Reports of Cases

OPINION OF ADVOCATE GENERAL
NORKUS
delivered on 20 November 2025 [1]

**Cases C-498/24 P and C-499/24 P**

**Çolakoğlu Metalurji AŞ,**
**Çolakoğlu Dış Ticaret AŞ**
**v**
**European Commission (C-498/24 P)**
**and**
**Ereğli Demir ve Çelik Fabrikaları TAŞ,**
**İskenderun Demir ve Çelik AŞ,**
**Erdemir Çelik Servis Merkezi Sanayi ve Ticaret AŞ**
**v**

**European Commission (C-499/24 P)**

(Appeals – Dumping – Implementing Regulation (EU) 2021/1100 – Imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Türkiye – Definitive anti-dumping duties – Regulation (EU) 2016/1036 – Import duties – Calculation of the dumping margin – Article 2(10)(j) – Foreign currency risk hedging contract)

## I. Introduction

1. The present cases are two appeals brought by Turkish undertakings against the judgments handed down by the General Court of the European Union in Cases T-629/21 [2] and T-630/21 [3] ('the judgments under appeal'), which concerned anti-dumping duties. The appellants claim that the General Court made a series of errors of law in the course of its examination of their actions for the annulment of Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in [Türkiye] ('the contested regulation'). [4]

[1] Original language: French.

[2] Judgment of 8 May 2024 in *Ereğli Demir ve Çelik Fabrikaları and Others* v *Commission* (T-629/21, 'the judgment under appeal in Case C-499/24 P', EU:T:2024:303).

[3] Judgment of 8 May 2024 in *Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret* v *Commission* (T-630/21, 'the judgment under appeal in Case C-498/24 P', EU:T:2024:304).

[4] OJ 2021 L 238, p. 32.

2. As requested by the Court of Justice, this Opinion will focus on the ground of appeal that is common to both cases, which essentially raises a question regarding the interpretation of Article 2(10)(j) 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 ('the basic regulation').[5] More specifically, it is necessary to determine whether, for the purposes of establishing the existence of dumping, the European Commission is bound to take into consideration contracts for hedging foreign currency risk concluded between undertakings engaged in international trade or whether it may, on the contrary, continue to apply its own methodology for currency conversion.

3. This issue is of particular importance in international trade, where transactions are generally carried out in different currencies. It is not uncommon for economic operators to conclude hedging contracts in order to protect themselves against significant exchange-rate fluctuations that can distort the actual price of the goods concerned. Nevertheless, it must be borne in mind that the European Union, as a member in its own right of the multilateral international trading system, has a legitimate interest in ensuring that the real price of such goods is determined, so as to ensure the effectiveness of its anti-dumping policy. In this context, it will fall to the Court to determine whether such contracts concluded between private operators are liable to influence the performance of the tasks entrusted by EU law to the Commission in the implementation of the basic regulation.

## II. Legal framework

### *A. World Trade Organization law*

4. By Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994),[6] the Council of the European Union approved the Agreement establishing the World Trade Organization (WTO), signed in Marrakesh on 15 April 1994, as well as the agreements in Annexes 1, 2 and 3 to that agreement, which include the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) ('the Anti-Dumping Agreement).[7]

5. Article 2 of the Anti-Dumping Agreement, entitled 'Determination of Dumping', provides:

'…

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. … In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price

[5] OJ 2016 L 176, p 21.

[6] OJ 1994 L 336, p. 1.

[7] OJ 1994 L 336, p. 103.

comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale …, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. …'

### *B. European Union law*

#### *1. The basic regulation*

6. Article 1 of the basic regulation provides:

'1. An anti-dumping duty may be imposed on any dumped product whose release for free circulation in the Union causes injury.

2. A product is to be considered as being dumped if its export price to the Union is less than a comparable price for a like product, in the ordinary course of trade, as established for the exporting country.

…'

7. Article 2 of that regulation, entitled 'Determination of dumping', provides:

'…

C. COMPARISON

10. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis, due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price

comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are listed as follows:

…

(j) Currency conversions

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that, when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if those more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

…'

*2. The contested regulation*

8. Recitals 96 to 101 of the contested regulation state:

'(96) One exporting producer and two related exporting producers contested the provisional rejection of a currency conversion adjustment, which they claimed on account of hedging contracts related to their sales to the Union. The claim concerns the foreign exchange rate to be used when converting the sales value in foreign currencies (euro in this case) into the currency of the exporting country (Turkish lira or TRL). The companies invoked the provisions of Article 2(10)(j) of the basic regulation that "… when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used".

(97) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims stating that hedging is an internal process, and the companies cannot argue that without hedging the sales price would have been higher because it is not evident that the customers would have paid a higher price.

(98) The Commission noted that Article 2(10)(j) of the basic regulation is applicable in situations where a currency conversion is necessary for the purpose of comparison between the normal value and the export price. It is the standing practice to perform such comparison in the currency of the country concerned. Therefore, in the present case the Commission used the Turkish lira as the currency of comparison. Both companies claiming the currency conversion adjustment hedged those export sales transactions which were denominated in euro. The currency conversion risk stemming from those transactions was in all cases hedged against the US dollar. Since the comparison was done in Turkish lira and all transactions in euro were converted to Turkish lira directly without an intermediate conversion to US dollar[s], just like all domestic sales were taken in Turkish lira, the Commission considered that the conversion rate between euro and US dollar agreed in the hedging contracts was irrelevant for the purpose of comparison. Consequently, the Commission rejected the claim of the three exporting producers.

