Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

2 October 2024*

(Dumping – Imports of certain iron or steel fasteners originating in China – Imposition of a definitive anti-dumping duty – Action for annulment – Admissibility – Standing to bring proceedings – Representative association of exporters – Article 2(6a) of Regulation (EU) 2016/1036 – Construction of the normal value – Choice of appropriate representative country – Article 2(10) of Regulation 2016/1036 – Adjustments – Non-cooperation – Article 18 of Regulation 2016/1036 – Calculation of the dumping margin for the non-sampled cooperating exporting producers – Definition of the product concerned – Injury to the Union industry – Assessment of injury by segment – Causal link – Calculation of price undercutting and injury margin – Macroeconomic indicators – Procedural rights – Confidential treatment)

In Case T-263/22,

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

applicants,

v

European Commission, represented by G. Luengo, L. Di Masi and J. Zieliński, acting as Agents,

defendant,

supported by

European Industrial Fasteners Institute AISBL (EIFI), represented by B. O'Connor and M. Hommé, lawyers,

intervener,

THE GENERAL COURT (Third Chamber),

composed of F. Schalin, President, G. Steinfatt and D. Kukovec (Rapporteur), Judges,

Registrar: I. Kurme, Administrator,

* Language of the case: English.

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

having regard to the written part of the procedure,

further to the hearing on 7 February 2024,

gives the following

Judgment

1 By their action, the applicants, China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) and the other legal persons whose names appear in the annex, seek the annulment of Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2022 L 36, p. 1) ('the contested regulation'), in so far as it concerns them.

I. Background to the dispute

2 Following a complaint lodged on 6 November 2020 by the intervener, European Industrial Fasteners Institute, on behalf of the Union industry, the European Commission initiated an anti-dumping investigation with regard to imports of fasteners originating in China pursuant to Article 5(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21) ('the basic regulation').

3 On 21 December 2020, the Commission published the Notice of initiation of an anti-dumping proceeding concerning imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2020 C 442, p. 6) pursuant to Article 5 of the basic regulation.

4 The investigation of dumping and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period'). The examination of trends relevant for the assessment of injury and causation covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

5 The CCCME requested that it be recognised as an interested party, arguing that it represented the Chinese fasteners industry. The intervener opposed that request. The Commission considered that the CCCME was empowered by a number of Chinese fasteners producers to act on their behalf and that it could be an interested party only to the extent that it was empowered by those specific fasteners producers to represent them.

6 In the notice of initiation, the Commission stated that it had provisionally selected a sample of Union producers on the basis of production and sales volumes in the European Union, and that it had taken into account their geographical location and had ensured the representation of small and medium-sized enterprises (SMEs). That sample consisted of six Union producers, located in four different Member States. One of the provisionally sampled Union producers, an SME, informed the Commission that it would not be able to provide a complete questionnaire. The Commission therefore decided to revise the sample of Union producers by replacing that company by the next largest SME in the same Member State. In recital 34 of the contested regulation, the Commission specified that the methodology to select the sample was duly disclosed to interested parties and no comments were received on the methodology as such.

7 During the investigation, one of the sampled Union producers informed the Commission that it would not be able to provide a complete questionnaire. Another sampled Union producer was not in a position to provide sufficient assurance on the data provided for verification. Those producers were therefore replaced by the next two largest producers in terms of volumes and sales, taking into account geographical spread and wide product-type mix.

8 For the sampling of exporting producers, the Commission selected the three exporting producers or groups of exporting producers representing the largest volume of exports which could reasonably be investigated within the time available, pursuant to Article 17(1) of the basic regulation, namely Jiangsu Yongyi Fastener Co., Ltd ('Jiangsu'), Ningbo Jinding Fastening Piece Co., Ltd ('Ningbo Jinding') and Wenzhou Junhao Industry Co., Ltd ('Wenzhou'). The Commission clarified that the specific product types produced by the selected companies were not a criterion, since all fasteners had been considered as one single product for the purposes of the investigation.

9 The product concerned comprised certain fasteners made from iron or steel, other than stainless steel, that is to say, mainly screws, bolts or washers originating in China.

10 Fasteners can be standard ('standard fasteners') or made on the basis of customer drawings ('non-standard fasteners'). Within the same national or international standards, fasteners should comply with the same basic physical and technical characteristics, including strength, tolerance, finishing and coating. Based on their basic physical and technical characteristics and end-uses, all the fasteners were considered to constitute a single product for the purposes of the proceedings that led to the contested regulation.

11 The Commission further considered that the production process for fasteners was not in itself relevant for the definition of the product being investigated. Accordingly, all the product types concerned, whether produced by hot or cold forging processes, were part of the investigation.

12 The Commission considered that the evidence at the initiation of the investigation had pointed to the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic regulation.

13 After hearing the parties on the matter, the Commission selected Thailand as the appropriate representative country from which undistorted prices and costs would be sourced for the determination of the normal value of the products, pursuant to Article 2(6a)(a) of the basic regulation.

14 By the contested regulation, the Commission imposed a definitive anti-dumping duty ranging from 22.1 to 86.5% on imports of certain iron or steel fasteners originating in China.

II. Forms of order sought

15 The applicants claim that the Court should:

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

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

16 The Commission, supported by the intervener, contends that the Court should:

– dismiss the action as unfounded;

– order the applicants to pay the costs.

III. Law

A. Admissibility

17 The intervener submits that the CCCME is not a representative association within the meaning of Article 6(7) of the basic regulation and that the Commission should not have considered it as such during the administrative procedure preceding the adoption of the contested regulation, since the CCCME does not represent the interests of its members, but those of the Chinese State. Accordingly, in its view, the fact that the CCCME had powers of attorney from individual exporting producers does not change the fact that its objective is to prevent competition between its members when they export their products to the European Union. Consequently, standing to bring proceedings for the purposes of Article 263 TFEU can only be based on the Commission's error during the administrative investigation, not on rights established in the basic regulation. The intervener therefore invites the Court to examine that question of its own motion.

18 The applicants dispute that line of argument.

19 At the outset, it should be recalled that, according to Article 142(1) of the Rules of Procedure of the General Court, the intervention is to be limited to supporting, in whole or in part, the form of order sought by one of the main parties. In the present case, the intervener's arguments concerning the admissibility of the action are not supported by the form of order sought by the Commission.

20 However, according to well-established case-law, the EU Courts may rule, if necessary of their own motion, whether there is an absolute bar to proceeding arising from disregard of the conditions as to admissibility laid down in Article 263 TFEU (see judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 22 and the case-law cited).

21 In accordance with settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed by such a decision (see judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 50 and the case-law cited).

22 The persons capable of being distinguished individually by an EU measure in the same way as the addressees of a decision include those persons who participated in the process by which that measure is adopted. However, the fact that a person participates in the process by which an EU measure is adopted does not distinguish that person individually with regard to the measure in question unless provision has been made under the EU rules for procedural guarantees in favour

of that person. The precise scope of an individual's right to bring an action challenging an EU measure depends on his or her legal position as defined by EU law with a view to protecting the legitimate interests thus afforded him or her (see judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 51 and the case-law cited).

23 In the present case, the introductory paragraph of the application states that the present action has been brought (i) by the CCCME, on behalf of its members listed in Annex A.2 ('the relevant members of the CCCME') and on its own behalf as regards certain complaints, (ii) by the three Chinese exporting producers sampled by the Commission, and (iii) by five other Chinese non-sampled cooperating exporting producers whose names are listed in the annex to the contested regulation. Neither the three sampled exporting producers nor the five other Chinese non-sampled cooperating exporting producers are named as members of the CCCME under Annex A.2 provided by the applicants and no documents have been produced to attest to their membership to the CCCME.

24 First of all, it should be noted that, following a question put by the Court concerning the consequences to be drawn from the judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission* (C-478/21 P, EU:C:2023:685), delivered after the written part of the procedure, the CCCME accepted that the action was inadmissible in so far as it had been brought in its own name. When questioned in that regard at the hearing, the CCCME maintained that all the complaints in the action were raised both on its own behalf and in the interest of its members. Consequently, the CCCME did not raise any complaint on its own behalf in isolation.

25 Next, as regards the representation of the members of the CCCME in legal proceedings by the CCCME, it is apparent from paragraph 23 above that the CCCME intends to represent, in the present action, the 31 companies which are listed in Annex A.2 to the application and in respect of which it produced documents attesting to their membership. It is apparent from that annex that those 31 companies are non-sampled cooperating exporting producers.

26 In order for an association to be able legitimately to bring an action before the EU Courts on behalf of its members, it is important, first, that the natural or legal persons on whose behalf it is acting are members of that association, secondly, that it has the power to bring proceedings in their name, third, that that action is brought in their name, fourth, that at least one of the members on whose behalf it is acting could itself have brought an admissible action, and, fifth, that the members on whose behalf it is acting have not brought an action in parallel before the EU Courts (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 83).

27 In the present case, first, the CCCME provided evidence, which was not contested, showing that the members concerned belonged to the CCCME.

28 Secondly, the articles of association produced by the CCCME in the annex set out the corporate purpose to be pursued in terms which enable legal proceedings intended to defend the interests of its members against trade defence measures to be covered (judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 88).

29 Thirdly, the application states that the action is also brought on behalf of the members concerned.

30 Fourthly, the members concerned could have brought an action challenging the contested regulation. In that regard, the fourth paragraph of Article 263 TFEU provides that any natural or legal person may, under the conditions laid down in the first and second paragraphs of that provision, institute proceedings against an act addressed to that person, against acts of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

31 In the present case, the condition relating to direct concern is fulfilled since (i) the contested regulation directly affects the legal situation of the members of the CCCME, and (ii) the customs authorities of the Member States are required to levy the duties imposed by the contested regulation without having any margin of discretion (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 118 and the case-law cited).

32 As regards individual concern, it must be recalled that, according to the case-law, regulations imposing anti-dumping duties are, by their nature and scope, of a legislative nature in that they apply generally to the economic operators concerned (see judgment of 28 February 2019, *Council* v *Marquis Energy*, C-466/16 P, EU:C:2019:156, paragraph 47 and the case-law cited). However, that legislative nature does not preclude those regulations from being of individual concern to those producers and exporters of the product concerned which are alleged to have carried out dumping on the basis of data relating to their commercial activities, such as producers and exporters which are able to establish that they were identified in the acts of the Commission or that they were concerned by the preliminary investigations (see, to that effect, judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association*, C-465/16 P, EU:C:2019:155, paragraph 79).

33 In that regard, it should be noted that the relevant members of the CCCME are exporting producers of the product concerned which cooperated with the Commission during its investigation and are named in the annex to which Article 1(2) of the operative part of the contested regulation refers. In their capacity as other cooperating companies identified in that annex, the relevant members of the CCCME, on behalf of which the CCCME brought the present action, are subject to an anti-dumping duty of a specific amount, which is different from the amount applicable to all the other unidentified companies to which the contested regulation applies. Therefore, those members are directly and individually concerned.

34 Fifthly, none of the relevant members of the CCCME has brought an action in parallel to that examined in the present case.

35 Accordingly, the conditions of admissibility as set out in paragraph 26 above have been met.

36 However, it is apparent from the case-law that an action for annulment of a regulation imposing anti-dumping duties, if successful, results in the annulment of that regulation in so far as it imposes an anti-dumping duty on the applicant and that annulment does not affect the validity of the other aspects of that regulation, in particular the anti-dumping duty applicable to other operators. It follows that, as regards the representation of the CCCME's members before the Court in the present action, only the relevant members of the CCCME on behalf of which the present action was brought could benefit from an annulment if the Court were to find that the CCCME was successful in the action which it had brought on their behalf (see, to that effect,

judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraphs 110 and 112). Those members are Haining Hisener Trade Co., Ltd, Changshu City Standard Parts Factory Co., Ltd., Ningbo Nanjubaoge Fastener Manufacturing Co. Ltd, Jinan Star Fastener Co., Haiyan Xinglong Fastener Co., Ltd, Zhejiang Excellent Industries Co. Ltd, Zhejiang Channov Auto Parts Co., Ltd, Zhejiang New Shengda Fastener Co., Ltd., Shanghai East Best Foreign Trade Co., Ltd., Lianyungang Suli Hardware Technology Co., Ltd., Yuyao Alfirste Hardware Co., Ltd, Zhejiang Chaoboer Hardware Co., Ltd, Haiyan Shangxin Standarf Parts Co., Ltd, Jiaxing Shangxiang Import and Export Co., Ltd, Zhejiang Tianyuan Metal Products Co., Ltd, Jiashan Xiaohai Metal Products Factory, Jia Xing Tai Cheng Aoto Parts Co., Ltd, Haiyan Yousun Entreprise Co., Ltd, Haiyan Wancheng Fasteners Co., Ltd., EC International (Nantong) Co., Ltd., Jiaxing Zhengying Hardware Co., Ltd, SSF Industrial Co. Limited, Zhe Jiang World Win Fastener Co., Ltd, Haiyan Tianqi Standard Parts Co., Ltd, Jiashan Sanxin Fastener Company Limited, Jiaxing Huanhuan Tong Plastic Industry Co., Ltd, Yuyao Zhenrui Metal Co., Beijing Jinzhaobo High Strength Fastener Co., Ltd., Jiashan Yongxin Fastener Co., Ltd, Haiyan Yihui Hardware Technology Co., Ltd and Shanghai Moregood Hardware Co., Ltd.

37 It follows that the present action is admissible in so far as it has been brought by (i) the CCCME on behalf of its 31 members – referred to in paragraph 36 above – which are exporting producers that have cooperated with the Commission during the investigation which led to the adoption of the contested regulation, (ii) the three sampled Chinese exporting producers, and (iii) the five other non-sampled cooperating exporting producers which did not provide a CCCME membership certificate.

B. Substance

38 In support of their action, the applicants rely on nine pleas in law, alleging (i) infringement of Article 2(6a)(a) of the basic regulation and of the principle of good administration in the determination of normal value, (ii) infringement of Article 2(10) of the basic regulation, in so far as the Commission failed to make the necessary adjustments to the data relating to the selling, general and administrative expenses ('SG&A costs') and profits of the Thai producers, (iii) infringement of Article 18(1), (3) and (4) of the basic regulation, of Article 6.8 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103) ('the Anti-Dumping Agreement'), contained in Annex 1A to the Agreement establishing the World Trade Organization (WTO) (OJ 1994 L 336, p. 3), and of Annex II to the Anti-Dumping Agreement (OJ 1994 L 336, p. 118) ('Annex II'), in relation to the determination of the labour cost for two sampled exporting producers, (iv) infringement of Article 9(6) of the basic regulation in relation to the determination of the dumping margin for the non-sampled exporting producers, (v) infringement of Article 3(2), (3), (5) and (6) of the basic regulation in conjunction with Article 4(1) of that regulation in that it failed to take into account the difference between standard fasteners and non-standard fasteners in the assessment of the injury and of the causal link, (vi) infringement of Article 3(2) and (3) and Article 9(4) of the basic regulation in that the Commission's undercutting analysis only established the existence of undercutting for 24% of the production of the sampled Union producers, (vii) infringement of Article 3(2), (3) and (6) and Article 9(4) of the basic regulation in so far as the Commission compared Chinese prices to distributors with Union prices to end-users in its assessment of the price effects and the determination of the injury margin, (viii) infringement of Article 3(2) and (5) of the basic regulation in that the Commission failed to make an objective examination based on positive evidence with respect to the macroeconomic injury indicators, and (ix)

infringement of Article 6(7), Article 19(1) to (3) and Article 20(2) and (4) of the basic regulation and of the applicants' rights of defence by the Commission on account of the confidential treatment of certain data during the administrative procedure.

1. The first plea, alleging infringement of Article 2(6a)(a) of the basic regulation and of the principle of good administration

39 As a preliminary matter, it should be noted that, in the field of common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 35 and the case-law cited). The judicial review of such an appraisal must therefore be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 36 and the case-law cited).

40 In addition, it also follows from the settled case-law of the Court of Justice that the General Court's review of the evidence on which the EU institutions base their findings does not constitute a new assessment of the facts replacing that made by the institutions. That review is restricted to showing whether that evidence was able to support the conclusions reached by the institutions. The General Court must therefore not only establish whether the evidence put forward is factually accurate, reliable and consistent but also ascertain whether that evidence contained all the relevant information which had to be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions reached (see judgment of 12 May 2022, *Commission* v *Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 59 and the case-law cited).

41 Furthermore, it should be noted that the determination of the normal value of a product constitutes one of the essential steps required to prove the existence of dumping (judgments of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 19, and of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 20).

42 That said, it is settled case-law that the institutions of the European Union enjoy broad discretion when determining the normal value in respect of non-market economy countries (see judgment of 19 September 2019, *Zhejiang Jndia Pipeline Industry* v *Commission*, T-228/17, EU:T:2019:619, paragraph 126 and the case-law cited) and that the choice of the appropriate representative country to that end also falls within the broad discretion enjoyed by the EU institutions in the field of common commercial policy. However, the discretion enjoyed by the Commission is limited in the context of Article 2(6a)(a) of the basic regulation, in that the country chosen must have a similar level of economic development as the exporting country (see, to that effect, judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:347, paragraph 127 and the case-law cited).

43 It has also been held that it was necessary to verify that the Commission had not neglected to take account of essential or relevant factors for the purpose of establishing the appropriate nature of the country chosen and that the information contained in the file in the case had been considered with all the care required for it to be held that the normal value of the product concerned had been determined in an appropriate and not unreasonable manner. That case-law

can be transposed to situations in which the existence of significant distortions in the exporting country justifies the use of data from an appropriate representative country to construct the normal value, which also entails examining complex economic and political situations (see judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:347, paragraph 128 and the case-law cited).

44 It is in the light of those principles that the applicants' first plea, relating to the construction of the normal value of the product concerned, which is divided into five parts, must be examined.

(a) The first part, relating to the choice of Thailand as the appropriate representative country within the meaning of Article 2(6a) of the basic regulation for the purposes of constructing the normal value of the product concerned

45 By the first part of the first plea, the applicants claim that (i) the Commission should not have used Thailand as the appropriate representative country in the present investigation due to the imports of special grade wire rod from Japan into that country, (ii) the database used by the Commission to calculate SG&A costs and profits was not correctly chosen, and (iii) the Commission should have made adjustments to those data in order to construct the normal value as closely as possible to the production values of the sampled Chinese exporting producers.

(1) The prices of the raw materials needed to manufacture the product concerned in Thailand

46 The applicants claim, in essence, that the Commission should not have used Thailand as an 'appropriate representative country', within the meaning of Article 2(6a) of the basic regulation, due to the price of the special grade wire rod, imported from Japan to Thailand, which is the raw material used to manufacture the product concerned. During the administrative procedure, the CCCME provided ample data and evidence to show that the prices of Thai imports did not correspond to the costs of production of the sampled Chinese producers, in so far as the latter exported almost exclusively standard fasteners to the European Union, rather than special fasteners. By contrast, special grade wire rod from Japan is used for specific applications and not for the production of standard fasteners. In addition, the applicants maintain that the Commission did not properly examine the significant price difference of 17% between Japanese exports to Thailand and to the five other main export countries.

47 The applicants claim that the costs of production in Thailand are not 'corresponding costs' to those of Chinese exporting producers within the meaning of Article 2(6a)(a) of the basic regulation. By imposing an unreasonable burden of proof, the Commission also infringed the principle of good administration.

48 The Commission disputes the applicants' arguments. Furthermore, it contends that the applicants have failed to substantiate the complaint relating to the infringement of the principle of good administration and that, consequently, that complaint is inadmissible.

(i) The admissibility of the complaint concerning infringement of the principle of good administration

49 In response to a question from the Court as to the inadmissibility of the complaint raised by the Commission in its defence, the applicants stated, at the hearing, that the complaint concerning infringement of the principle of good administration concerned the excessive burden of proof

imposed on them by the Commission, in so far as they had set out extensively the reasons why the data taken into account by the Commission were not the most appropriate and had provided sufficient information.

50 It follows from the principle of good administration, which is one of the general principles of EU law, that the burden of proof which may fall on exporting producers pursuant to Article 2(6a)(a) of the basic regulation must not be unreasonable (see, by analogy, judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:347, paragraph 82 and the case-law cited).

