Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

19 May 2021 *

(Dumping – Imports of certain cast iron articles originating in China – Definitive anti-dumping duty – Action for annulment – Admissibility – Association – Standing to bring proceedings – Interest in bringing proceedings – Injury determination – Calculation of the import volume – Macroeconomic and microeconomic indicators – Sampling – Calculation of the EU industry's cost of production – Prices charged intra-group – Causal link – Attribution and non-attribution analysis – No assessment of injury by segment – Assessment of the significance of undercutting – Confidential treatment of information – Rights of the defence – PCN-by-PCN methodology – Product comparability – Calculation of the normal value – Analogue country – Adjustment for VAT – Determination of the selling, general and administrative costs and profit)

In Case T-254/18,

China Chamber of Commerce for Import and Export of Machinery and Electronic Products, established in Beijing (China), and the other applicants whose names are listed in Annex I,[1] represented by R. Antonini, E. Monard and B. Maniatis, lawyers,

applicants,

v

European Commission, represented by T. Maxian Rusche and P. Němečková, acting as Agents,

defendant,

supported by

EJ Picardie, established in Saint-Crépin-Ibouvillers (France), and the other interveners whose names are listed in Annex II,[2] represented by U. O'Dwyer, B. O'Connor, Solicitors, and M. Hommé, lawyer,

interveners,

ACTION under Article 263 TFEU seeking the annulment of Commission Implementing Regulation (EU) 2018/140 of 29 January 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the People's Republic of China and terminating the investigation on imports of certain cast iron articles originating in India (OJ 2018 L 25, p. 6), in so far as it concerns the applicants.

* Language of the case: English.

1 The list of the other applicants is annexed only to the version sent to the parties.

2 The list of the other interveners is annexed only to the version sent to the parties.

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Gervasoni, President, L. Madise, P. Nihoul (Rapporteur), R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Artemiou, Administrator,

having regard to the written part of the procedure and further to the hearing on 29 June 2020,

gives the following

Judgment

Background to the dispute

1 On 31 October 2016, a complaint was lodged with the European Commission, in accordance with Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21) ('the basic regulation'), seeking to have it initiate an anti-dumping investigation concerning imports of certain cast iron articles originating in the People's Republic of China and the Republic of India.

2 That complaint was submitted by seven EU producers, namely Fondatel Lecomte SA, Fonderies Dechaumont SA, Fundiciones de Odena, SA, Heinrich Meier Eisengießerei GmbH & Co. KG, Saint-Gobain Construction Products UK Ltd, Saint-Gobain PAM SA and Ulefos Oy ('the complainants'). It was supported by two EU producers, namely EJ Picardie and Montini SpA.

3 By notice published in the *Official Journal of the European Union* on 10 December 2016 (OJ 2016 C 461, p. 22), the Commission initiated an anti-dumping proceeding concerning the imports in question.

4 The product subject to the investigation was 'certain articles of lamellar graphite cast iron (grey iron) or spheroidal graphite cast iron (also known as ductile cast iron), and parts thereof[, t]hese articles [being] of a kind used to: – cover ground or sub-surfaces systems, and/or openings to ground or sub-surface systems, and also – give access to ground or sub-surface systems and/or provide view to ground or sub-surface systems' ('the product concerned').

5 The investigation into dumping and injury covered the period from 1 October 2015 to 30 September 2016 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2013 to the end of the investigation period ('the period under consideration').

6 On 16 August 2017, the Commission adopted Implementing Regulation (EU) 2017/1480 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the People's Republic of China (OJ 2017 L 211, p. 14) ('the provisional regulation'). The Commission provisionally found no dumping in respect of imports originating in the Republic of India.

7 Following the anti-dumping proceeding, the Commission adopted Commission Implementing Regulation (EU) 2018/140 of 29 January 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the People's Republic of China and terminating the investigation on imports of certain cast iron articles originating in India (OJ 2018 L 25, p. 6) ('the contested regulation').

8 China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME') is an association governed by Chinese law whose members include Chinese exporting producers of the product concerned. The CCCME took part in the administrative proceeding which led to the adoption of the contested regulation.

9 The other legal persons whose names are listed in Annex I are nine Chinese exporting producers, two of which were selected by the Commission as part of the sample of Chinese exporting producers used for the purposes of the investigation.

Procedure and forms of order sought

10 By application lodged at the Registry of the General Court on 23 April 2018, the applicants, namely CCCME and the other legal persons whose names are listed in Annex I, brought the present action. The defence, reply and rejoinder were lodged on 22 August 2018, 12 November 2018 and 23 February 2019 respectively.

11 By documents lodged at the Court Registry on 26 July 2018, EJ Picardie and the other legal persons whose names are listed in Annex II sought leave to intervene in the present case in support of the form of order sought by the Commission. By order of 24 October 2018, the President of the First Chamber of the General Court granted such leave to intervene.

12 On 13 December 2018, the interveners lodged a statement in intervention at the Court Registry. The applicants and the Commission submitted their comments on that statement in intervention on 24 January 2019.

13 Following a change in the composition of the Chambers of the Court, the Judge Rapporteur was assigned to the Fourth Chamber, to which the present case was reassigned.

14 On a proposal from the Fourth Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

15 On a proposal from the Judge-Rapporteur, the Court (Fourth Chamber, Extended Composition) decided to open the oral part of the procedure and, by way of measures of organisation of procedure as provided for in Article 89 of its Rules of Procedure, put written questions to the parties and requested the Commission to produce a document. The parties replied to those questions and to that document production request within the prescribed period.

16 The parties presented oral argument at the hearing held on 29 June 2020.

17 The applicants claim that the Court should:

– annul the contested regulation in so far as it applies to them and to the members of the CCCME mentioned in Annex A.2;

– order the Commission and the interveners to pay the costs.

18 The applicants also request the Court to order, by way of a measure of organisation of procedure, the Commission to produce the calculations and source data concerning the import volumes, injury and dumping margin of the Chinese and Indian exporting producers.

19 The Commission, supported by the interveners, contends that the Court should:

– dismiss the action as being inadmissible;

– in the alternative, dismiss the action as being partially admissible;

– in the further alternative, dismiss the action as being unfounded;

– order the applicants to pay the costs.

Law

Admissibility

20 The Commission, supported by the interveners, sets out a number of pleas of inadmissibility against the action brought before the Court, alleging that:

– the application lacks clarity and precision (first plea of inadmissibility, raised as the principal argument);

– it is impossible for the CCCME to act in its own name and on behalf of its members (second and third pleas of inadmissibility, raised in the alternative);

– the action is inadmissible in so far as it is brought by the other legal persons whose names appear in Annex I (fourth plea of inadmissibility, also raised in the alternative).

21 Those pleas of inadmissibility will be examined in the following paragraphs.

The lack of clarity and precision in the application

22 As its principal argument, the Commission maintains, in its first plea of inadmissibility, that the action is inadmissible in its entirety, on the ground that the application does not meet the minimum requirements of clarity and precision laid down in Article 76(d) of the Rules of Procedure, in so far as the grouping together of entities challenging the contested regulation under the same term, namely 'applicants', does not make it possible to identify the claims submitted by each of them in the application.

23 In that regard, it should be recalled that, under Article 21 of the Statute of the Court of Justice of the European Union, which applies to the procedure before the General Court pursuant to the first paragraph of Article 53 of that statute, and under Article 76(d) of the Rules of Procedure, the application must, in particular, contain the name of the applicant and a brief statement of the pleas in law relied on.

24 That information 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 information (judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 93).

25 In the present case, the Commission does not maintain that the applicants are not properly identified or that the pleas in law are not sufficiently clear, but submits that, in their action, the applicants have not specified the pleas in law relied on by each of them, whereas those details are necessary to assess the effect of their status on the admissibility of the pleas in law relied on.

26 In that regard, it should be stated that, contrary to the Commission's assertions, the essential information regarding the relationship between the applicants and the pleas raised are apparent from the application.

27 Indeed, paragraph 1 of the application states that the action is brought, first, by the CCCME on its own behalf in respect of certain claims, second, by the CCCME acting on behalf of its members and, third, by nine Chinese exporting producers acting individually without using the intermediary of the CCCME.

28 From that information it follows that solely the application for annulment brought by the CCCME on its own behalf is limited.

29 The scope of the action brought by the CCCME acting on its own behalf is set out, in paragraph 5 of the application, as seeking to safeguard its procedural rights, on the understanding that, in that context, the CCCME alleges infringement of the principle of sound administration, of the rights of the defence and of certain provisions of the basic regulation, namely Article 6(7), Article 19(1) to (3) and Article 20(2) and (4).

30 Accordingly, contrary to the Commission's assertion, a relationship can be established, on the basis of the application, between the pleas in law and the applicants relying on them.

31 It follows that the Commission was in a position to put forward its defence taking account of the effect of the differences in the applicants' status on the admissibility of the pleas and to reach conclusions on those issues and that the Court may, for its part, exercise its power of review in full knowledge of the facts, in accordance with the case-law referred to in paragraph 24 above.

32 In those circumstances, the first plea of inadmissibility must be rejected.

Admissibility of the action in so far as it is brought by the CCCME in its own name

33 In its action, the CCCME states that it is acting on its own behalf in order to safeguard the procedural rights conferred on it during the investigation pursuant to the basic regulation.

34 According to the Commission, which is supported by the interveners, the action is inadmissible in that respect, since the CCCME is not an association representing the interests of its members, but rather an emanation of the People's Republic of China. Therefore, in the Commission's view, the CCCME cannot rely on the procedural rights which the basic regulation grants to representative associations and to interested parties, but ought to be granted, in the light of that regulation, the status of representative of the exporting country, which confers on it, at most, a right to information.

35 In support of that position, which is put forward in the alternative and constitutes the second plea of inadmissibility raised against the admissibility of the action, the Commission and the interveners set out the following matters.

36 First, Article 4 of the CCCME's articles of association, by stipulating that it is to act under the supervision, management and business guidance of the Ministry of Civil Affairs and of the Chinese Ministry of Commerce, establishes that the CCCME is a working group of the Chinese administration, and not a trade association.

37 Second, the general meeting of the members of the CCCME is held only once every five years, as stated in Article 16 of its articles of association, whereas that meeting is represented as being the highest authority of the group and is deemed, on that basis, to have the powers listed in Article 14 of the CCCME's articles of association.

38 Third, the Chinese chambers of commerce resulted from a reorganisation of governmental institutions and of the Chinese Communist Party. Their role as an extension of the party and of the State did not, however, fundamentally change when that reorganisation took place. Their conduct continues to be determined by the State, so that they do not have the independence required to be regarded as representative associations.

39 Fourth, the CCCME is managed by the national competent association management agency, in accordance with the Chinese legislation applicable to associations, with the result that the CCCME cannot take any initiative or defend any position without the prior authorisation of the People's Republic of China.

40 Fifth, the existence of close links with the Chinese Ministry of Commerce is demonstrated by the involvement of a deputy director of that ministry at a meeting held by the CCCME on 9 December 2016 in order to examine the investigation planned at that time by the Commission and which led to the contested regulation being adopted. As regards that involvement, the existence of which is demonstrated by the minutes of that meeting provided by the applicants, the Commission states that that involvement bears out the fact that the CCCME's participation in the investigation was a means for the People's Republic of China to monitor its progress. The CCCME was present systematically during the inspections carried out by the Commission's agents at the headquarters of the Chinese exporting producers as a means of carrying out such monitoring. Indeed, the Chinese exporting producers copied the CCCME on all emails exchanged with the Commission, even where they themselves were not members of the CCCME.

41 For their part, the interveners maintain that, at the direction of the People's Republic of China, the CCCME is implementing a strategy designed to undermine legitimate trade defence measures taken by the European Union and the World Trade Organisation (WTO). That is, in their opinion, demonstrated by the fact that, in the present case, the CCCME is arguing in favour of two fundamental changes, namely, first, that the Court's review of the legality of the contested regulation be extended and, second, that full access to confidential data contained in the Commission's investigation file be granted.

42 Sixth, the interveners submit that the CCCME describes itself on its website as an organisation whose purpose is to rectify and regulate national market economic order. In that vein, the interveners state that a working committee for industry self-discipline was established within the CCCME in order to prevent harmful competition between Chinese companies as regards external trade and overseas engineering markets.

43 Seventh, the statements provided by the applicants show that the 19 undertakings on whose behalf the CCCME claims to act were not members of that entity during the investigation, but only became so between December 2017 and January 2018. In such circumstances, the CCCME cannot, in the view of the interveners, claim to be a genuine association representing those members. Moreover, the CCCME's website does not mention cast iron products as a branch of activities covered by that association.

44 In order to adopt a position, it must be recalled that the task of the EU Courts, when an objection to the admissibility of an action or of part of an action is brought before them, is to determine whether the requirements laid down in the case-law concerning that type of objection have been satisfied.

45 In the present case, it appears that, according to the case-law, in order to establish whether the CCCME is entitled to bring an action in its own name, there must be an examination as to whether it has, first, *locus standi* and, second, an interest in bringing proceedings, which are required under Article 263 TFEU (see, to that effect, judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 62 and the case-law cited).

– *Standing to bring proceedings*

46 As regards standing to bring proceedings, the fourth paragraph of Article 263 TFEU provides that any natural or legal person may, under the conditions laid down in the first and second paragraphs of that provision, institute proceedings against an act addressed to that person, against acts of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

47 Since the contested regulation is not addressed to the CCCME, it is necessary to establish whether, in so far as it seeks to safeguard its procedural rights by bringing an action in its own name, the CCCME may rely on the second situation provided for in the fourth paragraph of Article 263 TFEU, namely the situation in which the applicant can establish that it is, first, individually and, second, directly concerned by the contested measure.

48 Those two requirements (individual concern and direct concern) are examined in turn in the following paragraphs.

49 According to the case-law, individual concern presupposes that the contested act affects the applicant by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons and by virtue of these factors distinguishes it individually just as in the case of the person addressed by such a decision would be (judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 107).

50 The fact that a person or entity is involved in some way or other in the procedure leading to the adoption of a contested measure is not sufficient to distinguish that person or entity individually in relation to the measure in question (see, to that effect, judgments of 4 October 1983, *Fediol* v *Commission*, 191/82, EU:C:1983:259, paragraph 31; of 17 January 2002, *Rica Foods* v *Commission*, T-47/00, EU:T:2002:7, paragraph 55; and of 9 June 2016, *Growth Energy and Renewable Fuels Association* v *Council*, T-276/13, EU:T:2016:340, paragraph 81).

51 By contrast, individual concern may be regarded as established where a provision of EU law requires, in order for an EU measure to be adopted, that a procedure be followed under which that person or entity may assert procedural rights, including the right to be heard, the particular legal position in which it finds itself being such as to distinguish it individually as provided for in the fourth paragraph of Article 263 TFEU (see, to that effect, judgments of 4 October 1983, *Fediol* v *Commission*, 191/82, EU:C:1983:259, paragraph 31; of 17 January 2002, *Rica Foods* v *Commission*, T-47/00, EU:T:2002:7, paragraph 55; and of 9 June 2016, *Growth Energy and Renewable Fuels Association* v *Council*, T-276/13, EU:T:2016:340, paragraph 81).

52 In that context, it is necessary to examine whether, in the course of the procedure leading to the adoption of the contested regulation, the legislative body which enacted that regulation granted the CCCME procedural rights in respect of which it could seek protection by acting on its own behalf before the Courts of the European Union.

53 In the context of that examination, it should be noted that, following its request, the CCCME received authorisation from the Commission to gain access, pursuant to Article 6(7) of the basic regulation, to the investigation file, that authorisation having been granted on 16 December 2016.

54 Subsequently, the Commission addressed to the CCCME, in accordance with Article 20(1) of the basic regulation, the provisional conclusions which it had reached. According to the file, that communication took place on 17 August 2017. The CCCME submitted written comments on the provisional conclusions on 15 September 2017.

55 At a later stage, on 8 November 2017, the CCCME received, in accordance with Article 20(2) of the basic regulation, the final conclusions, in which the Commission intended to propose that definitive measures be imposed.

56 As regards those final conclusions, the CCCME submitted written comments on 20 November 2017, to which the Commission replied, as stated in recital 9 of the contested regulation.

57 Finally, the CCCME was granted, by the Commission, the right to take part in two hearings arranged in the context of the investigation, as provided for in Article 6(5) of the basic regulation, for persons or entities who, within the time limit laid down in the notice published in the *Official Journal of the European Union*, request in writing to be heard, demonstrating that they are indeed interested parties, that they are likely to be affected by the outcome of the proceedings and that there are particular reasons for hearing them.

58 It follows from those procedural documents that, throughout the administrative procedure, the CCCME was regarded by the Commission as an interested party to which the procedural rights provided for in the basic regulation ought to be granted.

59 The recognition of that status and of the resulting rights for the CCCME were noted in the contested regulation, in which the Commission stated, in recital 25, that, pursuant to the provisions in the basic regulation, that entity had to be regarded as an interested party representing, in particular, the Chinese castings industry.

60 On that basis, it must be held that, having thus been distinguished individually by the Commission during the administrative procedure, the CCCME satisfies the requirements laid down by the case-law for being regarded as individually concerned by the contested regulation as regards the action brought in its own name for the purpose of safeguarding its procedural rights.

61 That conclusion is disputed by the Commission and the interveners, which – without calling into question the fact that procedural rights and a particular status were granted to the CCCME during the investigation pursuant to the basic regulation – claim that that situation is, in fact, the product of an error. In preparing its defence before the Court, the Commission realised that, since the CCCME was an emanation of the People's Republic of China, the CCCME could not, in fact, be granted the status and procedural rights provided for in the basic regulation. Even though it occurs at the stage of the judicial proceedings, recognition of such an error ought, according to the Commission, to render the action brought by the CCCME in its own name inadmissible.

62 In response to that argument, first, it must be recalled that, when hearing an objection concerning admissibility, the Courts of the European Union must examine whether the requirements of the Treaty have been satisfied and that that examination has led to the conclusion that that was indeed so in the instant case.

63 Second, it must be stated that the Commission's line of argument amounts to suggesting that the legal position which it granted to the CCCME, pursuant to the basic regulation, must be disregarded for the purposes of the present action, on the ground that that position was the result of an error attributable to it.

64 Such an error, even if it were established, could not erase what was recognised and granted during the administrative procedure, particularly as the author of a contested measure is able to correct the errors which it makes in the course of that measure's adoption. Accordingly, that author may, when it becomes aware of the error, decide that procedural rights and recognised status are to be withdrawn from the party concerned, without prejudice to that party's ability then to request the EU Courts to review the validity of the decision thus taken (see, to that effect, judgment of 27 January 2000, *BEUC* v *Commission*, T-256/97, EU:T:2000:21, paragraphs 27 and 84). Where the error is identified after the

administrative procedure has closed, as is so in the present case according to the arguments put forward by the Commission, the author of the contested measure retains the possibility of withdrawing that measure and resuming the procedure, correcting the error at the stage at which it was committed (see, to that effect, judgment of 16 March 2016, *Frucona Košice* v *Commission*, T-103/14, EU:T:2016:152, paragraph 61 and the case-law cited), without prejudice to the possibility for the party concerned to contest once again the decision taken in its regard.

65 It follows that the argument put forward by the Commission with the support of the interveners must be rejected.

66 In so far as is necessary, it should be pointed out that the Commission further maintains that, even if the CCCME were able to claim procedural rights derived from the basic regulation, that entity ought to be recognised as a representative association within the meaning of that regulation, and not as an interested party within the meaning of the same regulation. The status of representative association gives access to procedural rights which are more limited than those available to interested parties, with the consequence that the action ought to be declared inadmissible in respect of certain procedural rights relied on by the CCCME which are granted by the basic regulation only to interested parties.

67 By way of response to that argument, suffice it to point out that that representation of the CCCME by the Commission does not correspond to what is set out in the contested regulation, the statement of reasons of which is what is to be taken into account in the present action.

68 In the contested regulation, the Commission acknowledged the CCCME's status as an interested party, without ambiguity, as was indicated in paragraph 59 above. The Commission accordingly stated as follows in recital 25:

'… the Commission considered that the open file of the case made available to parties, including to the CCCME, contained all the information relevant for the presentation of their cases and used in the investigation. If the information was deemed confidential, the open file contained meaningful summaries thereof. All the interested parties, including the CCCME, had access to the open file and could consult it. With regard to the CCCME, the Commission observed that although it represents, among others, the Chinese castings industry, it was not authorised by any individual sampled exporting producer to have access to its confidential information. Thus, the confidential disclosure sent to the individual sampled Chinese exporting producers could not be provided to the CCCME.'

69 Moreover, as is apparent from paragraphs 53 to 58 above, the Commission granted to the CCCME, during the procedure, both procedural rights which are expressly provided for in relation to representative associations, such as those set out in Article 20(1) and (2) of the basic regulation, enabling information to be obtained on the essential facts and considerations on the basis of which provisional measures have been imposed or on the basis of which it is intended to recommend the imposition of definitive measures, and other procedural rights granted without distinction to all interested parties under that regulation, such as the right to be heard pursuant to Article 6(5) of the basic regulation.

70 In the light of the foregoing considerations, it must be held that the CCCME satisfies the requirements to be regarded as being individually concerned within the meaning of the fourth paragraph of Article 263 TFEU, without prejudice to the possibility that the Commission may deny, where appropriate, in the future, the CCCME the status and guarantees at issue and the possibility, for the entity concerned, to challenge that decision before the EU Courts in such a situation.

71 Since individual concern has therefore been established, it is necessary to examine whether the CCCME may be regarded as also being directly concerned, which requires that the following conditions be satisfied cumulatively.

72 First, the contested measure must directly affect the applicant's legal situation (judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 66).

73 Second, the contested measure must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 66).

74 Those conditions are satisfied in the present case, since the CCCME can ensure that its procedural rights are respected only if it is able to challenge the contested regulation.

75 Since the CCCME is, accordingly, directly affected as well as individually affected, it must be concluded that it has standing to bring proceedings in its own name in order to ensure that its procedural rights are safeguarded (see, to that effect, judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association*, C-465/16 P, EU:C:2019:155, paragraphs 101 to 109).

76 To complete the analysis, it is stated that, in the defence, the Commission maintained that the CCCME was not a legal person within the meaning of the fourth paragraph of Article 263 TFEU. At the hearing, however, it withdrew that plea of inadmissibility after examining the documents provided by the applicants concerning the legal personality of the CCCME under Chinese law, a fact of which note was taken in the minutes of the hearing.

– *Interest in bringing proceedings*

77 As regards interest in bringing proceedings, it is stated in the case-law that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure (judgment of 10 December 2010, *Ryanair* v *Commission*, T-494/08 to T-500/08 and T-509/08, EU:T:2010:511, paragraph 41; orders of 9 November 2011, *ClientEarth and Others* v *Commission*, T-120/10, not published, EU:T:2011:646, paragraph 46, and of 30 April 2015, *EEB* v *Commission*, T-250/14, not published, EU:T:2015:274, paragraph 14).

78 In that regard, it must be observed that the annulment of the contested regulation would require the Commission to reopen the anti-dumping procedure and, if it took the view that the conditions laid down in the basic regulation for that purpose had been met, to allow the CCCME to intervene in the proceeding by obtaining its comments in accordance with the basic regulation.

