Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

30 June 2016*

(Dumping — Importations of threaded tube or pipe cast fittings, of malleable cast iron originating in China — Definitive anti-dumping duty — Confidential treatment of the normal value calculations — Information provided in good time — Time limit for adopting a decision on market economy treatment — Rights of the defence — Equal treatment — Principle of non-retroactivity — Article 2(7) to (11), Article 3(1) to (3), Article 6(7), Article 19(1) and (5), and Article 20(2) and (4), of Regulation (EC) No 1225/2009)

In Case T-424/13,

Jinan Meide Casting Co. Ltd, established in Jinan (China), represented by R. Antonini and E. Monard, lawyers,

applicant,

v

Council of the European Union, represented by S. Boelaert and B. Driessen, acting as Agents, and by S. Gubel, lawyer, and B. O'Connor, Solicitor,

defendant,

supported by

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

intervener,

ACTION for the annulment 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), to the extent that it applies to the applicant,

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias (Rapporteur), President, M. Kancheva and C. Wetter, Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 22 October 2015,

* Language of the case: English.

gives the following

Judgment

Background to the dispute

1 Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; 'the basic regulation'), defines, in EU law, the rules applicable to anti-dumping proceedings. It is clear from recital 3 that, in order to ensure a proper and transparent application of the rules contained in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103, 'the Anti-dumping Agreement'), which is set out in Annex I A of the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3) that regulation transposes, as far as possible, the terms of the Anti-dumping Agreement into EU legislation.

2 Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012, amending Regulation No 1225/2009 (OJ 2012 L 344, p. 1, 'the amending regulation'), entered into force on 15 December 2012.

3 Jinan Meide Casting Co. Ltd, the applicant, is a company established in China that produces threaded tube or pipe cast fittings, of malleable cast iron, for the domestic market and export.

Facts relevant to the investigation procedure leading to the provisional regulation

4 On 16 February 2012, following a complaint lodged on 3 January 2012 by the Defence Committee of Tube or Pipe Cast Fittings, of Malleable Cast Iron of the European Union, the European Commission published a notice of initiation of an anti-dumping proceeding concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, Thailand and Indonesia (OJ 2012 C 44, p. 33). It is clear from paragraph 3 of that notice that the product allegedly being dumped is a product classified in the Combined Nomenclature, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), under CN code ex 7307 19 10. In paragraph 5.1.1.1(a) of the notice, the Commission stated that, in view of the potentially large number of Chinese exporting producers of the product, it would select a sample of exporting producers in accordance with the conditions laid down by Article 17 of the basic regulation.

5 On 3 April 2012, the applicant submitted a claim for market economy treatment ('MET'), under Article 2(7)(b) of the basic regulation. The visit to the applicant's premises by the Commission's services to examine that claim was scheduled to take place from 30 May to 1 June 2012. On 9 July 2012, the Commission communicated to the applicant the essential facts and considerations on the basis of which it decided not to grant it MET. By letter of 23 July 2012, the applicant submitted to the Commission its comments on that decision. On the other hand, like all the other Chinese exporting producers included in the sample, the applicant was granted individual treatment under the second subparagraph of Article 9(5) of the basic regulation.

The provisional regulation and the provisional disclosure document

6 On 14 November 2012, the Commission adopted Regulation (EU) No 1071/2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ 2012 L 318, p. 10) ('the provisional regulation').

7 In recital 14 of the provisional regulation, the Commission clarifies that, in order to establish a normal value for the Chinese exporting producers that are not granted MET, a visit to verify the data from India, as analogue country (see paragraph 13 below), took place at the premises of a producer of that country with the company name 'Jainson Industries, Jalandhar, Punjab, India'.

8 In recital 15 of the provisional regulation, the Commission stated that the dumping investigation had covered the period between 1 January and 31 December 2011 and that the examination of trends relevant for the assessment of injury had covered the period from 2008 to the end of the investigation period.

9 In recitals 16, 17 and 18 of the provisional regulation, the Commission defined the product concerned stating that, in particular, it corresponded to threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10.

10 According to recital 19 of the provisional regulation, it had been established that the product concerned and the product produced and sold on the domestic markets of China, Thailand and Indonesia, and on the Indian domestic market, which served as an analogue country, as well as the product manufactured and sold in the European Union by the EU industry were found to have the same basic physical and technical characteristics. Consequently, those products were provisionally considered to be alike within the meaning of Article 1(4) of the basic regulation.

11 Recital 30 of the provisional regulation states that, as regards imports from China, 12 exporting producers, accounting for 51% of all Chinese exports to the European Union during the investigation period, cooperated by providing the information requested. That recital also indicates that, in accordance with Article 17(1) of the basic regulation, the Commission selected a sample of 3 of the 12 exporting producers, representing 88% of the volume of exports by those 12 exporting producers. The applicant was one of that sample.

12 Recital 40 of the provisional regulation states that the two month delay in the determination of the MET of one of the Chinese companies having claimed that status, namely the applicant, was mainly due to the fact that an earlier MET verification could not take place as the exporting producers were not available. That recital also states that the timing of the determination did not have any impact on the outcome.

13 In recitals 49 to 53 of the provisional regulation, the Commission set out the reasons why it had provisionally concluded that India was an appropriate analogue country for the exports from China, in accordance with Article 2(7)(a) of the basic regulation.

14 In recitals 54 to 63 of the provisional regulation, the Commission set out the method used to establish the normal value, within the meaning of Article 1(4) of the basic regulation, as regards exports of the product concerned from China.

15 First of all, in recital 54, the Commission stated that since no Chinese exporter included in the sample had been granted MET, normal value had been established, as regards those exporters, in accordance with Article 2(7)(a) of the basic regulation, namely by using India as analogue country.

16 Next, in recital 55, the Commission stated that, first of all, it had begun by seeking to establish whether the total volume of sales of the like product made by the producer in the analogue country were representative, namely whether that volume represented at least 5% of the total volume of export sales of the product concerned to the European Union of each of the Chinese exporting producers included in the sample. Furthermore, the Commission stated in the same recital that that was the case for two of those exporting producers. By contrast, as will be explained in paragraph 130 below, at the stage of the adoption of the provisional regulation the Commission had reached the opposite conclusion as regards the applicant.

17 It is apparent from recitals 56 and 57 that, at the second stage, the Commission identified the various types of like product which were required to be taken into account to establish the normal value. For that purpose, the Commission identified each type of product sold by the producer in the analogue country that was identical or directly comparable to the various types of product concerned sold for export by the Chinese exporting producers. At the third stage, once the types of like product to be taken into account were thus defined, the Commission, as stated in recital 57 of the provisional regulation, established whether domestic sales in the analogue country of each of the like product types were sufficiently representative, namely whether the volume of those sales to independent customers during the investigation period represented at least 5% of the total volume of the corresponding type of product sold for export to the European Union by each of the exporting producers.

18 At the fourth stage, as it stated in recitals 58 to 62 of the provisional regulation, the Commission examined whether the sales of those types of like product, made in representative quantities according to the definition set out in paragraph 17 above, could be considered as having been sold in the ordinary course of trade, on the basis of the proportion of sales that were profitable, that is to say, sales made at a net sales price equal to or above the calculated cost of production. At the end of that assessment, the Commission chose the method of calculating the normal value.

19 Thus, according to recital 59, where the volume of profitable sales, thus defined, of a type of like product exceeded 80% of the total sales volume of that product type and the weighted average sales price of that product type was equal to or higher than the cost of production, normal value of that product type was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that product type during the investigation period. On the other hand, according to recital 60, where the volume of profitable sales was 80% or less of the total sales volume of a like product type, or where the weighted average price of that product type was below the cost of production, normal value was determined using the actual domestic price, calculated on the basis of profitable sales of that product type only.

20 Finally, according to recital 61, the types of like product sold at a loss were not considered to have been sold in the ordinary course of trade. Recital 62 states that, for those product types and for those that were not sold in sufficiently representative quantities, according to the definition set out in paragraph 17 above, the method of a constructed normal value, within the meaning of Article 2(3) and (7)(a) of the basic regulation, had been used.

21 As regards the determination of the export price, it is apparent from recital 64 of the provisional regulation that those prices were established in accordance with Article 2(8) of the basic regulation, namely on the basis of export prices actually paid or payable by each of the Chinese exporting producers included in the sample.

22 According to recitals 65 to 67 of the provisional regulation, in accordance with Article 2(10) of the basic regulation, the comparison between the normal value and the export price was made on an ex-works basis and by making adjustments for difference in physical characteristics, indirect taxes, transport, insurance, handling, loading and ancillary costs, packing, credit, commissions and bank charges in all cases where they were found to be reasonable, accurate and supported by verified evidence.

23 According to recital 68 of the provisional regulation, the dumping margin for the Chinese companies included in the sample was calculated on the basis of a comparison between the weighted average normal value of each type of the like product established for the analogue country and the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) of the basic regulation.

24 According to recital 69 of the provisional regulation, the weighted average dumping margin of the applicant, calculated on the basis described in paragraph 23 above, was set at 39.3% of the CIF (cost, insurance and freight) Union frontier price, duty unpaid, of the product concerned.

25 Article 1(2) of the provisional regulation fixed the rate of the provisional anti-dumping duty for the applicant at 39.3%.

26 By letter of 15 November 2012, the Commission sent the applicant the provisional disclosure document, pursuant to Article 20(1) of the basic regulation. In addition to the provisional regulation, which was included as Annex 1 to that document, the document included an Annex 2 concerning the methodology used for the calculation of dumping, and an Annex 3 on the methodology used for the calculation of undercutting and injury.

27 In Annex 2 to that provisional disclosure document, the Commission provided, first of all, some general explanations as to the calculation of the dumping margin. In addition, the Commission provided a certain number of clarifications as regards the exclusion, from the applicant's export sales, of a certain product type concerned and the various adjustments that it had made for the purposes of a fair comparison, in accordance with Article 2(10) of the basic regulation. Also in Annex 2, the Commission provided a certain number of tables setting out the detailed calculations of the dumping margin by product type, in which it omitted elements based on data provided by the analogue country producer. As the Commission clarified in that annex, only one analogue country producer had cooperated with the investigation and, consequently, the information derived from the analogue country could not be disclosed at the level of product control numbers.

Exchanges between the applicant and the Commission after the provisional regulation

28 On 17 December 2012, the applicant submitted to the Commission its observations on the provisional disclosure document. Those observations concerned five points, namely the determination of MET, normal value, the adjustment to the normal value as regards value added tax (VAT), the need for an adjustment concerning the production process, and export prices.

29 In particular, on the second point, the applicant submitted that the Commission was wrong to have used a constructed value in respect of all like product types that had been compared with the product types concerned that the applicant exported to the European Union. Thus, first, according to the applicant, the Commission should have used the domestic prices of the analogue country producer and not a constructed value, recourse to that method only being justified where it was not possible to use domestic prices, which was not so in the present case. Second, the applicant considered that the use of a 5% threshold to determine whether sales of the like product were representative was not justified where, as in the present case, a comparison was to be made between the domestic prices of a given producer on the Indian market and the export prices of Chinese producers, and that that approach excessively penalised those exporting producers, such as the applicant, that had significant export volumes, who had greater difficulty in satisfying such a criteria for representativeness. Furthermore, that threshold was not, under Article 2(2) of the basic regulation, absolute. For all those reasons, the applicant asked the Commission to recalculate the normal value in accordance with its observations. Next, the applicant made two other criticisms of the determination of the normal value, which concerned, on the one hand, the use of turnover to determine the analogue country producer's costs of production and, on the other hand, the use of a single average profit margin for all the product types. Furthermore, the applicant, after having 'taken note of the fact that the analogue country producer [was] Jainsons Industries', submitted comments on the adjustments to the normal value and, in particular, set out the reasons why it claimed an adjustment in respect of the differences in the production process and productivity between the applicant and the analogue country producer.

30 Finally, as regards the export price, the applicant requested that the Commission, first, calculate the dumping margin on the basis of all of its export sales of the product concerned and, second, provide additional explanations as regards the calculation of the adjustments made on export sales in respect of difference in physical characteristics.

31 At the hearing on 6 February 2013, the applicant repeated, in essence, all of its submissions relating to the provisional disclosure document that were made in its letter of 17 December 2012. To substantiate, in particular, its requests for adjustment as to the production processes and productivity, the applicant referred, inter alia, to information regarding the analogue country producer, namely, first, an extract from the analogue country producer's website, which contained, in particular, information as to the size of the workforce, the annual production volume and the principal equipment that the producer had at its disposal, and, second, an email exchange between that producer and the applicant that had taken place between 29 January and 1 February 2013.

32 On 15 March 2013, the Commission sent the applicant the final disclosure document. That document included, in Annex 1, a general disclosure document, the purpose of which, in accordance with Article 20(2) of the basic regulation, was to set out the essential facts and considerations on the basis of which the Commission intended to recommend the imposition of definitive measures. In Annexes 2 and 3 to that final disclosure document, the Commission set out particular observations as regards the calculation of the dumping margin and the undercutting calculations and injury calculations respectively. In particular, in Annex 2, the Commission stated that it had accepted the applicant's submission that the normal value should be calculated on the basis of the domestic sales of the sole cooperating analogue country producer, even if those sales had not been made in quantities that were representative within the meaning of Article 2(2) of the basic regulation. Consequently, it was domestic sales made in the ordinary course of trade by the sole cooperating analogue country producer that had been used to determine the normal value with a view to establishing the definitive dumping margin of the applicant. Furthermore, the Commission stated that it had also accepted the applicant's contention that the dumping margin should be determined on the basis of all exports and not only in respect of the product types concerned that corresponded to like product types sold by the analogue country producer on the domestic market. The Commission stated that, for the non-matching product types, the average normal value was adjusted by the market value of the differences in the physical characteristics, in accordance with Article 2(10)(a) of the basic regulation.

33 By contrast, the Commission stated that it rejected the applicant's claims for adjustments as regards the differences between the applicant and the analogue country producer concerning the production process and productivity. First of all, as regards the claim for an adjustment in respect of the production process, while the Commission acknowledged that there were certain differences in the production process between the two producers concerned, it noted that the unit consumption of steel scrap was almost identical. As regards the second claim for an adjustment, the Commission stated, in essence, that only differences affecting prices and price comparability between the analogue country producer and an exporter in a non-market-economy country warranted an adjustment and that only a comprehensive analysis could reveal all differences in cost factors and demonstrate that prices and their comparability were affected, which might then justify an adjustment.