51 Therefore, as regards the admissibility of the complaint relating to the infringement of the principle of good administration, it is sufficient to note that that complaint is substantiated in the arguments put forward by the applicants in the first part of the first plea, by which they dispute the choice of Thailand as the appropriate representative country within the meaning of Article 2(6a) of the basic regulation, despite the evidence which they provided to the Commission indicating that the country in question was not an appropriate representative country for the purpose of constructing the normal value of the product concerned.

52 Consequently, the Commission's plea of inadmissibility must be rejected.

(ii) The merits of the choice of Thailand as the appropriate representative country for the construction of the normal value of the product concerned

53 Article 2(6a) of the basic regulation provides as follows:

'(a) In case it is determined, when applying this or any other relevant provision of this Regulation, that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, subject to the following rules.

The sources the Commission may use include:

– corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country, provided the relevant data are readily available; where there is more than one such country, preference shall be given, where appropriate, to countries with an adequate level of social and environmental protection;

– if it considers appropriate, undistorted international prices, costs, or benchmarks; or

– domestic costs, but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence, including in the framework of the provisions on interested parties in point (c).

Without prejudice to Article 17, that assessment shall be done for each exporter and producer separately.

The constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits.

(b) Significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:

– the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;

– state presence in firms allowing the state to interfere with respect to prices or costs;

– public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;

– the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;

– wage costs being distorted;

– access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state.

…'

54 According to recital 220 of the contested regulation, the Commission based its choice of appropriate representative country on three criteria, namely a level of economic development similar to China, the production of the product concerned in that country and the availability of relevant public data.

55 During the investigation, the Commission made available two notes to the file on the sources for the determination of the normal value on which interested parties were invited to comment. It is apparent from the note to the file published on 5 February 2021 ('the first note') that the Commission found that there was considerable production of the product concerned in eight countries with a similar economic level to that of China, but that it was able to find relevant and readily available data only for Brazil, Russia, Türkiye and Thailand. According to recital 223 of the contested regulation, in the note to the file published on 4 May 2021 ('the second note'), the Commission confirmed that data were also available for Malaysia.

56 When analysing the import data for the five potential representative countries, the Commission observed that more than 75% of imports of the raw material used in the manufacture of the product under investigation in Brazil and Malaysia came from China and non-WTO countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ 2015 L 123, p. 33). Given that the prices of those imports could be affected by distortions and, in turn, were likely to distort the remaining import volumes, the Commission analysed the remaining import volumes in relation to their absolute quantities and prices and concluded that Brazil and Malaysia had a lower quality set of readily available data for calculating undistorted value. Russia was discarded since no interested party had made any views in its favour. Thailand was chosen over Türkiye since

Thailand had higher volumes of imports of the four main raw materials used in the manufacturing of the product under investigation and lower import duties on those factors of production.

57 The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production. It is apparent from the documents before the Court that the applicants and, in particular, the CCCME and the three sampled Chinese exporting producers were able, as interested parties, to consult the Commission's file and submit observations on the choice of the appropriate representative country.

58 In response to the CCCME's observations regarding the significant presence of what it described as special grade raw materials from Japan, the Commission analysed Japanese export prices for the four main raw materials in order to identify whether there were distortions which indicated that imports into Thailand from Japan were not subject to market rules. It is apparent from recital 232 of the contested regulation that, during the investigation period, Thailand was one of Japan's five main export markets and accounted for 17% of total Japanese exports of those materials, whereas the top five export countries, excluding China, accounted for more than 60% of Japanese exports. The average export price to Thailand was 17% higher than the average export price to the other five main export countries. The Commission concluded that Japanese export prices to Thailand were not unreasonably high or unrepresentative. Consequently, the Commission considered that Japanese exports to Thailand were not capable of calling into question the representative nature of Thailand, for the purpose of investigating the product concerned.

59 It is therefore necessary to examine whether, in the present case, the Commission made a manifest error of assessment in finding that Thailand was an appropriate representative country for the purpose of constructing the normal value of the product under investigation. In that context, given that the burden of proof rests with the applicants, which must provide conclusive evidence in support of their claims, it is necessary to determine whether they have adduced evidence capable of demonstrating that the Commission made a manifest error of assessment, within the meaning of the case-law cited in paragraph 39 above, in choosing Thailand as the appropriate representative country (see, to that effect, judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:347, paragraph 131 and the case-law cited).

60 At the outset, it should be noted that the applicants do not dispute, in the present action, the Commission's findings in the contested regulation concerning the existence of evidence at the initiation of the investigation which had pointed to the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic regulation. In addition, they do not contest the fact that Thailand generally has a similar level of development to China.

61 In that regard, in the first place, it should be noted that the Commission invited all Chinese exporting producers to provide information regarding the inputs used for producing fasteners, in order to calculate the price that a producer of fasteners would pay in Thailand for a raw material delivered at the factory gate. For the definition of raw materials necessary to produce the product under investigation, the Commission used the Harmonized Commodity Description and Coding System drawn up by the Customs Cooperation Council, now the World Customs Organization, and defined the relevant Harmonized System (HS) codes. The Commission explained that, in order to obtain undistorted prices for the relevant raw materials in the appropriate representative country, it was required to perform estimations depending on the data available to it.

62 As the applicants confirmed at the hearing, they do not dispute as such the definition of the HS codes which determine the raw materials needed to manufacture the product concerned. The Commission found, without being contradicted by the applicants on that point, that that method inevitably involved a certain degree of approximation, in so far as several grades of a raw material could be captured by the same HS code in various proportions. Therefore, it is difficult to establish an exact match between HS codes from one manufacturer to another.

63 However, the applicants claim that the Commission should have adjusted the data available to it and, in particular, should have disregarded the values relating to imports of wire rod into Thailand from Japan, since that wire rod is of a better grade than that used by the sampled Chinese exporting producers and unreasonably increases the price of the normal value of the product under investigation.

64 The applicants define special grade wire rod as being associated with non-standard fasteners, since they are generally intended for sectors which seek better quality fasteners. However, it should be noted in that regard that, first, even in the sectors to which they refer, in particular the motor vehicles and aeronautics sectors, both standard and non-standard fasteners can be used. In any event, according to the Commission's definition of the product under investigation, the present investigation covers both standard and non-standard fasteners.

65 Secondly, the applicants do not prove the specific presence, in percentage terms, of special grade wire rod in standard or non-standard fasteners. They rely, in that regard, on visits by representatives of the European Fasteners Distributor Association ('EFDA') to Thai factories and witness statements by those representatives establishing the use of special grade wire rod in the Thai automotive sector. However, that evidence cannot constitute reliable and objective proof that all of the Thai fasteners producers were limited to that kind of production. In that regard, during the course of an investigation, the Commission must satisfy itself as to the accuracy of the information supplied by interested parties upon which its findings are based. That obligation to carry out checks is, in the context of the imposition of anti-dumping measures, the expression of a more general principle which requires any authority, notwithstanding its broad discretion, to conduct a precise examination and to base its assessment on evidence of sufficient quality (see, to that effect, judgment of 3 December 2019, *Yieh United Steel* v *Commission*, T-607/15, EU:T:2019:831, paragraph 71 and the case-law cited).

66 Thirdly, it should be noted that the applicants have not provided any specific evidence as to the proportions of wire rod included in the non-standard fasteners which the Commission could use. As the Commission noted, the applicants were unable to prove that special grade wire rod was not used by the Chinese producers which exported fasteners. Moreover, as is apparent from Annex B.1 to the defence, which the applicants do not dispute, in 2020, China was the leading country of export for wire rod falling under the relevant Japanese codes. Accordingly, 'special grade' wire rod from Japan was also imported into China in significant quantities.

67 Moreover, the Commission explained in recital 301 of the contested regulation that, based on the confidential data presented by one of the interested parties, fasteners for the automotive sector represented less than 50% of the overall industrial fasteners demand in Thailand in 2018, with the result that there was demand for raw materials for both standard and non-standard fasteners in Thailand.

68 Accordingly, the applicants have not substantiated their claim that imports from Japan were predominantly imports of special grade wire rod. In any event, the fact that a raw material is of a better – and therefore more expensive – grade is not sufficient to call into question the accuracy or veracity of that information. Therefore, that does not mean that that figure must be excluded from the calculation.

69 Fourthly, the applicants provided tables with 'factors of production' relating to price differences for different types of wire rod. However, no specific evidence has been provided as to the distribution of that wire in the production of the product concerned. It follows that that evidence may relate to products which are not covered by the investigation. Consequently, the tables do not constitute sufficient proof to call into question the values taken into account by the Commission.

70 In any event, as is apparent from paragraph 61 above, the relevant HS codes include types and qualities of raw materials which are not used in the manufacture of fasteners. That is consistent with the method chosen by the Commission, in the exercise of its broad discretion in determining the appropriate representative country within the meaning of Article 2(6a) of the basic regulation. Although that article lays down certain criteria as to the choice of country, it does not determine a precise method which the Commission should follow in order to construct the normal value of the product under investigation on the basis of data from a country other than the one directly concerned by the investigation.

71 Furthermore, it is important to recall that the normal value of the product concerned was constructed on the basis of all imports into Thailand, and not only on the basis of imports from Japan. According to recital 301 of the contested regulation, Thai imports of the four major raw materials from Japan represented only around 33% of the total imports of those materials.

72 Fifthly, as regards the applicants' argument that the average export price from Japan to Thailand was 17% higher than the average export price to the five other major export countries, it is apparent from recital 232 of the contested regulation that Thailand represented 17% of total Japanese exports of those materials, whereas the top five export countries, excluding China, represented more than 60% of Japanese exports. The average export price to Thailand was 17% higher than the average export price to the other five main export countries. The Commission considered that that did not demonstrate the need to disregard Japanese data, since Japanese export prices to Thailand were not unreasonably high or unrepresentative. When questioned in that regard at the hearing, the Commission maintained that Japanese prices to Thailand were simply the upper value of the range. There is no evidence to show that that difference in Japanese export prices to Thailand compared with other countries does not correspond to the traditional market mechanism or call into question the choice of Thailand as the appropriate representative country.

73 In any event, as is apparent from the case-law cited in paragraph 59 above, it was for the applicants to submit sufficient evidence to show that that difference had a direct impact on the construction of the normal value of the product under investigation. In that regard, despite their arguments to that effect, the applicants have also failed to provide evidence that the Commission used distorted data, in other words, data that have been manipulated or are not true to reality.

74 In the second place, as regards the fact that the Thai costs correspond to the costs incurred by the sampled exporting producers, according to recital 198 of the contested regulation, the Commission found that the Chinese fasteners industry benefited from governmental guidance

and intervention concerning steel, the main raw material to manufacture fasteners. Therefore, the Commission concluded in recital 206 of the contested regulation that input costs, including raw materials, were also affected by significant distortions.

75 In that regard, it is apparent from the case-law that the Commission's broad discretion in matters of trade defence measures also extends to the evaluation of factual situations of a legal and political nature in the country concerned which must be assessed in order to determine whether an exporter operates in market conditions without significant State interference (judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraph 163).

76 It is true that the Commission must construct the normal value of the product under investigation as it would have been for the exporting producers in the country concerned in the absence of distortions. However, it is clear from the wording of Article 2(6a) of the basic regulation that normal value is constructed exclusively on the basis of the data of the selected representative country. Accordingly, the Commission did not make a manifest error of assessment in determining the normal value by taking into account the costs of raw materials for Thai producers of fasteners.

77 Moreover, as is apparent from the case-law, since China has one of the largest economies in the world, it would be unreasonable to require the Commission to use a country with an equivalent economy as the representative country (see, to that effect and by analogy, judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:347, paragraph 135). It follows that the Commission may, in the exercise of its broad discretion, carry out certain approximations in constructing the normal value, provided that those approximations are justified by the data available to it. As the Commission argues, the use of HS codes involves approximations, since it does not accurately reflect the raw materials in the exact proportions used by the sampled exporting producers.

78 It follows from the foregoing considerations that the applicants have not shown that the Commission had committed a manifest error of assessment when it concluded, in recital 303 of the contested regulation, that, without more substantiated data on the proportion of raw materials imported from Japan for non-standard fasteners and on how to distinguish special grade raw material out of the four HS codes while taking into account the demand for raw materials for the production of standard and non-standard fasteners in Thailand, the data of the Thai producers could be used to construct the normal value of the product concerned.

(2) The representativeness of the calculation of SG&A costs and profits

79 The applicants claim that the data relating to SG&A costs and profits calculated by the Commission do not correspond to those of the sampled Chinese producers and, therefore, that those data are not representative.

80 In that regard, in the first place, the applicants claim that three of the five Thai producers selected by the Commission do not produce the product under investigation. First of all, they argue that Topy Thailand does not produce any screws or bolts and that the thrust washers it produces do not correspond to the product concerned. By contrast, none of the sampled Chinese producers make washers, which are very different products from screws and bolts. Furthermore, EFDA

visits confirmed that Topy Thailand did not produce the product under investigation. Next, ThaiSin primarily produces special fasteners and, lastly, S. J. Screwthai primarily focuses on products that do not correspond to the product concerned.

81 In the second place, the applicants claim that the Dun & Bradstreet data ('D & B data') on Thai producers used by the Commission for the purpose of calculating the SG&A costs and profits are unreliable. Those data differ from the Orbis data which were used in other anti-dumping investigations. Those differences vitiate the reliability of the data. In particular, if the D & B data concern the Topy group rather than the group's Thai entity, the data are unrepresentative.

82 The Commission contends that the applicants' arguments should be rejected.

83 Under Article 2(6a)(a) of the basic regulation, where normal value is constructed on the basis of the corresponding costs of production and sale in an appropriate representative country, that normal value is to include an undistorted and reasonable amount for SG&A costs and for the profit margin.

84 In the first place, the applicants dispute the choice of Thai producers on which the Commission relied in order to calculate the SG&A costs and profits.

85 In that regard, it is apparent from recital 244 of the contested regulation that, following the objections raised by the CCCME and EFDA as to the appropriateness of the Thai producers referred to in the second note, the Commission reviewed the information available for the six companies in Thailand for which data were intended to be used. First, it concluded that Topy Thailand produced washers, which fall under the product scope, among other products that were not covered by the investigation and therefore kept it in the analysis. Secondly, the Commission concluded that TR Formac did not have a production plant in Thailand and ultimately excluded it from the analysis. Thirdly, the Commission concluded that S. J. Screwthai was an anchor bolt manufacturer, and also produced screws, concrete anchors and washers. The Commission considered that anchors, in particular when combined with bolts or screws, fell within the scope of the investigation. The Commission found that the company also produced several other types of fasteners (for example screws and washers) and therefore kept it in the analysis. Fourthly, the Commission concluded that ThaiSin Metals Industries Co., Ltd. was a bolt screw producer, also producing self-tapping screws, machine screws, hexagon bolts and socket hex cap for a variety of sectors. Since there were several types of fasteners produced by that company, including non-standard fasteners, the Commission kept that company in the analysis.

86 According to recital 307 of the contested regulation, following final disclosure, in response to the comments received by interested parties, including the CCCME, requesting the exclusion of the financial data of certain Thai companies selected as manufacturing the product under investigation, the Commission confirmed that several types of fasteners of the product under investigation were produced by those companies. In particular, the website of Topy Thailand had also demonstrated that the company produced standard washers which were part of the product under investigation and not only thrust washers, as had been claimed. The Commission therefore confirmed that the selected companies in Thailand related directly or indirectly to the manufacturing and sales of the product under investigation.

87 In that regard, first of all, it should be noted that, as is apparent from paragraph 9 above, washers are fasteners concerned by the investigation.

88 Next, it is apparent from recitals 63 and 70 of the contested regulation that, in accordance with Article 17(1) of the basic regulation, the Commission selected, from among the 92 Chinese exporting producers which had submitted the information requested in the notice of initiation and had agreed to be included in the sample, the three exporting producers or groups of exporting producers, representing the largest volumes of exports, which could reasonably be investigated within the time available. The specific product types produced by the selected companies were not a criterion for that selection, since all types of fasteners were considered as one single product for the purposes of the investigation.

89 Pursuant to Article 17(1) of the basic regulation, in cases where the number of Union producers, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid, on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

90 It is common ground that Article 17 of the basic regulation authorises the Commission to use the technique of sampling, in particular where the number of exporting producers is high. Moreover, the applicants do not dispute the composition of the sample of Chinese exporting producers and its representative nature.

91 Lastly, the applicants do not in any way explain why the differences in the production of the fasteners necessarily imply a significant difference in costs in respect of SG&A costs. In that regard, it should be recalled that Article 2(6a)(a) of the basic regulation provides that the construction of normal value is to include an undistorted and reasonable amount for SG&A costs and other profits. Therefore, it is apparent from that provision that, in order to be relevant, the data used by the Commission must be representative of the companies manufacturing the products under investigation. Washers fall within the definition of the product concerned, even if they are not produced by the three sampled Chinese exporting producers.

92 Therefore, given that the Commission considered that all fasteners constituted one and the same product and that sampling was established in accordance with the relevant provisions of the basic regulation, the argument that the data of a Thai producer which produced some of the fasteners under investigation but whose fasteners did not correspond exactly to those produced by the three sampled Chinese exporting producers should be disregarded cannot succeed. Therefore, the fact that those producers do not produce washers is irrelevant to the representativeness of the calculation of the SG&A costs and profits linked to the normal value of the product under investigation.

93 Furthermore, as the Commission contends, in investigations such as those which are the subject of the present action, where it determines the normal value on the basis of data from an appropriate representative country, it is difficult for it to have available qualitative data which are fully calibrated to the sample of exporting producers. In any event, the representativeness of the reference data for Thai producers must be assessed at the national level of the country whose products are being dumped, and not only in relation to each exporting producer included in the sample considered individually. The Commission explained that the undistorted and reasonable amounts for SG&A costs and profits were usually identified on the basis of extensive research of all potentially relevant companies in all potential appropriate representative countries in the databases to which it had access. Those data are usually provided on a company-wide basis and are hardly ever limited to the product concerned.

94 In any event, as regards Topy Thailand in particular, its website states that it manufactures standard washers, which are part of the product under investigation.

95 The applicants dispute those assessments, in so far as, first, the website of Topy Thailand shows only thrust washers, which are different to the washers 'used in conjunction with a screw and nut' concerned by the Commission's investigation. Secondly, EFDA, which has significant knowledge of the Thai producers, confirmed that Topy Thailand did not produce the product in question. However, as is apparent from paragraph 65 above, such undocumented visits cannot constitute sufficient evidence to call into question the Commission's findings as to the representativeness of the Thai producer in question.

96 In the second place, as regards the database used to collect the relevant data of the Thai producers, it must be borne in mind, first of all, that the determination of reasonable margins for SG&A costs and profits is no exception to the application of the case-law cited in paragraph 39 above, according to which the Commission has a wide discretion in the field of trade defence measures, so that the EU Courts are required to exercise only limited control. That determination necessarily entails complex economic assessments (judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 132), as well as an analysis of the data available to the Commission (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 180).

97 Accordingly, it is for the applicants, if they seek to dispute the reliability of the data used by the Commission for the purpose of calculating the SG&A costs and profits added to the normal value of the product concerned, to substantiate their assertions with evidence capable of casting specific doubt on the credibility of the method or data used by that institution (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 178 and the case-law cited).

98 In that context, if the applicants wish their claim to be successful, they cannot merely provide alternative figures, such as figures obtained from another database, but rather must produce evidence capable of calling into question the data provided by the Commission (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 179).

99 In that regard, it should be noted that, on each of their points of contention, the applicants obtained explanations during the investigation. It is apparent from recital 241 of the contested regulation that the Commission attached to the open case file the extracts from the D & B database relating to companies in Thailand and that those extracts included links to the D & B website referring to the general methodology, namely a collection of the balance sheet, profit and loss and key ratios from a number of companies worldwide, per country, including the explanations of those key ratios.

100 In recital 308 of the contested regulation, the Commission rejected the claims that the D & B data were unreliable, which was demonstrated by the fact that the amounts of profits generated at the level of the Topy group were similar to those generated by Topy Thailand. The Commission

explained that the consolidated profit of the Topy group was the result of the revenues and costs of the group in relation to the parties outside the group and intra-group profits were eliminated at the group level accounts. Such a similarity is therefore not unusual.

101 Finally, according to recital 309 of the contested regulation, the discrepancies between Orbis and D & B data may be the result of the different description of the financial item collected by the database, or different level of the company or group report, and therefore do not call into question the reliability of the data. Therefore, the Commission rejected the CCCME's argument that the data in question were reliable only to the extent that they were publicly available. That being the case, the Commission explained that it used percentages and not absolute figures. Such data offer, in the Commission's view, a more accurate and reasonable approximation.