79 Since it is capable of having such effects, an annulment could have legal consequences for the CCCME acting in its own name.

80 In those circumstances, it must be held that the CCCME has the interest in bringing proceedings which is necessary to bring the present action in its own name.

Admissibility of the action in so far as it is brought by the CCCME on behalf of its members and admissibility of the arguments raised in support of that action

81 In the third plea of inadmissibility, also raised in the alternative, the Commission, by means of four arguments, disputes the CCCME's ability to bring an action on behalf of its members.

– *Lack of representativeness*

82 The Commission, supported by the interveners, contends that the right of associations to bring legal proceedings when they act on behalf of their members is permitted, in the case-law, only for associations which are representative. In Member States' legal tradition, that term refers to the character of a body governed by private law which is capable of representing the collective interests of its members as democratically defined by those members within it. That representativeness, it is argued, is not present in the case of the CCCME, which ought to be regarded as an emanation of the People's Republic of China and cannot therefore rely on the case-law at issue.

83 In that regard, it must be stated that, according to the case-law, an association is entitled to bring an action for annulment in particular where it represents the interests of undertakings which themselves are entitled to bring proceedings (order of 23 November 1999, *Unión de Pequeños Agricultores* v *Council*, T-173/98, EU:T:1999:296, paragraph 47, and judgment of 15 September 2016, *Molinos Río de la Plata and Others* v *Council*, T-112/14 to T-116/14 and T-119/14, not published, EU:T:2016:509, paragraph 33).

84 An association's ability to act on behalf of its members is based on the significant advantage afforded by that method of proceeding, by obviating the institution of numerous separate actions against the same acts by the members of the association representing their interests (see, to that effect, judgments of 6 July 1995, *AITEC and Others* v *Commission*, T-447/93 to T-449/93, EU:T:1995:130, paragraph 60; of 15 September 2016, *Molinos Río de la Plata and Others* v *Council*, T-112/14 to T-116/14 and T-119/14, not published, EU:T:2016:509, paragraph 35; and of 30 April 2019, *UPF* v *Commission*, T-747/17, EU:T:2019:271, paragraph 25).

85 It follows from the case-law cited in paragraph 84 of the present judgment that, in order for that advantage to materialise, it is necessary and sufficient, first, that the association in question acts on behalf of its members (who are themselves entitled to bring proceedings, something which is to be examined subsequently) and, second, that the powers conferred on it in its articles of association permit actions to be initiated.

86 It is necessary to examine whether those two requirements can be regarded as being satisfied so far as concerns the CCCME.

87 As regards the first requirement, it must be observed that, in order to establish their status as members, the CCCME provided to the Court, in respect of each of the undertakings on whose behalf the action is brought, a document attesting to their membership.

88 As regards the second requirement, it may be noted that the articles of association produced by the CCCME set out the corporate purpose to be pursued by that association in terms which enable legal proceedings intended to defend the interests of its members against trade defence measures to be covered.

89 That finding is based on Article 3 of the articles of association of the CCCME, which defines the CCCME's corporate purpose as being 'to provide its members with coordination, consultation and service; maintain a level playing field against trade protectionism; safeguard the legitimate rights and interests of its members; and promote the healthy development of the mechanical and electronic industries'.

90 That finding is also based on Article 6(4), (5) and (9) of the articles of association, which grants the CCCME the ability to 'organi[s]e enterprises to deal with trade remedies cases and intellectual property litigation cases with respect to overseas exports of mechanical and electronical products from China, provide legal advice and legal support for members, and apply to the government for investigation of unfair competition practices of foreign companies[,] to organise the formulation of

industry service regulations, promote industry self-regulation and maintain normal import and export business order as well as the common interest of members … and to carry out other work based on the requirements of the members'.

91 In so far as is necessary, it may be noted that the corporate purpose of the CCCME is described in its articles of association in terms similar to those used in the articles of association of the applicant associations in the case which gave rise to the judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association* (C-465/16 P, EU:C:2019:155, paragraphs 60 to 63), in which the Court of Justice held that the condition relating to standing to bring proceedings for those associations was satisfied.

92 Accordingly, it must be held that, in the present case, the two conditions laid down in the case-law for an association to bring an action on behalf of its members are satisfied.

93 That position is, however, disputed in two respects by the Commission and the interveners.

94 In the first place, the interveners state that the certificates produced by the CCCME to establish the membership of the undertakings claiming to belong to its organisation were drawn up shortly before the action was brought, without that membership having been demonstrated during the administrative phase which led to the adoption of the contested regulation.

95 In their view, representation covering the entire procedure, including the administrative stage, ought to be established, in order to be able to rely on the case-law enabling associations to act on behalf of their members, without which the representation would be artificial, being exclusively linked to the bringing of the action.

96 In that regard, suffice it to recall that, according to the case-law, the recognition of a right of action for associations on behalf of their members is based on a procedural reason linked to the sound administration of justice, namely the advantage which stems from bringing together, in one action, a series of actions which would otherwise be brought by the undertakings concerned (see paragraph 84 of the present judgment), and that it is not required that the representation covers the entire procedure, including the administrative stage, in order for the association to be able to bring an action on behalf of its members.

97 In the present case, such an advantage is indeed present, since the action brought by the CCCME on behalf of its members makes it possible to obviate the institution of an action by each of the members on whose behalf it acts. In addition, it is common ground that, on the date on which the action was brought, the undertakings on whose behalf the CCCME brings legal proceedings were indeed members of that association.

98 In the second place, the Commission, supported by the interveners, submits that, beyond the two requirements which have just been examined, a third requirement, linked to the representativeness of the association at issue, for the purposes of the legal tradition common to the Member States, was introduced by the judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association* (C-465/16 P, EU:C:2019:155).

99 In that regard, it must be stated that, in the judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association* (C-465/16 P, EU:C:2019:155, paragraphs 120 to 125), the Court of Justice held that the absence of a right to vote or any other means for undertakings to defend their interests within an association did not preclude an association from bringing an action on behalf of its members.

100 On that basis, the Court of Justice set aside the judgment of 9 June 2016, *Growth Energy and Renewable Fuels Association* v *Council* (T-276/13, EU:T:2016:340), by which, at first instance, the General Court, introducing a requirement adding to the conditions examined above, had held that the right of action of associations had to be subject, where they claimed to act on behalf of their members, to the existence of a right to vote or another means enabling their members to express their views within the organisation.

101 It is therefore necessary to reject the interpretation of the judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association* (C-465/16 P, EU:C:2019:155), put forward by the Commission and the interveners, according to which the right of associations to bring legal proceedings on behalf of their members contains an additional condition which is linked to the representativeness of that association for the purposes of the legal tradition common to the Member States.

102 Moreover, it may be noted that the EU legislature has demonstrated a certain realism by making provision, in anti-dumping legislation, for the situation in which dumped imports originate in a country which does not have a market economy. Thus, Article 2 of the basic regulation lays down different rules for determining normal value according to whether or not the exporting producers concerned are established in a country with a market economy.

103 If a condition of representativeness were necessary with regard to an entity purporting to be an association, account ought to be taken, in order to assess whether that condition is satisfied, first, of the specific features of the third country from which that entity originates and, second, of the fact that, in the case of a non-market economy State, the public authorities intervene to a greater degree in the functioning and activities of undertakings or associations operating within its territory.

104 On the basis of those considerations, the first argument put forward by the Commission and the interveners against the admissibility of the action brought by the CCCME on behalf of its members must be rejected.

– *Nature of the contested regulation*

105 The Commission maintains, also in order to dispute the CCCME's ability to act on behalf of its members, that the nature of the contested regulation precludes the application, in proceedings concerning trade defence measures, of the case-law on the admissibility of actions brought by associations.

106 According to the Commission, the contested regulation involves a bundle of decisions each concerning an individual exporting producer. Since the effects of a possible annulment of that regulation can benefit only the exporting producer which brought an action, it is of fundamental importance, for reasons of legal certainty, to identify the undertakings seeking that annulment via the association which acts on their behalf. Such identification is not possible, on the basis of information in the *Official Journal of the European Union* regarding court proceedings brought before the Court of Justice of the European Union, where an action is brought by an association on behalf of its members.

107 In that regard, it must be noted that the case-law does not make it possible to exclude the right for an association to bring proceedings on behalf of its members against trade defence measures (see, to that effect, judgments of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association*, C-465/16 P, EU:C:2019:155, paragraph 126; of 21 March 2012, *Fiskeri og Havbruksnæringens Landsforening and Others* v *Council*, T-115/06, not published, EU:T:2012:136, paragraph 29; and of 15 September 2016, *Molinos Río de la Plata and Others* v *Council*, T-112/14 to T-116/14 and T-119/14, not published, EU:T:2016:509, paragraph 63).

108 The procedural advantages which the case-law acknowledges in respect of actions of that kind are also a feature of the present case, since the regulations imposing anti-dumping duties can affect a large number of exporting producers identified in those measures or concerned by the investigation which preceded their adoption.

109 It is true that, in accordance with the case-law, a regulation imposing different anti-dumping duties is of direct concern to each operator which is the subject of that regulation only in respect of the regulation's provisions which impose a specific anti-dumping duty on that operator and determine the amount thereof, and not in respect of those provisions which impose anti-dumping duties on other undertakings (judgment of 10 March 1992, *Ricoh* v *Council*, C-174/87, EU:C:1992:108, paragraph 7).

110 Accordingly, an action for annulment of a regulation imposing anti-dumping duties, if successful, results in the annulment of that regulation in so far as it imposes an anti-dumping duty on the applicant and that annulment does not affect the validity of the other aspects of that regulation, in particular the anti-dumping duty applicable to other operators (see, to that effect, judgment of 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraph 27).

111 However, suffice it to observe that the exporting producers on whose behalf the CCCME acts are 19 Chinese exporting producers identified in Annex A.2 to the application as being Hebei Cheng'An Babel Casting Co. Ltd, Shanxi Jiaocheng Xinglong Casting Co. Ltd, Tianjin Jinghai Chaoyue Industrial and Commercial Co. Ltd, Qingdao Jiatailong Industrial Co. Ltd, Qingdao Jinfengtaike Machinery Co. Ltd, Shahe City Fangyuan Casting Co. Ltd, Shandong Heshengda Machinery Technology Co. Ltd, Baoding Shuanghu Casting Co. Ltd, Tang County Kaihua Metal Products Co. Ltd, Weifang Nuolong Machinery Co. Ltd, Laiwu Xinlong Weiye Foundry Co. Ltd, Handan Zhangshui Pump Manufacturing Co. Ltd, Zibo Joy's Metal Co. Ltd, Dingxiang Sitong Forging and Casting Industrial, Jiaocheng County Honglong Machinery Manufacturing Co. Ltd, Laiwu City Haitian Machinery Plant, Lianyungang Ganyu Xingda Casting Foundry, Rockhan Technology Co. Ltd and Botou GuangTai Precision Casting Factory.

112 It follows that, in accordance with the case-law referred to in paragraph 110 of the present judgment, only those members could benefit from an annulment if the Court were to find that the CCCME was successful in the action which it had brought on their behalf.

113 For that reason, the second argument put forward by the Commission to challenge the admissibility of the action brought by the CCCME on behalf of its members must be rejected.

– *Members not included in the sample*

114 The Commission points out that the members of the CCCME were not included in the sample of Chinese exporting producers which it selected during the investigation and submits that the case-law permits solely operators which were so selected to bring proceedings.

115 In that regard, it must be recalled that, as stated in paragraph 46 of the present judgment, under the fourth paragraph of Article 263 TFEU a person has standing to bring proceedings against an act addressed to that person, against an act which is of direct and individual concern to him or her or against a regulatory act which is of direct concern to him or her and which does not entail implementing measures.

116 The first and third situations envisaged by that provision do not concern the members of the CCCME, since, first, the contested regulation is not addressed to those members (see, to that effect, judgment of 15 September 2016 *Molinos Río de la Plata and Others* v *Council*, T-112/14 to T-116/14 and T-119/14, not published, EU:T:2016:509, paragraphs 39), and, second, the contested regulation involves implementing measures, the system established by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

(OJ 2013 L 269, p. 1) and in the context of which the contested regulation was adopted, provides in fact that the duties fixed by that regulation are collected on the basis of the measures adopted by the national authorities (see, to that effect, order of 21 January 2014, *Bricmate* v *Council*, T-596/11, not published, EU:T:2014:53, paragraph 72 and the case-law cited).

117 Since the present case does not involve the first and third situations provided for in the fourth paragraph of Article 263 TFEU, it is necessary to establish whether the conditions laid down for the application of the second situation are fulfilled as regards the members of the CCCME, which entails examining whether they are directly and individually concerned.

118 In the present case, the condition relating to direct concern is fulfilled since (i) the contested regulation directly affects the legal situation of the members of the CCCME and (ii) the customs authorities of the Member States are required to levy the duties imposed by the contested regulation without having any margin of discretion (see, to that effect, judgments of 29 March 1979, *ISO* v *Council*, 118/77, EU:C:1979:92, paragraph 26, and of 15 September 2016, *Molinos Río de la Plata and Others* v *Council*, T-112/14 to T-116/14 and T-119/14, not published, EU:T:2016:509, paragraph 62).

119 As regards individual concern, it must be recalled that, according to the case-law, regulations imposing anti-dumping duties are, by their nature and scope, of a legislative nature in that they apply generally to the economic operators concerned (judgments of 16 April 2015, *TMK Europe*, C-143/14, EU:C:2015:236, paragraph 19, and of 28 February 2019, *Council* v *Marquis Energy*, C-466/16 P, EU:C:2019:156, paragraph 47). That legislative nature does not, however, preclude those regulations from being of individual concern to those producers and exporters of the product concerned who are alleged to have carried out dumping on the basis of data relating to their commercial activities. That is the case, in general, of producers and exporters which are able to establish that they were identified in the acts of the Commission or the Council or that they were concerned by the preliminary investigations (judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association*, C-465/16 P, EU:C:2019:155, paragraph 79; see also judgment of 16 January 2014, *BP Products North America* v *Council*, T-385/11, EU:T:2014:7, paragraph 74 and the case-law cited).

120 In that regard, it must be observed that the members of the CCCME are producers and exporters of the product concerned which, first, provided the Commission with information in response to the questionnaire contained in Annex I to the notice of initiation of the investigation and, second, are identified in the contested regulation, more particularly in the annex to which Article 1(2) of the operative part of that regulation refers. In their capacity as other cooperating companies identified in that annex, the members of the CCCME are subject to an anti-dumping duty of a specific amount, which is different from the amount applicable to all the other unidentified companies to which the contested regulation applies. Therefore, and as the Commission itself submits, as stated in paragraph 106 of the present judgment, the contested regulation comprises a bundle of decisions each concerning a particular exporting producer.

121 In those circumstances, it must be held, in the light of the criteria resulting from the case-law as identified in paragraph 119 of the present judgment, that, in addition to being directly concerned by the contested regulation, the members of the CCCME are individually concerned by that regulation.

122 Finally, the members of the CCCME have an interest in bringing proceedings since, by virtue of being subject to the anti-dumping duties imposed by the contested regulation, they have an interest in the annulment of that regulation.

123 Accordingly, it must be held that the members of the CCCME and, consequently, that association itself, fulfil the conditions for their action to be admissible and the third argument put forward by the Commission against that conclusion must be rejected.

– Limits on the arguments which may relied upon

124 The Commission maintains that the CCCME cannot rely, on behalf of its members, on an infringement of the provisions which, in the basic regulation, relate to matters other than those concerning the determination, by the Commission, of the injury caused to the EU industry.

125 The Commission states that the mandate conferred on the CCCME by the Chinese exporting producers during the anti-dumping investigation extended solely to defending those undertakings against its claims regarding injury. It follows that the members of the CCCME granted that entity the right to represent them during the investigation and, therefore, in the present action, solely in order to defend them against the Commission's assertions concerning injury.

126 In that regard, it should be recalled that, as stated in paragraphs 88 to 90 of the present judgment, the tasks conferred on the CCCME by the articles of association governing its creation and organisation include defending the interests of its members.

127 By its general nature, such a task covers initiating legal proceedings designed to defend the interests of its members against trade defence measures and to put forward, in that context, any plea capable of calling into question the lawfulness of those measures, even if the mandate received from the members was limited, during the investigation, to injury.

128 It must, furthermore, be recalled that, according to the case-law, an association whose tasks under its statutes include defending the interests of its members, as is the case in respect of the CCCME, need not have a mandate or specific authority established by the members whose interests it defends in order to be recognised as having standing to bring proceedings before the EU Courts (see, to that effect, judgment of 15 January 2013, *Aiscat* v *Commission*, T-182/10, EU:T:2013:9, paragraph 53), since, by its very nature, initiating an action is inherent in the defence of such interests.

129 It is thus necessary to reject the fourth argument put forward by the Commission, according to which it is impossible for the CCCME to plead, on behalf of its members, an infringement of provisions which do not concern the injury caused to the EU industry.

Admissibility of the action in so far as it is brought by the other legal persons whose names appear in Annex I

130 In the alternative, the Commission also disputes the admissibility of the action in so far as it is brought by the other legal persons whose names appear in Annex I.

131 In the first place, the Commission maintains that, for the reason already set out in paragraph 114 of the present judgment, seven of the other legal persons whose names appear in Annex I, who are non-sampled Chinese exporting producers, do not have the standing required to bring proceedings.

132 In that regard, it must be held that, like the members of the CCCME, those undertakings, which are exporting producers of the product concerned, first, provided the Commission with information in response to the questionnaire contained in Annex I to the notice of initiation of the investigation and, second, are identified in the contested regulation as other cooperating companies listed in the annex to that regulation. On that basis, their names appear in that annex and they are subject to an anti-dumping duty of a specific amount, with the result that it must be concluded that the contested regulation contains a bundle of decisions each concerning a particular exporting producer. Accordingly, for the same reasons as those set out in paragraphs 118 to 122 of the present judgment, the conclusion must be drawn that those seven legal persons have an interest and standing to bring proceedings.

133 In the second place, the Commission maintains that the mandates provided by the other legal persons whose names appear in Annex I contain irregularities which preclude the action from being admissible, on the ground that they do not identify clearly the position of the persons who signed them and do not establish that those persons had the power to sign such documents.

134 More particularly, as regards seven of the other legal persons whose names appear in Annex I, the position of the person who signed the authority to act is a 'general manager', 'managing director', 'financial controller' or 'director', without any further explanation or justification as to whether that person was able to sign such a mandate under Chinese law.

135 As regards the other two legal persons whose names are listed in Annex I, it is submitted that they provided a mandate which did not state the signatory's position, without, furthermore, attaching any documents establishing that the signatory had the power to sign such a document.

136 In that regard, it must be stated that the version of the Rules of Procedure which stems from the regulation of 23 April 2015 (OJ 2015 L 105, p. 1), does not require proof that the authority granted to the lawyer was conferred on him by someone authorised for the purpose, as was the case for the Rules of Procedure of 2 May 1991, which were previously in force (see, to that effect, order of 7 March 2016, *Sopra Steria Group* v *Parliament*, T-182/15, not published, EU:T:2016:165, paragraphs 26 to 29; judgments of 28 September 2016, *European Food* v *EUIPO – Société des produits Nestlé (FITNESS)*, T-476/15, EU:T:2016:568, paragraph 19, and of 17 February 2017, *Batmore Capital* v *EUIPO – Univers Poche (POCKETBOOK)*, T-596/15, not published, EU:T:2017:103, paragraphs 19 and 20).

137 It follows that the plea of inadmissibility raised by the Commission must be rejected.

138 Consequently, it must be held that the other legal persons whose names are listed in Annex I are entitled to bring an action for annulment against the contested regulation.

Conclusion on admissibility

139 In the light of all of the foregoing considerations, it must be held that the action is admissible, first, in so far as it is brought by the CCCME in its own name in order to safeguard its procedural rights, second, in so far as it is brought by the CCCME on behalf of the 19 members which it identified and, third, in so far as it is brought by the other legal persons whose names appear in Annex I.

Substance

140 The applicants put forward six pleas in law in support of their action.

141 The first plea in law alleges infringement of Article 3(2), (3), and (5) to (7) of the basic regulation and failure to have regard to the principle of sound administration in so far as the Commission did not base its injury and causation findings on positive evidence or on an objective examination.

142 The second plea in law alleges that the Commission infringed Article 3(6) and (7) of the basic regulation in its causation analysis.

143 The third plea in law alleges that the Commission infringed the rights of the defence and Article 6(7), Article 19(1) to (3) and Article 20(2) and (4) of the basic regulation by refusing to give the applicants access to information relevant to the dumping and injury determinations.

144 The fourth plea in law alleges infringement of Article 2(10), Article 3(2)(a), Article 3(3) and Article 9(4) of the basic regulation and failure to have regard to the principle of sound administration in the determination of the dumping margin, price undercutting and injury elimination level.

145 The fifth plea in law alleges that the Commission infringed Article 2(10)(b) and Article 2(7)(a) of the basic regulation by making the adjustment for value added tax (VAT) in the context of the comparison between the export price and the normal value.

146 The sixth plea in law alleges infringement of Article 2(7)(a) of the basic regulation in the determination of the selling, general and administrative costs ('SG&A costs') and profit used for the constructed normal value.

Scope of judicial review

147 As a preliminary point, the applicants submit that there must be a full judicial review of the contested regulation, which should not be limited to the 'manifest error of assessment' test which in general forms the basis of judicial review of complex economic evaluations.

148 At the hearing, the applicants stated that, in making that preliminary observation, they did not intend to depart from the existing case-law, but merely wished to emphasise that, in their view, the EU Courts had to verify the material accuracy, reliability and consistency of the evidence relied on by the Commission even in areas in which the Commission has a broad discretion.

149 In that regard, it should be recalled that, in accordance with the case-law, in view of the broad discretion enjoyed by the EU institutions in the field of trade defence measures, the EU Courts must confine themselves to reviewing, in proceedings concerning trade defence measures, which are characterised by the complexity of the economic and political situations which must be examined, whether the rules of law have been complied with, whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, whether there are any manifest errors of assessment of those facts and whether there has been a misuse of powers (see, to that effect, judgment of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 47 and the case-law cited).

150 In that context, it is for the Court, as the applicants request, first, to establish whether the evidence relied upon is factually accurate, reliable and consistent, and second, to ascertain whether that evidence contains all the relevant information which had to be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel*, C-186/14 P and C-193/14 P, EU:C:2016:209, paragraph 36).

The first plea in law: injury determination and causation

151 The first plea is divided into six parts.

– *The first part of the first plea in law: the calculation of import volumes*

152 In the first part, the applicants maintain that the Commission used unreliable data supplied by the complainants to calculate the volume of dumped imports.

153 That line of argument is disputed by the Commission.

154 As a preliminary point, it should be recalled that in accordance with Article 1(1) of the basic regulation, an anti-dumping duty may be imposed on any dumped product whose release for free circulation in the European Union causes injury.

155 Article 3(2)(a) of the basic regulation provides that a determination of injury is to be based on positive evidence and is to involve an objective examination, in particular, of the volume of the dumped imports.