34 The Commission also provided, in Annex 2 to the final disclosure document, a series of tables on the detailed calculation of the dumping margin by product type analogous to the series of tables provided in Annex 2 to the provisional disclosure document referred to in paragraph 27 above. Thus, as in the provisional information document, in the final disclosure document the Commission redacted entirely the information based on the data provided by the analogue country producer.

Exchanges between the applicant and the Commission after the provisional regulation

35 On 18 March 2013 the analogue country producer sent the Commission a letter in which it stated that it 'explicitly authorise[d] the European Commission to disclose [to the applicant's lawyer] the confidential version of Jainsons Industries' questionnaire reply and the on-spot verification exhibits'. Furthermore, in that same letter, that producer stated that it had, on the same day, sent those documents to the applicant.

36 By email of 18 March 2013, the applicant asked the Commission, on the basis of the analogue country producer's letter referred to above, to disclose the confidential version of the reply by that producer to the anti-dumping questionnaire and the on-spot verification visit exhibits. In addition, 'in light of the authorisation [by the analogue country producer] to disclose their confidential questionnaire reply', the applicant asked the Commission, in the same email, to give it full disclosure of all the normal value calculations. Finally, the applicant asked specifically for information regarding, first, how the normal value for non-matching product types had been established, second, how the Commission had differentiated between the black and galvanised fittings and, third, the basis of the Commission's conclusion that the unit consumption of steel scrap for the analogue country producer and its own consumption of that material was almost identical.

37 In a second email of 19 March 2013, the applicant repeated its request. In particular, it responded to the reason for refusal that, according to the information given by the analogue country producer, the Commission had told that producer that confidentiality could not be waived selectively for specific interested parties. The applicant submitted in that respect, first, that the dumping margin calculations and, hence, the normal value data were specific to the undertaking concerned and, second, that the basic regulation did not provide that the specific authorisation by the supplier of the confidential information could not be restricted to a single interested party. In addition, stating that the rights of the defence were at stake, the applicant requested that the dispute in question be resolved by the hearing officer, whose role is regulated by Decision 2012/199/EU of the President of the European Commission of 29 February 2012 on the function and terms of reference of the hearing officer in certain trade proceedings (OJ 2012 L 107, p. 5).

38 In response, in its email dated 21 March 2013, the Head of Trade Defence Investigations Section of the Commission rejected the applicant's request, justifying its refusal as follows: 'The normal value information was used for all three exporting producers included in the sample, and not only for Jinan Meide. A disclosure to Jinan Meide only would therefore result in a selective disclosure of limited information to one interested party, while other interested parties affected by the same information do not benefit from this preferential access to this limited information.' In a later email of the same day, the hearing officer stated that he shared the position expressed in the abovementioned email and emphasised that non-discriminatory treatment of the parties was the main element.

39 On 25 March 2013 the applicant submitted its observations on the final disclosure document. The applicant referred to its disagreement with the Commission that had arisen in the exchange of emails referred to in paragraphs 36 to 38 above and repeated its request for disclosure of the confidential version of the reply by the analogue country producer to the anti-dumping questionnaire, the on-spot verification visit exhibits and for full disclosure of the normal value calculations. Next, the applicant touched on a certain number of specific questions relating to the determination of the normal value, which, in certain cases, had already been referred to in its observations on the provisional information document. The applicant relied, on that occasion, on the analogue country producer's data that the latter had, in the meantime, communicated to the applicant, as it had stated in its email of 18 March 2013 (see paragraph 35 above).

40 In particular, the applicant repeated its specific request submitted in its email of 18 March 2013 (see paragraph 36 above) relating to the disclosure of the methodology for calculating the normal value for non-matching products. The applicant considered that the explanation given by the Commission in the

final disclosure document relating to the fact that the normal value of those products had been adjusted in accordance with the market value of the differences in physical characteristics was insufficient. The applicant submitted that it produced 1 645 product types concerned, whilst the analogue country producer only produced 287 like product types, with the result that 83% of the product types concerned did not have a match. Furthermore, out of the 11 130 tonnes that it had exported to the European Union during the investigation period, only 5 738 tonnes concerned corresponding product types. In those circumstances, the disclosure requested was absolutely vital to its rights of defence.

41 In addition, the applicant proposed corrections relating, first, to the allocation of production costs on the basis of turnover and, second, to the calculation of adjustments to the normal value concerning the costs of freight and packing. The applicant also repeated and clarified its requests for an adjustment relating to the production process and productivity, which it had made in its observations on the provisional disclosure document, and its criticism of the adjustment for non-refundable VAT, also already set out within its aforementioned observations. The applicant also, moreover, made a new request for an adjustment in respect of quantities sold.

42 At the hearing of 26 March 2013 which the Commission services granted it, the applicant recalled its claims and the complaints that it had made in its observations on the final disclosure document. Following that hearing, in a letter dated 27 March 2013, the applicant noted that during the hearing of 26 March 2013, the Commission had stated that the methodology followed for that calculation consisted of relying on the average normal value established for corresponding product types, adjusted by determining a market value for the differences in physical characteristics on the basis of export prices to the European Union fixed by the applicant for non-matching product types. The applicant stated in that regard that, in its view, that methodology rested on the unverifiable and unreasonable assumption that the market value of the differences in physical characteristics would be reflected in export prices and it proposed an alternative method consisting of limiting the number of non-matching product types by shortening the control numbers of the product that allowed them to be identified.

The contested regulation

43 On 13 May 2013, the Council of the European Union adopted Implementing Regulation (EU) No 430/2013 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, 'the contested regulation').

44 In recital 15 of the contested regulation, the Council states that, in the absence of any comments concerning MET, the provisional findings set out in recitals 32 to 46 of the provisional regulation are thereby confirmed.

45 In recital 17 of the contested regulation, the Council states that it had accepted the claim made by one Chinese exporting producer that, even if they were not made in representative quantities, the normal value had to be calculated on the basis of the domestic sales of the analogue country producer. It states that, accordingly, it was those sales in the ordinary course of trade that were used to establish the normal value.

46 In recital 18 of the contested regulation, the Council states that it also accepted the claim by the same Chinese exporting producer that the dumping margin should be established using all export sales, and not only those relating to the product types directly comparable with the types sold by the analogue country producer on its domestic market.

47 In recital 19 of the contested regulation, the Council states that, in the absence of any other comments concerning the normal value, export price and comparison, the findings set out in recitals 54, 59 to 61 and 64 to 67 of the provisional regulation were confirmed

48 It is clear from recital 20 of the contested regulation that the weighted average normal value of each type of the like product established for the analogue country, in accordance with the methodology set out in recitals 17 to 19 of the regulation, was compared with the weighted average export price of the corresponding type of the product concerned.

49 According to the table in recital 21 of the contested regulation, the definitive dumping margin for the applicant was established at 40.8%.

50 Article 1(1) of the contested regulation provides:

'A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China ('PRC') and Thailand.'

51 Article 1(2) of the contested regulation provides, in respect of the applicant, that the rate of the definitive anti-dumping duty applicable to the net free-at-Union-frontier, before duty, price of the product covered is 40.8%.

Procedure and forms of order sought

52 By an application lodged with the Court Registry on 7 August 2013, the applicant brought the present action.

53 By document lodged with the Court Registry on 26 September 2013, the Commission applied for leave to intervene in support of the form of order sought by the Council, the defendant. The applicant and the Council did not submit observations on that application. By order of 19 November 2013, the President of the Eighth Chamber of the Court granted the Commission leave to intervene. The Commission lodged its statement in intervention and the other parties submitted their observations on that statement within the prescribed periods.

54 The applicant claims that the Court should:

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

— order the Council and the Commission to pay the costs.

55 The Council contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

56 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

57 In support of its action, the applicant puts forward five pleas in law. The first plea in law alleges that the EU institutions infringed its rights of defence and Article 6(7) and Article 20(2) and (4) of the basic regulation in so far as those institutions failed to disclose to it information relevant to the normal value determination. The second plea alleges, principally, an infringement of Article 2(10) of the basic regulation and of Article 2.4 of the Anti-dumping Agreement, inasmuch as the institutions rejected the requests for adjustments in the normal value presented by the applicant and, in the alternative, a failure to provide reasons. The third plea in law alleges an infringement of Article 2(7)(a), Article 2(10) ab initio and (a) and Article 2(11) read in conjunction with Article 2(7)(a), (8) and (9) and Article 9(5) of the basic regulation and the principle of non-discrimination in so far as the institutions adopted an incorrect methodology for the determination of the normal value for non-matching products. The fourth plea alleges an infringement of Article 2(7) of the basic regulation in so far as it was not until 9 July 2012 that the Commission notified the MET findings. The fifth plea in law alleges an infringement of Article 3(1), (2) and (3) of the basic regulation in so far as the determination of the injury suffered by the European Union industry relied on inaccurate data concerning the volume of dumped imports from China.

58 The Court considers it appropriate to examine, first of all, the fourth plea in law, and then the first plea.

The fourth plea in law

59 The applicant submits, in essence, that the notification of the MET findings took place almost five months after the date of initiation of the investigation, which constitutes an infringement of the three-month period provided for by Article 2(7) of the basic regulation. That interpretation is, according to the applicant, supported by the case-law of the Court of Justice. In addition, the applicant submits that, if the MET decision had been taken earlier, the applicant would have the chance better to exercise its rights of defence. Furthermore, according to the applicant, the institutions' assertion that the delay in adopting the MET decision was due to the fact that the Chinese exporting producers were unavailable for the verification visits was factually incorrect and legally irrelevant. Finally, the applicant submits that, as the infringement of Article 2(7) of the basic regulation occurred on 16 May 2012, it was not affected by Article 2 of the amending regulation, which provides that that regulation applies to new and to all pending investigations as from 15 December 2012, that article being, in any event, unlawful.

60 The Council and the Commission contend that those submissions must be rejected.

61 At the outset, it should be noted that, in the version before the entry into force of the amending regulation referred to in paragraph 2 above, which occurred on 15 December 2012, the second subparagraph of Article 2(7)(c) of the basic regulation provided that a determination of whether the producer met the criteria referred to for MET had to be decided within three months of the initiation of the investigation. Following the entry into force of Article 1(1)(a) of the amending regulation, that provision in the basic regulation provided, from then on, that the determination of MET was normally to be made within seven months of, but in any event not later than eight months after, the initiation of the investigation. Furthermore, Article 2 of that amending regulation provides that that regulation applies to all new and to all pending investigations as from 15 December 2012.

62 In addition, as was recalled in paragraph 5 above, in the present case, the Commission notified the applicant by letter of 9 July 2012 of the essential facts and considerations on the basis of which it decided not to grant it MET. As is clear from that letter, which was added to the case file in the context of a measure of organisation of procedure, the Commission referred, in that regard, to

'essential facts and considerations on the basis of which [it] intended not to grant [the applicant] MET'. However, as the parties confirmed at the hearing, that formulation is explained by the fact that, in accordance with the case-law, the Commission, in the course of the investigation, had the power to reconsider its MET decision (judgment of 1 October 2009 in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, ECR, EU:C:2009:598, paragraphs 110 to 113). Thus, in spite of that formulation, it was in fact by that letter of 9 July 2012 that the Commission had, in accordance with the second subparagraph of Article 2(7)(c) of the basic regulation, determined whether the applicant satisfied the criteria to be granted MET.

63 In the first place, it is appropriate, therefore, to examine which version of the second subparagraph of Article 2(7)(c) applied to that decision in order to determine whether the Commission's decision of 9 July 2012 was taken after the deadline laid down by that provision. In that regard, the institutions submit, in essence, that the amendment of the time limit laid down in the second subparagraph of Article 2(7)(c) of the basic regulation, introduced by the amending regulation, was applicable to the MET decision dated 9 July 2012 on the ground that the investigation at issue in the present case was ongoing at the date of 15 December 2012 and that Article 2 of the amending regulation provided for the application of the aforementioned amendment in such investigations. That interpretation must be rejected.

64 It must be recalled that, according to settled case-law, a new rule of law applies from the entry into force of the act introducing it and, while it does not apply to legal situations that have arisen and become definitive under the old law, it does apply to their future effects and to new legal situations. It is otherwise, subject to the principle of the non-retroactivity of legal acts, only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application. In particular, procedural rules are generally taken to apply from the date on which they enter into force, as opposed to substantive rules, which are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such an effect must be given to them (see the judgment of 26 March 2015 in *Commission* v *Moravia Gas Storage*, C-596/13 P, ECR, EU:C:2015:203, paragraphs 32 and 33 and the case-law cited).

65 The Court of Justice has also held that the provision which formed the legal basis of an act and empowers an EU institution to adopt the act must be in force on the date on which the act is adopted (see the judgment in *Commission* v *Moravia Gas Storage*, EU:C:2015:203, paragraph 34 and the case-law cited).

66 In the present case, Article 2 of the amending regulation provides that that regulation is applicable to pending proceedings from 15 December 2012, that is to say, on the date that it entered into force. Moreover, it is clear from the case-law recalled in paragraph 64 above that the amendment of the time limit for determining MET introduced by Article 1(1)(a) of the amending regulation would be applicable even in the absence of the provisions of that Article 2 to the extent that it amended a procedural rule. Thus, while it was necessary to clarify in that article that the amending regulation applied to all new or pending investigations as from the date of its entry into force, that was because, in addition to the amendment to the time limit referred to above, the amending regulation also contained provisions amending the substantive rules concerning the MET determination (Article 1(1)(b) and Article 1(2)). In accordance with the case-law recalled in paragraph 64 above, such substantive rules, in principle, could not be applied to situations existing before their entry into force, without such an application being expressly laid down or, at the very least, apparent from the purpose or general scheme of those rules.

67 Therefore, the amendment of the time limit for the MET determination applied in principle, in the context of an ongoing anti-dumping investigation, to any Commission decision determining whether an undertaking satisfied the criteria to be granted MET, within the meaning of the second subparagraph of Article 2(7)(c) and having been adopted on or after 15 December 2012.

68 On the other hand, contrary to the submissions made by the institutions, Article 2 of the amending regulation cannot have had the effect of rendering Article 1(1)(a) of the amending regulation applicable to a decision determining MET adopted before the entry in force of that regulation. That would confer on that provision a retroactive effect, which is not clear from the wording of Article 2 of the amending regulation. In addition, it is clear from the case-law recalled in paragraph 64 above that, while the new rules, in particular procedural rules, can apply to legal situations that have arisen and become definitive under the old law, the application of the new rules must nevertheless comply with the principle of non-retroactivity. The consequence of respect for the principle of non-retroactivity is, in particular, as is clear from the case-law recalled in paragraph 64 above, that the legality of a European Union act must, in principle, be assessed having regard to the provision that formed the legal basis of that act, which was in force at the date on which it was adopted.

