Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

18 November 2015*

(Dumping — Imports of certain compressors originating in China — Partial refusal to refund the anti-dumping duties paid — Determination of the export price — Deduction of anti-dumping duties — Adjustment of the temporal effects of an annulment)

In Case T-73/12,

Einhell Germany AG, established in Landau an der Isar (Germany),

Hans Einhell Nederlands BV, established in Breda (Netherlands),

Einhell France SAS, established in Villepinte (France),

Hans Einhell Österreich GmbH, established in Vienna (Austria),

represented by R. MacLean, Solicitor, and A. Bochon, lawyer,

applicants,

v

European Commission, represented by A. Stobiecka-Kuik, K. Talabér-Ritz and T. Maxian Rusche, acting as Agents,

defendant,

ACTION for the partial annulment of Commission Decisions C(2011) 8831 final, C(2011) 8825 final, C(2011) 8828 final and C(2011) 8810 final of 6 December 2011 concerning applications for a refund of anti-dumping duties paid on imports of certain compressors originating in the People's Republic of China, and, in the event that the General Court should annul the contested decisions, for the maintenance in force of the effects of those decisions until the Commission has adopted the measures necessary to comply with the judgment of the General Court in this case,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, I. Pelikánová and E. Buttigieg (Rapporteur), Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written procedure and further to the hearing on 12 December 2014,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 Einhell Germany AG, Hans Einhell Nederlands BV, Einhell France SAS and Hans Einhell Österreich GmbH (collectively, 'the applicants') are four companies belonging to the Einhell group, which import, inter alia, air compressors originating in China. In particular, they import into the European Union compressors purchased from Nu Air (Shanghai) Compressors and Tools Co. Ltd ('Nu Air Shanghai' or 'the exporting producer'), a company established in China belonging to the Nu Air group.

2 By Regulation (EC) No 261/2008 of 17 March 2008, the Council of the European Union imposed a definitive anti-dumping duty on imports of certain compressors originating in the People's Republic of China (OJ 2008 L 81, p. 1). Compressors manufactured by Nu Air Shanghai and covered by Regulation No 261/2008 ('the product concerned') were made subject to an anti-dumping duty of 13.7%.

3 Between June 2009 and June 2010, the applicants filed, in accordance with Article 11(8) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended [replaced by Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51), 'the basic regulation'], several applications for refunds of definitive anti-dumping duties imposed by Regulation No 261/2008, which they had respectively paid on imports of compressors manufactured by Nu Air Shanghai, for a total amount of EUR 1 067 158.66. Those applications were submitted to the European Commission via the competent national authorities in Germany, the Netherlands, France and Austria, respectively.

4 Applications for a refund of anti-dumping duties paid on imports of compressors manufactured by Nu Air Shanghai were also filed with the Commission by companies belonging to the Nu Air group, namely Nu Air Compressors and Tools SpA, Nu Air Polska sp. z o.o. and Mecafer SA (collectively, 'the related importer').

5 The Commission opened an investigation into the refund of the anti-dumping duties paid on imports of compressors manufactured by Nu Air Shanghai, covering the period between 1 September 2008 and 31 December 2009 ('the refund investigation period').

6 On 6 April 2011, the Commission sent the applicants four information documents containing the essential facts and considerations on the basis of which it proposed to set the revised dumping margin for Nu Air Shanghai at 11.2% and to grant a partial refund to the applicants.

7 On 26 April 2011, the applicants informed the Commission of their view that the amount of the revised dumping margin for Nu Air Shanghai was lower than 11.2% and referred the Commission to the comments submitted in that regard by the related importer.

8 In a letter dated 19 July 2011, addressed to the related importer, the Commission accepted the validity of some of its comments and reduced the dumping margin to 10.7%.

9 By e-mail of 26 July 2011, the related importer submitted new observations to the Commission in which it challenged the method for calculating the dumping margin applied by the Commission. In particular, it challenged the deduction of the anti-dumping duties from the calculation of the export price, relying on Article 11(10) of the basic regulation. Finally, the related importer asked the Commission to send it the calculations on which the Commission had relied in order to deduct the anti-dumping duties from the export price constructed on the basis of Article 2(9) of the basic regulation. Those calculations were sent to the related importer by e-mail of the same day.

10 On 28 July 2011, the related importer sent the Commission an e-mail seeking an explanation as to how the Commission had interpreted the results of the above calculations, to which the Commission responded the same day by e-mail.

11 On 17 October 2011, the Commission sent to the applicants four final information documents containing the essential facts and considerations on the basis of which it intended to revise the dumping margin applicable to the product concerned and to grant them a partial refund of the anti-dumping duties paid.

12 By e-mails of 20 and 21 October 2011, the related importer asked the Commission for further explanations concerning the method used by the Commission for the purposes of assessing whether the anti-dumping duties were reflected in the resale prices of the product concerned to the first independent buyer established in the European Union. The Commission refused to accede to that request and referred the related importer to the explanations provided in its previous e-mail of 28 July 2011.

13 On 6 December 2011, the Commission adopted Decisions C(2011) 8831 final, C(2011) 8825 final, C(2011) 8828 final, and C(2011) 8810 final ('the contested decisions'), in which, on the one hand, it fixed the revised dumping margin for Nu Air Shanghai at 10.7% and, on the other, it granted the applicants a partial refund of the anti-dumping duties unduly paid on the basis of the difference between the original dumping margin (13.7%) and the revised dumping margin (10.7%).

14 In order to calculate the revised dumping margin, the normal value of the product concerned was constructed pursuant to Article 2(3) of the basic regulation.

15 Moreover, for export sales to the European Union made directly to independent buyers or through a related company established outside the European Union, the export price was determined on the basis of the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic regulation.

16 For export sales to the European Union made through the related companies established in the European Union, which performed all import functions for the product concerned, such as the importer related to the exporting producer, the export price was established, in accordance with Article 2(9) of the basic regulation, on the basis of the prices at which the imported products were first resold to an unrelated importer established in the European Union. In order to obtain a reliable export price, adjustments were made in order to take account of all costs incurred between importation and resale, and for profits accruing.

17 In particular, in accordance with Article 11(10) of the basic regulation, the anti-dumping duties paid were deducted from the constructed export price, since the related importer had failed to show that these had been duly reflected in all resale prices. In addition, the related importer's argument that its total turnover relating to the resale of the product concerned had increased by an amount which exceeded the total amount of duties paid on imports of that product was rejected because it did not call into question the finding that the anti-dumping duty had not been duly reflected in the resale price of a large number of types of the product concerned and, accordingly, that the pricing policy had not been altered in such a way as to reflect the anti-dumping duties paid.