(99) Following final disclosure, the three exporting producers repeated their claims for a currency conversion adjustment on sales to the Union, to account for hedging operations of the currency risk stemming from transactions in euro. They repeated the argument that, regardless of the currency used for price comparison, the gain or loss resulting from the conversion rate at the moment of hedging does have a significant impact on the price comparison. In particular, they provided a theoretical example of a domestic sales order with a unit price in USD agreed on a particular day and an export sales order with the same unit price in EUR equivalent agreed on the same day. The companies' calculation showed that when those sales orders are delivered on the same day and the invoiced value is converted directly from the currency of the invoice to TRY, the comparison would result in dumping although the price agreed in the two sales orders was the same on the date of the sales orders. They then claimed that an adjustment for hedging should be done either on the basis of Article 2(10)(j) or Article 2(10)(k) of the basic regulation.

(100) The Commission analysed the claim, in particular the theoretical example, which allegedly proved that the exchange rate in the hedging contracts should be taken into account for the purpose of price comparison. First, the Commission noted that although the example was mathematically correct, it did not reflect the reality of either the companies' business activities or the dumping margin calculations. In particular, the example implied that the dumping margin is calculated by comparison of two individual transactions carried out at the same time, which is not the case as the Commission compares the average normal value and the average export price as determined during the IP for each product type. Second, the example assumed that all sales orders concluded on a certain day are fulfilled at a similar time, which was shown to be incorrect. In fact, one of the exporting producers made a separate claim that the lead time between finalising the production and the pick-up of the goods by the customer was much longer on the domestic market as compared to the export sales. Therefore, the example given by the companies was found to be inaccurate for the situation at hand. Furthermore, none of the companies provided evidence that their export sales transactions denominated in EUR were originally negotiated on their USD price. On the contrary, sales contracts and/or sales orders of those export sales transactions were directly denominated in EUR without any reference to USD. A conversion from EUR to TRY via USD was therefore considered to be irrelevant. Consequently, the Commission rejected the claimed adjustment on the basis of Article 2(10)(j) of the basic regulation.

(101) In addition, although the companies claimed to be able to link the export transactions to individual hedging operations, these could, and in many cases were, adjusted after the sale depending on how the financial outlook developed and in order to maximise the companies' return. The Commission therefore did not consider that the hedge could be directly linked to the export sale involved, and that taking into account the forward sales price would have risked distorting the actual export price.'

## III. The background to the disputes, the procedures before the General Court and the judgments under appeal

### *A. Case C-498/24 P (Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret v Commission)*

#### *1. Background to the dispute*

9. The background to the dispute, set out in paragraphs 2 to 10 of the judgment under appeal in Case C-498/24 P, may be summarised as follows.

10. Çolakoğlu Metalurji AŞ ('CM') is a Turkish exporting producer of hot-rolled flat products, and Çolakoğlu Dış Ticaret AŞ ('ÇOTAŞ') is a related Turkish trading and export company.

11. On 14 May 2020, the Commission initiated an anti-dumping investigation with regard to imports into the European Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('the product concerned') originating in Türkiye.

12. The investigation covered the period from 1 January to 31 December 2019 ('the investigation period'). The examination of trends relevant for the purpose of determining injury covered the period from 1 January 2016 to the end of the investigation period.

13. On 6 January 2021, the Commission adopted Implementing Regulation (EU) 2021/9 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in [Türkiye] ('the provisional regulation'), [8] making the appellants' exports of the product concerned to the European Union subject to a provisional anti-dumping duty of 7.6%.

14. On 5 July 2021, the Commission adopted the contested regulation, imposing an anti-dumping duty of 7.3% on the imports into the European Union of the product concerned manufactured by the appellants.

#### *2. Procedure before the General Court and the judgment under appeal in Case C-498/24 P*

15. By an application lodged at the Registry of the General Court on 29 September 2021, CM and ÇOTAŞ brought an action for the annulment of the contested regulation.

16. In support of their action, the appellants put forward four pleas in law. The first plea alleged infringement of Article 2(10)(i) of the basic regulation. The second plea alleged infringement of Article 2(10)(b) of the basic regulation on account of the requirement that import duties be paid in order for an adjustment to be made. The third plea alleged a manifest error of assessment relating to the refusal to carry out a quarterly calculation of the dumping margin and alleged a consequent infringement of Article 2(10) of the basic regulation. The fourth plea alleged infringement of Article 2(10)(j) of the basic regulation due to a refusal to make an adjustment for hedging gains and losses.

[8] OJ 2021 L 3, p. 4.

17. By the judgment under appeal in Case C-498/24 P, the General Court dismissed those four pleas in law and, consequently, the action in its entirety.

### *B. Case C-499/24 (Ereğli Demir ve Çelik Fabrikaları and Others v Commission)*

#### *1. Background to the dispute*

18. The background to the dispute, set out in paragraphs 2 to 10 of the judgment under appeal in Case C-499/24 P, may be summarised as follows.