102 At any rate, it is clear from the case-law that the lawfulness of a regulation imposing anti-dumping duties must be assessed in the light of legal rules and, in particular, the provisions of the basic regulation, not on the basis of the alleged previous practice of the EU institutions in taking decisions (judgment of 18 October 2016, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-351/13, not published, EU:T:2016:616, paragraph 107). Accordingly, the fact that the Commission may have used other databases in the past cannot call into question the choice of D & B data for the investigation in question.

103 According to the scheme of the basic regulation, the purpose of constructing the normal value is to determine the selling price of a product as it would be if that product were sold in its country of origin or in the exporting country and consequently it is the expenses relating to sales on the domestic market which must be taken into account in calculating the constructed value. In constructing the normal value, the institutions do not have to take into account the actual expenses of the company under consideration, but a reasonable estimate of the SG&A costs that that company would have to bear if it marketed the product in question in sufficient quantities in its State of origin (judgment of 18 March 2009, *Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision* v *Council*, T-299/05, EU:T:2009:72, paragraph 258).

104 Accordingly, it must be held that, in the present case, the Commission did not commit a manifest error of assessment by basing the calculation of an undistorted and reasonable amount for the SG&A costs and profits of Thai producers on D & B data. The applicants have not adduced any evidence calling into question the reliability of the databases in question.

105 Therefore, the applicants' complaint that there was an error in the calculation of SG&A costs and profits which had not been established in accordance with the fourth subparagraph of Article 2(6a)(a) of the basic regulation must be rejected.

(3) The requirement to make amendments and adjustments

106 The applicants claim that the Commission should have made adjustments to the data of the Thai producers so that those data would correspond to the costs of a Chinese producer. In that regard, they argue that according to the WTO Appellate Body, 'whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin".'

107 The Commission disputes the applicants' arguments.

108 First of all, it should be noted that the applicants do not allege the infringement of a specific provision of the basic regulation, but refer to the decision-making practice of the WTO Appellate Body.

109 In that regard, it is apparent from the case-law that, having regard to their nature and structure, the WTO agreements are not in principle among the rules in the light of which the EU Courts are to review, under the first paragraph of Article 263 TFEU, the legality of measures adopted by the institutions of the European Union. However, where the European Union intended to implement a particular obligation assumed in the context of the WTO, or where the EU measure refers expressly to precise provisions of the WTO agreements, it is for the EU Courts to review the legality of the EU measure in question in the light of the WTO rules (judgment of 14 July 2021, *Interpipe Niko Tube and Interpipe Nizhnedneprovsky Tube Rolling Plant* v *Commission*, T-716/19, EU:T:2021:457, paragraph 95).

110 Next, it should be recalled that, by Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ 2017 L 338, p. 1), the EU legislature amended Article 2 of the basic regulation by inserting paragraph 6a and amending paragraph 7.

111 According to the case-law, Article 2(7) of the basic regulation, in the version prior to amendment by Regulation 2017/2321, was the expression of the EU legislature's intention to adopt, in that area, an approach specific to the EU legal order by establishing a special regime of detailed rules for the construction of normal value for imports from non-market economy countries. Consequently, it has been held that that provision could not be considered to be a measure intended to ensure the implementation in the EU legal order of a particular obligation assumed in the context of the WTO agreements, which did not lay down rules for the construction of the normal value for non-market economy countries. The Court has stated that, in so far as that provision laid down rules concerning the construction of normal value that had no equivalents in the WTO agreements, the Commission was not required to interpret it in accordance with the obligations of the European Union in the context of the WTO. If that had been the case, the Commission would have been deprived of the discretion which the legislature had intended to grant it (see judgment of 21 February 2024, *Sinopec Chongqing SVW Chemical and Others* v *Commission*, T-762/20, under appeal, EU:T:2024:113, paragraph 41 and the case-law cited).

112 Those principles are applicable, by analogy, to Article 2(6a) of the basic regulation. That provision establishes a special regime laying down rules for determining normal value in the case of exports from countries whose domestic market has been shown to have significant distortions, as defined in that provision. WTO law does not, however, include specific rules for the construction of the normal value in such situations.

113 It follows that Article 2(6a) cannot be regarded as a measure intended to ensure the implementation in the EU legal order of a particular obligation resulting from the WTO agreements within the meaning of the case-law cited in paragraph 111 above. Accordingly, the applicants cannot rely on the obligation to interpret that article in conformity with the WTO rules (see, to that effect, judgment of 21 February 2024, *Sinopec Chongqing SVW Chemical and Others* v *Commission*, T-762/20, under appeal, EU:T:2024:113, paragraph 49).

114 That being the case, it is important to note that, in any event, in the context of the present complaint, the applicants merely repeat their arguments concerning the presence of Japanese wire rod in Thai imports – wire rod which should have been excluded from the investigation – and the fact that the data collected did not correspond to those of the three sampled Chinese exporting producers. With regard to the alleged obligation to adjust production costs, the applicants do not rely on the infringement of any specific provision of the basic regulation.

115 Accordingly, it must be stated that Article 2(6a)(a) of the basic regulation refers to an 'undistorted and reasonable amount' to be determined by the Commission and that the applicants have not adduced evidence that that amount was distorted or unreasonable.

116 In the light of the foregoing considerations and the findings in paragraphs 78 and 105 above, it is necessary to reject in its entirety the first part of the first plea raised by the applicants, relating to the manifest error of assessment made by the Commission in selecting Thailand as the appropriate representative country for the purpose of constructing the normal value of the product under investigation, under the conditions laid down in Article 2(6a) of the basic regulation.

(b) The second part, alleging that Malaysia was the most appropriate representative country

117 In essence, the applicants claim that Malaysia was the appropriate representative country to which the Commission should have referred in order to construct the normal value, within the meaning of Article 2(6a)(a) of the basic regulation. Accordingly, the Commission did not take into account all the evidence available to it, since Malaysia was a better source than Thailand on the basis of several factors.

118 In that regard, in the first place, the applicants dispute the fact that, when examining the data available to it, the Commission based its assessment on the volume of imports under HS code 7227.90 (wire of alloy steel) instead of import prices, which are more representative and reliable than those relating to Thailand. Furthermore, the Commission does not explain why Malaysian imports were less reliable, since the prices of Malaysian imports were comparable to the costs of the sampled Chinese exporting producers, unlike the Thai import prices.

119 The applicants also submit that the Commission should not have limited itself to imports under HS code 7227.90, but should have taken into account Malaysian imports as a whole. When also taking into account the three other raw materials (under HS codes 7213.91, 7213.99 and 722830), 70% of Malaysian imports of wire rod are from countries other than China and non-WTO countries. By contrast, only 54% of Thai imports under the four HS codes are from sources other than China and non-WTO countries. Moreover, if the Commission considered that the price of Malaysian imports for HS code 7227.90 was not representative or reliable, it could have relied on a specific country and then chosen another benchmark for a particular fastener, such as an international benchmark, as the Commission had been able to do in other investigations.

120 In the second place, the applicants claim that there were sufficient companies in Malaysia on which the Commission could rely, since Ningbo Jinding had provided the audited financial accounts of 11 Malaysian fasteners producers, and that the Commission could have relied on at least 3 of them.

121 The Commission contends that the applicants' arguments should be rejected.

122 At the outset, it should be recalled that, although the applicants have not adduced evidence that the Commission committed a manifest error of assessment in choosing Thailand as the appropriate representative country, the Court must verify, in accordance with the case-law cited in paragraph 43 above, whether the Commission failed to take account of essential or relevant factors for the purpose of establishing the appropriate nature of the country chosen and whether the information contained in the file in the case had been considered with all the care required, so that the normal value of the product concerned was determined in an appropriate and not unreasonable manner. Accordingly, the applicants' arguments in the second part of the plea should be examined only in so far as the Commission had the choice between several 'appropriate representative' countries, among which preference should possibly have been given to the country which applied an adequate level of social and environmental protection in accordance with the criteria laid down in Article 2(6a)(a) of the basic regulation.

123 That said, it should be noted that, according to recital 224 of the contested regulation, the Commission considered that more than 75% of the imports of wire of alloy steel (HS code 7227.90) into Malaysia came from China and non-WTO countries and that wire of alloy steel represented more than 45% in the cost of production of fasteners. On that basis, the Commission considered that the import value of the wire of alloy steel was unrepresentative in comparison with the other available representative countries and concluded that Malaysia had a lower quality set of readily available data for calculating undistorted value.

124 In addition, according to recital 235 of the contested regulation, the Commission found that imports to Malaysia under HS code 7227.90 from undistorted sources were lower than import volumes to other potential representative countries and that their prices were therefore considered less reliable. The Commission considered that Malaysian imports are less appropriate in terms of prices than Thai imports, since they were affected by competition with imports from China and non-WTO countries which represented together more than 80% of all imports of that raw material into Malaysia.

125 Moreover, it is apparent from the data of the sampled Chinese exporting producers that the share of the three other major raw materials was at least 10% lower than that of wire of alloy steel. The Commission therefore also took into account the fact that the relative weight of imports of those other raw materials from China and other non-WTO countries was greater in Malaysia than in Thailand, except for one of them (HS code 7213.91). The Commission therefore rejected the argument of certain interested parties alleging that Malaysia was an appropriate representative country.

126 The applicants' arguments cannot call into question that choice on the part of the Commission.

127 In the first place, it is apparent from the contested regulation that, although the Commission considered that it did not have sufficient or adequate data with regard to Malaysia, that country was in fact excluded primarily on the ground that registered imports of the product concerned could not be taken into account for the construction of normal value, since they were not determined by free market forces. The Commission explained that it had primarily referred to prices in order to determine the representativeness of the country concerned and that the proportions of imports from China and non-WTO countries indicated that the prices of the remaining volume would also be affected by competition with imports from China and non-WTO countries which represented more than 80% of all of that raw material in Malaysia.

128 In addition, as regards the importance of the share of raw materials falling within the four codes, the Commission explained that HS code 7227.90 was the most important factor of production, representing more than 50% of the costs of the raw materials used and over 35% of the cost of manufacturing of fasteners. That is more than the other raw materials combined. That said, the applicants concede that the volumes of Thai imports under HS code 7227.90 that the Commission could use were larger than those for Malaysia.

129 Furthermore, the applicants' argument concerning the identical volume of imports which would have been sufficient in the context of another investigation is irrelevant in the context of the examination of the contested regulation in the present case. First, according to the case-law, the lawfulness of a regulation imposing anti-dumping duties must be assessed in the light of legal rules and, in particular, the provisions of the basic regulation, not on the basis of the alleged previous practice of the EU institutions in taking decisions (see, to that effect, judgment of 18 October 2016, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-351/13, not published, EU:T:2016:616, paragraph 107; see also, to that effect, judgments of 10 February 2021, *RFA International* v *Commission*, C-56/19 P, EU:C:2021:102, paragraph 79, and of 4 October 2006, *Moser Baer India* v *Council*, T-300/03, EU:T:2006:289, paragraph 45). Secondly, the size of the imported volume of a product varies according to the product in question.

130 In the second place, as regards the issue of the unavailability of data on Malaysian producers, which the applicants contest on the basis that Ningbo Jinding provided the Commission with relevant and qualitative data on Malaysian producers, it should be noted, first, that Ningbo Jinding provided the certified accounts of one Malaysian producer on 5 January 2021, that is to say, before the first note, in its comments on the HS codes chosen by the Commission where it claimed that both Thailand and Malaysia were appropriate representative countries. According to recital 237 of the contested regulation, which the applicants do not dispute, the document produced by that Malaysian producer was considered inappropriate, since the group to which the company belonged included activities other than the production of fasteners in Malaysia.

131 Secondly, it is apparent from recital 294 of the contested regulation that Ningbo Jinding provided data relating to the audited financial accounts of 11 fasteners producers following final disclosure, namely, as the Commission observes, eight months after they were requested to do so in the second note. That disclosure was therefore late and was not taken into account in the examination of the relevance of the choice of the appropriate representative country at the time of the investigation.

132 It follows from the foregoing that the applicants have not adduced evidence that the Commission committed a manifest error of assessment when it considered that Malaysia could not be chosen as an appropriate representative country, within the meaning of Article 2(6a) of the basic regulation, in the context of the investigation which is the subject of the present action.

(c) The calculation of inland freight, consumables and overheads for the purpose of determining the normal value

133 In order to take into account all costs associated with the production of the product concerned, the Commission reconstructed the cost of the raw materials on the basis of the prices as they were available to a producer in the appropriate representative country, namely Thailand.

134 In the third part of the first plea, in the first place, the applicants claim that the Commission artificially calculated the transport costs of the raw materials, the consumables – which are minor raw materials consumed in the manufacturing process – and the overheads and that those were not 'corresponding costs' to those of the Chinese producers, in breach of Article 2(6a)(a) of the basic regulation. The Commission increased the transport costs by the same ratio as it increased the raw material cost in question. However, that benchmark related to that raw material in Thailand and had no bearing whatsoever on the transport cost. The cost of providing transport does not fluctuate up or down as the value of the raw material transported rises or falls. In any event, the same percentage should not be applied. Such a method does not take into account any specific facts, such as transport distance.

135 In addition, Ningbo Jinding provided the Commission with an appropriate benchmark for Thailand, namely the unit freight per kilogram and per kilometre in Thailand, based on the 'Doing Business 2020 – Thailand' report. The Commission therefore had at its disposal a more appropriate benchmark than the artificial ratio it relied on.

136 In the second place, the applicants claim that the same criticisms apply to the calculations of consumables and overheads in so far as the Commission constructed those values by reference to the recalculated costs of raw materials, increasing them by reference to an entirely unrelated benchmark. However, consumables are not raw materials and overheads include items such as rent, repair and depreciation. Those costs are not correlated to the costs of raw materials.

137 Furthermore, the Commission failed to inform interested parties of the source it intended to use for the purpose of determining the transport costs, contrary to its obligation under Article 2(6a)(a) of the basic regulation. Neither the first note to the file on factors of production nor the second note contained any information in that respect.

138 The Commission contends that the applicants' arguments should be rejected.

139 In the first place, according to recital 256 of the contested regulation, the Commission expressed the transport cost incurred by the sampled Chinese exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in Thailand in order to obtain the undistorted transport cost. The Commission considered that, in the context of the investigation, the ratio between the Chinese exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the company's factory.

140 It is apparent from recitals 327 and 328 of the contested regulation that the Commission considered that the normal value, within the meaning of Article 2(6a)(a) of the contested regulation, had to correspond to the price that a producer of fasteners would pay in Thailand for the raw materials delivered at the factory gate. Accordingly, if international transport costs or import duties were not added, the resulting benchmark would not reflect the undistorted price on the Thai market, but merely the average cost, insurance and freight (CIF) price in the countries exporting the raw materials in question.

141 The Commission added that, in the absence of any benchmark for transport cost (per company, per raw material type, per different transport channel, etc.), it had used the ratio between the cost of transport and the raw materials of the sampled Chinese exporting producers. That ratio is applied to the benchmark of the raw material, which is consequently multiplied by the quantity of

raw materials consumed by the exporting producer. Such methodology reflects the costs structure of the exporting producer, since the ratio between transport cost and the cost of raw material is maintained and is further applied to the undistorted benchmark.

142 To arrive at the total undistorted costs of production, the Commission added manufacturing overheads. Those manufacturing overheads incurred by the sampled Chinese exporting producers were increased by the costs of minor raw materials and consumables and subsequently expressed as a percentage of the costs of manufacturing actually incurred by each of the sampled exporting producers. That percentage was applied to the undistorted costs of manufacturing.

143 At the outset, it should be recalled that the Commission could not rely on the prices paid by the Chinese exporting producers due to the existence in that country of significant distortions. It is apparent from recital 187 et seq. of the contested regulation that the Commission found that there were significant distortions as a result of Chinese Government intervention in the steel sector, which thus affected prices or costs of the product concerned, including raw material costs.

144 Article 2(6a)(b) of the basic regulation defines the concept of 'significant distortions' as 'distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention' and contains an indicative list of elements that can be taken into account when analysing the existence of such distortions. The applicants do not dispute, in the context of the present action, the Commission's finding that there were significant distortions in China.

145 In that regard, it must be observed that the broad discretion enjoyed by the EU institutions in the sphere of measures to protect trade, by reason of the complexity of the economic and political situations which they have to examine, also covers the determination of the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic regulation. The same applies to factual situations of a legal and political nature in the country concerned which the EU institutions must assess in order to determine whether an exporter operates in market conditions without significant State interference (see judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:347, paragraph 78 and the case-law cited).

146 It follows that, in accordance with the case-law cited in paragraph 39 above, it is for the applicants to adduce evidence of a manifest error of assessment on the part of the Commission in calculating the normal value of the product concerned by the investigation and, in particular, in the calculation of the costs of inland freight, consumables and overheads.

147 As the Commission rightly submitted, the applicants did not contest, either during the investigation or in their written pleadings before the Court, that the transport cost incurred by the sampled Chinese exporting producers for the supply of raw materials, consumables and overheads was affected by significant distortions.

148 It follows that the costs of the sampled exporting producers cannot be used as a reference for the calculation of ancillary costs. The Commission explained that, where appropriate benchmarks were not available, it was required to establish them in relation to the cost group to which the costs in question belonged. Consequently, once the undistorted costs of raw materials or manufacturing costs were established, the Commission applied the benchmark to estimate the undistorted cost in question, in accordance with the exporting producer's cost structure.

Accordingly, if, for example, inland freight represented 1% of the total raw material costs, as reported in the accounts of one Chinese exporting producer, it would still represent 1% of the raw material costs in the normal value thus constructed by the Commission, in accordance with Article 2(6a)(a) of the basic regulation.

149 Furthermore, the Commission disregarded the benchmark provided by Ningbo Jinding, in so far as it did not have reliable information on the distance in kilometres. Moreover, the four major raw materials were supplied to Ningbo Jinding by different suppliers, and thus from different regions in China, whereas the applicants had suggested using a single distance which was the nearest to the port. In addition, the benchmark could not be cross-checked with any other data, since it was provided after the final disclosure. That claim was therefore rejected.

150 In the second place, it should be noted that the applicants have not provided an appropriate benchmark for the calculation of consumables and overheads.

151 Furthermore, it must be recalled that the Commission enjoys a broad discretion in analysing data (judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 180).

152 Accordingly, in the absence of more relevant and reliable data that the Commission could use for the calculation of inland freight, consumables and overheads, the Commission was required to construct those costs taking into account the structure of the sampled Chinese exporting producers. Moreover, it should be noted in that regard that the applicants do not dispute, as such, that the normal value of the product constructed on the basis of the Thai producers had to contain those costs relating to the raw materials.

153 At any rate, it is clear from the case-law that, in the absence of available data which are more reliable, data obtained following an adjustment of other data can constitute positive evidence, provided that, first, those other data themselves constitute such positive proof and, secondly, that the adjustments in question are made on the basis of reasonable assumptions, such that the result of those adjustments is plausible (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 125).

154 Accordingly, in the absence of more reliable data, the Commission could, without making a manifest error of assessment, calculate the cost of inland freight, consumables and other overheads by applying a percentage on the cost of raw materials needed to manufacture the product concerned, thereby preserving the structure of the sampled exporting producers.

155 It follows from the foregoing considerations that the applicants have not adduced evidence of a manifest error of assessment on the part of the Commission in the calculation of inland freight, consumables and other overheads. The third part of the first plea must therefore be rejected.

(d) Calculation of the hourly labour cost

156 The applicants claim that the Commission's assumption that a Thai employee worked on average 40 hours per week is incorrect and has no factual basis, in breach of Article 2(6a)(a) of the basic regulation. Moreover, the quarterly reports from Thaistat (National Statistical Office of Thailand) show that the percentage of employees working either between 40 and 49 hours, or

more than 50 hours, in each quarter was very high for every quarter of the investigation period. The interested parties informed the Commission that the applicable Thai legislation provided for a maximum of 48 working hours per week.

157 The Commission contends that the applicants' arguments should be rejected.

158 Labour is one of the factors of production used to construct normal value on the basis of Article 2(6a)(a) of the basic regulation.

159 According to recital 314 of the contested regulation, in order to calculate the labour cost per hour, the Commission divided the monthly labour cost in the representative country by four weeks, then divided each week by 40 hours of work, which is the standard number of hours worked per week (8 hours per day multiplied by five working days). According to the information available to it, 67% of the employees in Thailand's manufacturing sector worked between 40 and 49 hours per week, the statutory limit being 48 hours.