18 Finally, the dumping margin of 10.70% was calculated by comparing the average normal value by product type with the weighted average export price of the corresponding type of the product concerned.

19 In conclusion, in Decision C(2011) 8831 final, the Commission granted the application for a refund made by Einhell Germany in the amount of EUR 157 950.76 and rejected it as to the remainder, that is to say, in respect of the sum of EUR 734 777.06; in Decision C(2011) 8825 final, the Commission

granted the application for a refund made by Hans Einhell Nederlands in the amount of EUR 21 113.52 and rejected it as to the remainder, that is to say, in respect of the sum of EUR 92 502.22; in Decision C(2011) 8828 final, the Commission granted the application for a refund made by Einhell France in the amount of EUR 11 517.09 and rejected it as to the remainder, that is to say, in respect of the sum of EUR 41 077.62; lastly, in Decision C(2011) 8810 final, the Commission granted the application for a refund made by Hans Einhell Österreich in the amount of EUR 1 800.09 and rejected it as to the remainder, that is to say, in respect of the sum of EUR 6 420.30.

Procedure and forms of order sought

20 By application lodged at the Registry of the General Court on 17 February 2012, the applicants brought the present action.

21 On hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 64 of its Rules of Procedure of 2 May 1991, put questions to the parties in writing and requested them to lodge certain documents. The parties complied with those measures of organisation of procedure.

22 By letter of 27 November 2014, the applicants offered further evidence. All of those documents were added to the file by decision of the President of the First Chamber of the Court of 5 December 2014.

23 The parties presented oral argument and answered the oral questions put to them by the Court at the hearing on 12 December 2014.

24 The applicants claim that the Court should:

— declare the action admissible;

— annul Article 1 of the contested decisions insofar as it grants them only a partial refund of the anti-dumping duties which they had paid;

— order that the effects of the contested decisions be maintained in force until the Commission has adopted the measures necessary to comply with the judgment of the Court in this case;

— order the Commission to pay the costs.

25 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the applicants to pay the costs.

Law

Admissibility

Admissibility of the evidence offered by the applicants on 27 November 2014

26 Pursuant to Article 48(1) of the Rules of Procedure of 2 May 1991:

'In reply or rejoinder a party may offer further evidence. The party must, however, give reasons for the delay in offering it.'

27 That article makes it possible to adduce evidence outside, in particular, the situation referred to in Article 46(1) of the Rules of Procedure of 2 May 1991. By analogy, the Court allows some evidence to be lodged after the rejoinder if the person offering the evidence was unable, before the end of the written phase of the procedure, to obtain possession of the evidence in question, or if evidence produced belatedly by the other party justifies completing the file so as to ensure observance of the rule that both parties should be heard (judgment of 14 April 2005 in *Gaki-Kakouri* v *Court of Justice*, C-243/04 P, EU:C:2005:238, paragraph 32).

28 Since it is an exception to the rules governing the submission of offers of evidence, Article 48(1) of the Rules of Procedure of 2 May 1991 requires parties to give reasons for the delay in offering their evidence. That obligation implies that the Court has jurisdiction to review the merits of the grounds given for the delay in producing the evidence offered and, where appropriate, the content thereof, and, where the application is not substantiated to the requisite legal standard, the power to reject the evidence. The same applies, *a fortiori*, to offers of evidence made after the rejoinder has been submitted (judgment in *Gaki-Kakouri* v *Court of Justice*, cited in paragraph 27 above, EU:C:2005:238, paragraph 33).

29 In the present case, the applicants produced, by way of annex to the letter of 27 November 2014, nine decisions taken by the Commission in the context of other procedures for refunds of anti-dumping duties, eight of which were adopted before the end of the written part of the procedure and, in the case of the ninth, after the closure thereof. In order to justify the delay in producing the evidence offered, the applicants indicated inter alia that the above decisions were not published and that they had therefore had to make several requests to the Commission for access to those documents, to which the Commission acceded after the date on which the reply had been filed.

30 The Commission raised no objection in that regard.

31 In those circumstances, the evidence offered by the applicants by way of annex to the letter of 27 November 2014 must be declared admissible.

Admissibility of Annex D.5

32 The Commission produced, in Annex D.5 to its rejoinder, a document that it obtained in its capacity as defendant in Cases T-74/12 (*Mecafer* v *Commission*), T-75/12 (*Nu Air Polska* v *Commission*) and T-76/12 (*Nu Air Compressors and Tools* v *Commission*). In addition, in paragraph 86 of its rejoinder, the Commission referred to the content of Annex D.5 in order to reject the merits of the applicants' arguments.

33 The document which is the subject of Annex D.5 was produced by each of the applicants in Cases T-74/12, T-75/12 and T-76/12 as annexes to their written pleadings before the Court.

34 In response to a question put by the Court at the hearing, the Commission indicated that it had not sought authorisation from the applicants in Cases T-74/12, T-75/12 and T-76/12 to make use of the document which is the subject of Annex D.5 in the context of the present case.

35 The applicants raised the issue of the inadmissibility of Annex D.5 at the hearing.

36 In that regard, first, it should be recalled that each case brought before the Court has its own file, containing in particular the procedural documents produced by the parties in that case, and that each of those files is entirely independent. This last point is illustrated by Article 5(6) of the Instructions to the Registrar of the General Court, which states that '[a] procedural document which is produced in a case and placed on the file of that case may not be taken into account for the purpose of preparing another case for hearing'.

37 Moreover, it is settled case-law that, under the rules which govern procedure in cases before the General Court, parties are entitled to protection against the misuse of pleadings and evidence and that, therefore, the parties to a case, whether the main parties or interveners, have the right to use the pleadings of other parties to which they have been granted access solely for the purpose of defending their own legal position in the context of that case (order of 15 October 2009 in *Hangzhou Duralamp Electronics* v *Council*, T-459/07, ECR, EU:T:2009:403, paragraph 13 and the case-law cited).

38 However, apart from exceptional cases in which disclosure of a document might adversely affect the proper administration of justice, parties to proceedings are free to disclose their own written submissions to parties not involved in those proceedings (see order in *Hangzhou Duralamp Electronics* v *Council*, cited in paragraph 37 above, EU:T:2009:403, paragraph 14 and the case-law cited). Likewise, a party to proceedings may, subject to the same proviso, consent to a pleading which it presented in the context of those proceedings being used by another party thereto in the context of separate proceedings (order in *Hangzhou Duralamp Electronics* v *Council*, cited in paragraph 37 above, EU:T:2009:403, paragraph 14).

