Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

11 September 2014*

(Subsidies — Imports of coated fine paper originating in China — Methodology — Calculation of the advantage — Manifest error of assessment — Specificity — Depreciation period — Preferential tax treatments — Compensatory measures — Injury — Determination of the profit margin — Definition of the product concerned — Community industry — Causal link)

In Case T-444/11,

Gold East Paper (Jiangsu) Co. Ltd, established in Jiangsu (China),

Gold Huasheng Paper (Suzhou Industrial Park) Co. Ltd, established in Jiangsu,

represented by V. Akritidis, Y. Melin and F. Crespo, lawyers,

applicants,

v

Council of the European Union, represented by J.-P. Hix, acting as Agent, assisted initially by G. Berrisch, A. Polcyn, lawyers, and by N. Chesaites, Barrister, and subsequently by B. O'Connor, Solicitor, and by S. Gubel, lawyer,

defendant,

supported by

European Commission, represented by J.-F. Brakeland, M. França and A. Stobiecka-Kuik, acting as Agents,

and by

Cepifine AISBL, established in Brussels (Belgium),

Sappi Europe SA, established in Brussels,

Burgo Group SpA, established in Altavilla Vicentina (Italy),

Lecta SA, established in Luxembourg (Luxembourg),

represented by L. Ruessmann and W. Berg, lawyers,

interveners,

* Language of the case: English.

APPLICATION for annulment of Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China (OJ 2011 L 128, p. 18) in so far as it concerns the applicants,

THE GENERAL COURT (Third Chamber),

composed of O. Czúcz, President, I. Labucka (Rapporteur) and D. Gratsias, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 12 November 2013,

gives the following

Judgment

Legal context

1 Article 2(d) of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic regulation') provides that '"injury", unless otherwise specified, means material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry …'

2 Article 4 of the basic regulation, entitled 'Countervailable subsidies', reads as follows:

'1. Subsidies shall be subject to countervailing measures only if they are specific, as defined in paragraphs 2, 3 and 4.

2. In order to determine whether a subsidy is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as certain enterprises) within the jurisdiction of the granting authority, the following principles shall apply:

(a) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

(b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to;

(c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down [in] (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises; predominant use by certain enterprises; the granting of disproportionately large amounts of subsidy to certain enterprises; and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In this regard, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.

For the purpose [of the provisions set out in] (b), "objective criteria or conditions" means criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

The criteria or conditions must be clearly set out by law, regulation, or other official document, so as to be capable of verification.

In applying point (c) of the first subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

3. A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. The setting or changing of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Regulation.

4. Notwithstanding paragraphs 2 and 3, the following subsidies shall be deemed to be specific:

(a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

For the purposes [of the provisions set out in] point (a), subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not, for that reason alone, be considered to be an export subsidy within the meaning of this provision.

5. Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.'

3 Article 6 of the basic regulation, entitled 'Calculation of benefit to the recipient', reads as follows:

'As regards the calculation of benefit to the recipient, the following rules shall apply:

(a) government provision of equity capital shall not be considered to confer a benefit, unless the investment can be regarded as inconsistent with the usual investment practice, including for the provision of risk capital, of private investors in the territory of the country of origin and/or export;

(b) a loan by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market. In that event the benefit shall be the difference between these two amounts;

(c) a loan guarantee by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;

(d) the provision of goods or services or purchase of goods by a government shall not be considered to confer a benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

If there are no such prevailing market terms and conditions for the product or service in question in the country of provision or purchase which can be used as appropriate benchmarks, the following rules shall apply:

(i) the terms and conditions prevailing in the country concerned shall be adjusted, on the basis of actual costs, prices and other factors available in that country, by an appropriate amount which reflects normal market terms and conditions; or

(ii) when appropriate, the terms and conditions prevailing in the market of another country or on the world market which are available to the recipient shall be used.'

4 Article 7(3) of the basic regulation, under the heading 'General provisions on calculation', provides:

'Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned.

The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in paragraph 2.

Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with Article 6(b).'

5 Article 8 of the basic regulation, entitled 'Determination of injury', provides:

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

(a) the volume of the subsidised imports and the effect of the subsidised imports on prices in the Community market for like products; and

(b) the consequent impact of those imports on the Community industry.

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

3. Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the effects of such imports shall be cumulatively assessed only if it is determined that:

(a) the amount of countervailable subsidies established in relation to the imports from each country is more than de minimis as defined in Article 14(5) and that the volume of imports from each country is not negligible; and

(b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

4. The examination of the impact of the subsidised imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including: the fact that an industry is still in the process of recovering from the effects of past subsidisation or dumping; the magnitude of the amount of countervailable subsidies; actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

5. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 1, that the subsidised imports are causing injury. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 2 are responsible for an impact on the Community industry as provided for in paragraph 4, and that this impact exists to a degree which enables it to be classified as material.

6. Known factors, other than the subsidised imports which are injuring the Community industry at the same time, shall also be examined to ensure that injury caused by these other factors is not attributed to the subsidised imports pursuant to paragraph 5. Factors which may be considered in this respect include the volume and prices of non-subsidised imports, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.

7. The effect of the subsidised imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidised imports shall be assessed by examination of the production of the narrowest group or range of products including the like product, for which the necessary information can be provided.

8. A determination of a threat of material injury shall be based on facts and not merely on an allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to, inter alia, such factors as:

(a) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

(b) a significant rate of increase of subsidised imports into the Community market indicating the likelihood of substantially increased imports;

(c) sufficient freely disposable capacity of the exporter or an imminent substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;

(d) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and

(e) inventories of the product being investigated.

Not one of the factors listed above by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury will occur.'

6 Article 9(1) of the basic regulation, under the heading 'Definition of Community industry', provides:

'1. For the purposes of this Regulation, the term "Community industry" shall be interpreted as referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 10(6), of the total Community production of those products, except that:

(a) when producers are related to the exporters or importers or are themselves importers of the allegedly subsidised product, the term "the Community industry" may be interpreted as referring to the rest of the producers;

(b) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:

  (i) the producers within such a market sell all or almost all of their production of the product in question in that market; and

  (ii) the demand in that market is not to any substantial degree met by producers of the product in question located elsewhere in the Community.

In such circumstances, injury may be found to exist even where a major portion of the total Community industry is not injured, provided that there is a concentration of subsidised imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such a market.'

7 Article 10(6) of the basic regulation, under the heading 'Initiation of proceedings', provides:

'An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Community industry.'

8 Article 14(2) of the basic regulation, under the heading 'Termination without measures', provides:

'Where, after consultation, protective measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceeding shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceedings be terminated. The proceedings shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.'

9 Article 15(1) of the basic regulation, under the heading 'Imposition of definitive duties', provides:

'Where the facts as finally established show the existence of countervailable subsidies and injury caused thereby, and the Community interest calls for intervention in accordance with Article 31, a definitive countervailing duty shall be imposed by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee.

The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission.

Where provisional duties are in force, a proposal regarding definitive action shall be submitted no later than one month before the expiry of such duties.

No measures shall be imposed if the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved.

The amount of the countervailing duty shall not exceed the amount of countervailable subsidies established but it should be less than the total amount of countervailable subsidies if such lesser duty would be adequate to remove the injury to the Community industry.'

10 Article 28 of the basic regulation, entitled 'Non-cooperation', reads as follows:

'1. In cases in which any interested party refuses access to, or otherwise does not provide necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available.

Interested parties should be made aware of the consequences of non-cooperation.

2. Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. 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.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefore and shall be granted an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

5. If determinations, including those regarding the amount of countervailable subsidies, are based on the provisions of paragraph 1, including the information supplied in the complaint, it shall, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation. Such information may include relevant data pertaining to the world market or other representative markets, where appropriate.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.'

11 In its Communication 98/C 394/04 (OJ 1998 C 394, p. 6), the Commission of the European Communities published Guidelines for the calculation of the amount of subsidy in countervailing duty investigations ('the Guidelines').

12 The Guidelines, under the heading 'F. Investigation period for subsidy — calculation expense versus allocation', provide, inter alia:

'(b) Appropriate denominator for allocation of subsidy amount

Once the subsidy amount to be attributed to the investigation period has been established, the per unit amount is arrived at by allocating it over the appropriate denominator, consisting of the volume of sales or exports of a product concerned.

…'

Background to the dispute

13 The applicants, Gold East Paper (Jiangsu) Co. Ltd ('GE') and Gold Huasheng Paper (Suzhou Industrial Park) Co. Ltd ('GHS'), are related companies in the Asia Pulp and Paper China group ('the APP Group') which produce coated fine paper in China, which they export to the European Union.

Investigation

14 The coated fine paper was the subject of two separate investigations which were conducted in parallel. First, an anti-dumping investigation led to the adoption of Council Implementing Regulation (EU) No 451/2011 of 6 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China (OJ 2011 L 128, p. 1; 'the regulation imposing a definitive anti-dumping duty'). Secondly, an anti-subsidy investigation led to the adoption of Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China (OJ 2011 L 128, p. 18; 'the contested regulation').

15 On 17 April 2010, a Commission notice relating to the initiation of an anti-subsidy proceeding concerning imports of coated fine paper originating in the People's Republic of China was published in the *Official Journal of the European Union* (OJ 2010 C 99, p. 30).

16 On 8 July 2010, the applicants submitted their replies to the anti-subsidy questionnaire which the Commission had sent to them. The Commission carried out on-the-spot verifications of those responses at the applicants' premises between 15 and 21 September 2010.

17 On 3 February 2011, the Commission sent to the applicants a disclosure document setting out the essential facts and considerations on the basis of which it intended to propose to the Council of the European Union the imposition of a definitive countervailing duty on the applicants' exports to the Union.

18 By letter dated 3 March 2011, the applicants submitted comments on the definitive disclosure document.

19 On 10 March 2011, the applicants attended a meeting with the case handlers at the Commission's premises, in the presence of the Hearing Officer.

20 On 16 March 2011, the Commission sent a letter to the applicants clarifying some points of its findings.

21 On 25 March 2011, the Commission held a hearing which the applicants attended, in the presence of the Hearing Officer.

22 On 28 March 2011, the applicants submitted a letter summarising the objections presented at the hearing of 25 March 2011 and replying to the Commission's comments and questions during that meeting.

23 On 29 March 2011, the applicants sent a letter to the Hearing Officer summarising the points raised in the hearing of 25 March 2011, in particular regarding their rights of defence.

The contested regulation

24 The contested regulation was adopted by the Council on 6 May 2011.

25 Article 1(1) and (2) of the contested regulation imposed a definitive countervailing duty of 12% on imports into the Union of coated fine paper produced by the applicants.

Procedure and forms of order sought

26 By application lodged at the Court Registry on 8 August 2011, the applicants brought the present action.

27 By document lodged at the Court Registry on 10 November 2011, the Commission sought leave to intervene in the present case in support of the form of order sought by the Council.

28 By document lodged at the Court Registry on 1 December 2011, Cepifine AISBL, the European association of fine paper manufacturers, Sappi Europe SA, Burgo Group SA and Lecta SA (together 'the private interveners') sought leave to intervene in the present case in support of the form of order sought by the Council. In its observations, lodged on 24 January 2012, the Council raised no objections to that intervention.

29 By order of 23 January 2012, the President of the Third Chamber of the Court granted the Commission leave to intervene. The Commission lodged its statement within the prescribed period.

30 On 8 February 2012, the applicants requested confidential treatment vis-à-vis the private interveners of certain elements contained in their written pleadings and their respective annexes. They produced a non-confidential version of those various pleadings.

31 By order of 8 March 2012, the President of the Third Chamber granted the private interveners leave to intervene at the hearing in support of the form of order sought by the Council. In the same order, the President of the Third Chamber reserved the decision on whether the applicants would receive the Report for the Hearing in order for them to identify the elements considered to be confidential, and the decision on whether the private interveners would receive a provisional non-confidential version of the Report for the Hearing in order to submit any comments on the application for confidential treatment.

32 Acting upon a report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure.

33 The main parties to the dispute and the interveners presented oral argument and replied to the oral questions put to them by the Court at the hearing on 12 November 2013.

34 The applicants claim that the Court should:

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

— order the Council to pay the costs.

