the Council failed to state properly the reasons for its rejection of the arguments and evidence put forward by the applicants in the anti-dumping investigation in order to show that the increase in ferro-silicon prices after the investigation period had been greater than the increase in costs.

219 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

220 In examining this part of the second plea, it must in the first place be ascertained whether the Council erred in law in finding, in recital 106 to the contested regulation, that Article 6(1) of the basic regulation applies in the context of determining whether there was a Community interest which called for anti-dumping measures to be imposed ('a Community interest'), the implication being that information relating to a period subsequent to the investigation period may not, normally, be used for the purposes of that determination.

221 It can be inferred from a literal and teleological interpretation of both Article 6(1) of the basic regulation and Article 21(1) thereof (now Article 21(1) of Regulation No 1225/2009) that, contrary to the assertions made by the Council in recital 106

to the contested regulation, Article 6(1) of the basic regulation does not apply in the context of determining whether there is a Community interest as contemplated in Article 21(1) of the basic regulation, which means that information relating to a period subsequent to the investigation period may be taken into account for those purposes.

222 It should be recalled that Article 6 of the basic regulation is entitled 'The investigation'. Article 6(1) of the basic regulation provides that the investigation 'shall cover both dumping and injury and these shall be investigated simultaneously'. It also states that, '[f]or the purpose of a representative finding, an investigation period shall be selected' and that '[i]nformation relating to a period subsequent to the investigation period shall, normally, not be taken into account'. Since Article 6(1) of the basic regulation states that the investigation is to relate only to the assessment of dumping and injury, the last sentence of that provision, pursuant to which developments subsequent to the investigation period may not normally be taken into account, accordingly applies only to the assessment of dumping and injury.

223 That interpretation is confirmed by an analysis of the objective of Article 6(1) of the basic regulation. It has been held that fixing an investigation period and precluding consideration of factors arising subsequently are intended to ensure that the results of the investigation are representative and reliable (Case T-188/99 *Euroalliages and Others* v *Commission* [2001] ECR II-1757, paragraph 74). The investigation period under Article 6(1) of the basic regulation is intended to ensure, in particular, that the factors on which the determination of dumping and injury is based are not influenced by the conduct of the producers concerned after the anti-dumping proceeding has been initiated and, accordingly, that the definitive duty imposed as a result of the proceeding is appropriate to remedy effectively the injury caused by the dumping (*Nanjing Metalink* v *Council*, paragraph 216 above, paragraph 59). On the other hand, it should be noted that, as the applicants observed, although the parties concerned can influence the assessment of dumping and injury by changing their trade policy, no such possibility exists in relation to the assessment as to whether there is a

Community interest. Consequently, the objective pursued through the delimitation of an investigation period after which information is not to be taken into account is not relevant in the context of Article 21 of the basic regulation.

224 Similarly, it should be pointed out, first, that Article 21 of the basic regulation does not contain any temporal restriction as to the information which may be taken into account by the institutions for the purposes of determining whether there is a Community interest. Second, in accordance with case-law, examination of the Community interest requires an evaluation of the likely consequences, both for the interest of the Community industry and for the other interests at stake, of applying — and of not applying — the measures proposed. That evaluation involves a forecast based on hypotheses regarding future developments, which includes an appraisal of complex economic situations (Case T-132/01 *Euroalliages and Others* v *Commission* [2003] II-2359, paragraph 47). Since the analysis provided for in Article 21 of the basic regulation is forward-looking, the institutions may find it necessary to take into account information which does not relate to the investigation period, but post-dates that period.

225 Consequently, it must be found that — as the applicants have argued —the Council erred in law, in recital 106 to the contested regulation, in applying Article 6(1) of the basic regulation in the context of determining whether there was a Community interest.

226 Nevertheless, although the institutions regarded Article 6(1) of the basic regulation as applying in the context of determining whether there was a Community interest, in recital 106 to the contested regulation they analysed information which had become available after the investigation period. In consequence, the error of law is not in itself capable of affecting the lawfulness of the contested regulation.

227 In the second place, it is necessary to establish whether the examination of the information relating to a period subsequent to the investigation period, carried out by the institutions in recital 106 to the contested regulation, is flawed by a manifest error of assessment. In that regard, it should be borne in mind that, where assessment of a complex economic situation is involved, the Commission has a broad measure of discretion when evaluating the Community interest. The judicature of the European Union must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate or whether there has been a manifest error of appraisal or a misuse of powers (*Euroalliages and Others* v *Commission*, paragraph 224 above, paragraph 67).

228 It should be recalled that, in recital 106 to the contested regulation, the Council stated that it could not be concluded that the Community industry had recovered to the extent that the imposition of measures would not be warranted, since, although ferro-silicon prices had increased in the months following the investigation period, the prices for major cost inputs of ferro-silicon had also increased.

229 The applicants' contention that recital 106 to the contested regulation is flawed by a manifest error of assessment is based upon two arguments: (i) prices increased by 50 % between the investigation period and the adoption of the contested regulation and (ii) production costs did not increase by as much as ferro-silicon prices.

230 However, it should be noted that the documents produced by the applicants in support of those arguments, both in the proceedings before the General Court and in the anti-dumping proceeding, contain a fundamental flaw. Although the documents prove that ferro-silicon prices increased in the months following the investigation period, they do not prove that the increase in overall costs was much lower. In that regard, the applicants simply produce a document showing a 4 % increase in the price of electricity, but containing no reference to the changes in other input prices.

231 As it is, under Article 21(7) of the basic regulation (now Article 21(7) of Regulation No 1225/2009), information submitted to the institutions is to be taken into account only where it is supported by actual evidence which substantiates its validity. Since such evidence was not available, the Council cannot be found to have made a manifest error of assessment.

232 In view of the lack of proof adduced by the applicants, their arguments are even less justified given that the basic regulation lays down specific mechanisms designed to deal with certain developments subsequent to the investigation period (see, to that effect, Case 258/84 *Nippon Seiko* v *Council* [1987] ECR 1899, paragraph 53). Thus, Article 11(3) of the basic regulation (now Article 11(3) of Regulation No 1225/2009) provides that an interim review may be initiated in three cases: when the continued imposition of the measure is no longer necessary to offset dumping, when the injury would be unlikely to continue or recur if the measure were removed or varied and when the existing measure is not, or is no longer, sufficient to counteract the dumping. Article 11(8) of the basic regulation (now Article 11(8) of Regulation No 1225/2009) provides for the reimbursement of anti-dumping duties where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force. Lastly, under Article 14(4) of the basic regulation (now Article 14(4) of Regulation No 1225/2009), anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension.