39 In the present case, firstly, it should be noted that the document which is the subject of Annex D.5 contains two tables reproducing the calculations made by the applicants in Cases T-74/12, T-75/12 and T-76/12 intended to show that the revised dumping margin for Nu Air Shanghai should have been less than that calculated by the Commission.

40 Moreover, it is not disputed that the Commission was not authorised to produce the document which is the subject of Annex D.5 in the context of the present case.

41 Accordingly, Annex D.5 must be declared inadmissible pursuant to the case-law referred to in paragraphs 37 and 38 above.

42 That conclusion cannot be called into question by the arguments raised by the Commission at the hearing.

43 First, the Commission submits that, before the hearing, the applicants had not raised any objections to Annex D.5 even though they had the same lawyer as the applicants in Cases T-74/12, T-75/12 and T-76/12. However, that circumstance has no bearing on the fact that Annex D.5 was produced without the consent of those applicants.

44 The Commission's argument must therefore be rejected as ineffective.

45 Furthermore, the Commission claims, in essence, that, in this case, the data contained in the document which is the subject of Annex D.5 were produced by the applicants, in extract forms, in Annexes A.15 and A.16. It must, however, be pointed out that the data in Annexes A.15 and A.16 are not the same as those contained in Annex D.5.

46 The Commission's argument must therefore be rejected as unfounded.

47 In view of the foregoing, it is necessary, on the one hand, to order the withdrawal from the file of Annex D.5 and, on the other, to remove from the file all references to that annex and its content.

Substance

48 The applicants seek, first, the partial annulment of the contested decisions on the basis of Article 263 TFEU and, secondly, the provisional maintenance of the effects of those decisions on the basis of Article 264 TFEU.

The first head of claim, seeking partial annulment of the contested decisions

49 As part of the first head of claim, the applicants seek, in essence, the partial annulment of the contested decisions insofar as the Commission only partially upheld their applications for a refund of anti-dumping duties and, accordingly, did not grant them a refund beyond the amounts referred to in Article 1 of those decisions.

50 In support of their first head of claim, the applicants rely on two pleas in law. In the first plea, they complain that the Commission made manifest errors of assessment in the choice of the profit margin deducted from the export price constructed pursuant to Article 2(9) of the basic regulation and infringed Article 2(9) and Article 18(3) of the basic regulation. In the second plea, they complain that the Commission, in essence, made a manifest error of assessment by deducting the amount of the anti-dumping duties paid by the related importer from the constructed export price and, accordingly, failed to establish a reliable export price and a reliable dumping margin, in breach of Article 2(9) and (11) and Article 11(10) of the basic regulation.

51 The Court considers it appropriate to examine first the second plea in law raised in support of the first head of claim, before addressing the first plea.

52 In putting forward their second plea, the applicants divide it into five parts, alleging, respectively, first, an error by the Commission in the interpretation of Article 11(10) of the basic regulation, in that it found that the passing-on of the anti-dumping duties should be established for each type of air compressor; secondly, the harmful nature of that approach for the purposes of establishing a reliable export price and a reliable weighted average dumping margin; thirdly, breach of the case-law of the World Trade Organisation (WTO) Appellate Body and the Court of Justice; fourthly, the excessive importance attached to that approach in the context of the analysis of the resale prices; and, finally, fifthly, the arbitrary nature of that analysis.

53 The Court considers it appropriate to examine first of all the first part of the second plea in law and then the third, fourth, fifth and second parts.

– The first part of the second plea in law

54 The applicants submit, in essence, that the Commission made a manifest error of assessment and errors of law in that, in order to assess whether the anti-dumping duties had been reflected in the resale price to the first independent buyer established in the European Union, it applied a product-control-number-by-product-control-number method of analysis ('the PCN-by-PCN method'), which has no basis in either the basic regulation or the case-law. In the applicants' view, that method is contrary to a literal and purposive interpretation of Article 11(10) of the basic regulation, according to which the question whether the anti-dumping duties have been passed on should be assessed on the basis of the same rules and methods as those referred to in Article 2 of the basic regulation, to which

Article 11(10) of that regulation refers expressly, and, therefore, in the aggregate, that is to say for the product concerned, and not for each of the product control numbers ('the PCNs') of which it is composed. They further state that the PCN-by-PCN method introduces an additional obstacle to non-deduction of the anti-dumping duties when calculating the export price and is therefore contrary to Article 11(10) of the basic regulation, as interpreted in the light of Article 9.3.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 (GATT) (OJ 1994 L 336, p. 103; 'the Anti-Dumping Agreement') contained in Annex 1A to the Agreement establishing the WTO (OJ 1994 L 336, p. 3), which it transposes.

55 The Commission disputes the merits of those arguments.

56 As a preliminary observation, on the one hand, it is apparent from the case-law that, in the field of measures to protect trade, the Council and the Commission ('the institutions') enjoy broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (judgments of 17 July 1998 in *Thai Bicycle* v *Council*, T-118/96, ECR, EU:T:1998:184, paragraph 32, and 25 October 2011 in *CHEMK and KF* v *Council*, T-190/08, ECR, EU:T:2011:618, paragraph 38). It follows that the review of the exercise of that discretion by the European Union Courts must be confined to ascertaining whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of assessment of the facts or a misuse of powers (judgments of 14 March 1990 in *Gestetner Holdings* v *Council and Commission*, C-156/87, ECR, EU:C:1990:116, paragraph 63; in *Thai Bicycle* v *Council*, cited above, EU:T:1998:184, paragraph 33; and 7 February 2013 in *EuroChem MCC* v *Council*, T-84/07, ECR, EU:T:2013:64, paragraph 32).

57 On the other hand, first of all, it should be recalled that Article 2(8) of the basic regulation provides that the export price is the price actually paid or payable for the product when sold for export to the European Union. However, the first subparagraph of Article 2(9) of the basic regulation provides that, in cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any other reasonable basis (judgment in *CHEMK and KF* v *Council*, cited in paragraph 56 above, EU:T:2011:618, paragraph 25).