35 The Council contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

36 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

37 The private interveners support the form of order sought by the Council.

Law

38 In support of their action, the applicants rely essentially on 10 pleas in law, alleging:

— first, infringement of Article 15(1) of the basic regulation;

— second, infringement of Article 6(d), Article 28 and Article 4 of the basic regulation;

— third, infringement of Article 4 of the basic regulation;

— fourth, infringement of Article 7(3) of the basic regulation;

— fifth, infringement of Article 6(b) of the basic regulation;

— sixth, infringement of Article 14(2) of the basic regulation;

— seventh, infringement of Article 8(1) of the basic regulation;

— eighth, infringement of Article 2(d) and Article 15 of the basic regulation;

— ninth, infringement of Article 8, Article 9(1) and Article 10(6) of the basic regulation;

— tenth, infringement of Article 8(1) and (6) of the basic regulation.

The first plea, alleging infringement of Article 15(1) of the basic regulation

39 According to the heading of this plea the applicants allege an infringement of Article 15(1) of the basic regulation. However, it should be noted that, in essence, the applicants also allege an infringement of Article 7(1) and (2) of the basic regulation. 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).

40 Consequently, it is appropriate to examine not only the complaint alleging infringement of Article 15(1) of the basic regulation, but also the complaint alleging infringement of Article 7(1) and (2) of the basic regulation.

41 The Court considers it appropriate to examine, first, the complaint alleging infringement of Article 7(1) and (2) of the basic regulation in that the contested regulation uses an inappropriate denominator for the calculation of the subsidy amount and, then, the complaint alleging infringement of Article 15(1) of the basic regulation, relating to the effect of the methodology followed by the institutions on the percentage of subsidisation.

42 The applicants submit, in the first place, that Article 7(1) and (2) of the basic regulation is infringed because of the Council's use of an inappropriate denominator.

43 The applicants claim that the Council wrongly used the applicants' total sales turnover as the denominator for the calculation of the amount of the subsidy. The total subsidies which they received was wrongly expressed as a percentage of their total turnover and not by calculating the amount of countervailable subsidisation received per unit of the product concerned, converted into a percentage of the CIF (cost, insurance, freight) price of the product sold to the European Union.

44 It should first be noted that Article 7(2) of the basic regulation provides that '[w]here the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period'.

45 It is apparent from the provisions under the heading '(b) Appropriate denominator for allocation of subsidy amount' (which is itself found under the heading 'F. Investigation period for subsidy — calculation expense versus allocation' of the Guidelines) that, '[o]nce the subsidy amount to be attributed to the investigation period has been established, the per unit amount is arrived at by allocating it over the appropriate denominator, consisting of the volume of sales or exports of a product concerned.'

46 In the light of the foregoing, it is necessary to examine the applicants' complaint.

47 In recital 369 of the contested regulation, the Council rejected the complaint already raised by the applicants during the investigation, stating that:

'[E]xcept for one of the subsidy schemes found to be countervailable, no other scheme was found to be contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported. Therefore the amount of subsidy was allocated over the total sales turnover of the companies of APP Group in line with Article 7(2) of the basic regulation which reads

as follows: "Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy should be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidisation". Since this subsidy is not linked to production of any particular product or exports, the total sales turnover of the company is the most appropriate denominator. In that respect, it should be noted that the relevant turnover has been determined on a basis which ensures that it reflects as closely as possible the sales value of the products sold by the recipient company.'

48 That recital shows that the Council took into account one of the approaches envisaged in Article 7(2) of the basic regulation, namely the level of sales of the products concerned, and gave the reason why the allocation of the amount of the subsidy over the total sales turnover of the company, and not for a single product, was appropriate in the circumstances of the present case.

49 By arguing that it was inappropriate to allocate the value of the subsidy over the applicants' total sales turnover, the applicants are in reality arguing that the Council made a manifest error of assessment.

50 As regards the alleged obligation to calculate an amount of subsidy per unit on the basis of Article 7(1) of the basic regulation, it must be observed, as the Council rightly did, that, firstly, none of the countervailable subsidies in question were granted on a per unit basis; secondly, none of those subsidies were limited to the product concerned; thirdly, only one of those subsidies, which concerned GHS, was contingent on export performance, being, in the present case, an award for maintaining growth, with a subsidy margin of 0.05%.

51 Consequently, it must be held that a per unit calculation would not have been appropriate in the present case, contrary to what the applicants claim.

52 As regards the applicants' assertion that the *ad valorem* duty rate must be calculated using the CIF value of the exports of the product concerned as a denominator, it should be noted (i) that the subsidies in question were granted to the company as a whole and were not directed at exports to the Union, (ii) that all products produced by the company were equally subsidised and (iii) that the applicants do not claim that the countervailable subsidies were contingent on exports or that they were limited to the product concerned.

53 This shows that the CIF value of the exports of the product concerned would not have been an appropriate denominator in the present case, contrary to what the applicants claim.

54 As regards the use of the turnover, the applicants state, first, that it is not an appropriate denominator, given that that turnover is in principle lower than the CIF value as it does not include all freight and insurance costs that a CIF price contains. The applicants add that their turnover for export sales is very low, [*confidential*].[1]

55 In its letter of 16 March 2011, the Commission explained that it had not used the turnover for the applicants' exports sales as reported in their financial statements, but that it had used the applicants' entire turnover, including adjustments to the applicants' export turnover, 'in order to ensure that the turnover reflects the full sales value of the product concerned (rather than the amount of tolling fees)'.

56 Consequently, that complaint must be rejected.

1 — Confidential data omitted.

57 The applicants submit, in the second place, that the methodology pursued by the Commission artificially inflated the percentage of subsidisation because the actual turnover of the applicants, [*confidential*], is lower than the CIF value of the exported products. According to the applicants, this is an infringement of Article 15(1) of the basic regulation.

58 According to Article 15(1) of the basic regulation, the amount of the countervailing duty is not to exceed the amount of the countervailable subsidies but should be less than the total amount of countervailable subsidies if a lesser duty would be adequate to remove the injury to the Union industry, an approach which corresponds to the so-called 'lesser duty' rule.

59 During the investigation, the applicants proposed their own methodology. During the proceedings before the Court, they reiterated their line of argument.

60 It is apparent from recital 369 of the contested regulation that 'the … methodology [proposed by the applicants] is considered non representative as it mixes turnover and units produced only for the product concerned while it disregards units of other products produced'.

61 It must be noted that, in the present case, the applicants do not respond to the Council's arguments. First, it must be observed, in that regard, that the applicants do not address the Council's argument that their methodology mixes data relating to turnover and data relating to units. Secondly, the applicants do not dispute that their methodology mixes actual sales prices (sales on the internal market) and [*confidential*] (export sales) when calculating the proportion of turnover relating to the product concerned. Thirdly, the applicants do not address the Council's argument that the proposed methodology involved, at its fifth stage, allocating the artificially reduced amount of the subsidy for the export sales of the product concerned [*confidential*], but over the CIF price which that company was charging for sales to the European Union. Fourthly, the applicants do not address the argument that the subsidies had to be allocated over all sales, and not just over sales of the product concerned, as the applicants claim, in order to fairly allocate them over their sales, since the subsidies were not limited to the product concerned.

62 Consequently, it must be held that the applicants have failed to adduce sufficient evidence to render implausible the Council's assessment in the contested regulation of the facts concerning the denominator. Such evidence is, however, necessary in order to establish that an EU institution has committed a manifest error of assessment such as to justify the annulment of a measure (see, by analogy, Case T-68/05 *Aker Warnow Werft and Kvaerner* v *Commission* [2009] ECR II-355, paragraph 42 and the case-law cited).

63 Since the applicants have not shown that the Council erred in calculating the amount of the countervailable subsidies, the complaint alleging infringement of Article 15(1) of the basic regulation must therefore be dismissed.

64 It follows from all the foregoing that the complaints under consideration are unfounded and that the first plea must be rejected in its entirety.

The second plea, alleging infringement of Article 6(d), Article 28 and Article 4 of the basic regulation

65 The present plea contains two parts.

66 The first part alleges infringement of Article 6(d) and Article 28 of the basic regulation in that the Commission used Taiwan as a benchmark for establishing whether the allocation by China of land-use rights had conferred a benefit on the applicants.

67 The second part alleges infringement of Article 4 of the basic regulation in that the EU institutions ought to have concluded that there was absolutely no evidence of specificity in the applicants' acquisition of land-use rights.

The first part, relating to the use of Taiwan as an appropriate benchmark

68 According to recitals 260 to 262 of the contested regulation, the Commission had to use an external benchmark, in accordance with Article 6(d)(ii) of the basic regulation, since there was no functioning market for land in China nor any other available private benchmark in relation to which it could determine the normal conditions prevailing on the market for the land-use rights in question.

69 As a preliminary point, it should be observed that the applicants no longer dispute, in the present case, the use by the EU institutions of an external benchmark for establishing whether the allocation of land-use rights conferred a benefit on the applicants. In their observations on the Commission's final disclosure document of 3 February 2011 ('the final disclosure document'), the Chinese government and the applicants were still of the opinion that there was a market for land in China and that the Chinese land prices in the Zhenjiang New District and in Suzhou (China) constituted an appropriate benchmark.

70 The question that arises is whether, by selecting Taiwan as a benchmark, the Commission made a manifestly erroneous choice.

71 It should be borne in mind that, in the sphere of measures to protect trade, the Community institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 72; Case T-97/95 *Sinochem* v *Council* [1998] ECR II-85, paragraph 51; and Case T-118/96 *Thai Bicycle* v *Council* [1998] ECR II-2991, paragraph 32).

72 The choice of reference country falls within the discretion enjoyed by the institutions when analysing complex economic situations.

73 The exercise of that discretion is not, however, excluded from judicial review. According to consistent case-law, in the context of such a review, the EU judicature will verify whether the relevant procedural rules have been complied with, whether the facts on which the choice is based have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers (Case 240/84 *NTN Toyo Bearing and Others* v *Council* [1987] ECR 1809, paragraph 19; see *Thai Bicycle* v *Council*, paragraph 71 above, paragraph 33 and the case-law cited).

74 As regards, in particular, the choice of reference country, it should be verified that the EU institutions have not neglected to take account of essential factors for the purpose of establishing the appropriate nature of the country chosen and that the information contained in the documents in the case was considered with all the care required.

75 In the present case, the applicants submit, in the first place, that the institutions did not use the best benchmark available to them, that is the price of land in the Indian State of Maharashtra (India), but that they used the price for purchasing full title in land in Taiwan (see recitals 356 and 357 of the contested regulation), which is unsuitable so far as concerns land-use right prices in the Jiangsu province between 1995 and 2000, a period during which the GDP in the Jiangsu province was that of Sub-Saharan Africa and Taiwan was an open economy.

76 The Council considers that the fact that Taiwan is an open market economy is beside the point in the present case because the Commission is required to choose a benchmark that reflects normal market terms and conditions, and, as is indicated in recital 356 of the contested regulation, 'it is normal for a non-market economy to lag behind a functioning market economy in terms of GDP'.

77 In the second place, the applicants submit that the Commission did not ensure comparability between the Jiangsu province and Taiwan chosen as the benchmark since, by relying on the current situation, it considered that Taiwan and the Jiangsu province were similar, whereas the State of Maharashtra was less developed. The applicants submit, in that regard, that the Commission did not examine their argument that an appropriate benchmark for the price that the applicants should have paid for their land-use rights had to take into account the market conditions at the time they were granted and not the current market conditions, in particular as regards infrastructure and the urban population density. In support of their argument, the applicants invoke the WTO Appellate Body report of 18 May 2011 in the case 'European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft' (WT/DS316/AB/R) ('the EC-Airbus case').

78 The Council states that the EU institutions assessed the two bases on which the applicants proposed the use of the State of Maharashtra as an external benchmark, namely population density and GDP, but that the State of Maharashtra was not comparable to the Jiangsu province on those bases.

79 The Council takes the view that the applicants' claim that the Commission did not take account of market conditions at the time the subsidy was granted during the investigation lacks merit in that the Commission used Taiwan as an external benchmark. The Council notes (i) that the Commission could not rely on financial data alone, (ii) that GDP and the population density cannot be the only decisive factors and (iii) that other factors, such as the lack of physical proximity and common characteristics between India and China, were taken into consideration.