69 In the present case, at the date of adoption of the Commission decision not to grant the applicant MET, namely 9 July 2012, the second subparagraph of Article 2(7)(c) of the basic regulation, which forms the legal basis of that decision, provided that the Commission had three months from the initiation of the investigation to make such a decision. It is therefore, contrary to the arguments advanced by the institutions, with regard to the latter time limit that the legality of the decision referred to must be assessed and not with regard to the time limit applicable since the entry into force of the amending regulation, which occurred on 15 December 2012.

70 In the second place, contrary to what the institutions suggest, the time limit laid down in the second subparagraph of Article 2(7)(c) of the basic regulation is not merely indicative because, in accordance with paragraphs 110 to 113 of the judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above (EU:C:2009:598), the Commission may, at any time during the investigation procedure, amend its original decision. It is clear from those paragraphs that the Court did not rule on whether the Commission had an option of not complying with the time limit referred to, an option which, moreover, was not in issue in the proceedings upon which the Court ruled in that case. Thus, in those paragraphs, the Court merely ruled that the second subparagraph of Article 2(7)(c) of the basic regulation could not be interpreted as obliging the Commission to propose to the Council definitive measures which would perpetuate, to the detriment of the undertaking concerned, an error made in the original assessment of the substantive criteria laid down in the first subparagraph of Article 2(7)(c) of the basic regulation. The Court concluded that, consequently, if the Commission realised that its original assessment was vitiated by such an error, it was required to take appropriate action, while ensuring that the procedural safeguards were observed (judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above, EU:C:2009:598, paragraphs 111 and 112). Therefore, the mere fact that the Commission had, in accordance with that case-law, the option — the obligation even — of reconsidering an initial decision on MET that was vitiated by an error of assessment does not affect its obligation to comply with the time limit laid down by the basic regulation for adopting such an initial decision.

71 Furthermore, the wording of the second subparagraph of Article 2(7)(c) of the basic regulation does not contain any indication that the time limit that it lays down should be interpreted as being purely indicative. Indeed, certain language versions of that provision, such as the English and French that use the verbs ‘shall’ and ‘doit’ respectively, refer explicitly to an obligation, for the Commission, to make the determination in compliance with that time limit. Moreover, as the applicant submits, paragraphs 36 to 39 of the judgment of 2 February 2012 in *Brosmann Footwear (HK) and Others* v *Council* (C-249/10 P, ECR, EU:C:2012:53), and paragraphs 29 to 32 of the judgment of 15 November 2012 in *Zhejiang Aokang Shoes* v *Council* (C-247/10 P, EU:C:2012:710), explicitly confirmed the mandatory nature of the time limit referred to.

72 Consequently, compliance with the time limit of three months for determining MET, laid down in the second subparagraph of Article 2(7)(c) of the basic regulation, does not constitute, for the Commission, an option, but a requirement.

73 In the third place, the circumstances relating to the organisation of verification visits, which were relied on by the Council and the Commission in order to justify the delay in the adoption of the MET determination concerning the applicant, do not permit the Commission to derogate from such a requirement.

74 On the one hand, the option of derogating from the requirement to determine MET within the time limit of three months was not provided for in the second subparagraph of Article 2(7)(c) of the basic regulation, in the version in force at the date on which the decision of 9 July 2012 was adopted.

75 On the other hand, it must be noted that, in the present case, as is clear from recital 40 of the provisional regulation (see paragraph 12 above), confirmed by recital 15 of the contested regulation, the institutions justify the delay in the adoption of the MET determination concerning the applicant by the fact that the Commission had not been able to carry out the verification visits at the premises of the Chinese exporters earlier due to their unavailability. In its defence, the Council clarifies that justification by stating that the Chinese exporting producers included in the sample had indicated that they were available only in one of the three possible periods that the Commission had proposed to them, namely the period between 9 and 11 May 2012. According to the Council, it was impossible in practice for the Commission simultaneously to carry out, during that sole period, the verification visits at the three exporting producers concerned. That is the reason why those visits had to be re-scheduled, with the result that it became impossible for the Commission to adopt a decision on MET within the time limit allowed.

76 However, the institutions do not go so far as to submit that, given those circumstances, it was absolutely impossible for the Commission to adopt a decision on MET within the time limit allowed, nor that the late adoption of that decision was a case of force majeure, namely, according to settled case-law, that the non-compliance with the time limit was attributable to circumstances, beyond the control of the institutions, which were abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence (see, to that effect, judgments of 8 March 1988 in *McNicholl and Others*, 296/86, ECR, EU:C:1988:125, paragraph 11, and 4 March 2010 in *Commission* v *Italy*, C-297/08, ECR, EU:C:2010:115, paragraph 85). In any event, even if the institutions, by setting out the circumstances referred to in paragraph 75 above, intended to rely on the notion of force majeure, it must be held that, in the present case, the criteria, laid down by the case-law cited above, for that notion to apply are clearly not fulfilled. In that regard, the documents on the case file show that, by an email dated 4 April 2012, the Commission had proposed to the exporting producers included in the sample three periods for verification visits at their premises, which were 2 to 4 May 2012, 7 to 9 May 2012 and 9 to 11 May 2012 respectively. It is appropriate, moreover, to observe that those three periods were all relatively near to the date on which the period for adopting a MET decision would expire, namely, at the latest, 17 May 2012. Thus, the institutions do not prove, or even contend, that the Commission exercised all due diligence in proposing periods for the verification visits allowing it a sufficient margin of manoeuvre in order to adopt a MET decision before the abovementioned time limit expired. In addition, the fact that the three exporting producers included in the sample were available only in one of the three periods proposed by the Commission is manifestly not, in the present case, an abnormal and unforeseeable circumstance.

77 It must be held that, as stated in paragraph 62 above, the MET decision concerning the applicant was taken on 9 July 2012 and consequently was adopted after the expiry of the time limit laid down in the second subparagraph of Article 2(7)(c) of the basic regulation, which was, as stated in paragraph 76 above, 17 May 2012 at the latest.

78 Consequently, it follows from all the foregoing that the Commission infringed its obligation, under the second subparagraph of Article 2(7)(c) of the basic regulation, to take a MET decision concerning the applicant within three months of the initiation of the investigation.

79 That said, neither the wording of the second subparagraph of Article 2(7)(c) of the basic regulation nor the legislative history leading to its insertion into the basic regulation, give any indication as to the consequences of a failure to comply with the three month time limit laid down in that provision (Opinion of Advocate General Bot in Joined Cases *C & J Clark International* and *Puma*, C-659/13 and C-34/14, ECR, EU:C:2015:620, paragraph 82).

80 In that regard, as was stated in paragraph 59 above, the applicant submits that, if the MET decision had been taken earlier, the applicant would have had a chance better to exercise its rights of defence. The applicant supports that assertion by submitting, in a general way, first, that the purpose of the three month time limit referred to is to allow exporting producers operating in non-market economy countries to benefit from a clear legal status during a sufficiently long period of the investigation procedure and, second, that the late determination of MET was likely to affect other aspects of that procedure.

81 According to established case-law, in particular in the field of dumping, the existence of an irregularity relating to the rights of the defence can result in annulment of the contested regulation only where it cannot be ruled out that, due to that irregularity, the administrative procedure could have resulted in a different outcome, thus in fact adversely affecting the rights of the defence (judgments in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above, EU:C:2009:598, paragraphs 81 and 94, and of 16 February 2012 in *Council and Commission* v *Interpipe Niko Tube and Interpipe NRTP*, C-191/09 P and C-200/09 P, ECR, EU:C:2012:78, paragraphs 78 and 79).

82 Thus, any failure to rule on MET within the three month time limit available to the Commission cannot automatically result in the annulment of the contested regulation, in particular where the applicant's rights of defence have not in fact been adversely affected (see, to that effect, the Opinion of Advocate General Bot in Joined Cases *C & J Clark International* and *Puma*, cited in paragraph 79 above, EU:C:2015:620, point 87, and judgment of 10 October 2012 in *Ningbo Yonghong Fasteners* v *Council*, T-150/09, EU:T:2012:529, paragraphs 51 to 54 and the case-law cited).

83 In the present case, besides the general considerations on the purpose and scheme of the three month time limit mentioned above, the applicant puts forward no concrete arguments capable of justifying its assertion that the infringement of that time limit affected its rights of defence, and, in particular, how, in the absence of such an infringement, it would have been able better to exercise its rights. At the hearing, in reply to a question by which the Court asked it to clarify which aspects of the procedure could have been affected by the lateness of the MET decision, the applicant stated that it could have obtained the analogue country producer's data earlier and, thus, have had more time to prepare its defence and, if necessary, convince, at an earlier stage, the Commission to disclose to it the normal value calculations. Furthermore, it also submitted, in essence, that, to the extent that the parties concerned did not know the dumping margin until late in the investigation procedure, it is possible that, at that stage, the parties concerned would no longer be able to persuade the authorities to change their position.

84 However, that argument is not capable of establishing either that other aspects of the investigation procedure were affected by the lateness of the MET decision, in particular the other deadlines to be complied with during that procedure, or that the applicant's rights of defence were infringed.

85 First of all, it is clear from the documents on the case file that, as recalled in paragraph 5 above, the applicant was able to submit its observations on the MET decision, notified to the Commission on 23 July 2012, and that it was not until 14 November 2012, namely almost four months later, that the Commission adopted the provisional regulation (see paragraph 6 above). Moreover, the Commission did not transmit its proposal for the definitive regulation until 15 April 2013. Consequently, all the time necessary in order to take account of the applicant's observations, to assess their relevance and, if necessary, to reconsider its MET decision was available to the Commission before it determined the provisional dumping margin for that undertaking or proposed definitive measures.

86 Next, the documents on the case file show that, at the date of the MET decision, namely 9 July 2012, the normal value had not been determined. It is apparent from the documents received from the analogue country producer that the latter replied to requests for clarification from the Commission's services concerning the information that it had transmitted on 29 August 2012. Similarly, it is clear from the same documents and the letter of 18 March 2013 from the analogue country producer to the Commission (see paragraph 35 above) that the verification visit by the Commission to the premises of that producer took place between 19 and 21 September 2012. Consequently, the applicant could not have had, in any event, access to all the data provided to the Commission by the analogue country producer before that date. In any event, it is apparent from the applicant's submissions in relation to the provisional disclosure document that the latter only became aware of the identity of the analogue country producer from that document, which was notified to it on 15 November 2012 (see paragraph 26 above). Consequently, the lateness of the MET decision could not have any effect on the ability of the applicant to prepare its defence in a sufficient time period, on the basis of information that it would have been able to obtain from the analogue country producer.

87 Finally, the documents on the case file do not show that, during the period between the date on which the three month time limit expired, namely 17 May 2012 at the latest, and the date on which the provisional regulation was adopted, there were stages in the investigation procedure which were affected by the failure to comply with the abovementioned time limit.

88 Therefore, it must be held that the applicant has not established that, if the MET decision had been adopted within the time limit laid down by the second subparagraph of Article 2(7)(c) of the basic regulation, in the version before the entry into force of the amending regulation, the procedure could have had a different outcome and, consequently, the applicant's rights of defence were in fact adversely affected by the failure to comply with that time limit.

89 It follows from the foregoing that the fourth plea must be dismissed.

The first plea in law

90 The first plea in law is based on three complaints. By its first complaint, the applicant alleges that the EU institutions refused it, in breach of Article 20(2) and (4) of the basic regulation, access to the normal value calculations after it received the authorisation of the analogue country producer to view the underlying data for those calculations. By its second complaint, the applicant alleges that the institutions did not give it the possibility of consulting the email communications between the analogue country producer and the Commission, in breach of Article 6(7) of the basic regulation. Lastly, by its third complaint the applicant alleges that the institutions, in breach of Article 20(2) and (4) of the basic regulation, did not disclose to it, in good time and in writing, the methodology followed to determine the market value used to establish the normal value of non-matching products. In addition, the applicant considers that each of those alleged breaches of provisions of the basic regulation led to the breach of its rights of defence.

Preliminary observations

91 As a preliminary point, it is necessary to recall the principles and procedural guarantees that the institutions are required to comply with when the parties concerned in an anti-dumping investigation wish to exercise their rights of defence by having access to information concerning the facts and considerations likely to form the basis of anti-dumping measures.

92 First of all, according to settled case-law, the requirements stemming from the right to a fair hearing must be observed not only in the course of proceedings which may result in the imposition of penalties, but also in investigative proceedings preceding the adoption of anti-dumping regulations which may directly and individually affect the undertakings concerned and entail adverse

consequences for them. In particular, in the context of the communication of information to the undertakings concerned during an investigation procedure, the respect for their rights of defence presupposes that those undertakings should have been placed in a position during the administrative procedure in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (see judgments of 10 March 2009 in *Interpipe Niko Tube and Interpipe NTRP* v *Council*, T-249/06, ECR, EU:T:2009:62, paragraph 64 and the case-law cited, and *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, cited in paragraph 81 above, EU:C:2012:78, paragraph 76 and the case-law cited).

93 However, it is clear from the Court's case-law that it is for the interested parties in an anti-dumping investigation procedure to place 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. A fortiori, such an interested party is not justified in complaining before the EU judicature that a piece of information was not put at its disposal, if, in the course of the investigation procedure that led to the contested anti-dumping regulation, it did not make any request to the institutions concerning that particular information (see, to that effect, judgments of 17 December 2008 in *HEG and Graphite India* v *Council*, T-462/04, ECR, EU:T:2008:586, paragraph 47 and the case-law cited, and 10 October 2012 in *Shanghai Biaowu High-Tensile Fastener and Shanghai Prime Machinery* v *Council*, T-170/09, EU:T:2012:531, paragraphs 134 and 135).

94 Furthermore, the principles governing the right to information must be reconciled with the requirements of confidentiality, in particular the obligation for the institutions to respect business secrecy (see, to that effect, judgments of 20 March 1985 in *Timex* v *Council and Commission*, 264/82, ECR, EU:C:1985:119, paragraph 24; 18 December 1997 in *Ajinomoto and NutraSweet* v *Council*, T-159/94 and T-160/94, ECR, EU:T:1997:209, paragraph 75, and 11 July 2013 in *Hangzhou Duralamp Electronics* v *Council*, T-459/07, EU:T:2013:369, paragraph 115). In that regard, the institutions' obligation to ensure the confidential treatment of information, the disclosure of which would have a significantly adverse effect for the undertaking that had provided it, cannot deprive the other interested parties, in particular the exporters, of the procedural guarantees laid down in the basic regulation, nor deprive of their substance the rights that they enjoy pursuant to the same provisions (see, to that effect, judgments in *Timex* v *Council and Commission*, EU:C:1985:119, paragraph 29, and 8 November 2011 in *Zhejiang Harmonic Hardware Products* v *Council*, T-274/07, EU:T:2011:639, paragraph 59).