19. The appellants are companies incorporated under Turkish law. Ereğli Demir ve Çelik Fabrikaları TAŞ and İskenderun Demir ve Çelik AŞ are active in the production and sale of hot-rolled flat products. Erdemir Çelik Servis Merkezi Sanayi ve Ticaret AŞ is their related trader.

20. On 14 May 2020, the Commission initiated an anti-dumping investigation with regard to imports into the European Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Türkiye ('the investigation').

21. The investigation covered the period from 1 January to 31 December 2019. The examination of trends relevant for the purpose of determining injury covered the period from 1 January 2016 to the end of the investigation period. The appellants submitted their written observations in the course of the investigation.

22. On 6 January 2021, the Commission adopted the provisional regulation, making the appellants' exports of the product concerned to the European Union subject to a provisional anti-dumping duty of 5.4%.

23. On 5 July 2021, the Commission adopted the contested regulation, imposing an anti-dumping duty of 5% on the imports into the European Union of the product concerned manufactured by the appellants.

#### *2. Procedure before the General Court and the judgment under appeal in Case C-499/24 P*

24. By an application lodged at the Registry of the General Court on 29 September 2021, the appellants brought an action for the annulment of the contested regulation.

25. In support of their action, the appellants put forward four pleas in law. The first plea alleged infringement of the first three sentences and the fifth sentence of Article 2(10) and of Article 2(10)(j) of the basic regulation and infringement of Article 2(5) of that regulation. The second plea alleged that the Commission's rejection of an adjustment for hedging gains and losses infringed Article 2(10)(j) of the basic regulation, Article 2.4 of the Anti-Dumping Agreement and the principle of good administration. By their third plea, the appellants claimed that Article 2(5) and (6) of the basic regulation and the first three sentences of Article 2(10) thereof were infringed. Lastly, the fourth plea alleged infringement of Article 2(6) of the basic regulation and of Article 2.2.2 of the Anti-Dumping Agreement.

26. By the judgment under appeal in Case C-499/24 P, the General Court dismissed those four pleas in law and, consequently, the action in its entirety.

### *C. The procedures before the Court of Justice and the forms of order sought*

27. The appeals in Cases C-498/24 P and C-499/24 P were lodged on 17 July 2024 and were entered in the register at the Registry of the Court of Justice the same day.

28. By their respective appeals, the appellants claim that the Court should:

– set aside the judgments under appeal, annul the contested regulation and order the Commission to pay the costs incurred by them in the appeal as well as those relating to the proceedings before the General Court, and

– in the alternative, refer the cases back to the General Court and reserve the costs of the proceedings before the General Court and on appeal.

29. The Commission contends that the Court should:

– dismiss the appeals, and

– order the appellants to pay the costs of the proceedings.

30. In accordance with Article 76(2) of the Rules of Procedure, the Court decided not to hold a hearing.

## IV. Legal analysis

### *A. Preliminary remarks*

#### *1. The European Union in the multilateral trading system*

31. The WTO ensures compliance with a multilateral trading system based on binding rules. The European Union, as a regional organisation having its own legal personality, enjoys a particular status within the WTO, where it sits as a member in its own right, alongside its Member States. [9] Having regard to the exclusive competence that Article 3(1)(e) TFEU confers on it in the sphere of the common commercial policy, the European Union has assumed the international obligations of its Member States, in particular those arising under WTO agreements. The Anti-Dumping Agreement, an integral part of that corpus, governs both the substantive conditions and the procedural rules pertaining to the adoption, the implementation and the continuation of anti-dumping measures. Non-compliance with those rules exposes any measures adopted to the risk of being challenged under the WTO dispute settlement mechanism. [10]

32. In order to transpose those international obligations into the legal system of the European Union, the EU legislature adopted, on the basis of Article 207(2) TFEU, the basic regulation on trade defence. That legislation defines the conditions under which the Commission has power to

[9] See the Opinion of Advocate General Pikamäe in *Commission* v *Hansol Paper* (C-260/20 P, EU:C:2022:13, point 71).

[10] See Dispute DS591, concerning a complaint by the European Union regarding anti-dumping duties imposed by Colombia on imports of frozen fries from Germany, Belgium and the Netherlands. The European Union was successful before the panel (in October 2022) and then on appeal (in December 2022), on both occasions Colombia being found to have infringed various provisions of the Anti-Dumping Agreement.

take action against unfair commercial practices on the part of exporters established in third countries that are harmful to industry in the European Union. In that context, the Commission performs the duties of an investigating authority and a decision-making authority, as is apparent from Article 6 and Article 9(4) of the basic regulation. Nevertheless, in accordance with the fundamental principle of the rule of law, any decision producing legal effects is subject to effective judicial review. Thus, acts of the Commission in anti-dumping matters may be the subject of an action for annulment before the General Court, with the further possibility of review by the Court in the event of an appeal. The present cases illustrate this review of legality, the aim of which is to ensure that acts of the Commission comply with EU rules and with international obligations arising under the Anti-Dumping Agreement. [11]

33. The fourth ground of appeal in Case C-498/24 P and the sixth ground of appeal in Case C-499/24 P are *identical* in that they essentially call into question the interpretation of a provision, namely Article 2(10)(j) of the basic regulation, and the Commission's application of that provision when it determined the dumping margin. In this context, the appellants complain that the General Court adopted the Commission's legal position regarding the interpretation of that provision, meanwhile disregarding the importance of hedging contracts in international trade.