233 In the light of the foregoing, recital 106 to the contested regulation cannot be regarded as flawed by a manifest error of assessment.

234 In the third place, as regards the applicants' argument alleging failure to state properly the reasons for the rejection of the evidence which they had put forward, this is

unfounded. It has been established, in paragraph 230 above, that although the documents which the applicants had provided to the institutions proved that ferro-silicon prices had risen in the months following the investigation period, they in no way proved that the increase in overall costs had been much lower. The reasoning in recital 106 to the contested regulation is therefore a sufficient basis on which to reject those documents.

235 In the light of all the above considerations, the first part of the second plea must be rejected in its entirety. It must be held that the error of law found in the course of examining this part of that plea does not give grounds for annulling the contested regulation.

2. *The second part of the second plea, concerning previous experience demonstrating that anti-dumping measures do not help the Community industry*

(a) Arguments of the parties

236 The applicants claim that the Council made a manifest error of assessment when, in recitals 117 and 118 to the contested regulation, it refused to take account of previous experience, even though this shows that (i) anti-dumping measures in the ferro-silicon sector do not attain the desired remedial effect and (ii) those measures impose an unjustified burden on the Community industry. According to the applicants, although it is true that a decision to impose anti-dumping measures should be based on information gathered and analysed during the relevant investigation, the impact of previous anti-dumping measures is an important and relevant factor to be taken into consideration under Article 21 of the basic regulation. In Decision 2001/230/EC of 21 February 2001 terminating the anti-dumping proceeding concerning imports of

ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ 2001 L 84, p. 36; 'Decision 2001/230'), the Commission terminated anti-dumping measures that had been applied to ferro-silicon imports since 1987, because they did not achieve the expected remedial effect despite imposing a significant burden on Community users. The Commission's decision was upheld by the General Court. In the light of that precedent, the applicants submit that the institutions should have ascertained how the present case differed from the previous case, in order to justify the difference of analysis.

237 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

238 In the context of this part of the second plea, the applicants claim in essence that, in recitals 117 and 118 to the contested regulation, the institutions should have taken account of Decision 2001/230, which terminated anti-dumping measures on ferro-silicon imports on the ground that they had not had the expected remedial effect. That claim must be analysed in the light of the case-law cited in paragraph 227 above.

239 It should be noted that, in recitals 117 and 118 to the contested regulation, the Council refused to take account of Decision 2001/230 because, under the basic regulation, decisions are to be taken on the basis of the information gathered and analysed during the relevant investigation and not on the basis of previous investigations.

240 In that connection, it should be borne in mind that Article 21(1) of the basic regulation provides that a determination as to whether the Community interest calls for intervention is to be based on an appreciation of all the various interests taken as a whole, including the interests of the Community industry and users and consumers. It has been consistently held that an assessment of the Community interest also requires the interests of the various parties concerned to be balanced against the public interest (*Euroalliages and Others* v *Commission*, paragraph 224 above, paragraph 48).

241 It should again be stressed that, as was noted in paragraph 227 above, the Commission has a broad measure of discretion when evaluating the Community interest. That discretion must be exercised on a case-by-case basis, with reference to all the relevant facts (see, to that effect, *Gestetner Holdings* v *Council and Commission*, paragraph 227 above, paragraph 43). Nevertheless, for the purposes of applying Article 21(1) of the basic regulation, an earlier decision finding that anti-dumping measures imposed on imports of the same goods from the same countries as those covered by the investigation procedure lacked remedial effect may be relevant if it helps to show that the adoption of anti-dumping measures is not in the general interest. In such a case, however, it is for the party relying on the previous decision to explain how the circumstances in which that decision was adopted are comparable with those of the anti-dumping proceeding under way and why the conclusions drawn in the decision relied on should be applied to that proceeding.

242 In the present case, the applicants have failed to show how the circumstances in which Decision 2001/230 was adopted were comparable and that there were grounds for applying its conclusions to the facts of the present case. In addition — as the Council observes — the circumstances in which Decision 2001/230 was adopted differ from those of the present case. Thus, that decision followed an expiry review and measures had been in place in respect of various countries for many years, which means that the Community industry had been protected on the market for a long time. That was not the position in the present case. Moreover, in Decision 2001/230, in order to conclude that it was not appropriate to adopt anti-dumping measures, the

Commission relied on the fact that the situation of the Community industry had not improved despite the long-standing protection. Thus, conditions on the Community ferro-silicon market as examined in Decision 2001/230 were radically different from those in the present case.

243 Consequently, since none of the arguments raised by the applicants proves that recitals 117 and 118 to the contested regulation are flawed by a manifest error of assessment, the second part of the second plea must be rejected as unfounded.

3. *The third part of the second plea, concerning the analysis of the impact of the anti-dumping measures on users*

(a) Arguments of the parties

244 In the first place, the applicants submit that the Council made a manifest error of assessment in concluding that the impact of the anti-dumping measures on users was insignificant. First, in recital 115 to the contested regulation, the Council merely mentions the impact on profit as a percentage. This is misleading, since, at an average duty rate of 23.4%, user industries would have to bear a direct extra cost of approximately EUR 104 million annually. In addition, anti-dumping measures cause

Community users further indirect costs associated with disruptions in supply and short and medium term increases in ferro-silicon prices.

245 Secondly, the applicants argue that the Council failed to take account of the fact that, during the period under consideration, Community users were increasingly reliant on imports to satisfy their ferro-silicon requirements because Community producers were unable and unwilling to meet those requirements. Moreover, the supply problems worsened even further after the period under consideration, since Vargön Alloys decided to end its ferro-silicon production, OFZ decided to focus on captive production for ArcelorMittal, TDR decided to switch its production to silicon and Huta Laziska had to continue operating under the supervision of the courts with no certainty as to its continued electricity supply.

246 In the second place, the applicants submit that, in order for the principle of proportionality to be observed, the high costs for users have to be weighed against the benefit for the Community industry. In the light of the earlier anti-dumping proceedings and the change in market conditions, the Community interest militated against the imposition of duties.