156 Data from the Statistical Office of the European Union (Eurostat) are to be used to calculate the volume of dumped imports (see, to that effect, judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 30). Those data are classified according to codes derived from the combined nomenclature (CN). In the present case, the product covered by the contested regulation falls under two codes: CN code ex 7325 10 00 (non-malleable cast iron) and CN code ex 7325 99 10 (malleable cast iron), the term 'ex' before the code indicating, in both cases, that the product under investigation comes under only part of the code under consideration.

157 In order to establish the volume of dumped imports, the transactions which were registered under those codes during the period under consideration, namely, between 1 January 2013 and 30 September 2016, must be added together.

158 In the present case, adjustments had to be made to resolve three difficulties arising in the calculation of the volume of dumped imports.

159 The first difficulty concerned non-malleable cast iron products (CN ex 7325 10 00). Prior to 2014, those products formed part of a larger group (CN ex 7325 10), which was broken down into sub-codes, three of which included the product concerned, the third of those sub-codes with CN code ex 7325 10 99, however, was not restricted to that product. From 2014 onwards, that breakdown no longer existed. In order to establish the volume of dumped imports, the Commission had only data corresponding to CN code ex 7325 10 00 which covered the product concerned, together with other products. To resolve the difficulty, it was necessary, within those more general figures, to isolate the figures which corresponded to the actual imports of the product concerned during the period under consideration. In order to achieve that, the Commission relied on a suggestion made by the complainants involving two methodological decisions. First of all, to determine the proportion of imports of the product concerned covered by the general category, the complainants suggested that the Commission rely on the ratio of those imports in the three sub-codes which, prior to 2014, provided data concerning that product. Next, as regards the third of those sub-codes, which did not cover solely the product concerned, but rather was broader, the suggestion was made to estimate the proportion attributable to the product concerned at 30%.

160 On the basis of that reasoning, it was observed that, before 2014, as regards Chinese imports, 60% of the volume recorded as imports from China under CN code ex 7325 10 was derived from the three sub-codes corresponding to the product concerned. As regards Indian imports, that ratio was 73%, whereas it was 50% for the other third countries. Those percentages were then applied to imports recorded during the period between 1 January 2014 and the end of the investigation period under CN code ex 7325 10 00.

161 The second difficulty related to malleable cast iron (CN ex 7325 99 10). The code which corresponded to that product remained unchanged throughout the period under consideration. However, that code also covered products other than the product concerned. In order to resolve that difficulty, the Commission used a method suggested by the complainants, as it had done for non-malleable cast iron.

162 First of all, as the complainants had done, the Commission observed that the importers of the product concerned in malleable cast iron originating in the People's Republic of China had started to use CN code ex 7325 99 10 in 2005, when previous anti-dumping measures had been imposed by Council Regulation (EC) No 1212/2005 of 25 July 2005 imposing a definitive anti-dumping duty on imports of certain castings originating in the People's Republic of China (OJ 2005 L 199, p. 1). In order to calculate the imports concerned by that code, it selected, on the basis of that observation, the previous year, namely 2004, as the reference year. It had data for that reference year which set out, for the People's Republic of China, imports corresponding to CN code ex 7325 99 10 but not relating to the product concerned. It therefore calculated the quantity of the product concerned by the imports from the People's Republic of China under that code by subtracting the transactions which had been carried out in 2004 from the volume of imports in the period under consideration. Following that reasoning, the Commission accordingly took the view that, for the People's Republic of China, a proportion of 100% of the transactions relating to the product concerned came under CN code ex 7325 99 10, from which 14 645 tonnes was to be subtracted.

163 A similar calculation was then made for imports from the Republic of India. The complainants observed that, for the product concerned, imports under CN code ex 7325 99 10 from that country had commenced in 2010. According to the complainants, that could be explained by the withdrawal of the minimum price undertaking from which the CCCME and certain Chinese companies benefited under the previous anti-dumping measures imposed by Regulation No 1212/2005. Following that withdrawal, many operators sought to obtain supplies from Indian producers. That led to the growth of imports from that country for the product concerned. Having made that finding, the Commission, thereby following the suggestion made by the complainants, calculated the quantity of the product concerned under CN code ex 7325 99 10 for imports from the Republic of India by subtracting the 2009 import volumes from the import volumes during the period under consideration. Once that reasoning had been applied, it accordingly took the view that a proportion of 100% of the transactions relating to the product concerned came under CN code ex 7325 99 10, from which 6 074 tonnes had to be subtracted.

164 Finally, the investigations carried out by the complainants showed that it was unlikely that imports from other third countries coming under that code contained the product concerned. The Commission, thereby following the complainants, accordingly took the view that, for the other third countries, 0% of the transactions relating to the product concerned came under CN code ex 7325 99 10.

165 The third difficulty concerned channel gratings. Those products form part of the Eurostat data corresponding to codes used for the product concerned. However, as stated in recital 41 of the contested regulation, they were excluded from the investigation. To establish the volume of dumped imports, it was therefore necessary to deduct the figures which could be attributed to channel gratings from the available figures.

166 To resolve that difficulty, the Commission, acting on its own initiative, relied on an estimate of imports of channel gratings. In order to make that estimate, it set out the average sales of channel gratings made by the sampled Chinese exporting producers during the investigation period. Those sales represented 10% of the total imports used for that period. That percentage was applied to the figures obtained for imports recorded during the period under consideration.

167 The context of the first part of the first plea having thus been explained, it must be noted that, in that part of the plea, the applicants raise three complaints concerning the calculation made by the Commission to establish the volume of dumped imports.

168 By their first complaint, the applicants complain that the Commission accepted the data submitted by the complainants without verifying them, which is contrary to the impartiality which should govern its attitude in that type of procedure.

169 In that regard, it must be stated that, in the present case, in order to calculate the volume of dumped imports, the Commission did not merely use the data provided by the complainants, but rather used a method which had been suggested by the complainants, while ensuring, on the basis of that method which it had in the meantime endorsed, that it would itself perform the calculation leading to the figures which it finally used.

170 In at least two documents, the Commission explained the reasons which led it to use the method suggested by the complainants. Accordingly, in recital 122 of the provisional regulation, it stated that 'in the complaint the complainants [had] explained their method to arrive at the import data limited to the product concerned using Eurostat data' and that, 'in the absence of a more reliable method and data', it had 'based the determination of the import volume of the product concerned from the [People's Republic of China] on this method using Eurostat data excluding channel gratings[, since the CCCME had] not provided any alternative data'. Furthermore, in recitals 110 and 111 of the contested regulation, the Commission stated, in particular, that 'it [had] noted that the method used by the complainants to arrive at the import data related to the product concerned during the period under consideration was based on Eurostat data', which is then briefly described, and stated that, 'as [it] [had] found no other alternative source of information that would more accurately reflect the import data for the product concerned, it considered the method based on Eurostat data as the most appropriate one'.

171 The Commission therefore analysed the method in question before adopting it, explaining how, in its view, it considered it appropriate. Thus, in recital 113 of the contested regulation, the Commission rejected the request of the ad hoc association of independent importers, Free Castings Imports (FCI), and of the CCCME to exclude CN code 7325 99 10 or to take into account a percentage of that code in calculating the import volumes of the product concerned, stating that 'an analysis of the imports under this CN code since the imposition of provisional measures until the beginning of October 2017 [had] shown significant imports of 6 796 tonnes under the TARIC code 7325991051 from [the People's Republic of China] which exclusively refer[red] to the product concerned' and that 'therefore, it [was] clear that the product concerned [was] imported also under CN code 7325 99 10'. On that occasion, the Commission stated that it 'did not have any evidence that imports of other products under this CN code [had] followed the same trend as the product concerned since 2005' and that, 'consequently, using a percentage over the period under consideration would be unreliable'.

172 Furthermore, it must be stated that the calculation method suggested by the complainants was not accepted without the Commission verifying it. Indeed, the Commission visited the premises of the complainants' representatives on 30 May 2017. Following that verification, it came to the conclusion, first, that the proposed allocation between the various CN codes was the most reliable estimate for determining the volume of dumped imports and, second, that that estimate was an objective approximation of such data in the absence of more detailed data from another source.

173 In those circumstances, the applicants' first complaint that the Commission 'automatic[ally]' accepted the method suggested by the complainants must be rejected.

174 The applicants put forward a second complaint, that the data used by the Commission are based on unwarranted and unreasonable assumptions, which are not based on any positive evidence, as the Commission itself admitted.

175 In that regard, it must be observed that, contrary to the applicants' statements, the Commission did not admit that the method for calculating the import volumes which it had used was incorrect, unreasonable or unreliable or that the import prices resulting from that method were incorrect, unreasonable or unreliable.

176 It is true that the Commission stated, in recital 126 of the provisional regulation, to which the applicants refer, that 'as this data [was] based on import statistics and the detailed product type mix [was] not known, the evolution of prices [was] not completely reliable'.

177 However, that admission means only that the method used did not, as the Commission states, yield as detailed a result as it would have wished, and it does not imply that, in the Commission's view, the data obtained by that method were completely unreliable and could not be used at all in drawing up the contested regulation.

178 It is, therefore, for the applicants, if they seek to dispute the reliability of data used by the Commission concerning the volume of dumped imports, to substantiate their assertions with evidence capable of casting specific doubt on the credibility of the method or data used by that institution (see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting* v *Commission*, T-650/17, EU:T:2019:644, paragraph 357 (not published)).

179 In that context, if an applicant wishes its claim to be successful, it cannot merely provide alternative figures, such as figures obtained on the basis of data from the customs authorities from which the contested imports derived, but rather must provide evidence capable of calling into question the data provided by the Commission (see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting* v *Commission*, T-650/17, EU:T:2019:644, paragraph 357 (not published)).

180 Furthermore, it must be recalled that the Commission enjoys a broad discretion in analysing data, including data provided by Eurostat (judgment of 23 September 2015, *Schroeder* v *Council and Commission*, T-205/14, EU:T:2015:673, paragraph 41).

181 In the present case, the applicants dispute five assumptions relied on by the Commission for the purpose of calculating the import volumes on the basis of Eurostat data.

182 In that regard, it should be noted that, on each of those points of contention, the applicants obtained explanations during the investigation as to the method used to arrive at the estimates forming the basis of the adjustments made by the Commission to the Eurostat import data.

183 Thus, in the first place, the applicants dispute that the import volumes of the product concerned out of the total import volume declared under the former CN sub-code ex 7325 10 99 (non-malleable cast iron) was stable at 30% from 2009 to 2013, and then remained unchanged from 2013.

184 In that respect, it was explained that approximately 30% of total imports declared under the former CN code ex 7325 10 99 related to the product concerned. According to the Commission, that estimate could be regarded as conservative when the 2005 anti-dumping measures were in force. During that time, a 10-digit integrated tariff code of the European Union (TARIC) was defined for that product, which had enabled the Commission and the customs authorities to know the precise figures.

185 That is how it was explained that the 30% figure used by the Commission corresponded to what had been observed after the adoption of Regulation No 1212/2005, when anti-dumping duties on imports of cast iron originating in the People's Republic of China were applied for the first time. Subsequently, that percentage was used by the Commission in the present proceedings in the absence of a more reliable estimate.

186 In the second place, the applicants dispute the application of the 30% percentage, which results from an estimate of the data specific to imports from the People's Republic of China to all the countries from which the imports came which were taken into account in the proceeding which gave rise to the adoption of the contested regulation.

187 In that respect, it was explained that the 30% estimate had been applied to the other third countries because there were no specific data for those countries, the only information which could have been obtained being that collected as a result of the imposition, by Regulation No 1212/2005, of anti-dumping measures relating to imports solely from the People's Republic of China.

188 In the third place, the applicants dispute the assumption that the import volumes of the product concerned out of the total volume of imports registered under the former CN code ex 7325 10 remained unchanged from 2013.

189 In that respect, the Commission explained that, in order to calculate the volume of imports covering the product concerned registered from 2014 under CN General Code ex 7325 10, it had used as a basis the ratio represented by those imports in the three sub-codes which, prior to 2014, provided more specific data concerning that product, by considering separately the data concerning the People's Republic of China, the Republic of India and the other third countries (see paragraph 159 of the present judgment).

190 In the fourth place, the applicants dispute the assumption that the absolute volume of imports from the People's Republic of China, made under CN code ex 7325 99 10 (malleable cast iron) and not relating to the product concerned, had remained unchanged from 2004.

191 In that respect, the Commission explained the methodology used to calculate the import volumes from the People's Republic of China under CN code ex 7325 99 10, consisting of identifying one year during which imports of the product under investigation had started under that code in the third country concerned and comparing the number of imports registered under that code the year preceding that year with the difference corresponding to the imports registered for the period under consideration, in order to establish the volume of imports of the product concerned registered under CN code ex 7325 99 10 during the period under consideration (see paragraphs 162 to 164 of the present judgment).

192 Finally, in the fifth place, the applicants dispute the assumption that the percentage of Chinese imports of channel gratings out of total Chinese imports remained unchanged from 2013 and would be identical to the percentage of imports of channel gratings by the sampled Chinese exporting producers, out of their total imports. In that context, the applicants also dispute the assumption that third countries do not export channel gratings, since, unless they are mistaken, third countries appear not to have been excluded. If an exclusion was made, the assumption, which according to the applicants would also have been unwarranted, was that the percentage of imports of channel gratings from third countries out of their total imports was stable from 2013 and was identical to the percentage of imports of channel gratings of the sampled Chinese exporting producers during the investigation period.

193 On that last point of contention, the Commission explained that, since it had no information on the import volumes of channel gratings which were to be excluded in respect of the product concerned, it relied on the percentage of channel gratings imported by certain sampled producers during the investigation. In its reply to the Court's questions, the Commission stated that it had relied, in that context, on the data from the sample of Chinese exporting producers and on the data from the sample of Indian exporting producers relating to the investigation period. That estimate was then applied to all imports, namely those from the People's Republic of China, from the Republic of India and from the other third countries.

194 It is apparent from the foregoing considerations that, in their points of contention, the applicants have not put forward any evidence which can cast doubt on the reliability of those estimates, since, in essence, they do not dispute the reliability of the estimates on which the Commission relied, but rather their application to a period subsequent to that to which the data giving rise to those estimates correspond (first, third, fourth and fifth assumptions, referred to in paragraphs 183, 188, 190 and 192

respectively of the present judgment) or their application to countries other than the country from which the data which gave rise to the estimate originated (second and fifth assumptions, referred to in paragraphs 186 and 192 respectively of the present judgment).

195 The Commission stated that it did not have more accurate or more recent data which were similarly or more reliable.

196 In such a context which is characterised, first, by the lack of more precise and more recent information which is similarly or more reliable and, second, by the reasonableness and plausibility of the estimates presented by the Commission, which are apparent from the explanations provided by the Commission to justify their application, in the light of the broad discretion afforded to the Commission, it is necessary to reject the applicants' second complaint, to the effect that the data used by the Commission are based on unwarranted and unreasonable assumptions which are not based on any positive evidence.

197 By their third complaint, the applicants take the view, in essence, that the lack of more reliable alternative data is due to a lack of diligence and to inactivity on the part of the Commission, which ought, in their view, to result in the contested regulation being annulled.

198 In that regard, it must be stated that, according to the case-law, the Commission has an obligation to consider on its own initiative all the information available, since in an anti-dumping investigation it does not act as an arbitrator whose remit is limited to making an award solely on the basis of the information and the evidence provided by the parties to the investigation. In that regard, it must be noted that Article 6(3) and (4) of the basic regulation authorises the Commission to request Member States to supply information to it and to carry out all necessary checks and inspections (judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 32).

199 However, in order to determine the extent of the requirements imposed on the Commission, it is necessary to consider the limits affecting the time available to it, having regard in particular to the procedural time limits, which may not be sufficient to carry out the checks, inspections and investigations which might be envisaged (see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting* v *Commission*, T-650/17, EU:T:2019:644, paragraph 408 (not published)).

200 Furthermore, account must be taken of whether or not the data envisaged are likely to culminate, with a sufficiently high probability, in more reliable results than those obtained within the applicable time limits (see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting* v *Commission*, T-650/17, EU:T:2019:644, paragraph 410 (not published)).

201 In the present case, it appears that the Commission did not fail to have regard to the case-law referred to in paragraphs 198 to 200 of the present judgment, which requires it to consult all the sources available to it.

202 As regards the information which, according to the applicants, could have been obtained from the national customs authorities, it should be noted that, as the Commission has stated, even if the basic regulation enables it to do so, it would be disproportionate to require that institution to collect import lists, transaction by transaction, from the customs authorities of all the Member States, and to analyse them in order to establish whether they may be taken into account and then to compile the data relating to the product concerned for four years for the whole of the European Union.

203 In their written submissions, the applicants put forward two arguments to challenge the Commission's conduct in relation to the search for reliable information.

204 In the first place, the applicants maintain that the Commission could have collected certain more detailed data from the national customs authorities so as to verify the reliability of the assumptions made and subsequently to extrapolate the result of that analysis to all the data.

205 In that regard, it should be noted that such information is not immediately available but that it ought also to be obtained on an ad hoc basis from the national authorities concerned. In order to be able to compile a data sample, the Commission ought then to await the reply of those authorities providing the requested information. Proceeding in that manner would, however, involve a significant investment in terms of workload and would require a significant amount of time, since those two issues must be factored in to the strict procedural deadlines imposed on the Commission, as stated in paragraph 199 of the present judgment.

206 Moreover, such a sample of transactions could also raise questions as to the representativeness of the transactions selected, as well as raising doubts as to its relevance, since it does not allow for a precise calculation of the import volumes for the product concerned.

207 In the second place, the applicants allege that the Commission could have turned to the importers, sending them questionnaires, the replies to which would have enabled it to verify whether the data used were reliable, and to make corrections.

208 The applicants submit that the EU institutions have made use of that source of information in other anti-dumping investigations, such as the investigation which led to the adoption of Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ 2013 L 129, p. 1).

209 In that regard, it must be observed that, as the Commission stated, it was not possible in the present case to obtain more reliable data from importers. First of all, the 28 importers which came forward during the investigation provided, in their replies to the questionnaire contained in Annex II to the notice of initiation of the investigation, an overall figure showing the volume of imports covering the product concerned and relating solely to imports from the People's Republic of China and from the Republic of India, which were the two countries covered by the investigation. In the present case, those data were not subsequently broken down according to the CN codes of the product under investigation. Finally, those replies could be verified solely as regards the three sampled importers which replied to the questionnaire. It has not been established that those importers were sufficiently representative of all importers of the product under investigation. The Commission stated that the market was fragmented and characterised by a large number of small and medium-sized enterprises and that, in such a context, it could not be ruled out that many other unrelated importers operating in the market, with no direct interest in cooperating in the investigation, had not come forward.

210 Accordingly, it must be held that, in the present case, the Commission did not commit a manifest error of assessment in limiting its assessment, as regards the calculation of the import volumes covering the product concerned, to data from Eurostat's database, as adjusted on the basis of justified assumptions and which reflected a reasonable estimate of the actual figures for those imports.

211 The first part of the plea must therefore be rejected.

– The second part of the first plea in law: the macroeconomic indicators used by the Commission to determine the injury suffered by the EU industry

212 In the second part, the applicants dispute the reliability of the macroeconomic indicators used by the Commission to establish the injury suffered by the EU industry.

213 As a preliminary point, it must be stated that, as was clarified in the parties' replies to the Court's questions, the Commission assessed the macroeconomic indicators for the EU industry as a whole.

214 In that context, the Commission relied on different types of data. For the sampled EU producers ('the sampled producers'), the Commission took account of data submitted by those producers, which it verified. For the other EU producers which lodged the complaint which gave rise to the investigation or which supported that complaint ('the other complainants'), the Commission relied on the data which it obtained from the replies to the questionnaires returned by those companies. Finally, for the remaining EU producers ('the remaining producers'), the Commission used estimates provided by the complainants in respect of those producers.

215 In the present case, the applicants put forward six complaints, which are disputed by the Commission.

216 By their first complaint, the applicants criticise the Commission on the ground that it failed to update the data available to it concerning the other complainants.

217 In that regard, it should be noted that, according to recital 136 of the contested regulation, the data concerning the other complainants are taken from their replies to the questionnaire sent to them by the Commission, on the understanding that those data were compiled by the complainants and that they were 'subsequently brought up to date to cover the investigation period'. The Commission produced a letter, which it sent to the CCCME on 14 June 2017 and in which it stated that the complainants had compiled the data on the basis of the replies to the questionnaire, verified by the Commission, as well as on information gathered by email from the producers who had lodged or supported the complaint. The interveners, for their part, stated that those data had been updated to exclude data concerning channel gratings and to include the latest available quarterly data.

218 Since the applicants have adduced no evidence capable of casting doubt on those assertions, the first complaint must be rejected.

219 In their second complaint, the applicants challenge the contested regulation on the ground that, in order to adopt it, the Commission relied on estimates, not actual data, for the remaining producers.

220 In that regard, it must be stated that the basic regulation does not confer on the Commission investigating powers enabling it to compel undertakings to participate in an investigation or to produce information. Accordingly, the Commission is dependent on the willingness of the parties to cooperate in providing it with the necessary information within the prescribed periods (see, to that effect, judgment of 20 May 2015, *Yuanping Changyuan Chemicals* v *Council*, T-310/12, not published, EU:T:2015:295, paragraph 152 and the case-law cited).

221 In that situation, it is necessary to ascertain whether, in the present case, the Commission sought diligently to collect actual data, before relying on estimates constructed on the basis of the information which it could obtain.

222 In the notice of initiation of the investigation, the Commission invited EU producers manufacturing the product concerned to participate in the anti-dumping proceeding and invited any interested party to make known, within 21 days of the date of publication of the notice of initiation, its views on the selection of the sample of EU producers.

223 The Commission subsequently expressly informed the complainants and other known EU producers of the initiation of the investigation and invited them to participate in it.

224 By email of 16 May 2017, after noting that the data provided by the complainants concerned only their own situation, the Commission requested the complainants' representatives to provide it with macroeconomic data for the industry as a whole.

225 In those circumstances, the Commission cannot be criticised for having relied on the estimates provided by the complainants for the remaining producers, since the objective was, in accordance with Article 4(1) of the basic regulation, to obtain a view of the EU industry as a whole.

226 In addition, as the interveners point out, the use of estimates may prove necessary in anti-dumping proceedings where certain producers choose not to cooperate or where, as has been shown to be so in the present case, certain EU producers have ceased to produce or to exist at the time when the macroeconomic data were collected.

227 Furthermore, it must be recalled that the estimates are not assumptions and that the complainants followed a calculation method verified by the Commission, which requested, after that verification, that amendments be made. In that regard, the interveners have observed that, contrary to the complainants' suggestion that the actual production of the operators in question be estimated, the Commission decided to use instead the production capacity of those producers, which increased the overall EU production and decreased the rise in market share gained by the Chinese exporting producers. The interveners infer from this, without being challenged on that point, that the Commission's choice lowered one injury indicator to the advantage of the Chinese exporting producers.

228 The second complaint must therefore be rejected.

229 In their third complaint, the applicants maintain that the data used by the Commission were substantially revised without explanation.

230 In that regard, it should be noted that, from the file and the parties' replies to the Court's questions, it is apparent that the Commission revised the macroeconomic data as follows.