80 The relevant recitals of the contested regulation concerning Taiwan read as follows:

'(356) … The Commission considers Taiwan … as an appropriate external benchmark because of the totality of the information on the file i.e. (i) the level of economic development and economic structure prevailing in Taiwan and the relevant Chinese provinces where the co-operating exporting producers are established, (ii) the physical proximity of these two Chinese provinces with Taiwan, (iii) the high degree of infrastructure that both Taiwan and these two Chinese provinces have, (iv) the strong economic ties and cross border trade between Taiwan and [China], (v) the similar density of population in the Chinese provinces concerned and in Taiwan, (vi) the similarity between the type of land and transactions used for constructing the relevant benchmark in Taiwan with those in [China] and (vii) the common demographic, linguistic and cultural characteristics in both Taiwan and [China]. Furthermore, Jiangsu and Shandong provinces are considered top manufacturing provinces in [China]. Although the GDP per capita of Taiwan and the two Chinese provinces is not identical, the GDP of these Chinese provinces has grown rapidly in recent years i.e. they are catching up with Taiwan.

In addition, recent data suggest that the both [China] and Taiwan have similar real GDP growth rates …. However, it is important to note that the exact comparison made between the GDP of a non-market economy ([China]) and the GDP of a well established market economy (Taiwan) is not a decisive fact because it is normal for a non-market economy to lag behind a functioning market economy in terms of GDP. In addition, many other factors e.g. planning rules, environmental policy may affect the supply and demand of industrial land. The real issue is what would be the "prevailing market conditions" with regard to [land-use rights] in [China] if it was a functioning market economy and on the basis of all evidence they would be very similar to those of Taiwan.

(357) Based on the totality of the above information it is considered that the benchmark chosen is in line with the requirements of the Appellate Body in US — Softwood Lumber IV (Para.103) which concluded that "the benchmark chosen must, nevertheless, relate or refer to, or be connected with, the prevailing market conditions in that country, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d)". Indeed, the totality of conditions in Taiwan relate to the prevailing market conditions in the two Chinese provinces. Land is available in similarly dense areas, the physical proximity of the areas ensures that quality of land is similar while the fact that both Taiwan and the two Chinese provinces share the same language and culture, have export-oriented economies and important manufacturing sectors confirm that price, marketability and other conditions of purchase or sale of land are closely connected.'

81 It must be observed, in that regard, that the applicants do not challenge either the relevance or the correctness of the additional factors taken into account by the institutions in recital 356 of the contested regulation in order to establish that Taiwan was the appropriate benchmark.

82 The recital concerning India in the contested regulation reads as follows:

'(361) As already described in the recital 359 above, there is no functioning land market in China. Therefore it is not appropriate to use today's Chinese [land-use rights] prices as a benchmark. Exporting producers based its claim that the land prices in Maharashtra could be used as a benchmark on the comparison of the Indian State of Maharashtra in terms of GDP per capita and the population density at the time of purchase of [land-use rights]. As explained above the Commission is of the opinion that the GDP per capita and the population density cannot be the only decisive factors when choosing a country/region for the purpose of application of external benchmark. In any event the methodology proposed by co-operating exporting producers is not consistent with their claims. In the [investigation period], Mumbai, the capital [of the State] of Maharashtra and by far the most developed area of the State had per capita income [of] USD 2 675 (Rs 1,28 lakh) which is in fact lower than the Chinese national average of USD 3 529 … let alone the GDP par capita in the highly developed [provinces] of Shandong and Jiangsu (USD 5 255 and USD 6 550 respectively). As far as population density is concerned, this is also not by itself a decisive factor, but, for the record, the population density is 314/km^2 in [the State of] Maharashtra, 736/km^2 in [the] Jiangsu [province] and 600/km^2 in [the] Shandong [province], i.e. not in the same level. Furthermore, other factors, such as the lack of physical proximity and common characteristics between India and China lead to the conclusion that the [State of] Maharashtra benchmark does not relate or refer to, and is not connected with, the prevailing market conditions in China. For the reasons explained in recital 357, [the] Commission maintains the opinion that the prices of land in Taiwan are far more suitable external benchmark.'

83 The preceding recital shows that the EU institutions engaged in a thorough examination of the alternative proposal to the selection of Taiwan as the reference country. The EU institutions examined the GDP and the population density in India, as proposed by the applicants. In addition, the EU institutions convincingly explained why India had not been chosen as the reference country.

84 However, it should be remembered, on this point, that the applicants have stated that the Commission did not examine their argument that an appropriate benchmark for the price that the applicants should have paid for their land-use rights had to take into account the market conditions at the time they were granted and not the current market conditions. In support of their argument, the applicants rely on the WTO Appellate Body report in the EC-Airbus case.

85 First, the applicants' argument relating to the application of the approach adopted in the EC-Airbus case to the present case cannot succeed. It should be observed, as the Council rightly did, that that case did not concern the selection of the appropriate external benchmark in order to determine the amount of the benefit conferred.

86 Secondly, it should be observed that the applicants do not claim that the fact that the Commission did not examine their argument prevented them from effectively making known their point of view and impaired their rights of defence.

87 Thirdly, the claim that the Commission should have taken into account the market conditions in the reference country at the time of the granting of the land-use rights — in the present case, during the period from 1995 to 2000 — and not the current conditions in force at the time of the investigation cannot be accepted.

88 It must be noted that the applicants challenge, in essence, the EU institutions' interpretation of the words 'prevailing conditions' in Article 6(d) of the basic regulation.

89 Under Article 6(d) of the basic regulation:

'… The adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

If there are no such prevailing market terms and conditions for the product or service in question in the country of provision or purchase which can be used as appropriate benchmarks, the following rules shall apply:

…

(ii) when appropriate, the terms and conditions prevailing in the market of another country or on the world market which are available to the recipient shall be used.'

90 It is not apparent from the wording of that article that the Commission was obliged to take into account the market conditions in the reference country at the time of the granting of the land-use rights, rather than the current conditions.

91 Consequently, it follows from all the foregoing that the complaint alleging infringement of Article 6(d) of the basic regulation must be rejected.

92 As regards the alleged infringement of Article 28 of the basic regulation, entitled 'Non-cooperation', it must be held that that complaint is clearly not substantiated. In paragraph 45 of the application, the applicants submit only that, 'by selecting Taiwan as the best benchmark available in the investigation, the Commission did not ensure comparability, … [thus] breaching … Article 28 (use of the best facts available)'.

93 It must be borne in mind that, under Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1) of the Rules of Procedure of the General Court, the application initiating proceedings must contain a brief statement of the pleas in law on which the application is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without any other supporting information. The application must, accordingly, specify the nature of the grounds on which it is based, with the result that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure (Case T-102/92 *Viho* v *Commission* [1995] ECR II-17, paragraph 68; Case T-352/94 *Mo och Domsjö* v *Commission* [1998] ECR II-1989, paragraph 333; and Case T-224/10 *Association belge des*

consommateurs test-achats v *Commission* [2011] ECR II-7177, paragraph 71). Since the applicants have not in any way specified the nature of their complaint alleging infringement of Article 28 of the basic regulation, that complaint must be rejected as inadmissible.

94 For the sake of completeness, Article 28 of the basic regulation allows the institutions to make use of the facts available but does not require them to use the best facts available.

95 The first part of the second plea must therefore be rejected.

The second part, relating to the alleged lack of evidence of specificity

96 The applicants consider, in essence, that there is no evidence of specificity in their acquisition of land-use rights, with the result that the institutions made a manifest error in the assessment of the facts of the case and infringed Article 4 of the basic regulation when they concluded otherwise.

97 The recitals of the contested regulation concerning the specificity of the subsidy as far as concerns land-use rights read as follows:

'(252) The [Chinese government] was requested to provide information on the eligibility criteria for obtaining the subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic regulation. The [Chinese government] provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available in accordance with Article 28 of the basic regulation. It is noted that Article 28(6) states that "[i]f an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated". The facts considered included the following:

(253) The evidence of specificity submitted by the complainants.

(254) The findings (see recitals 77 and 78) that specific subsidies are channelled to the papermaking industry through a specific sectoral plan i.e. the Papermaking Plan. In this respect it is noted that Articles 7 to 11 of the aforesaid Plan set out specific rules on industrial layout by stating what type of papermaking industries shall be established in various geographical regions of the country.

(255) The evidence (see recital 76) that the papermaking industry is an "encouraged industry" (Decision No. 40).

(256) The findings (see recitals 260 to 262) that there is no functioning market for land in China.

(257) The findings from the cooperating exporting producers, as confirmed in the parallel anti-dumping investigation, that land was allocated to them in view of their papermaking projects …

(258) In the light of the above, and in the absence of any cooperation by the [Chinese government], the available evidence indicates that subsidies granted to companies in the paper industry are not generally available and are therefore specific under Article 4(2)(a) of the basic regulation. In the light of the [Chinese government's] non-cooperation, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic regulation.

(259) Consequently, this subsidy should be considered countervailable.'

98 It should be noted, in that regard, that the applicants do not contest the findings in recitals 252 to 259 of the contested regulation which led the EU institutions to conclude that the land-use rights conferred by the Chinese government were specific.

99 The applicants simply observe that the land-use rights 'are available indiscriminately [with regard] to all companies in China … [since the sale of those rights] is not aimed by law or in practice at granting a benefit to an enterprise or industry or group of enterprises or industries' and that they '[are] always sold to the highest bidder or, in cases where there are not enough bidders or bids are too low, the sale does not take place'.

100 Those observations are not of such a kind as to be able to challenge the findings of the EU institutions.

101 The applicants maintain that the evidence which they submitted to the Commission during the investigation showed that 'there is in China a single, unified, system governing the sale and purchase of land-use rights for the entire territory of China and all sales are made under unified and non-discriminatory tendering, auction or listing procedures'.

102 In addition, the applicants consider that they provided all the evidence on the purchase and sale of land-use rights in China, namely the mechanics governing land-use rights and the rules relating to the value-setting of sales.

103 Since the applicants do no more than plead by reference to annexes, those arguments must be declared inadmissible in accordance with Article 44(1)(c) of the Rules of Procedure. In this connection, it should be remembered that, whilst the body of the application may be supported and supplemented on specific points by references to certain extracts from documents annexed to it, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential submissions 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).

104 The applicants claim that the Council's discussion of the specificity of the subsidy does not meet the standards of review and reasoning in force since the Commission based its assessment on the ground that the Chinese government had not provided information on the eligibility criteria for obtaining the subsidy and on the use of the subsidy (see recital 252 of the contested regulation), without, however, identifying the type of information allegedly not provided by the Chinese government.

105 That argument cannot succeed because recital 248 of the contested regulation, which reproduces paragraph 226 of the final disclosure document, described the evidence that the Commission had sought, without success, to obtain from China.

106 According to that recital:

'The allegation in the complaint was that the [Chinese government] had provided land-use rights to the cooperating exporters for less than adequate remuneration. In response to this, [the Chinese government] provided the Land Administration Law and the Provisions on the Assignment of State-Owned Construction Land-Use Right through Bid Invitation, Auction and Quotation, No. 39, dated 28 September 2007. The [Chinese government] refused to provide any data with respect to actual land-use rights prices, minimum land price benchmarks that they claim that exist, the way of evaluating minimum land price benchmarks as well as the methodology followed when the State expropriates land from former users.'

107 Recital 252 of the contested regulation is in the nature of a conclusion with regard to the provisions of the contested regulation entitled ‘Provision of land-use rights’, and does not, therefore, need to contain a description of the types of information allegedly not provided by the Chinese government.

108 The applicants submit that the investigation was not able to prove that the situation in the Zhenjiang New District and Suzhou Industrial Park was different from the situation outside of those areas so far as concerns the granting and the cost of land-use rights.

109 It should be noted, in that regard, as the Council rightly has, that the submissions concerning regional specificity are beside the point since the EU institutions did not find that the grant of land-use rights was specific to those areas.

110 It follows from all of the foregoing that the second part of this plea must be rejected.

111 The second plea must therefore be rejected in its entirety.

The third plea, alleging infringement of Article 4 of the basic regulation

112 The Council stated, in recital 125 of the contested regulation:

‘The [dividend exemption between qualified resident enterprises] scheme concerns resident enterprises in China which are shareholders in other resident enterprises in China. The former are entitled to a tax exemption on income from certain dividends paid by the latter.’

113 According to recital 127 of the contested regulation, ‘[t]his scheme provides a benefit to all resident companies which are shareholders in other resident enterprises in China’.