247 In the third place, the applicants claim, in their reply, that the Council failed to state adequate reasons for the decision not to take into account the costs resulting for Community users from the disruptions to production.

248 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

249 In the context of this part of the second plea, the applicants in essence question whether the impact of the anti-dumping measures on users was insignificant. In common with the first two parts of the present plea, this part must be analysed in the light of the case-law cited in paragraph 227 above.

250 In the first place, the applicants submit that recital 115 to the contested regulation is flawed by a manifest error of assessment. In that connection, it should be pointed out that the Council stated in that recital that, taking into account that the average definitive duty rate was 23.4%, the impact of the measures on the steel and the foundry industry was not expected to be significant as it would effect the financial results of the sectors at most by 0.16% and 0.33%, respectively.

251 First, the applicants argue that that recital is misleading, since ferro-silicon users would have to bear a direct extra cost of approximately EUR 104 million annually. Nevertheless, it should be noted that the applicants do not claim that the figures quoted by the Council in recital 115, in relation to the impact on the financial results of the users, are incorrect. They simply put forward a figure corresponding to the absolute extra cost borne by the users, without explaining why that figure is more reliable or more relevant than the figures quoted by the Council.

252 Secondly, as regards the indirect costs to be borne by users, the applicants fail to adduce any evidence in support of the claim that ferro-silicion users would have to contend with supply disruptions. In addition, it should be noted that — as the Council observes — the claim is purely speculative, since the imposition of anti-dumping measures would not prevent the selling of ferro-silicon from the countries covered

by the investigation procedure, but would only prevent exporters from doing so at dumped prices.

253 Thirdly, as regards the applicants' claim that the Community producers were neither able nor willing to meet the requirements of users during the period under consideration, it should be noted that the applicants base that claim on two documents submitted to the Commission in the course of the investigation procedure by the European Confederation of Iron and Steel Industries. Since those documents themselves contain no more than assertions made by another interested party, they have no probative value. The applicants rely also on an article in the specialised press which states that Vargön Alloys decided to switch its ferro-silicon production to ferro-chrome. That document is not sufficient to prove that the Community producers as a whole were neither able nor willing to meet the ferro-silicon requirements of Community users.

254 It follows that none of the arguments raised by the applicants proves that the Council made a manifest error of assessment in finding — in recital 115 to the contested regulation, in particular — that the impact of the anti-dumping measures on users is insignificant.

255 In the second place, as regards the complaint alleging breach of the principle of proportionality, it is sufficient to note that that complaint essentially reproduces the arguments put forward in support of the first and second parts of the second plea. Since those arguments have been held to be unfounded, the present complaint must likewise be rejected as unfounded.

256 In the third place, as regards the alleged failure to state adequate reasons concerning the disruptions to production, it should be borne in mind that, according to settled case-law, the statement of reasons required under Article 253 EC must show clearly and unequivocally the reasoning of the EU authority which adopted the contested measure, so as to inform the persons concerned of the justification for the measure adopted and thus to enable them to defend their rights and the Courts of the European Union to exercise their powers of review (Case T-48/96 *Acme* v *Council* [1999] ECR II-3089, paragraph 141). On the other hand, the institutions are not required to reply, in the statement of reasons for the provisional or definitive regulation, to all the points of fact and law raised by the persons concerned during the administrative procedure (see, to that effect, Joined Cases T-371/94 and T-394/94 *British Airways and Others* v *Commission* [1998] ECR II-2405, paragraph 94).

257 In that context, it should be observed that, in recitals 159 to 166 to the provisional regulation, the Commission analysed in a clear and unequivocal manner the consequences of the anti-dumping measures for Community ferro-silicon users. Similarly, in recitals 113 to 116 to the contested regulation, the Council conducted a shorter, yet no less clear, examination of the impact of the imposition of anti-dumping duties on those users. Consequently, in view of the fact that the institutions are not required to reply to all the points of fact and law raised by the persons concerned during the administrative procedure, the applicants cannot validly claim that the institutions acted in breach of the obligation to state reasons.

258 The third part of the second plea must therefore be rejected as unfounded.

259 In the light of all of the foregoing considerations, the second plea must be rejected.

C — *The third plea, concerning non-cooperation, use of the facts available and the grant of MET*

1. *The first part of the third plea, concerning non-cooperation*

(a) Arguments of the parties

260 The applicants submit that the Council made a manifest error of assessment and infringed Article 18(1) and (3) of the basic regulation (now Article 18(1) and (3) of Regulation No 1225/2009) and Article 6.8 of the Anti-Dumping Agreement, and paragraphs 3 and 5 of Annex II thereto, in finding that the applicants had refused to cooperate, in thereby refusing their MET claim and in relying on the facts available for the purposes of calculating the dumping and injury margins.

261 In the first place, the applicants maintain that they cooperated in the anti-dumping investigation, as is demonstrated by the submissions which they lodged in the anti-dumping proceeding. The documents containing those submissions were more numerous than normally required in such a proceeding.

262 In the second place, the applicants argue that although it is true that, owing to exceptional circumstances beyond their control, they were unable to allow the verification visit to go ahead, that situation does not amount to non-cooperation for the purposes of the basic regulation, since, except for the verification, all other steps were

taken to cooperate fully with the investigation. The applicants state, in that regard, that they had intended to allow the visit in question to go ahead but that it had to be cancelled only six days before its start. They explain that they did not have the necessary personnel available for the visit, since the personnel in question was working on the preparation of a multi-million euro initial public offering ('IPO') on the London Stock Exchange and on the silico-manganese anti-dumping investigation. Given the extraordinary amount of work required for full cooperation in a single anti-dumping investigation, and the need for massive personnel investment in the IPO preparation, the applicants were forced to choose between continuing to cooperate fully in the silico-manganese anti-dumping investigation, which was already at an advanced stage, and continuing to cooperate fully in the ferro-silicon investigation. As it is, the silico-manganese investigation required less effort, as the verification visit had already taken place, and presented a more compelling business case since the applicants had reduced their ferro-silicon production but not their silico-manganese production. That was why the applicants informed the Commission that they would still cooperate in the ferro-silicon investigation but that they would not be as active as in the silico-manganese investigation.