231 On 7 April 2017 the Commission requested by letter to the complainants' representatives that it be provided, by 12 May 2017 at the latest, with certain macroeconomic data for the period under consideration. On 12 May 2017 the complainants' representatives provided, by email, a table containing the macroeconomic data.

232 On 15 May 2017 the Commission requested, by email, a non-confidential version of that document. On 16 May 2017 the Commission sent another email, requesting that it be provided with a version containing the macroeconomic data for the EU industry as a whole, excluding channel gratings. On 24 May 2017 the Commission again sent an email to the complainants' representatives requesting them to send the requested data by 29 May 2017 at the latest and to accept a verification of those data at their premises on 30 May 2017.

233 On 29 May 2017 the complainants' representatives provided, by email, a new version of the table containing the macroeconomic data ('the second version of the macroeconomic indicators'). The Commission verified those data on 30 May 2017. During the verification visit, the complainants submitted more complete information on the data concerning the sampled producers, warranting an update of the figures. Furthermore, the Commission stated that the data in the second version of the macroeconomic indicators showed consolidated data for the remaining producers, but that the complainants had not been in a position to verify the consistency of those data with the supporting documents within the time limit set for the verification visit. The verification team thus asked the complainants to break down the data by known producer and accordingly to present an updated table.

234 On 1 June 2017 the complainants' representatives provided, by email, a new non-confidential version of the macroeconomic data ('the third version of the macroeconomic indicators'), which included the Commission's requests. According to the applicants, that version differs significantly from the previous version. The CCCME asked the Commission, by email, to explain the reasons for that difference. By

email, the Commission replied that the data had been updated following the inspection carried out on 30 May 2017. On 2 June 2017 the Commission requested, by email, that it be permitted to verify the updated tables at the premises of the complainants' representatives on the same day. The complainants' representatives accepted by way of email.

235 Following that verification, the complainants provided the Commission, on the same day, with the fourth version of the macroeconomic indicators on a USB stick. On 12 June 2017 the complainants' representatives sent the fourth version of the macroeconomic indicators once more, but on that occasion by email in a confidential and non-confidential version. The interveners stated that the third version of the macroeconomic indicators, which had been examined during the verification visit, erroneously contained two producers' production data for channel gratings and that it had been amended *in situ*. The interveners also state that the fourth version also took account of additional information received from the EU industry on that day concerning other producers.

236 The Commission adds that, following comments submitted by the FCI on 21 June 2017, data of an EU producer which the complainants had omitted in error was added to the fourth version of the macroeconomic indicators.

237 In the light of those factors, it must be concluded that the applicants obtained a reply to their email referred to in paragraph 234 of the present judgment, in which they asked the Commission to explain why there was a difference between the second and third versions of the macroeconomic indicators.

238 As to the remainder, it must be observed that, in the light of the material in the file and the explanations provided in the parties' replies to the Court's questions, the amendments were intended to supplement, refine and, therefore, improve the reliability of the data. As the interveners have pointed out, some of the amendments described were made precisely in order to take account of the objections raised by the interested parties and accepted by the Commission. Accordingly, it was necessary, first, to add the data regarding an additional EU producer which the complainants had omitted, and, second, to exclude data relating to channel gratings, which the Commission had agreed to exclude from the definition of the product under investigation.

239 In those circumstances the third complaint must be rejected.

240 In the fourth complaint, the applicants maintain that the list of sources used by the Commission to calculate the macroeconomic indicators is inconsistent, since it contains data which, as for investments, cannot be taken into account since they do not constitute a macroeconomic indicator.

241 In that regard, it must be noted that, as stated in paragraph 214 of the present judgment, the Commission relied on different types of data according to the category of EU producers concerned. Accordingly, it is apparent that the list at issue, entitled 'Additional supporting documents', does not include all the sources used, but is merely supplementary having regard to all the data used.

242 Furthermore, as regards the content of that list, as the applicants have stated, it mentions three documents entitled '[company name] re investments'. However, the applicants dispute only a limited number of the documents included in the list in question. Accordingly, at least 13 of the 22 documents listed, some of which concern the complainants, others of which concern other EU producers, relate to 'assets', 'assets and investments', 'financial statements', 'financial reports', 'employment', 'indirect jobs' and 'jobs', which are relevant for determining the macroeconomic data.

243 Finally, in the comments lodged by the complainants during the investigation, the complainants provided further details regarding the sources used to calculate the macroeconomic indicators, stating as follows:

'We gathered data from the complainant companies and their supporters based on their accounts. For the other companies, the complainant companies made estimates, using data extrapolated from financial statements, taken from websites, press articles and market knowledge.'

244 In the light of all the foregoing, the fourth complaint must be rejected.

245 In the fifth complaint, the applicants criticise the Commission on the ground that it went to the complainants' representatives' offices solely in order to verify the data supplied by the complainants. The applicants state that the Commission could, for example, have contacted the remaining producers and asked them to confirm or comment on the estimates relating to them.

246 In that regard, it must be stated that, in accordance with Article 6(8) of the basic regulation, the information which is supplied by interested parties, whatever that may be, and upon which findings are based must be examined for accuracy as far as possible.

247 It has already been observed, in response to other arguments put forward by the applicants, that the Commission did not have investigating powers enabling it to compel undertakings to participate in an investigation or to produce information, but that it was dependent on the parties' voluntary cooperation to provide it with information (paragraph 220 of the present judgment).

248 In the present case, the Commission invited the EU producers manufacturing the product concerned to participate in the investigation (see paragraphs 222 and 223 of the present judgment). However, only the complainants provided the information necessary to calculate the macroeconomic indicators. That was the context in which the Commission approached the complainants in order to obtain data concerning the EU producers which had not cooperated in the investigation and in which the Commission received estimates concerning them from those producers (paragraph 224 of the present judgment).

249 Article 16(1) of the basic regulation allows the Commission to carry out visits, where it considers it appropriate, in order to verify the information provided.

250 Consequently, it follows that the Commission was entitled, in order to verify the accuracy of the information supplied, to make a verification visit to the authors of the information in question, on the understanding that, in the present case, that information came from the complainants.

251 As regards the fact that that verification was carried out at the premises of the complainants' representatives, it must be noted that the Commission requested, as from the beginning of the procedure, through the complainants' representatives, that the complainants retain all 'supporting documents and worksheets used in preparing the answers to this letter as well as for the macro-data indicated in the complaint for the years 2013-2015'.

252 For practical reasons, it was acceptable for the Commission to go to the offices of the complainants' representatives to consult, in order to verify, the documents from which the data provided by the complainants derived, given the need to base the analyses on reliable and credible data.

253 Consequently, the fifth complaint must be rejected.

254 In the sixth complaint, the applicants criticise the Commission for having failed to identify precisely the evidence which was the subject of verification.

255 In that regard, it must be observed that, during the proceeding, the Commission stated that the verification of 30 May 2017 would concern 'data on macro indicators submitted (source documents used for the data reported, how compilation of the data [had been] done, how certain figures in the complaint with regard to consumption and imports [had] been arrived at, etc.)' and thereby identified, contrary to the applicants' assertions, the evidence to which the verification related.

256 Since that information was brought to the applicants' attention, the complaint must be rejected and, consequently, the second part of the first plea must be rejected in its entirety.

– *The third part of the first plea in law: the profitability of the EU producers*

257 In the third part, the applicants dispute the figures used by the Commission to determine the deterioration which, in its view, describes the trend in EU producers' profitability over the years preceding the investigation.

258 In recital 162 of the provisional regulation, the Commission stated that the profitability of EU producers was around 10% in 2006, that it was no more than 5.3% in the first year of the period under consideration, namely 2013, and that it continued to deteriorate during the period under consideration.

259 In that regard, the applicants put forward three complaints, which are disputed by the Commission.

260 In their first complaint, the applicants submit, in essence, that the Commission had no basis for the figures used to calculate the profitability of the EU industry, since the only data which it received from the EU industry were communicated on 2 October 2017, that is to say, after the provisional regulation had been adopted and more than five months after the verifications carried out at the premises of the complainants' representatives.

261 In that regard, it must be stated that the complaint has no factual basis.

262 The data concerning profitability for the years 2006 to 2012 were, in any event, communicated to the Commission on 11 May 2017, that is to say before (i) the provisional regulation was adopted and (ii) the verification visits, which took place on 30 May and 2 June 2017. The email by which the data were communicated was produced by the Commission, which explained that that document had been communicated by the complainants, on their own initiative, in a confidential version, which was why it had not been placed in the file accessible to the interested parties, but only in the part of the file reserved to the Commission. The Commission also stated that the document of 2 October 2017 sent by the complainants was nothing more than a version of the document of 11 May 2017 which was available to the interested parties.

263 As regards the profitability of the EU industry during the period under consideration, it is apparent that it was calculated on the basis of the responses of the sampled EU producers to the questionnaire sent to them by the Commission, which was to be returned to it by 22 February 2017 at the latest, that is to say, before the provisional regulation was adopted.

264 The first complaint must therefore be rejected.

265 In the second complaint, the applicants assert that the document of 2 October 2017, referred to in paragraph 260 of the present judgment, provides no information on the sources used.

266 In that regard, suffice it to note that the sources used by the complainants to establish the profitability of the EU industry from 2006 to 2012 in the document of 11 May 2017, requested by the applicants, are not relevant for the purpose of analysing the legality of the Commission's assessment of the microeconomic indicators. As the Commission has pointed out, despite referring to the EU industry's

profitability in 2006 in recital 162 of the provisional regulation, it relied solely on the profitability of the EU industry during the period under consideration (1 January 2013 to 30 September 2016) to assess its development, as is apparent from recital 168 of that regulation.

267 That complaint is therefore ineffective, as is, for the same reason, the third complaint raised by the applicants, namely that the figures used by the Commission are contradicted by those referred to in the request for expiry review submitted by the EU industry in 2010 in respect of the expiry of the anti-dumping measures imposed by Regulation No 1212/2005.

268 The data concerning the profitability of the EU industry which were at issue in that request for expiry review necessarily related to the years prior to 2010. As indicated in paragraph 266 of the present judgment, although the Commission mentioned the year 2006 in recital 162 of the provisional regulation, it is the data for the period under consideration, namely the period from 1 January 2013 to 30 September 2016, which were relevant and which formed the basis for the Commission's decision.

269 In any event, as submitted by the interveners, the profitability estimated in the context of the investigation was based on data from the sample of EU producers, whereas the average profitability communicated by the EU industry in its request for expiry review submitted in respect of the anti-dumping measures imposed by Regulation No 1212/2005 was based on the data of six additional producers.

270 In the light of the foregoing, the third part of the first plea must be rejected.

– *The fourth part of the first plea in law: the sample of EU producers*

271 In the fourth part, the applicants dispute the Commission's selection of the EU producers to form the sample on the basis of which it assessed the effects of the dumped imports.

272 In that context, the applicants put forward two complaints which are disputed by the Commission.

273 In their first complaint, the applicants submit that the Commission's invitation to interested parties to submit their comments on the provisional sample was not effective.

274 The CCCME, it is submitted, had access on 18 January 2017, after having contacted the Commission in that respect, first, to a document dated 12 December 2016, entitled 'Proposed sample of EU producers' containing the sample of three EU producers, and, second, to the questionnaires sent on 16 January 2017 by the Commission to 'EJ Picardie + 4 other' EU producers, according to the title of that document.

275 According to the applicants, those documents create the impression that the provisional sample had been increased to include other EU producers. However, on 20 January 2017 the Commission placed in the non-confidential file the final sample of EU producers, dated 16 January 2017, in which it confirmed the original selection of three producers.

276 In the applicants' view, those circumstances show that the Commission communicated the provisional sample to the interested parties after the final sample had been determined and that the questionnaires were sent to the sampled producers, which constitutes an infringement of the interested parties' rights of defence and of Article 17(2) of the basic regulation, which provides that preference is to be given to choosing a sample in consultation with, and with the consent of, the parties concerned.

277 In that regard, it should be noted that, in accordance with Article 17(2) of the basic regulation, 'the final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen'.

278 In order for the consultation of interested parties referred to in Article 17(2) of the basic regulation to be effective, it must take place at a stage where the Commission is in a position to take account of the comments submitted and, where appropriate, to modify the sample.

279 It must be noted that, in the present case, the Commission stated, in the notice of initiation of the investigation, that it had decided to limit the EU producers to be investigated to a reasonable number by selecting a sample and that, to that end, it had compiled a provisional sample, the composition of which was made available to interested parties for consultation. In that notice, the Commission also stated that, unless otherwise specified, interested parties wishing to submit other relevant information regarding the selection of the sample had to do so within 21 days of the date of publication of that notice in the *Official Journal of the European Unio*n.

280 In its written submissions, the Commission submits that the reason why the document dated 12 December 2016 entitled 'Proposed sample of EU producers' was not initially added to the non-confidential file, as had been stated in the notice of initiation, was that there had been a clerical error by the investigating team. The document had accidentally been marked 'confidential', whereas it should have been marked 'non-confidential' in order to allow all interested parties to have access to it. As soon as the CCCME informed the Commission, on 18 January 2017, that that document was not included in the information to which that entity had access, that document was marked as 'non-confidential' in the system so as to ensure inspection for interested parties, including the CCCME.

281 It follows that the CCCME was consulted on 18 January 2017, that is to say, a little over a month after the initiation of the investigation, namely, at a time when its comments could be taken into account in the selection of the sample.

282 Although it had the opportunity to do so as from that time, the CCCME did not submit any comments on the composition of that sample.

283 It is true that the applicants maintain that the number of undertakings included in the selected sample was amended, then finalised, before they were consulted, which, in their view, meant that the consultation was not effective, since the composition of the sample was decided before they could express their view on it.

284 Even if the Commission did in fact consider amending the provisional sample and then reversed its position before the CCCME was able to review the composition of the proposed sample, suffice it, in any event, to state in response to that argument, first, that the interested parties were placed in a position to express their views in the present case on the sample composition proposed by the Commission, second, that the composition upon which there was consultation comprised three undertakings and, third, that the final sample did in fact cover those undertakings.

285 Accordingly, the applicants could have submitted comments on the sample of EU producers, which the Commission could have taken into account, which means that, contrary to the applicants' assertions, their rights of defence and Article 17(2) of the basic regulation were in fact respected.

286 For those reasons, the first complaint must be rejected.

287 In their second complaint, the applicants maintain that the sample selected by the Commission does not represent the variety of producers' situations within the European Union, in particular the specific situation of the eastern European producers.

288 According to the Commission, the argument put forward in that respect by the applicants is unfounded as well as being inadmissible, since it was put forward for the first time before the Court.

289 In that regard, it must be stated, as regards the substance, that, under Article 4(1) of the basic regulation, the Commission's analysis must be based on the EU industry as a whole in order to obtain a reliable representation of the economic situation of the industry throughout the European Union.

290 However, the Commission is permitted in large-scale cases to limit the investigation to a reasonable number of parties by using the sampling method referred to in Article 17 of the basic regulation.

291 Article 17(1) and (2) of the basic regulation lays down two methods for selecting a sample which may be considered representative under that regulation. The first method consists of the Commission using a sample of parties, products or transactions which are statistically valid on the basis of information available at the time of the selection. As regards the second sampling method laid down in Article 17(1) of that regulation, the representativeness of the sample is based on the fact that it includes the largest volume of production, sales or exports which can reasonably be investigated within the time available (see judgment of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 24 and the case-law cited).

292 Furthermore, it is apparent from Article 17(2) of the basic regulation that the final selection of the sample made under the sampling provisions is to rest with the Commission (judgments of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 87, and of 15 March 2018, *Caviro Distillerie and Others* v *Commission*, T-211/16, EU:T:2018:148, paragraph 48).

293 In addition, regard must be had to the fact that, where it uses samples, the Commission has a broad discretion and the review by the EU Courts is, therefore, subject to the confines set out in paragraphs 149 and 150 of the present judgment (see, to that effect, judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 93).

294 Finally, the case-law states that, where it selects the second sampling method, the Commission has some discretion, relating to the prospective assessment of what is reasonably possible for it to accomplish in the conduct of its investigation within the prescribed time limit (judgments of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 31, and of 15 March 2018, *Caviro Distillerie and Others* v *Commission*, T-211/16, EU:T:2018:148, paragraph 41).

295 In such a context, which is characterised by the Commission having a wide discretion and by the EU Courts' review being subject to limits, it is for the applicants, in accordance with the case-law, to adduce evidence enabling the Court to find that, by its particular composition of the sample of the EU industry, the Commission made a manifest error of assessment when determining injury (see, to that effect, judgment of 15 March 2018, *Caviro Distillerie and Others* v *Commission*, T-211/16, EU:T:2018:148, paragraph 49).

296 In the present case, the Commission, in applying the second method referred to in paragraph 291 of the present judgment, selected the sample on the basis of the highest production and sales volumes, as permitted by Article 17(1) of the basic regulation.

297 As stated in recital 13 of the provisional regulation, that sample represented 48% of the total production volume and 43% of the total sales of the EU industry, without the applicants having disputed the significance of the production volume and total sales of those producers.

298 Accordingly, the choice of that sampling method precludes the possibility of a challenge based on insufficient geographical representativeness, since production, sales or exports volumes included in the sample are deemed, if they are high, to provide an appropriate basis for assessing the situation in the industry as a whole.

299 The applicants are therefore incorrect in regarding the Commission's sample as not sufficiently representative, for the purpose of Article 17(1) of the basic regulation, because it did not include eastern European producers.

300 The second complaint must therefore be rejected on the substance, there being no need to give a ruling on the arguments put forward by the Commission regarding admissibility.

301 It follows from all of the foregoing considerations that the fourth part of the first plea must be rejected.

– The fifth part of the first plea in law: the inclusion of intra-group prices in the calculation of the EU industry's costs

302 In the fifth part, the applicants contend that, in order to calculate the injury suffered by the EU industry, the Commission used, in the case of Saint-Gobain PAM, prices charged for resales within the group of companies to which that producer belongs (transfer pricing), without assessing whether those were arm's length purchase prices.

303 In order to assess actual profitability, in the applicants' view, the Commission should have compared, first, the value of sales to independent customers and, second, the costs incurred in producing goods and the resellers' SG&A costs, if the Commission's injury analysis is not to be distorted.

304 The Commission disputes the applicants' arguments.

305 In that regard, it should be noted that, in its reply to the Court's questions, the Commission explained that Saint-Gobain PAM sold the product concerned directly to independent customers, but also, as the applicants have pointed out, indirectly through related traders.

306 However, that fact has proved to have no effect on the establishment of production costs, since, first, the two types of sale involve products manufactured by the undertaking in question and, second, the value taken into account in the Commission's calculation corresponds to the production costs incurred by the undertaking in question in the context of manufacturing, irrespective of the type of sale which would occur subsequently.

307 Accordingly, as the Commission stated, the fact that certain sales were made through related companies did not affect the calculation of Saint-Gobain PAM's production costs and, consequently, did not affect the assessment of the injury suffered by the EU industry.

308 It is true that, in its reply to the Court's questions, the Commission stated that Saint-Gobain PAM purchased certain raw materials from associated undertakings.

309 However, in order to be able to include in its calculation the production costs associated with those transactions, the Commission examined whether those transactions could be regarded as having been made under normal market conditions.

310 When comparing the direct costs in the unit manufacturing cost and in the resale price to unrelated parties in the European Union, the Commission found that Saint-Gobain PAM was in the same range as the other two sampled producers which had not purchased their raw materials from related suppliers.

311 The fifth part of the first plea must consequently be rejected.

– The sixth part of the first plea in law: mainly concerning the difference in the practices attributed to the exporting producers depending on whether they were Indian or Chinese

312 In the sixth part, the applicants put forward a number of complaints, one of which is examined in the present part of this judgment, whilst the others will, on account of their subject matter, be examined in other parts of the present judgment (see paragraph 325 below).

313 In the complaint presently under examination, the applicants submit that the Commission's finding – that no dumping practices could be attributed to the Indian exporting producers, whereas such a practice was observed in respect of the Chinese exporting producers – is incomprehensible. According to the applicants, that conclusion is incompatible with the following two facts. First, Indian export prices were lower than the Chinese export prices. Second, since the Republic of India was selected as the analogue country, the data used by the Commission for the normal value determination were identical for the Indian and the Chinese exporters.

314 The Commission contends that that complaint should be rejected.

315 In order to adopt a position, it should be noted that, as the applicants point out, imports into the European Union of the product concerned from the Republic of India were subject, along with imports from the People's Republic of China, to an investigation seeking to establish the existence of dumping (see paragraph 3 of the present judgment).

316 In the investigation, the Commission found that, on the basis of the volume in tonnes, the prices of imports originating in the People's Republic of China was on average above prices originating in the Republic of India.

317 At the same time, since the People's Republic of China was not considered to be a market-economy country, the normal value used to determine whether there was dumping by the Chinese exporting producers was calculated on the basis of the data from the Republic of India, in accordance with Article 2(7)(a) of the basic regulation ('the analogue country method').

318 Pursuant to Article 1(2) of the basic regulation, a product is to be regarded as being dumped if its export price to the European Union is less than a comparable price for a like product, in the ordinary course of trade, as established for the exporting country.

319 According to the applicants, given that, in assessing whether there was dumping by the Chinese and Indian exporting producers, the Commission had to take account of the fact that, first, the normal value was in both cases based on the Indian data and, second, the export prices of Indian exporting producers were lower than those charged by Chinese exporting producers, the logical corollary was that the Indian exporting producers had higher dumping margins and that the Commission would find that that country's exporting producers were engaged in dumping, since it had come to such a conclusion in respect of the Chinese exporting producers.

320 In that regard, it must be stated that that difference between the Chinese and Indian exporting producers was explained by the Commission during the investigation.

321 First of all, although the Commission acknowledged that, on the basis of the volume in tonnes, Indian export prices were on average below Chinese prices, it explained that those prices could not be compared adequately. As the Commission stated in detail in recital 179 of the provisional regulation, to which recital 19 of the contested regulation refers, the price difference was explained, in the view of the Commission, by the fact that the Indian exporting producers exported grey cast iron, which,

being more brittle, required a larger quantity of raw material than ductile iron products originating in the People's Republic of China to reach a comparable performance. That is why the Chinese prices were higher if the comparison was made on the basis of the volume in tonnes. The situation would be different, however, if the comparison was made by product, which was the appropriate criterion for sales to be compared.

322 Next, as the Commission observed in recital 20 of the contested regulation, there was also a specific feature of the domestic prices of Indian products for tax purposes, which involved certain adjustments. It was apparent from the Commission's analysis that VAT was not applied to the Indian domestic prices used, in accordance with the analogue country method, to establish the normal value used to determine the existence of dumping from the People's Republic of China. That situation created an asymmetry between the Chinese export prices and the Indian domestic prices used to establish the normal value. So as to enable a comparison to be made between those prices, the Commission therefore adjusted the normal value by including VAT and accordingly increased the normal value used to assess the existence of dumping by Chinese exporting producers.

323 Following that reasoning, the consistency of which could not be called into question by the applicants, the Commission came to different conclusions regarding the existence of dumping as regards the Chinese exporting producers and the Indian exporting producers.