114 According to recital 129 of the contested regulation:

‘On the income tax statement of the cooperating exporting producers there is an amount exempted from income tax. This amount is referred to as Dividends, bonuses and other equity investment income of eligible residents and enterprises in line with the conditions in Appendix 5 to the Income tax return (Annual Statement of Tax Preferences). No income tax was paid by the relevant companies on these amounts.’

115 The Council took the view, in the first place, that that scheme was specific within the meaning of Article 4(2)(a) of the basic regulation ‘given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to resident enterprises in China receiving dividend income from other resident enterprises in China, as opposed to those enterprises which invest in foreign enterprises’ (see recital 132 of the contested regulation).

116 In the second place, in recital 133 of the contested regulation, the Council stated the following:

‘[S]ince all the above tax schemes under Chapter 4 of the Enterprise Income Tax Law of [China] are reserved exclusively to important industries and projects supported or encouraged by the State as stated in Article 25, also this scheme is specific because it is reserved only to certain enterprises and industries classified as encouraged, such as the coated paper industry. Indeed, according to the Commission’s understanding, the State Council in its Decision No. 40 (Article 14) and in the Guiding Catalogue of the Industrial Restructuring offers the principles and the classification to consider an enterprise as encouraged. Furthermore, in that case there are no objective criteria to limit eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with

Article 4(2)(b) of the basic regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the [Chinese government] authorities does not permit to assess the existence of such objective criteria.'

117 In the present case, the applicants claim, first, that the Council made a manifest error of assessment in taking the view that the Chinese tax scheme in question was specific in that the granting authority limited access to it to resident enterprises in China receiving dividend income from other resident enterprises in China, as opposed to enterprises which invested in foreign enterprises.

118 It should be noted that the applicants submit that the institutions made a manifest error of assessment in connection with the application of Article 4(2)(a) of the basic regulation, which states that, 'where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific'.

119 In this respect, the applicants maintain that the tax scheme avoids double taxation within China in that dividends received by a resident company, if they come from another resident company over which China also has tax jurisdiction, can be deducted from taxable income. On the other hand, if the dividends come from foreign investments over which China has no tax jurisdiction, they cannot be deducted from taxable income.

120 By way of information, it should be noted that the Council stated, in recital 338 of the contested regulation, that, '[a]s to the claim that this [tax] incentive [that leads to government revenue forgone] aims at avoiding double taxation it is noted that although the SCM Agreement has recognized that WTO Members are not limited from taking measures to avoid double taxation (see SCM Agreement, Annex I, footnote 59), this provision is an "affirmative defence" and no concrete evidence was provided to corroborate the claim that e.g. dividends from resident and non-resident enterprises are treated differently because of legal obligations that [China] has undertaken under relevant bilateral double taxation agreements with third countries'.

121 In the present case, it must be observed, as the Council rightly did, that the applicants do not produce, in the context of the present action, any documentary evidence or commentary capable of supporting their assertion that '[the tax scheme in question] aims at avoiding double taxation within China'.

122 That argument must therefore be declared inadmissible pursuant to Article 44(1)(c) of the Rules of Procedure.

123 For the sake of completeness, it should be noted that Article 26 of the Enterprise Income Tax Law of China ('the EITLC') comes under Chapter 4 of that law, relating to preferential tax treatments. If, as the applicants claim, the tax scheme in question actually aims 'at avoiding double taxation', it is nevertheless curious to note that Article 26 of the EITLC is not found in another chapter of that law.

124 The applicants claim, secondly, that the Council has not provided any explanation concerning the reason why it concluded that all schemes under Chapter 4 of the EITLC were reserved to encouraged industries. The applicants add that Article 26 of the EITLC in no way excludes any industries from the exemption at issue and that Article 25 of that law is irrelevant in the present case.

125 The Council, supported by the Commission, submits that the applicants do not provide any explanation, in their application, as to the reason why Article 26 of the EITLC must not be read in the light of Article 25 of the EITLC, but that they merely refer to the explanations provided to the Commission during the investigation.

126 In that regard, it must be stated that the applicants submit, in their reply, that the institutions erred in their interpretation of Articles 25 and 26 of the EITLC. According to the applicants, the fact that those two articles both come under the same chapter, that is Chapter 4, entitled 'Preferential Tax Treatment',

does not mean that the limitations applicable under Article 25 of the EITLC to the preferential income tax scheme extend to the exemption under Article 26 of that law. The applicants stated at the hearing that Article 25 of the EITLC does not act as an umbrella article in the abovementioned Chapter 4 and that Articles 25 and 26 of the EITLC must, therefore, be read separately. Contrary to the Council's claims, the applicants submit that this is not a new argument, but an amplification of an existing argument.

127 It must be stated that the applicants merely refer to the explanations provided to the Commission during the investigation and do not produce any evidence in support of their argument.

128 In their reply, the applicants also submit that the reading of Article 26 of the EITLC made in the contested regulation is justified in recital 133 thereof solely by the alleged absence of cooperation by the Chinese authorities (last sentence of recital 133).

129 In the light of the foregoing, the link between Articles 25 and 26 of the EITLC made by the EU institutions must be examined in order to ascertain whether they made an incorrect reading of Article 26 of the EITLC which originates in the alleged lack of cooperation of the Chinese authorities.

130 Article 25 of the EITLC provides that '[p]referential income tax is granted to important industries and projects whose development is supported and encouraged by the State'.

131 Article 26 of the EITLC reads as follows:

'The following income is exempt from tax:

…

(2) Dividends, bonuses and other equity investment income of eligible residents and enterprises.'

132 It is apparent from paragraph 111 of the final disclosure document, which is confirmed in recital 133 of the contested regulation, that the Commission set out its analysis of the link between Articles 25 and 26 of the EITLC in the following terms:

'In addition, since all the above tax schemes under Chapter 4 of the Enterprise Income Tax Law of [China] are reserved exclusively to important industries and projects supported or encouraged by the State as stated in Article 25, also this scheme is specific because it is reserved only to certain enterprises and industries classified as encouraged, such as the coated paper industry. Indeed, according to the Commission's understanding, the State Council in its Decision No. 40 (Article 14) and in the Guiding Catalogue of the Industrial Restructuring offers the principles and the classification to consider an enterprise as encouraged. Furthermore, in that case there are no objective criteria to limit eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2)(b) of the basic regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the [Chinese government] does not permit to assess the existence of such objective criteria.'

133 It is apparent from paragraph 109 of the final disclosure document, which is confirmed in recital 131 of the contested regulation, that the Chinese government did not disclose information on the objective eligibility criteria:

'The [Chinese government] was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic regulation. The [Chinese government] provided no such complete information. The Commission,

mindful of the requirement of Article 4(5) of the basic regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, … in accordance with Article 28 of the basic regulation.'

134 The Chinese government's observations of 3 March 2011 on the final disclosure document were confirmed in recital 339 of the contested regulation:

'It was also submitted that the scheme is totally irrelevant to enterprises and industries classified as encouraged but by definition applies to all resident companies. The [Chinese government] also submitted that Article 2(2) of the SCM Agreement provides that setting of generally applicable tax rates shall not be deemed a specific subsidy. It was thus submitted that the eligibility criteria for this scheme are objective and defined in detail and eligibility is automatic thus the scheme cannot be considered specific in line with the provisions of Article 2(1)(b) of the SCM Agreement and Article 4(2)(b) of the basic regulation.'

135 In the absence of positive evidence to support their submissions made in their observations of 3 March 2011, the EU institutions resolved, in recital 340 of the contested regulation, the question relating to the specific nature of the subsidy scheme as follows:

'Those claims had to be rejected. In this respect it is recalled that the legal provisions setting out this scheme fall under Chapter 4 "Preferential Tax Treatments" of the Enterprise Income Tax Law that foresees specific tax incentives for important industries and projects supported or encouraged by the State. As explained above under these conditions benefits under this programme are specific under Article 4(2)(a) of the basic regulation. The investigation did not find objective criteria to limit eligibility and conclusive evidence to conclude that the eligibility is automatic. With respect to the claim on the provisions of Article 2(2) of the SCM Agreement it is noted that the present scheme does not refer to the setting of a generally applicable tax rate but to the existence of an exemption from tax of a certain type of revenue stemming from a certain type of companies.'

136 It should be noted that it was for the applicants to provide evidence to the contrary. However, it is apparent from their observations on the final disclosure document that the applicants were not able to provide evidence capable of rendering implausible the assessment of the facts set out in the contested regulation.

137 In point 2.3 of their observations on the final disclosure document, the applicants submitted the following arguments:

'There is … no "clear and substantiated evidence" linking the alleged tax scheme with Article 25 that the exclusion from taxable income of the dividend distributed by resident enterprises is available to encouraged programmes only. On the contrary, the text of the above-mentioned provisions of the Enterprise Income Tax shows that the said tax scheme is generally and uniformly applied all over China on the basis of objective criteria, i.e. the source of dividend income. Therefore, the finding of the Commission on the specificity of this tax scheme is not correct.'

138 In the light of all of the foregoing, it is apparent that the applicants have failed to adduce sufficient evidence to render implausible the assessment of the facts set out in the contested regulation concerning the link between Articles 25 and 26 of the EITLC. Therefore, since the EU institutions did not make any error of assessment in the application of Article 4 of the basic regulation, that complaint must be rejected.

139 It follows from all of the foregoing that the third plea must be dismissed in its entirety.

The fourth plea, alleging infringement of Article 7(3) of the basic regulation

140 The applicants submit that, in the light of their interpretation of Article 7(3) of the basic regulation, the EU institutions essentially made a manifest error of assessment in concluding that the normal depreciation period by the industry concerned was 15 years since they did not use the depreciation period in the applicants' books and had no reason to seek surrogate sources to establish the depreciation period by referring to the depreciation periods in force in the Union industry.

141 In that regard, the applicants note that it is the Commission's consistent practice to calculate the depreciation period for the industry concerned on the basis of the depreciation period used by the exporters concerned, and not by referring to the practice of other interested persons.

142 Thus, the applicants submit that the normal depreciation period for the industry concerned should have been fixed at [*confidential*] years, based on an arithmetical average, and at [*confidential*] years, based on a weighted average. The applicants challenge the averaging of the depreciation period in China with the depreciation period of Union producers or that of the Union industry.

143 Furthermore, the applicants submit that, in its statement of defence, the Council gave a different explanation from that presented by the Commission in the investigation and that it was therefore difficult to determine the source taken into account in order to calculate the depreciation period.

144 The Council states that the Commission calculated the depreciation period of the papermaking industry based on the arithmetical average of the depreciation periods reported by cooperating producers and Union producers, resulting in an average depreciation period of 15 years (see recital 344 of the contested regulation).

145 The Council submits that the applicants merely reproduce the arguments put forward during the investigation, that they did not report a depreciation period of [*confidential*] years, but a range of [*confidential*] to [*confidential*] years, and that they do not demonstrate consistent past practice of the institutions; nor does their past practice create legal obligations to assess all future cases in the same manner.

146 It should be noted that the applicants contest both the basis for calculating the depreciation period and the result of the calculation.

147 First, as regards the basis for calculating the depreciation period, it should be remembered that Article 7(3) of the basic regulation provides:

'Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned.'

148 It follows from that provision that the depreciation period of the assets is to be established in the industry concerned, namely the coated fine paper industry, which cannot be represented solely by the applicants.

149 As is apparent from recital 344 of the contested regulation:

'The depreciation period reported by APP is determined for the accounting and financial purposes. Other cooperating exporting producers and the Union Industry reported different depreciation periods. Therefore the Commission, in line with its usual practice, and with Article 7(3) of the basic regulation, used the period of 15 years as the useful life of the machinery for the purpose of this calculation, which is considered as the "normal" depreciation period by the industry concerned.'

150 In that regard, the fact that the institutions took into account the Union industry and the cooperating exporting producers cannot be qualified as a manifest error of assessment by the EU institutions.

151 It must be held that, if the EU institutions had to calculate the normal depreciation period solely on the basis of the applicants' accounting or financial information, the result would be that that period would be high in relation to reality, which would result in a reduction of the subsidy amount.

152 As regards the Commission's practice in previous decisions, relied upon by the applicants in support of their argument, it should be noted that it does not serve as a legal framework for determining the normal depreciation period since the Commission enjoys a wide discretion in the sphere of measures to protect trade and, when exercising that discretion, is not bound by its past assessments.