263 In the third place, the applicants argue that a verification visit was not necessary. First, they point out that a number of WTO panels have further clarified Article 6.8 of the Anti-Dumping Agreement, and paragraphs 3 and 5 of Annex II thereto, which paragraphs 1 and 3 of Article 18 of the basic regulation implement, in accordance with the fifth recital to that regulation. Thus, in *United States — Anti-dumping and countervailing measures on steel plate from India* (WT/DS206/R), the WTO Panel stated that the information had to be verifiable but that the investigating authorities could not choose to disregard the information they had been provided with solely because there had been no on-the-spot verification. That assertion was confirmed by the WTO Panel in *European Communities — Anti-dumping measure on farmed salmon from Norway* (WT/DS337/R), which added that the Anti-Dumping Agreement recognises that on-the-spot investigations are not the only way of discovering

whether information is verifiable. Secondly, according to the applicants, if cooperating parties submit information that cannot be verified on the spot, the Commission can reject that information if other sources call into question its accuracy. It was for that reason that the applicants suggested that the Commission cross-check the data submitted with other available information. The applicants explain that they were confident that the information submitted would not be called into question and that, accordingly, there would be no justification for the EU institutions not to use that information as a basis for their findings.

264 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

265 In the context of this part of the third plea, it must be established whether the institutions infringed the basic regulation and the Anti-Dumping Agreement in reaching their conclusions on the facts available, owing to the applicants' decision no longer to allow the verification visit scheduled by the Commission's services to go ahead, given the fact that the applicants actively cooperated in the remainder of the investigation procedure and the information provided by them could be checked by means other than a verification visit.

266 The disagreement between the parties relates essentially to the interpretation of paragraphs 1 and 3 of Article 18 of the basic regulation, which transpose into EU law Article 6.8 of the Anti-Dumping Agreement and paragraphs 3 and 5 of Annex II thereto. In particular, it must be ascertained whether, under Article 18(1) and (3) of the basic regulation, the refusal of one party to allow a verification visit to go ahead justifies the other party's having recourse to the facts available. In order to answer that question, consideration must be given to the wording and purpose of Article 18(1)

and (3) of the basic regulation, on the one hand, and to the broad logic of that regulation, on the other.

267 In the first place, it should be noted that paragraphs 1 and 3 of Article 18 of the basic regulation are worded to the effect that the institutions are entitled to use the facts available where an interested party has impeded a verification visit scheduled by the Commission's services.

268 Paragraphs 1 and 3 of Article 18 of the basic regulation concern the institutions' use of the facts available in a manner which lends a negative bias as compared with the facts specific to one or more of the interested parties. While Article 18(1) of the basic regulation defines the cases in which the facts available may be used, Article 18(3) of that regulation sets out the cases in which the facts available do not necessarily have to be used. Under Article 18(1) of the basic regulation, there are four cases in which recourse may be had to the facts available: (i) where any interested party refuses access to necessary information; (ii) where it does not provide necessary information within the time-limits provided; (iii) where it significantly impedes the investigation; or (iv) where it supplies false or misleading information. Article 18(3) of the basic regulation provides that, where the information submitted by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

269 It follows that paragraphs 1 and 3 of Article 18 of the basic regulation concern different situations. Thus, whereas Article 18(1) of the basic regulation sets out in general terms cases in which the information needed by the institutions for the purposes of the investigation has not been supplied, Article 18(3) of the basic regulation

contemplates the cases in which the information necessary for the purposes of the investigation has been supplied but is not ideal in all respects.

270 The Court considers that the cancellation of a verification visit by an interested party must be analysed not in the light of Article 18(3) of the basic regulation, but in the light of Article 18(1) of that regulation. First, such a cancellation must be regarded as falling within the scope of Article 18(1) of the basic regulation. Admittedly, the cancellation cannot be regarded as covered by any of the last three cases contemplated in that provision, as set out in paragraph 268 above: clearly, by making a cancellation of that kind, an interested party does not fail to provide necessary information within the time-limits provided or supply false or misleading information. Similarly, in the present case, given the circumstances surrounding the cancellation of the verification visit, it cannot be stated that the applicants significantly impeded the investigation. However, although such a cancellation of a verification visit is not covered by any of the last three cases envisaged in Article 18(1) of the basic regulation, it must be regarded — save in the case of *force majeure* — as a refusal of access to information which the Commission has considered to be necessary, as in the first case envisaged in that provision. In the present case, the reasons given by the applicants for cancelling the verification visit cannot constitute such a case of *force majeure*.

271 In addition, contrary to what the applicants suggest, Article 18(3) of the basic regulation may not be used in order to circumvent the obligation to allow a verification visit to go ahead where such a visit has been considered necessary by the Commission's services. Admittedly, the purpose of a verification visit is to confirm the facts supplied by an interested party in the course of the investigation procedure and it may be possible for those facts to be checked by means other than a visit to the interested party's premises. Nevertheless, it should be recalled that, under Article 18(3) of the basic regulation, where the information is not ideal in all respects, the use of the facts

available is to be disregarded only if the interested party has acted to the best of its ability. As it is, where there has been a refusal to allow a verification visit to go ahead, a party cannot be considered to have acted to the best of its ability.

272 In the second place, the purpose of Article 18(1) and (3) of the basic regulation provides confirmation that the refusal to allow a verification visit to go ahead gives grounds for using the facts available. Thus, as regards the purpose of Article 18(1) of the basic regulation, it has consistently been held that, since the basic regulation does not give the Commission any power of investigation enabling it to compel the producers or exporters complained of to participate in the investigation or to produce information, the Council and the Commission depend on the voluntary cooperation of the parties concerned in supplying the necessary information within the time-limits set. That being so, the replies of those parties to the questionnaire referred to in Article 6(2) of the basic regulation (now Article 6(2) of Regulation No 1225/2009) and the subsequent on-the-spot verification which the Commission may carry out under Article 16 of that regulation (now Article 16 of Regulation No 1225/2009) are essential to the operation of the anti-dumping procedure. The risk that, where the undertakings concerned in the investigation do not cooperate, the institutions may take into account information other than that supplied in reply to the questionnaire is inherent in the anti-dumping procedure and is designed to encourage the honest and diligent cooperation of those undertakings (Case T-413/03 *Shandong Reipu Biochemicals* v *Council* [2006] ECR II-2243, paragraph 65). Article 18(3) of the basic regulation, on the other hand, is designed to ensure that the institutions do not unreasonably disregard information which, while not perfect, can nevertheless be used and checked.