324 In those circumstances, the first complaint must be dismissed.

325 In the sixth part, the applicants raise two further complaints which are to be examined with the other pleas to which they relate. The applicants thus criticise the Commission on the ground that it refused the CCCME any access to the information necessary to verify the Commission's analyses. That complaint will be examined in the context of the third plea. Furthermore, the applicants challenge the Commission's refusal to collect data in order to assess the injury indicators by Member State and by product category, in grey cast iron or in ductile cast iron. That complaint will be examined in the context of the second part of the second plea.

326 In the light of the foregoing considerations, the sixth part of the first plea must be rejected as regards the complaint examined above, reference being made to the analysis concerning the other two complaints related to other pleas, and, consequently, the first plea must be rejected in its entirety.

The second plea in law: causal link

327 The second plea, which is divided into three parts, concerns Article 3(6) and (7) of the basic regulation, which provides that the Commission is to examine the extent to which injury to the EU industry is caused, where relevant, by the imports at issue, and not by other factors.

– The first part of the second plea in law: the increase in dumped imports and the deterioration in the situation of the EU industry did not occur simultaneously

328 In the first part, the applicants dispute the Commission's reasoning used to establish a causal link between, first, the increase in the dumped imports and, second, the observed deterioration of the situation of the EU industry during the period under consideration.

329 That part, which is disputed by the Commission, is divided into four complaints.

330 In their first complaint, the applicants contend that, in order to establish the causal link, the Commission compared the economic indicators at the beginning and end of the period under consideration, whereas it should have analysed the trends observed during that period. If it had adopted that approach, in the applicants' view, the Commission would have been able to observe that

the indicators describing the situation of the EU industry had deteriorated from 2014 onwards. However, it is apparent from the data provided by the Commission that, as from that time, imports from the People's Republic of China decreased. According to the applicants, such a reduction is incompatible with the finding that those imports contributed to the deterioration of the situation of the EU industry.

331 In that regard, it should be noted that the indicators set out in the table below evolved in the following manner during the period under consideration.

Index (2013 = 100)	2013	2014	2015	Investigation period
Sales volume of the EU industry (in tonnes)	100	97	90	89
Production volume of the EU industry (in tonnes)	100	103	96	96
Market share of the EU industry (in %)	100	97	95	97
Volume of imports from the People's Republic of China (in tonnes)	100	124	120	116
EU market share attributed to imports from the People's Republic of China (in %)	100	125	126	126

332 It is apparent from that table that, as the applicants state, the volume of imports from the People's Republic of China decreased in 2015 as compared with its 2014 level.

333 That does not mean, however, that there cannot be a causal link between the trend in those imports and the trend in the indicators concerning the EU industry.

334 The table shows that the fall in those imports from 2014 is relative, since the level of imports remains significantly higher than at the beginning of the period under consideration (+ 16%), with the result that it would appear artificial to speak of a decrease in imports if a longer period is taken into consideration.

335 Furthermore, the information provided by the applicants makes no mention of the significant increase in the imports in question between 2013 and 2014 (+ 24%). Indeed, an increase of such a magnitude was able to saturate the EU market by causing EU customers to place orders early, with the result that sales subsequently fell, in particular in 2015, during which year the EU industry's sales volume decreased (– 10% compared with the starting point), whilst imports also decreased, even though that decrease remained limited in comparison with the decrease in that industry's sales.

336 In their arguments, the applicants fundamentally call into question, beyond the specific considerations examined above, the Commission's method of basing its findings on a comparison between the data for the beginning and the end of the period under consideration.

337 In that regard, it must be recalled that, according to the case-law, the idea which underlies setting a 'period under consideration' is to enable the Commission to examine a period longer than that covered by the investigation proper, so as to base its analysis on actual or potential trends, which, in order to be capable of being identified, require a sufficiently long period of time (see, to that effect, judgment of 7 May 1991, *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraph 87).

338 That is precisely what the Commission did in the present case by not limiting its analysis to developments which took place over one or two years, but rather by examining trends over a longer period (see, to that effect, judgment of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, EU:T:2014:1076, paragraph 145 (not published)). It accordingly came to the conclusion that, in total, the dumped imports had increased by 16% between 2013 and the end of the investigation period, whereas the sales volume of the EU industry had decreased by 11% and that that industry's market share had decreased by 3% over the same period.

339 In short, the applicants, since they dispute the Commission's ability to rely on the beginning and the end of the period under consideration, are calling into question a methodological choice made by that institution.

340 The case-law recognises, however, with regard to that type of question, that the EU institutions have a wide discretion, which, if an applicant wishes successfully to challenge the action of those institutions, requires the applicant to demonstrate that there has been a manifest error of assessment (judgment of 14 March 2007, *Aluminium Silicon Mill Products* v *Council*, T-107/04, EU:T:2007:85, paragraph 71).

341 In the present case, clearly, by their arguments the applicants are not adducing evidence to support a finding that such an error has occurred, but rather are proposing an alternative interpretation of the trend in the economic indicators, while noting that the Commission's approach seems to them to be artificial (see, to that effect, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 172).

342 For those reasons, the first complaint must be rejected.

343 In their second complaint, the applicants observe that the Commission stated, in recital 174 of the contested regulation, first, that the dumped imports had triggered a deterioration in the situation of the EU industry and, second, that those imports had evolved in parallel to EU production, that is to say, they had increased, then fallen.

344 The applicants maintain that the Commission's reasoning is difficult to follow, since the fact that the increase in dumped imports coincided with the increase in the production volumes of the EU industry and that the decrease in imports which followed coincided with a decrease in the volumes of the EU industry rather confirms that there is no causal link.

345 In that regard, it must be noted that, as the applicants state, in the contested regulation the Commission referred to a parallel trend for the dumped imports and the production of the EU industry.

346 That finding is correct, since, as indicated in the table in paragraph 331 of the present judgment, the dumped imports increased in 2014, rising from the index of 100 to the index of 124, just as the production volume of the EU industry increased from the index of 100 to the index of 103. In 2015, those indices both decreased, the dumped imports falling to the index of 120 and the production volume of the EU industry falling to the index of 96.

347 Nevertheless, it is appropriate to set out the terms used by the Commission in the whole of recital 174 of the contested regulation in order to determine how it came to the conclusion that there was a causal link between the dumped imports and the deterioration of the EU industry.

348 On the basis of all the explanations given by the Commission in recital 174 of the contested regulation, it is possible to understand why it took the view, in the light of the figures set out in the injury indicators of the EU industry, that those indicators had deteriorated at the same time as the dumped imports had increased and that a causal link could be established between those two occurrences.

349 In recital 174 of the contested regulation, the Commission states that, throughout the period under consideration, the trend observed demonstrates the existence of a causal link between the decrease in the EU industry, observed in terms of volumes and market shares, and the increase in dumped imports during that period.

350 That conclusion is supported by the figures provided in the table in paragraph 331 of the present judgment, from which it is apparent that the dumped imports increased during the period under consideration from the index of 100 to the index of 116, whilst the indicators for the situation of the EU industry fell overall, the production volume decreasing from the index of 100 to the index of 96, the sales volume decreasing from the index of 100 to the index of 89 and the market share falling from the index of 100 to the index of 97 over the same period.

351 Accordingly, the applicants are in a position to follow the Commission's reasoning and to understand the reasons why it concluded, without committing any manifest error of assessment, that throughout the period under consideration there had been a coincidence in time between the trend of the dumped imports and the indicators referred to in paragraph 350 of the present judgment.

352 For those reasons, the second complaint must be rejected.

353 In their third complaint, the applicants dispute the Commission's assertion that the decrease in consumption in the European Union did not break the causal link between the increase in dumped imports and the deterioration of the indicators of the situation of the EU industry.

354 In that regard, it must be noted that, in recital 191 of the provisional regulation, the Commission acknowledged that consumption of the product concerned had decreased during the period under consideration.

355 However, the Commission pointed out in the same recital that the existence of that decrease and the influence which that decrease could have had on the trend of the indicators could not break the causal link between the increase in dumped imports and the injury suffered by the EU industry.

356 In order to substantiate that position, the Commission relied on three sets of figures. First, it noted that consumption had fallen by 8% for the product concerned. Second, it observed that the sales volume had decreased by 11% for the EU industry. Since the second figure was higher than the first figure, it took the view that the decrease in sales volume could not be explained entirely by the fall in consumption. Third, it stated that, at the same time, dumped imports had increased by 16%. According to the Commission, that increase explained the difference between the decrease in consumption and the larger decrease which affected the sales volume of the EU industry.

357 In their arguments, the applicants have not put forward any evidence from which it might be concluded that, in formulating that reasoning, the Commission had committed any manifest error of assessment. On the contrary, it appears that such reasoning is consistent with the case-law (see, to that effect, judgment of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, EU:T:2014:1076, paragraph 122 (not published)).

358 The third complaint must therefore be rejected.

359 In their fourth complaint, the applicants dispute that, as the Commission stated in the contested regulation, the undercutting resulting from the dumped imports could have harmed the EU producers' market share and profits, since the EU industry's market share increased during the period during which undercutting was observed, namely the investigation period, from the index of 95 to the index of 97.

360 In that regard, it appears that, in order to establish the causal link, the Commission relied, first, on the existence of undercutting (in the order of 31.6% to 39.2%) observed during the investigation period and, second, on the fact that, during the period under consideration, the EU industry's market share had fallen by 2.1 percentage points whereas the market share of the dumped imports increased by 5.6 percentage points.

361 In that context, the question which arises is whether the Commission may rely on undercutting observed during the investigation period in order to establish an impact on the EU industry during the whole of the period under consideration.

362 In that regard, it must first be recalled that undercutting is analysed, in accordance with Article 3(2) and (3) of the basic regulation, in order to determine whether the dumped imports may have had an impact, in terms of price, on sales of the like product of the EU industry. It is established on the basis of the data provided by the sampled exporting producers, in particular for the purpose of determining their dumping margins. Those data are calculated on the basis of the investigation period. In those circumstances, it cannot be inferred that the Commission may have made an error in calculating undercutting on the basis of data relating to that period (see, to that effect, judgment of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission*, T-500/17, not published, under appeal, EU:T:2019:691, paragraph 51).

363 Next, it should be pointed out that there is a relationship between, first, the determination of price undercutting and, more generally, the effect of the dumped imports on prices in the EU market for like products, under Article 3(2) and (3) of the basic regulation, and, second, the establishment of a causal link, under Article 3(6) of the basic regulation (see judgment of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission*, T-500/17, not published, under appeal, EU:T:2019:691, paragraph 32; see also, to that effect, judgment of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council and Commission*, T-107/08, EU:T:2011:704, paragraph 59).

364 The evidence of the existence of injury, including the evidence relating to the effect of imports on prices for like products of the EU industry, is taken into account in the Commission's analysis of the causal link, which is referred to in Article 3(6) of the basic regulation. Accordingly, the comparison made by the Commission under Article 3(3) of the basic regulation must serve as a basis for its analysis as to whether there is a causal link between the dumped imports and the injury suffered by the EU industry (judgment of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission*, T-500/17, not published, under appeal, EU:T:2019:691, paragraph 57).

365 It follows that the Commission cannot be criticised for having taken account of undercutting observed during the investigation period in order to assess its effects on the deterioration of the EU industry, assessed over a longer period.

366 In such a context, the fact that, during the year of the investigation in the course of which the undercutting was established, the EU industry's market share increased, whereas it fell in 2014 and 2015 and, generally, during the period under consideration, cannot invalidate the causal link established in that regard by the Commission.

367 For those reasons, the fourth complaint must be rejected.

368 In their fifth complaint, the applicants maintain that the Commission should have assessed the trends in market share and in dumped imports by distinguishing between ductile cast iron products and grey cast iron products.

369 Since it is closely linked to the second complaint in the second part of the second plea, it will be examined in the context of the second plea.

370 In the light of the foregoing considerations, the first part of the second plea must be rejected as regards the four complaints examined above, reference being made to the analysis concerning it in respect of the fifth complaint linked to another part of a plea.

– *The second part of the second plea in law: need for an assessment of injury by segment*

371 According to the applicants, the Commission was not entitled to state in general terms that the dumped imports had caused the injury observed, but should have established, using a segmented analysis, that there was a link between those two factors.

372 The Commission maintains that that part of the plea is unfounded, in addition to being inadmissible, since the arguments put forward by the applicants are not supported by any legal arguments.

373 As to admissibility, it must be stated that the applicants allege that Article 3(6) and (7) of the basic regulation has been infringed, in that the Commission did not assess how the dumped imports, consisting of a product type (a standard, almost exclusively ductile cast iron, product), could have caused the injury observed when that injury also covered other product types. Since it is possible, first, to identify the provisions concerned and, second, to understand the applicants' argument, the present part of the plea must be declared admissible.

374 As to the substance, the applicants rely on the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317), in support of their arguments.

375 In paragraph 127 of the judgment of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317), the Court held that the Council had not infringed the basic regulation by carrying out an assessment by segment of the product concerned in that case, namely electronic weighing scales, in order to evaluate the various injury indicators. The Court stated that it is not the case under the basic regulation that an assessment by segment may not be carried out and that the institutions can use such an assessment, particularly if the results obtained using another method prove to be distorted for one reason or another. In that case, the Council had stated, in recital 83 of the regulation which was contested, that the method of calculating the overall average sales prices for all electronic weighing scales had altered the results due to 'changes in the product mix (i.e. substantial changes in the volume of sales of the product ranges from 1995 to the investigation period)'.

376 Furthermore, it must be noted that, in the judgment of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission* (T-500/17, not published, under appeal, EU:T:2019:691), relied on by the applicants in their reply to the Court's written questions, it was held that, since the Commission had found that the product under consideration (in that case, certain seamless pipes and tubes of iron or steel) fell within three different segments (oil and gas, construction, and power generation), it had to take account of that segmentation in determining whether there had been injury and, in particular, in the analysis of price-undercutting. The Court stated that an assessment by segment was justified, in the instant case, by the limited interchangeability of the products on the demand side, the price variation between segments, the fact that the largest sampled EU producer mainly operated in the oil and gas sector and that the imports of the sampled exporting producers were concentrated in the construction segment. In that context, the Court stated that the use of a comparison method based

on product control numbers (PCNs) to establish a correspondence between product types, known as the 'PCN-by-PCN method', could be used if it formed part of an analysis which took account of market segmentation.

377 It is apparent from the judgments of 28 October 2004, *Shanghai Teraoka Electronic* v *Council* (T-35/01, EU:T:2004:317), and of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission* (T-500/17, not published, under appeal, EU:T:2019:691), that an assessment by segment may be justified where the products covered by the investigation are not interchangeable and where one or more segments are more likely to be concerned than others by the dumped imports.

378 By contrast, such an assessment by segment is not required where the products are sufficiently interchangeable. In such a case, the absence of a clear distinction between the products or segments (A, B and C) and the relationship between them mean that sales of products A and C by EU producers could also decrease, to the benefit of imports of product B into the European Union. Accordingly, the dumped imports are likely to have an impact on the EU industry as a whole even though they are concentrated in one market segment (B).

379 It is only where the results prove to be distorted, for one reason or another, that a segmented analysis is justified for products which are nevertheless interchangeable. In such a case, it is for the interested party to adduce specific evidence to substantiate its assertion that different products are not sufficiently interchangeable or that failure to undertake a segmented analysis for sufficiently interchangeable products would lead, in the instant case, to distorted results.

380 The applicants put forward three complaints in support of their arguments on that issue of segmentation.

381 In their first complaint, the applicants refer to the complaint which gave rise to the opening of the investigation. In that complaint, the EU producers concerned stated that the dumped imports concerned exclusively standard products and that the situation was different in the European Union, where production generally involved 90% standard products and 10% non-standard products. According to the applicants, in such a context, only an assessment by segment can ensure that the injury suffered by the EU industry to its non-standard products is not incorrectly attributed to the imports from the People's Republic of China.

382 In that regard, it must be noted that standard products are defined, in the complaint, as products which comply with standard EN 124 or EN 1433. Under those standards, non-standard products have broader openings and have additional features which are supposed to add value to the product: water tightness, security locking systems, patents and so forth.

383 However, the fact that products belong to different ranges is not sufficient to establish, in itself, that they are not interchangeable and therefore that an assessment by segment may be undertaken, since products belonging to different ranges can have identical functions or satisfy the same needs (see, to that effect, judgment of 10 March 1992, *Sanyo Electric* v *Council*, C-177/87, EU:C:1992:111, paragraph 12).

384 In that regard, it must be stated that, in the present case, the applicants have adduced no evidence of any specific and distinct needs of customers satisfied by each of those product categories (standard and non-standard).

385 In those circumstances, it must be held that, in the absence of evidence to the contrary adduced by the applicants, the failure to conduct a segment analysis distinguishing standard products from non-standard products did not, in the present case, run contrary to the requirements of the case-law, with the result that the first complaint must be rejected.

386 In the second complaint, the applicants maintain that, in order to assess the injury to the EU industry, the Commission should have distinguished between the products concerned according to whether they were made of ductile cast iron or grey cast iron. That argument is also raised in the context of the sixth part of the first plea and in the context of the fifth complaint in the first part of the second plea.

387 In that regard, it must be stated that the links between ductile cast iron and grey cast iron were analysed during the review of the first anti-dumping measures taken against imports of that type of product from the People's Republic of China.

388 In that case, the review procedure sought to establish whether ductile cast iron parts, like grey cast iron parts, came within the definition of the product with which Regulation No 1212/2005 is concerned, namely certain articles of non-malleable cast iron.

389 In the regulation adopted following that review, namely Council Regulation (EC) No 500/2009 of 11 June 2009 amending Regulation No 1212/2005 (OJ 2009 L 151, p. 6), the Commission took the view that grey cast iron parts and ductile cast iron parts constituted a single product for the purposes of the anti-dumping proceeding, since they shared the same (physical, chemical and technical) characteristics, were intended for the same uses and were interchangeable.

390 In that context, the Commission stated that grey cast iron and ductile cast iron were both derived from an iron and carbon alloy, even though there could be slight differences between them in terms of the structure of the raw material and the materials added during the manufacturing process. The Commission added that it is true that ductile cast iron, in contrast to grey cast iron, has technical properties which allow the material to resist higher rupture stress and, more importantly, to be deformed to a significantly greater extent under compressive stress without fracture. However, that difference is offset by comparable mechanical or technical characteristics such as moulding ability, wear resistance and elasticity. In addition, it is apparent from Regulation No 500/2009 that the difference mentioned above affects only the required design of the casting (namely whether a locking device is required), but not the fitness for purpose of the casting, which is to cover and/or give access to ground or sub-surface systems. In its assessment, the Commission also stated that consumers perceive both types of casting to be the same and sole product used to cover manholes, resist traffic load, provide safe and easy access to buried networks or to collect surface water (channel gratings) and that both types provide long-term durable solutions.

391 In the present case, it must be observed that the applicants provide no evidence calling those findings into question, but allege that, in certain Member States, there is a 'priority' or 'preference' for one or other type of cast iron. According to the applicants, the German market is accordingly dominated by grey cast iron and the French market by ductile cast iron.

392 Since it is not supported by concrete evidence, such an assertion is not sufficient to call into question the Commission's assessment. In any event, a mere priority does not make it possible to determine with certainty that the products are not, or are insufficiently, interchangeable, with the result that the second complaint must also be rejected.

393 By their third complaint, the applicants maintain that the Commission should have assessed the injury to the EU industry by distinguishing eastern Europe from the rest of the European Union, on account of the fact that the competitive conditions in that part of the European Union are less developed.

394 In that regard, it should be noted that that complaint is not sufficiently substantiated for a proper assessment of it to be made, since the applicants have merely stated, without providing any specific explanation, that competitive conditions differ in eastern Europe and in other regions of Europe.

395 The applicants point out, admittedly, that, in Regulation No 1212/2005, which led to the adoption of the 2005 anti-dumping measures, the Commission carried out an assessment by segment, by excluding a specific geographical area, namely France.

396 However, in recital 73 of Regulation No 1212/2005, the Commission justified that approach on the ground that the penetration of dumped imports was uneven on the EU market. While the penetration of dumped imports was high in 14 Member States, the French market had not as yet been targeted by dumped imports. At the same time the weighting factor of the two sampled French producers in the overall situation of the EU industry was particularly high as their production and sales of castings in France represented approximately 36% of the total production and total sales volume of the EU industry. In view of that particular situation, the Commission took the view that it was appropriate, together with the injury analysis for the EU industry as a whole, to present an analysis of the trends of certain indicators for the targeted EU market, that is to say, the EU market without France.

397 The applicants have not demonstrated that circumstances of that kind justify, in the present case, the injury caused to the western European industry being assessed separately from that caused to the eastern European industry, with the result that the third complaint and, consequently, the whole of the second part of the second plea must be rejected.

– *The third part of the second plea in law: import prices and the significance of undercutting*

398 In the third part of the second plea, the applicants put forward two complaints, which are disputed by the Commission.

399 In the first complaint, the applicants submit that the Commission did not have reliable information on the prices of the dumped imports.

400 In that regard, it should be noted that, in recital 126 of the provisional regulation, the Commission acknowledged that the evolution of prices of dumped imports was 'not completely reliable' since the data were based on import statistics and the detailed product mix was not known.

401 However, it must be stated that, in that extract, the Commission, contrary to what is stated by the applicants, did not acknowledge that the evolution of prices of dumped imports was not sufficiently reliable to be able to be used, but only that the calculation of the import price had not yielded as detailed a result as it would have wished, without, however, it taking the view that those data were completely unreliable and without it envisaging that the data could not be used at all in drawing up the contested regulation.

402 The evolution of those prices is not 'completely reliable' due to the fact that the Eurostat data classify the product concerned under codes which also cover other products and that, for that reason, those data were adjusted, as described in paragraphs 158 to 166 of the present judgment.

403 In response to the first part of the first plea, it was held that the Commission was entitled to rely on those data, as adjusted, in order to establish the volume of dumped imports, in the absence of more accurate, more recent and more reliable information.

404 Continuing that assessment, it must be held that the Commission was also entitled to use those data to assess the price of the dumped imports and to track the evolution of that price.

405 The first complaint must therefore be rejected.

406 In the second complaint, the applicants criticise the Commission for having failed sufficiently to assess the significance of undercutting in relation to the EU industry's share of production for which no price undercutting had been observed.

407 In that regard, it must be stated that, in recital 187 of the contested regulation, the Commission stated that it had established that 62.6% of the sampled EU producers' total sales in the European Union had been undercut by the dumped imports from the sampled exporting producers from the People's Republic of China. In reaching that conclusion, it relied on the fact that, first, all the product types imported were comparable to product types sold by the sampled EU producers and, second, the prices of all product types imported had undercut the sales prices of the comparable product types sold by the sampled EU producers. On the basis of those various factors, the Commission concluded that the injurious effects of the prices of the dumped imports on the EU industry sales had been sufficiently demonstrated.

408 According to the applicants, the Commission could not reach that conclusion given the limited share in respect of which undercutting had actually been observed – in the present case 62.6% of the sales made by the sampled EU producers. In the applicants' view, such a share is insufficient for two reasons. The first objection raised by the applicants is that the share of sales for which undercutting was established amounts to only 26.9% of EU sales, since the sample of EU producers represents 43% of the total sales of the EU industry. The second objection raised by the applicants is that a 62.6% share implies that no undercutting was observed in respect of the not insignificant remainder of those sales (more than 37%). In such a context, the Commission should have examined, according to the applicants, whether a causal link could actually be established with the injury observed for the EU industry as a whole. In that regard, they point out that the sales of the EU industry showed, in relation to the dumped imports, significant differences depending on the products (ductile cast iron or grey cast iron) and on the Member States.