153 However, the Commission is required to respect the general principles of law, including the principle of equal treatment which implies that the Commission may not treat comparable situations differently or different situations in the same way, unless such difference in treatment is objectively justified (see, by analogy, Case C-174/89 *Hoche* [1990] ECR I-2681, paragraph 25 and the case-law cited).

154 It follows from the examination of the examples given by the applicants that the Commission was able to calculate the normal depreciation period in various ways. In the case which gave rise to Council Regulation (EC) No 1599/1999 of 12 July 1999 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on stainless steel wires with a diameter of 1 mm or more originating in India and terminating the proceeding concerning imports of stainless steel wires with a diameter of 1 mm or more originating in the Republic of Korea (OJ 1999 L 189, p. 1), the Commission calculated the normal depreciation period on the basis of all of the cooperating Indian exporting producers (recital 25). In the case which gave rise to Commission Decision No 842/2002/ECSC of 21 May 2002 amending Decision No 284/2000/ECSC imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating, inter alia, in India and accepting an undertaking (OJ 2002 L 134, p. 18), the Commission calculated the normal depreciation period on the basis of the industry of the product concerned (recital 23). Finally, in the case which gave rise to Council Regulation (EC) No 713/2005 of 10 May 2005 imposing a definitive countervailing duty on imports of certain broad spectrum antibiotics originating in India (OJ 2005 L 121, p. 1), the normal depreciation period was calculated on the basis of the antibiotics industry (recital 105).

155 In Commission Decision 90/266/EEC of 13 June 1990 accepting an undertaking given by the Royal Thai Government in connection with the countervailing duty proceeding concerning imports of ball bearings with a greatest external diameter not exceeding 30 mm, originating in Thailand (OJ 1990 L 152, p. 59), invoked by the Council by way of an example, the Commission rejected the depreciation period stated by Thai exporters and preferred to rely on the depreciation period reported by Union producers (recital 43).

156 It follows from the foregoing that, in reality, the Commission's practice is to calculate the normal depreciation period of goods according to several benchmarks and not only on the basis of information produced by the applicants. Accordingly, the EU institutions did not make a manifest error of assessment by taking into account the Union industry.

157 Secondly, as regards the result of the calculation of the depreciation period of the goods in question, recital 344 of the contested regulation shows that the normal depreciation period was fixed at 15 years.

158 It must be stated that the applicants do not provide any explanation to support their argument that the Commission made a manifest error of assessment when calculating the normal depreciation period of the goods in question.

159 The applicants merely argue that the EU institutions made a manifest error of assessment because they fixed the normal depreciation period at 15 years.

160 In any event, that argument is based on a false premiss since the Commission took into account the other cooperating exporting producers and the Union industry when calculating the depreciation period of the goods in question, namely machinery and equipment.

161 Moreover, it should be remembered that the Commission enjoys discretion as regards the determination of the calculation method used in order to fix the normal depreciation period at 15 years, which corresponds in the present case to the arithmetical average.

162 It should be explained that the arithmetical average is calculated by multiplying the number of units by the depreciation period, and dividing by the total number of units.

163 As the Council states, for their machinery and equipment, the applicants reported depreciation periods of [*confidential*] and [*confidential*] years, respectively, for GHS and of [*confidential*] years for GE.

164 In comparison, another cooperating exporting producer in the investigation reported a depreciation period of 10 and 20 years.

165 The Council also correctly states that the Union industry reported depreciation periods of 10 to 20 years for the machinery.

166 Thus, it follows from the foregoing that the Commission did not make a manifest error of assessment in fixing the normal depreciation period at 15 years, a period which is above the arithmetical average.

167 Finally, the applicants' argument that the average normal depreciation period should be fixed at [*confidential*] years, based on an arithmetical average, and at [*confidential*] years, based on a weighted average, is wrong.

168 The depreciation period cannot reach [*confidential*] or [*confidential*] years since, firstly, the EU institutions took into account the Union industry which, on the basis of the information submitted during the investigation, reported a normal depreciation period of 10 to 20 years, and, secondly, the sum of the depreciation periods of the machinery and of the equipment submitted by the applicants is less than the period which they try to claim, whether calculated on the basis of an arithmetical average or on the basis of a weighted average.

169 Consequently, the institutions did not make a manifest error of assessment in taking the view that the normal depreciation period had to be fixed at 15 years.

170 The fourth plea must therefore be dismissed in its entirety.

The fifth plea, alleging infringement of Article 6(b) of the basic regulation

171 The applicants claim that the EU institutions infringed Article 6(b) of the basic regulation and made a manifest error of assessment in taking the view that the applicants benefited from preferential loans, since they should have compared interest rates applied by State banks to what the applicants would have obtained on the market. In this respect, the applicants take the view that the EU institutions did not investigate whether there was any State guarantee or support at conditions more favourable than market conditions.

172 The applicants claim that the EU institutions arbitrarily rated them as BB using the index of the credit rating agency Bloomberg, rather than as A-1 which was assigned to them by Moody's. In this respect, the applicants take the view that the fact that they have excellent creditworthiness allows them to finance themselves at good rates with Chinese banks.

173 The Council submits that most of the major Chinese banks are State-owned and are not free to set the interest rates they charge. For those reasons, they do not carry out systemic risk assessments, and the interest rates that exporters could have obtained on the Chinese market could not provide an appropriate benchmark against which to determine the amount of the subsidy conferred on exporting producers by those preferential loans.

174 The Council observes that the EU institutions considered it reasonable to construct an appropriate benchmark applying the adjusted Chinese rates, but that they were not able to use that method because of the failure to provide information regarding the lending policies of Chinese banks and the way loans were attributed to exporting producers.

175 The Council points out that the EU institutions applied Bloomberg's rating, which took into account the interest rate which the applicants could have obtained in the absence of preferential treatment, whereas Moody's rating took into account the support of government policies.

176 As a preliminary point, it should be remembered that Article 6(b) of the basic regulation states:

'As regards the calculation of benefit to the recipient, the following rules shall apply:

…

(b) a loan by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market. In that event the benefit shall be the difference between these two amounts.'

177 The first subparagraph of Article 28(1) of the basic regulation provides:

'In cases in which any interested party refuses access to, or otherwise does not provide necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.'

178 In that regard, it should be noted that the Chinese government provided limited information concerning the shareholding and ownership of banks in China, although the Chinese financial market is characterised by government intervention in that most of the major banks are State-owned (see recital 84 of the contested regulation).

179 The Chinese government merely referred to the Annual reports of the Chinese banks, which are not sufficiently detailed for the Commission's investigation.

180 It should be noted, in that regard, that, following the Commission's request, the Chinese government did not provide any information concerning the structure of government control in the Chinese banks (policy banks or other banks) and the pursuit of government policies or interests with respect to the papermaking industry (see the first and third paragraphs of recital 85 of the contested regulation).

181 It should also be noted that, following the Commission's request, the Chinese government did not provide any explanation or evidence on the loans granted by the commercial banks, whether they be preferential loans or other specific loans (see the second paragraph of recital 87 of the contested regulation).

182 It should be pointed out that the Chinese government did not provide any data concerning the Chinese banking system (see recital 88 of the contested regulation).

183 In addition, the Chinese government and the cooperating exporting producers did not provide data on the lending policies of the Chinese banks or on the way loans were attributed to the exporting producers (see recital 99 of the contested regulation).

184 The applicants do not dispute the foregoing.

185 Nor do they dispute the fact that the Chinese banks are not free to set interest rates and do not carry out systemic risk assessments of their financial market.

186 The applicants merely claim that the institutions made a manifest error of assessment since they did not compare the rates applied by State banks to what the applicants would have obtained on the market.

187 However, it follows from the foregoing that, during the investigation, the Commission based its assessment on the data available, namely the annual reports of the Chinese banks, a 2006 study on China's banking sector carried out by Deutsche Bank and the few pieces of information submitted by the Chinese government, the Chinese banks or the cooperating exporting producers.

188 Therefore, it must be held that the EU institutions did not make a manifest error of assessment as regards the existence of a benefit on the loans granted by the Chinese banks, since those banks are controlled by the government and exercise government authority (see recital 85 of the contested regulation) and since the Chinese government has specific rules regulating the way interest rates float in China (see recital 87 of the contested regulation).

189 Recital 89 of the contested regulation states:

'[T]he Commission concludes that … the financing market in China is distorted by government intervention and interest rates charged by non-government banks and other financial institutions are likely to be aligned with government rates. Therefore, the interest rates charged by non-governmental banks and other financial institutions cannot be considered as appropriate commercial benchmarks when determining whether government loans confer a benefit.'

190 In any case, the applicants do not produce any evidence or arguments and merely allege that the loans granted by the Chinese banks do not constitute a benefit.

191 It must be held that, on the basis of the data available, the Commission did not make a manifest error of assessment in that it referred to the BB credit rating of the agency Bloomberg, which corresponds to the non-investment grade.

192 Indeed, according to recital 324 of the contested regulation, 'information in [the credit rating reports submitted by APP Group] actually confirms the Commission's findings that the exporter's current financial state has been established in the distorted market and therefore the creditworthiness of Chinese exporters [rated A-1 by Moody's] could not be taken at its face value'.

193 It must be stated that, in support of their plea, the applicants do not attempt to show that they would retain their current financial status if the market were not distorted.

194 Accordingly, the fifth plea must be rejected.

The sixth plea, alleging infringement of Article 14(2) of the basic regulation

195 By their sixth plea, the applicants submit, essentially, that the imposition of countervailing measures was not necessary since the subsidies had already been offset by the rejection of their application to benefit from market economy treatment within the context of the regulation imposing a definitive anti-dumping duty. Consequently, the investigation should have been terminated pursuant to Article 14(2) of the basic regulation.

196 In that regard, the applicants claim, firstly, that, had no countervailing duty been imposed against them, the overall duty level would have remained the same, capped at the level of the injury margin, and, secondly, that, in accordance with Article 15(1) of the basic regulation, relating to the so-called lesser duty rule, the level of the 20% duty imposed under the regulation establishing a definitive anti-dumping duty would remain the same, whether countervailing duties are imposed or not. Therefore, the Commission was under the obligation to submit a proposal to the Council that the anti-subsidy proceedings be terminated.

197 The Council submits that Article 14(2) of the basic regulation does not oblige the institutions to choose between anti-dumping and anti-subsidy measures, nor does it prescribe any rules as to the appropriate combination of those two measures, provided that those measures do not exceed the amount of the dumping and subsidies established or the injury margin pursuant to Article 15(1) of the basic regulation.

198 In that regard, the Council states that the applicants acknowledge that there is no risk that the concurrent anti-dumping and anti-subsidy investigations will impact unfairly on them.

199 First, as to the Council's claim that the present plea is inadmissible, it should be noted that the applicants stated, both in the subject-matter of the action and in their claims for annulment, that they were merely challenging the legality of the definitive anti-subsidy duty in so far as it concerned them.

200 In those circumstances, the present action for annulment must be treated as seeking only partial annulment of the contested regulation, in so far as it imposes a definitive anti-subsidy duty on the applicants.

201 In the light of all of the foregoing, the sixth plea must be examined.

202 According to recital 6 of the contested regulation:

'The injury analyses performed in this anti-subsidy and the parallel anti-dumping investigation are identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. For this reason, comments on injury aspects put forward in both these proceedings were taken into account in both proceedings.'

203 It must be stated, in that regard, that the two investigations concern the same product, namely coated fine paper originating in China.

204 Within the framework of the contested regulation, the Council imposed anti-subsidy measures (recital 490 of the contested regulation), for which account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained (recital 491 of the contested regulation), in order to cover the Union industry's costs of production and to obtain a profit before tax that could be reasonably achieved by the Union industry under normal conditions of competition (recital 492 of the contested regulation).

205 In this respect, the Council considered that the complainants' target profit should reflect the high up-front investment needs and risk involved in that capital-intensive industry and that a profit margin of 8% of turnover could be regarded as an appropriate minimum which the Union producers could have expected to obtain in the absence of injurious subsidisation (recital 494 of the contested regulation) and that, on that basis, a non-injurious price was calculated for the Union producers for the like product. That non-injurious price was obtained by adding the profit margin of 8% to the cost of production (recital 495 of the contested regulation).