273 Having recourse to the facts available where an interested party refuses to allow a verification visit to go ahead is consistent with those aims. Such a refusal runs counter to the objective of honest and diligent cooperation with which Article 18(1) of the basic regulation seeks to ensure compliance. Furthermore, in those circumstances, the institutions cannot be accused of unreasonably disregarding information,

which means that information which has not been checked during an on-the-spot verification does not necessarily have to be checked by other means, but can be disregarded.

274 In the third place, the possibility of having recourse to the facts available where an interested party has refused to allow a verification visit to go ahead is confirmed by an analysis of the broad logic of the basic regulation. In that connection, it should be noted that, under Article 6(8) of the basic regulation (now Article 6(8) of Regulation No 1225/2009), the Commission must — except in the circumstances laid down in Article 18 of that regulation — examine for accuracy, to the extent possible, in the course of the investigation of dumping and injury which it is required to carry out, the information which has been supplied by the interested parties and upon which findings are based. In addition, under Article 16(1) of the basic regulation (now Article 16(1) of Regulation No 1225/2009), the Commission must, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations, and to verify information provided on dumping and injury.

275 It follows, first, that it is for the institutions to decide whether, for the purposes of checking the information supplied by an interested party, they consider it necessary to corroborate that information by a verification visit at the premises of that party and, second, that, where an interested party impedes verification of the information which it has supplied, Article 18 of the basic regulation applies and the facts available may be used.

276 In the light of the foregoing, it must be concluded that Article 18(1) of the basic regulation allows the institutions to use the facts available where an interested party has impeded the verification visit and that Article 18(3) of that regulation does not place

any obligation on the institutions to check, by reference to other available sources of information available, information which has been supplied by an interested party but which has not been verified on the spot.

277 That conclusion is not affected either by the report of the WTO Panel, adopted on 29 July 2002, in *US — Steel Plate* (WT/DS206/R), or by the report adopted on 15 January 2008 in *EC — Salmon (Norway)*.

278 Neither report addresses the issue of how the institutions are to deal with the refusal of an interested party to allow a verification visit to go ahead. Thus, in the extract from the report concerning *US — Steel Plate*, referred to by the applicants in their written pleadings, the WTO Panel took issue with the United States' assertion that certain information had been rejected in the course of the investigation procedure because it did not fulfil the criteria set out in paragraph 3 of Annex II to the Anti-Dumping Agreement. In that context, the WTO Panel defined the notion of 'verifiable' information. Similarly, the extract from the report of the WTO Panel in *EC — Salmon (Norway*), relied on by the applicants in their written pleadings, concerned the issue of whether information submitted after the on-the-spot verification might be regarded as verifiable.

279 In the light of all the foregoing, it must be concluded that, given the applicants' decision not to allow the verification visit scheduled by the Commission's services to go ahead, it was lawful for the Council to have recourse to the facts available and it did not thereby make a manifest error of assessment.

280 Consequently, the first part of the third plea must be rejected as unfounded.

2. *The second part of the third plea, concerning use of the facts available without taking into account verifiable information*

(a) Arguments of the parties

281 The applicants submit that the Council infringed Article 18(5) of the basic regulation (now Article 18(5) of Regulation No 1225/2009), Article 6.8 of the Anti-Dumping Agreement, and paragraphs 3 and 5 of Annex II thereto, in failing to examine the verifiable information with which it had been provided in a complete and timely fashion. The institutions were obliged to check their findings by reference to the information provided by the applicants in their capacity as an interested party and by reference to other available information. That is confirmed by the report of the WTO Panel adopted on 20 December 2005 in *Mexico — Anti-Dumping Measures on Rice* (WT/DS295/R).

282 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

283 The applicants state, in the context of the second part of the third plea, that the institutions should have checked their findings by reference to the information which the applicants had provided.

284 It should be observed in that connection that, in the light of Article 18(5) of the basic regulation, it is correct that, where the institutions use the facts available, they are required, as far as possible, to check them by reference to information from other independent sources or information obtained from other interested parties during the investigation.

285 Nevertheless, in the present case, it should be noted that — as the Council has observed — the applicants do not specify which findings would have been called into question if the facts available had been checked by reference to the information which they had provided. Nor do they specify which information would have provided a basis for calling those findings into question.

286 It follows, in the light of the case-law referred to in paragraph 212 above, that this part of the third plea must be rejected as inadmissible.

3. *The third part of the third plea, concerning the rejection of the MET claim*

(a) Arguments of the parties

287 In the first place, the applicants submit that the institutions made a manifest error of assessment and infringed Article 2(7)(b) of the basic regulation in imposing an additional condition which is not laid down in that provision and in failing to consider important information solely because, owing to exceptional circumstances

beyond their control, the applicants had been unable to allow a verification visit to go ahead.

288 Thus, first, contrary to what is implied by the institutions in recitals 10 and 25 to the provisional regulation, Article 2(7)(b) of the basic regulation does not require MET claims to be verified on the spot. This is also apparent from the practice of the institutions, which, in cases where it is impossible to verify certain information on the spot, rely on a desk analysis. That was the case in the anti-dumping investigations giving rise to Council Regulation (EC) No 1212/2005 of 25 July 2005 imposing a definitive anti-dumping duty on imports of certain castings originating in the People's Republic of China (OJ 2005 L 199, p. 1) and to Commission Regulation (EC) No 426/2005 of 15 March 2005 imposing a provisional anti-dumping duty on imports of certain finished polyester filament apparel fabrics originating in the People's Republic of China (OJ 2005 L 69, p. 6).

289 Secondly, according to the applicants, the institutions had substantial information regarding the operating conditions of the applicants, since, in the course of the silico-manganese anti-dumping investigation, the Commission had confirmed that the applicants were operating under market economy conditions and could be granted MET.

290 In the second place, the applicants submit that the institutions infringed Article 2(7)(c) of the basic regulation in that the applicants were not informed of the rejection of their MET claim until 5 July 2007, that is, seven months after the initiation of the investigation. According to the applicants, Article 2(7)(c) of the basic regulation requires that determination to be made within three months of the initiation of the investigation, a point confirmed by the Court. In addition, the applicants state that, if the Commission had acted within three months, as legally required, that would have made it possible for them to allow the verification visit to go ahead since it would not have coincided with the IPO.