409 It should be noted in this respect that, as stated in paragraph 290 of the present judgment, the basic regulation permits the Commission to base its investigation, in large-scale cases, on a given number of parties by using a sampling method laid down in Article 17 of that regulation, without the applicants calling into question that ability or the methods laid down in that provision, in the present case, in a plea of illegality.

410 In the present case, the Commission used, for that sampling, as stated in paragraph 296 of the present judgment, the second method referred to in that provision, namely a selection based on the 'highest' volumes (production and sales).

411 Therefore, it must be held, pursuant to the basic regulation, that the analysis carried out by the Commission was based on data which must be regarded as representative, with the result that, where it is observed in the sales of the sampled EU producers, price undercutting must be regarded as representative for the entire EU industry.

412 Accordingly, it is necessary to reject the applicants' first objection concerning the existence of undercutting in respect of only 26.9% of EU sales, which amounts, in essence, to calling into question the Commission's ability to rely on representative samples.

413 As regards the second objection raised by the applicants, the latter point out in their reply to the written questions put by the Court that the sales corresponding to the 37.4% not taken into account were not comparable to the imports of the sampled Chinese exporting producers and, by definition, were not undercut.

414 In support of their argument, the applicants refer to the judgment of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission* (T-500/17, not published, under appeal, EU:T:2019:691), annulling a Commission anti-dumping regulation on the ground, inter alia, that, in its assessment,

that institution had not taken into account 8% of the sales volume of the sampled EU producers for the purposes of examining price undercutting, because there was no corresponding type of imported product.

415 According to the applicants, the same conclusion must apply in the present case, in light of the similarities between the two cases, especially since the percentage disregarded by the Commission in the present case is greater (approximately 37%) than that in that precedent (8%). In the two cases, the data set used by the Commission to establish the average unit sales prices and the profitability of sales in the European Union to independent customers was based on all the product types sold by the sampled EU producers. In the same way, the Commission had established a specific link, in both cases, between the assessment of price undercutting regarding the dumped imports and the evolution of the EU industry's prices. In the same vein, the Commission identified a relationship, in both cases, between, first, the decrease in the EU industry's prices and, second, the deterioration in that industry's profitability and the decrease in its market share. Finally, in the applicants' view, in the present case, as in that earlier case, the Commission failed to provide specific reasons enabling the products not taken into account from being precluded from having played a significant part in the decrease in the prices of the sampled EU producers.

416 In that regard, it must be recalled that, in the judgment of 24 September 2019, *Hubei Xinyegang Special Tube* v *Commission* (T-500/17, not published, under appeal, EU:T:2019:691), upon which the applicants rely, the Court gave its ruling in a context in which the Commission had itself noted that there were distinct segments within the totality of the products covered by the investigation. In that context, the Court found that the Commission had assessed price undercutting without, however, distinguishing between the segments which it had identified. Furthermore, the Court found, in its analysis, that the Commission had not taken account of certain product types sold by the sampled EU producers, for which there was no corresponding imported product type. In that specific context, it held, in paragraph 74 of that judgment, that 'in the absence of a specific statement of reasons in that regard in the contested regulation, it cannot be ruled out that the 17 types of products in question, accounting for 8% of the sales volume of those producers and perhaps more in terms of value given the variation in prices between segments, contributed, to a not insignificant degree, to the decrease in the prices of the sampled EU producers'.

417 That situation differs from that in the present case, in which the Commission did not find that there were different segments on the market for the product concerned and comprehensively explained its position in that respect without the applicants having been able to adduce evidence to invalidate or cast doubt on that assessment.

418 The applicants take the view that their second objection is also supported by the conclusions of the WTO Appellate Body in the dispute 'China – Measures imposing anti-dumping duties on high-performance stainless steel seamless tubes "HP-SSST" from Japan' (WT/DS 454/AB/R and WT/DS 460/AB/R, report of 14 October 2015).

419 In that regard, it must be recalled that, according to the case-law, interpretations of the Agreement on Implementation of Article VI of GATT (OJ 1994 L 336, p. 103) ('the Anti-Dumping Agreement') in Annex 1A to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3) adopted by that body cannot bind the Court in its assessment of the validity of the contested regulation (see, to that effect, judgment of 1 March 2005, *Van Parys*, C-377/02, EU:C:2005:121, paragraph 54).

420 Moreover, it must be noted that, in the report referred to in paragraph 418 of the present judgment, the WTO Appellate Body stated that the investigating authority, in order to make an objective assessment of the effect of dumped imports on domestic prices, had to adopt a dynamic assessment of price developments and trends in the relationship between, first, the prices of the dumped imports and,

second, the prices of domestic like products over the duration of the period of investigation, taking into account all relevant evidence, including, where appropriate, the relative market share of each product type.

421 However, that assertion must be placed in its context. In that case, it had been established that the products in question, namely high-performance stainless steel seamless tubes (HP-SSST), had to be distinguished by different market segments corresponding to different product ranges which had not been established to be substitutable. In addition, during the investigation, the Chinese investigating authority had observed that, during the period covered by the investigation, the dumped imports and the domestic sales were concentrated on different segments of the HP-SSST market. While the majority of the Chinese domestic production of HP-SSST was of A quality products, the market share held by dumped imports of A quality products had been 1.45% in 2008 and 0% after that date.

422 It is in that specific context that the WTO Appellate Body took the view that the Chinese investigating authority could not merely state, as it had done, that there was price undercutting for imports of B and C quality products, but that it also had to take into account the relative market share of each product, A, B and C.

423 The situation is different in the present case, since, although divided into PCNs by the Commission for the purposes of comparison, the product concerned covers a variety of product types which continue to be interchangeable.

424 That method was, moreover, validated by the WTO Appellate Body in its report cited in paragraph 418 of the present judgment, since, in paragraph 5.180, it stated that the investigating authority was not required, under Article 3.2 of the Anti-Dumping Agreement, to establish the existence of undercutting for each of the product types under investigation or with respect to the entire range of goods making up the domestic like product.

425 In those circumstances, it must be held that the existence of an undercutting margin in a range of 31.6% to 39.2%, covering 62.6% of the sales of the sampled EU producers, appears sufficient, in the present case, to conclude that there was significant price undercutting as compared with the price of a like product of the EU industry within the meaning of Article 3(3) of the basic regulation.

426 In the light of the foregoing considerations, the second complaint and, consequently, the whole of the third part of the second plea must be rejected.

427 Since all of the arguments put forward in the context of the second plea have been rejected, that plea must be rejected.

The third plea in law: refusal to disclose certain information

428 In the third plea, the applicants criticise the Commission for having refused to disclose to them information relevant to the determination of dumping and injury. That criticism is also made in the sixth part of the first plea.

– Admissibility of the third plea in law

429 According to the Commission, the third plea must be declared inadmissible in respect of all the applicants. First, the Commission argues that, since the CCCME is not an interested party within the meaning of the basic regulation, it cannot rely on an infringement of procedural rights under that regulation. Second, the Commission argues that, since the members of the CCCME and the other

legal persons whose names are listed in Annex I did not participate in the investigation by submitting comments and by requesting access to the non-confidential file, they cannot rely on an infringement of procedural rights relating to the failure to communicate information to them.

430 In order to examine that plea of inadmissibility, it is necessary to distinguish three situations, which are dependent on the identity of the entity or undertaking making the plea.

431 Accordingly, the first situation to be examined is that in which the argument is made by the CCCME acting in its own name.

432 In that regard, it must be stated that the CCCME, in so far as it participated in the investigation and requested to have access to the information referred to in the third plea, has procedural rights which it may seek to protect in the context of the present action.

433 In those circumstances, the third plea is declared admissible in so far as it is raised by the CCCME acting in its own name.

434 The second situation to be examined is that in which the plea is made by the members of the CCCME and the other legal persons whose names are listed in Annex I, who challenge the contested regulation on the ground that information essential for the defence of their interests was not communicated to them.

435 In that regard, it must be noted that those two categories comprise undertakings which have not established that they participated in the investigation or made requests seeking that the information at issue be communicated to them.

436 It is apparent from the basic regulation, and in particular from Article 5(10) thereof, that, since the institutions are unable to identify all the undertakings which may be interested in an anti-dumping proceeding and thereby to determine to whom information the disclosure of which is permitted ought to be disclosed, it is for the interested parties to make themselves known and to state their interest in being informed and in participating in the investigation.

437 As stated in the case-law, those parties must put the institutions in a position to assess the difficulties which the absence of an element in the information put at their disposal could cause them, it being understood that they cannot complain, before the EU Courts, that a piece of information was not put at their disposal if, in the course of the investigation procedure, they did not make any request to the institutions concerning it (see judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 93 and the case-law cited).

438 Accordingly, the third plea cannot be regarded as admissible in respect of the members of the CCCME and the other legal persons whose names are listed in Annex I in so far as those undertakings seek annulment of the contested regulation on the ground that information that ought to have been communicated to them was not communicated to them.

439 Finally, the third and final situation to be contemplated is that in which the plea is raised by the members of the CCCME and the other legal persons whose names are listed in Annex I, claiming that the rights of the defence were not complied with as regards the CCCME.

440 In that respect, it must be recalled that, in accordance with the case-law, an infringement of the rights of the defence is an irregularity which by nature is subjective (see, to that effect, judgment of 26 October 2010, *CNOP and CCG* v *Commission*, T-23/09, EU:T:2010:452, paragraph 45), the consequence of which is that it must be raised by the person concerned himself or herself without another party being able to raise it (see, to that effect, judgment of 1 July 2010, *ThyssenKrupp Acciai Speciali Terni* v *Commission*, T-62/08, EU:T:2010:268, paragraph 186).

441 Accordingly, it must be held that, in accordance with that case-law, the other legal persons whose names are listed in Annex I cannot raise before the EU Courts an infringement of the procedural rights granted to the CCCME during the investigation.

442 According to the applicants, EU law does, however, allow the members of an association to raise an infringement of the procedural rights exercised by that association if that association acted on their behalf before the Commission during the investigation, on the understanding that, in such a case, what they are requesting, ultimately, is the protection of their own rights that were exercised on their behalf by the association during that administrative phase.

443 In that regard, it must be stated that the case-law accepts an association's ability to exercise the procedural rights of certain of its members during the anti-dumping proceeding (see, to that effect, judgment of 19 September 2019, *Zhejiang Jndia Pipeline Industry* v *Commissio*n, T-228/17, EU:T:2019:619, paragraph 36).

444 However, the same case-law makes that ability subject to the condition that the entity has demonstrated, during the investigation, the intention to act as the representative of certain of its members, which presupposes that those members have been identified and that the entity is in a position to establish that it has received from them a mandate enabling it to exercise those procedural rights on their behalf.

445 It is, however, apparent from the file that, in the present case, the CCCME did not present itself in that manner to the Commission during the investigation, but acted, rather, throughout the investigation as an entity representing the Chinese industry as a whole.

446 In the comments which it lodged on 15 September 2017 on the provisional regulation, the CCCME stated as follows:

'The CCCME's interest is the interest of the Chinese cast iron industry as a whole. This interest can and will often coincide with the interests of individual Chinese exporting producers of the product concerned, but it is distinct from and goes beyond those individual interests. In particular, the CCCME's members include not only the sampled Chinese exporting producers but also Chinese exporting producers that are not sampled and which will be made subject to the rate applicable to "other cooperating companies listed in [the] Annex" or "All other companies". Its members equally include companies that at this stage are not exporting the product concerned to the European Union ("EU") but may consider doing so in the future. The CCCME's participation in the present investigation aims at serving the overall interests of its members and the Chinese cast (exporting) iron industry, as distinct from the individual interests of its Member[s]. The latter interests will be taken care of by the individual Chinese (exporting) producers, some of which participate individually in the present proceeding.'

447 In those circumstances, the view cannot be taken that the requirements laid down by the case-law to permit the members of the association to protect procedural rights allegedly exercised by the CCCME during the administrative phase are satisfied.

448 At the hearing, the applicants offered to produce the mandates which they claim were provided by the members of the CCCME permitting and requesting that the CCCME assert on their behalf the procedural rights to which they make claim.

449 However, that offer of evidence must be regarded as being of no consequence at that stage of the procedure, since it was during the investigation that those mandates, if they existed, should have been submitted in order to enable the Commission to grant to the undertakings concerned the procedural rights which they could claim.

450 In the light of the foregoing, the Court considers that the third plea may be raised by the CCCME, acting on its own behalf as an association representing the Chinese industry as a whole, and rejects as inadmissible the arguments put forward in the context of that plea by the members of the CCCME and by the other legal persons whose names are listed in Annex I.

– *The relationship between the rights of the defence and the obligation of confidentiality*

451 As regards substance, it must be noted that, in accordance with the case-law, respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of EU law which must be guaranteed even in the absence of any rules governing the proceedings in question (see judgment of 1 October 2009, *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, EU:C:2009:598, paragraph 83 and the case-law cited).

452 The Court has stated that respect for that principle is of crucial importance in anti-dumping investigations (see judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 77 and the case-law cited).

453 In accordance with that principle, the undertakings concerned should have been placed in a position during the administrative procedure in which they could effectively make known their views, first, on the correctness and relevance of the facts and circumstances alleged and, second, on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (see judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 76).

454 In that context, the EU institutions must act with due diligence by seeking to provide the undertakings concerned with information relevant to the defence of their interests while having a degree of freedom to choose, if necessary on their own initiative, the appropriate means of providing such information to them for the purpose of such disclosure (judgments of 27 June 1991, *Al-Jubail Fertiliser* v *Council*, C-49/88, EU:C:1991:276, paragraph 17, and of 3 October 2000, *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraph 99; see also, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraph 30).

455 Those principles are given effect in the basic regulation, which provides for a system of guarantees pursuing two objectives, namely, first, to allow interested parties effectively to defend their interests and, second, to preserve the confidentiality of the information gathered during the investigation (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 96).

456 The rules relating to those two objectives are examined in the following paragraphs.

457 As regards the first objective, the procedural guarantees guaranteeing the interested parties' right to information are defined, first of all in Article 6(7) and then in Article 20 of the basic regulation (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 97).

458 Accordingly, Article 6(7) of the basic regulation provides that, upon written request, the interested parties, including the exporters and their representative associations, may inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the European Union or those of the Member States, which is relevant to the presentation of their cases, not confidential and is used in the investigation (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 98).

459 For its part, Article 20 of the basic regulation identifies two points in time for communicating to the interested parties, including exporters and their representative associations, specific information on the essential facts and circumstances on which anti-dumping measures are capable of being based, namely, first, after the imposition of provisional measures and, second, before the imposition of definitive measures (judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 99).

460 As regards the second objective, the basic regulation determines the rules to be followed in order to respect the confidentiality of information gathered during the investigation (see, to that effect, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 103).

461 In that context, Article 19(1) of the basic regulation lays down the principle that confidential information must be treated as such by the authorities.

462 Confidential information is information which is confidential by nature or which has been designated as such by the persons or entities which provided it. Information, the disclosure of which would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information, falls within the first category. As regards the second category, the first sentence of Article 19(5) of the basic regulation prohibits the Commission, the Member States and their officials from revealing, without the specific permission of that person or entity, any information provided by a person or entity which has requested confidential treatment.

463 According to the second sentence of Article 19(5) of the basic regulation, the prohibition on disclosure also applies to exchanges of information between the Commission and the Member States and to any internal documents of the institutions and the Member States, the only permitted exceptions being those expressly provided for in the basic regulation.

464 Since the two objectives pursued by the legislation have thereby been set out, it must be stated that EU law includes guidance as to how they relate to one another (see, to that effect, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 105).

465 Certain provisions in the basic regulation make clear the importance attached to confidentiality. Accordingly, Article 6(7) of that regulation, which is recalled in paragraph 458 of the present judgment, indicates that the confidentiality of information supplied by a party concerned by the investigation precludes the interested parties from inspecting it. Furthermore, Article 20(4) of the basic regulation provides that final disclosure must be given 'due regard being had to the protection of confidential information' (see, to that effect, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 105).

466 However, the case-law provides that the requirement to respect confidential information cannot deprive the rights of defence of their substance (see, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraph 29).

467 In order to place the two objectives in relation to one another, Article 19(2) of the basic regulation states that, where confidential information is communicated, a non-confidential summary must be provided by the party requesting confidentiality, and that summary must be in sufficient detail to permit interested parties to gain a reasonable understanding of the substance of the information submitted.

468 With the same objective of respecting the rights of the defence when confidentiality precludes the disclosure of information, Article 19(4) of the basic regulation makes the institutions responsible for disclosing general information, in particular the reasons on which decisions taken under the basic regulation are based.

469 It is in the light of those principles and provisions that it is necessary to examine whether the CCCME was placed in a position in which it could effectively make known its views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission, on the understanding that, when it is necessary for them to reconcile the requirements of confidentiality with the right to information for the interested parties, the institutions concerned must consider, in the light of that information, the particular situation of the interested party and, in particular, the position that that interested party occupies on the market under consideration in relation to the position of the supplier of that information (see, to that effect, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 199).

470 In that examination, the three parts of the plea will be analysed in turn.

– *The first part of the third plea in law: request for disclosure of the Commission's calculations*

471 In the first part, the CCCME criticises the Commission for not having provided it with details of the calculation of (i) the normal value, (ii) dumping margins, (iii) the effects of Chinese imports on prices, (iv) injury and (iv) the injury elimination level. According to the CCCME, having access to the Commission's detailed calculations and to the data used for those calculations enables the interested parties to submit comments which are more appropriate for their defence. Those interested parties can then verify exactly how the Commission used those data and compare them with their own calculations, which enables them to identify possible errors made by the Commission which would otherwise be undetectable.

472 The Commission does not dispute that the calculations requested by the CCCME may constitute essential facts and considerations within the meaning of Article 20(2) of the basic regulation for interested parties such as exporting producers, which risk being subject to the anti-dumping measures at issue. However, it submits that the CCCME cannot be regarded as an interested party within the meaning of the basic regulation, since the CCCME is not itself active as a producer or trader of the product concerned. According to the Commission, the duty to provide information is less pronounced for representative associations than it is for interested parties, in particular exporting producers.

473 In that regard, it must first be established whether the calculations to which the CCCME requested access contain confidential information within the meaning of Article 19(1) of the basic regulation, in accordance with the Commission's objections on that issue during the investigation.

474 As regards the calculations of the normal value, the Commission explained in the contested regulation that different calculation methods had been used according to the situation contemplated. Thus, the first situation used is that in which the exported product type was identical or comparable to a product type manufactured on the Indian market, it being noted that the Republic of India was chosen as a market economy third country acting as a reference for calculating the normal value. In that case, different methods were applied according to whether or not the product type concerned was sold in representative quantities on the Indian market. Where the product type was sold in representative quantities on the Indian market, which in practice concerned a product type sold by one Indian producer, the Commission used the sales prices charged in the ordinary course of trade. Where the product type at issue was not sold in representative quantities on the Indian market, which was the case in respect of all other product types identical or comparable to the exported product types, the Commission also made a distinction according to whether the product type was sold 'in sufficient quantities' by at least one Indian producer, in which case it used the sales prices charged in the ordinary course of trade ('the second method'), or whether the product type was not sold, but produced by at least one Indian producer, in which case it constructed the normal value on the basis of the costs of manufacturing, to which the SG&A costs and the profits linked to domestic sales made in the ordinary course of trade by that Indian producer were added ('the third method'). The second situation is that in which the exported product type was not identical or comparable to a product

type manufactured on the Indian market. In that case, the Commission used a normal value based on sales of all the product types using the same raw material (ductile or grey cast iron) by Indian producers on the domestic market in the ordinary course of trade.

475 In the light of those explanations, it must be held that the calculations of the normal value to which the CCCME requested access concern the sales prices and the costs of manufacturing, the SG&A costs and the profits of the Indian producers, broken down by product type.

476 Matters such as costs of manufacturing, SG&A costs or profits are, in the present case, confidential by nature within the meaning of Article 19(1) of the basic regulation, since, as indicated in that provision, third parties' knowledge of those matters could, in the conduct of business, be of significant competitive advantage to a competitor or have a significantly adverse effect on the person who supplied the information (see paragraph 462 of the present judgment).

477 In any event, it must be observed that, having been included in the restricted version of the questionnaire sent to the Commission, those matters, in common with the prices, were communicated by the parties to the investigation on a confidential basis, which resulted in an obligation for the authorities with knowledge of that information to respect that confidentiality if they were not to infringe Article 19(1) and (5) of the basic regulation (see paragraph 462 of the present judgment).

478 The same observation applies to the other calculations requested by the CCCME.

479 Accordingly, the calculations of the dumping margins, since they consist of a comparison of the normal value and export prices of the sampled Chinese exporting producers, involve confidential data of the Indian producers and of the Chinese exporting producers whose prices are compared.

480 Similarly, the injury calculations, including, in that context, the calculation of the effects of Chinese imports on prices, include confidential data. First, the undercutting calculations, which enable an assessment to be made of the effect of imports on prices of the products on the EU market, stem from a comparison between the export prices of the sampled Chinese exporting producers and the prices of similar models or products of the sampled EU producers. Second, the injury to the EU industry is assessed by taking into account the impact of the imports on the EU industry. In that respect, the confidential data of the EU industry, namely data from the sampled EU producers relating to prices and factors affecting prices, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital are gathered and analysed in relation to the microeconomic indicators assessed by the Commission. The same is true of the data of the EU industry producers relating to production, production capacity, capacity utilisation, sales volume, market share, growth, employment and productivity, in relation to the macroeconomic indicators assessed by the Commission.

481 Finally, continuing in the same vein, the injury elimination level calculations also involve confidential data, in that they stem from a comparison between export prices and the corresponding non-injurious prices charged by the EU industry.

482 Accordingly, it is apparent from the analysis carried out above that all the calculations requested by the CCCME are confidential and merit protection.

483 However, it must be recalled that, where information cannot be communicated because of it being confidential, Article 19(2) to (4) of the basic regulation, first, requires the parties concerned to provide a non-confidential summary of that information whenever possible and, second, requires the Commission to disclose general information, in particular the reasons underlying the decisions taken within the context of the basic regulation.

484 It is therefore necessary to establish whether, in the light of the information communicated to it, the CCCME was placed in a position, as required by the case-law, to provide information appropriate to its defence.

485 In that examination, two issues must be taken into account, namely, first, the information actually available to the CCCME and, second, the CCCME's status during the investigation (see the case-law cited in paragraph 469 above). Those issues are examined below.