206 Thus, the Council considered that a definitive countervailing duty had to be imposed on imports of the product concerned at the level of the lower of the subsidy and the injury margins in line with the lesser duty rule. In the present case, the rate of that countervailing duty accordingly had to be set at the level of the subsidy margins found, namely 12%, in accordance with Article 15(1) of the basic regulation (recital 498 of the contested regulation).

207 The Council also considered that, with respect to other subsidy schemes, in view of the use of the lesser duty rule in the present case and the amount of subsidisation found in the investigation carried out in parallel it was not considered necessary to further examine whether and to what degree the same subsidies were offset twice when anti-dumping and countervailing duties were simultaneously imposed on the same imported product (recital 500 of the contested regulation).

208 Within the framework of the regulation imposing a definitive anti-dumping duty, the Council stated that the cost of investment had been specifically considered and the target profit set on that latter basis was found to reflect the high up-front investment needs and risks involved in that capital-intensive industry in the absence of dumped and/or subsidised imports. Therefore a target profit of 8% was considered as the level that the industry could obtain in the absence of dumped imports (recital 158 of the regulation imposing a definitive anti-dumping duty).

209 The Council concluded that a definitive duty should be imposed on imports at the level of the lower of the margins found, in accordance with the lesser duty rule, and that the duty rate should be set in the present case at the level of the injury found (recital 160 of the regulation imposing a definitive anti-dumping duty).

210 The Council noted that, in accordance with Article 9(2) of 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 OJ 2010 L 7, p. 22; 'the basic anti-dumping regulation'), it was considered necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arose from the same situation (recital 161 of the regulation imposing a definitive anti-dumping duty).

211 The Council stated that the injury elimination level was lower than the definitive dumping margins but higher than the definitive subsidy margins. The Council therefore agreed to impose a definitive countervailing duty at the level of the established definitive subsidy margins and then impose a definitive anti-dumping duty up to the relevant injury elimination level (recital 164 of the regulation imposing a definitive anti-dumping duty).

212 In response to questions at the hearing on the reason why the EU institutions had chosen to concentrate first of all on the subsidy and then on the dumping, the Council explained that subsidies could be a factor in dumping but that dumping, on the other hand, did not give rise to subsidy.

213 The Council took the view that, in accordance with Article 14(1) of the basic anti-dumping regulation, the anti-dumping duty would not be imposed to the extent necessary to comply with the lesser duty rule (recital 165 of the regulation imposing a definitive anti-dumping duty).

214 Article 1(2) of the regulation imposing a definitive anti-dumping duty provides that the rate of that duty is 20%.

215 Article 1(3) of the regulation imposing a definitive anti-dumping duty provides that, with regard to the anti-dumping duty, 12% will not be collected for the applicants in so far as the corresponding amount is collected in accordance with the contested regulation.

216 Article 1(4) of the regulation imposing a definitive anti-dumping duty provides that the rate of the anti-dumping duty to be imposed is 8%.

217 Firstly, it follows from all the foregoing that Article 14(2) of the basic regulation does not oblige the institutions to choose between anti-dumping and anti-subsidy measures, nor does it prescribe any rules as to the appropriate combination of those two measures, as the Council, supported by the Commission, rightly states. However, the measures must not exceed the amount of the dumping and subsidies established or the injury margin, pursuant to Article 15(1) of the basic regulation or Article 9(4) of the basic anti-dumping regulation. Moreover, it is not for the Commission to propose to the Council that the investigation be terminated on the ground that the imposition of countervailing duties was irrelevant since the injury margin would have remained unchanged.

218 Secondly, since the total subsidy margin established for the applicants was 12%, for a total dumping margin of 43.5%, and the definitive countervailing duties (12%) and anti-dumping duties (8%) are capped at the level of the common injury margin, that being 20%, it must be held that the measures imposed do not exceed the level of subsidies, dumping or injury established following the investigations.

219 Thirdly, since the difference between the dumping and subsidy margins (31.5%) is higher than the amount of anti-dumping duties (8%), the question of an overlap between the countervailing and anti-dumping duties does not arise either, contrary to what the applicants allege.

220 The sixth plea must therefore be rejected as unfounded.

The seventh plea, alleging infringement of Article 8(1) of the basic regulation

221 The seventh plea consists of two parts.

222 The first part alleges infringement of Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic regulation in that the Commission excluded from the injury assessment one of the five Union producers cooperating in the investigation without any justification.

223 The second part alleges infringement of Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic regulation in that the Commission relied on the data of four representative producers when assessing so-called 'microeconomic' indicators, and not with respect to the Union industry as a whole.

224 As a preliminary point, it should be remembered that, according to Article 8(1) of the basic regulation, '[a] determination of injury shall be based on positive evidence and shall involve an objective examination of the volume of the subsidised imports and the effect of the subsidised imports on prices in the Community market for like products, and the consequent impact of those imports on the Community industry'.

225 It must be recalled that, in accordance with settled case-law, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they

have to examine (see, to that effect, Case 191/82 *Fediol* v *Commission* [1983] ECR 2913, paragraph 26; Case C-351/04 *Ikea Wholesale* [2007] ECR I-7723, paragraph 40; Case C-535/06 P *Moser Baer India* v *Council* [2009] ECR I-7051, paragraph 85; and Case T-156/11 *Since Hardware (Guangzhou)* v *Council* [2012] ECR, paragraph 134).

226 It is well-established case-law that determination of injury involves the assessment of complex economic matters. In that respect, the institutions enjoy a broad discretion (Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 86; Case T-164/94 *Ferchimex* v *Council* [1995] ECR II-2681, paragraph 131; Case T-107/04 *Aluminium Silicon Mill Products* v *Council* [2007] ECR II-669, paragraph 43; and *Since Hardware (Guangzhou)* v *Council*, paragraph 225 above, paragraph 135).

227 The European Union judicature must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate and whether there has been a manifest error of assessment or a misuse of powers (*Ferchimex* v *Council*, paragraph 226 above, paragraph 67; Case T-210/95 *EFMA* v *Council* [1999] ECR II-3291, paragraph 57; *Aluminium Silicon Mill Products* v *Council*, paragraph 226 above, paragraph 43; and *Since Hardware (Guangzhou)* v *Council*, paragraph 225 above, paragraph 136).

228 In addition, it is for the applicants to adduce evidence enabling the Court to find that the Council made a manifest error of assessment when determining injury (see, to that effect, Case T-35/01 *Shanghai Teraoka Electronic* v *Council* [2004] ECR II-3663, paragraph 119; Case T-300/03 *Moser Baer India* v *Council* [2006] ECR II-3911, paragraph 140 and the case-law cited; and *Since Hardware (Guangzhou)* v *Council*, paragraph 225 above, paragraph 137).

The first part, relating to the alleged lack of justification for excluding a Finnish producer from the injury assessment

229 First, the applicants submit that, although sampling was not applied, the Commission did restrict the analysis of a number of injury indicators labelled microeconomic, in that only the four complainants were verified and considered representative of the Union industry. In this respect, the Commission did not justify the exclusion of a Finnish producer.

230 The applicants argue that, by not considering in its injury assessment one of the Union producers with positive trends and by considering as representative only the four complaining producers, the Commission did not conduct an ‘objective examination’ of the facts before it in the sense described by the WTO Appellate Body.

231 The Council submits that the Commission did not disregard the cooperation of the Finnish producer in question because, as regards the analysis of the microeconomic injury indicators, that producer never provided the relevant data, and, as regards the analysis of the macroeconomic injury indicators, the data provided by Cepifine included that producer’s data.

232 The Council contends that the production of the Finnish producer in question represented at maximum a mere 1.4% of the Union industry’s production and that, even though the Finnish producer’s figures showed some positive trends, they could not reverse the injury analysis with respect to all Union producers.

233 The Council states that sampling may be applied only if the number of cooperating companies is so large that it is not practicable to investigate all of them individually. In any case, the cooperating companies were representative of the Union industry.

234 In the light of the above, it must be determined whether, as the applicants submit, the Commission did not actually examine the injury assessment on the basis of objective evidence, in that it excluded a Finnish producer of the Union industry with positive data.

235 In that regard, the applicants produce a letter, sent on 18 March 2010, in which the Commission asked the Finnish producer in question to submit its observations and to which the latter responded by letter of 30 April 2010 and from which it is apparent that it did not suffer injury. On that basis, the applicants submitted, during the investigation, that the Commission could not disregard the cooperation of that producer without any reasonable cause.

236 It should be noted that in anti-subsidy cases the Council and the Commission depend on the willingness of the parties to cooperate in providing them with the necessary information within the prescribed periods (see, by analogy, *EFMA* v *Council*, paragraph 227 above, paragraph 71).

237 As the applicants observe, it is mentioned in recital 13 of the contested regulation that '[r]eplies to the questionnaires and other submissions were received from two groups of Chinese exporting producers, Cepifine, the four complainant Union producers and one additional Union producer, 13 unrelated importers and traders, 5 users and one association of the printing industry'.

238 However, it is apparent from recital 53 of the contested regulation that only four Union producers came forward within the deadlines set in the Notice of initiation.

239 It is apparent from recital 389 of the contested regulation that '[i]n the present investigation the Union industry was defined at the level of Union producers accounting for the total Union production, [regardless of whether they] supported the complaint or have been cooperating in the investigation'.

240 It is apparent from recital 372 of the contested regulation that, '[d]uring the [investigation period], the like product was manufactured by 14 known and some other very small producers in the Union' and that '[t]he data provided by Cepifine is estimated to be covering 98% of the production of Union producers'.

241 In the light of the foregoing, the situation of the Finnish producer in question was taken into account as regards the macroeconomic indicators, since the data submitted by Cepifine represented 98% of the production of Union exporting producers.

242 However, as regards the microeconomic indicators, which can be assessed only on submission of data by individual companies, it should be noted that the Finnish producer in question did not respond within the deadlines set by the Notice of initiation.

243 Thus, the fact that the Finnish producer did not respond cannot constitute an omission in the course of a specific examination based on objective evidence of the injury assessment.

244 Accordingly, the present complaint must be rejected.

245 Secondly, the applicants claim that the institutions did not satisfy the requirement to give reasons under Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

246 The Council submits that the applicants adduce no evidence so far as concerns the failure to state the reasons for the contested regulation.

247 In the light of the examination carried out in the context of the first complaint in the first part of the plea, it must be concluded that neither Article 296 TFEU nor Article 41 of the Charter of Fundamental Rights was infringed.

248 Accordingly, the present complaint must be rejected.

249 Consequently, the first part of the present plea should be rejected.

The second part, relating to the detailed arrangements for the alleged assessment of the microeconomic injury indicators based on four representative Union producers

250 Firstly, the applicants submit that the Union industry was defined by the Council as being the 14 Cepifine members but, within the context of its investigation, the Commission's analysis was restricted to the assessment of the situation of the four representative producers for certain injury indicators.

251 The applicants submit that certain injury indicators, namely the microeconomic indicators, concern a limited number of producers, that is to say, the four complainants and the Finnish producer in question, which are the only companies to have submitted a reply to the questionnaire.

252 According to the applicants, that methodology created a distorted injury picture in that it reflects neither the situation of a sub-group of producers, nor the situation of the 14 members of Cepifine. The injury assessment cannot be a mix of the Union industry for certain indicators, and only for a representative portion for other indicators.

253 The applicants take the view that there is no logic in the criteria used by the Commission for categorising injury indicators as macroeconomic and microeconomic. In addition, they assert that the contested regulation provides no reason or explanation in this respect.

254 The Council submits that the Union industry was defined as the producers accounting for the total Union production, including the 14 members of Cepifine.

255 The Council states that Article 8(1) of the basic regulation does not prohibit the analysis of different injury indicators with respect to different subsets of Union producers.

256 The Council considers that the analysis satisfies the criteria set out in Article 8(1) of the basic regulation, both with respect to the microeconomic injury indicators and with respect to the macroeconomic injury indicators.

257 The Council takes the view that the distinction between macroeconomic and microeconomic injury criteria is logical and based on practical considerations, in particular the availability of data.

258 It should be noted that, in the present plea, the applicants do not dispute the relevance of the economic factors and indices used by the institutions in assessing the injury suffered by the Union industry or the Commission's analysis set out at recitals 389 and 390 of the contested regulation.