58 It is therefore apparent from Article 2(9) of the basic regulation that the institutions may treat the export price as unreliable in two cases, namely where there is an association between the exporter and the importer or a third party or a compensatory arrangement between the exporter and the importer or a third party. In any other case, where an export price exists, the institutions are required to base their determination of dumping on that price (judgment in *CHEMK and KF* v *Council*, cited in paragraph 56 above, EU:T:2011:618, paragraph 26).

59 Secondly, it should be noted that, under the second subparagraph of Article 2(9) of the basic regulation, where the export price is constructed on the basis of the price at which the imported products are first resold to an independent buyer, or on any other reasonable basis, adjustment for all costs incurred between importation and resale, including all duties and taxes, and for profits accruing, is to be made so as to establish a reliable export price, at the European Union frontier level. The third subparagraph of Article 2(9) of the basic regulation provides that the items for which adjustment is to be made are to include a reasonable margin for selling, general and administrative costs and profit (judgment in *CHEMK and KF* v *Council*, cited in paragraph 56 above, EU:T:2011:618, paragraph 27).

60 It is important to add that the adjustments provided for in the second and third subparagraphs of Article 2(9) of the basic regulation are made automatically by the institutions (see, by analogy, judgments of 7 May 1987 in *Nachi Fujikoshi* v *Council*, 255/84, ECR, EU:C:1987:203, paragraph 33; 7 May 1987 *Minebea* v *Council*, 260/84, ECR, EU:C:1987:206, paragraph 43, and 14 September 1995 in *Descom Scales* v *Council*, T-171/94, ECR, EU:T:1995:164, paragraph 66).

61 Thirdly, it is apparent from Article 11(10) of the basic regulation that, in a procedure for review or for a refund of anti-dumping duties, if it is decided to construct the export price in accordance with Article 2(9) of the basic regulation, the Commission must calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the European Union.

62 In the present case, it should be recalled that the applicants complain, in essence, that the Commission assessed whether the anti-dumping duties had been passed on by using a PCN-by-PCN method instead of on the basis of an assessment conducted in the aggregate, that is, by taking into consideration the increase in the turnover, attributable to the sales of all the models of the product concerned carried out by the related importer, which was observed between the original investigation period and the refund investigation period. According to the applicants, if the Commission had carried out that analysis, it would have found that the turnover of the related importer had increased by an amount greater than that of the anti-dumping duties paid on imports of that product, expressed as a percentage of the price, cost, insurance and freight value of the imports made during the refund investigation period.

63 It is in the light of those considerations that the merits of the arguments raised by the applicants in support of the first part of the second plea must be examined.

64 First, the applicants rely on a textual argument in support of the method described in paragraph 62 above to the effect that, in essence, it is apparent from the expression ‘duly reflected’, used in Article 11(10) of the basic regulation, that the passing-on of the anti-dumping duties must be assessed according to what is required or appropriate, that is to say, according to them, by applying the rules and methods referred to in Article 2 of the basic regulation, which seek to establish an individual and unique dumping margin for each exporting producer, regardless of whether or not several models of the product concerned exist.

65 The Commission disputes the merits of that argument.

66 In that regard, firstly, it should be noted that, notwithstanding the dual reference to Article 2 of the basic regulation made by Article 11(10) of that regulation, the adverb ‘duly’ does not refer to a method of examination or a rule referred to in Article 2 of the basic regulation, but to the purpose of reflecting the anti-dumping duties in the resale prices charged by the companies related to the exporting producer to the first independent buyer in the European Union, which is to change the conduct of those companies as a result of the imposition of anti-dumping duties, or, in other words, ultimately, to eliminate the dumping margin initially noted (see, to that effect, judgment of 5 June 1996 in *NMB France and Others* v *Commission*, T-162/94, ECR, EU:T:1996:71, paragraphs 76 to 81).

67 Furthermore, Article 11(10) of the basic regulation does not set out a method by which to determine whether the evidence produced by the importers claiming repayment of the anti-dumping duties is ‘conclusive’ and whether the anti-dumping duty was ‘duly reflected’ in the selling price to the first independent buyer in the European Union.

68 Therefore, it must be held that not one, but several methods exist by which to determine whether the requirements laid down in Article 11(10) of the basic regulation are met.

69 It is apparent from the case-law that the choice between different methods of calculation requires an appraisal of complex economic situations, which means that the review of that appraisal by the EU Courts is correspondingly limited (see, by analogy, judgments of 7 May 1987 in *NTN Toyo Bearing and Others* v *Council*, 240/84, ECR, EU:C:1987:202, paragraph 19; *Nachi Fujikoshi* v *Council*, cited in paragraph 60 above, EU:C:1987:203, paragraph 21; and *NMB France and Others* v *Commission*, cited in paragraph 66 above, EU:T:1996:71, paragraph 72).

70 In view of the foregoing, it must be held that the Commission has a broad discretion when choosing the method by which to ascertain whether the requirements set out in Article 11(10) of the basic regulation have been met, with the result that the Court is required to carry out, in this field, only a limited judicial review (paragraph 56 above).

71 Thus, contrary to what the applicants submit, it cannot be inferred from the wording of Article 11(10) of the basic regulation that the question whether the anti-dumping duties were passed on should be assessed by conducting an assessment in the aggregate.

72 Accordingly, the applicants' argument must be rejected.

73 Secondly, the applicants argue, in essence, that the method of review based on the overall increase in turnover was justified by the fact that there is only one product concerned, which must be considered as a whole. In the present case, despite the existence of several models of air compressors subject to the anti-dumping duty in force, recital 19 in the preamble to Regulation No 261/2008 expressly states that those air compressors constitute a single product for the purpose of the original anti-dumping investigation. The unitary character of the product concerned is confirmed, according to them, by recital 20 in the preamble to the basic regulation and by the judgment of 21 March 2012 in *Marine Harvest Norway and Alsaker Fjordbruk* v *Council* (T-113/06, EU:T:2012:135).

74 The Commission disputes the merits of that argument.

75 In this regard, it must be noted, first, that the assessment, by way of a PCN-by-PCN method, as to whether the anti-dumping duties were passed on does not affect the uniqueness of the product concerned since the Commission has not defined a dumping margin per PCN, but rather a single dumping margin for the product concerned.

76 Next, it is common ground that, in this case, the product concerned is a complex product, the different models of which have different technical characteristics and prices which can vary significantly. Consequently, the PCN-by-PCN method, which aims to compare PCNs whose characteristics and resale prices are similar, appears to be more appropriate for the purposes of examining the evolution of the resale prices of the product concerned between the original investigation period and the refund investigation period.