95 Next, in the context of anti-dumping investigations, the institutions must ensure respect for the principle of good administration enshrined in Article 41(1) and (2) of the Charter of Fundamental Rights of the European Union, in accordance with which every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. The right to good administration includes, in particular, pursuant to Article 41(2)(a) of the Charter of Fundamental Rights the right of every person to be heard, before any individual measure which would affect him or her adversely is taken against him (see, to that effect and by analogy, the judgment of 20 May 2015 in *Yuanping Changyuan Chemicals* v *Council*, T-310/12, EU:T:2015:295, paragraph 224).

96 Finally, it should be recalled that those principles are given effect in the basic regulation by a complete system of procedural guarantees seeking, on the one hand, to allow the interested parties effectively to defend their interests and, on the other hand, to preserve, when it is necessary, the confidentiality of the information used in the course of the anti-dumping investigation and by rules allowing those two requirements to be reconciled.

97 In the first place, the purpose of Article 6(7) and Article 20 of the basic regulation, which correspond, in essence, to the provisions of Article 6.4 and 6.9 of the Anti-dumping Agreement, is to define the procedural guarantees guaranteeing the interested parties' right to information.

98 First, Article 6(7) of the basic regulation provides that the interested parties may, upon written request, 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.

99 Second, Article 20 of the basic regulation provides for two stages during the investigation procedure in which the interested parties can receive specific information on the essential facts and circumstances on which anti-dumping measures are capable of being based. Thus, on the one hand, under paragraph 1 of that article, the parties have the right to disclosure of the details underlying the essential facts and considerations forming the basis of provisional measures after the imposition of those measures. On the other hand, under paragraphs 2 and 4 of that article, in the version applicable to the facts of the case, those parties have the right to disclosure of the essential facts and considerations capable of providing the basis of the final decision before the adoption of that decision or the submission by the Commission of any proposal in that respect.

100 Furthermore, Article 20 of the basic regulation makes disclosure of that specific information subject to a certain number of procedural guarantees. Thus, first of all, both the provisional disclosure and the final disclosure must be communicated to the interested parties in writing and 'as soon as possible'. Next, under paragraph 4 of that article, in the version applicable to the dispute, the time limit for providing final disclosure cannot be less than one month before the final decision or the submission of a proposal by the Commission in that respect. Finally, under paragraph 5, the time limit given to the interested parties for submitting observations on that final disclosure cannot be less than 10 days.

101 In addition, Article 20(2) of the basic regulation requires the EU institutions, as regards final disclosure, to pay particular attention to the disclosure of any facts or considerations which are different from those used for any provisional measures. Furthermore, under paragraph 4, the Commission may be required to complete the disclosure given to the parties after the time when final disclosure is given, either where it was impossible for the Commission to disclose certain facts or considerations at that time, or where the subsequent decision was based on different facts and considerations.

102 However, Article 20(1) and (3) of the basic regulation makes the provision of that disclosure specific to the interested parties subject to the submission by them of a written request made, as regards the provisional disclosure, immediately after the imposition of provisional measures, or, as regards the final disclosure, no later than one month after the publication of the imposition of those provisional measures.

103 In the second place, Article 19 of the basic regulation, which corresponds to Article 6.5 of the Anti-dumping Agreement, defines the framework within which the competent authorities must respect the confidentiality of the information that they collect in the context of anti-dumping investigations.

104 In that regard, it must be noted that Article 19(1) of the basic regulation lays down the principle that all confidential information is to be treated as such by the authorities, if good cause is shown. That article distinguishes, furthermore, between two categories of confidential information. On the one hand, it refers to information which is confidential by nature and cites, by way of example, 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. On the other hand, it refers to information provided on a confidential basis by parties to an anti-dumping investigation. In addition, pursuant to the first sentence of paragraph 5 of that article, the Council, the Commission and Member States, or the officials of any of these, must not reveal any information received pursuant to the basic regulation for which confidential treatment has been requested by its supplier, without specific permission from that supplier. Furthermore, the second sentence of that paragraph adds an additional obligation of

non-disclosure which applies to information exchanged between the Commission and Member States, relating to consultations made pursuant to that regulation and to the internal documents of the institutions and the Member States, to which exceptions can only be made in the circumstances where their disclosure is expressly provided for in that regulation.

105 In the third place, the basic regulation lays down a certain number of provisions that allow the requirements linked to the rights of defence of the interested parties to be reconciled with those linked to the necessity of protecting confidential information. First, the access to information available to the interested parties under Article 6(7) and Article 20 of the basic regulation is restricted by the confidentiality of such information. It is clear from the wording of Article 6(7) of that regulation, set out in paragraph 98 above, that the confidential character of information supplied by a party concerned in the investigation precludes the interested parties from having access to it. Furthermore, Article 20(4) provides that final disclosure must be given 'due regard being had to the protection of confidential information'. Second, Article 19(2) to (4) of the basic regulation provides a certain number of arrangements with respect to the confidentiality of the information in order to protect the rights of defence of the interested parties, seeking in particular to ensure, so far as possible, the existence of non-confidential summaries of confidential information, which must be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted and the possibility for the institutions to disclose general information, in particular the reasons on which decisions taken pursuant to the basic regulation are based.

106 When the complaints referred to above are examined, the question whether the applicant's rights of defence were in fact affected must be assessed in the light of those principles and provisions.

107 It is appropriate to examine the second, the third and then the first complaint.

The second complaint

108 In support of its second complaint, the applicant submits, in essence, that the email correspondence between the analogue country producer and the Commission, on the subject of the preparation of the response to the questionnaire, constitutes information relevant to permitting the interested parties to submit their comments and that it is not confidential. Therefore, the absence of that correspondence and, potentially, other relevant documents in the non-confidential file of the procedure placed at the disposal of the interested parties constitutes, according to the applicant, a breach of the rights of the defence. For its part, the Council considers that that complaint must be rejected.

109 In that regard, it follows from the wording of Article 6(7) of the basic regulation, set out in paragraph 98 above, that the interested parties in an anti-dumping investigation procedure, such as the applicant, may raise a complaint regarding the absence of a document only if four cumulative conditions are met. First, such a document must contain information provided to the Commission by a party to the investigation, which must have been used in the course of that investigation. Second, that document must not be either an internal document prepared by the EU authorities nor be confidential. Third, the information contained in that document must be relevant for the defence of the interests of the interested party in question. Finally, fourth, that interested party must have submitted a written request to inspect the said document.

110 Several of those cumulative conditions are clearly not met in the present case.

111 First, as is clear from Annex A.16, which contains the email correspondence at issue, that correspondence merely concerns the difficulties that the analogue country producer faced in obtaining the data requested by the Commission with a view to determining the normal value and the

Commission's clarifications seeking to address those difficulties. That correspondence does not therefore contain, in itself, information that was provided by the producer to the Commission and used in the course of the investigation.

112 Next, in order to establish that that correspondence was relevant for the defence of its interests, the applicant merely submits that it concerns the data and information used to determine the normal value. However, it has been shown in paragraph 111 above that that correspondence does not contain such information or data. Furthermore, the applicant does not identify, in that correspondence, any particular element capable of assisting its defence.

113 Finally, and in any event, the applicant neither claims nor establishes that it submitted, in the course of the investigation procedure, a written request to the Commission to inspect that correspondence.

114 Therefore, it follows from all the foregoing that, in not permitting the applicant to inspect that correspondence, the Commission did not infringe in any way either Article 6(7) of the basic regulation or the applicant's rights of defence.

The third complaint

115 In support of its third complaint, the applicant submits that the timely disclosure of information on the methodology for determining the market value of the adjustments to the calculation of the normal value of non-matching products was of the utmost importance. That methodology was different from the one used for the adoption of the provisional regulation, it was new in character and concerned a majority of the product types manufactured by the applicant. In addition, according to the applicant, the time limits and written form required for the disclosure of that information under Article 20(2) and (4) of the basic regulation had not been complied with. Finally, the late communication of that information deprived the applicant of the possibility of submitting more substantial observations which would probably have led the EU institutions to amend their conclusions.

116 The Council contends, in essence, that those arguments must be rejected.

117 At the outset, it must be observed that, in the context of the present complaint, the applicant does not criticise, as it does in the first complaint, the fact that the information relating to the calculation of the normal value was not disclosed, but that certain aspects of that information were not disclosed within the time limits and in the forms laid down under Article 20(4) of the basic regulation.

118 In the present case, it must be recalled that, as stated in paragraph 32 above, in the final disclosure document, the Commission stated that it had accepted the applicant's contention that the dumping margin should be determined on the basis of all exports and not only in respect of the product types concerned that corresponded to the types of like product sold by the analogue country producer on the domestic market. The Commission clarified, in that regard, that, for the non-matching product types, the average normal value was adjusted by the market value of the differences in the physical characteristics, in accordance with Article 2(10)(a) of the basic regulation.

119 On the other hand, as the applicant stated, the Commission did not explain in that document how it had determined the market value of the differences in the physical characteristics. Article 2(10)(a) of the basic regulation provides only that the amount of the adjustment for differences in physical characteristics is to correspond to a reasonable estimate of the market value of the difference without specifying the method to be followed to arrive at that reasonable estimate. Thus, as the applicant emphasised in essence at the hearing, by stating, in the final disclosure document, that it had adjusted the normal value in accordance with Article 2(10)(a) of the basic regulation, the Commission did not provide any clarification as to the method that it had used in that respect, except that it made that adjustment on the basis of a 'reasonable estimate'.

120 It must be held that, although, contrary to what the applicant suggests, that information did not prevent the applicant from submitting observations in support of its defence, it nevertheless restricted the scope and detail of those observations. That information did not enable the applicant to know which market and what reference prices the Commission had used to determine the market value of the differences in physical characteristics between the non-matching product types and the products types in respect of which directly comparable similar product types were sold on the domestic market by the analogue country producer. It is not contested, as the applicant notes in its application, that those non-matching product types represented 83% of all the product types sold for export which had been taken into account for the calculation of its dumping margin. It is true that, in the defence, the Council contended, without being contradicted, that those non-matching product types represented 'only' 40% of the total volume of the same sales for export. Nevertheless that concerns a considerable part of the transactions taken into account for the calculation of the dumping margin. Consequently, the choice of the market and the reference prices for determining the market value of the differences in physical characteristics between those product types and the others was likely to have a significant impact on the calculation of the normal value and thus on the applicant's dumping margin.

121 As is clear from the documents on the case file, it was only at the hearing on 26 March 2013 that the Commission clarified for the applicant the method that it had used to determine the market value of the adjustment made to the normal value of non-matching products due to the differences in physical characteristics. As is clear from the applicant's letter dated 27 March 2013 (see paragraph 42 above), the Commission explained at that hearing that the market value of that adjustment had been determined on the basis of the export price to the European Union fixed by the applicant for the non-matching product types concerned. As the applicant observed, those clarifications were given one day after the expiry of the 10 day time limit fixed by the Commission for the interested parties to submit their written observations on the final disclosure document.

122 That said, as is clear from the same letter of 27 March 2013, the time within which the Commission gave the clarification regarding the determination of the market value of the adjustment referred to above did not prevent the applicant from submitting observations on that matter or the Commission from taking account of those observations in its proposal for the definitive regulation.

123 On the one hand, the applicant submitted, at the hearing on 26 March 2013 and in its letter of 27 March 2013, that the methodology chosen by the Commission rested on a presumption, which was neither reasonable nor verifiable, that the market value of the differences in physical characteristics was reflected in the export prices. According to the applicant, that assertion was supported by the fact that that approach led to a dumping margin at a level analogous to that calculated only on the basis of matching product types. Furthermore, the applicant proposed an alternative method consisting of limiting the number of non-matching product types by shortening the product control numbers allowing them to be identified. Thus, the applicant suggested, those control numbers should have been limited to the first four digits, which refer to the form of the fitting, and to the ninth digit, which refers to its surface. As regards fittings with a black surface, the applicant proposed relying on the normal value of identical or similar fittings with a galvanised surface adjusted downwards by 15% in accordance with the analogue country producer's statements. As regards the remaining non-matching products, the Commission should, according to the applicant, have used the average normal value of all comparable similar product types, without making an adjustment for differences in physical characteristics.

124 On the other hand, contrary to what the applicant suggests, those observations were submitted on a date that left sufficient time for the Commission to taken them into account. As the applicant itself stated in the application, the Commission's proposal for the definitive regulation was submitted to the Council on 15 April 2013, with the result that the Commission had an amount of time to examine the applicant's observations that did not excessively restrict its discretion. In that respect, it should be noted that no provision in the basic regulation, in particular Article 15 on the consultations carried out by the Commission within the Advisory Committee, lays down a fixed time limit for the

occurrence of those consultations before the submission of a proposal for the definitive Council regulation. Thus, Article 15 provides merely that those consultations must take place within a period of time that allows the time limits set by the basic regulation to be adhered to. Furthermore, it is clear from Article 20(4) of the basic regulation that, after the disclosure of the final disclosure document, the Commission or the Council have the power to take a decision based on facts and considerations different from those stated in that document.

125 In addition, the Court cannot accept the applicant's submission that, under Article 20(4) of the basic regulation, the disclosure of that information should, first, be made in writing and, second, provided no later than one month before the submission of the proposal for the definitive regulation. First of all, as regards a reply by the Commission to a request by the applicant for clarification concerning information contained in the final disclosure document, there was no requirement for the Commission to submit it in writing. That obligation laid down in Article 20(4) of the basic regulation only refers to the final disclosure document itself, which is disclosed to all the interested parties. In any event, the fact that the reply was given orally and not in writing is irrelevant, inasmuch as, as is clear from paragraph 123 above, it allowed the applicant to submit its observations in good time. Similarly, the deadline of no later than one month before the submission of a proposal for a final decision applies, under the same provision, only to the final disclosure document and was complied with as regards that document, which is not contested. By contrast, that deadline cannot, by definition, apply to an explanation provided in response to a request for clarification by an interested party as to the content of that final disclosure document.