160 The Commission defends its choice by arguing that there is no evidence that the correct value was 48 hours per week.

161 In that regard, it should be noted that the applicants have not proved, with concrete evidence, during the investigation or before the Court, that the 40- to 49-hour working week was incorrect. As is apparent from the case-law cited in paragraph 59 above, if the applicants wish to dispute the Commission's complex assessments in the context of constructing the normal value, it is for them to adduce concrete evidence showing that the Commission made a manifest error of assessment in the evidence taken into account for the purposes of that calculation. The applicants claim that weekly working hours are in fact higher in Thailand, but do not rely on concrete evidence.

162 It follows that the applicants have not adduced evidence that the Commission has committed a manifest error of assessment by using the value of 40 hours per working week in Thailand in order to calculate the labour cost associated with the production of the product concerned.

163 The fourth part of the first plea must consequently be rejected.

(e) The imposition of import duties relating to raw materials

164 The applicants claim that, by adding import duties to the average CIF price, as indicated in the Global Trade Atlas (GTA), the Commission infringed Article 2(6a)(a) of the basic regulation, since Chinese exporting producers purchase their raw materials exclusively from the Chinese market. Therefore, costs calculated in that way are not corresponding costs.

165 In addition, the applicants argue that the Commission had at its disposal the Thai domestic price of the main raw materials. The data submitted by the interested parties were based on data for sales of wire rod in Thailand during the investigation period by Tata Thailand, as presented in its audited annual report.

166 The Commission contends that the applicants' arguments should be rejected.

167 In that regard, it is apparent from recital 258 of the contested regulation that the Commission considered that, in order to determine the normal value of the product concerned, the costs that a Thai producer would pay for a raw material delivered at the factory gate should be included in the calculation. Accordingly, if import duties were not added to the average CIF price, the resulting benchmark would not reflect the undistorted price on the Thai market.

168 First, in so far as the Commission was required to construct the normal value of the product concerned, as it would be determined for a producer from an appropriate representative country, it rightly considered it necessary to take into account, in the construction of that value, all the costs associated with the production of the product concerned, and in particular the costs relating to the supply of raw materials for the Thai producers.

169 Accordingly, where normal value is constructed on the basis of the prices and costs of a country other than the country examined, all the data relating to that market must be taken into account in determining the normal value (see, to that effect, judgment of 23 April 2018, *Shanxi Taigang Stainless Steel* v *Commission*, T-675/15, not published, EU:T:2018:209, paragraph 61 and the case-law cited).

170 It follows that the applicants' argument that Chinese exporting producers purchase their supplies exclusively from the Chinese domestic market is irrelevant.

171 Secondly, as the Commission found, without being contradicted by the applicants on that point in the present action, the Chinese internal prices were strongly influenced by government intervention, with the result that they did not correspond with free market forces.

172 Thirdly, the applicants concede that the data communicated to the Commission concerned a single producer, namely Tata Thailand. In that regard, the Commission noted that no explanation had been given as to how those data had been obtained, the exact raw materials concerned or the period covered by those data and that, in any event, the data of a single producer were not necessarily considered as representative.

173 Fourthly, with regard to the alternative method proposed by the applicants, according to which the Commission should limit itself to Thai domestic prices and not base itself on import prices, it should be noted that the Commission explained that imports were not only price-competitive with domestic industry but also reflected the costs of raw materials associated with, for example, transport, as identified by the exporting producers themselves, and that they therefore constituted a more relevant set of data for calculating not only the price of raw materials, but also the costs incidental to the production of the product concerned. In addition, the Commission explained that the data that it had at its disposal in relation to Thai domestic prices concerned only one supplier and that they were therefore not regarded as reliable data.

174 It follows that the fifth part of the first plea is unfounded.

175 In the light of the foregoing, the fifth part of the first plea and, accordingly, the first plea in its entirety must be rejected.

2. The second plea, alleging infringement of Article 2(10)(e) of the basic regulation

176 The applicants allege infringement of Article 2(10)(e) of the basic regulation, in so far as the Commission failed to make a fair comparison between the export price and the normal value, since it applied adjustments only to export prices and not to the normal value.

177 First, the applicants claim that the Commission did not have a detailed breakdown of the SG&A costs of the five Thai producers on the basis of which it calculated the normal value, so it did not know what those data from the Thai producers included. Secondly, certain selling expenses, such as transport costs, were not deducted from the SG&A costs, which meant that the Commission assumed that all five Thai producers made all of their sales on an 'ex-works' basis, an assumption that the applicants argue is unwarranted. However, in the questionnaire sent to the Chinese producers, the Commission classified transport costs as SG&A costs.

178 The applicants claim that the Commission erred in rejecting the evidence which they had adduced showing the need for the adjustment requested. In the absence of data on the exact breakdown of costs, the Commission should at least have used a proxy for the percentage of transport costs. Moreover, the Commission's approach in that regard is not consistent with its previous practice.

179 The Commission contends that the applicants' arguments should be rejected.

180 According to Article 2 of the basic regulation, once the normal value has been determined, the export price of the products under investigation must be determined. Article 2(8) of the basic regulation provides that the export price is to be the price actually paid or payable for the product when sold for export from the exporting country to the European Union.

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

182 In particular, according to Article 2(10)(e) of the basic regulation relied on by the applicants, an adjustment is to be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to the first independent buyer, where such costs are included in the prices charged. Those costs are to include transport, insurance, handling, loading and ancillary costs.

183 In accordance with the case-law, if a party claims adjustments under Article 2(10) of the basic regulation in order to make the normal value and the export price comparable for the purpose of determining the dumping margin, that party must prove that its claim is justified. The burden of proving that the specific adjustments listed in Article 2(10)(a) to (k) of the basic regulation must be made lies with those who wish to rely on them (see judgment of 23 April 2018, *Shanxi Taigang Stainless Steel* v *Commission*, T-675/15, not published, EU:T:2018:209, paragraph 71 and the case-law cited).

184 The case-law has also made it clear that the Commission's discretion, which is broad by reason of the complexity of the economic, political and legal situations which it has to examine in matters of trade defence, also extends to the application of Article 2(10) of the basic regulation (see, to that effect, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 63). Therefore, the

Court's review of the evidence on which the Commission bases its findings does not encroach on the broad discretion of that institution in the field of commercial policy, but is limited to ascertaining whether that evidence is such as to support the conclusions drawn by the Commission (judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel*, C-186/14 P and C-193/14 P, EU:C:2016:209, paragraph 35).

185 It follows that, in the present case, it was for the applicants, in accordance with that case-law, to demonstrate the need for the adjustment requested in support of evidence which they adduced during the investigation.

186 It is apparent from recital 279 of the contested regulation that the Commission adjusted the export price of the Chinese exporting producers for handling charges, freight, insurance, packing, credit costs and bank charges to achieve the 'ex-works' basis price.

187 However, the Commission did not make any adjustments to the normal value, since that value had already been constructed on an 'ex-works' basis, in accordance with Article 2(6a) of the basic regulation.

188 In that regard, it should be noted that although the practice of making adjustments may prove to be necessary, under Article 2(10) of the basic regulation, to take account of differences between the export price and the normal value which affect their comparability, such deductions cannot be made with respect to a value which has been constructed and which is not, therefore, genuine. That value is not generally affected by factors which might damage its comparability, because it has been artificially established (see, to that effect, judgment of 18 March 2009, *Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision* v *Council*, T-299/05, EU:T:2009:72, paragraph 266).

189 Moreover, it should be noted that, in response to the observations of the interested parties, the Commission concluded in recital 333 of the contested regulation that the construction of the normal value per product type on an 'ex-works' basis included a reasonable amount for SG&A costs and that there was no information available showing that the SG&A costs of the Thai companies concerned included transport expenses for the delivery to customers.

190 As for the sufficiency of the evidence adduced by the applicants on the adjustment requested, in accordance with the case-law cited in paragraph 183 above, it is apparent from the file submitted to the Court, in the first place, that the applicants refer to Wenzhou's alternative proposal to quantify SG&A costs on the basis of the exporting producers' data. However, as the Commission correctly submits, an adjustment based on the cost structure of the exporting producers is inappropriate under Article 2(10) of the basic regulation, since those prices do not correspond with a market economy (see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting* v *Commission*, T-650/17, EU:T:2019:644, paragraphs 74 and 75). That argument must therefore be rejected.

191 In the second place, the applicants have provided documents which they consider to be capable of demonstrating that transport costs are, in standard accounting practice, treated as SG&A costs. In that regard, first, they refer to both Oracle's NetSuite compliance software, from which it is apparent that the SG&A costs may include 'shipping costs', and to an article of the *Harvard Business Review* of 1987, which also categorises freight costs as SG&A costs. According to the applicants, that is the result of standard accounting practice, since there is no other accounting line to place those costs.

192 The 'evidence' on which the applicants rely relates to general accounting information, and not specifically to the data used by the Commission in the context of the investigation in question. Therefore, they are not capable of calling into question the Commission's assessment regarding the examination of the data of the Thai exporting producers.

193 Secondly, the applicants also submit as an annex to the reply (i) Tata Thailand's audit report indicating delivery and selling costs, as well as bank charges, as SG&A costs, and (ii) the audited report of Ningbo Jinding, which treats export and inland freight costs and sundry charges as SG&A costs.

194 It is apparent from recital 271 of the contested regulation that Tata Thailand is not one of the five Thai companies identified. Moreover, the audited report of Ningbo Jinding is ineffective in that regard, since, as is apparent from paragraph 190 above, the cost structure of the Chinese exporting producers cannot serve as a basis for an adjustment requested under Article 2(10) of the basic regulation.

195 Thirdly, it is necessary to reject, for the same reasons, the applicants' argument relating to the questionnaire sent to the Chinese exporting producers which had included transport costs in the SG&A costs. The Commission explained that the purpose of that questionnaire was to understand the structure of the Chinese exporting producers. It cannot therefore oblige the Commission to process those data after receiving it.

196 Fourthly, the applicants claim that, in so far as the Commission was unaware of what the SG&A costs of the five Thai producers included, it is unreasonable to expect them to produce specific evidence in that regard, in the light of the opaqueness of the D & B data and the fact that those data relate to a foreign country. Accordingly, the applicants accept that their arguments are speculative.

197 That being said, the fact that normal value is constructed on the basis of Article 2(6a) of the basic regulation and therefore on the basis of data from exporting producers from the appropriate representative country cannot lower the burden of proof arising from the case-law cited in paragraph 183 above, according to which it is for the party requesting an adjustment in respect of one of the factors referred to in Article 2(10) of the basic regulation to demonstrate that that factor is such as to affect prices and, therefore, price comparability (see, to that effect, judgment of 28 April 2022, *Changmao Biochemical Engineering* v *Commission*, C-666/19 P, EU:C:2022:323, paragraph 151).

198 In conclusion, it should be noted that it was for the applicants during the administrative procedure to make a claim for adjustment under Article 2(10) of the basic regulation and to adduce evidence to establish the need for that adjustment in order to ensure price comparability between the normal value and the export prices.

199 It follows from the foregoing considerations that the applicants have not in any way proved the need for the adjustment requested.

200 It follows that the second plea must be rejected.

3. The third plea, alleging infringement of Article 18 of the basic regulation in the calculation of the labour costs necessary to manufacture the product concerned

201 By their third plea, the applicants challenge, in essence, the calculation of the labour costs necessary to manufacture the product concerned, on the basis of data of only one of the three sampled Chinese exporting producers, namely Jiangsu, in breach of Article 18(1) and (5) of the basic regulation and of Article 6.8 of, and points 5 and 7 of Annex II to, the Anti-Dumping Agreement.

202 In the first place, the applicants claim that the calculation method is incorrect in so far as Jiangsu uses the cold forging process, whereas the hot forging process is more labour intensive. By applying Jiangsu's labour productivity to Ningbo Jinding, the Commission reached the unreasonable conclusion that Ningbo Jinding's employees worked 52 weeks a year, 6 days a week and 17 hours per day. The Commission is required, under Article 18 of the basic regulation, first, to select the best information available in order to fill the evidentiary void resulting from the missing necessary information and, secondly, to cross-check the resulting data with information from other sources, in particular those of Union producers.

203 In the second place, as regards the other data on which the Commission could have relied, first, the applicants claim that the Commission could have used the standard working hours reported by Ningbo Jinding and Wenzhou in good time. There is no obligation for those producers to record the actual working hours and, therefore, they did not have more data that they could have provided to the Commission to corroborate that the standard working hours were respected. According to the applicants, the Commission knew that it could rely, in the case of Ningbo Jinding, on notices to the employees, which were specific to the workshops involved in the production of fasteners and, in the case of Wenzhou, on the maximum working hours authorised by Chinese law. Those maximum working hours apply, according to the applicants, to any sector. In addition, the applicants maintain that the Commission has, in the past, been able to rely on standard costs, which is common in trade defence analyses. It also did so in the present case, by relying on standard working hours in order to determine the Thai benchmark cost.

204 Secondly, the applicants claim that the Commission could have relied on the maximum working hours established by Chinese law. They state that Ningbo Jinding's notices to the employees with the working hours by workshop confirm that Ningbo Jinding respects the maximum number of hours. In the absence of evidence to the contrary, the Commission is not justified in presuming illegal behaviour by a cooperating exporting producer.

205 Thirdly, according to the applicants, the Commission could have relied on the average working hours per employee of Jiangsu. By multiplying those hours per employee by the number of employees of the specific exporting producers, the Commission could have calculated the average working hours per kilogram of product under investigation, avoiding the distortion resulting from the different production process used. In addition, that would make it possible to take account of the actual number of employees reported by Ningbo Jinding and Wenzhou, in accordance with Article 18 of the basic regulation.

206 The Commission disputes the applicants' arguments.

207 Article 18 of the basic regulation provides that in cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided, or significantly impedes the investigation, provisional or final findings, affirmative or negative,

may be made on the basis of the facts available. Accordingly, where it is found that any interested party has supplied false or misleading information, that information is to be disregarded and use may be made of facts available.

208 It is apparent from Article 6.8 of the Anti-Dumping Agreement that, in cases in which any interested party refuses access to – or otherwise does not provide – necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. In addition, Annex II to the Anti-Dumping Agreement contains provisions on the use of the 'best information available' during investigations and sets out the conditions under which the investigating authorities may rely on information from a source other than the person concerned.

209 At the outset, it must be recalled that Article 18 of the basic regulation constitutes the implementation, in EU law, of the content of Article 6.8 of, and Annex II to, the Anti-Dumping Agreement, and must be interpreted in the light thereof in so far as possible (see judgment of 22 May 2014, *Guangdong Kito Ceramics and Others* v *Council*, T-633/11, not published, EU:T:2014:271, paragraph 40 and the case-law cited).

210 According to Article 18(1) of the basic regulation, there are four cases in which recourse may be had to the facts available, namely (i) where any interested party refuses access to necessary information; (ii) where it does not provide necessary information within the time limits provided; (iii) where it significantly impedes the investigation; or (iv) where it supplies false or misleading information (judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, T-192/08, EU:T:2011:619, paragraph 268).

211 It also follows from the case-law that the interested parties are required to provide the Commission's services with the information that will enable it to complete the anti-dumping investigation. Accordingly, information is to be regarded as 'necessary' within the meaning of Article 18(1) of the basic regulation if it is such as to enable the Commission to establish appropriate findings in an anti-dumping investigation. The assessment as to whether an item of information is necessary must be carried out on a case-by-case basis (judgment of 14 December 2017, *EBMA* v *Giant (China)*, C-61/16 P, EU:C:2017:968, paragraph 53).

212 The definition of the term 'necessary information' must take account of the objective of Article 18 of the basic regulation. In that regard, it must be recalled that it is for the Commission, as the investigating authority, to establish that the product concerned has been dumped, that there has been injury and that there is a causal link between the dumped imports and the injury. However, there is no provision in the basic regulation which confers on the Commission any power to compel the interested parties to participate in the investigation or to provide information. Therefore, the Commission is reliant on the voluntary cooperation of those parties in supplying the necessary information. In that context, it follows from recital 27 of the basic regulation that the EU legislature considered it 'necessary to provide that, where parties [did] not cooperate satisfactorily, other information [could] be used to establish findings and that such information may be less favourable to the parties than if they had cooperated'. Accordingly, the objective of Article 18 of the basic regulation is to enable the Commission to continue with the investigation even though the interested parties refuse to cooperate or do not cooperate satisfactorily. Therefore, given that they are obliged to cooperate to the best of their ability, interested parties must provide all the information at their disposal which the institutions consider necessary for the purpose of making their findings (see, to that effect, judgment of 14 December 2017, *EBMA* v *Giant (China)*, C-61/16 P, EU:C:2017:968, paragraphs 54 to 56).

213 Moreover, when the Commission bases its conclusions on the facts available in situations where the facts submitted are deficient, that institution is not required to explain why the facts available that were used were the best possible, since no such obligation is apparent either from Article 18 of the basic regulation or from the case-law (see, to that effect and by analogy, judgment of 19 March 2015, *City Cycle Industries* v *Council*, T-413/13, not published, EU:T:2015:164, paragraph 132).

214 Recourse to Article 18 of the basic regulation is not excluded in the absence of intentional conduct (see judgment of 22 September 2021, *NLMK* v *Commission*, T-752/16, not published, EU:T:2021:611, paragraph 62 and the case-law cited). The degree of effort displayed by an interested party in submitting certain information does not necessarily reflect the substantive quality of the information submitted, and in any case is not the only determinant thereof. Accordingly, where the requested information is not ultimately obtained, the Commission is entitled to resort to the facts available in respect of the requested information (see judgments of 19 March 2015, *City Cycle Industries* v *Council*, T-413/13, not published, EU:T:2015:164, paragraph 117 and the case-law cited, and of 22 September 2021, *NLMK* v *Commission*, T-752/16, not published, EU:T:2021:611, paragraph 63 and the case-law cited).

215 In that regard, it is important to recall that the General Court's review of the evidence on which the EU institutions based their findings does not constitute a new assessment of the facts replacing that made by the institutions. That review does not encroach on the broad discretion of the institutions in the field of commercial policy, but is restricted to showing whether that evidence was able to support the conclusions reached by the institutions (see judgment of 12 May 2022, *Commission* v *Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 59 and the case-law cited).

216 In the present case, it is apparent from recital 180 of the contested regulation that, during the remote cross-checks, the Commission was unable to verify the actual labour necessary for the production of the product concerned for any of the three sampled exporting producers and that it informed them that it intended to make use of the facts available in accordance with the provision of Article 18 of the basic regulation in order to calculate the consumption of labour. The sampled exporting producers reported the labour consumption based on standard actual working hours. However, according to recital 260 of the contested regulation, the Commission was able to obtain information on the difference between the hours reported and the entry and leave times at Jiangsu.

217 Therefore, on the basis of Jiangsu's 'actual' working hours, the Commission calculated Jiangsu's 'actual' productivity, that is to say, the number of kilograms of the product under investigation that an employee could produce during the investigation period, and compared it with the productivity of the other two sampled exporting producers. The comparison showed greater productivity at Ningbo Jinding, which called into question the reliability of the calculation which took into account the standard working hours in general. The Commission then established the actual average working hours per kilogram of the product under investigation at Jiangsu and used those data for all three exporting producers as the facts available within the meaning of Article 18 of the basic regulation.

218 It is also apparent from recitals 181 and 182 of the contested regulation that, first, Ningbo Jinding had claimed that the Commission should have relied on standard working hours and, secondly, Wenzhou had claimed that the actual working days were indicated on the monthly payroll slips and that the Commission could use the standard working hours per day laid down by Chinese

labour law. However, in recital 184 of the contested regulation, the Commission stated that no evidence was found that actual labour days converted to working hours captured the hours worked relating to the manufacturing process of the product concerned, since no evidence had been provided as to how the standard working hours for the production of fasteners had been determined.

219 The applicants claim that there has been an infringement of Article 18 of the basic regulation and Article 6.8 of the Anti-Dumping Agreement, given that, first, the Commission failed to take due account of the differences between the manufacturing processes of the products under investigation and incorrectly used the figures based on Jiangsu which were detached from reality once applied to Ningbo Jinding. Secondly, the applicants claim that the Commission should have taken into account other data which it had at its disposal in order to calculate labour productivity.