77 Furthermore, it should be noted that the method of analysis based on the overall increase in turnover does not make it possible to establish whether the related importer actually changed its conduct in the market or whether, on the contrary, it implemented a pricing policy allowing it to offset the least-sold with the most-sold models, and thus by acting on margins earned.

78 Moreover, recital 20 in the preamble to the basic regulation provides, in particular, that 'in any recalculation of dumping which necessitates a reconstruction of export prices, duties are not to be treated as a cost incurred between importation and resale where the said duty is being reflected in the prices of the products subject to measures in the [European Union]'.

79 Contrary to what the applicants claim, it cannot be inferred from the term 'products subject to measures', used in recital 20 in the preamble to the basic regulation, that the question whether the anti-dumping duties had been passed on must be assessed for the product concerned considered as a

whole. Recital 20 in the preamble to the basic regulation and Article 11(10) of that regulation refer to 'resale prices', 'subsequent selling prices' and 'prices of the products subject to measures in the [European Union]' in the plural. Thus, according to a literal interpretation of the above provisions, it is appropriate to examine whether the anti-dumping duties were reflected in each selling price and, therefore, rather on the basis of a transaction-by-transaction method or even, where appropriate, on the basis of a model-by-model or PCN-by-PCN method.

80 Finally, the reference made by the applicants to the judgment in *Marine Harvest Norway and Alsaker Fjordbruk* v *Council*, cited in paragraph 73 above (EU:T:2012:135), is not relevant in the present case since the dispute which was before the Court in the case giving rise to that judgment did not concern the determination of the export price.

81 In view of the foregoing, it must be held that the Commission did not commit a manifest error of assessment in finding that, in the present case, it was more appropriate to conduct a review of whether the anti-dumping duties had been passed on by way of a PCN-by-PCN method, rather than by way of an overall method based on the increase in turnover between the original investigation and the refund investigation.

82 Accordingly, the applicants' argument must be rejected.

83 Thirdly, the applicants submit, in essence, that the PCN-by-PCN method adopted by the Commission is contrary to the objective of Article 11(10) of the basic regulation, as interpreted in the light of Article 9.3.3 of the Anti-Dumping Agreement.

84 As a preliminary point, it is apparent from the case-law that the provisions of the basic regulation must, so far as is possible, be interpreted in the light of the corresponding provisions of the Anti-Dumping Agreement (see, to that effect, judgments of 9 January 2003 in *Petrotub and Republica* v *Council*, C-76/00 P, ECR, EU:C:2003:4, paragraph 57, and 22 May 2014 in *Guangdong Kito Ceramics and Others* v *Council*, T-633/11, EU:T:2014:271, paragraph 38).

85 The European Union adopted the basic regulation in order to meet its international obligations arising from the Anti-Dumping Agreement (judgment in *Petrotub and Republica* v *Council*, cited in paragraph 84 above, EU:C:2003:4, paragraph 56). Furthermore, by means of Article 11(10) of the basic regulation, the European Union intended to implement the particular obligations laid down by Article 9.3.3 of the Anti-Dumping Agreement. Article 11(10) of the basic regulation must therefore be interpreted in the light of that provision.

86 In that regard, it should be recalled that Article 9.3.3 of the Anti-Dumping Agreement provides that, '[i]n determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2 [of the Anti-Dumping Agreement], authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided'.

87 Moreover, Article 2.3 of the Anti-Dumping Agreement provides that, '[in] cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine'.

88 Finally, the fourth sentence of Article 2.4 of the Anti-Dumping Agreement states that '[i]n the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made …'.

89 It follows from the foregoing that, like the second subparagraph of Article 2(9) of the basic regulation, the fourth sentence of Article 2.4 of the Anti-Dumping Agreement establishes the principle of 'duty as a cost', according to which duties and taxes incurred between importation and resale, including the anti-dumping duties paid, are costs to be deducted when constructing the export price (judgment in *NMB France and Others* v *Commission*, cited in paragraph 66 above, EU:T:1996:71, paragraph 104).

90 In that context, it must be held that non-deduction of the anti-dumping duties pursuant to Article 9.3.3 of the Anti-Dumping Agreement is an exception to the rule of 'duty as a cost', laid down in the fourth sentence of Article 2.4 of that agreement. Similarly, the non-deduction of the anti-dumping duties, laid down in Article 11(10) of the basic regulation, is an exception to the rule of 'duty as a cost', set out in the second subparagraph of Article 2(9) of that regulation.

91 Like any exception to a general rule, the non-deduction of anti-dumping duties from the constructed export price must be interpreted strictly (see, by analogy, judgment of 18 March 2009 in *Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision* v *Council*, T-299/05, ECR, EU:T:2009:72, paragraph 82 and the case-law cited).

92 In the present case, it should be noted that the method based on the increase in turnover advocated by the applicants would lead to the finding that the anti-dumping duties were in the aggregate passed on to the related importer's customers. However, under the PCN-by-PCN method, the Commission was able to demonstrate that the anti-dumping duties were not passed on in relation to several models of the product concerned.

93 Thus, the PCN-by-PCN method, which leads, in a case such as the one at hand, to a stricter assessment of whether the anti-dumping duties had been passed on, is more consistent with a literal and purposive interpretation of Article 11(10) of the basic regulation and, accordingly, must be preferred to an approach based on the overall increase in turnover between the original investigation period and the refund investigation period.

94 The arguments put forward by the applicants cannot invalidate that finding.

95 First of all, the applicants claim that it is to be inferred from the use of the singular in the phrase 'any movement in the resale price', which appears in Article 9.3.3 of the Anti-Dumping Agreement, that the question whether the anti-dumping duties had been passed on must be examined overall.

96 The phrase 'any movement in the resale price' is, however, immediately followed by the use of the plural in the phrase 'duly reflected in subsequent selling prices'. Moreover, the phrases 'any change' and 'any movement', used in Article 9.3.3 of the Anti-Dumping Agreement, are inherently indeterminate.

97 Next, the applicants argue, in essence, that the PCN-by-PCN method runs counter to the objective of Article 9.3.3 of the Anti-Dumping Agreement, which is to reduce barriers to the non-deduction of anti-dumping duties. That method, they submit, strengthens the 'double jump' obstacle, under which a related importer can obtain a full refund of the anti-dumping duties paid only if it demonstrates that it has increased the resale prices in the European Union in an amount equal to twice the dumping margin, or is an attempt to legitimise a new, 'triple jump', obstacle.