126 Similarly, the applicant's argument that it is clear from the contested regulation that its observations were not taken into account also cannot be accepted. In that regard, it should be noted that, as the applicant implicitly admits in its reply, that argument does not seek to allege a lack of reasoning in the contested regulation, but rather to show that the Commission was not in a position to consider or take into account its observations. However, according to the case-law, that alleged failure to take into account the applicant's observations does not constitute a breach of its rights of defence or its right to be heard. Although for those rights to be observed, the EU institutions must enable the applicants to make their views known effectively, those institutions cannot be required to accept them. In order for the applicant's submission of views to be effective, it is necessary only that they have been submitted in good time so that the EU institutions may take cognisance of them and assess, with all the requisite attention, their relevance for the content of the measure being adopted (see the judgment of 12 December 2014 in *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, ECR (Extracts), EU:T:2014:1076, paragraph 43 and the case-law cited). In any event, it must be pointed out, as the Council observes, that the Council is not required to respond, in a regulation fixing definitive anti-dumping duties, to all of the arguments advanced by the interested parties during the investigation procedure and that that failure to respond does not automatically establish a failure to consider those arguments. Moreover, the Court has held that it cannot be required that the statement of reasons for a definitive anti-dumping regulation specify the often very numerous and complex matters of fact and law to which the regulation relates or that the institutions adopt a position on all the arguments relied on by the parties concerned. On the contrary, it is sufficient for the institution which adopted the measure to set out the facts and the legal considerations having decisive importance in the scheme of the contested regulation (judgments of 13 September 2010 in *Whirlpool Europe* v *Council*, T-314/06, ECR, EU:T:2010:390, paragraph 114, and of 20 May 2015 in *Yuanping Changyuan Chemicals* v *Council*, T-310/12, EU:T:2015:295, paragraph 172).

127 Therefore, it follows from all the foregoing that the third complaint must be rejected.

The first complaint

128 In support of its first complaint, in the first place, the applicant submits that the calculations of normal value constitute essential facts and considerations within the meaning of Article 20(2) of the basic regulation. Since, according to the applicant, those calculations no longer constituted confidential information, within the meaning of paragraph 4 of that article, after the analogue country producer had authorised disclosure of the underlying data for those calculations, it considers that the Commission was obliged, from that moment, to disclose those calculations to it. According to the applicant, that obligation is, moreover, confirmed by the wording of Article 19(5) of the basic regulation. In the second place, the applicant submits that the institutions' refusal prevented it from exercising its rights of defence, in particular in presenting observations on those calculations, such that the outcome of the procedure could have been different. Finally, in the third place, the applicant alleges that disclosing those calculations to it would not breach the principle of non-discrimination since, due to the permission given by the analogue country producer, which referred to the applicant specifically, it was in a situation that differed objectively from that of the other exporting producers.

129 In the first place, in order to assess whether there was a breach of paragraphs 2 to 4 of Article 20 of the basic regulation, resulting from the institutions' refusal to disclose to the applicant the normal value calculations, it is necessary to determine the precise nature of the information which, according to the applicant, the institutions should have disclosed to it and which it designates using the expression 'normal value calculations'.

130 In that regard, it should be recalled that, as can be inferred from the applicant's observations on the provisional disclosure document of 17 December 2012 (see paragraphs 16 and 29 above) and as the Council confirmed in reply to a written question put by the Court, the normal value for the determination of the applicant's dumping margin had initially been calculated, in the provisional regulation, on the basis of a constructed value, in accordance with Article 2(3) of the basic regulation. As can be inferred from recital 55 of the provisional regulation, the sales of like product had been considered to be insufficiently representative of the applicant's export sales of the product concerned, which was confirmed by the Council. Thus, as recital 17 of the contested regulation states, it was following the applicant's observations that the Council, in the contested regulation, accepted the use of domestic sales of like product carried out by the analogue country producer in the ordinary course of trade to establish the normal value for the determination of the applicant's dumping margin.

131 In addition, as is clear from recitals 56 and 68 of the provisional regulation (see paragraphs 17 and 23 above), the Commission initially restricted itself, for the determination of the normal value, to like product types sold by the analogue country producer that were directly comparable with the product types concerned sold for export by the applicant. For that reason, the applicant's dumping margin had been calculated on the basis of a comparison between the normal value and the export price limited to those like product types and to corresponding product types concerned, namely, as shown in an email from the Commission of 26 November 2012, 369 product types. Those product types therefore represented about 20% of the product types sold for export by the applicant, which numbered 1 645, according to a figure that was provided by the applicant in its observations on the final disclosure document and was not contested (see paragraph 40 above). In that regard, as the Commission stated to the applicant in the final disclosure document dated 15 March 2013 (see paragraph 32 above), it is following the latter's objections that that institution accepted, in its proposed definitive measure, the establishment of its dumping margin on the basis of all of its export sales, through an adjustment to the normal value as regards the product types concerned that had no match in the product types sold by the analogue country producer. As is clear from recital 18 of the contested regulation (see paragraph 46 above), that amendment to the determination of the dumping margin was confirmed in that regulation. It is therefore on that basis that, as follows from recital 20 of the contested regulation (see paragraph 48 above), the weighted average normal value established for each type of like product was compared with the weighted average of the corresponding product type concerned, in accordance with Article 2(11) of the basic regulation.

132 Thus, it follows from paragraphs 130 and 131 above that the calculation of the normal value with a view to the determination of the applicant's dumping margin is based, in fact, on a total of 1 645 values, each of them corresponding to the weighted average of the sales by the analogue country producer of a given like product type adjusted where necessary, in particular, for about 80% of those values, in order to take account of the differences in physical characteristics presented by the types of non-matching products concerned.

133 As was stated in paragraph 27 above, in the provisional disclosure document, the Commission stated that, since only one producer of the analogue country had cooperated with the investigation, the information derived from the analogue country could not, therefore, be disclosed 'on a [product control number] level'. It is apparent from the documents on the case file that the product control numbers designate alphanumeric codes each corresponding to a certain product type. Thus, the Commission's statement must be understood as meaning that that institution had redacted all the detailed information relating to each product type sold by the analogue country producer. In addition, also in the same document, the Commission stated that, in the electronic files annexed to the provisional disclosure document, it had redacted, for reasons of confidentiality, data based on the information provided by the analogue country producer. It is apparent from the documents on the case file that the tables relating to the costs of production of domestic sales (2.2 DMCOP), to domestic sales (2.4 DMSALES) and to the calculations of the sales in the ordinary course of trade and the normal value (2.5 OCOT and NV) do not contain any data. Similarly, in the table on the overview of the dumping calculation (2.1), the columns relating to the normal value, the amount and the dumping margin for each product type do not contain any data. By contrast, no data was redacted from the columns of the latter table relating to the applicant's export sales to the European Union or the table relating to those same sales (2.7 EUSALES) and in the table relating to the calculations of the price of those exports by product type (2.8). As was stated in paragraph 34 above, in the final disclosure document, the Commission redacted the same categories of data as in the provisional disclosure document. In addition, it is not apparent from the documents on the case file that the Commission disclosed certain of those data to the applicant, when, in reply to the latter's requests, it provided additional clarifications of the information provided in the provisional disclosure document and the final disclosure document.

134 It follows therefore from the foregoing that the normal value calculations made for each like product type, and the values referred to in paragraph 132 above, which correspond to the results of those calculations, were not disclosed to the applicant. As is clear from the application, it is the failure to disclose that information that the applicant considers constitutes a breach of its rights of defence in the context of its first complaint. In particular, the applicant refers in that regard to the data redacted from the tables in the final disclosure document on the calculations of sales in the ordinary course of trade and of the normal value (2.5 OCOT and NV), referred to in paragraph 133 above. According to the applicant, those data should have been disclosed to it as soon as the analogue country producer had authorised the disclosure of information on which the Commission had relied to determine its data.

135 It is true that, as stated in paragraphs 36 and 39 above, in the course of the investigation procedure, the applicant also complained about the failure to disclose other documents and information relevant to the determination of the normal value. However, in this first complaint, the applicant has not made submissions on those other matters, and thus restricted itself to alleging the failure to disclose the normal value calculations, namely the detail of those calculations, product type by product type, and the results of those calculations.

136 In the second place, it is necessary, at this stage, to note that the institutions do not contest the applicant's assertion that the normal value calculations, within the meaning of paragraph 135 above, constitute essential considerations within the meaning of Article 20(2) of the basic regulation. Moreover, as they admitted at the hearing in reply to a question put by the Court, the institutions would have disclosed the detailed calculations of the normal value to the applicant if those

calculations had been made on the basis of that exporting producer's domestic sales and had not appeared, for that reason, to be confidential in nature for that producer. Similarly, as has been stated in paragraph 133 above, even though the Commission had redacted, as regards the applicant, the normal value calculations product type by product type for reasons of confidentiality, it had, by contrast, disclosed to the applicant the calculations of the corresponding export prices.

137 In the third place, it is necessary to recall the precise reasons for which the Commission rejected the request for disclosure of the normal value calculations.

138 In that regard, the applicant's email dated 19 March 2013 (see paragraph 38 above) shows that the Commission, first of all, replied to the analogue country producer stating that, in its opinion, confidentiality of the information that it had supplied could not be waived selectively in favour of specific interested parties. That tenor of that statement has not been contested by the institutions. In the same email, the applicant repeated its request by responding to the reason given by the Commission to the analogue country producer and making two arguments in that respect. The first argument alleged that the calculations of the dumping margin and, thus, the data relating to the normal value were specific to the undertaking concerned. The second alleged that the basic regulation did not provide that specific authorisation by the person supplying the confidential information could not be limited to a single interested party. In addition, stating that its rights of defence were at stake, the applicant stated that it requested that the hearing officer resolve the dispute in question. The Head of the Trade Defence Investigations Section of the Commission, then the Hearing Officer, both took a position, on 21 March 2013, on the email in the terms stated in paragraph 38 above. The documents on the case file do not show that the Commission took a view different from that set out above at a later stage of the investigation procedure.

139 Consequently, the sole ground that the Commission relied on to reject the request for disclosure of the normal value calculations was the need to respect the principle of non-discrimination with regards to the Chinese exporting producers included in the sample other than the applicant. Thus, the Commission considered that it was not possible, first, for the analogue country producer to waive confidentiality of the information that that producer had provided for one particular interested party, and, second, for the Commission itself to disclose that information only to the applicant, to the exclusion of the other Chinese exporting producers included in the sample. The Commission considered that that information concerned the latter as much as the applicant, in so far as it had been used to calculate the normal value used for the determination of the individual dumping margin for those three producers. The Commission therefore considered that that information was not specific to the normal value calculation in respect of the applicant's dumping margin and that, consequently, specific disclosure of that information to the applicant was not justified.

140 However, in the present action, the institutions have put forward submissions based, in part, on reasons other than those set out in paragraph 139 above.

141 Thus, in the written stage of the procedure, the Council relied, in essence, on two other reasons for which, according to it, that refusal was well founded.

142 First, the Council contended that the permission of the analogue country producer can apply only to the information submitted to the Commission and not to the calculation of normal value, which constitutes an internal document of the Commission.

143 Second, the Council submitted that the normal value calculations are confidential by nature, within the meaning of Article 19(1) of the basic regulation, such that their confidential nature is not subject to a request for confidentiality under Article 19(5) of that regulation and cannot be changed by the authorisation of the analogue country producer. Thus, notwithstanding that authorisation, the Commission was required in any event to refuse the applicant's request for disclosure of those calculations. At the hearing, the Council and the Commission clarified and supplemented the

argument made by the Council in writing, with a view to demonstrating that that ground was well founded. In particular, the institutions stated, in substance, that the analogue country producer's data used in those calculations revealed its business secrets. It followed that, according to those institutions, the disclosure of those data, on the one hand, would harm the particular interests of the applicant's competitors on the market under consideration and, on the other hand, distort competition in that market. In addition, in the context of the analogue country methodology, the resulting restriction on the information provided to the exporting producers concerned is a logical consequence of the refusal of their claim for MET, which is, moreover, necessary to ensure the voluntary cooperation of the analogue country producers. Finally, the institutions stated that, on the date on which the Commission had refused the applicant's request for disclosure of the normal value calculations, it did not know the precise extent of the information that the analogue country producer had itself disclosed to the applicant.

144 However, it was not on one or other of the grounds set out in paragraph 142 and 143 above that the Commission refused to disclose to the applicant the normal value calculations, but on the basis of the ground set out in paragraph 139 above, as is clear from the exchange of emails between 18 and 21 March 2013 (see paragraphs 35 to 38 and 138 above).

145 Moreover, it should be noted that, as regards the ground alleging that the normal value calculations constituted, unlike the information supplied by the analogue country producer, internal documents, the institutions expressly acknowledged, at the hearing, that the Commission did not rely on that ground in the course of the investigation procedure in order to protect the confidentiality of those calculations.

146 It is true that, as regards the ground alleging that the calculations were confidential by nature, the institutions submitted at the hearing, by contrast, that the Commission relied on that ground in order to redact those calculations in the context of the final disclosure document. In that regard, as was stated in paragraph 133 above, the Commission justified the redaction of the normal value calculations in the provisional disclosure document and in the final disclosure document by the fact that, as only one analogue country producer had cooperated with the investigation, the information from the analogue country could not be disclosed at the level of types of product. It can logically be inferred from the terms of that justification that the purpose of redacting the normal value calculations in those documents was to prevent it being possible to reconstitute the underlying data of the sole analogue country producer that had cooperated, which involved business secrets of that producer. Thus, it may be considered that, at the date on which the final disclosure document was transmitted, the Commission had relied on that ground in order to redact the normal value calculations in that document.

147 However, as is shown by the exchange of emails between 18 and 21 March 2013, the Commission no longer referred to that ground in the course of the exchange, either as a principal or subsidiary reason. On the contrary, both the wording and the context of that exchange (see paragraphs 35 to 38 and 138 above) appear to indicate that, at that stage of the procedure, the Commission no longer intended to rely on that ground to refuse the applicant's request for disclosure of the normal value calculations.

148 In that regard, it should, in particular, be noted that the hearing officer stated in his email of 21 March 2013 that the 'the main element was the non-discriminatory treatment of the parties' (see paragraph 38 above).

149 In addition, it should also be pointed out that, at the date of the transmission of the final disclosure document, namely 15 March 2013, the analogue country producer had not yet given the applicant permission to have access to the data that that producer had transmitted to the Commission. As stated in paragraph 35 above, it was not until 18 March 2013 that that permission was given. It was after that new fact that the Commission relied, for the first time, on the ground of the need to ensure equal treatment. From that chain of events it can be inferred that the Commission, implicitly but

necessarily, considered that, on account of the permission referred to above, it could no longer rely, as against the applicant, on the ground on which it had redacted the normal value calculations in the provisional disclosure document and the final disclosure document, namely respect for the analogue country producer's business secrets, but only on the ground based on the need to ensure equal treatment.