291 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

292 In the first place, the applicants submit that, by rejecting the MET claim because no verification visit had been carried out, the institutions made a manifest error of assessment and infringed Article 2(7)(b) of the basic regulation, since no verification visit is required under that provision and given that the institutions had substantial information regarding the operating conditions of the applicants, obtained in the course of the silico-manganese anti-dumping investigation.

293 First, as regards the argument that Article 2(7)(b) of the basic regulation does not require a verification visit to be carried out, reference has been made above, in paragraph 274, to Article 6(8) and Article 16(1) of the basic regulation.

294 Under Article 6(8) of the basic regulation, the Commission is required to examine for accuracy, to the extent possible, the information which has been supplied by the interested parties and upon which findings are based. Since Article 6(8) of the basic regulation does not place any limitation on the scope of the obligation to check the facts upon which the institutions base their findings, such an obligation extends to information supplied by an interested party in the course of an MET claim.

295 In addition, under Article 16(1) of the basic regulation, the Commission may, for the purposes of the verification obligation, carry out visits at the premises of the interested parties, if it considers it appropriate. That provision does not limit the possibility of carrying out such visits depending on the information which the Commission seeks to corroborate. It follows that Article 16(1) of the basic regulation authorises the Commission to carry out a visit at the premises of an exporting producer in order to deal with its MET claim and to satisfy itself as to the accuracy of the information supplied therein, if the Commission considers it necessary.

296 Consequently, the fact that Article 2(7)(b) of the basic regulation does not require a verification visit to be carried out at the premises of the exporting producer making the MET claim does not mean that such a visit may not take place. Similarly, the organisation of a verification visit, in the context of dealing with an MET claim, cannot be regarded as imposing a condition additional to those laid down in Article 2(7)(b) of the basic regulation.

297 That conclusion cannot be called in question by the precedents cited by the applicants, in the context of which the Commission did not, when examining MET claims, carry out a verification visit but confined itself to a desk analysis.

298 First of all, as noted in paragraph 295 above, it is for the institutions to assess whether a verification visit is appropriate. Consequently, although such a visit may be inappropriate in one anti-dumping investigation, that does not mean that it will be unnecessary in another investigation.

299 Next, the precedents cited by the applicants are not comparable with the present set of circumstances. Both in Regulation No 1212/2005 and in Regulation No 426/2005, the institutions had recourse to the technique of sampling, within the meaning of

Article 17 of the basic regulation (now Article 17 of Regulation No 1225/2009), in view of the large number of exporting producers concerned which had submitted an MET claim. In that context, the institutions carried out a verification visit only at the premises of the exporting producers in the sample. In the case of the other exporting producers, the institutions confined themselves to a desk analysis.

300 Secondly, as regards the argument that the institutions had substantial information regarding the applicants' situation — obtained in the course of the silico-manganese anti-dumping proceeding — it should be recalled that, under Article 2(7)(b) of the basic regulation, in order to be granted MET, it must be shown on the basis of a properly substantiated claim entered by a producer subject to the investigation that market economy conditions prevail for that producer in respect of the manufacture and sale of the like product concerned. It follows that the conclusions drawn by the institutions in the course of an investigation into a particular product cannot be applied to another product. In that connection, it should be noted that — as the Council observed —although an investigation makes it possible to establish that a company meets the MET criteria with regard to a particular product, that does not automatically mean that it also meets those criteria for another product, since, for example, it may be that the State has a strategic interest in a product and interferes in decisions concerning its price, costs and inputs.

301 Consequently, the information obtained in dealing with the MET claims submitted in the silico-manganese investigation cannot be used to deal with the MET claims submitted in the ferro-silicon investigation.

302 In the second place, as regards the complaint alleging infringement of Article 2(7)(c) of the basic regulation, that provision states — as the applicants point out — that the question of whether market economy conditions prevail for the producer must be determined within three months of the initiation of the investigation. In the present case, the notice of initiation of the proceeding was published in the Official Journal on 30 November 2006. The three-month period therefore ended on 28 February 2007. However, the applicants received an answer to their MET claim on 5 July 2007, that is, over six months after the initiation of the investigation. Consequently, it must be found that — as the applicants have argued — the time-limit laid down in Article 2(7)(c) of the basic regulation was exceeded.

303 Nevertheless, such an irregularity cannot affect the lawfulness of the contested regulation unless the applicants show that, if the answer to the MET claim had been provided within the time-limits, it could have been different. As it is, the applicants' assertion that, if the Commission had acted in such a way as to ensure that the three-month time-limit was observed, they could have allowed the verification visit to go ahead is not substantiated by any evidence. Thus, at the hearing, the applicants stated that they would have been able to allow the verification visit — scheduled to take place between 21 February and 2 March 2007 — to go ahead, if it had been organised in January 2007, since it was not until the end of February 2007 that the IPO had required additional work. The applicants have not produced any document in support of that statement. On the contrary, in their letter of 14 February 2007 and in their written pleadings, they stated that, by February 2007, the preparations for the IPO had already been under way for a number of months.

304 In addition, since both the IPO and the silico-manganese investigation had probably occupied the applicants' workforce over a relatively long period, it is unlikely that the applicants would have been in a position to allow the verification visit to go ahead even if it had taken place earlier, given that the MET claim was not submitted until 15 December 2006.

305 In those circumstances, it must be found that the applicants have not proved that the irregularity found in respect of Article 2(7)(c) of the basic regulation gives grounds for annulling the contested regulation.

306 The third part of the third plea must therefore be rejected.

D — *The fourth plea, concerning the applicants' rights of defence*

1. *The first part of the fourth plea, alleging infringement of the applicants' rights of defence, in that the institutions failed to provide a meaningful, consistent and timely summary of the confidential file*

(a) Arguments of the parties

307 The applicants submit that their rights of defence were infringed, since the quality of the non-confidential information which was made available to them and the time when that information was provided to them seriously undermined their ability to respond to the allegation that material injury had been caused by the imports at issue.

308 Thus, they argue, in the first place, that the non-confidential data submitted by the Community producers in the form of indexed data were insufficient. First, the data

were insufficiently detailed to permit an understanding of the substance of the information submitted in confidence. In that regard, the applicants state that the great majority of the indexed non-confidential data was not accompanied by any narrative, so that they were prevented from effectively exercising their rights of defence. Secondly, according to the applicants, those data did not contain information regarding all the injury indicators. Thus, for example, export data and data on sales to associated companies were omitted.