98 In that regard, first, it is apparent from paragraphs 89 to 91 above that, as regards the sales made through a related importer, the export price must be calculated by deducting the anti-dumping duties paid, pursuant to the 'duty as a cost' rule. In addition, non-deduction of the anti-dumping duties,

under Article 11(10) of the basic regulation, constitutes an exception to that rule of principle and must therefore be interpreted strictly (paragraph 91 above). Thus, the 'double jump' obstacle, mentioned by the applicants, is the inevitable consequence of non-fulfilment of the requirements laid down in Article 11(10) of the basic regulation and, therefore, of the application of the 'duty as a cost' rule.

99 Furthermore, it should be noted that recourse to the PCN-by-PCN method, as long as it is consistently applied at all stages of the examination of the application for a refund, does not imply that additional requirements are laid down for the full refund of the anti-dumping duties paid, but only that compliance with the requirements laid down in Article 11(10) of the basic regulation is verified at the level of the individual PCNs, rather than at the level of the product concerned as a whole.

100 In those circumstances, the applicants err in submitting that the PCN-by-PCN method reinforces the 'double jump' obstacle or even that it is an attempt to legitimise a new obstacle to non-deduction of the anti-dumping duties.

101 Accordingly, it must be held that the PCN-by-PCN method is not contrary to a literal and purposive interpretation of Article 11(10) of the basic regulation.

102 The applicants' argument must therefore be rejected.

103 In view of the foregoing, the Commission did not err, on the one hand, in finding that, in the present case, the method based on the overall increase in turnover, defended by the applicants, did not make it possible to establish conclusively that the related importer had duly passed on its anti-dumping duties to its own customers established in the European Union and, on the other hand, in holding that the PCN-by-PCN method was the most appropriate in the light of the circumstances of the case and, in particular, of the complex nature of the product concerned.

104 The first part of the second plea in law must therefore be rejected.

– The third part of the second plea in law

105 The applicants claim that the PCN-by-PCN review of whether the anti-dumping duties had been passed on is very similar to the practice of 'zeroing' and, accordingly, that it is contrary to the report of the Appellate Body of the WTO entitled 'European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India' (WT/DS141/AB/R), adopted on 1 March 2001, and to the judgment of 27 September 2007 in *Ikea Wholesale* (C-351/04, ECR, EU:C:2007:547).

106 The Commission disputes the merits of those arguments.

107 As a preliminary point, it should be noted that the practice of 'zeroing', sanctioned by the WTO Appellate Body and by the Court of Justice, was applied by the Commission only for the purposes of calculating the overall dumping margin. In a case in which the product concerned included several models, that practice consisted, in essence, on the one hand, in adding together only the amounts of the dumping for all the models in respect of which the existence of a positive dumping margin had been established, and on the other, in reducing to zero all the negative dumping margins. The overall amount of the dumping thus calculated was then expressed as a percentage of the cumulative value of all the export transactions relating to all the models, irrespective of whether they had or had not been the subject of dumping.

108 In that regard, firstly, it should be noted that, in the present case, the applicants do not challenge the method for calculating the dumping margin, but rather the method applied by the Commission in order to establish whether the conditions for non-deduction of the anti-dumping duties from the

export price constructed pursuant to Article 2(9) of the basic regulation had been met. However, the use of the PCN-by-PCN method, challenged by the applicants, occurs upstream from the calculation of the dumping margin and has a different purpose.

109 Furthermore, the applicants have not produced any evidence in support of their contention that the practice of 'zeroing' and the PCN-by-PCN method are similar.

110 Consequently, they have not established that there is a similarity between the practice of 'zeroing' and the PCN-by-PCN method.

111 Finally, in response to a question put by the Court at the hearing, the applicants clarified their line of argument by stating, in essence, that it is the consequence of the practice of 'zeroing' — which is to change the export price and, accordingly, the dumping margin — that, in their view, is similar to that of the PCN-by-PCN method.

112 It has, however, previously been stated that the Commission did not err in using the PCN-by-PCN method in order to assess whether the anti-dumping duties had been passed on; having regard to the circumstances of the present case, that method afforded the most accuracy in examining whether the requirements set out in Article 11(10) of the basic regulation had been met (paragraphs 76, 92 and 93 above).

113 Consequently, the applicants are not justified in claiming that the PCN-by-PCN method used by the Commission had the effect of distorting the export price and, ultimately, the revised dumping margin.

114 In the light of the foregoing, the third part of the second plea in law must be rejected.

– The fourth part of the second plea in law

115 The applicants submit that the use of a PCN-by-PCN method has no legal basis.

116 The Commission disputes the merits of that argument.

117 The fact that the PCN-by-PCN method is nowhere mentioned in the basic regulation does not demonstrate that it is illegal or manifestly incorrect.

118 In this regard, it should be noted that, in the application, the applicants themselves acknowledged that the PCN-by-PCN analysis is an administrative technique that is justified in the context of the calculation of the weighted average dumping margin pursuant to Article 2(12) of the basic regulation, since it allows a fair comparison between the different models or types of goods which are the subject of an investigation and which have different characteristics.

119 However, they fail to explain what would make it possible to consider the PCN-by-PCN or model-by-model approach appropriate in the context of the calculation of the dumping margin, but not for the purposes of the examination of whether the anti-dumping duties had been passed on.

120 In any event, contrary to what the applicants claim, in practice, the use of the above method by the institutions is not restricted to the calculation of the dumping margin. The Court of Justice has, inter alia, approved the model-by-model method for the purposes of calculating the threshold below which sales of the like product intended for domestic consumption in the exporting country should be disregarded (see, to that effect, judgment of 5 October 1988 in *Canon and Others* v *Council*, 277/85 and 300/85, ECR, EU:C:1988:467, paragraph 14).

121 In the light of the foregoing, the fourth part of the second plea in law must be rejected.

– The fifth part of the second plea in law

122 The applicants claim, in essence, that the PCN-by-PCN method adopted by the Commission is arbitrary since, in other cases, by agreeing to take account of the weighted average resale prices in the European Union, or further by accepting a lower standard of proof than that required in the present case, the Commission considered that the requirements of Article 11(10) of the basic regulation had been met.

123 The Commission disputes the merits of that argument.

124 First, it should be recalled that, in the context of a refund procedure, the Commission has a broad discretion for the purposes of determining whether the requirements for the non-deduction of anti-dumping duties from the constructed export price have been met (paragraph 70 above). That discretion must be exercised on a case-by-case basis, with reference to all the relevant facts (see, by analogy, judgment in *Gestetner Holdings* v *Council and Commission*, cited in paragraph 56 above, EU:C:1990:116, paragraph 43).