150 It must therefore be held that, by relying on grounds set out in paragraph 141 above, the Council in fact invites the Court to substitute those grounds for those relied on by the Commission during the investigation procedure in order to refuse the applicant's request for disclosure of the normal value calculations. However, it is settled case-law that the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see the judgment of 3 September 2015 in *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, ECR, EU:C:2015:535, paragraph 22 and the case-law cited), with the result that the Court cannot accept that invitation (see, to that effect, the judgment of 12 November 2013 in *North Drilling* v *Council*, T-552/12, EU:T:2013:590, paragraph 25).

151 Moreover, the breach of the rights of the defence during the administrative proceedings, raised by the applicant in this complaint, is capable of leading to the annulment of the anti-dumping regulation. Consequently, that breach cannot be remedied by a mere examination, by the Court, of the reasons capable of justifying the decision constituting the breach alleged. Such an examination is limited to a judicial review of the grounds raised and cannot replace a full investigation of the case in the context of an administrative procedure based on an assessment by the competent authority of the specific circumstances of the case. In addition, by becoming aware of, for the first time in the context of this action, grounds relied on by the institutions before the Court, the applicant is not placed in the situation in which it would have been if it had been able to submit its observations during the investigation procedure (see, to that effect and by analogy, judgment of 25 October 2011 in *Solvay* v *Commission*, C-110/10 P, ECR, EU:C:2011:687, paragraph 51). Consequently, the Court cannot, in any event, determine whether there was, in the present case, a breach of the applicant's rights of defence as a result of the refusal to disclose to it the normal value calculations on the basis of grounds which were not the basis for that refusal.

152 Therefore, in order to determine whether there was a breach of the rights of the defence in the present case, the Court will only be able to take into account the institutions' arguments to the extent that they support the sole ground relied on by the Commission during the investigation procedure. On the other hand, as was recalled in paragraph 81 above, it is settled case-law that the existence of an irregularity relating to the rights of the defence can result in annulment of the contested regulation only where it cannot entirely be excluded that, due to that irregularity, the administrative procedure could have resulted in a different outcome. Consequently, in the event that it must be held that the Commission was not entitled to rely on the ground of the need to ensure equal treatment in order to justify refusing to disclose the normal value calculations to the applicant, it will be appropriate, in that case, to examine whether it was nevertheless required to make such a refusal on the basis of one or other of the grounds relied on by the Council in the present action, such that a different outcome of the procedure must be excluded.

153 In the fourth place, it must therefore be considered whether, in the circumstances of the present case, the need to ensure equal treatment as regards the other exporting producers included in the sample could justify the refusal to disclose to the applicant the normal value calculations.

154 In that regard, it must be noted that, as stated in paragraph 128 above, both during the investigation procedure and in the present proceedings, the applicant has submitted, in particular, that, as regards the normal value calculations, it was placed in a situation that was objectively different from that of the other exporting producers, as a result of the permission given by the analogue country producer which referred specifically to the applicant.

155 On the other hand, the applicant does not dispute that, until the analogue country producer, by its letter of 18 March 2013, authorised the Commission to disclose to it the information that it had provided to that institution, the normal value calculations could not be communicated to it. In particular, the documents on the case file do not show that the applicant had requested that disclosure earlier than the said letter.

156 As recalled in paragraph 95 above, in the combined application of Articles 19 and 20 of the basic regulation, the institutions must ensure compliance with the principle of good administration, enshrined in Article 41(2) of the Charter of Fundamental Rights, under which every person has the right, inter alia, to have his or her affairs handled impartially by the institutions of the European Union (see, to that effect and by analogy, the judgment of 11 July 2013 in *Ziegler* v *Commission*, C-439/11 P, ECR, EU:C:2013:513, paragraph 155). According to settled case-law, the general principle of equal treatment prohibits treating similar situations differently and treating different situations in the same way unless there are objective reasons for such treatment (see the judgment of 25 October 2011 in *CHEMK and KF* v *Council*, T-190/08, ECR, EU:T:2011:618, paragraph 65 and the case-law cited).

157 In the context of the application of the basic regulation's provisions, the EU institutions are required to comply with the principle of equal treatment as regards the interested parties (see judgment of 13 September 2013 in *Cixi Jiangnan Chemical Fiber and Others* v *Council*, T-537/08, EU:T:2013:428, paragraph 45 and the case-law cited). In particular, that general principle is given particular application in the context of Article 9(5) of the basic regulation, which requires that the anti-dumping duty, in the appropriate amounts in each case, be imposed on a non-discriminatory basis on imports of a product from all sources.

158 However, it is clear from the case-law that, where the difference in treatment between exports as regards the collection of anti-dumping duty has a legal basis in the basic regulation, there is an objective reason for the difference in treatment, with the result that it cannot be regarded as constituting an infringement of the principle of equal treatment (see, to that effect, judgment of 12 September 2002 in *Europe Chemi-Con (Deutschland)* v *Council*, T-89/00, ECR, EU:T:2002:213, paragraph 57 and the case-law cited). In general, a difference in treatment is based on an objective and reasonable criterion when the difference relates to a legally permitted aim pursued by the legislation in question and it is proportionate to the aim pursued by the treatment concerned (see judgment of 22 May 2014 in *Glatzel*, C-356/12, ECR, EU:C:2014:350, paragraph 43 and the case-law cited).

159 In that regard, it is appropriate first to note that, as the applicant submits, the argument advanced by the Commission in the email exchange between the 18 and 21 March 2013, according to which it was not possible to waive the confidentiality of a piece of information as regards a specific interested party, finds no support in the relevant provisions of the basic regulation.

160 Thus, first of all, it does not follow from the wording of Article 19(5) of the basic regulation that the authorisation of the person that provided the information, which is required for the disclosure of any information for which that person submitted a confidentiality request, could not be given to one or several specific interested parties only.

161 Next, it is clear from the grounds for confidentiality listed by way of guidance in Article 19(1) of the basic regulation that the assessment of the confidential character of information provided in the context of an anti-dumping investigation can involve taking into account the respective situation of both the person supplying the information and the interested parties to whom it might be disclosed. In particular, one of the grounds mentioned in that provision — that the disclosure of that information would be of significant competitive advantage to a competitor — means that it is necessary to assess the respective position on the market of, on the one hand, persons that the disclosure might disadvantage and, on the other hand, of interested parties that might obtain an advantage leading to the distortion of competition.

162 On that basis the Court has already held that it was for the Commission, having regard to the particular circumstances of the case, for example the limited number of companies present on the market and the very thorough knowledge that the person making the request had of the market, to avoid disclosing commercially sensitive information which could have jeopardised the company which had provided that data (see, to that effect, the judgment in *Ajinomoto and NutraSweet* v *Council*, cited in paragraph 94 above, EU:T:1997:209, paragraph 86).

163 It is true that, as the institutions submitted at the hearing, the grounds mentioned in Article19(1) of the basic regulation refer to the protection of information covered by business secrecy, which is confidential by nature and which, in principle, is not disclosed (see, to that effect, the judgments of 7 May 1991 in *Nakajima* v *Council*, C-69/89, ECR, EU:C:1991:186, paragraph 112, and *Hangzhou Duralamp Electronics* v *Council*, cited in paragraph 94 above, EU:T:2013:369, paragraph 115).

164 However, it does not follow from the wording of Article 19(1) of the basic regulation that the protection of such information requires the exclusion, on principle, of any possibility of disclosing that information and therefore any assessment of the particular situation of the interested party who requests access to that information. As is recalled in paragraph 94 above, it follows from the case-law that the institutions' obligation to ensure the confidential treatment of information covered by business secrecy cannot deprive the other parties concerned, exporters in particular, of the procedural safeguards laid down by Article 20 of the basic regulation, or deprive the rights that they enjoy under those provisions of their substance (see, to that effect, the judgments in *Timex* v *Council and Commission*, cited in paragraph 94 above, EU:C:1985:119, paragraph 29, and *Zhejiang Harmonic Hardware Products* v *Council*, cited in paragraph 94 above, EU:T:2011:639, paragraph 59). Furthermore, it has been emphasised in paragraph 105 above that the wording of Article 20(4) of the basic regulation provides that final disclosure must be given 'due regard being had to the protection of confidential information'. It should be noted that that formulation leaves the Commission a measure of discretion to determine the most appropriate way of reconciling the interested parties' right to disclosure and the confidentiality of certain information.

165 The institutions' interpretation is also not supported by the case-law on the protection of business secrets. According to that case-law, the protection of business secrets is a general principle of EU law (see the judgment of 29 March 2012 in *Interseroh Scrap and Metals Trading*, C-1/11, ECR, EU:C:2012:194, paragraph 43 and the case-law cited). In addition, again according to that case-law, the maintenance of fair competition is an important public interest, the safeguarding of which can justify a refusal to disclose information which reveals business secrets (see, to that effect and by analogy, the judgment of 14 February 2008 in *Varec*, C-450/06, ECR, EU:C:2008:91, paragraph 51). However, while it follows from those principles that an administrative authority or court of law must be able to refuse the disclosure of information that would damage those interests, including by giving precedence to those interests over the rights of defence of the parties with an interest in that disclosure, it does not follow that that authority or court would, for those reasons, be obliged to make such a refusal in all circumstances. On the contrary, the Court of Justice has already ruled that, where the nature of the procedure required it, the interests safeguarded by the special protection which business secrets enjoy must be balanced against the rights of defence of the interested parties to that procedure (see, to that effect and by analogy, judgment in *Varec*, EU:C:2008:91, paragraphs 43 and 51). Thus, as was recalled in paragraph 94 above, that is the case in an anti-dumping investigation procedure such as that in the present case, which means that, even in the case of information covered by business secrecy, the Commission cannot be placed under an absolute obligation to refuse its disclosure, without assessing the specific circumstances of the case and, in particular, the specific situation of the interested party concerned.

166 In particular, as regards the objective of avoiding the distortion of competition on the markets under consideration, relied on by the institutions at the hearing, it must be recalled that, while the fact that undertakings hold information relating to a competitor that is covered by business secrecy, such as the prices or sales, may reduce or remove the degree of uncertainty on the functioning of the market

with the possible consequence of reducing competition between undertakings, such consequences depend on the particular circumstances of the case (see, to that effect, judgment of 4 June 2009 in *T-Mobile Netherlands and Others*, C-8/08, ECR, EU:C:2009:343, paragraph 33 and the case-law cited).

167 Contrary to what the institutions suggested at the hearing, the discretion that is left to the Commission to reconcile the interested parties' right to information and the protection of confidential information is not restricted where the interested party in question is an exporting producer which had not obtained MET, such as the applicant. It is true, as the applicant itself admitted at the hearing, that an exporting producer which had not obtained MET would not be well founded in complaining of a breach of the rights of the defence on the sole ground that the normal value calculations were not disclosed to it, where the redaction of those calculations was justified by the need to protect the confidentiality of the analogue country producer's business secrets. However, those particularities of the situation of an exporting producer established in a non-market-economy country and which has not obtained MET cannot justify treatment of it that is different from that of another interested party as regards the rights of the defence. In particular, in the same way as any interested party, such an exporting producer's request for disclosure of those calculations cannot be met with a refusal on principle without an examination of the particular circumstances of the case, on the sole ground that the possibility of granting that disclosure would create a 'systemic imbalance' in the relations between, on the one hand, the Commission and, on the other hand, the undertakings participating in the investigation, such as, in particular, the producers which did not obtain MET and the analogue country producer.

168 Finally, while it follows from the wording of Article 20(2) to (4) of the basic regulation that the institutions are obliged to give all the interested parties final disclosure on the essential facts and considerations on which anti-dumping measures are based, it does not follow that those institutions are prevented from providing disclosure to a specific interested party which requests information that was omitted in that final disclosure, on the ground that all the interested parties must have access to it. Moreover, as the applicant submitted at the hearing, it is clear from documents on the case file that the final disclosure includes a general part, which is to be circulated to all the interested parties, and a specific part, which relates to particular issues concerning the interested party in question. Thus, for example, as stated in paragraph 133 above, in the final disclosure document that was sent to the applicant, the calculations relating to export prices product type by product type were communicated to the applicant. However, such information was to be included in the final disclosure document sent to the applicant only, since it concerned only the calculation of the individual dumping margin for the applicant, and not in the final disclosure document sent, in particular, to the other Chinese exporting producers included in the sample, whose individual dumping margin was calculated on the basis of their own export prices.

169 Moreover, Article 20(2) and (4) of the basic regulation must be read in the light of the case-law recalled in paragraph 93 above, according to which it is for the interested parties in an anti-dumping investigation procedure to place the institutions in a position to be able to assess the difficulties which the absence of an element in the information put at their disposal could cause them. A fortiori, such an interested party is not entitled to complain before the Court that information was not put at its disposal if, in the course of the investigation procedure that led to the contested anti-dumping regulation, it had not made any request to the institutions in relation to that particular information.

170 Consequently, disclosure to an interested party of information of the type falling within Article 20(2) and (4) of the basic regulation cannot be refused on the sole ground that other interested parties would equally have the right to have access to it, if those other parties have not submitted a request to that effect. In any event, it follows from the foregoing that the Commission must assess requests for access to confidential information presented by an interested party in the light of the latter's particular situation, irrespective of the situation of the other interested parties to whom that information would be useful for the exercise of their rights of defence.

171 An interpretation contrary to that set out in paragraphs 160 to 170 above would lead to a restriction in principle of the information that was available to the interested parties to an anti-dumping investigation, which would not be compatible with the obligations flowing, according to the case-law recalled in paragraph 92 above, from the respect for the rights of defence of the interested parties that is required in such investigations that are capable of affecting them, directly and individually, and of having adverse consequences for them. In cases such as the present, in particular, such an interpretation would amount to refusing an exporting producer access to information relating to the normal value that was used for determining its dumping margin on the sole ground that that information was also used in determining the dumping margin of other exporting producers. It would thus lead to depriving that exporting producer, in most cases, of information likely to be of the utmost importance for its rights of defence, having regard to the impact of the normal value calculation on the determination of its dumping margin.