486 As regards the first of those issues, it should be noted that, with regard to the calculations of the normal value, in order to protect the cooperating Indian producers' commercially sensitive information, but also that of the sampled Chinese exporting producers, the Commission communicated to the CCCME a description of the method of calculating the normal value applied in the situations referred to in paragraph 474 of the present judgment and certain information concerning the result of those calculations. The Commission thereby informed it that that result was within a range between 3 000 and 4 000 yuan renminbis (CNY) and between CNY 8 000 and CNY 9 000 depending on the product type. Following a request by the CCCME, the Commission also stated, in paragraph 61 of its final conclusions and in recital 67 of the contested regulation, that the sum of the SG&A costs and of the profits which had been added under the third method was in a range between 1% and 10% of turnover for grey cast iron products and between 10% and 20% of turnover for ductile cast iron products.

487 For the dumping margin calculations, the CCCME was aware of the methodology used by the Commission, namely, as stated in recital 92 of the provisional regulation, that the Commission calculated the dumping margin of the sampled exporting producers by comparing the weighted average normal value of each type of the like product in the analogue country with the weighted average export price of the corresponding type of the product concerned. The Commission thereby obtained a dumping margin per product type. It then calculated the dumping margin for each sampled exporting producer on the basis of the product types sold by it. The CCCME was informed that the result of those calculations revealed dumping margins ranging between 15.5% and 38.1%.

488 For the undercutting calculations, the CCCME, as stated in recitals 127 and 128 of the provisional regulation, was informed of the fact that the Commission had determined price undercutting during the investigation period by comparing the weighted average sales prices per product type of the three sampled EU producers charged to independent customers on the EU market, adjusted to an 'ex-works level', and the corresponding weighted average prices per product type of the imports from the five sampled producing exporters in the People's Republic of China charged to the first independent customer on the EU market, established on a 'cost, insurance, freight' (CIF) basis with appropriate adjustments for customs duties of 1.7% for grey cast iron products and of 2.7% for ductile cast iron products. The Commission added that the price comparison had been performed on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of that comparison was expressed as a percentage of the three sampled EU producers' turnover during the investigation period and showed undercutting margins ranging from 35.4% to 42.7%, which were subsequently adjusted, as stated in recital 122 of the contested regulation.

489 For the calculations underlying the examination of the microeconomic and macroeconomic indicators, enabling an assessment of the injury caused to the EU industry, the CCCME obtained overall figures by indicator and by year, set out in recitals 137 to 166 of the provisional regulation.

490 Finally, as regards the calculation of the injury elimination level, the CCCME was informed of the fact that, in order to determine the profit that could reasonably be achieved under normal conditions of competition by the EU industry, the Commission had examined the profits made on sales to unrelated buyers. The target profit was provisionally set at 5.3%, in line with the 2013 profits from the sales to independent customers. The Commission clarified that, in that regard, as the dumped imports

underwent a large increase in 2014, after which they stabilised, it had taken the view that the 2013 level of profits reflected what could reasonably have been achieved under normal conditions of competition, that is to say, in the absence of dumped imports. The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating sampled Chinese exporting producers, duly adjusted for importation costs and customs duties, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled EU producers on the EU market during the investigation period. Any difference resulting from that comparison was expressed as a percentage of the weighted average import CIF value. The result of those calculations gave a percentage of between 70.7% and 80.7%.

491 As regards the second issue to be taken into account in order to determine whether the CCCME was provided with the information it needed in order to exercise its rights of defence, it must be recalled that that entity is not a sampled exporting producer. Accordingly, the CCCME does not find itself in the situation of operators whose individualised data, which they themselves communicated to the Commission, were used by the Commission in its calculations in order to make the findings required by the basic regulation. The Commission provides to each operator the calculations concerning that operator, part of which involves their own data and which does not raise confidentiality concerns vis-a-vis that operator, and the other part of which involves the confidential data of the Indian or EU producers. For their own situation, those explanations enable them to understand, with the explanations provided by the Commission, the duties imposed on them, since those explanations must be as detailed and precise as possible in order to enable them to challenge, where appropriate, the choices made by the Commission.

492 As stated in paragraph 58 of the present judgment, during the investigation the CCCME enjoyed the status of interested party within the meaning of the basic regulation. In the context of the investigation, it acted, according to the presentation which it itself gave at the beginning of the proceeding, as an association representing Chinese producers active in the sector concerned in the People's Republic of China as a whole, that is to say, a considerable number of undertakings. On that basis, it cannot claim to gather all the information concerning certain Chinese exporting producers without the permission of those exporting producers. Furthermore, it also cannot claim to have access to the confidential data of the Indian and EU producers whose decision to cooperate in the investigation is dependent, in particular, on the confidentiality assurances given to them. To allow the CCCME to obtain such extensive access as it requested would be at variance with the requirements for respecting confidentiality which the basic regulation imposes on the EU institutions.

493 It follows that, in the present case, the Commission was entitled, as it did, to communicate to the CCCME information which was both precise and in aggregated form, in order to respect the confidentiality obligations concerning the calculations made by the Commission.

494 Moreover, it was following comments made by the CCCME that the Commission changed its method of calculating the normal value, in particular the second and third methods, that is to say, respectively, the method which applies where the exported product type is identical or comparable to a product type manufactured and sold on the Indian market in small quantities and the method which applies when the product type is not sold, but is produced by at least one Indian producer in the sample. The Commission ultimately constructed the normal value on the basis of the sales prices charged by those sellers (second method), as explained in recital 66 of the contested regulation, and on the basis of the cost of manufacturing plus SG&A costs and profit related to domestic sales made in the ordinary course of trade by the Indian producer in question (third method), as explained in recital 67 of the contested regulation, rather than, as had previously been done, on the basis of the normal value constructed on the basis of each Indian producer's average cost of producing the like product. The CCCME was also able to challenge the calculation of the normal value under that third method and, more specifically, the taking into account of the SG&A costs and profits of a single Indian producer, even though the CCCME's line of argument was rejected, as is stated in recitals 70 to 72 of the contested regulation.

495 In those circumstances, it must be held that, in the present case, the Commission was entitled to refuse the CCCME, acting as an association representing the Chinese industry, access to the details of the calculations of (i) the normal value, (ii) dumping margins, (iii) the effects of Chinese imports on prices, (iv) injury and (v) the injury elimination level, which it requested during the investigation, that, together with the information which had been communicated to it and which is referred to in paragraphs 486 to 490 of the present judgment, the CCCME, as an association representing the Chinese industry, had available to it the essential facts and considerations on the basis of which the Commission intended to recommend that definitive measures be imposed, and that, while maintaining the confidentiality of the data at issue, the Commission afforded it the opportunity effectively to make its views known in that regard.

496 The CCCME relies on two judgments in order to dispute that position.

497 First, the CCCME relies on the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), in which the Court held that the Commission had infringed the applicant's rights of defence by refusing to communicate to it the details of the calculations of the normal value, product type by product type, and the result of those calculations.

498 In that regard, it must be noted that the facts of the case which gave rise to the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), relied on by the CCCME, are different from those of the present case. On the one hand, the first case concerned a sampled exporting producer, not an association representing an entire industry such as the CCCME, which, for the reasons stated in paragraphs 491 and 492 of the present judgment, is in a different situation from that of such an exporting producer. On the other hand, the Court's annulment in that case was, in any event, made in a specific context, in which the analogue country producer whose data were included in those calculations had authorised the disclosure of its data underlying those calculations. As the Commission points out, the Court, in the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), therefore censured a refusal by the Commission although the operator which provided the data had accepted the disclosure thereof, taking the view that that institution could accept what the operator had accepted. In the present case, there is no such situation, since the Indian producers, in particular, did not consent to such disclosure of their data.

499 Second, the CCCME relies on the judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council* (T-442/12, EU:T:2017:372), in which the Court, in order to annul the regulation which was contested, relied on the fact that the Commission had refused to provide information concerning the calculation of the normal value, in particular the source of the prices used for the product concerned and the factors affecting the price comparison.

500 In that regard, the differences between the present case and the case which gave rise to the judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council* (T-442/12, EU:T:2017:372) must, once more, be pointed out. The latter case again concerned the position of an exporting producer subject to the investigation, which contrasts with the position of an association representing an industry as a whole. Furthermore, the scope of that judgment is not as broad as the CCCME claims. First of all, the Court's annulment concerned the refusal to provide specific information concerning the calculation of normal value, namely information on the price difference between DL tartaric acid (which was the subject matter of the investigation) and L + tartaric acid (which was produced in the analogue country), there being no question, in that judgment, of communicating the prices themselves. Next, the annulment was justified by the fact that the Commission's refusal to provide that particular information had no valid ground. The Commission had not justified its refusal during the administrative procedure. Before the Court, the Commission explained that, in short, the information requested had not been provided for reasons of confidentiality. According to the Court, however, such an explanation could not be put forward for the first time before it. That explanation should have been provided to the applicant during the administrative procedure. Accordingly, it is apparent from the abovementioned judgment that the Court did not rule out the possibility that the Commission, had it

duly stated the reasons for its refusal to communicate the information at the stage of the administrative procedure, might have been able to prevent the applicant from accessing the information in question.

501 On the basis of the foregoing, it must be concluded that the CCCME cannot have access, as an association representing the Chinese industry, to the detailed calculations of (i) the normal value, (ii) the dumping margins, (iii) the effects of Chinese imports on prices, (iv) injury and (v) injury elimination level, since they contain confidential information. It is apparent from the circumstances of the present case that the information which that entity obtained concerning the essential facts and considerations on the basis of which the Commission intended to adopt definitive measures enabled it effectively to defend its interests as an association representing the Chinese industry.

502 During the investigation, the CCCME requested that its lawyers be given access to the abovementioned information, subject to respecting the confidentiality of those data.

503 In that regard, it must be noted that the basic regulation lays down no such procedure, whereas, as stated in paragraphs 467 and 468 of the present judgment, that regulation sets out precisely what must be done by the institutions and by the parties to which the information concerned is available when that information is confidential. Since the institutions and the parties concerned complied with the requirements imposed on them in that context, there is no reason to criticise the Commission's decision to refuse such access.

504 The first part of the third plea must therefore be rejected.

– The second part of the third plea in law: the request for the calculations to be communicated in aggregated form

505 In the second part, which is raised in the alternative to the first part, the CCCME asserts that the Commission ought at least to have provided the calculations referred to in the first part in aggregated form, in particular as regards, first, the calculations of (i) the normal value, (ii) the effects of Chinese imports on prices and (iii) injury elimination levels and, second, estimates relating to macroeconomic indicators.

506 The Commission contends that that part of the plea should be rejected.

507 In that regard, first, it must be noted that presenting confidential data in aggregated form does not necessarily mean that those data are no longer confidential. That is so, in the present case, in particular, as regards the calculations of the normal value. The Commission argued, correctly, in that regard that, since, for certain product types, it had used data from a single Indian producer and for others it had used data relating to a maximum of two or three Indian producers, aggregating the data could not adequately ensure that it was impossible to identify the individual data of those producers. The same is true of the estimates concerning the macroeconomic indicators made by the complainants as to the position of the remaining producers. In that regard, the Court has already held that the estimated production of the EU producers concerned, on which the Commission had relied in calculating consumption, had correctly been regarded as confidential, since it was based on the complainants' market knowledge. The Court accordingly held that, by merely providing the total production figure, the Commission had acted in accordance with the basic regulation (judgment of 25 October 2011, *CHEMK and KF* v *Council*, T-190/08, EU:T:2011:618, paragraph 231).

508 Second, it must be pointed out that, as the Commission has argued, the calculations made for the purposes of the investigation and the determinations required by the basic regulation do not mean that it has available to it, in every case, aggregated results for all the producers concerned.

509 Accordingly, the Commission stated in recital 24 of the contested regulation that the aggregated undercutting calculations requested by the CCCME did not exist because undercutting had been calculated solely per product type per exporting producer. Each sampled Chinese exporting producer accordingly received the undercutting calculations for each of the product types which it exported.

510 It is true that the Commission may be required to generate a document in order to guarantee a party's rights of defence (see, by analogy, judgment of 27 November 2019, *Izuzquiza and Semsrott* v *Frontex*, T-31/18, EU:T:2019:815, paragraph 53 and the case-law cited).

511 However, that obligation cannot extend to an obligation, in the present case, for the Commission to generate a document for a party such as the CCCME, namely an association representing the Chinese industry, in order to enable the CCCME to have available to it all the information on the basis of which the trade defence measures are envisaged, if it is not to subject the Commission to requirements going beyond those laid down by the basic regulation as regards arrangements for respecting the confidentiality of information in order to preserve the rights of defence of the interested parties.

512 In that regard, it must be stated that the volume of information requested by the CCCME in the present case is such that the Commission could be impeded in its activity and in its investigation if it had to provide all that information in a form adapted to the sole needs of such an entity. It should, in that regard, be recalled that the various stages of an anti-dumping proceeding are subject to strict time limits. Accordingly, Article 6(9) of the basic regulation dictates an overall period of 15 months for investigations. Article 7(1) of that regulation provides that provisional duties are to be imposed no later than nine months from the initiation of the proceedings and, in accordance with Article 9(4), a proposal to impose definitive duties must be submitted no later than one month before the expiry of the provisional duties.

513 Accordingly, the line of argument put forward by the CCCME in support of the second part of the plea cannot alter the conclusion reached by the Court in the context of the first part of the present plea that the CCCME had available to it, in the present case, the essential facts and considerations on the basis of which the Commission intended to adopt definitive measures, and that entity was thus able effectively to defend its interests as an association representing the Chinese industry.

514 The second part of the third plea must therefore be rejected.

– The third part of the third plea in law: other information requested by the CCCME

515 In the third part of the third plea, which the Commission disputes, the CCCME lists three types of information which it regards as important and to which it claims that the Commission unlawfully refused access.

516 In its first complaint, the CCCME criticises the Commission for not having communicated to it information other than the characteristics set out in the PCN, as regards the products of the Indian and EU producers which were compared with the imported products. The CCCME alleges that that situation prevented it from establishing whether adjustments were necessary in order to ensure price comparability. That line of argument is also put forward by the applicants in the context of the second part of the fourth plea in law.

517 In support of that complaint, the CCCME relies on the report of the WTO Appellate Body in the dispute 'European Communities – Definitive Anti-dumping measures on certain iron or steel fasteners from China' (WT/DS 397/AB/RW, report of 18 January 2016).

518 In that case, the WTO Appellate Body stated that, 'in an anti-dumping investigation involving an analogue country producer, the exporters under investigation also need[ed] to be informed "of the specific products with regard to which the normal value [was] determined", or they [would] "not be in a position to request any adjustments they deem[ed] necessary"'. In that case, the Appellate Body's position was based on the fact that, in that type of investigation, the information concerning the normal value was obtained from a third source, namely the analogue country producer. In so far as the exporters under investigation do not have access to that information, they do not know whether they can request adjustments to account for differences which affect price comparability between the exported products and the products sold domestically by the analogue country producer. It is not sufficient to communicate to those producers, according to the Appellate Body, the 'product groups' which were used as a basis for comparing the transactions by disclosing PCNs. It was necessary to provide them with all information concerning the characteristics of the products of the analogue country producers which were used to compare prices.

519 In that regard, as has been recalled in paragraph 419 of the present judgment, in accordance with the case-law, interpretations of the Anti-Dumping Agreement by that body are not capable of binding the Court in its assessment of the validity of the contested regulation (see, to that effect, judgment of 1 March 2005, *Van Parys*, C-377/02, EU:C:2005:121, paragraph 54).

520 Moreover, the interpretation put forward by the CCCME cannot be used in the present case to provide an answer to the questions raised.

521 The case cited by the CCCME concerns exporting producers whose data were taken into account to calculate the dumping margin. In the report cited by the CCCME, the WTO Appellate Body states, in order to justify the communication of information on product models where the analogue country method is applied, that, in an 'ordinary' anti-dumping investigation, normal value is usually determined on the basis of the sales of the exporter concerned on its domestic market. In its view, it could therefore be expected that the exporter under investigation has the necessary knowledge of its own products used for establishing both the export price and the normal value.

522 Thus, where an exporting producer whose data are examined by the Commission in order to calculate the dumping margin is notified of the characteristics of the analogue country's products, it is in a position to ascertain, having knowledge of all the parameters, the comparability of the analogue country's products with the products which it has itself exported to the European Union.

523 The situation is, however, different in the present case, in so far as it is the CCCME, acting as an association representing the Chinese industry as a whole, as has already been indicated in paragraphs 445 and 446 of the present judgment, which requested access to the information concerning the characteristics of the products.

524 In the case of such disclosure to it, the information concerning the characteristics of the products would not enable the CCCME to make a meaningful comparison of the products in question, since it does not generally have models of products placed on the market by the sampled Chinese exporting producers which were compared with Indian products.

525 Accordingly, it has not been established that disclosure of the information concerning the characteristics of the products of the analogue country producers would have placed the CCCME in a position in which it was better able to safeguard its rights of defence.

526 In any event, as the Commission stated during the investigation, that information is confidential. Therefore, and for the same reasons as those relied on, in particular in paragraph 501 of the present judgment, it must be held that an association representing the whole of an industry, such as the

CCCME, has at its disposal the essential facts and considerations on the basis of which measures are envisaged and may therefore effectively make known its views, where it has available to it the product (PCN) types compared for the purposes of the calculations required by the basic regulation.

527 The same conclusion applies in regard to disclosure of the characteristics of the products of the EU industry, the prices of which are compared with the prices of Chinese products in order to calculate undercutting, with the result that the first complaint must be rejected.

528 In its second complaint, the CCCME takes the view that the Commission ought to have provided it with the calculations concerning the import volumes from the People's Republic of China, the Republic of India and the other third countries as well as the source documents.

529 In that regard, it is apparent from the file that the CCCME had been informed, during the anti-dumping proceeding, of the method used by the Commission to calculate the import volumes. The CCCME was aware, in particular, of (i) the percentages recorded for imports originating in the People's Republic of China, in the Republic of India and in the other third countries, in relation to the former sub-codes which were used before the introduction in 2014 of CN General Code ex 7325 10 00, (ii) the fixed amount to be deducted from CN code ex 7325 99 10 in order to obtain imports originating in the People's Republic of China, in the Republic of India and in third countries, and (iii) the percentage to be deducted from total imports in order to exclude channel gratings. Furthermore, since the data used to determine those imports were extracted from statistics provided by Eurostat, which are available in the Comext database, the CCCME had at its disposal all the information necessary to reproduce the Commission's calculations for which it requested disclosure. In those circumstances, it cannot be concluded that the Commission infringed the basic regulation in that respect.

530 It is true that in paragraph 207 of the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), upon which the CCCME relies, the Court held that rights of the defence had been infringed, stating that obtaining the calculations made by the Commission in that case represented, for the applicant, a substantial increase in the information it held which would have enabled it to make more relevant observations than those it had already presented.

531 However, the case which gave rise to the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), differs from the present case in two important respects.

532 First of all, the applicant's level of knowledge was very much lower than the level which could be established in the present case. Thus, in the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), the applicant had only a general knowledge of the method used to calculate the normal value of non-matching product types. It was unaware of which market and reference prices the Commission had used in order to calculate the market value of the adjustment to the normal value of those product types, which was required due to the differences in the physical characteristics between those product types and the matching product types. In those circumstances, the Court observed that, if the applicant had had in its possession the calculations of the normal value, product type by product type, it would have been in a position to compare the Commission's results with its own results obtained via another method. Those circumstances differ from the present case, in which the CCCME was aware of the calculation method used by the Commission, as stated in paragraph 529 of the present judgment.

533 Next, the time period available to the parties to carry out their calculations was also very different in regard to the number of documents to be dealt with. In the judgment of 30 June 2016, *Jinan Meide Casting* v *Council* (T-424/13, EU:T:2016:378), the applicant had a very limited period (seven days) within which to reproduce the Commission's calculations, which were voluminous since they related to 1 645 product types. In the present case, the calculations to be carried out were more limited and

the CCCME received the required information concerning the method of calculating the imports used at the latest when the provisional regulation was adopted, which makes reference to the complaint, in which certain estimates are explained and to which the CCCME already had access.

534 For those reasons, the second complaint must be rejected.

535 In its third complaint, the CCCME challenges the Commission's refusal to split, for each macroeconomic indicator used to establish the harm suffered by the European Union, the figures collected into two categories according to whether they were based on actual data or on estimates, in order to communicate those estimates to it in an aggregated form.

536 In that regard, it must be noted that, during the investigation, the CCCME had access, for each macroeconomic indicator used by the Commission, to the aggregated figures, per year, for the EU industry as a whole. Those aggregated figures, as stated in the second part of the first plea, are the result of a compilation of data provided by the complainants and the sampled EU producers with estimates made by the complainants in respect of the remaining producers.

537 The CCCME submits that its rights of defence were infringed by the Commission's refusal to distinguish, in the figures obtained, between those which stemmed from real data and those which resulted from estimates.

538 In that regard, it must be noted that, as the Commission has stated, the Commission is not required to make such a distinction when assessing the injury to the European Union, the injury being assessed for the EU industry as a whole. However, as stated in paragraph 510 of the present judgment, the Commission may be required to generate a document where what is at issue is the requirement to guarantee the rights of defence of interested parties in an anti-dumping investigation, and it must, in accordance with the case-law, in so far as is compatible with the obligation not to disclose business secrets, provide information relevant to the defence of the interests of the interested parties, choosing, if necessary on its own initiative, the appropriate means by which to provide such information (see, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraph 30).

539 In the present case, it should, however, be noted that the actual data of the sampled producers and of the other complainants, on the one hand, and the estimates made for the remaining producers, on the other hand, are confidential, even when aggregated.

540 In that regard, as stated in paragraph 507 of the present judgment, the Court held in the judgment of 25 October 2011, *CHEMK and KF* v *Council* (T-190/08, EU:T:2011:618, paragraph 231), that the estimated production of the EU producers concerned, relied on by the Commission in calculating consumption, had correctly been regarded as confidential, since it was based on the complainants' market knowledge. The Court accordingly took the view that, by doing no more than providing the total production figure, the Commission had acted in accordance with the basic regulation.

541 As regards, as in the present case, a request concerning commercially sensitive data relating to part of the EU industry, which stems from an association representing all the Chinese exporting producers active in the sector and those which will, in the future, be prompted to export the products in question to the European Union, as stated in paragraphs 445 and 446 of the present judgment, it must be concluded that knowledge, by that association, of aggregated figures concerning the EU industry as a whole for each of the macroeconomic indicators used by the Commission was sufficient for it to be able to defend its interests.

542 The third part must therefore be rejected, as, consequently, must the third plea in its entirety.

The fourth plea in law: the comparability of the prices used to calculate the dumping margin and to analyse injury

543 The fourth plea comprises three parts, which are disputed by the Commission.

– *The first part of the fourth plea in law: the PCN-by-PCN method*

544 In the first part, the applicants dispute the Commission's alleged simplification, during the investigation, of the characteristics associated with the PCNs used to calculate the dumping margin and to analyse injury.

545 In that regard, it should be recalled, as a preliminary point, that PCNs are codes used in anti-dumping investigations to establish matches between product types. During an investigation, the undertakings contacted are invited to classify their products in categories corresponding to those codes. Characteristics intended to describe the goods concerned are attached to those codes.

546 In the present case, during the investigation, the Commission excluded from the codes concerned certain characteristics which, although originally attached to them, did not appear to it to be relevant. Accordingly, the PCN communicated to the Indian producers for them to classify their products initially comprised 15 characteristics. During the investigation, only some were selected for the purposes of the comparison: a single characteristic (raw material) for situations where the product concerned was neither manufactured nor sold by a sampled Indian producer and three characteristics (raw material, load index and product type) for other situations.