125 Secondly, the conditions governing non-deduction of the anti-dumping duties from the calculation of the export price must be assessed in the light, on the one hand, of the evidence produced by the importers seeking non-deduction of the anti-dumping duties and, on the other, of the factual circumstances of each case.

126 Consequently, the applicants' argument alleging that the nature of the approach adopted by the Commission in the contested decisions is arbitrary in comparison with its previous, or later, practice cannot be upheld (see, by analogy, judgments of 7 May 1991 in *Nakajima* v *Council*, C-69/89, ECR, EU:C:1991:186, paragraph 119; 17 December 2010 in *EWRIA and Others* v *Commission*, T-369/08, ECR, EU:T:2010:549, paragraph 93; and 10 October 2012 in *Ningbo Yonghong Fasteners* v *Council*, T-150/09, EU:T:2012:529, paragraphs 119 and 120).

127 In any event, it must be held that the applicants have not shown that the circumstances at issue in this case were strictly identical to those at issue in the other procedures for a refund of anti-dumping duties or for a review which they raised in support of their argument that the PCN-by-PCN method was arbitrary in nature.

128 In particular, it must be noted that the circumstances involved in this case differ from those at issue in the cases which gave rise to Council Implementing Regulation (EU) No 60/2012 of 16 January 2012 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 of the anti-dumping measures applicable to imports of ferro-silicon originating, inter alia, in Russia (OJ 2012 L 22, p. 1), produced by the applicants by way of annex to the application, and the decisions of the Commission of 10 August 2012 concerning applications for a refund of anti-dumping duties paid on imports of ferro-silicon originating in Russia, produced by the applicants by way of annex to the letter of 24 November 2014 ('the cases concerning ferro-silicon originating in Russia'). In the rejoinder and at the hearing, the Commission explained that, in the cases concerning ferro-silicon originating in Russia, it had aggregated the product concerned into four PCNs and, accordingly, examined whether the requirements laid down in Article 11(10) of the basic regulation had been met for each PCN. Moreover, the Commission had found that the anti-dumping duties had indeed been passed on in the case of one of the four PCNs, which represented more than 80% of the transactions at issue, which was sufficient, according to the Commission, to grant the application for non-deduction of the anti-dumping duties from the export price constructed pursuant to Article 2(9) of the basic regulation.

129 By contrast, in the present case, it is common ground that, with regard to 5 of the 10 most widely sold PCNs, it has not been shown that the anti-dumping duties had been passed on to the customers of the related importer.

130 In those circumstances, the applicants cannot criticise the Commission for not having, in any event, adopted the same solution as in the cases concerning ferro-silicon originating in Russia.

131 The fifth part of the second plea in law must therefore be rejected.

– The second part of the second plea in law

132 The applicants submit, in essence, that the full deduction of the anti-dumping duties from the calculation of the export price is disproportionate since it includes the duties paid on the models or PCNs in respect of which the anti-dumping duties had been reflected in the subsequent resale prices. In so doing, the Commission therefore failed to establish a reliable export price and a reliable weighted average dumping margin.

133 The Commission disputes the merits of those arguments.

134 As a preliminary point, it should be recalled that Article 11(10) of the basic regulation is an exception to the rule of 'duty as a cost', laid down in the second subparagraph of Article 2(9) of that regulation. The option not to deduct the anti-dumping duties from the constructed export price must therefore be interpreted strictly (paragraphs 90 and 91 above).

135 Moreover, following the PCN-by-PCN review of whether the anti-dumping duties had been passed on, the Commission found that, for several PCNs, it had not been shown that the anti-dumping duties had been reflected in the resale prices and selling prices in the European Union.

136 However, the PCN-by-PCN analysis carried out by the Commission also revealed that, for 5 of the 10 most widely sold PCNs, the resale prices charged by the related importer to independent customers established in the European Union reflected the anti-dumping duties paid. As is apparent from the spreadsheet prepared by the Commission, which is annexed to its e-mail of 26 July 2011 and was produced by the applicants in Annex A. 15 to the application, the five PCNs referred to above correspond, on the one hand, to a volume of 119 523 air compressors sold out of a total volume of 229 239 air compressors sold during the refund investigation period by importing companies related to the exporting producer, established in the European Union, and, on the other hand, to more than 50% of the total price, cost, insurance and freight value of those sales.

137 It is in the light of those reminders and clarifications that it is appropriate to examine whether, in deducting the anti-dumping duties paid by the related importer from the constructed export price, even though those duties had been passed on for some of those PCNs, the Commission committed a manifest error of assessment and thus infringed Article 2(9) and (11) and Article 11(10) of the basic regulation.

138 As a preliminary point, it should be noted, as correctly claimed by the applicants, that there is an undeniable link between Article 2(9) and Article 11(10) of the basic regulation.

139 On the one hand, Article 11(10) of the basic regulation expressly makes a double reference to Article 2 and to Article 2(9) of that regulation.

140 On the other hand, as part of a procedure for review or for a refund of anti-dumping duties, the review of whether the anti-dumping duties were passed on to customers of a related importer, provided for under Article 11(10) of the basic regulation, is a stage in the calculation of the export price constructed on the basis of Article 2(9) of that regulation. In step with the result obtained at the conclusion of that review, the anti-dumping duties are to be deducted from the constructed export price and, accordingly, will have a direct impact on the amount of that constructed export price, in that it will necessarily be less than if the anti-dumping duties had not been deducted.

141 Moreover, it should be noted that, the lower the export price, the greater will be the difference with the normal value and the higher will be the revised dumping margin.

142 Article 11(10) of the basic regulation therefore contributes to the construction of the export price and, indirectly, to the calculation of the revised dumping margin.

143 In that context, the Commission must be consistent in the methods it uses for the purposes of the application of Article 2(9) and (11) and Article 11(10) of the basic regulation.

144 In that regard, it should be recalled that, for the purposes of calculating the export price when the product concerned had been sold in the European Union through the related importer, the Commission considered it more appropriate, having particular regard to the nature of the product concerned, to ascertain whether the anti-dumping duties had been passed on for each PCN.

145 Furthermore, the Commission continued with that PCN-by-PCN analysis, on the one hand, by calculating a single weighted average export price and a single weighted average normal value for each PCN and, on the other hand, by calculating a dumping margin for each PCN prior to calculating the single dumping margin for the product concerned.