34. Given that the appellants' arguments concern only isolated aspects of the legislation at issue, and that it is somewhat unclear what their intentions behind those arguments are, I shall, for the sake of clarity, begin with *a presentation of that legislation*, so as better to explain what is at issue in the present cases. To that end, I shall in particular explain how a dumping margin is calculated in practice [12] and what approach is taken with regard to transactions involving different currencies. [13] I shall also explain the function of the hedging contracts to which the appellants refer and address the question whether the Commission is bound to take such contracts concluded between private parties into consideration in its calculations. [14] Those preliminary explanations will allow for a better understanding of the merits of the parties' arguments. It is in the last part of this Opinion that the common ground of appeal will be examined in depth. [15]

### *2. The rules governing the determination of the dumping margin*

35. In accordance with Article 1(2) of the basic regulation, a product is to be considered as being dumped if its export price to the European Union is less than a comparable price for a like product, in the ordinary course of trade, as established for the exporting country. Dumping is thus determined by comparing two values. The first of those two values, which is the price of the product on the domestic market in a given third country, is called the 'normal value'. The second is the 'export price' of the product concerned to the European Union. The result obtained is the 'dumping margin', defined in Article 2(12) of the basic regulation as being 'the amount by which the normal value exceeds the export price'.

[11] In so doing, the European Union also discharges its obligations under agreements, since it is required, under Article 13 of the Anti-Dumping Agreement and Article X:3(b) of the General Agreement on Tariffs and Trade, to maintain judicial, arbitral or administrative tribunals or procedures so as to ensure judicial review of adopted anti-dumping measures.

[12] See point 35 et seq. of this Opinion.

[13] See point 39 et seq. of this Opinion.

[14] See point 49 et seq. of this Opinion.

[15] See point 62 et seq. of this Opinion.

36. As the Court has pointed out in its case-law,[16] the determination of the normal value of a product constitutes one of the essential steps in proving the existence of dumping. In that regard, the first subparagraph of Article 2(1) of the basic regulation provides that the normal value is normally to be based on the prices actually paid or payable, in the ordinary course of trade, by independent customers in the exporting country. As regards the export price, it is clear from Article 2(8) of the basic regulation that it is the price actually paid or payable for the product when sold for export from the exporting country to the European Union. This means the price of the product at the EU border, before it enters the European Union market, not the price paid when the product is marketed within the European Union.

37. Once these two values have been determined, they must be compared and their comparison must, in accordance with the requirements of Article 2(10) of the basic regulation, be 'fair' and 'at the same level of trade'. To arrive at that comparison, adjustments are made. If a party requests such adjustments, it must prove that its claim is justified.[17] In practice, the Commission compares the prices – that is, the normal value and the export price – at the 'ex-factory' stage, deducting the costs which accrue in the sale of the product.

38. In accordance with Article 2(11) of the basic regulation, the dumping margin is determined either using a method referred to as 'symmetrical', which consists in comparing a weighted average normal value with the weighted average of prices of all export transactions to the European Union, or using a method referred to as 'asymmetrical', which consists in comparing a weighted average normal value with the price of each individual export transaction to the European Union. Whichever method is used, it must result in an accurate reflection of the true scale of the dumping found. The precise calculation of the dumping margin is particularly important in practice, since any anti-dumping duties imposed must not exceed that dumping margin.[18]

### *3. Practical difficulties associated with calculating the dumping margin, in particular the taking into account of different currencies*

39. In practice, difficulties frequently arise in the exact calculation of the dumping margin. Particular care is required, inter alia, because of the requirement in Article 2(10) of the basic regulation that the comparison between the export price and the normal value must be 'fair'. That provision of EU law does not define what is meant by the concept of a 'fair comparison'. However, the corresponding concept in Article 2.4 of the Anti-Dumping Agreement, on which Article 2(10) of the basic regulation is based, has been interpreted within the WTO as meaning that the comparison must be 'unbiased, objective and even-handed'.[19] The obligation to ensure a 'fair comparison' is understood as extending to all of the provisions of Article 2 of the Anti-Dumping Agreement.[20]

[16] See judgment of 1 October 2014, *Council* v *Alumina* (C-393/13 P, EU:C:2014:2245, paragraph 20).

[17] See judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP* (C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 58).

[18] Hahn, M., EUV/AEUV – *Kommentar* (Calliess/Ruffert), 6th edition, Munich, 2022, Article 207 TFEU, paragraph 141.

[19] See the WTO Appellate Body Report in Dispute DS442, European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia, paragraph 5.21. In the French-language version, the comparison must be '*impartiale et objective*', while the Spanish-language version uses the terms '*imparcial, objetiva y equilibrada*'.

[20] See the WTO Appellate Body Report in Dispute DS141, European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India, paragraph 59.

40. In the interests of an interpretation consistent with WTO law,[21] those same principles should be applied to the provisions set out in Article 2 of the basic regulation. That approach is justified, in particular, by the EU legislature's express decision to reproduce faithfully the provisions of WTO anti-dumping law in EU law.[22]

41. An apposite comparison between the export price and the price charged for consumption in the domestic market of the country of export requires, logically speaking, that those two values be expressed *in the same currency* – a condition which, in practice, is not always fulfilled in the context of international trade.[23] Consequently, it becomes necessary to convert the currency of one of the prices into the reference currency of the other market, an operation which, despite its apparent technical neutrality, poses a certain number of challenges of a methodological and legal nature, which will be set out below.