220 Accordingly, in the first place, as regards, first, the possible impact in terms of productivity of the production process chosen by each exporting producer, the Commission explained in recital 317 of the contested regulation that it had been unable to establish the difference between the working hours needed for different methods of production for any of the sampled exporting producers, nor had the interested parties provided any evidence as to how those differences should be estimated.

221 When questioned in that regard at the hearing, the applicants confirmed, first, that both Jiangsu and Ningbo Jinding used the two manufacturing processes of the product concerned and, secondly, that, in their replies to the Commission's questionnaire, the three exporting producers had determined productivity solely on the basis of labour costs for the production of the product concerned, irrespective of the production process. The applicants were not in a position to determine how the Commission could have made a distinction between the two processes in order to establish the labour cost.

222 Furthermore, as the Commission noted, without being contradicted by the applicants on that point, none of the three exporting producers had specific documentation defining the labour cost requirements on the basis of the product forging method.

223 It follows that, in so far as the applicants were not in a position to provide the Commission with data in that regard, their argument alleging that there could be a difference between the working hours needed to manufacture the product concerned on the basis of which manufacturing process is chosen must be rejected.

224 Secondly, the applicants dispute the fact that the Commission calculated Ningbo Jinding's labour costs from Jiangsu data, since that would have produced results which, in their view, were unrealistic, namely that Ningbo Jinding's employees worked 52 weeks a year, 6 days a week and 17 hours per day.

225 Nevertheless, it is apparent from Ningbo Jinding's comments on the final disclosure that, in order to arrive at the figure of 17 working hours per employee and per day, Ningbo Jinding used the working hours needed to produce the product concerned as calculated on the basis of the 'facts available' used by the Commission and multiplied it by the number of employees indicated in Table C5 of the reply to the questionnaire. It should be noted in that regard that, first of all, those data were not verified by the Commission. Next, the applicants acknowledged that the number of employees at Ningbo Jinding had fluctuated significantly during the investigation, so that the Commission was unable to use the working hours per employee at Jiangsu, multiplied by the

number of employees at the other two exporting producers, in order to calculate labour costs. Therefore, the figure of 17 working hours per day is not supported by actual evidence and remains, in any event, hypothetical.

226 Lastly, as the Commission has argued, it is apparent from Annex R.3 to the reply that Ningbo used in its calculation only the 'direct labour' necessary to manufacture the product concerned and 'R & D [(research and development)] support staff', whereas the Commission stated in the instructions provided with the anti-dumping questionnaire that the 'labour' used to calculate the cost of production had to include both 'direct and indirect labour'. It must therefore be held that the applicants were unable to provide the Commission with the information it considered necessary.

227 In that regard, it is apparent from the case-law that, in so far as the institutions depend on the voluntary cooperation of the parties in supplying the necessary information within the time limits set, the replies of those parties to the questionnaire referred to in Article 6(2) of the basic regulation, and the subsequent verification which the Commission may carry out are essential to the operation of the anti-dumping procedure. The risk that, where the undertakings concerned in the investigation do not cooperate, the institutions may take into account information other than that supplied in reply to the questionnaire is inherent in the anti-dumping procedure and is designed to encourage the honest and diligent cooperation of those undertakings (see judgment of 13 July 2006, *Shandong Reipu Biochemicals* v *Council*, T-413/03, EU:T:2006:211, paragraph 65 and the case-law cited).

228 Therefore, the Commission considered, in the exercise of its broad discretion, that, in so far as both Jiangsu and Ningbo Jinding used the cold and hot forging process, it was not required to verify whether those processes led to differences in the working hours needed to manufacture the product concerned as compared with other sources, and in particular the working hours needed to manufacture the product concerned by the Union producers. In that regard and in any event, the Commission explained that working hours were not requested in the questionnaires of the Union producers. That information was therefore not available for the purposes of Article 18(5) of the basic regulation.

229 In those circumstances, the Commission was entitled, without committing a manifest error of assessment, to conclude that the data at issue were contradictory and incomplete and that it could not use them.

230 In the second place, as regards whether the Commission chose the best data available to it in order to calculate the labour cost, it must be recalled, at the outset, that the possibility of alternative calculations is not sufficient for a finding that the Commission committed a manifest error of assessment.

231 The objective of Article 18 of the basic regulation is to enable the Commission to conclude the investigation in the context of the temporary constraints imposed on it. In those circumstances, the Commission has a broad discretion as to the need to rely on Article 18 of the basic regulation in examining the data available to it, given the complexity of the economic, political and legal situations which it has to examine.

232 More specifically, as regards, first, the possibility of relying on standard working hours, it should be noted that the Commission was able to find, without being contradicted by the applicants on that point, that standard working hours did not necessarily reflect the reality of the hours allocated specifically to manufacture the product concerned.

233 Moreover, the applicants' argument that standard hours were used in other investigations cannot succeed. In that regard, it is clear from the case-law that the lawfulness of a regulation imposing anti-dumping duties must be assessed in the light of legal rules and, in particular, the provisions of the basic regulation, not on the basis of the alleged previous practice of the EU institutions in taking decisions (judgment of 18 October 2016, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-351/13, not published, EU:T:2016:616, paragraph 107; see also, to that effect, judgments of 10 February 2021, *RFA International* v *Commission*, C-56/19 P, EU:C:2021:102, paragraph 79, and of 4 October 2006, *Moser Baer India* v *Council*, T-300/03, EU:T:2006:289, paragraph 45).

234 The basic regulation does not define what is 'necessary' information within the meaning of Article 18(1) thereof (judgment of 22 May 2014, *Guangdong Kito Ceramics and Others* v *Council*, T-633/11, not published, EU:T:2014:271, paragraph 46).

235 Therefore, given that an item of information may make it possible to reach findings in one investigation but serve no purpose in another investigation, it must be concluded that the assessment as to whether a particular item of information is 'necessary' within the meaning of Article 18(1) of the basic regulation must be carried out in the light of all the specific circumstances of each individual investigation, not in the abstract (judgment of 14 December 2017, *EBMA* v *Giant (China)*, C-61/16 P, EU:C:2017:968, paragraph 49).

236 In the present case, the Commission considered it necessary to determine the number of 'actual' working hours needed to manufacture the product concerned. The applicants do not dispute that the number of working hours needed to manufacture the product concerned is necessary information for the investigation, but consider that the disclosure of standard hours was sufficient. Therefore, they do not adduce evidence of a manifest error of assessment by the Commission in rejecting the calculation of labour costs on the basis of standard working hours in China.

237 For the same reasons, the applicants' argument that there is no legal obligation in China to record the number of hours actually worked must be rejected, in so far as the Commission considered that the actual working hours needed to manufacture the product concerned constituted necessary information for the calculation of the normal value of the product concerned.

238 That finding is not called into question by the applicants' argument that the Commission could have used the statutory hours to calculate the working hours needed to manufacture the product concerned rather than presume unlawful conduct. As the Commission noted in recital 183 of the contested regulation, the mere existence of a labour law delimiting the standard number of hours a worker can work is not sufficient evidence for demonstrating the actual hours worked, given that there was no evidence during the investigation that Chinese labour law was respected or applied and that the actual working days reported by the exporting producers corresponded to the remuneration actually paid to staff.

239 Secondly, as regards the possibility proposed by the applicants of using the maximum number of working hours under Chinese law, the Commission explained that it had found evidence at Jiangsu of non-compliance with that rule and an apparent lack of monitoring of compliance with it. Accordingly, the Commission concluded that that benchmark was irrelevant.

240 Thirdly, as regards the possibility of relying on the average number of working hours per Jiangsu employee, multiplied by the number of employees of the other two exporting producers, as the Commission explained, such a calculation is inappropriate since the number of employees working at Ningbo Jinding fluctuated throughout the investigation period. Accordingly, the information provided by that exporting producer in that regard did not allow the Commission to use a value in order to calculate the labour costs. Consequently, the applicants did not provide the Commission with all the information it considered necessary to construct the normal value of the product concerned.

241 It follows from the foregoing that the applicants have failed to adduce sufficient evidence to render implausible the assessments of the facts in the contested regulation concerning the actual hours of work needed to manufacture the product concerned. Such evidence is necessary in order to establish that the Commission committed a manifest error of assessment such as to justify the annulment of the contested regulation (see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting* v *Commission*, T-650/17, EU:T:2019:644, paragraph 110).

242 Accordingly, in the light of the foregoing, it must be held that, in the exercise of its broad discretion, the Commission was entitled to consider, without making a manifest error of assessment, that, in so far as the sampled exporting producers had been unable to provide it with the number of actual working hours of their employees involved in the entire manufacturing process of the product concerned, it could rely on the verified data of one of those three exporting producers in order to calculate the normal value of the product concerned.

243 Therefore, the third plea must be rejected.

4. The fourth plea, alleging infringement of Article 9(6) of the basic regulation

244 The applicants claim, in essence, that the Commission could not rely on Article 9(6) of the basic regulation to establish the dumping margin for the non-sampled cooperating exporting producers, in so far as, according to that provision, the Commission was to disregard the margins established in the circumstances referred to in Article 18 of that regulation. The applicants argue that the same limitation follows from Article 9.4 of the Anti-Dumping Agreement, which seeks to prevent those exporting producers that were not asked to cooperate in the investigation from being prejudiced by gaps or shortcomings in the information supplied by the exporting producers under investigation.

245 The Commission disputes the applicants' arguments.

246 As a preliminary point, it should be noted that, in Article 1(2) of the contested regulation, that regulation set the rates of the definitive anti-dumping duty (i) for the three sampled exporting producers, namely at 22.1% for Jiangsu, 46.1% for Ningbo Jinding and 48.8% for Wenzhou, (ii) for the non-sampled cooperating exporting producers, at 39.6%, and (iii) for all the other exporting producers in the country concerned, at 86.5%. The rate challenged in the fourth plea is that of 39.6%.

247 Article 9(6) of the basic regulation provides as follows:

'When the Commission has limited its investigation in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the investigation shall not exceed the weighted

average margin of dumping established with respect to the parties in the sample, irrespective of whether the normal value for such parties is determined on the basis of Article 2(1) to (6) or point (a) of Article 2(7).

For the purpose of this paragraph, the Commission shall disregard any zero and *de minimis* margins, and margins established in the circumstances referred to in Article 18.

…'

248 Accordingly, that provision applies only in cases where the Commission uses sampling, that is to say, only where it has limited its investigation to a given group of exporting producers, in accordance with Article 17 of the basic regulation, as it did in the procedure to which the present dispute relates.

249 Next, it should be noted that Article 9(6) of the basic regulation is substantially identical to Article 9.4 of the Anti-Dumping Agreement, which provides as follows:

'When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

…

provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.'

250 The Court has already held that the general international law principle of compliance with treaty commitments (*pacta sunt servanda*), laid down in Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331), meant that the EU Courts was obliged, for the purpose of interpreting and applying the Anti-Dumping Agreement, to take account of the interpretation that the WTO Dispute Settlement Body had given to the various provisions of that agreement (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 32 and the case-law cited).

251 According to recital 3 of the basic regulation, in order to ensure a proper and transparent application of the rules of the Anti-Dumping Agreement, the language of that agreement should be reflected in EU legislation to the best extent possible. Accordingly, the EU Courts may rely on the reports of the WTO Appellate Body in order to interpret provisions which are substantially the same (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraphs 33 and 34).

252 In its report relating to the dispute 'United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan' of 24 July 2001 (WT/DS 184/AB/R), the WTO Appellate Body considered that Article 9.4 of the Anti-Dumping Agreement sets a maximum limit for the

relevant authorities in determining the ceiling for the 'all others' rate, namely the fact that the margin set for non-sampled cooperating exporting producers did not exceed the weighted average margin of the sampled exporting producers. The Appellate Body also noted that Article 9.4 established two prohibitions. The first prevents investigating authorities from calculating the all others rate using zero or *de minimis* margins, while the second prohibits them from calculating that ceiling by using 'margins established under the circumstances referred to' in Article 6.8 of the agreement.

253 More specifically, the WTO Appellate Body explicitly rejected the claim that the second limitation covered only margins which are calculated entirely on the basis of the facts available. Accordingly, the 'circumstances referred to' in Article 6.8 of the Anti-Dumping Agreement are circumstances in which the investigating authorities have due recourse to the facts available in order to remedy the lack of necessary information in the file and those circumstances may, in fact, involve only a small amount of information which must be used to calculate the individual dumping margin for an exporter or producer.

254 Furthermore, the WTO Appellate Body considered that that reading of Article 9.4 of the Anti-Dumping Agreement was compatible with the purpose of that provision. In so far as Article 6.8 of that agreement allows the authorities to fill the gaps in the file resulting from the insufficiency or lack of information which must be provided by the investigated exporters, Article 9.4 of the Anti-Dumping Agreement seeks to prevent the exporters which were not asked to cooperate in the investigation from being prejudiced by gaps or shortcomings in the information supplied by the sampled exporters. That objective would therefore be jeopardised if the weighted average margin were calculated only in part, on the basis of the facts available.

255 The WTO Appellate Body explicitly found that the dispute it was required to examine did not raise the question of how to remedy a situation such as that in the present case, where all the margins in support of which the Commission was required to calculate the weighted average margin for non-sampled exporting producers should be excluded from the calculation on the basis of the second prohibition. Therefore, having established that there was a gap, it explained that the dispute it was examining did not entail a duty to resolve that issue.

256 In the present case, the Commission relied on that report in order to support the existence of a lacuna in the basic regulation, which, in circumstances such as those of the present case, imposed a limitation on it without giving it an alternative. Accordingly, the Commission argued before the Court that Article 17(4) of the basic regulation sought to remedy that identified lacuna as regards the determination of the dumping margin of non-sampled cooperating exporting producers.

257 Article 17(4) of the basic regulation provides:

'Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected.

However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.'

258 Accordingly, the Commission maintained that it did not have 'sufficient time' within the meaning of Article 17(4) of the basic regulation and that it was obliged to establish the weighted average margin for non-sampled cooperating exporting producers on the basis of Article 18 of the basic regulation, as it did for non-cooperating exporting producers. The Commission argued that if it

could not rely on the margins of the three sampled exporting producers for the calculation of the weighted average margin of the non-sampled cooperating exporting producers, those latter producers would have been placed in a much worse situation, since the applicable anti-dumping rate would have been set at 86.5%, as for all other Chinese exporting producers not involved in any way in the investigation, rather than at 39.6%.

259 In their reply, the applicants contested those arguments in so far as the reasoning based on Article 17(4) of the basic regulation was entirely new and could not justify the contested regulation a posteriori. They therefore considered that it was a new statement of reasons on the part of the Commission. At the hearing, the applicants claimed that Article 17(4) of the basic regulation provided for two stages, namely, the first, a finding of a degree of non-cooperation which was capable of having a material impact and, the second, the selection of a new sample. If, as a result of that new sample, there was still no cooperation or there was insufficient time, the relevant provisions of Article 18 of the basic regulation could apply. That situation does not correspond to the one in the present case. According to the applicants, Article 17(4) of the basic regulation addresses blockages, where not all exporting producers cooperate or supply any data.

260 First, the Commission argued at the hearing that the selection of a new sample was a possibility, but not an obligation, in so far as Article 17(4) of the basic regulation states that it 'may' constitute a new sample. Secondly, the Commission acknowledged that the finding that there was a gap did not relieve it of its general obligation to comply with the basic regulation, as is the case here. Thirdly, the Commission noted that, where there was a gap, it could apply Article 18 of the basic regulation in accordance with the requirements of that regulation. Fourthly, the Commission also argued that Article 9(6) of the basic regulation does not necessarily constitute protection for non-sampled cooperating exporting producers. In the hypothetical situation where only two of the three margins should be disregarded in so far as they are based on Article 18 of the basic regulation, the Commission applies the remaining margin to the exporting producers in question, even where that margin is the highest of the three margins in question. Accordingly, the dumping margin of those producers could increase if one of the sampled margins could not be selected because it would be set using the facts available, within the meaning of Article 18 of the basic regulation.

261 In the light of the foregoing considerations, it must be held, in the first place, that, according to settled case-law, the statement of reasons required by the second paragraph of Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measures in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. However, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question as to whether it meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, it would be unreasonable to require a detailed description of each of the factors underpinning the contested measure, particularly where, as in the present case, the applicant was closely associated with the administrative procedure (see, to that effect, judgment of 13 April 2011, *Far Eastern New Century* v *Council*, T-167/07, not published, EU:T:2011:165, paragraph 103 and the case-law cited).

262 In the second place, it should also be noted that, although the data of the three sampled exporting producers could not be used due to the limitation of the second subparagraph of Article 9(6) of the basic regulation, the Commission's sample became non-operational for the investigation in question.

263 As is apparent from paragraphs 201 to 243 above, the Commission used the best facts available relating to the use of the labour necessary to manufacture the product concerned, in so far as the data which the sampled exporting producers had provided to it were missing or inconsistent. However, that finding was made at an advanced stage of the investigation, since the Commission found that the data provided were insufficient only during the remote cross-checks. Since the procedure leading to the imposition of an anti-dumping duty in accordance with the basic regulation follows a step-by-step approach, the dumping margin of the sampled exporting producers was determined only when the final disclosure was made. In that regard, it must be borne in mind that the Commission is required to complete the investigation within relatively short time limits which are strictly limited by the basic regulation and by the notice of initiation of the investigation in question. Accordingly, it did not have sufficient time to select a new sample, in accordance with Article 17(4) of the basic regulation.

264 In the third place, first, it should be noted that, as is apparent from recital 336 of the contested regulation, none of the applicants concerned by that margin, namely the relevant members of the CCCME or the five other non-sampled cooperating exporting producers, disputed the Commission's findings on the margin set for the non-sampled cooperating exporting producers.

265 Secondly, it should be noted that Article 17(3) of the basic regulation, to which Article 9(6) of that regulation refers, provides for the calculation of an individual dumping margin for each non-sampled exporter or producer requesting it, by submitting a complete questionnaire.

266 According to Article 17(3) of the basic regulation, where the Commission uses sampling, an individual margin of dumping may, nevertheless, be calculated for any exporting producer not initially selected that submits the necessary information within the time limits provided for, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time. In any event, as the parties confirmed at the hearing, none of the applicants concerned expressed to the Commission the desire to have an individual margin applied to them.

267 In the fourth place, it should be borne in mind that the Commission explained in the contested regulation that the level of cooperation had generally been considered to be low and that it had to base the calculation of the country-wide level of duties on the facts available in the file.

268 In the fifth place, it should be recalled that the Commission used facts available within the meaning of Article 18 of the basic regulation to calculate the normal value of the product concerned. The normal value of the product concerned is the same for all exporting producers of that product from China, since it was constructed on the basis of Article 2(6a) of the basic regulation. What differentiates the dumping margin of the various exporting producers is the comparison of that normal value with their own export prices, rather than a comparison of the 'general' normal value with the industry's export prices. Accordingly, non-sampled exporting producers could obtain a different margin, pursuant to Article 17(3) of the basic regulation, by comparing their export prices with the normal value established on the basis of the 'facts

available' in accordance with Article 18 of the basic regulation. Therefore, in the absence of a new sample of exporting producers as a whole, the limitation of Article 9(6) of the basic regulation could not have been lifted in the present case.

269 Therefore, by accepting the assumption that the Commission was required to use the 'facts available' within the meaning of Article 18 of the basic regulation for the construction of the normal value, in so far as the information provided by the sampled exporting producers was insufficient, it can be argued that that step was necessary in the context of the investigation in question. Moreover, it has also been established that the Commission used sampling for the investigation in question, which, moreover, is not disputed in the present action, on account of the volume of exporting producers concerned, the data of which could not have been examined individually in due time. As is apparent from the case-law cited in paragraph 227 above, the Commission has no means of compelling the sampled exporting producers to provide it with the information which it considers necessary to conclude its investigation.

270 Consequently, the margin of the non-sampled cooperating exporting producers was determined by the Commission not in an arbitrary or punitive manner, but after it had found, at a late stage of the administrative procedure, that it was required to apply Article 18 of the basic regulation to some of the applicants since, first, the data provided by the sampled exporting producers were inconsistent and, secondly, the global context affected by the COVID-19 outbreak prevented it from carrying out on-the-spot checks.

271 It follows that the applicants have not established that the Commission could not rely on Article 9(6) of the basic regulation in order to establish the weighted average margin of non-sampled cooperating exporting producers.