547 According to the Commission, eliminating certain characteristics for the purposes of the comparison is standard practice where the product types are complex, since it makes it possible for a certain match to be identified between product types which, otherwise, could not be compared.

548 In their arguments, the applicants raise two complaints against that approach, which the Commission disputes.

549 In their first complaint, the applicants maintain that the 15 characteristics initially attached to the relevant PCNs were important and should have been retained throughout the investigation, without the Commission being able to make the simplification referred to in paragraph 546 of the present judgment.

550 In that regard, it must be stated that, where the product concerned contains a wide range of goods which have considerable differences with regard to their characteristics and their prices, it may prove necessary to group them under categories which are more or less homogeneous (judgment of 4 March 2010, *Sun Sang Kong Yuen Shoes Factory* v *Council*, T-409/06, EU:T:2010:69, paragraph 172; see also, to that effect, judgment of 18 November 2015, *Einhell Germany and Others* v *Commission*, T-73/12, EU:T:2015:865, paragraph 76).

551 According to the case-law, the purpose of that grouping is to allow for a fair comparison between comparable products and thereby to avoid an incorrect calculation of the dumping margin, on the one hand, and of the injury, on the other, owing to unsuitable comparisons (judgment of 4 March 2010, *Sun Sang Kong Yuen Shoes Factory* v *Council*, T-409/06, EU:T:2010:69, paragraph 172).

552 If the applicants intend to call into question the approach taken by the Commission in that context, they must demonstrate that the codification proposed by that institution is manifestly inappropriate (see, to that effect, judgment of 4 March 2010, *Sun Sang Kong Yuen Shoes Factory* v *Council*, T-409/06, EU:T:2010:69, paragraph 180).

553 In the present case, however, the applicants have produced no evidence tangibly demonstrating how that codification led to manifestly inadequate product categories.

554 In the absence of such evidence, it cannot be concluded that the applicants have demonstrated that the Commission's codification was manifestly inappropriate, and the first complaint must therefore be rejected.

555 In their second complaint, the applicants criticise the Commission for not having used the same characteristics attached to PCNs, first, for the determination of dumping, and, second, for the injury analysis.

556 In that regard, it must be observed that, as stated in paragraphs 550 and 551 of the present judgment, the PCN nomenclature is used to identify the types of characteristics which, within the category constituted by the product concerned, enable prices and values to be compared in the investigation.

557 As the Commission points out, the use of that nomenclature in a context involving a non-market economy country means that the characteristics resulting from that nomenclature are not necessarily identical depending on whether the injury is being analysed or the dumping margin is being determined.

558 In order to analyse the injury, products originating in the People's Republic of China are compared with those produced in the European Union. Since the objective is to examine the effect of imports of Chinese products on the price of the EU products, there must, in order to make that comparison, be a match between the types actually compared.

559 When determining dumping, the comparison relates to the exporting producers' sales prices on their domestic market and the sales prices of the products exported to the European Union by those exporting producers. In order to make that determination in the present case, account had to be taken of the fact that the People's Republic of China was not considered to be a market economy country. Under Article 2(7)(a) of the basic regulation, that fact makes it impossible to use prices charged on the Chinese domestic market for the purposes of comparison.

560 That is the context in which the normal value is constructed. In order to construct that normal value, the Commission seeks the country which, of those with a market economy, is economically closest to the People's Republic of China. In the present case, the country selected was the Republic of India.

561 To make the comparison described above, the Commission must then identify the products which are closest, in the light of the characteristics attached to the PCNs, to those products exported by the Chinese exporting producers to the European Union. In order to make that identification, the Commission's services gradually discount the characteristics which make it impossible to find a match between the products concerned, until they have been able to identify those which will enable a comparison to be made.

562 In such a context, the difference between the PCNs used in the dumping determination and those used in the injury analysis can be explained by the difference between the products to be compared in order to carry out the necessary calculations for those two areas.

563 For those reasons, the second complaint must be rejected, since the Commission cannot be criticised for not having attached the same characteristics to PCNs, for, on the one hand, the determination of dumping and, on the other, the injury analysis.

564 Since both complaints have been rejected, the first part of the fourth plea must be rejected in its entirety.

– The second part of the fourth plea in law: lack of information on the characteristics of the products under comparison

565 In the second part, the applicants claim that, even though the Commission disclosed the PCNs used, it provided no information on the product types compared, with the result that they were prevented from determining whether adjustments were necessary to ensure price comparability.

566 In that regard, it should be recalled that the members of the CCCME and the other legal persons whose names are listed in Annex I have not established that they participated in the investigation or made a request to the Commission for disclosure of the information at issue.

567 Since the members of the CCCME and the other legal persons whose names are listed in Annex I thus did not place the Commission in a position to assess the difficulties which the absence of those elements in the information placed at their disposal could cause them, they are not entitled to rely on the second part of the fourth plea in support of their action, in accordance with the case-law cited in paragraph 437 of the present judgment.

568 As regards, additionally, that part of the plea in so far as it is raised by the CCCME, it should be noted that the same line of argument, submitted by that entity under the third part of the third plea has been rejected in paragraphs 519 to 527 of the present judgment.

569 The second part of the fourth plea must therefore be rejected.

– The third part of the fourth plea in law: adjustment to the production costs of ductile cast iron

570 In the third part of the fourth plea, the applicants submit that the Commission should have adjusted Indian prices in order to ensure that they were comparable to Chinese prices. In their view, Indian producers' lack of specialisation in the manufacture of ductile cast iron products has an impact on the production costs accepted by the Commission in its analysis. Those costs are significantly higher than those borne by the Chinese exporting producers because of lack of economies of scale and lack of know-how on the part of Indian producers.

571 In that context, the applicants raise two complaints, which are disputed by the Commission.

572 In their first complaint, the applicants maintain that the request for an adjustment could not be rejected on the ground, put forward by the Commission, that it was satisfied that Indian sales were representative.

573 In that regard, it should be noted that, as it stated in recital 89 of the contested regulation, the Commission examined whether domestic sales of ductile cast iron products by the only sampled Indian producer which manufactured such products, and whose prices were used, were representative within the meaning of the basic regulation, that is to say, whether, in accordance with Article 2(2) of that regulation, they represented at least 5% of the total sales volume to the European Union, where those sales had not been made at a loss and where they were normal commercial transactions.

574 Contrary to the applicants' submission, such examinations permit the inference that, in so far as its domestic sales of ductile cast iron products represented at least 5% of the total sales volume to the European Union, the Indian producer whose data were used possesses certain know-how and has a particular production capacity, which runs counter to the objection alleging a lack of know-how and of economies of scale in the Indian industry in relation to the production of ductile cast iron because of the small quantity produced.

575 Consequently, the first complaint must be rejected.

576 In their second complaint, the applicants argue that it was impossible to substantiate a request for adjustment without having access to data concerning the production costs of Indian producers or to a summary of that information. Accordingly, in their view, the Commission failed to have regard to the case-law arising from the judgment of 8 July 2008, *Huvis* v *Council* (T-221/05, not published, EU:T:2008:258, paragraphs 77 and 78), which prohibits the imposition of an unreasonable burden of proof on a person claiming an adjustment.

577 In that regard, it should be noted that, under Article 2(10) of the basic regulation, a fair comparison is to be made between the export price and the normal value, with due allowance, as appropriate, in the form of adjustments, for differences in factors which are claimed, and demonstrated, to affect prices and, therefore, price comparability.

578 In accordance with the case-law, it is for the party making the request to establish that the adjustment sought is necessary to make the normal value and the export price comparable for the purpose of determining the dumping margin (see, to that effect, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 58 and the case-law cited).

579 Accordingly, it was for the applicants, in accordance with that case-law, to establish, in the present case, the need for an adjustment.

580 It is true that it may be inferred from the case-law relied on by the applicants and referred to in paragraph 576 of the present judgment that a person seeking an adjustment under Article 2(10) of the basic regulation and who is required to establish that the adjustment requested is necessary must not have to bear an unreasonable burden of proof and that it is for the institutions to indicate to that person what information is necessary.

581 In the present case, however, on the basis of their knowledge of the sector, at least of the Chinese sector, the applicants could have substantiated their request by indicating the manufacturing patterns and production ratios which did not result in unreasonable unit production costs.

582 In its exchanges with the Commission, however, the CCCME merely observed that the Indian producers, in general, produced a limited volume of ductile cast iron, inferring from that situation that their unit production costs were necessarily unreasonable and that their prices could therefore not be representative.

583 In such a context, which is also characterised by the confidentiality of the information concerned, it was not inappropriate for the Commission to require the CCCME to demonstrate, initially, that the request demonstrated a certain degree of credibility and was not based solely on general assumptions.

584 In the light of those considerations, the second complaint and, consequently, the third part of the fourth plea in its entirety must be rejected.

585 It follows that the fourth plea must be rejected.

The fifth plea in law: the adjustment for VAT

586 By their fifth plea, the applicants dispute the adjustment made by the Commission to the normal value for VAT purposes.

587 As a preliminary point, it must be noted that, in order to determine whether there was dumping, the Commission compared the export price and the normal value. As a rule, the normal value is calculated on the basis of the prices paid or payable in the ordinary course of trade in the exporting

country, namely the People's Republic of China. However, since that country was not considered to be a market economy country, the normal value was calculated, in the present case, on the basis of domestic sales prices in the Republic of India, in accordance with Article 2(7)(a) of the basic regulation.

588 It is apparent from recitals 79 to 81 of the contested regulation that, in the present case, the Commission made an adjustment for VAT in order to ensure comparability between the export price from the People's Republic of China and the Indian normal value, relying on Article 2(10)(b) of the basic regulation. For the export price, in so far as the export VAT rate in the People's Republic of China was 17%, of which 5% was reimbursed, the Commission used an export price including a VAT rate of 12%. For the normal value, in so far as the Indian prices excluded VAT, the Commission intended to apply the Chinese VAT of 17% to them by subtracting 5% from that percentage, having regard to Article 2(10)(b) of the basic regulation.

589 The fifth plea is divided into two complaints, which are disputed by the Commission.

590 By their first complaint, the applicants maintain that Article 2(10)(b) of the basic regulation does not allow the adjustment described to be made. According to the applicants, it is apparent from the wording of that provision that it permits an adjustment solely where the costs of the normal value are not collected or are refunded upon export. In the present case, however, there are no 'indirect taxes borne by the … product' sold in the Republic of India or any 'indirect taxes borne by the … product' sold in the People's Republic of China. In fact, the Commission's adjustment seeks to correct a situation where there are solely indirect taxes on export sales from the People's Republic of China to the European Union which are not refunded. However, the wording of Article 2(10)(b) of the basic regulation does not allow an adjustment to be made in order to take account of that situation.

591 In that regard, it should be noted that, according to Article 2(10) of the basic regulation, the comparison between the export price and the normal value must be fair. For that purpose, the comparison is to be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability.

592 Where the normal value and the export price as established are not on such a comparable basis, due allowance, in the form of adjustments, is to be made in each case for differences in factors which are claimed, and demonstrated, to affect prices and price comparability.

593 Where the adjustment is made, its purpose is to re-establish the symmetry between the normal value and the export price of a product. That symmetry thus constitutes a key element, reflecting the need to establish the comparability of prices within the meaning of Article 1(2) of the basic regulation (judgment of 16 December 2011, *Dashiqiao Sanqiang Refractory Materials* v *Council*, T-423/09, EU:T:2011:764, paragraphs 42 and 43).

594 Article 2(10) of the basic regulation lists the factors in respect of which adjustments may be made, including import charges and indirect taxes. Article 2(10)(b) of that regulation accordingly provides that 'an adjustment shall be made to the normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Union'.

595 Article 2(10)(k) of the basic regulation states that an adjustment may also be made for differences in other factors not provided for under points (a) to (j) of Article 2(10), if it is demonstrated that they affect price comparability as required under that paragraph, in particular if customers consistently pay different prices on the domestic market because of the difference in such factors.

596 Furthermore, it must be stated that, according to the case-law, the broad discretion available to the institutions in the field of anti-dumping applies to the facts relied on to demonstrate the fairness of the comparison method used, the concept of fairness needing to be narrowed down by the institutions in each individual case in the light of the relevant economic context (see, to that effect, judgment of 16 December 2011, *Dashiqiao Sanqiang Refractory Materials* v *Council*, T-423/09, EU:T:2011:764, paragraph 41).

597 In the present case, first, it should be noted that Article 2(10)(b) of the basic regulation does not expressly provide for the normal value of the analogue country to be adjusted to take account of export VAT in the country in which the dumped imports originate. Although the Commission erred in law in its application of that provision, that error, in the circumstances of the present case, did not have any decisive influence on the outcome of its assessment of the case submitted to it, in so far as Article 2(10)(k) of the basic regulation allows the Commission to make such an adjustment in order to re-establish the symmetry between the normal value and the export price of the product concerned and to ensure a fair comparison between those two values.

598 Second, it must be pointed out that the choice made, in the present case, by the Commission to compare the normal value and the 'VAT-inclusive' export price cannot be criticised, in the light of the broad discretion available to it as regards the method of comparison applied.

599 In the judgment of 16 December 2011, *Dashiqiao Sanqiang Refractory Materials* v *Council* (T-423/09, EU:T:2011:764), the Court recognised the fairness of such a method of comparing the normal value and the export price of certain magnesia bricks originating in the People's Republic of China. In those circumstances, the Court found that the Council had made no manifest error of assessment in taking the view that, in the instant case, the comparison between the normal value and the export price on a 'VAT-inclusive' basis constituted a fair comparison method because that comparison had been carried out in accordance with the requirement of symmetry between the normal value and the export price at the same level of trade for sales, both domestic and for export, which were all subject to VAT at the rate of 17%.

600 In the present case, since the Commission is entitled to use an export price including VAT, and since the People's Republic of China applies export VAT of 17%, of which 5% is refunded, the Commission is justified in adjusting the normal value by adding VAT to it at the 'net' rate of 12%, with a view to restoring symmetry between those two values.

601 For those reasons, the first complaint must be rejected.

602 By their second complaint, the applicants assert that the adjustment at issue cannot be performed where the Commission uses the analogue country method. The objective of that method is to prevent account being taken of prices and costs in non-market economy countries to the extent that those parameters are not the normal result of market forces. Since the Commission regards the VAT refund system as a pervasive distortion in the Chinese economy, precluding China from being granted market economy status, it is exactly the kind of factor that the Commission ought not to be inclined to take into account. In other words, the applicants submit that the alleged distortion of the VAT system has already been remedied by applying the analogue country method.

603 In that regard, it should also be noted that, under Article 2(7)(a) of the basic regulation, for imports from countries which, like the People's Republic of China, are non-market economy countries, the normal value is, as a rule, to be determined on the basis of the price or constructed value in a market economy third country, in the present case being the Republic of India.

604 According to the case-law, Article 2(7)(a) of the basic regulation seeks to prevent account being taken of prices and costs in non-market economy countries in so far as these are not the normal result of market forces (see judgment of 28 February 2018, *Commission* v *Xinyi PV Products (Anhui) Holdings*, C-301/16 P, EU:C:2018:132, paragraph 64 and the case-law cited).

605 However, that does not mean that the normal value thus determined cannot be adjusted at all. There is nothing in the basic regulation to indicate that Article 2(7)(a) of that regulation lays down a general derogation from the requirement to make adjustments on the basis of Article 2(10) of that regulation, for comparability purposes.

606 Accordingly, in a case, such as the present, in which the institutions determine normal value in accordance with the analogue country method, under Article 2(10) of the basic regulation, they must take into account, in the form of adjustments, differences in factors which are claimed, and demonstrated, to affect prices and price comparability.

607 However, where adjustments to the normal value are envisaged, Article 2(10) of the basic regulation must be interpreted in the light and in the context of Article 2(7)(a) of that regulation. If the latter provision is not to be rendered redundant, the adjustments made must not reincorporate, in the institutions' analysis, factors linked to the parameters which, in that country, in the present case the People's Republic of China, are not the normal result of market forces (see, to that effect, Opinion of Advocate General Mengozzi in Joined Cases *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2016:928, point 102).

608 In the present case, the application to the normal value of the VAT rate applicable in the People's Republic of China does not amount to introducing or reintroducing an element of distortion of the Chinese system into the calculation of the normal value determined on the basis of the analogue country method.

609 Although the Commission was entitled to regard, in the documents produced by the applicants, the Chinese VAT system as creating distortions, that was only, as it states, because of the manner in which the People's Republic of China applied export VAT, providing for a refund of that VAT for certain products and not for others.

610 For all of those reasons, the second complaint and, consequently, the fifth plea must be rejected.

The sixth plea: SG&A costs and profits

611 In the sixth plea, the applicants maintain that, in order to establish the normal value of the product types which were not sold by the three sampled Indian producers but manufactured by at least one of them, the Commission could not use the SG&A costs and the profits related to domestic sales carried out in the ordinary course of trade by that producer.

612 According to the applicants, the Commission cannot justify its position by relying on Article 2(6) of the basic regulation, as it did in recital 71 of the contested regulation. That provision, it is submitted, applies only to companies granted market economy treatment pursuant to Article 2(7)(b) of the basic regulation.

613 The Commission contends that this plea should be rejected. It states that, in so far as the applicants seek to raise a new plea alleging infringement of Article 2(6) of the basic regulation, that plea must be deemed inadmissible because it was raised only at the stage of the reply.

614 In that regard, first of all, it must be stated that the Commission has not correctly presented the arguments raised by the applicants. The applicants maintain that the Commission infringed Article 2(7)(a) of the basic regulation, a provision which states how to calculate normal value where the analogue country method is applied. According to the applicants, Article 2(7)(a) of the basic regulation thus precludes the Commission from relying on Article 2(6) of that regulation, which lays down the procedure for calculating SG&A costs and profits, because that provision applies only in the case of imports originating in a market economy country or to companies from a non-market economy country in respect of which it has been decided that they qualify for market economy treatment pursuant to Article 2(7)(b) of the basic regulation. That line of argument was raised at the stage of the application and is therefore admissible.

615 Next, it should be recalled that, as the Commission stated in recital 67 of the contested regulation, when a product type was not sold by the three sampled Indian producers, but at least one of them manufactured it, the Commission used a constructed value when calculating the normal value. That value was constructed on the basis of the Indian producer's costs of manufacturing, plus SG&A costs and profits relating to domestic sales carried out in the ordinary course of trade by that producer.

616 Under Article 2(6) of the basic regulation, 'the amounts for [SG&A] costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product by the exporter or producer under investigation'. That provision subsequently lists other methods for situations where those amounts cannot be determined on that basis.

617 The applicants do not dispute that the Commission could have used the SG&A costs and the profits of the only Indian producer which manufactured the product types at issue in accordance with Article 2(6) of the basic regulation, had it been applicable. They maintain that, in a case such as the present, where the normal value is, in accordance with Article 2(7)(a) of the basic regulation, determined by the analogue country method, paragraphs 1 to 6 of that article do not apply.

618 In that regard, it must be stated that, as the applicants have submitted in support of their arguments, it is apparent from the case-law that under Article 2(7)(a) of the basic regulation, in the case of imports from non-market economy countries, in derogation from the rules set out in paragraphs 1 to 6 of Article 2, normal value must, as a rule, be determined on the basis of the price or constructed value in a market economy third country (judgment of 19 July 2012, *Council* v *Zhejiang Xinan Chemical Industrial Group*, C-337/09 P, EU:C:2012:471, paragraph 66).

619 Accordingly, it is apparent from the wording and from the structure of Article 2(7) of the basic regulation that the determination of the normal value of products originating in the People's Republic of China by reference to the rules laid down in Article 2(1) to (6) is confined to specific individual cases, which do not occur in the present case, in which the producers concerned have each made a properly substantiated claim in their own regard in accordance with the criteria and procedures laid down in Article 2(7)(c) of that regulation (judgment of 23 October 2003, *Changzhou Hailong Electronics & Light Fixtures and Zhejiang Yankon* v *Council*, T-255/01, EU:T:2003:282, paragraph 40).

620 The objective is to prevent account being taken of prices and costs in non-market economy countries which are not the normal result of market forces (judgment of 19 July 2012, *Council* v *Zhejiang Xinan Chemical Industrial Group*, C-337/09 P, EU:C:2012:471, paragraph 66).

621 It follows that the Commission cannot depart from the requirements of Article 2(7)(a) of the basic regulation to calculate the normal value, that is to say that it must, in accordance with that provision, determine the normal value 'on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin'.

622 That having been clarified, it must be stated that, setting to one side the source of the prices or costs which must be used, which source corresponds to the market economy third country chosen by the Commission, namely, in the present case, the Republic of India, and the order in which the listed methods are to be applied, which the Commission must respect as recalled in the case-law (see, to that effect, judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraphs 24 to 26), Article 2(7)(a) of the basic regulation gives no description of the methods for calculating the price or the constructed value in the analogue country, in particular as regards SG&A costs and profits.

623 In that context, it cannot be ruled out that the Commission may apply certain methodological factors contained in Article 2(1) to (6) of the basic regulation, provided that they are not manifestly inappropriate and that they do not have the effect of reintroducing parameters of the original country which are not the normal result of market forces.

624 In the present case, the SG&A costs and profits used in calculating the constructed normal value for a product type of ductile cast iron and two product types of grey cast iron are those of the only Indian producer which manufactured the products in question and whose cost of manufacturing was therefore used.

625 In the light of the Commission's broad discretion in anti-dumping matters, it cannot be found that it was manifestly inappropriate for the Commission to add SG&A costs and profits relating to its sales to that producer's cost of manufacturing. Furthermore, taking into account only SG&A costs and profits of that Indian producer did not have the effect of reintroducing parameters of the People's Republic of China which were not the normal result of market forces.

626 Consequently, the sixth plea must be rejected.

The application for a measure of organisation of procedure

627 At the end of their first plea, the applicants request the Court to order, by way of a measure of organisation of procedure, the Commission to produce information which had already been requested from that institution during the investigation, namely the calculations and source data concerning the volume of dumped imports, the injury and the dumping margin of the Chinese and Indian exporting producers.

628 In that regard, it must be stated that, according to the case-law, it is for the Court to appraise the usefulness of measures of organisation of procedure (see judgment of 9 March 2015, *Deutsche Börse* v *Commission*, T-175/12, not published, EU:T:2015:148, paragraph 417 and the case-law cited).

629 In the present case, the information in the file is sufficient to enable the Court to give judgment, since it has been able to give a proper ruling on the basis of the forms of order sought, the pleas in law and arguments put forward during the proceedings and in the light of the documents lodged by the parties.

630 It follows that the application for a measure of organisation must be rejected, and the action dismissed in its entirety, there being no need to give a ruling on the admissibility or effectiveness of all the complaints contested by the Commission which have been rejected on the merits.

Costs

631 Under Article 134(1) 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 the costs incurred by the Commission and by the interveners, in accordance with the forms of order sought by them.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders China Chamber of Commerce for Import and Export of Machinery and Electronic Products and the other applicants whose names are listed in the annex to pay the costs.**

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 19 May 2021.

E. Coulon
Registrar

S. Papasavvas
President

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