42. Specific difficulties arise in the calculation of the dumping margin, in particular, where different currencies are used, to the extent that fluctuations in exchange rates are liable to distort the real value of the products concerned and, consequently, alter the scale of the dumping margin.[24] The exchange rate between the currencies in question may vary depending on the date selected for determining the price. Unless the conversion is carried out with an appropriate exchange rate, an investigating authority's comparison of prices may result in an incorrect assessment of the dumping margin, in breach of the requirement for a 'fair comparison'.[25] It is therefore imperative in such circumstances that uniform criteria be available that enable the competent authority to eliminate from the calculation any distortion resulting from exchange rate fluctuations.

43. Article 2(10)(j) of the basic regulation, which is the subject of the present procedures, contains specific provisions concerning currency conversion for the purposes of comparing the export price and the normal value. In general, export prices are not expressed in the national currency of the exporting country, but rather in one of the currencies most often used in international trade. A currency conversion is thus 'required', under the first sentence of Article 2(10)(j) where the normal value is expressed in the local currency of the exporter and that currency is different from the currency used for export sales. Conversely, it would be contrary to that provision to carry out a currency conversion where the prices to be compared are already expressed in the same currency.[26] In practice, in order to determine whether a currency conversion is required, investigation authorities must ascertain whether the sales are made in the same currency.

44. The first sentence of Article 2(10)(j) of the basic regulation establishes that, as a *general rule*, the conversion must be made using 'the rate of exchange on the date of sale'. The second sentence states that 'normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if those more appropriately establish the material terms of sale'.[27] In any event, it is important to choose the date that most surely identifies the material terms of sale. Proof must be furnished, on a case-by-case basis, by the Commission or by the party

[21] See judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube* (C-891/19 P, EU:C:2022:38, paragraphs 31 and 32).

[22] Anders, H., *EU Dumping Determinations and WTO Law*, Alphen aan den Rijn, 2009, p. 234.

[23] Palmetter, N.D., 'Exchange Rates and Anti-dumping Determinations', *Journal of World Trade*, Vol. 22, No 2, 1988, p. 73.

[24] See judgment of 7 May 1987, *Nachi Fujikoshi* v *Council* (255/84, EU:C:1987:203, paragraph 52).

[25] Kim, J.B., 'Currency Conversion in the Anti-dumping Agreement', *Journal of World Trade*, Vol. 34, No 4, 2000, p. 125.

[26] See the Report of the WTO Panel in Dispute DS179, United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, paragraphs 6.13 and 6.41.

[27] By contrast with the Anti-Dumping Agreement, the basic regulation gives preference to the date of invoice as the reference for the 'date of sale', rather than the date of contract, purchase order or order confirmation (see footnote 8 to Article 2.4.1 of the Anti-Dumping Agreement).

concerned. Framework agreements and mere declarations of intent do not generally satisfy those criteria.[28] By way of *derogation* from the general rule, 'the rate of exchange in the forward sale' must be used when a sale of foreign currency on forward markets is directly linked to the export sale concerned. I shall discuss that last variant in detail further on in this Opinion.

45. In setting a rule regarding the appropriate point in time for determining the exchange rate ('the date of sale'), the Anti-Dumping Agreement and the basic regulation quite naturally adopt the principle that the conversion can only be made using *exchange rates*. Any other conversion method is thus expressly ruled out. In particular, abstract values, such as consumer purchasing power parities, calculated, inter alia, by the Organisation for Economic Co-operation and Development (OECD) and the United Nations Organisation (UNO), cannot be considered to provide decisive references. Similarly, the real impact of dumped imports on industry in the European Union is determined *according to the official exchange rates* that underlie international commercial transactions.

46. Neither the Anti-Dumping Agreement nor the basic regulation specify the source from which the exchange rates should be taken. In practice, the exchange rates published by the European Central Bank are used. Where it does not provide an exchange rate for a given currency, the exchange rates determined by the International Monetary Fund are generally used. The Commission uses *average monthly exchange rates*, except in the event of significant devaluation, in which case it may take daily exchange rates into account. Therefore, it matters little whether or not the exporting manufacturer uses different rates in its accounting systems for internal purposes. Notwithstanding, for practical reasons, the Commission often uses the exchange rate commonly applied by the undertaking when it is collecting and verifying data in the course of numerous investigative procedures.[29]

47. Over and above the general rules set out in Article 2.4.1 of the Anti-Dumping Agreement, which, in the EU legal system are to be found in Article 2(10)(j) of the basic regulation, the investigating authorities have a discretion as regards other aspects of currency conversion. By way of example, those authorities habitually convert the export currency *into the national currency of the exporting country*. However, they may also choose to convert the currency of domestic sales into the currency used for export sales.[30] As a general rule, the export price is converted into the national currency of the exporting country on the basis of the average exchange rate during the investigation period.[31]

48. Lastly, it is important to note that the EU legislature, in a departure from the provisions of the Anti-Dumping Agreement, incorporated the rules relating to currency conversion into a legal mechanism that gives economic operators *the right to request the correction of the values* linked to factors established as having an impact on prices and, consequently, on the comparability of those prices. That is particularly important since it enables undertakings to participate actively, with the Commission, in the adjustments and corrections made in the calculation of the dumping margin.