146 However, the Commission did not draw all the consequences of the PCN-by-PCN method which it had itself decided to apply, in that it refused non-deduction of the anti-dumping duties from the export prices of the PCNs for which the anti-dumping duties had nevertheless been reflected in the resale prices and the subsequent selling prices in the European Union. Consequently, it deducted all of the anti-dumping duties paid from the export price constructed pursuant to Article 2(9) of the basic regulation, thereby artificially reducing the single weighted average export price per PCN and, consequently, increasing the rate of Nu Air Shanghai's revised dumping margin.

147 In the light of that finding, it must be held that the Commission made a manifest error of assessment affecting the rate of the revised dumping margin and, consequently, the amount of the anti-dumping duties to be repaid to the applicants, bearing in mind that that amount is the result of the difference between the initial dumping margin and the revised dumping margin (paragraph 13 above).

148 The arguments raised by the Commission cannot affect the foregoing conclusion.

149 First, the Commission claims, in essence, that, according to a strict interpretation of Article 11(10) of the basic regulation, it is not possible to deduct the anti-dumping duties paid only for certain transactions, models or PCNs and not for others, as doing so would not make it possible to avoid the risk of the law being circumvented and prices manipulated and would therefore be contrary to the objective of Article 11(10) of the basic regulation, which is to exclude any possibility of resale prices and subsequent selling prices being distorted as a result of dumping. If the partial non-deduction of anti-dumping duties were accepted, the related importer could set up internal compensatory mechanisms, for example, by passing on the anti-dumping duties to the prices of PCNs for which demand is relatively inelastic, but not to the prices of other PCNs for which demand is very elastic.

150 In this regard, on the one hand, it should be recalled that Article 11(10) of the basic regulation does not prescribe a method for determining whether the anti-dumping duties were duly reflected in the resale prices and subsequent selling prices in the European Union and, accordingly, that the Commission enjoys, in this area, a broad discretion (paragraphs 67 to 70 above). Similarly, contrary to what the Commission, in essence, submits, Article 11(10) of the basic regulation does not require it systematically to deduct all the anti-dumping duties paid in a case such as the present one, in which the examination, by way of a PCN-by-PCN method, of whether the anti-dumping duties had been passed on has not made it possible to conclude that the anti-dumping duties had been passed on for all PCNs, but only for some of them.

151 Moreover, the Commission has not shown that, in the present case, the related importer had circumvented the law by introducing compensatory mechanisms between the most-sold and the least-sold PCNs, or between PCNs for which demand was relatively inelastic and those for which it was highly elastic.

152 Accordingly, the Commission's argument must be rejected.

153 Secondly, the Commission submits that the partial non-deduction of the anti-dumping duties should be excluded because, in practice, it is inapplicable in regard to new products. In the absence of comparable products sold during the original investigation, it is, the Commission submits, impossible to verify whether their resale prices have increased to a degree making it possible to reflect the anti-dumping duties paid.

154 However, the only requirement laid down in Article 11(10) of the basic regulation is that the related importer must adduce conclusive evidence that the anti-dumping duties have been reflected in the resale prices and in the subsequent selling prices in the European Union.

155 In that context, provided that it is 'conclusive', evidence that the anti-dumping duties have been reflected in the resale prices and subsequent selling prices in the European Union may be adduced by any means and not solely by a comparison between the selling prices charged before the institution of the anti-dumping duties and those charged subsequently.

156 Accordingly, the Commission's argument must be rejected.

157 In view of the foregoing, the Commission committed a manifest error of assessment by deducting the anti-dumping duties in the aggregate and not solely from the export prices of the PCNs for which it had found, following a PCN-by-PCN analysis, that the duties had not been reflected in the resale prices and the subsequent selling prices in the European Union and, therefore, it infringed Article 2(9) and (11) and Article 11(10) of the basic regulation.

158 It is not disputed that, had the Commission not erred, the amount of the anti-dumping duties to be refunded to the applicants would have been greater than that mentioned in Article 1 of the contested decisions.

159 Consequently, the second part of the second plea in law must be upheld, and, therefore, also the first head of claim, by partial annulment of the contested decisions, in so far as the Commission did not grant the applicants a refund of the anti-dumping duties unduly paid beyond the amounts referred to in Article 1 of those decisions, without it being necessary to examine the first plea in law relied on in support of the first head of claim.

The second head of claim, seeking the provisional maintenance of the effects of the contested decisions, on the basis of Article 264 TFEU

160 In essence, the applicants request the Court, in the event that it upholds the first head of claim, to exercise the powers conferred upon it under Article 264 TFEU and, accordingly, to order the maintenance in force of the effects of the contested decisions until the Commission has adopted the measures necessary to comply with the judgment of the Court in this case. In that regard, first, the applicants submit that annulment of the contested decisions would make it necessary for them to repay to the competent authorities the entirety of the amounts which were refunded to them on the basis of those decisions. Secondly, they state that they seek only the rectification of the contested decisions and not their annulment in all respects, since those decisions are, in part, favourable to them.

161 The Commission raises no objection to the second head of claim.

162 In that regard, it should be recalled that the contested decisions must be annulled in so far as the Commission partially refused to grant the applicants' applications for a refund of the anti-dumping duties and, accordingly, did not grant them a refund beyond the amounts mentioned in Article 1 of those decisions, for which it is up to the Commission to calculate the exact amount.

163 In those circumstances, the partial annulment of the contested decisions does not mean that the applicants are required to repay to the competent authorities the amounts that were refunded to them on the basis of those decisions.

164 In view of the foregoing, the applicants' arguments must be rejected as ineffective and, accordingly, the second head of claim must be rejected.

Costs

165 Under Article 134(1) of the Rules of Procedure of the General Court, the party who has essentially been unsuccessful is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has failed in its submissions and the applicants have applied for costs, the Commission must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Annuls Article 1 of Commission Decisions C(2011) 8831 final, C(2011) 8825 final, C(2011) 8828 final and C(2011) 8810 final of 6 December 2011 concerning applications for a refund of anti-dumping duties paid on imports of certain compressors originating in the People's Republic of China in so far as that article does not grant Einhell Germany AG, Hans Einhell Nederlands BV, Einhell France SAS and Hans Einhell Österreich GmbH a refund of the anti-dumping duties unduly paid beyond the amounts referred to therein;**

2. **Dismisses the action as to the remainder;**

3. **Orders the European Commission to pay the costs.**

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 18 November 2015.

[Signatures]