272 Accordingly, the fourth plea must be rejected.

5. The fifth plea, alleging infringement of Article 3(2), (3), (5) and (6) of the basic regulation, read in conjunction with Article 4(1) of that regulation

273 By their fifth plea, the applicants allege that the Commission erred in analysing injury and causation, first, since it failed to take account of the fact that the majority of Union producers mainly manufactured non-standard fasteners whereas the majority of Chinese imports consisted of standard fasteners. Therefore, the Commission should have ascertained whether the Union industry and the Chinese exporters are equally focused on the two segments, or whether one or more segments were more likely to be concerned than others by the dumped imports. Moreover, the Commission's refusal was not based on evidence that the product types in question were interchangeable or that they were in competition with each other. In that regard, the applicants add that, apart from the significant price differences, the two product types have different end-uses and are sold to different industries. Non-standard fasteners are used in safety-critical and quality-sensitive industries, whereas standard fasteners are used in sectors such as construction, furniture and DIY. The applicants dispute the claim that, despite repeated requests by interested parties for a segmented analysis, the Commission refused to carry out such an analysis.

274 Secondly, the applicants contend that the Commission does not base its claim that Chinese exporting producers had the capacity to produce and export non-standard fasteners on any evidence and that, in any event, it should have analysed the actual impact of imports during the

period considered. According to the investigation carried out by the CCCME, only four Chinese producers considered exporting non-standard fasteners in the years following the period considered and 28 producers did not consider such a possibility.

275 Thirdly, the applicants claim, in essence, that segmentation is also proved by the fact that the Commission was obliged to expand the sample of Union producers since the information which it had previously obtained from the four sampled undertakings did not cover the production of standard fasteners. Only 24% of the production of the sampled Union producers was ultimately found to match among products.

276 Fourthly, as regards the use of the product control number ('PCN') method for the analysis of price undercutting, the applicants dispute the figure of a 90% match put forward by the Commission, claiming that the Commission should not focus on Chinese imports, but on Union sales. Accordingly, the Commission should have examined whether the Union industry's sales had been undercut and taken into account the percentage match from the point of view of the Union industry in order to assess whether there was significant price undercutting caused by the dumped imports. The applicants claim that the Commission only established undercutting for a small subset of Union industry which produces standard fasteners and subsequently extended those findings to the Union industry as a whole.

277 Fifthly, the applicants raise the same concerns as regards the major fastener product groups, specifically screws, bolts and washers, which are each intended for very different end-uses justifying a segmented injury analysis. The three sampled exporting producers export only screws and bolts. The Commission therefore infringed Article 3(2) and (6) of the basic regulation in that it established the existence of injury to Union producers of washers.

278 The Commission disputes the applicants' arguments.

279 At the outset, it should be noted that, for the purpose of determining injury, Article 3(2) of the basic regulation provides that it is necessary to carry out an objective examination of the volume of the dumped imports and their effect on prices in the Union market for like products, as well as their impact on the Union industry.

280 With regard in particular to the effect of the dumped imports on prices, the second sentence of Article 3(3) of the basic regulation specifies that consideration is to be given to whether there has been significant price undercutting by those imports as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree.

281 Article 3(5) of the basic regulation states that the examination of the impact of dumped imports on the Union industry concerned is to include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. That provision contains a list of factors which may be taken into account and states that that list is not exhaustive and that decisive guidance is not necessarily given by any one or more of those factors (see judgment of 28 February 2017, *Yingli Energy (China) and Others* v *Council*, T-160/14, not published, EU:T:2017:125, paragraph 188 and the case-law cited).

282 Under Article 3(6) of the basic regulation, the Commission must demonstrate that the dumped imports cause significant injury to the Union industry, taking into account their volume and price levels, using all relevant evidence.

283 Furthermore, it follows from Article 4(1) of the basic regulation that the determination of injury must be made at the level of the Union industry as a whole.

284 Next, it should be recalled that it is settled case-law of the Court of Justice that the broad discretion enjoyed by the Commission by reason of the complexity of the economic and political situations which it must examine in an anti-dumping proceeding also covers the determination of the injury caused to the Union industry (see judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 112 and the case-law cited). Moreover, as the assessment of whether there has been price undercutting is an economically complex issue in respect of which the basic regulation does not lay down any particular methodology, the Commission enjoys a broad discretion in that regard (judgment of 12 May 2022, *Commission* v *Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 99).

285 Therefore, the judicial review of such an appraisal must be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers. That is particularly the case as regards the determination of the factors injuring the Union industry in an anti-dumping investigation (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 36 and the case-law cited).

286 The Court of Justice has also repeatedly held that the General Court's review of the evidence on which the EU institutions based their findings did not constitute a new assessment of the facts replacing that made by the institutions. That review does not encroach on the broad discretion of the institutions in the field of commercial policy, but is restricted to showing whether that evidence was able to support the conclusions reached by the institutions. The General Court must therefore not only establish whether the evidence put forward is factually accurate, reliable and consistent but also ascertain whether that evidence contained all the relevant information which had to be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions reached (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 37 and the case-law cited).

287 It is apparent from the very wording of Article 3(3) of the basic regulation that the method used to determine possible price undercutting must, in principle, be applied at the level of the 'like product', within the meaning of Article 1(4) of that regulation, even though that product may, as in the present case, consist of different product types falling within several market segments (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 74). Accordingly, the basic regulation does not, in principle, impose any obligation on the Commission to carry out an analysis of the existence of price undercutting at a level other than that of the like product (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 75).

288 The same interpretation is also apparent from the Anti-Dumping Agreement, to which the applicants refer, since the investigating authority is not required, under Article 3, paragraph 3.2, of the Anti-Dumping Agreement, to establish price undercutting for each of the product types

under investigation or for the entire range of products constituting the like domestic product (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 76).

289 However, in order to ensure that the analysis of price undercutting is objective, the Commission may, in certain circumstances, be required to carry out such an analysis at the level of the market segments of the product in question, even though the broad discretion which it enjoys in determining, inter alia, the existence of injury extends, at the very least, to decisions on the choice of method of analysis, to the data and evidence to be gathered, to the method of calculation to be used in order to determine the undercutting margin and to the interpretation and evaluation of the evidence gathered (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 78).

290 The same may be the case in a situation where there is marked segmentation of the market for the product in question and due to the fact that the imports subject to the anti-dumping investigation were overwhelmingly concentrated in one of the market segments relating to the product in question, provided, however, that the like product as a whole is duly taken into account. The same may also be the case where there is a particular situation characterised by a high concentration of domestic sales and dumped imports in separate segments and by price differences which are very significant between those segments. In those circumstances, the Commission may be required to take account of the market shares of each product type and those price differences in order to ensure the objectivity of the analysis of the existence of price undercutting (see judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 167 and the case-law cited).

291 As regards the evidence on which the Commission may rely in order to find that injury has been caused to the Union industry, it follows from Article 3(2) of the basic regulation that it is required to take account in its analysis of price undercutting of all the relevant positive evidence (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 77). However, the basic regulation does not define the concept of 'positive evidence'. In the light of the literal meaning of that concept, its context, including in particular the requirement for an objective examination referred to in Article 3(2) of that regulation, and of the purpose of determining injury, namely to allow for an anti-dumping duty to be imposed in respect of dumped imports, that concept refers to substantive evidence which establishes the reality of indicators of that injury in an affirmative, objective and verifiable manner. Mere assertions, conjecture or uncertain considerations therefore cannot constitute such indicators (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 118).

292 It is in the light of those observations and clarifications that it is necessary to examine the merits of the applicants' claims that the Commission made a manifest error of assessment in relying on the like product as a whole for the injury analysis and in not examining that product by segment.

293 In the first place, it is important to note that, according to recital 110 of the contested regulation, based on their basic physical and technical characteristics and end-uses, all the fasteners were considered to constitute a single product for the purposes of the proceedings in question.

294 It is apparent from the case-law, first, that in defining the product concerned, the Commission may take account of a number of factors, such as the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality (judgments of 13 September 2010, *Whirlpool Europe* v *Council*, T-314/06, EU:T:2010:390, paragraph 138, and of 17 December 2010, *EWRIA and Others* v *Commission*, T-369/08, EU:T:2010:549, paragraph 82). To determine whether the products are in fact different, it needs to be assessed, inter alia, whether they share the same technical and physical characteristics, have the same basic end-uses and the same price-quality ratio. In that regard, the interchangeability of, and competition between, those products should also be assessed (judgment of 18 April 2013, *Steinel Vertrieb*, C-595/11, EU:C:2013:251, paragraph 44).

295 Nevertheless, in the light of the indicative nature of the criteria referred to in paragraph 294 above, the Commission is not under any obligation to determine the product concerned using all of those criteria. Nor is it necessary for the analysis of each of those criteria to be capable of leading to the same result (see judgment of 28 February 2017, *Yingli Energy (China) and Others* v *Council*, T-160/14, not published, EU:T:2017:125, paragraph 114 and the case-law cited).

296 The basic regulation does not specify exactly how the product or range of products which may be subject to an anti-dumping investigation is to be defined or require an intricate classification (judgment of 25 September 1997, *Shanghai Bicycle* v *Council*, T-170/94, EU:T:1997:134, paragraph 61).

297 It follows that products which are not identical may be grouped together under the same definition of 'the product concerned' and, together, be subject to an anti-dumping investigation (judgment of 10 October 2012, *Gem-Year and Jinn-Well Auto-Parts (Zhejiang)* v *Council*, T-172/09, not published, EU:T:2012:532, paragraph 60). Accordingly, the determination of 'like products' falls within the scope of the Commission's broad discretion in analysing complex economic situations. The examination of whether a specific product has been validly included in the list of products must be carried out in the light of the characteristics of the product concerned as defined by the Commission, not in the light of the characteristics of the products comprising the product concerned or its sub-categories (judgment of 18 November 2014, *Photo USA Electronic Graphic* v *Council*, T-394/13, not published, EU:T:2014:964, paragraph 30).

298 In the present case, it should be noted that the applicants do not dispute the distinction drawn by the Commission between standard and non-standard fasteners as regards whether or not they comply with an international standard. Accordingly, fasteners are classified as standard when they meet specific international standards, whereas fasteners described as non-standard do not correspond to a precise internationally recognised standard. According to recital 372 of the contested regulation, standard fasteners are those described in detail by industry standards, such as those of Deutsches Institut für Normung (DIN), International Organization for Standardization (ISO) or European Norms (EN) drafted and maintained by the European Committee for Standardization (CEN). Non-standard fasteners, on the other hand, differ from industry-recognised standards and often conform to a particular user's design or requirements. Therefore, customer drawings that deviate from a recognised international standard make a fastener non-standard. Likewise, fasteners that are produced on standard production lines are considered to be non-standard fasteners when they do not fully comply with a specific internationally recognised industry standard.

299 It follows that those elements are present in a broad category of sectors, which use several types of fasteners. The definition of what constitutes standard and non-standard fasteners does not take account of the complexity or cost of production of the industries concerned or of the raw materials used. It also follows that the same object, such as an item of furniture or a car, may consist of both standard fasteners and non-standard fasteners.

300 That finding cannot be called into question by the applicants' arguments. The applicants maintained that non-standard fasteners were aimed in particular at more safety-critical industries, whereas standard fasteners were mainly used in areas such as construction. However, no evidence has been adduced to support the distinction made by the applicants which would permit the finding that each type of fastener was aimed exclusively at a particular industry. Moreover, the applicants have not adduced any evidence to show that standard and non-standard fasteners were not in competition.

301 The Commission brought together standard and non-standard fasteners within a single category on the ground that they had to comply with the same physical and technical characteristics. It should be noted in that regard that those factors are among those recognised by the case-law cited in paragraph 294 above. Moreover, as is apparent from the details provided in paragraph 298 above, the manufacturing or distribution processes for standard and non-standard fasteners may be juxtaposed. Furthermore, the Commission explained in recital 402 of the contested regulation that the investigation had also revealed that there was an overlap in end-uses and applications between the two types of fasteners.

302 The applicants have failed to adduce sufficient evidence to render implausible the assessments made by the Commission in the contested regulation concerning the definition of the product concerned. Consequently, the Commission's approach is consistent with the case-law which has recognised that the fact that products belong to different ranges was not sufficient to establish, in itself, that they are not interchangeable and therefore that an assessment by segment may be undertaken, since products belonging to different ranges could have identical functions or satisfy the same needs (see judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 383 and the case-law cited). Furthermore, it is also apparent from case-law that if the price difference between different market segments can be ascribed to a difference in the uses of the products falling within the definition of the product concerned, that price difference is in any event taken into account when analysing price undercutting under the PCN method, so that it is not necessary to carry out an injury analysis by segment (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraphs 112 to 114).

303 Accordingly, the Commission was entitled, without committing a manifest error of assessment, to consider that standard and non-standard fasteners were like products.

304 In the second place, it should be noted that, first, the Commission stated in recital 402 of the contested regulation that the investigation had revealed that the Union industry produced and sold standard and non-standard fasteners, and that the exporting producers exported to the European Union standard and non-standard fasteners. Secondly, the Commission found that imports of the product concerned competed with Union industry sales for the same uses and applications. Thirdly, the Commission relied on evidence in the file which had shown that Chinese exporting producers had the ability to produce and export non-standard fasteners, even though the sampled exporting producers exported few non-standard fasteners. The product

types imported from the Chinese exporting producers matched to over 90% with product types produced and sold by the sampled Union producers and included a comparison of prices of standard and non-standard fasteners which invariably showed significant undercutting and underselling. Fourthly, the Commission concluded that all Union producers, including the ones producing non-standard fasteners irrespective of product mix, had decreasing trends in production and sales volumes as well as profit margins and that that showed that all sampled Union producers were affected by the imports from China. Fifthly, the Commission noted that there was evidence on file that Union producers were unable to expand their production and sales on standard fasteners because of the Chinese imports exercising price pressure on the Union market. Sixthly, the deterioration of the macroeconomic injury indicators in parallel with the increase of imports from China, as well as the downward trend of the microeconomic indicators of all sampled Union producers, showed that there was competition in the market between the Union industry and the imports from China at the level of the like product.

305 The Court asked the Commission to clarify which evidence in the file had enabled it to establish the ability of the Chinese exporting producers to export non-standard fasteners to the European Union, in so far as the applicants had disputed that claim.

306 In that regard, first of all, the Commission explained that, during the investigation, a significant number of Chinese importers and exporting producers, including a relevant member of the CCCME and one of the legal persons whose name appears in the annex, had requested to be excluded from the investigation, arguing that the fasteners they produced had special characteristics on aspects such as their physical and technical characteristics, their use, interchangeability, production process, price or verification process and that they were intended for a different use to that of standard fasteners. The Commission also produced evidence of those requests, which showed the close link between the two segments concerned.

307 Accordingly, it is apparent from Annex E.1 to the Commission's written replies to the Court's questions that two EU importers and distributors had requested that wood screws be excluded from the definition of the product concerned by the investigation, claiming that 40 to 60% of total imports of wood screws into the European Union came from China. They claimed that wood screws made from iron or steel, other than stainless steel, should be excluded from the investigation, on the basis of the criteria referred to in paragraph 294 above, also claiming that those products needed an additional certification in order to be sold in the territory of the European Union. Therefore, according to the definition adopted by the Commission, wood screws imported from China by those two importers and distributors are not standard fasteners since those screws differ from international standards. Similarly, two Chinese exporting producers claimed that they exported screws for wooden structures, which were non-standard fasteners that were made to measure, whereas a relevant member of the CCCME also requested that confirmat screws (or self-tapping screws) be excluded from the product scope due to their specific end-uses.

308 Next, Annex E.6 produced by the Commission sets out the intervener's position that many of the products exported by the Chinese exporting producers had been incorrectly classified as standard fasteners and that, in reality, there were far more imports of non-standard fasteners during the investigation period. Accordingly, the intervener argued that certain non-standard fasteners had been mistakenly classified as standard fasteners in the replies to the questionnaire provided by EFDA, which had used criteria other than those of the Commission's questionnaire on the distinction between standard and non-standard fasteners. Moreover, the intervener argued that the replies to that questionnaire ignore the fact that standard fasteners imported into the

European Union require an additional certification procedure before the products are delivered to original equipment manufacturers. EFDA's replies annexed by the intervener to its letter confirm those claims.

309 Finally, it is also apparent from the evidence submitted by the Commission that two of the three sampled Chinese exporting producers exported non-standard fasteners to the European Union during the investigation period. The applicants also acknowledged that Union producers and Chinese producers produced both standard and non-standard fasteners. However, the applicants argued that that observation was irrelevant and that the Commission should have examined whether the Union industry and the Chinese exporting producers were equally concentrated in the two segments, or even whether one segment was more likely to be affected than others.

310 It is clear from the case-law cited in paragraphs 289 and 290 above that the Commission is required to carry out a segmented injury analysis only when there is evidence of particularly marked segmentation as regards the imports concerned, provided, however, that the like product as a whole is duly taken into account (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 80).

311 In any event, such a particularly marked segmentation is not apparent from the evidence submitted by the parties to the Court.

312 First, it is not disputed by the applicants that the Union producers – and in particular those included in the sample – produce both standard fasteners and non-standard fasteners. According to the Commission's investigation, that production took place at the same production sites. It follows that Chinese imports of fasteners may compete with all fasteners produced by the Union industry.

313 Secondly, the applicants claimed that the fact that 90% of the imported fasteners matched with the fasteners produced by the Union industry was irrelevant in so far as the Commission had to consider whether Union sales, and not Chinese imports, were being undercut in order to assess injury. Such an argument is clearly not supported by the relevant case-law. It follows from a combined reading of Article 1(1) and Article 3(2) of the basic regulation that the injury must be assessed at the time of the dumped product's 'release for free circulation in the Union'. Consequently, contrary to the applicants' claim, the calculation of price undercutting must, in principle, be made at the level of the dumped imports (judgment of 12 May 2022, *Commission* v *Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 102).

314 It follows that the Commission based its findings on the ability of the Chinese exporting producers to export non-standard fasteners to the European Union on positive evidence, which also demonstrates the interference between the two market segments.

315 In the third place, as regards the applicants' argument that the Commission had to expand the sample of Union producers six months after the initiation of the investigation because the producers included in the sample initially did not produce or sell standard fasteners in sufficient quantities, it should be noted that, as is apparent from paragraphs 6 and 7 above, the sample of Union producers had to be revised because of a lack of information from those initially selected. That information was contained in the non-confidential case file.

316 In that regard, it must be noted that the Commission complied with the requirements of Article 17(1) of the basic regulation concerning sampling, which provides that, in cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

317 It follows from the case-law that the final choice of the sample rests with the Commission, for which it has a broad discretion (see judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 293 and the case-law cited). Consequently, review by the EU Courts in that regard is limited in accordance with the case-law cited in paragraph 285 above.

318 In such a context, it is for the applicants, in accordance with the case-law, to adduce evidence enabling the Court to find that, by its particular composition of the sample of the Union industry, the Commission made a manifest error of assessment when determining injury (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 295 and the case-law cited).

319 However, the applicants have not adduced any evidence to establish a manifest error of assessment on the part of the Commission in the selection of the sampled Union producers or to demonstrate that the Commission had not complied with the requirements arising from the basic regulation or the case-law in that regard.

320 In addition, if an initially selected Union producer cannot or does not wish to participate in the Commission's investigation, the Commission has no power of investigation enabling it to compel it to participate in the investigation or to provide information under the basic regulation (see judgment of 20 May 2015, *Yuanping Changyuan Chemicals* v *Council*, T-310/12, not published, EU:T:2015:295, paragraph 152 and the case-law cited).

321 That said, although the sample of Union producers ultimately included more producers of standard fasteners than in its initial selection, it must be stated that it was therefore more representative of the two segments of the fasteners market. The Commission explained that, since two of the six initially selected Union producers had ceased to cooperate, it was required, in order to ensure the representativeness of the remaining sample, including at the level of the product range, to select two new producers. Therefore, that fact cannot constitute evidence of a manifest error of assessment on the part of the Commission in the analysis of the existence of injury to the Union industry.

322 In any event, the applicants have not adduced any evidence enabling the Court to find that the Commission had manipulated the composition of the selected sample of the Union industry so as to make it less representative of the Union industry.

323 Consequently, the applicants' claim that the change in the sample of Union producers during the procedure demonstrates insufficient standard fasteners production by the Union industry as a whole must be rejected.