[28] Bungenberg, M., Reinhold, P., *EU-Außenwirtschafts- und Zollrecht*, Munich, 2024, AD-GVO 2016, Article 2, paragraph 346.

[29] Bungenberg, M., Reinhold, P., *EU-Außenwirtschafts- und Zollrecht*, Munich, 2024, AD-GVO 2016, Article 2, paragraph 345.

[30] De Baere, P., du Parc, C., Van Damme, I., *The WTO Anti-Dumping-Agreement – A Detailed Commentary*, Cambridge, 2021, p. 123.

[31] Van Bael & Bellis, *EU Anti-Dumping and Other Trade Defence Instruments*, Alphen aan den Rijn, 2011, p. 123. See also judgment of 7 May 1987, *Nachi Fujikoshi* v *Council* (255/84, EU:C:1987:203, paragraph 52).

### *4. The importance of hedging contracts in international trade*

49. To protect themselves against financial risks associated with fluctuations in exchange rates or changes in raw materials prices, economic operators frequently have recourse to hedging contracts, or include terms in their agreements for contractual conversion. Foreign exchange hedging instruments have the effect of locking in the exchange rate that will be applied to a future transaction. Such a mechanism means, for example, that if the euro were to depreciate after an exporter had set its prices in euro, the currency hedge will still ensure that it receives a predetermined sum in its national currency.

50. Hedging contracts are agreements concluded between private parties and their purpose is *the internal management of risk*. They do not, in principle, have any legal effect on the method for calculating the dumping margin applied by the investigating authority. In particular, those contracts have no effect on the Commission's policy regarding exchange rates. Nor can they remove liability for dumping duties. In this context, it should be pointed out that, in the past, the Commission has systematically refused to adopt any exchange rate other than the official exchange rate, thus removing from consideration any forward contracts or hedging operations. [32]

51. The reasons which justify, in principle, the refusal to accord any legal effect to such hedging contracts are obvious and already follow from the considerations that I have set out in relation to the calculation of the dumping margin. It should be noted, in the first place, that the basic regulation makes no mention of such contracts in the context of the general rule set out in Article 2(10)(j).

52. In the second place, it should be observed that only the method which the Commission applies, which uses official exchange rates, is appropriate to ensuring the degree of *neutrality* required for converting the normal value and the export price, in that it is shielded from any influence from third parties that might be pursuing their own financial interests. [33]

53. Moreover, that method fully satisfies the requirements of *transparency* in administrative action, in that it enables the parties concerned – undertakings and third countries – to understand the way in which the Commission exercises its competence and to verify that it is compliant with the rules of the multilateral system of trade.

[32] Van Bael & Bellis, *EU Anti-Dumping and Other Trade Defence Instruments*, Alphen aan den Rijn, 2011, p. 123. It is clear from recital 17 of Commission Regulation (EEC) No 1696/88 of 14 June 1988 imposing a provisional anti-dumping duty on imports of synthetic fibres of polyesters originating in Mexico, Romania, Taiwan, [Türkiye], the United States of America or Yugoslavia (OJ 1988 L 151, p. 47) that 'the Commission did not accept requests for adjustments to the export prices charged by the Taiwanese producers to allow for the hedging of exchange rates, since such adjustments are not provided for in [the legislation on protection against dumping practices]. In any case, the Commission considered the hedging of exchange rates to be a financial technique independent of the commercial transaction proper. Moreover, such adjustments were requested only where they favoured the exporter.'

[33] Van Bael & Bellis, *EU Anti-Dumping and Other Trade Defence Instruments*, Alphen aan den Rijn, 2011, p. 123, refers to Council Regulation (EEC) No 738/92 of 23 March 1992 imposing a definitive anti-dumping duty on imports of cotton yarn originating in Brazil and [Türkiye] (OJ 1992 L 82, p. 1). Recital 28 of that regulation states that 'the establishment, by the competent authorities, of the exchange rate of a third country's currency is a decision which cannot be the subject of appreciation by the [EU] institutions in the framework of an anti-dumping proceeding. It is, therefore, the Commission's constant practice, confirmed in the case-law of the Court of Justice, to use the official exchange rate applied to international commercial transactions. To adjust this exchange rate for the purposes of dumping calculations would be inappropriate and contrary to the *principle of neutrality* as regards the monetary aspects of an anti-dumping case.' (Emphasis added).

54. Furthermore, because this is the Commission's *standing* practice, and because the Commission regularly justifies the continuation of that practice in its decisions – in the present case in recital 98 of the contested regulation [34] – it enables the EU judicature to exercise effective judicial review.

55. If, on the other hand, the Commission were to treat simple agreements concluded between private parties as a decisive criterion in its currency conversion operation when calculating a dumping margin, there would be a serious risk of its administrative practice developing into a case-by-case approach characterised by unpredictability incompatible with the requirements of *legal certainty*.

56. Such a development would undermine the stability of the European Union's trade relations with third countries. It would also be likely to damage the Commission's *credibility* as an institution, by creating the false impression that the conversion method applied could be arbitrary or subject to the influence of private interests.