309 In the second place, the applicants argue that the summaries of the indexed information should already have been on the non-confidential file in January 2007 whereas they were put on that file on 28 August 2007, the day on which the provisional regulation was published. Basically, this meant that the applicants lost nine months in which they could have examined those data and accordingly they were unable, before a very late stage had been reached in the proceeding, to revise a substantial part of the submissions that they had already made. More specifically, they were unable to resolve outstanding questions and to obtain relevant information prior to the deadline for the submission of comments on the provisional disclosure document.

310 In the third place, the applicants argue that the summaries of the indexed data put on the non-confidential file on 28 August 2007 contradict earlier non-confidential data, which means that the verification revealed that the data submitted were inaccurate. Moreover, the applicants state in the reply that those data contained numerous anomalies, in particular as regards the data on FerroAtlántica and FerroPem.

311 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

312 It is in the light of Article 19(1) and (2) of the basic regulation (Article 19(1) and (2) of Regulation No 1225/2009) and the case-law referred to in paragraph 110 above that the Court must determine whether the applicants' rights of defence have indeed been infringed, given (i) the poor quality of the non-confidential version of the summaries of the data supplied individually by the Community producers, concerning the changes in their economic situation, and (ii) the date on which that version was placed on the file.

313 In the first place, as regards the argument that the non-confidential version of the summaries is inadequate, to begin with, because of the lack of narrative, it should be noted that the summaries are composed of tables setting out, for each Community producer and for each year between 2003 and the investigation period, the changes in the 19 different injury factors. Although it is true that the data referred to in those tables are presented in indexed form, they permit a reasonable understanding of how the situation of the various producers evolved. No narrative is necessary in order to understand those changes and the applicants were in a position to make known effectively their views on those changes.

314 In addition, although the applicants claim in their written pleadings that, owing to the lack of narrative, they were left to try to guess the actual situation of the Community producers, so that they were unable to exercise their rights of defence effectively, it is apparent from their comments on the provisional disclosure document that they are in fact objecting to the lack of explanation of the reasons for the trends observed in relation to each Community producer. However, the institutions were not required to request such explanations from the Community producers, since it is not for those producers to carry out a non-attribution analysis under Article 3(7)

of the basic regulation (now Article 3(7) of Regulation No 1225/2009). By contrast, such an analysis had to be carried out by the institutions for the purposes of the provisional and definitive determinations. In other words, such an explanation was not to be sought in the non-confidential version of the data supplied by the Community producers, but in the analysis produced by the institutions.

315 As is apparent from paragraphs 193 to 203 above, the institutions analysed the reasons underlying certain specific trends of Community producers. Since that analysis appeared both in the provisional regulation and in the provisional and definitive disclosure documents, the applicants were in a position to submit their observations in that regard — which, moreover, they did in fact do. Thus, for example, in the section of their comments on the provisional disclosure document in which they state that the non-confidential version of the data concerning the developments in the individual economic situation of the Community producers needs to be accompanied by narrative, the applicants put forward a number of arguments as to the reasons for the trends observed for each Community producer.

316 Consequently, it must be found that the applicants did exercise their rights of defence, and that the lack of narrative accompanying the indexed data from the Community producers in the non-confidential version of the file does not give grounds for claiming that the institutions infringed those rights.

317 Secondly, as regards the argument alleging a lack of data in relation to certain injury factors, it should be noted that the applicants are referring to export data and data on sales to associated companies. However, contrary to the assertions made by the applicants, the tables summarising the data from the Community producers do contain information on exports. Also, as regards the data on sales to associated companies, the Council explains in its written pleadings that, although those data were not included in the tables summarising the injury indicators in relation to the Community producers, they were included in another part of the non-confidential file which was

consulted by the applicants on a number of occasions. In response to a request for the production of documents, made by the Court by way of a measure of organisation of procedure, those data were produced by the Council in the form in which they appeared in the non-confidential version of the case-file.

318 In the light of the foregoing, the argument alleging a lack of data concerning certain injury indicators must be rejected as unfounded.

319 In the second place, as regards the date on which the non-confidential data on the Community producers were sent to the applicants, it should be noted that it was put on the non-confidential file on 28 August 2007 and that the contested regulation was not adopted until 25 February 2008. Admittedly, the applicants were not able to make known their views on those data before the provisional regulation was adopted. Nevertheless, it has been held that even if the principle of the right to a fair hearing requires exporting producers to be informed of the essential facts and considerations on the basis of which it is intended to impose provisional duties, a failure to respect that right cannot in itself have the effect of vitiating the regulation imposing definitive duties where, in the course of the procedure for the adoption of the latter regulation, the defect vitiating the procedure for the adoption of the corresponding regulation imposing provisional duties was remedied (Joined Cases C-76/98 P and C-77/98 P *Ajinomoto and Nutrasweet* v *Council and Commission* [2001] ECR I-3223, paragraph 67).

320 Since the applicants had several months before the contested regulation was adopted in which to make known their views on those data, their rights of defence cannot be considered to have been infringed as a result of the late inclusion of the data in the file.

321 In the third place, as regards the alleged inconsistencies and anomalies of those data, the applicants cannot confuse failure to observe their rights of defence with the existence of other, substantive, errors which may affect the legality of the contested regulation. The fact that the applicants are of the opinion that the data on the Community producers are inconsistent and contain anomalies does not prove, however, that the Commission infringed the applicants' rights of defence.

322 It follows that the first part of the fourth plea must be rejected as unfounded.

2. *The second part of the fourth plea, alleging infringement of the applicants' rights of defence, in that the institutions failed to react to anomalies in the non-confidential file*

(a) Arguments of the parties

323 The applicants claim that the presence of anomalies in the non-confidential file, to which the institutions did not react despite requests to that effect, severely reduced the value of the information available in that file, thereby seriously undermining the applicants' ability to exercise their rights of defence. Thus, first, neither the non-confidential file nor the definitive disclosure document explains why OFZ halved its workforce between 2003 and 2004. Secondly, neither the non-confidential file nor the definitive disclosure document explains how costs were allocated after the acquisition of Ferropem by Ferroatlántica in 2005. However, this had an important impact on the profitability of those undertakings. Thirdly, no narrative explanation of the data on investments was provided. Fourthly, the applicants question how Ferroatlántica was

able to increase sales while Huta Laziska's sales contracted by two-thirds. Fifthly, the applicants draw attention to discrepancies between the information provided initially and the information put on file later.