172 Moreover, it is not disputed that, in the context of the investigation procedure at issue, the Commission transmitted to an EU producer information that had been supplied to it on a confidential basis by the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) with the specific authorisation of the latter. The Council's argument that that information was not confidential in nature for that producer because its content related to the company of that producer and was useful to the defence of its interests, confirms the relevance of that example. That example corroborates the interpretation set out in paragraphs 160 to 170 above, according to which it cannot be excluded that confidential information can be disclosed to an interested party in particular, with the specific authorisation of the person that supplied it, if, after having weighed the interests protected by confidentiality against the rights of defence of the person in question, the Commission must conclude that it is appropriate to disclose them.

173 In the present case, for the reasons set out in paragraphs 159 to 172 above, the fact, put forward by the Commission, that the normal value calculations had not been used only to determine the applicant's dumping margin, but also to determine that of the other Chinese exporting producers included in the sample cannot, in itself, justify refusing that disclosure.

174 On the one hand, such a ground leads, in fact, to making the exercise of the applicant's rights of defence depend on the exercise of the rights of defence of the other Chinese exporting producers included in the sample, which, as is clear in paragraph 171 above, constitutes a restriction on those rights of defence, contrary both to the wording and the purpose of Articles 19 and 20 of the basic regulation.

175 That interpretation is corroborated by the argument relied on by the Council that disclosing the normal value calculations to the applicant only, and not to the other Chinese exporting producers included in the sample, would have the effect of conferring on the applicant a significant competitive advantage in relation to those producers within the meaning of Article 19(1) of the basic regulation. That argument amounts to the submission that Article 19(1) of the basic regulation allows the institutions to refuse to disclose information to an interested party on the sole ground that other interested parties, which are its competitors and would need that information to defend their interests, cannot have access to it. Thus the Commission would be entitled to refuse to disclose information even if the material in its possession did not show that the information would be capable of conferring a significant advantage on the interested party in question that would affect competition on the market concerned by that information, such as, in the present case, the Indian market. The Commission could also rely on the competitive advantage conferred on that interested party on the EU market as regards the other exporting producers that needed that information to defend their interests. That argument confirms therefore that the institutions interpret the basic regulation as meaning that the rights of defence of the interested parties can be restricted, as a matter of principle, depending on the possibility that the other interested parties have of exercising their rights of defence themselves, an interpretation which, for the reasons given in paragraphs 171 and 174 above, cannot be upheld.

176 On the other hand, it must be noted that it is true that the anti-dumping duty was imposed on those exporting producers, just as it was on the applicant, on the basis of a dumping margin determined individually, in accordance with Article 2(11) of the basic regulation. Thus, as the Commission stated in its email of 21 March 2013, the information relating to the normal value calculations established on the basis of data supplied by the analogue country producer concerns all of the exporting producers. However, as the institutions confirmed at the hearing, unlike the applicant, the other Chinese exporting producers included in the sample did not submit a request seeking disclosure to them of the normal value calculations. Consequently, as is clear from paragraphs 169 to 170 above, the latter producers' right to have access to those calculations cannot, in any event, be relied on as against the applicant.

177 Moreover, it must be held that, as the applicant submits, the fact that the applicant was given permission by the analogue country producer to have access to the latter's data on which the normal value calculations were based objectively changes the situation as regards the confidentiality of those calculations in comparison with the other Chinese exporting producers included in the sample.

178 It is not disputed that, unlike the applicant, the other Chinese exporting producers included in the sample were not given permission by the analogue country producer to have access to the data provided by the latter to the Commission for the normal value calculation. It follows from the wording of Article 19(5) of the basic regulation that, failing such permission, the institutions are required not to disclose information in respect of which the person supplying it had requested confidential treatment. By contrast, as was observed in paragraphs 164 to 168 above, it follows from the wording of Articles 19(1) and 20(4) of the basic regulation, read in the light of the case-law, that, even where the information is confidential, covered by business secrecy in particular, the institutions have a certain measure of discretion which requires, in particular, balancing the interests protected by that confidentiality against the rights of defence of the interested parties seeking disclosure of that information. It is true that, contrary to what the applicant submits, the authorisation of the analogue country producer does not give it, as of right, access to the information that it requested. Nevertheless, unlike the other Chinese exporting producers included in the sample, the applicant did in fact have, at the very least, as a result of that authorisation, the right to have its request examined to assess whether it was well founded, by balancing its rights of defence against the interests protected by confidentiality of the information requested.

179 The arguments put forward by the institutions to contest the scope of the abovementioned authorisation do not call that conclusion into question.

180 First of all, the fact that the permission given by the analogue country producer covered, by definition, the information that it had supplied to the Commission and not the normal value calculations established on the basis of that information is irrelevant. As the applicant itself noted in the reply, the maintenance of the confidentiality of the normal value calculations during the investigation procedure is based on the confidentiality of the underlying data supplied by the analogue country producer. Thus, in the exchange of emails between 18 and 21 March 2013, the Commission did not make any distinction between the confidentiality of those calculations and the confidentiality of the underlying data in order to reject the applicant's request for disclosure of those calculations (see paragraphs 38 and 138 above). Moreover, even at the stage of the transmission of final disclosure, the Commission had specifically indicated that it had redacted the normal value calculations due to the need to protect the confidentiality of the information provided by the analogue country producer (see paragraph 133 above).

181 Next, the institutions' argument, according to which the authorisation of the person having supplied the information on a confidential basis (referred to in Article 19(5) of the basic regulation) cannot have an effect as regards information that is confidential by nature, must also be rejected. As is clear from paragraphs 139 and 143 above, that interpretation of the scope of the authorisation given by the analogue country producer does not rest on the same premiss as that relied on by the Commission in

the exchange of emails between 18 and 21 March 2013 and is, in fact, incompatible with the latter premiss. Thus, by that argument, the institutions in reality invite the Court to substitute their own interpretation for that held by the Commission during the investigation procedure, which is an approach that, for the reasons given in paragraphs 150 and 151 above, the Court cannot follow.

182 In any event, even if the Commission had considered, at the stage of the investigation procedure, that the analogue country producer's authorisation had no effect as regards information that was confidential by nature, such a position could not be upheld.

183 It follows from the wording of Article 19(5) of the basic regulation that the permission referred to in that provision concerns all information for which a request for confidential treatment has been submitted and not only that information in respect of which confidential treatment has been considered to be justified, which is referred to in Article 19(1) of the basic regulation.

184 That interpretation is corroborated by the fact that, under Article 19(3) of the basic regulation, the only conclusion that the authorities are authorised to draw, of their own motion, from an unwarranted request for confidential treatment which the person concerned does not wish to withdraw, is that the information concerned should not be used. Thus, even in those circumstances, the lack of authorisation by the person in question precludes disclosure of that information.

185 Contrary to the institutions' interpretation, the scope of application of the permission referred to in Article 19(5) of the basic regulation is therefore, in fact, wider and not more restricted than that in Article 19(1) of the basic regulation.

186 Moreover, the distinction made by Article 19(1) of the basic regulation between information that is confidential by nature and information that is confidential on the basis of a specific request by the supplier of that information cannot have the effect that the authorities confer on it. It is true that it can be interpreted as allowing the competent authorities to protect the first of those categories even failing a specific request in that respect. However, that category of information that is confidential by nature could also include information in respect of which, in addition, its supplier had presented a specific request for confidential treatment.

187 It is true that, taking into account, in particular, the principle of special protection of business secrets, recalled in paragraph 165 above, confidentiality of information that is confidential by nature essentially depends on an objective assessment of that point carried out by the competent authority, with the result that the existence of a request for confidential treatment may not be determinative. However, it cannot be inferred from that, a contrario, that permission given by the supplier of that information is irrelevant to the decision of the competent authority of whether or not to disclose that information. It is clear from paragraphs 164 to 168 above that, in certain cases, the disclosure of such information, which is confidential by nature, cannot be ruled out. In those circumstances, the fact that the supplier of the information has given permission for it to be disclosed is necessarily significant, to the extent that, as set out in paragraph 178 above, it follows from the wording of Article 19(5) of the basic regulation that it is only where such permission is given that the institutions are permitted to reveal the information in question.

188 That interpretation is corroborated by the wording of Article 6.5 of the Anti-dumping Agreement, which is reproduced in substance by Article 19 of the basic regulation, according to which the permission given to the investigating authorities by the supplier of the confidential information refers both to information that is confidential by nature and information that is 'provided on a confidential basis by parties to an investigation'. In that regard, it should be recalled that, according to settled case-law, in the context of implementing WTO rules, the primacy of international agreements concluded by the European Union over secondary EU legislation requires that the latter be interpreted, in so far as is possible, in conformity with those agreements (see judgment of 10 November 2011 in *X* and *X BV*, C-319/10 and C-320/10, EU:C:2011:720, paragraph 44 and the

case-law cited). That case-law applies, in particular, in cases concerning anti-dumping where it is established that the provision of the basic regulation under consideration was adopted in order to implement a specific obligation assumed under the Anti-dumping Agreement (see, to that effect, the judgments in *Nakajima* v *Council*, cited in paragraph 163 above, EU:C:1991:186, paragraphs 29 to 31, and of 9 January 2003 in *Petrotub and Republica* v *Council*, C-76/00 P, ECR, EU:C:2003:4, paragraphs 55 to 57).

189 Contrary to the submission made by the Council at the hearing, the application of that case-law as regards the interpretation of Article 19 of the basic regulation in the light of the provisions of Article 6.5 of the Anti-dumping Agreement is not called into question by the judgment of 16 July 2015 in *Commission* v *Rusal Armenal* (C-21/14 P, ECR, EU:C:2015:494). It is clear from paragraphs 47 to 53 of that judgment that the Court merely found that Article 2(7) of the basic regulation was an exercise by the EU legislature of its regulatory competence taking an approach specific to the EU legal order and, hence, that the intention of the Union legislature to ensure the implementation, by the adoption of that provision, of particular obligations contained in Article 2 of the Anti-dumping Agreement could not be established (judgment in *Commission* v *Rusal Armenal*, EU:C:2015:494, paragraphs 47 to 53). By contrast, the Court did not rule in that judgment on whether or not Article 19 of the basic regulation gave effect to a desire to retain an approach specific to the EU legal order, distinct from that of the Anti-dumping Agreement.

190 It follows from the very wording of paragraphs 1 and 5 of Article 19 of the basic regulation, which reproduce the wording of Article 6.5 of the Anti-dumping Agreement, that the EU legislature manifested in those provisions its intention to give effect to the specific obligations flowing from that provision of the Anti-dumping Agreement. The fact that the EU legislature chose to adopt a different structure from that of Article 6.5 of the Anti-dumping Agreement, in particular by reproducing the two parts of that article in two different paragraphs of Article 19 of the basic regulation, does not, in itself, reveal an intention on the part of the EU legislature to adopt an approach specific to the EU legal order, distinct from that of the Anti-dumping Agreement. That choice fell within the margin of discretion available to the EU legislature when implementing the obligations arising under Article 6.5 of the Anti-dumping Agreement, such that it is not capable of precluding Article 19(1) and (5) of the basic regulation from being interpreted in the light of that provision of the Anti-dumping Agreement.

191 Finally, whichever interpretation might be given to it, the institutions' argument that the permission given to the applicant by the analogue country producer did not constitute an objective criterion, within the meaning of the case-law recalled in paragraph 158 above, but a subjective criterion coming from an interested party and, for that reason, insufficient to justify a difference in treatment, also cannot be accepted. On the one hand, that argument in fact submits that the permission granted by the analogue country producer cannot change the objectively confidential nature of the information that it supplied as a result of their character as business secrets, which, for the reasons set out in paragraphs 180 to 190 above, cannot be upheld.

192 On the other hand and in any event, even if, by that argument, the institutions intended to submit that that permission had not been granted by the analogue country producer on the basis of its objective assessment of the confidential nature of the information at issue as regards the applicant, but on the basis of its subjective relationship with the latter, as a commercial partner, it must be rejected as unfounded. As is clear from the wording of Article 19(5) of the basic regulation, the reasons for which the supplier of information on a confidential basis might grant the permission referred to in that provision do not determine the scope of that permission. As was observed in paragraph 178 above, that provision obliges the institutions to refuse to disclose that information where that permission has not been granted, whatever the circumstances. The only particular condition of that permission, which is provided for by that provision, is that it must be specific, that is to say, explicit. Consequently, even if, in the present case, the analogue country producer permitted the applicant to have access to the information that it had provided to the Commission on the basis of its commercial partnership with that undertaking, that cannot preclude that permission from being considered as

placing the applicant in a situation objectively different from that of the other Chinese exporting producers included in the sample. Contrary to the Council's argument, the applicant cannot be criticised for wishing to call into question the so-called 'systemic balance' that, according to the Council, was established by the basic regulation on the ground that it relies on the permission for access to confidential information that the analogue country producer had granted it exclusively on the basis of their commercial partnership.

193 Therefore, it follows from all the foregoing that the Commission was wrong to rely on the need to comply with the principle of equal treatment in order to reject the applicant's request seeking disclosure of the normal value calculations. Consequently, it must be held that the Commission, by taking that decision, infringed the applicant's rights of defence. As stated in paragraph 136 above, it is not disputed that those calculations constituted, in the present case, essential considerations within the meaning of Article 20(2) of the basic regulation, that were capable of being communicated to the applicant so that it would be able usefully to make known its point of view in that regard before the adoption of definitive measures. The wrongful nature of the ground relied on by the Commission to refuse it access to those calculations constitutes therefore, in itself, a breach of those rights that cannot, for the reasons given in paragraphs 150 and 151 above, be remedied by the existence of other grounds for refusal, such as those relied on by the institutions in the present action.

194 However, in the fifth place, it is appropriate in accordance with the case-law recalled in paragraph 81 above, to check whether, as the applicant submits, there was a possibility that, due to the irregularity identified in paragraph 193 above, the administrative procedure could have led to a different outcome, thus concretely affecting its rights of the defence. It must be recalled, in that regard, that the applicant is not required to demonstrate that the institutions' decision would have been different, but simply that such a possibility cannot be totally ruled out since it would have been better able to defend itself if there had been no procedural error (judgments in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above, EU:C:2009:598, paragraphs 81 and 94, and *Council and Commission* v *Interpipe Niko Tube and Interpipe NRTP*, cited in paragraph 81 above, EU:C:2012:78, paragraphs 78 and 79).

195 In the present case, the applicant submits, in that regard, that failing the irregularity found in paragraph 193 above, the procedure could have had a different outcome because it would have analysed the determinations in detail and could have formulated observations on the calculations. Furthermore, according to the applicant, it might have spotted mistakes and identified adjustments other than those claimed.