57. Similarly, it cannot be ruled out that third countries may be encouraged, by the contractual fixing by private operators of abstract or autonomous exchange rates, to seek to exert undue influence over the Commission's administrative practice, [35] something which could compromise the European Union's *exclusive competence* in the field of the common commercial policy. In order to avert such risks, it is important that the Commission's standing practice, which has been expressly validated by the Court in its case-law, [36] be maintained.

58. Notwithstanding the foregoing, hedging contracts must nevertheless be taken into consideration in accordance with the exception, provided for in Article 2(10)(j) of the basic regulation, relating to forward transactions. As that provision states, 'the rate of exchange in the forward sale' is to be used, provided that the sale of currency in a forward transaction is directly linked to the export transaction. In other words, the hedging contract must have a direct link with the price actually invoiced for the export sale that is the subject of investigation.

59. In the interests of terminological precision, it should be noted that a 'hedge' is a financial instrument designed to reduce or eliminate a financial risk to which an undertaking is exposed. In this regard, a forward contract for the sale of currency operates as a firm commitment, entered into on the date the contract is concluded, to sell a specified amount of currency at a pre-determined rate of exchange, on an agreed date, thereby locking in the outcome of the foreign exchange transaction regardless of subsequent market fluctuations.

60. Moreover, the hedging instrument must not be of a general or speculative nature, but must be linked to specific transactions or sales occurring during the investigation period. It falls to the exporter to demonstrate, actively and with supporting documents, that the hedging contract

[34] Recital 98 of the contested regulation states: 'The Commission noted that Article 2(10)(j) of the basic regulation is applicable in situations where a currency conversion is necessary for the purpose of comparison between the normal value and the export price. It is the standing practice to perform such comparison in the currency of the country concerned. Therefore, in the present case the Commission used the Turkish lira as the currency of comparison.' (Emphasis added).

[35] See Commission Implementing Regulation (EU) 2025/670 of 4 April 2025 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Egypt, Japan and Vietnam (OJ L, 2025/670), recitals 19 and 20 of which explain that the Egyptian authorities and the exporting producer had sought to persuade the Commission to use the parallel market rate (rather that the official exchange rate) when calculating the normal value and the dumping margin. The Commission opposed that request, referring to its practice of using official exchange rates in cases where there are allegations of the use of parallel exchange rates.

[36] See judgment of 7 May 1987, *Nachi Fujikoshi* v *Council* (255/84, EU:C:1987:203, paragraphs 51 to 54).

influences the export price in such a way that an adjustment is justified. If those conditions are not fulfilled, the general rule will apply, and the official exchange rate in force on the date of sale will be taken as a basis.

61. It is in the light of the foregoing considerations that the fourth ground of appeal in Case C-498/24 P and the sixth ground of appeal in Case C-499/24 P should be examined in the next part of my analysis. Those grounds of appeal, which are essentially based on the same arguments, should be examined together in that analysis. Nevertheless, I should first recall the grounds of the judgments under appeal, as well as the arguments which the parties raise against them in their appeals.

## *B. Examination of the grounds of appeal*

### *1. The reasoning followed by the General Court in the judgments under appeal*

62. As I have already stated,[37] in the judgments under appeal, the General Court dismissed the actions for annulment brought by the appellants, which alleged, inter alia, infringement of Article 2(10)(j) of the basic regulation.[38]

63. The General Court pointed out in particular that the hedging contracts relied on by the appellants in support of their claims for adjustment under the abovementioned provision related to export sales denominated in euros and that the currency conversion risk was hedged in all those contracts against the US dollar. However, given that the Commission was required to ensure a fair comparison between the normal value denominated in Turkish lira and the export price, it converted all the export transactions denominated in euros into Turkish lira directly, finding it unnecessary to make an intermediate conversion into US dollars in order to ensure a fair comparison.[39]

64. The General Court also pointed out that the euro to US dollar exchange rate provided for in the hedging contracts relied on by the appellants in order to claim an adjustment under Article 2(10)(j) of the basic regulation was indicated for a hedge in US dollars, but that it had nothing to do with the conversion which the Commission was required to carry out in order to ensure a fair comparison between the normal value and the export price.[40] Consequently, the hedging contracts cited by the appellants were irrelevant for the purposes of that conversion, as was stated in recital 98 of the contested regulation.

65. The argument, put forward at first instance by the appellants, that the Commission was required to use the exchange rate stipulated in the hedging contracts was therefore rejected as unfounded.[41] Consequently, given the irrelevance of the hedging contracts relied on by the appellants in support of their claims for adjustment under Article 2(10)(j) of the basic regulation,

[37] See points 17 and 26 of this Opinion.

[38] See paragraphs 81 to 87 of the judgment under appeal in Case C-499/24 P and paragraphs 195 to 208 of the judgment under appeal in Case C-498/24 P.

[39] See paragraph 82 of the judgment under appeal in Case C-499/24 P and paragraph 196 of the judgment under appeal in Case C-498/24 P.

[40] See paragraph 85 of the judgment under appeal in Case C-499/24 P and paragraph 199 of the judgment under appeal in Case C-498/24 P.