259 The applicants dispute the classification of the indicators and the methodology used by the Commission.

260 Article 8(4) of the basic regulation provides:

'The examination of the impact of the subsidised imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including: the fact that an industry is still in the process of recovering from the effects of past subsidisation or dumping; the magnitude of the amount of countervailable subsidies; actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow,

inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.'

261 As regards the macroeconomic factors, according to recital 389 of the contested regulation 'it is the Commission's practice to evaluate macroeconomic factors for the indication of the injury suffered at the level of the Union industry as a whole ..., the Union industry was defined at the level of Union producers accounting for the total Union production ..., regardless of whether producers ... have been cooperating in the investigation'.

262 In that regard, according to recital 385 of the contested regulation '[t]he macroeconomic elements (production, capacity, capacity utilization, sales volume, market share, growth and magnitude of the amount of countervailable subsidies) were assessed at the level of the whole Union industry, on the basis of the information provided by Cepifine'.

263 As regards the microeconomic factors, according to recital 390 of the contested regulation those factors 'are analyzed at the level of the representative Union producers, regardless of whether these support the complaint or not'.

264 In that regard, recital 386 of the contested regulation states that '[t]he analysis of microeconomic elements was carried out at the level of the Union producers (average unit prices, employment, wages, productivity, stocks, profitability, cash flow, investments, return on investments, ability to raise capital) on the basis of their information, duly verified'.

265 It should be remembered that in anti-subsidy cases the Council and the Commission depend on the willingness of the parties to cooperate in providing them with the necessary information within the prescribed periods (see paragraph 236 above).

266 It follows from the foregoing that, in accordance with Article 8(4) of the basic regulation, the Commission carried out an analysis of the different criteria with regard to the Union industry, so far as concerns the macroeconomic indicators, and with regard to the individual companies, so far as concerns the microeconomic indicators.

267 The macroeconomic indicators were assessed on the basis of the information submitted by Cepifine, which covers 98% of the production of Union producers.

268 Moreover, the microeconomic indicators, based on the availability of information submitted by the individual companies, were assessed on the basis of the transmission of data by the four representative complaining producers, to the exclusion of the Finnish producer in question, which did not come forward by the deadline set.

269 When exercising their discretion, there is no obligation on the EU institutions under the basic regulation to classify the macroeconomic and microeconomic criteria or any prohibition on constituting sub-groups of producers, provided that the Commission carries out an objective examination based on evidence which is itself objective, such as was carried out in the present case.

270 Thus, it must be held that the applicants do not produce, in support of their complaint, any evidence capable of proving that the classification of the injury indicators and the methodology of the Commission did not allow a specific examination based on objective evidence to be carried out.

271 Therefore, the complaint must be rejected.

272 Secondly, the applicants argue that the Commission should have applied sampling.

273 Recital 28 of the basic regulation states that '[i]t is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time limits'.

274 However, as the Council notes, the Commission was not required, in the present case, to resort to sampling (see paragraph 233 above).

275 By virtue of the margin of assessment enjoyed by the EU institutions, as recognised by the case-law, the Commission did not make a manifest error of assessment since only four representative producers contributed to the investigation.

276 Therefore, the complaint must be rejected.

277 Thirdly, it must be stated that the applicants merely plead that the contested regulation is vitiated by a failure to state reasons and do not provide any evidence capable of establishing an alleged infringement of Article 296 TFEU.

278 Thus, the complaint must be rejected.

279 Therefore, the second part must be rejected.

280 Consequently, the seventh plea must be rejected in its entirety.

The eighth plea, alleging infringement of Article 2(d) and Article 15 of the basic regulation

281 Firstly, the applicants have stated to the Court that '[u]ntil very late in the proceedings, [they] were unaware of the methodology used by the Commission to arrive at an 8% target profit margin'.

282 Assuming that this is an argument, the applicants do not demonstrate that the alleged lateness prevented them from effectively making their views known, and adversely affected their rights of defence.

283 Therefore, and in so far as the applicants essentially seek to rely on an infringement of the rights of defence, that complaint must be rejected.

284 Secondly, the applicants submit that the Commission infringed Article 2(d) and Article 15 of the basic regulation in adopting a target profit of 8%.

285 It should be remembered that Article 2(d) of the basic regulation states that '"injury", unless otherwise specified, means material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry'.

286 Article 15(1) of the basic regulation states that '[t]he amount of the countervailing duty shall not exceed the amount of countervailable subsidies established but it should be less than the total amount of countervailable subsidies if such lesser duty would be adequate to remove the injury to the [Union] industry'.

287 It follows from a reading of those articles that the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the Union industry could reasonably count on under normal conditions of competition, in the absence of the subsidised imports (recital 494 of the contested regulation). It would not be

consistent with Article 2(d) and Article 15(1) of the basic regulation to allow the Union industry a profit margin that it could not have expected if there were no subsidies (see, by analogy, *EFMA* v *Council*, paragraph 227 above, paragraph 60).

288 The applicants state that the target profit was calculated on the basis of what was seen as an adequate return on (invested) capital for the paper industry rather than on the actual achievable margin in the absence of subsidised imports, which has to be limited to the profit margin that the Union industry could reasonably count on under normal conditions of competition.

289 According to the applicants, the question is not whether an 8% target profit margin would be sufficient to cover the investments and risks involved, but whether such a profit margin would be achievable in the absence of subsidised imports. That argument must be understood as relating to a manifest error of assessment in the calculation of the profit margin.

290 The Council submits that there is a link between the adequate return on capital of a particular industry and the profit that can be achieved under normal, undistorted market conditions, in that capital-intensive industries which require high up-front investment will invest only if they can expect an appropriate rate of return.

291 As is apparent from settled case-law, where assessment of a complex economic situation is involved, the Council has a broad margin of assessment when determining the appropriate profit margin. The EU judicature must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate and whether there has been a manifest error of appraisal or a misuse of powers (*EFMA* v *Council*, paragraph 227 above, paragraph 57; and *Ferchimex* v *Council*, paragraph 226 above, paragraph 67).

292 In the light of the foregoing, it is necessary to examine whether the Council made a manifest error of assessment when calculating the profit margin.

293 It should be remembered that it is for the applicants to adduce evidence enabling the Court to find that the Council made a manifest error of assessment as defined in the case-law (see, to that effect, *Shanghai Teraoka Electronic* v *Council*, paragraph 228 above, paragraph 119; *Moser Baer India* v *Council*, paragraph 228 above, paragraph 140 and the case-law cited; and *Since Hardware (Guangzhou)* v *Council*, paragraph 225 above, paragraph 137).

294 According to recital 494 of the contested regulation:

'The target profit as suggested in the complaint and the subsequent request of the complainant was examined based on the questionnaire replies and verification visits to the representative Union producers. It was considered that the target profit should reflect the high up-front investment needs and risk involved in this capital-intensive industry in the absence of dumped and or subsidised imports. Also the cost of investment into machinery was considered. It was considered that a profit margin of 8% on turnover could be regarded as an appropriate minimum which the Union producers could have expected to obtain in the absence of injurious subsidisation.'

295 It should be noted that the applicants only contest the fact that, when calculating the profit margin, the Commission included considerations relating to the coverage of the investments and the risks involved.

296 It should be recalled that when they use the margin of discretion conferred on them by the basic regulation, the institutions are not obliged to explain in detail and in advance the criteria which they intend to apply in every situation, even where they create new policy options (*Thai Bicycle* v *Council*, paragraph 71 above, paragraph 68; see, to that effect and by analogy, Case 250/85 *Brother Industries* v *Council* [1988] ECR 5683, paragraphs 28 and 29; and *Nakajima* v *Council*, paragraph 226 above, paragraph 118).

297 In the present case, it should be noted that the Commission took account of several criteria, such as the questionnaire replies, the cost of investment, the risks involved, the fact that the industry is capital-intensive and the exclusion of the export sales of a company belonging to a cooperating exporting producer.

298 As the Council notes, the applicants 'do not claim that any of these factors was factually incorrect or unreliable'.

299 It should be noted that the applicants do not dispute the Council's assertion that 'there is a link between the adequate return on capital of a particular industry and the profit that can be achieved under normal, undistorted market conditions'.

300 However, they claim that the purpose of the imposition of anti-subsidy duties is not to restore a price at an undistorted, normal level, but to a level that could be achieved without subsidised imports.

301 There is no evidence to support the conclusion that the Commission pursued the objective of imposing countervailing duties in order to restore a price at an undistorted, normal level.

302 The applicants point out that, in paragraph 356 of the anti-subsidy complaint, Cepifine asserted that the European manufacturers within the association could have expected to obtain a 5% profit in the absence of subsidised imports.

303 It is not apparent from that complaint, however, that the Commission imposed countervailing duties in order to restore a price at an undistorted, normal level.

304 Within the framework of their discretion, the EU institutions considered that the amount of the profit margin (8%) could be achieved in the absence of subsidised imports.

305 Thus, it must be held that the Commission clearly established that the target profit of 8% was regarded as the level that the industry could obtain in the absence of subsidised imports (see paragraph 294 above).

306 In any event, it should be noted that the applicants merely refer to the evidence in the administrative case file and do not provide any evidence to establish any manifest error of assessment on the part of the EU institutions in that they imposed countervailing duties with the sole objective of restoring a price at an undistorted, normal level.

307 Therefore, the complaint must be rejected.

308 Thirdly, in support of their argument, the applicants state that in 2005, that is before the investigation period, the average profit margin of the complainants was 2%, whereas the margin used to calculate the target profit was 2.88% in 2009, that is during the investigation period.

309 The Council states that the EU institutions could not rely on the profit achieved by the Union industry during the period considered because the industry in question made exceptional losses attributable to structural problems. The case-file shows that the applicants did not contest those considerations.

310 Recital 416 of the contested regulation states:

'The four representative Union producers incurred losses in the years 2006 to 2008 and the financial situation only turned positive in 2009 when the world price of pulp, the main raw material exceptionally decreased significantly as a result of the economic downturn. The drop in the price of

pulp (20%) was considered an abnormally large drop that directly contributed to the improved financial situation in the [investigation period]. It is to be noted that since the [investigation period], pulp prices returned to their pre-[investigation period] levels.'

311 Recital 457 of the contested regulation states:

'However, the investigation showed that losses were incurred by the Union industry in the period considered, especially in 2008, despite the restructuring of the producers because … the Union industry was still not able to raise its prices to levels above costs. This situation was mainly caused by the price pressure exerted by the subsidised imports undercutting Union industry prices.'

312 According to recital 444 of the contested regulation, 'it was concluded that the surge of the low-priced subsidised imports from [China] had a considerable negative impact on the economic situation of the Union industry'.

313 In the light of the foregoing, it must be held that the amount of the average profit margin of the complainants in 2005, as invoked by the applicants, is not sufficient, by itself, to establish that the Council committed a manifest error of assessment when determining the profit margin in the absence of the imports in question before the investigation period (see, to that effect, *EFMA* v *Council*, paragraph 227 above, paragraph 89).

314 Therefore, the complaint must be rejected.

315 It follows from all the foregoing that the eighth plea must be rejected.

The ninth plea, alleging infringement of Article 8, Article 9(1) and Article 10(6) of the basic regulation

316 As a preliminary point, it should be noted that the applicants do not dispute that coated fine paper used by sheet-fed printing machines is not interchangeable with rolls suitable for use in web-fed presses.

317 It should also be noted that the applicants do not dispute that rolls used by web-fed presses are not interchangeable with rolls used in sheet-fed printing.

318 Nor is it disputed by the applicants that rolls suitable for use in web-fed presses can be used in sheet-fed printing machines equipped with CutStar technology.

319 The applicants dispute the definition of the product concerned in that the institutions excluded rolls suitable for use in web-fed presses and concluded that they were not interchangeable with cutter-rolls.

320 The Council submits that rolls suitable for use in web-fed presses must be excluded from the definition of the product concerned because the different types of paper present different physical characteristics.

321 The Council states that the different types of paper are not interchangeable and that the EU institutions defined the product concerned as sheet-fed paper, including both paper sheets and paper rolls which are suitable for CutStar machines.

322 Therefore, in order to determine the interchangeability of the products, it is necessary to examine whether rolls suitable for use in web-fed presses can be used in sheet-fed printing machines equipped with CutStar technology and whether rolls used in sheet-fed printing can be used in web-fed presses.