324 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

325 The argument set out in the context of this part of the fourth plea is a variant of that relied on by the applicants in connection with the first part of the present plea, alleging that the data in the non-confidential file contained a number of anomalies. The applicants draw attention to the presence of anomalies in the data in the non-confidential file and state that they pointed out those anomalies to the institutions in the course of the proceeding, but that the latter did not react.

326 In that connection, as is explained in paragraph 321 above, the applicants cannot confuse failure to observe their rights of defence with the existence of other, substantive, errors which may affect the lawfulness of the contested regulation. In addition, the fact that the applicants are of the opinion that the data on the Community producers are inconsistent and contain anomalies does not, however, prove that the Commission infringed their rights of defence.

327 In any event, since the applicants state that they drew the presence of those anomalies to the attention of the institutions, they thereby demonstrate that they made known their views on those anomalies effectively. Accordingly, the applicants cannot rely on an infringement of their rights of defence. It should be recalled in that connection that, in accordance with the case-law referred to in paragraph 110 above, in order to observe the right to a fair hearing the institutions are not required to reply to each argument raised by an exporting producer in the course of the proceeding, but only to place the interested parties in a position in which they may effectively defend their interests.

328 It follows that the second part of the fourth plea must be rejected as unfounded.

3. *The third part of the fourth plea, alleging infringement of the applicants' rights of defence, in that the institutions failed to react to the applicants' submissions*

(a) Arguments of the parties

329 The applicants claim that the institutions infringed their rights of defence by ignoring several arguments put forward by them in the course of the proceeding and by failing to state reasons for the rejection of those arguments. Thus, the applicants state that, for example, the institutions did not respond to the arguments that: (i) the applicants were unable to allow the verification visit to go ahead and had done their best to cooperate; (ii) ferro-silicon prices on the Community market were the highest in the world; (iii) the reduction of employment preceded the decline in the Community industry's output; (iv) Huta Laziska claimed that its output during the investigation

period amounted to only 29 % of its output in 2003, whereas it had employed essentially the same number of workers as in that year; (v) ferro-silicon prices follow the same trends in all major world markets; and (vi) if the previous ferro-silicon anti-dumping proceedings were taken into consideration, it would be seen that anti-dumping measures are unlikely to produce tangible benefits for the Community industry.

330 The Council, supported by the interveners, disputes the applicants' arguments.

(b) Findings of the Court

331 It is apparent from the heading of this part of the fourth plea that the applicants allege infringement of their rights of defence. However, it should be noted that, in essence, the applicants also allege breach of the obligation to state reasons. It has consistently been held that an applicant's pleas must be interpreted in terms of their substance rather than of their classification (Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others* v *High Authority* [1961] ECR 281). Consequently, it is appropriate to examine not only the complaint alleging infringement of the applicants' rights of defence, but also the complaint alleging breach of the obligation to state reasons.

332 First, as regards the complaint alleging infringement of the applicants' rights of defence, it should be recalled that, in accordance with the case-law referred to in paragraph 110 above, in order to observe the applicants' rights of defence, the institutions are not required to reply to each argument raised by an exporting producer in the course of the proceeding, but only to place the interested parties in a position in

which they may effectively defend their interests. In addition, since the applicants state that they have already raised a number of arguments in the course of the anti-dumping proceeding, they thereby demonstrate that they have had the opportunity to make known their views effectively. Accordingly, they cannot rely on an infringement of their rights of defence.

333 Secondly, as regards the complaint alleging breach of the obligation to state reasons, it must be stated that the contested regulation and the provisional regulation disclose in a clear and unequivocal fashion the reasoning which led the institutions to adopt provisional — and, later, definitive — anti-dumping duties. In particular, the institutions carried out a non-attribution analysis under Article 3(7) of the basic regulation. In the light of the case-law referred to in paragraph 256 above, given that the findings of that analysis are set out in recitals 115 to 136 to the provisional regulation and in recitals 96 to 101 to the contested regulation, the institutions are not also required to reply to the applicants' arguments concerning the level and trend in ferro-silicon prices in the Community and in the rest of the world, the relationship between the reduction in employment in the Community industry and the decline in the Community industry's output, the specific situation of Huta Laziska or the previous anti-dumping proceedings. Similarly, since the Commission explained, in recitals 10 and 25 to the provisional regulation, that it considered that the fact that the applicants had impeded the verification visit justified disregarding their data pursuant to Article 18(1) of the basic regulation, the institutions were not required to reply to the applicants' detailed arguments concerning the consequences of the fact that no visit had taken place.

334 In any event, it should be noted that the institutions did in fact reply to all of those arguments. Thus, first, as regards the arguments relied on by the applicants with regard to the verification visit, the Commission replied to those arguments, in part, in recital 25 to the provisional regulation. It explained in that recital why it could not apply the findings of the silico-manganese investigation to the ferro-silicon investigation. Secondly, the arguments relating to the level and trend in ferro-silicon prices

in the Community and in the rest of the world were taken into account in recitals 87 to 90 to the contested regulation. Thirdly, the institutions analysed the changes in employment and output in the Community in recitals 91, 102 and 103 to the provisional regulation. Fourthly, the institutions took account of Huta Laziska's situation, in particular in recital 93 to the provisional regulation and in recitals 100 and 101 to the contested regulation. Fifthly, the Council stated, in recitals 117 and 118 to the contested regulation, why it took the view that it was not possible to base its decision on the previous anti-dumping proceedings.

335 It follows that the applicants have not shown that there has been a breach of the obligation to state reasons. Consequently, the third part of the fourth plea must be rejected as unfounded, and the fourth plea must be rejected in its entirety.

336 It follows from all the foregoing considerations that the action must be dismissed in its entirety.

Costs

337 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the Council and Euroalliages.

338 In addition, under the first subparagraph of Article 87(4) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Second Chambe)

hereby:

1. Dismisses the action;

2. Orders Transnational Company 'Kazchrome' AO and ENRC Marketing AG to bear their own costs as well as those incurred by the Council of the European Union and by Euroalliages;

3. Orders the European Commission to bear its own costs.

Pelikánová Jürimäe Soldevila Fragoso

Delivered in open court in Luxembourg on 25 October 2011.

[Signatures]

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