196 As a preliminary matter, it must be examined whether the Commission was obliged, in any event, to refuse the applicant's request for disclosure of the normal value calculations on one or other of the grounds relied on by the institutions in the present action and set out in paragraphs 142 and 143 above. As the Court of Justice has already held, the possibility that the outcome of the investigation procedure could have been different, if there had been no irregularity such as that found in paragraph 193 above, must be excluded if the applicable provisions of the basic regulation prohibited, in any event, the Commission from granting the applicant's request (see, to that effect and by analogy, the judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above, EU:C:2009:598, point 109). In other words, it is necessary to determine whether, notwithstanding the erroneous nature of the ground based on equality of treatment on which the Commission relied in the case, it did not have, in any event, any margin of discretion to grant the applicant's request to disclose the normal value calculations, either because they were an internal document within the meaning of Article 19(5) of the basic regulation, or because they were confidential by nature, within the meaning of paragraph 1 of the same article.

197 However, it must be held that that is not the case here.

198 On the one hand, it must be noted that Article 19(5) of the basic regulation allows the institutions to disclose internal documents where their disclosure is expressly provided for by that regulation. In particular, in the light of the objective of reconciling the requirement of confidentiality and the interested parties' right to information established by the case-law recalled in paragraph 94 above, it must be held that the disclosure of internal documents is expressly provided for by the basic regulation, within the meaning of that provision, where those documents contain essential considerations within the meaning of Article 20(2) of the basic regulation. In the present case, as noted in paragraph 136 above, it is not disputed that the normal value calculations constituted essential considerations, within the meaning of Article 20(2) of the basic regulation, capable of being disclosed to the applicant. Moreover, it is also not disputed that, as the institutions acknowledged at the hearing, if the normal value calculations had been based on prices internal to the applicant, in the event that it had obtained MET status, the Commission would have been able to disclose those calculations to it. Consequently, even if it were legally correct to categorise those calculations as an internal document, within the meaning of Article 19(5) of the basic regulation, that could not, in any event, have the consequence, in the present case, of requiring the Commission not to divulge those normal value calculations to the applicant.

199 On the other hand, as set out in paragraphs 164 and 165 above, it does not follow from either the specific provisions of Article 19 of the basic regulation that are intended to safeguard the interests protected by the confidentiality of the information used during an anti-dumping investigation or the case-law that the protection of information covered by business secrecy requires the exclusion, on principle, of all disclosure of that information to interested parties, irrespective of the circumstances. In particular, it is necessary to consider the particular situation of the interested party with regards to that information and, in particular, the position that that interested party occupies on the market under consideration in relation to the position of the supplier of the information. Furthermore, the interests safeguarded by the protection of business secrets must be weighed against the rights of defence of the interested parties.

200 Consequently, in the present case, the fact that the information supplied by the analogue country producer was covered by business secrecy cannot, in itself, suffice for it to be considered that the Commission was required, in any event, to refuse the applicant's request for disclosure of the normal value calculations. That conclusion clearly cannot be called into question by the institutions' argument that, on the date on which the Commission refused the applicant's request for disclosure of the normal value calculations, it did not know the precise extent of the information that the analogue country producer had itself disclosed to the applicant. It is sufficient to find, in that regard, that, as the applicant indeed emphasised at the hearing, in its email of 18 March 2013 (see paragraph 35 above) the analogue country producer had stated that it had itself transmitted to the applicant the information that it authorised the Commission to disclose to the applicant. Consequently, from that date, nothing prevented the Commission from requesting the applicant to communicate to it the documents that the analogue country producer had sent to it so that that institution could check the extent of the information then available to the applicant.

201 Also as a preliminary matter, it is necessary to reject the Council's argument that as the applicant did not ask the hearing officer to verify the information and calculations made by the Commission, the applicant cannot establish that the procedure could have had a different outcome.

202 In that regard, it must be observed that Article 15 of Decision 2012/199, cited in paragraph 37 above, provides that, on the request of an interested party, the hearing officer can examine information that is confidential by nature and not susceptible to summary, to which that party has no access, in order to verify how that information was used by the Commission services responsible for the investigation. That provision specifies, furthermore, that the hearing officer is to inform the party having submitted the request whether, in his view, the information withheld from that party is relevant to its defence and whether, where relevant, the investigation services have correctly reflected the information in the facts and considerations on which they have based their conclusions.

203 However, the fact that the applicant did not request the hearing officer to carry out the verification laid down in Article 15 of Decision 2012/199 is not relevant in the present case. As shown by its terms, recalled in paragraph 202 above, that provision only concerns information that is by nature confidential as regards the interested party having recourse to the hearing officer and to which, for that reason, that party does not have the right of access. As has been concluded in paragraph 193 above, the Commission did not rely on any valid ground to justify the confidentiality of the normal value calculations as regards the applicant. In those circumstances, the applicant cannot be criticised for not having requested the hearing officer to verify those calculations.

204 Next, it is appropriate to examine whether, by comparison with the extent of the information available to the applicant at the date on which its request for disclosure of the normal value calculations was refused, namely 21 March 2013, access to those calculations would have enabled it, as the applicant argues, to submit additional observations, in particular by identifying errors or proposing new adjustments, with the result that the outcome of the procedure could have been different.

205 As is clear from paragraphs 26, 27 and 32 to 34 above, the information disclosed by the Commission during the investigation procedure contained relatively precise information on the method followed for the determination of the normal value and the data, product type by product type, relating to the applicant's export sales which were compared with the normal value calculations. Furthermore, as recalled in paragraph 35 above, the analogue country producer transmitted to the applicant the internal data that it had provided to the Commission, in particular the accounting records and the detailed data relating to prices on the Indian market, and on which the Commission relied in order to calculate the normal value.

206 On the basis of those elements, taking into account moreover the financial and accounting expertise that an undertaking, such as the applicant, normally has available to it, the latter was, in principle, in a position to carry out its own calculations as regards the normal value and to compare the final result with that obtained by the Commission on the basis of the same data. To the extent that, furthermore, the Commission's calculations product type by product type as regards export sales had been communicated to the applicant in the final disclosure document, the applicant was in a position, in absolute terms, to make its own calculation as regards the dumping margin product type by product type, as it recognised at the hearing.

207 That said, it must be observed that obtaining the normal value calculations made by the Commission would, clearly, constitute for the applicant a substantial increase in the information it held which, taking into account the circumstances of the case, would have enabled it to make more relevant observations than those that it had already presented.

208 First of all, clearly, the fact of having the detailed calculations made by the Commission available to it, and not merely the data used for those calculations, is, in general, capable of enabling the interested parties to make observations that are more useful for their defence. They can then verify exactly how the Commission used those data and compare them with their own calculations, which would enable them to identify possible errors made by the Commission which would otherwise be undetectable. Moreover, the institutions' practice shows that they themselves consider that, for the interested parties, having available to them the detailed calculations as regards the determination of the dumping margin can enable them usefully to exercise their rights of defence. As they accepted at the hearing in response to a question by the Court, the institutions usually communicate to the exporting producers the detailed calculations of the normal value where they are made on the basis of the internal sales of those exporting producers. Likewise, as has been stated in paragraph 205 above, even though the Commission had redacted, as regards the applicant, the normal value calculations, product type by product type, for reasons of confidentiality, it had, by contrast, disclosed to the applicant the calculations of the corresponding export prices at product type level.

209 Next, it must be noted that, in the specific circumstances of the case, the applicant's lack of access to the normal value calculations restricted its ability to submit relevant observations to a greater extent than if it had had access to those calculations.

210 First, the applicant only had very limited time in which to make use of the analogue country producer's data. As was recalled in paragraph 35 above, the latter permitted the Commission to disclose those data and at the same time communicated them to the applicant on 18 March 2013. Furthermore, on the same day, the applicant asked the Commission to disclose to it the normal value calculations. Consequently, given that the deadline fixed by the Commission for the interested parties to submit observations in accordance with Article 20(5) of the basic regulation was due to expire on 25 March 2013, the applicant had only seven days at most in which to make use of the analogue country producer's data. Clearly, within that time limit it was difficult for the applicant to reconstruct even a part of the normal value calculations, having regard, as it itself submitted at the hearing, to the very large number of product types that had been taken into account for the determination of the dumping margin. According to the applicant's undisputed statements in the observations on the disclosure document dated 25 March 2013, that number reached 1 645 (see paragraph 40 above). Consequently, if the normal value calculations made by the Commission had been available to the applicant in that time, the applicant would have been in a position to identify certain mistakes or certain differences between the Commission's calculations and its own calculations or, at the very least, to identify them in the time required.

211 Second, as the applicant submitted, in essence, at the hearing, the fact that it did not have access, in the present case, to certain information concerning the methodology of the calculation is relevant to the assessment of whether the outcome of the procedure could have been different if the Commission had disclosed the normal value calculations. As is stated in paragraphs 119 and 120 above, the applicant had, on 18 March 2013, only a general knowledge of the method used to calculate the normal value of non-matching product types. It did not know, in particular, at that date, which market and what reference prices the Commission had used in order to calculate the market value of the adjustment to the normal value of those types of products required due to the differences in physical characteristics between those product types and the corresponding product types. As noted in paragraph 120 above, those non-matching product types represented (i) 83% of all the product types sold for export which were taken into account for the calculation of its dumping margin and (ii) more than 40% of the total volume of export sales. If the applicant had had in its possession the normal value calculations product type by product type, it would have been able, at the very least, to submit observations on the results that that method had produced. The applicant thus could have, if necessary, compared those results with its own results on the basis of another method. For that reason, it would have been able to challenge more precisely the method used by the Commission and would therefore have had a greater chance of its objections being taking into account by the Commission, which did not happen in the present case.

212 Finally, as the applicant itself pointed out at the hearing, during the investigation procedure it had submitted a certain number of observations on the basis of information that it already held, some of which led to the amendment of the methodology for calculating the normal value. As recalled in paragraphs 45 and 46 above, it was as a result of the applicant's observations that the institutions accepted that they should, first, calculate the normal value for its dumping margin on the basis of the analogue country producer's domestic sales and not by constructing that normal value and, second, take into account for that dumping margin the non-matching product types and, therefore, determine a normal value for those types of products. Therefore, it is legitimate to assume that, if the applicant had had in its possession the normal value calculations at product type level, which constituted, as is shown in paragraphs 207 to 211 above, a substantial increase in the information it held, it would have endeavoured, as far as possible, to make use of that information in effective ways for the exercise of its rights of defence.

213 Therefore, for all the reasons set out in paragraphs 207 to 212 above, it cannot be ruled out that, if the applicant's request regarding disclosure of the normal value calculations had been accepted, the outcome of the procedure could have been different.

214 That conclusion cannot be called into question by the arguments advanced by the institutions. First of all, it must be noted that the institutions cannot rely on paragraph 81 of the judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above (EU:C:2009:598), to support the argument that it was for the applicant to show that the outcome of the procedure could have been different if it had had access to the normal value calculations. It is true that, in paragraph 81 of the judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above (EU:C:2009:598), the Court of Justice recalled the principle that it was for an applicant to show that there was a possibility that, due to the procedural irregularity complained of, the administrative procedure could have resulted in a different outcome, thus in fact affecting the applicant's rights of defence. However, in paragraph 94 of the same judgment, the Court clarified the effect of that principle by stating that it follows from the case-law that that obligation cannot have the effect of requiring the applicant to show that the Commission's decision would have been different in content but simply that such a possibility cannot be totally ruled out, since it would have been better able to defend itself had there been no procedural error (see judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 62 above, EU:C:2009:598, paragraphs 81 to 94).

215 In those circumstances, the applicant cannot be required to show, on the basis of the data that it held, that the Commission had committed errors in respect of the determination of the normal value in order for it to be concluded that the outcome of the procedure could have been different if the normal value calculations had been disclosed to it.

216 First, taking into account the fact that, as shown in paragraph 211 above, the applicant only had a fairly general knowledge of the methodology used by the Commission, it cannot be ruled out that certain errors could only have been identified by an analysis of the normal value calculations product type by product type.

217 Second, as stated in paragraph 210 above, even if the applicant would have been able to identify those errors on the basis of the analogue country producer's data, it would not necessarily have been able to identify them as rapidly, which, taking into account the time available to it, could have proven determinative for the exercise of its rights of defence.

218 That is why, in the circumstances of the case, the allegation made by the institutions that, in the present action, the applicant was not able to establish that there were errors in the normal value determination, cannot be regarded, in any event, as sufficient to rule out any possibility that the outcome of the procedure could have been different.

219 In addition, for the same reasons, the fact put forward by the Council that, in any event, the interested parties only had 10 days within which to present their observations after final disclosure was given, under Article 20(5) of the basic regulation, cannot be regarded as relevant. It follows from the foregoing that, in the present case, the question raised is whether, within the time actually available to the applicant, which was, moreover, less than the period of 10 days laid down in Article 20(5) of the basic regulation, access to the normal value calculations was liable to allow it to exercise its rights of defence better than access merely to the data underlying those calculations.

220 Finally, in the context of assessing whether, if the infringement found by the Court in paragraph 193 above had not occurred, the outcome of the procedure could have been different, the fact relied on by the Council that the applicant had, in any event, a level of information sufficient for it effectively to exercise its rights of defence cannot be taken into account. Such a circumstance could only have an effect, where appropriate, in relation to the question whether or not an infringement had been committed. In any event, as has been noted in paragraph 139 above, the Commission, in order to

refuse to disclose the normal value calculations, relied on the sole ground that disclosure of that information specifically to the applicant was not possible due to the need to respect equality of treatment as regards the other exporting producers included in the sample. That refusal is not therefore based on the fact that the level of information that the applicant held was sufficient to enable it to exercise its rights of defence. In addition, as noted in paragraph 208 above, the institutions themselves consider, in general, that, subject to the need to respect confidentiality of the information, the detailed calculations on the basis of which an operator's dumping margin was calculated constitute useful information for defending the latter's interests and should, therefore, be included in the provisional and final disclosure documents.

221 Therefore, it follows from all the foregoing that the first complaint under the first plea in law is well founded and it is necessary, on the basis of that complaint, to uphold that plea. Therefore, without it being necessary to examine the second, third and fifth pleas in law, the contested regulation must be annulled to the extent that it applies to the applicant.

Costs

222 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

223 Under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the case are to bear their own costs.

224 In the present case, since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant. In addition, as an intervening institution, the Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber),

hereby:

1. **Annuls 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, to the extent that it applies to Jinan Meide Casting Co. Ltd;**

2. **Orders the Council of the European Union to pay, in addition to its own costs, those incurred by Jinan Meide Casting Co. Ltd;**

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

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 30 June 2016.

[Signatures]

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