323 It is apparent from recital 19 of the contested regulation that the applicants claimed that 'web-fed rolls and the ones included in the scope of the present investigation (cutter rolls and sheets) shared the same basic technical and physical characteristics and were not distinguishable from one another'.

324 In that regard, the applicants claim to have provided, as an annex to the application, 'conclusive evidence showing that presses equipped with CutStar can use both types of rolls'.

325 Recital 17 of the contested regulation states:

'[Coated fine paper] is high quality paper and paperboard generally used for the printing of reading material such as magazines, catalogues, annual reports, yearbooks. The product concerned includes both sheets and rolls suitable for use in sheet-fed ("cut star") printing machines. Rolls suitable for use in sheet-fed presses ("cutter rolls") are designed to be cut into pieces before printing, and are thus considered to be substitutable and directly competitive with sheets.'

326 Recital 18 of the contested regulation mentions that rolls suitable for use in web-fed presses, which are excluded from the product concerned, are 'normally directly fed into the printing machines and are not cut beforehand'.

327 However, the applicants merely claim that the EU institutions made a manifest error of assessment in the definition of the product concerned and do not adduce any evidence in support of their line of argument.

328 The applicants do not adduce any evidence to show that coated fine paper in rolls could be used in web-fed presses, either in the light of the physical or technical characteristics, such as resistance to picking, or the interchangeability from an economic point of view.

329 According to settled case-law, the purpose of the definition of the product concerned in an anti-subsidy investigation is to aid in drawing up the list of the products which will, if necessary, be the subject of countervailing duties. For that purpose, the EU institutions may take account of a number of factors, including the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality (see, by analogy, Case T-314/06 *Whirlpool Europe* v *Council* [2010] ECR II-5005, paragraph 138; Case T-369/08 *EWRIA and Others* v *Commission* [2010] ECR II-6283, paragraph 82; and judgment of 10 October 2012 in Case T-172/09 *Gem-Year and Jinn-Well Auto-Parts (Zhejiang)* v *Council*, not published in the ECR, paragraph 59).

330 Recital 20 of the contested regulation states:

'[T]he investigation confirmed that there are indeed distinct technical and physical characteristics such as humidity and stiffness between paper used in web-fed and the one used in sheet-fed printing. The investigation further confirmed that the technical characteristics listed in recital 18 above [were] unique to rolls suitable for use in web-fed presses. Due to these differences paper used in web-fed or the one used in sheet-fed printing cannot be used in the same type of printing machine and they are therefore not interchangeable. It is noted that all parties agreed that the two types of paper are distinct as regards their surface strength and tensile strength.'

331 Recital 35 of the contested regulation states that 'recitals 18 and 20 above set out additional criteria which have not been contested by the exporting producer concerned'.

332 It should be noted that the determination of the like product has not been contested.

333 Therefore, the provisions of the basic regulation relating to the definition of the product concerned were not infringed and the present complaint must therefore be rejected.

334 As regards the definition of the Union industry and standing to bring anti-subsidy proceedings, the applicants state that the erroneous definition of the product concerned was used for the purposes of defining the Union industry manufacturing the like product and to assess the injury suffered by that industry.

335 Recital 374 of the contested regulation states:

‘As mentioned in recital 19 above, one interested party claimed that [coated fine paper] suitable for web-fed printing should have been included in the scope of the present investigation. On this basis, the same party argued that the complainant Union industry would not have enough standing in the present proceedings. Based on the conclusions outlined above in recitals 22 and 25, however, i.e. that [coated fine paper] suitable for web-fed printing and [coated fine paper] for sheet-fed printing are two different products, this claim had to be rejected.’

336 As the Council notes, the plea should be examined only if the definition of the product concerned was erroneous.

337 However, it follows from the foregoing that the EU institutions did not make a manifest error of assessment in the definition of the product concerned.

338 Thus, the present complaint loses its factual premiss.

339 In addition, the applicants merely claim that the EU institutions infringed Article 9(1), Article 10 and Article 6(4) of the basic regulation and do not adduce any evidence in support of their line of argument.

340 Accordingly, the present complaint must be rejected.

341 As regards the infringement of Article 296 TFEU, the applicants submit that the EU institutions failed to fulfil their obligation to state reasons for the contested regulation since their silence as to the interchangeability of the two products in question when used on machines equipped with CutStar equipment prevented the applicants from effectively defending before the Court their claim that CutStar makes web-fed and cutter rolls interchangeable and from challenging an important decision which had a great impact on the standing and injury assessment and the consequent outcome of the investigation.

342 It should be remembered that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court to exercise its power of review (see Case C-521/09 P *Elf Aquitaine* v *Commission* [2011] ECR I-8947, paragraph 147 and the case-law cited).

343 In that connection, it should be borne in mind that the obligation to state reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (see *Elf Aquitaine* v *Commission*, paragraph 342 above, paragraph 146 and the case-law cited).

344 Thus, in the context of individual decisions, it is settled case-law that the purpose of the obligation to state the reasons on which an individual decision is based is, in addition to permitting review by the competent courts, to provide the person concerned with sufficient information to know whether the decision may be vitiated by an error enabling its validity to be challenged (see *Elf Aquitaine* v *Commission*, paragraph 342 above, paragraph 148 and the case-law cited).

345 It must be held that the complaint that the contested regulation is not reasoned or is insufficiently reasoned because of the EU institutions' silence as to the interchangeability of the products in question is unfounded.

346 The EU institutions examined the fact that coated fine paper in sheets or rolls suitable for sheet-fed printing and rolls suitable for web-fed printing constituted different groups and were not interchangeable (recital 20 of the contested regulation), both from the point of view of the physical and technical characteristics – recital 20 of the contested regulation confirming recital 18 of the contested regulation, in particular so far as concerns resistance to picking and stiffness as the relevant distinctive criteria (recitals 18, 35 and 40 of the contested regulation) – and from an economic point of view (recital 22 of the contested regulation).

347 Consequently, the EU institutions did not infringe Article 296 TFEU since the applicants could clearly identify the factors taken into account in the contested regulation in order to conclude that cutter rolls suitable for sheet-fed printing and rolls suitable for web-fed printing were not interchangeable.

348 Therefore, the complaint must be rejected.

349 Consequently, it follows from all of the foregoing that the ninth plea must be rejected.

The tenth plea, alleging infringement of Article 8(1) and (6) of the basic regulation

350 First, the applicants contend that, under the non-attribution principle, the contested regulation is vitiated by a failure to state reasons since the EU institutions did not provide relevant explanations or sufficient reasoning as to how the non-injurious price did not go beyond what was necessary to offset the injury caused by the subsidised and/or dumped imports.

351 However, the Court finds that the EU institutions stated clear reasons for the result of the non-attribution test since they carried out an assessment of the impact of other factors on the injury, such as the evolution of the consumption on the Union market (recitals 445 to 448 of the contested regulation), raw material prices (recitals 449 to 451 of the contested regulation), export performance of the Union industry (recitals 452 and 453 of the contested regulation), imports from other third countries (recitals 454 to 456 of the contested regulation), and the structural overcapacity (recitals 457 and 458 of the contested regulation).

352 Thus, it must be held that the EU institutions stated clear reasons for the fact that the other factors could not be held responsible for the injury caused by the subsidised and/or dumped imports and that, consequently, the non-injurious price had been determined in order not to go beyond what was necessary to offset the injury caused by those imports.

353 The applicants also contend that the EU institutions failed to ensure that the injury attributable to factors other than dumping and subsidisation was not taken into account in the determination of the level of the duty imposed on their imports when the burden was on those institutions to demonstrate that they had made a non-attribution analysis.

354 It must be stated that the applicants simply observe that the level of the duties imposed is 20% and that the non-injurious price on the basis of which that rate was calculated was obtained by adding an 8% profit margin to the costs of production.

355 As the Council points out, the applicants do not dispute the principle of the target profit approach adopted by the EU institutions and do not dispute that the target profit should be set at a level that the Union industry can achieve in the absence of the subsidised imports.

356 In that regard, it should be noted that the applicants do not dispute the reliability of those factors.

357 Thus it must be observed that the applicants do not dispute the level of the duties imposed since they merely draw attention to the calculation of the injury margin as set out in recital 499 of the contested regulation.

358 In any event, the Court notes that, in accordance with Article 8(6) of the basic regulation, the EU institutions examined the impact of the other known factors which could have caused injury to the Union industry and concluded that none of those factors was such as to break the causal link established between the dumped imports from China and the injury suffered by the Union industry (recitals 445 to 458 of the contested regulation). Thus, the EU institutions satisfied the necessary conditions to take the measures in question.

359 Therefore, the complaint must be rejected.

360 Secondly, the applicants submit that the EU institutions summarily dismissed all the causes for injury other than subsidised imports which had been presented to them during the investigation.

361 In that regard, the applicants merely argue, by way of example, that the injury sustained cannot be wholly attributed to the imports from China because, while there was a 5% loss of market share during the investigation period, Chinese imports increased only by 3% and therefore another competitor gained the 2% of the market share lost by the Union industry. Thus, the applicants are not the only ones responsible for the loss of market share and consequent injury.

362 In so far as it is an argument advanced by the applicants, it should be observed that, according to the case-law, 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 subsidised imports and must disregard any injury deriving from other factors (see, by analogy, Case C-358/89 *Extramet Industrie* v *Council* [1992] ECR I-3813, paragraph 16; and Case T-190/08 *CHEMK and KF* v *Council* [2011] ECR II-7359, paragraph 188).

363 It should also be observed that the question whether factors other than subsidised imports contributed to the injury to the Union industry involves the assessment of complex economic matters in respect of which the EU institutions enjoy a wide discretion, which means that the Courts of the European Union can exercise only limited review of that assessment (see, by analogy, *CHEMK and KF* v *Council*, paragraph 363 above, paragraph 189).

364 In addition, it is for the applicants to adduce evidence enabling the Court to find that the Council made a manifest error of assessment when determining the injury (see *Shanghai Teraoka Electronic* v *Council*, paragraph 228 above, paragraph 119; *Moser Baer India* v *Council*, paragraph 228 above, paragraph 140 and the case-law cited; and *Since Hardware (Guangzhou)* v *Council*, paragraph 225 above, paragraph 137).

365 It must be inferred from that case-law that the determination of injury takes into account all the conditions for determining that injury, including the causal link.

366 However, the applicants confine themselves to making mere assertions which are, moreover, examples.

367 Consequently, it must be held that the applicants submit no evidence in support of their argument to show that the EU institutions made an error of assessment in determining the causal link.

368 For the sake of completeness, as the Council observes, it should be noted that the applicants do not dispute the conclusions drawn from recitals 454 and 455 of the contested regulation, according to which the imports from other third countries did not contribute to the material injury suffered by the Union industry.

369 Thirdly, with regard to the deterioration of the export performance of the Union industry, the applicants dispute the EU institutions' statement that that deterioration is not the main reason for the injury suffered by the producers and thus does not break the causal link.

370 As the Council observes, the Union industry's export performance actually mitigated the injurious effects of the subsidised imports.

371 Recital 452 of the contested regulation states, in particular:

'Since exports play an important role in keeping capacity utilization high to cover the high fixed costs of investments into machinery, it was considered that although the export performance was deteriorating it had an overall positive effect. Accordingly, it is considered that even if the decrease in export activities may have contributed to the overall deterioration of the situation of the Union industry, these activities were on the other hand still mitigating the losses suffered on the Union market and thus are not such as to break the causal link established between the subsidised imports from [China] and the injury suffered by the Union industry.'

372 In that regard, the applicants submit no evidence to show that the EU institutions made an error of assessment in determining the causal link.

373 In the light of all of the foregoing considerations, the tenth plea must be rejected in its entirety.

374 It follows that the action must be dismissed in its entirety.

Costs

375 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 bear their own costs and to pay those of the Council, Cepifine, Sappi Europe, Burgo Group and Lecta, in accordance with the form of order sought by those parties.

376 The Commission shall bear its own costs, in accordance with the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Gold East Paper (Jiangsu) Co. Ltd and Gold Huasheng Paper (Suzhou Industrial Park) Co. Ltd to bear their own costs and to pay those of the Council of the European Union, Cepifine AISBL, Sappi Europe SA, Burgo Group SpA and Lecta SA;**

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

Czúcz Labucka Gratsias

Delivered in open court in Luxembourg on 11 September 2014.

[Signatures]

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