324 In the fourth place, as regards the applicants' argument relating to the low matches of PCNs, it should be recalled that PCNs are alphanumeric codes used in anti-dumping investigations to establish matches between product types. During an investigation, the undertakings contacted are invited to classify their products in categories corresponding to those codes. Specific product characteristics which were found to be relevant because they influenced the cost of production or the cost of sale are attached to those codes.

325 It is apparent from the case-law that, where the product concerned contains a wide range of goods, it may prove necessary to group them under categories which are more or less homogeneous in order to allow for a fair comparison between comparable products and thereby to avoid an incorrect calculation of the injury owing to unsuitable comparisons (judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraphs 550 and 551).

326 Accordingly, the injury analysis carried out using a PCN-by-PCN method is considered appropriate, in particular where complex products are involved, the models of which have different technical characteristics and prices which may vary significantly (see, to that effect, judgment of 22 September 2021, *Severstal* v *Commission*, T-753/16, not published, EU:T:2021:612, paragraph 72 and the case-law cited).

327 If they intend to call into question the approach taken by the Commission in that context, the applicants must demonstrate that the codification proposed by the Commission was manifestly inappropriate (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 552).

328 In the present case, the applicants do not make such an assertion. By contrast, they claim that the Commission did not establish matches for 138 out of 267 of the PCNs of the sampled producers.

329 In that regard, the Commission explained that, in the present case, each PCN actually had a series of six characteristics, which included whether it was standard or non-standard, but also other characteristics such as strength, diameter, length and coating. A product type is therefore composed of a combination of characteristics and there are only matches when all the characteristics of the product type produced by the Union industry match the product type exported. Accordingly, the applicants' claim based on a 24% match concerns only the corresponding transactions for the entire combination of characteristics. However, if the only factor taken into consideration was whether the fastener was standard or non-standard, there would be a 44% match, since 44% of sales in the sample would be sales of standard fasteners.

330 The Commission rightly contended that the fact that the Union industry also sold other product types which did not match the exports of the sampled Chinese exporting producers did not invalidate the finding of competition between the imported product and the product produced in the territory of the European Union, but was merely the consequence of the choice of the PCN method and the use of sampling, which is, moreover, not disputed in the present case (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 144).

331 In any event, it is clear from the correlation tables provided by the Commission that the percentage of a 90% match based on the PCN method has been established.

332 It follows that it is necessary to reject the applicants' objection concerning the existence of undercutting in respect of only a small proportion of EU sales, which amounts, in essence, to calling into question the Commission's ability to rely on representative samples (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 412).

333 That is borne out by the fact that the examination of the impact of the dumped imports on the Union industry prices, which is undertaken for the purposes of the determination of injury, entails comparing sales not of the same undertaking, but of a number of undertakings, namely the sampled exporting producers and the undertakings forming part of the Union industry included in the sample. A comparison of the sales of those undertakings will often be much more difficult in the context of the analysis of price undercutting than in the analysis of the dumping margin, since the range of product types sold by those different undertakings will tend to overlap only in part (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 195).

334 Such a risk, arising from the fact that certain types of goods cannot be taken into account in the analysis of price undercutting because of the difference in the range of products sold by those various undertakings, is even higher where PCNs are more detailed. Although more granular PCNs have the advantage of comparing product types with more common physical and technical characteristics, that advantage, conversely, has the disadvantage of increasing the possibility that certain product types sold by one or other of the companies concerned have no equivalent and cannot therefore be compared or taken into account in that analysis (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 196).

335 Accordingly, the Commission's exercise of its broad discretion in deciding on the method to be used for analysing price undercutting may have the inevitable consequence, as is the case of the PCN method, that certain product types cannot be compared and, therefore, are not taken into account in that analysis. The exercise of that discretion is, however, limited by the obligation, imposed on the Commission by Article 3(2) of the basic regulation, to carry out an objective examination of the effects of dumped imports on the Union industry prices (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 197).

336 It follows that the applicants have not adduced evidence of a manifest error of assessment on the part of the Commission in using the PCN method in order to demonstrate the existence of price undercutting causing injury to the Union industry.

337 In the fifth place, as regards the applicants' argument that the Commission should have analysed the injury separately for the three segments of screws, bolts and washers, it must be held that that complaint is not sufficiently substantiated, since the applicants' arguments are based essentially on the fact that they are very different products belonging to distinct segments. In addition to their claim on the difference between screws, bolts and washers, which call for a segmented injury analysis, the applicants have not adduced any evidence to establish that the Commission had made a manifest error of assessment in that regard.

338 Accordingly, since it is not supported by concrete evidence, such an assertion is not sufficient to call into question the Commission's definition of the product concerned by the investigation or the injury analysis for all of those fasteners.

339 Therefore, that complaint must be rejected.

340 It follows that the applicants' arguments concerning the Commission's alleged manifest error of assessment in refusing to analyse the possible injury to Chinese imports of fasteners by segments are unfounded.

341 Therefore, for all the foregoing reasons, the fifth plea must be rejected.

6. The sixth plea, alleging infringement of Article 3(2) and (3) and Article 9(4) of the basic regulation

342 By their sixth plea, the applicants claim that the small percentage of the sampled Union producers' sales for which the Commission found undercutting cannot be deemed to demonstrate to the requisite legal standard that the prices of the Union industry as a whole were being undercut. They submit, in that regard, that the Commission established the existence of undercutting for no more than 24% of the production of the sampled producers and that the small percentage of sales of the sampled producers cannot constitute 'positive evidence' within the meaning of Article 3(2) and (3) of the basic regulation, particularly since the Union sample used by the Commission represents only 9.5% of the Union industry's production. Accordingly, the Commission relied on the finding that 2.3% of the Union industry's sales had been undercut, which is not sufficient to establish price undercutting and, moreover, does not make it possible to have a sufficiently precise view of the level of the duty that would be adequate to remove the injury to the Union industry, in breach of Article 9(4) of the basic regulation.

343 The Commission disputes the applicants' arguments.

344 In that regard, it must be borne in mind that the basic regulation does not contain any definition of price undercutting and does not lay down any method for the calculation of price undercutting.

345 The same applies to the method for calculating the injury margin used to determine whether it is necessary to set, pursuant to Article 9(4) of the basic regulation, to which the applicants refer, an anti-dumping duty which is lower than the dumping margin and which is adequate to remove the injury to the Union industry (order of 17 February 2023, *Hansol Paper* v *Commission*, T-693/20, not published, EU:T:2023:83, paragraph 30).

346 The calculation of the price undercutting of imports is carried out, in accordance with Article 3(2) and (3) of the basic regulation, for the purpose of determining the existence of injury suffered by the Union industry by reason of those imports and it is used, more broadly, to assess that injury and to determine the injury margin, namely the injury elimination level (judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 176).

347 Furthermore, as the assessment of whether there has been price undercutting is an economically complex issue in respect of which the basic regulation does not lay down any particular methodology, the Commission enjoys a broad discretion in that regard (judgment of 12 May 2022, *Commission* v *Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 99).

348 The applicants claim to have been able to calculate the sales volumes of the sampled Union producers and to have inferred that price undercutting had been established for less than 24% of the Union producers' production. That percentage is contested by the Commission, which explained that, by comparing the corresponding sales of the sampled Union producers with the total sales of the Union producers, that percentage was 31.6%.

349 It is apparent from the file that the figure of 24% put forward by the applicants concerns only the corresponding transactions of the PCN method for the entire combination of characteristics between standard and non-standard fasteners, strength, diameter, length and coating. In accordance with the case-law cited in paragraph 287 above, the undercutting analysis must in principle be carried out only at the level of the like product.

350 Therefore, the figure of 24% on which the applicants rely is unfounded.

351 In any event, the applicants' claim that undercutting was established only for a very small percentage, namely 2.3%, of the Union producers is incorrect. First of all, it is based on the unfounded premiss that no Union producer other than the sampled producers manufactures matching product types, without the applicants having adduced any evidence in that regard.

352 Next, as is apparent from the case-law, the wording of Article 3(2) and (3) of the basic regulation neither indicates nor suggests that the analysis of the impact of dumped imports on the Union industry prices must, in all circumstances, take into account all of that industry's sales. On the contrary, it states that those provisions do not require the Commission to take into consideration all sales of the like product by the Union industry in the analysis of the impact on the Union industry prices of the dumped imports (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraphs 152 and 153).

353 Accordingly, the analysis carried out by the Commission was based on data which had to be regarded as representative, within the meaning of the basic regulation, with the result that, where price undercutting is found in respect of the sampled Union producers' sales, it must be regarded as representative for the entire Union industry (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 411).

354 It follows that the Commission was entitled, without making a manifest error of assessment, to base its findings as to the existence of injury to the Union industry on account of the dumping of the imports examined on a proportion of the sales of a representative sample of the Union industry.

355 Accordingly, the applicants' argument that the Commission based the injury analysis on a very low percentage of undercutting must be rejected.

356 It follows that the sixth plea is unfounded and must be rejected.

7. Seventh plea, alleging infringement of Article 3(2), (3) and (6) and Article 9(4) of the basic regulation

357 By their seventh plea, the applicants challenge the analysis of price effects and the determination of the injury margin, since the Commission did not carry out a fair price comparison. Accordingly, the applicants claim, in essence, that the Commission did not clarify at what level of trade the sales

of the sampled Union producers were made and they claim that the Commission compared the sales prices of the Chinese exporting producers to distributors with the Union producers' sales prices to end-users, in breach of Article 3(2) and (3) of the basic regulation. In so far as the contested regulation relies extensively on the level of price undercutting found to link the injury with the Chinese imports and therefore to conclude there is a causal link, the applicants also claim that there has been an infringement of Article 3(6) of that regulation.

358 The Commission contends that the applicants' arguments should be rejected.

359 As a preliminary point, it should be noted that the basic regulation does not impose any particular methodology on the Commission for the comparison of prices.

360 However, it is apparent from the case-law that, in order to guarantee the fairness of that comparison, prices must be compared at the same level of trade. It follows that a comparison of prices obtained at different levels of trade, that is to say, one which does not include all the costs relating to the level of trade which must be taken into account, would necessarily be misleading in its results and would not allow a correct assessment to be made of the injury to the Union industry. Such a fair comparison is a prerequisite of the lawfulness of the calculation of the injury to that industry (see judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 239 and the case-law cited).

361 Accordingly, first, the obligation to compare prices at the same level of trade applies irrespective of the number of cooperating exporting producers and, secondly, it applies irrespective of the volumes of related or unrelated sales in the context of the investigation in question (see, to that effect, judgment of 4 May 2022, *CRIA and CCCMC* v *Commission*, T-30/19 and T-72/19, EU:T:2022:266, paragraph 149).

362 Furthermore, it should be noted that the EU Courts have held that taking into account the prices of sales made to unrelated customers made it possible to determine the margin of any injury, in so far as those prices were decisive in the customer's choice to purchase the Union industry's products or the products of the Chinese exporting producers (see, to that effect, judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 251). Accordingly, in order to compare prices for the purpose of determining the injury margin, the Commission was required to take into account all the costs associated with a sale at a particular level of trade and, where appropriate, to make the necessary adjustments to the data at its disposal.

363 In the present case, the Commission explained in recital 364 of the contested regulation that it had determined price undercutting during the investigation period by comparing, on the one hand, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to 'ex-works' conditions, and, on the other hand, the corresponding weighted average prices per product type of the imports sold by the sampled cooperating Chinese producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for regular customs duties and post-importation costs. It is stated in recital 365 of the contested regulation that the comparison showed a weighted average undercutting margin of between 28 and 46% of the imports from the country concerned on the Union market.

364 In the first place, first of all, it should be noted that the parties agree that the three sampled exporting producers whose sales were used for the purposes of the comparison exported directly to independent distributors in the European Union.

365 Next, it must be noted that the Commission drew a distinction, for the purposes of that comparison, between standard and non-standard fasteners. For the entire product concerned, the Union producers' sales to unrelated customers represented 51% of total sales, whereas that figure was 84% for standard fasteners. The Commission explained that the distinction in the percentage of price comparability between standard and non-standard fasteners was a natural consequence of the PCN method.

366 Lastly, the Commission explained that the Union producers' sales to 'unrelated customers' which had been taken into account for the calculation of price undercutting, to which it refers in recital 364 of the contested regulation, concerned sales both to independent distributors and to end-users. In addition, the Commission stated at the hearing, without the applicants being able to contradict it, that the differences found between the Union producers' sale prices to independent distributors and to end-users were minimal, so that no adjustment was considered necessary.

367 In the second place, first, it should be noted that the applicants do not dispute the adjustments made by the Commission in order to ensure a fair price comparison between the sales of the sampled Chinese producers and the sales of the Union producers. Secondly, as the Commission stated at the hearing, no request for a quantifiable adjustment had been made by the applicants during the investigation.

368 The applicants disputed that allegation by the Commission at the hearing. In that regard, it is apparent, first, from the CCCME's comments on the final disclosure of 6 December 2021 and from recital 377 of the contested regulation that it had claimed that adjustments should have been made in order to take account of the costs of quality control and document management when calculating the undercutting margins. Accordingly, it claimed that the Union industry was subject to specific certification requirements that did not apply to Chinese exporting producers. However, that argument is in any event irrelevant since it is not raised by the applicants in their written pleadings.

369 Secondly, it is also apparent from recitals 376 and 381 of the contested regulation that the CCCME had claimed during the investigation that the majority of the Union industry's sales were made via related distributors and that the necessary adjustments should therefore have been made to take account of differences as regards the level of trade. However, it is apparent from recital 381 of the contested regulation that that claim was not based on any information included in the file, nor was it substantiated by any evidence. Therefore, the Commission again clarified that sales of the sampled Union producers which had been taken into consideration in the undercutting calculations had been made to unrelated customers in the European Union.

370 It is also apparent from EFDA's comments on the final disclosure, to which the applicants referred, that it maintained that the Commission should make adjustments in order to ensure that the prices must be compared at the same level of trade. However, those comments essentially contain claims that it was not easy to ascertain whether Union producers also sold predominantly to unrelated distributors. No evidence had been submitted in that regard, nor even any definite line of argument. Accordingly, in the absence of any quantitative evidence, the Commission did not call into question its findings as to the comparability of the sales taken into

account for the undercutting calculation. Therefore, since they were not based on specific evidence, the applicants' claims were not sufficient to call into question the Commission's analysis.

371 That said, in the context of the present action, the applicants have not alleged the need for any adjustment in order to ensure the comparability of Union prices with those of Chinese exporting producers for the purpose of assessing injury and causation. In their written pleadings, the applicants have disputed only the lack of clarity as regards the level of trade chosen for the Union producers for the purposes of the price undercutting analysis. Since that question has been clarified by the Commission, it must be held that, since the applicants have not established the existence of a manifest error of assessment on the part of the Commission in the analysis of price undercutting, that plea must be rejected.

8. The eighth plea, alleging infringement of Article 3(2) and (5) of the basic regulation

372 By their eighth plea, the applicants challenge the Commission's assessment of the macroeconomic indicators as incompatible with Article 3(2) and (5) of the basic regulation and with the Commission's procedural obligations.

373 In essence, first, the applicants dispute the representativeness of the companies whose data formed the basis of the Commission's conclusions and the fact that the Commission did not specify the exact number of companies in question. Although the non-confidential version of the macroeconomic questionnaire states that 44 companies submitted information, it is apparent from the Commission's reply to the CCCME's questions concerning additional information of 1 December 2021 that it referred to 34 companies which replied to the questionnaire.

374 Secondly, the applicants criticise the Commission for refusing to disclose the production or sales volumes of the companies that responded to the macroeconomic questionnaire. Furthermore, according to the applicants, the parties were deprived of any opportunity to comment meaningfully on those data, due to their late upload as well as the lack of an adequate non-confidential summary.

375 Thirdly, the applicants criticise the way in which the data in question were extrapolated to the Union industry as a whole.

376 The Commission contends that the applicants' arguments should be rejected.

377 Under Article 3(5) of the basic regulation, the examination of the impact of dumped imports on the Union industry concerned is to include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. That article contains a non-exhaustive list of the various factors which may be taken into consideration.

378 That provision thus gives those institutions discretion in the examination and evaluation of the various items of evidence (judgment of 10 September 2015, *Bricmate*, C-569/13, EU:C:2015:572, paragraph 54).

379 In the present case, according to recital 382 of the contested regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered, in accordance with Article 3(5) of the basic regulation.

380 In recitals 384 to 386 of the contested regulation, for the purpose of determining injury, the Commission distinguished between the macroeconomic and microeconomic injury indicators and assessed the former on the basis of data provided by the intervener and cross-checked with the data provided by the sampled Union producers. The data submitted were adjusted based on cross-checking with data provided by the sampled Union producers. The adjustments only took into account some inconsistencies in the data, but did not substantially change the data submitted by the intervener. According to recital 387 of the contested regulation, the Commission verified the accuracy of the data and therefore considered they were an appropriate basis for the determination of macroeconomic indicators.

381 In addition, the Commission explained in recital 385 of the contested regulation that it had protected the confidentiality of those data because they were provided at company level. Accordingly, the intervener estimated the total amount for macroeconomic data by extrapolating data based on the share of those producers in the total Union production and determined the total Union production on the basis of the information available in Prodcom.

382 It must first be stated that, in the present plea, the applicants do not dispute the relevance of the economic factors and indices used by the Commission in assessing the injury suffered by the Union industry.

383 As regards the applicants' first complaint, that the Commission failed to specify the number of companies concerned, the Commission explained that 44 companies had replied to the questionnaire and that the number 34 was merely a typing error in the correspondence it had received, which had been reproduced in the letter sent to the CCCME on 1 December 2021.

384 Since that clarification has now been made by the Commission and accepted by the applicants, the first complaint must be rejected.

385 By their second complaint, the applicants dispute the Commission's refusal to provide them with the production or sales volumes of the 44 companies that responded to the macroeconomic questionnaire.

386 In that regard, first of all, it is apparent from the letter sent to the CCCME on 1 December 2021 that the Commission informed the CCCME that the production or sales volume was not information available in the file.

387 The applicants rely on the non-confidential version of the responses to the macroeconomic questionnaire in order to claim that the Commission was aware of that information, since it appeared in cell B69 of Table '1 Production'. However, the Commission explained that that cell in the table indicated the share of all the companies which were members of the intervener and which had replied to the macroeconomic questionnaire on the total Union production estimated by the Commission. The Commission explained that, since the total Union production was an extrapolation of the data supplied by the cooperating Union producers, it did not have the exact share represented by the producers that replied to the macroeconomic questionnaire.

388 Next, it must also be borne in mind that, in order to ensure the cooperation of producers in the countries of the European Union which brought market knowledge, the Commission was required to restrict rights of access to that information and to preserve its confidential nature. That approach is confirmed by the case-law which held that the estimated production of the Union producers concerned, on which the Commission had relied in calculating the injury, could

correctly be regarded as confidential, since it was based on the intervener's market knowledge (see, to that effect, judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 507).

389 Furthermore, the nature of the questions put to the intervener and the non-confidential summary of the individual contributions of the Union producers were made available to interested parties. Although the applicants dispute the late disclosure of the non-confidential summary, it is apparent from the file that they still had the opportunity to submit comments, as a result of an extension of the time limit for submitting those comments, despite the constraints imposed by the basic regulation and the notice of initiation on the time limits for the investigation.

390 It follows that the second complaint must be rejected.

391 By their third complaint, the applicants challenge the extrapolation of the data provided by the intervener to the entire Union industry.

392 In that regard, first of all, it should be noted that the Commission used sampling for the present investigation in respect of both Union producers and Chinese producers of the product concerned. As is apparent from the considerations set out in paragraph 353 above, that argument must be rejected, in so far as it seeks to call into question the technique of sampling chosen by the Commission.

393 Next, it should be noted that in anti-dumping cases the Commission depends on the willingness of the parties to cooperate in providing it with the necessary information within the prescribed periods (judgment of 28 October 1999, *EFMA* v *Council*, T-210/95, EU:T:1999:273, paragraph 71). However, the macroeconomic factors make it possible to determine the injury suffered at the level of the industry as a whole and support the Commission's calculations in that regard.

394 It is apparent from the contested regulation that the complaint was supported by producers representing more than 58% of the total Union production of iron or steel fasteners during the period concerned. Therefore, the data shared by the intervener can be regarded as representative of the situation of the Union industry. Furthermore, the objective of obtaining as precise and detailed a view of the Union industry as possible could not be attained if the Commission were obliged to disregard, from all the data available, the microeconomic data on the ground that the latter were not available for all of the Union industry producers (judgment of 20 May 2015, *Yuanping Changyuan Chemicals* v *Council*, T-310/12, not published, EU:T:2015:295, paragraph 147).

395 Finally, the Commission explained that it had cross-checked the data shared by the intervener with those of the Union producers included in the sample. The Commission recalled that the extrapolation of data for the macroeconomic questionnaire of such a fragmented industry was a statistical exercise which, by definition, required inferring unknown values from trends found in the known data.

396 In that regard, it should be noted that the applicants' claim that the Commission did not duly verify the data provided by the intervener is speculative and is not supported by any concrete evidence which would call into question the checks carried out by the Commission when examining those data.

397 The applicants' third complaint and, consequently, the eighth plea in its entirety must be rejected.

9. The ninth plea, alleging infringement of the applicants' procedural rights

398 By their ninth plea, the applicants claim that their procedural rights were infringed during the administrative investigation. The present plea is divided into three parts, the first alleging excessive confidential treatment of the information in the file, the second alleging poor management of the non-confidential file by the Commission, and the third alleging failure by the Commission to disclose essential facts.

399 The Commission disputes the merits of that plea.

400 As a preliminary point, it is necessary to recall the principles and procedural guarantees that the Commission is 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, in particular where that information is confidential.

401 Article 19(1) of the basic regulation provides that any information which is by nature confidential is to be treated as such by the authorities, provided that there is good cause. Article 19(2) of that regulation provides that interested parties providing confidential information are to be required to provide non-confidential summaries thereof in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not capable of being summarised, but must state the reasons why it is not possible to provide such a summary.

402 Pursuant to Article 19(3) of the basic regulation, if it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. It also provides that requests for confidentiality are not to be arbitrarily rejected.

403 Under Article 6(5) of the basic regulation, the parties which have made themselves known within the prescribed period following publication of the notice initiating the investigation are to be heard if they have shown that they are in fact interested parties and that there are particular reasons why they should be heard.

404 Furthermore, Article 6(7) of the basic regulation provides that the Union producers, trade unions, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with Article 5(10) of that regulation, as well as the representatives of the exporting country, 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 its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and is used in the investigation. Such parties may respond to such information and their comments are to be taken into consideration, wherever they are sufficiently substantiated in the response.

405 According to Article 20(2) of the basic regulation, the complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Article 20(4) of that regulation states that final disclosure is to be given in writing as soon as possible and, normally, no later than one month prior to the initiation of the procedures set out in Article 9 of that regulation, taking into account, however, the need to protect confidential information. Where the Commission is not in a position to disclose certain facts or considerations at that time, they are to be disclosed as soon as possible thereafter.

406 It follows from the case-law that respect for the rights of the defence, which is of crucial importance in anti-dumping investigations, presupposes that the undertakings concerned should have been placed in a position during the administrative procedure in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (see judgment of 14 July 2021, *Interpipe Niko Tube and Interpipe Nizhnedneprovsky Tube Rolling Plant* v *Commission*, T-716/19, EU:T:2021:457, paragraph 209 and the case-law cited).

407 However, the alleged failure to take into account the applicants' observations does not constitute a breach of their rights of defence or their right to be heard. Although for those rights to be observed the EU institutions must enable the applicants to make their views known, those institutions cannot be required to accept them. In order for the applicants' 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. In any event, it must be noted that the Commission 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 (see, to that effect, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 126 and the case-law cited).

408 Infringement of the right of access to the investigation file can result in total or partial annulment of the contested regulation only if there is a chance, which may be slight, that disclosure of the documents in question might have caused the administrative procedure to have a different result if the undertaking concerned had been able to rely on them during that procedure (judgment of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP* v *Council*, T-249/06, EU:T:2009:62, paragraph 134).

409 That said, procedural rights must be granted lawfully to a person in order for that person to be able to be regarded as individually concerned by those rights and to be entitled to bring an action for annulment against a measure adopted in breach of those rights (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 52).

410 Moreover, those rights require the active participation by those parties in the proceedings in question, which must take the form, at the very least, of the submission of a written request within a stated deadline (see judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 214 and the case-law cited). The act, for the interested parties, of

making themselves known and providing relevant information in order to establish a representative sample of those parties, or even being included for that purpose, constitutes a form of participation in the anti-dumping proceeding. However, that participation does not confer on those parties the procedural guarantees listed in Article 6(5) and (7) and in Article 20(1) and (2) of the basic regulation. The grant of those guarantees is subject to certain requirements which involve participation specific to that procedure by those same parties, in the form of demonstrating an interest and written requests. Participating in sampling, as provided for in Article 17 of the basic regulation, does not constitute such specific participation (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 216).

411 Furthermore, it must be borne in mind that the protection of business secrets is a general principle of EU 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, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 165 and the case-law cited). Accordingly, in order to reconcile the principle of respect for the rights of defence of the parties concerned and the principle of the protection of business secrets, in performing their duty to provide information, the EU institutions must act with all due diligence by seeking to provide the undertakings concerned, as far as is compatible with the obligation not to disclose business secrets, with information relevant to the defence of their interests, choosing, if necessary on their own initiative, the appropriate means of providing such information (see judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 141 and the case-law cited).

412 Accordingly, when it is necessary for them to reconcile the requirements of confidentiality with the right to information for the interested parties, the institutions concerned must consider, in the light of that information, the particular situation of the interested party and, in particular, the position that that interested party occupies on the market under consideration in relation to the position of the supplier of that information (see judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, EU:T:2021:278, paragraph 469 and the case-law cited).

413 However, the objective of Article 19 of the basic regulation is to protect not only the business secrets but also the defence rights of the other parties to the anti-dumping proceeding. In that context, use by the Commission of information of which no non-confidential summary was supplied cannot be relied upon by parties to an anti-dumping proceeding as a ground for annulment of an anti-dumping measure unless they are able to demonstrate that use of that information constituted an infringement of their rights of defence (see judgment of 15 October 2020, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, T-307/18, not published, EU:T:2020:487, paragraph 82 and the case-law cited).

414 It is also apparent from the case-law that the sufficiency of the information provided by the Commission must be assessed in relation to how specific the request for information was (see judgment of 15 October 2020, *Zhejiang Jiuli Hi-Tech Metals* v *Commission*, T-307/18, not published, EU:T:2020:487, paragraph 86 and the case-law cited).

415 The ninth plea put forward by the applicants must be examined in the light of those principles.

(a) Admissibility of the ninth plea

416 In the first place, it should be borne in mind that the action is brought by several applicants, which are affected differently by the contested regulation. The applicants are the 3 sampled Chinese exporting producers and the 36 non-sampled cooperating exporting producers whose names are listed in Annex 1 to the contested regulation. As is apparent from paragraph 37 above, 31 of those exporting producers are represented, in the present action, by the CCCME.

417 In the second place, as is apparent from paragraphs 24 and 37 above, the arguments raised by the CCCME in its own name are inadmissible in the context of the present action. The applicants also acknowledged that the arguments of the CCCME, in their written reply of 15 January 2024 to the questions put by the Court and at the hearing on 7 February 2024, were inadmissible.

418 In the third place, it should be noted that, in the judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission* (C-478/21 P, EU:C:2023:685), the Court of Justice confirmed the inadmissibility of the allegation of a breach of the rights of defence of the members of the CCCME and the other legal persons whose names appeared in the annex to the regulation, in that they had not made specific requests to be provided with information essential to the defence of their interests. In those proceedings, the CCCME represented 'the interest of the Chinese cast iron industry as a whole' and its members had not been identified during the administrative procedure.

419 In the present case, the situation is different, since the CCCME participated in the investigation as an association representing the interests of its members and provided the Commission with evidence that it had been empowered to do so by its members.

420 It should be noted, first, that, in point 5.6 of the notice of initiation of the investigation that led to the adoption of the contested regulation, the Commission stated that, in order to participate in the investigation, interested parties, such as exporting producers, Union producers, importers and their representative associations, users or their representative associations, trade unions and representative consumer organisations, had to first demonstrate that there was an objective link between their activities and the product under investigation and that access to the file open for inspection by interested parties would be made via the Tron.tdi platform.

421 The applicants maintained, in their replies to the questions put by the General Court, that all the undertakings and members which had complied with that step had automatically acquired the status of interested party.

422 In that regard, the applicants claimed that, in the notice of initiation, the Commission had invited all Chinese exporters of the product concerned to participate in the investigation, by submitting a form specifying that all producers which participated in accordance with the requirements of that notice of initiation would be regarded as interested parties if there was an objective link between their activities and the product under investigation. Therefore, according to the applicants, all exporting producers which participated in the proceedings via the Tron.tdi platform were interested parties which had acquired procedural rights. Accordingly, since the wording of the notice of initiation invites all interested parties to participate in the investigation and since the procedure for the exchange of information between the Commission and the interested parties are different from those of the case which gave rise to the judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission* (C-478/21 P, EU:C:2023:685), in so far as it is carried out exclusively via the Tron.tdi

platform, the present case can be regarded as different to the case which gave rise to the abovementioned judgment. The applicants therefore consider that all three parts of the ninth plea are admissible.

423 First, with regard to the first part of the ninth plea, alleging infringement of Article 19(1) to (3) of the basic regulation, the applicants claim that, at any rate, those provisions impose objective obligations on the Commission, which should ensure that confidential treatment of the relevant data is limited to what is strictly necessary. Furthermore, the applicants claim that, in the case that gave rise to the judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission* (C-478/21 P, EU:C:2023:685), none of the pleas concerned the infringement of Article 19 of the basic regulation. Therefore, the applicants claim that that part is admissible in so far as it is raised both by the individual exporting producers and by the CCCME on behalf of its members.

424 Next, the applicants claim that the second part, by which they allege mismanagement of the confidential file in breach of Article 6(7) and Article 19(1) to (3) of the basic regulation and the rights of the defence, is also admissible.

425 Finally, the applicants claim that individual exporting producers and members of the CCCME expressly requested access to the file and to the final disclosure by registering on the Tron.tdi platform and that, by failing to disclose essential facts to them, the Commission infringed Article 20(2) and (4) of the basic regulation.

426 In the alternative, in the event that the Court does not accept the admissibility of certain complaints raised in the ninth plea by the CCCME on behalf of its members, the applicants claim that the ninth plea is admissible as regards the arguments raised by the individual exporting producers that the CCCME represented during the investigation.

427 In that regard, the applicants supplied the powers of attorney empowering the CCCME to represent several companies, which had been notified to the Commission during the investigation. As is apparent from paragraph 5 above, the CCCME could be considered to be an interested party to the administrative procedure only to the extent it was empowered by those specific fasteners producers to represent them.

428 It is apparent from the powers of attorney sent to the Court by the applicants that the CCCME did not represent before the Commission all the members concerned on whose behalf it brought the present action, that is to say, that the exporting producers which the CCCME represented before the Commission were in part different to those which it represents before the Court in the present action.

429 First, it is apparent from the powers of attorney provided to the Court by the applicants that the CCCME had been empowered to represent the three sampled exporting producers in the administrative procedure. However, they have not adduced evidence that they were members of that association.

430 Secondly, the CCCME represented nine companies which are non-sampled cooperating exporting producers listed in Annex 1 to the contested regulation. They are members of the CCCME and are also represented by the CCCME in the present action.

431 Thirdly, the CCCME also represented before the Commission eight other companies which are listed in Annex 1 to the contested regulation and are not parties to the present action. Those companies have not adduced evidence of being members of the CCCME either, but they are not, in any event, applicants in the present action.

432 Fourthly, the CCCME also represented before the Commission two companies the names of which do not appear in the contested regulation and which are not represented by the CCCME in the present action either.

433 Therefore, as regards the admissibility of the claims raised by the CCCME before the Court on behalf of its members, of the 31 relevant members of the CCCME on whose behalf it brought the present action, it represented before the Commission only 9 non-sampled Chinese exporting producers. As the parties confirmed on several occasions at the hearing, the Commission did not verify whether the companies granting those powers of attorney were members of the CCCME. No additional evidence was submitted by the parties in that regard. The applicants were unable to confirm with certainty whether all the companies granting powers of attorney before the Commission were members of the CCCME. The applicants also claimed that the power of attorney alone should be sufficient for the purpose of representing the interests of those companies before the Commission.

434 First, as is apparent from paragraph 26 above, an association such as the CCCME is entitled to represent exporting producers before the EU Courts only if it provides evidence that those exporting producers are among its members.

435 Secondly, the Court of Justice has held that even if the members of the CCCME and the other legal persons whose names are listed in the annex had participated in the sampling undertaken during the anti-dumping procedure in question, those members and those other persons were precluded from arguing that there had been an infringement of their procedural guarantees due to the Commission having failed to disclose to them information essential for the defence of their interests, since they had not made requests to be provided with that information during that procedure (see, to that effect, judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 217).

436 Procedural rights are rights specific to the person on whom they are conferred and are of a subjective nature, such that it is the concerned parties themselves that must be able effectively to exercise those rights, irrespective of the nature of the proceedings to which they are subject. An association's ability to exercise the procedural rights of its members cannot result in the circumvention of the conditions with which, under the case-law, the undertakings in question ought to have complied if they had wished to exercise their procedural rights themselves (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraphs 223 and 224).

437 It follows from those considerations that an exporting producer which is a member of the CCCME cannot merely rely on the CCCME's claims if it did not expressly assert its rights of defence during the administrative investigation. Although registering on the Tron.tdi platform allowed individual exporting producers to receive information in a timely manner and to follow

the progress of the administrative investigation, in the absence of an explicit request for more information, the exporting producers in question could not claim to exercise procedural rights specific to them.

438 In that regard, it should be recalled that the right of access to non-confidential information pursuant to Article 6(7) of the basic regulation is linked to the status of an interested party which has made itself known in accordance with Article 5(10) of that regulation (judgment of 27 January 2000, *BEUC* v *Commission*, T-256/97, EU:T:2000:21, paragraph 32) and that the Commission must decide on a case-by-case basis whether a party should be considered an interested party in the light of the particular circumstances of each case (judgment of 27 January 2000, *BEUC* v *Commission*, T-256/97, EU:T:2000:21, paragraph 76).

439 Moreover, it is clear from the 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 entitled to complain before the EU Courts 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 (see judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 93 and the case-law cited). It follows that those claims must be made by the individual exporting producers themselves, which cannot merely rely on the CCCME's claims.

440 The difference in the present proceedings, on which the applicants rely, in so far as the Commission's communication with the interested parties took place in a different way, namely by means of the Tron.tdi platform, which enabled the interested parties to submit information and observations and to follow the investigation, is not capable of calling into question that finding as regards the procedural requirements attached to the parties' rights of defence. As the Commission rightly argued at the hearing, the Tron.tdi platform is intended solely to simplify communication with the parties and to facilitate correspondence. In any event, the status of interested party under the basic regulation and the rights attached thereto cannot depend on the Commission's means of communication with those parties.

441 Consequently, the complaints raised in the ninth plea are inadmissible in so far as they concern non-sampled exporting producers which did not make specific requests for disclosure of additional information for the exercise of their procedural rights, whether they are raised by the CCCME on behalf of its members or by the five non-sampled exporting producers.

442 In the fourth place, as regards the three sampled Chinese exporting producers, it is apparent from the case-law cited in paragraph 410 above that participation in sampling does not, in itself, grant the exporting producers concerned specific procedural rights in the absence of requests to be provided with information which they consider essential for the defence of their interests.

443 Consequently, it must be concluded in the light of the foregoing considerations that the ninth plea can be admissible only in so far as it is raised by the individual exporting producers alleging infringement of their rights of defence which demonstrated during the administrative procedure that they wished to exercise those rights. In order to assess the admissibility of the complaints raised, it is therefore necessary to examine, for each part of the plea, whether the undertakings in question complied with the conditions enabling them effectively to exercise their rights of defence.

(b) Exercise of the applicants' procedural rights

(1) The first part

444 By the first part of the ninth plea, the applicants claim that there has been an infringement of Article 19(1) to (3) of the basic regulation and of their rights of defence, in so far as all the documents submitted by the intervener or by the sampled Union producers were treated as confidential without due cause, or the non-confidential summary of the documents was severely deficient, which deprived the interested parties of the opportunity to comment on or verify the accuracy of the evidence contained therein. The applicants dispute, in particular, the confidential treatment granted (i) to the macroeconomic questionnaire, (ii) to the non-confidential versions of the replies to the questionnaire of the sampled Union producers, and (iii) to the intervener's response to the Commission's request for additional information concerning the macroeconomic indicators.

445 According to the applicants, the infringement of their procedural rights is aggravated by the anonymous treatment granted to all Union producers which provided information and by the repeated refusals to provide any information on the product range of those companies and on the representative nature of their sales volume.

446 In that regard, with respect, first, to the confidentiality of the responses to the macroeconomic questionnaire, it is apparent from the contested regulation that only EFDA and the CCCME disputed the confidentiality of that information during the administrative procedure. The same is true of the challenge to the confidentiality of the replies to the questions put by the sampled Union producers and the confidentiality of the intervener's response to the Commission's request for additional information concerning the macroeconomic indicators.

447 First, EFDA is not an applicant and, secondly, in accordance with the conclusion in paragraph 434 above, the CCCME cannot rely on the infringement of its members' procedural rights if they have not asserted those rights before the Commission in the form of written requests.

448 Moreover, as regards the names of the companies which replied to the macroeconomic questionnaire, it is apparent from recitals 21 and 396 of the contested regulation that the only interested parties which disputed the anonymity of the Union producers were the CCCME, EFDA and the People's Republic of China. Since none of the exporting producers among the applicants requested further information from the Commission as to the identity of the Union producers, as concluded in paragraph 441 above, that complaint must be rejected.

449 It follows that the first part of the ninth plea is inadmissible and must be rejected.

(2) The second part

450 The applicants challenge the Commission's management of the non-confidential file, which in their view infringed Article 6(7) and Article 19(1) to (3) of the basic regulation and their rights of defence, since the interested parties did not have full and timely access to the non-confidential file during the investigation.

451 First, that deprived interested parties of the opportunity to follow as closely as possible significant developments in the investigation, such as the Commission's decision to modify the sample of Union producers, or to submit comments on them. Furthermore, interested parties were not informed of the *ex parte* communications between the Commission and the intervener.

452 Secondly, the applicants claim that a number of files were deleted from the non-confidential file.

453 Thirdly, the applicants suggest that there are various other files that were never uploaded to the non-confidential file.

454 As regards the Commission's management of the non-confidential file, in the first place, it should be noted that it follows from the wording of Article 6(7) of the basic regulation, set out in paragraph 404 above, that the interested parties in an anti-dumping investigation procedure, such as the applicants, are not able to raise a complaint regarding the absence of a document in the non-confidential file if they have not submitted a written request to acquaint themselves with that document (see, to that effect, judgment of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 109).

455 It is apparent from recitals 22 and 24 of the contested regulation that the alleged insufficiency of the non-confidential file was challenged during the administrative procedure only by the CCCME and EFDA following the final disclosure.

456 In the second place, as regards the communication between the Commission and the intervener, it is apparent from recital 47 of the contested regulation that only EFDA and the CCCME had requested its disclosure.

457 In the third place, as regards the alleged deletion of a number of documents from the non-confidential file, only the CCCME requested further information from the Commission in that regard.

458 Therefore, in the light of the identity of the interested parties that made claims during the administrative procedure and the conclusion in paragraph 441 above, it must be held that this part of the plea is also inadmissible.

(3) The third part

459 The applicants challenge the Commission's refusal to make available to interested parties information that the Commission relied on for its definitive findings, in breach of Article 20(2) and (4) of the basic regulation and of the rights of the defence. The information provided by the sampled Union producers and the macroeconomic questionnaire were the two key sources that the Commission relied on for its findings on injury and causation.

460 In that regard, it is apparent from the contested regulation that none of the individual exporting producers among the applicants requested disclosure of the precise information provided by the Union producers. It follows that the applicants' claims in the present part of the plea are inadmissible and, with them, the ninth plea in its entirety, which must be rejected.

461 In the light of the foregoing, the action must be dismissed in its entirety.

IV. Costs

462 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission and by the intervener, in accordance with the forms of order sought by them.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Dismisses the action;**

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

Schalin Steinfatt Kukovec

Delivered in open court in Luxembourg on 2 October 2024.

V. Di Bucci
Registrar

S. Papasavvas
President