[41] See paragraph 86 of the judgment under appeal in Case C-499/24 P and paragraph 200 of the judgment under appeal in Case C-498/24 P.

the General Court also rejected their other claims concerning alleged infringement of the principle of sound administration, which were put forward on the basis of a supposed infringement of Article 2(10)(j) of the basic regulation. [42]

*2. The parties' observations*

*(a) The appellants' arguments in the appeals*

66. The appellants assert that, since the focus of Article 2(10)(j) of the basic regulation is on the date of sale rather than on the currency and the exchange rate, as the General Court noted in the judgments under appeal, [43] that should be the relevant element for the Commission to take into account, since exchange rates are all 'interlinked'. According to the appellants, this means that the relevant currency for the export price should be converted using a conversion into US dollars. That approach is confirmed in one of the judgments under appeal. [44]

67. The appellants add that, if one were to accept the General Court's interpretation that hedging operations can be taken into consideration only where the operation is between the invoice currency and the currency to which the Commission converts, it would be all too easy to circumvent the obligation stated in the first sentence of Article 2(10)(j) of the basic regulation. They also take issue with the additional conclusions reached by the General Court in the judgments under appeal. [45]

*(b) The Commission's arguments*

68. The Commission notes that the appellants take issue only with the argument developed in the judgments under appeal regarding the conceptual difference between the exchange rate from euro into US dollars stated in the hedging contracts and the conversion rate which the Commission used in order to compare the normal value with the export price. [46] They do not, according to the Commission, dispute the reasoning according to which the contracts were intended to hedge the risk of conversion into US dollars, which makes their reference to the US dollar irrelevant to the conversion which the Commission carried out. Consequently, the Commission submits that the ground of appeal is ineffective.

69. The Commission recalls that, under Article 2(10) of the basic regulation, it has a broad discretion as regards currency conversions for the purpose of comparing complex economic values. The appellants needed to demonstrate that the conversion into the currency of the exporting country constituted a manifest error, which they failed to do, instead they merely argued infringement of the terms of that regulation. The judgments under appeal confirm that their arguments were insufficient to challenge the conversion method used.

[42] See paragraphs 88 to 93 of the judgment under appeal in Case C-499/24 P and paragraphs 201 to 208 of the judgment under appeal in Case C-498/24 P.

[43] The appellants refer respectively to paragraph 84 of the judgment under appeal in Case C-499/24 P and paragraph 198 of the judgment under appeal in Case C-498/24 P.

[44] The appellants refer to paragraphs 20 to 24 of the judgment under appeal in Case C-499/24 P.

[45] The appellants refer respectively to paragraphs 91 to 94 of the judgment under appeal in Case C-499/24 P and paragraphs 204 to 208 of the judgment under appeal in Case C-498/24 P.

[46] The Commission refers to paragraph 82 of the judgment under appeal in Case C-499/24 P and paragraph 199 of the judgment under appeal in Case C-498/24 P.

70. The Commission recalls that the comparison requires a currency conversion in order to ensure that the normal value and the export price are compared fairly. It is standard practice to perform the comparison in the currency of the exporting country – in this case the Turkish lira. The reference to US dollars was included in the hedging contracts for currency conversion risk purposes only and was therefore irrelevant to ensuring a fair comparison, especially since the export price was denominated in euros. The appellants' arguments concerning the 'date of sale' and the 'interlinking of exchange rates' do not alter that analysis, and the case-law cited in fact confirms the conversion method adopted by the institution.

### *3. Position*

#### *(a) General remarks*

71. It should be noted at the outset that it is apparent from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal lies on a point of law only. The General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence placed before it. The appraisal of those facts and the assessment of that evidence thus do not, save where they distort the evidence, constitute a point of law which, as such, is open to review by the Court of Justice on appeal. [47]

72. Moreover, it is clear from the Court's case-law that, where the appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of the appeal. Indeed, if an appellant could not thus base its appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose. [48]

73. Those general remarks are necessary since the appellants argue that both the Commission and the General Court essentially made the same mistakes in the interpretation and application of Article 2(10)(j) of the basic regulation. The errors of law lie, first, in the Commission's refusal to accede to the claims for rectification which the appellants made on the basis of that provision and, second, in the General Court's endorsement of that position. More specifically, the appellants argue that the Commission and the General Court refused to accord any legal effect to the hedging contracts which they had concluded for the purposes of the currency conversion. According to the appellants, that conversion should have been made through the intermediary of the US dollar and not directly from euros to Turkish lira.

#### *(b) Assessment of the reasoning in the judgments under appeal*

74. It must first of all be noted that the applicability of Article 2(10)(j) of the basic regulation to the facts of the case is not disputed by any of the parties to the proceedings. The transactions at issue were sales of goods, invoiced in different currencies, namely euros and US dollars, that were produced in Türkiye and intended for export to the European Union. In that context, the Commission was required to carry out a currency conversion, in accordance with that provision,

[47] See judgment of 24 March 2011, *Ferrero* v *OHIM* (C-552/09 P, EU:C:2011:177, paragraph 73).

[48] See judgment of 19 July 2012, *Council* v *Zhejiang Xinan Chemical Industrial Group* (C-337/09 P, EU:C:2012:471, paragraph 61).

when comparing prices. The dispute between the Commission and the appellants, raised in the proceedings at first instance, is limited solely to the question of *how that conversion should be carried out*.

75. If the appellants seek to argue that *the date of sale is the decisive criterion in determining the applicable rate of exchange*, that assertion cannot be disputed. Having regard to the fluctuations inherent in foreign exchange markets, identifying a specific point in time as the point of reference for the conversion is imperative. The adoption of the date of sale for that purpose was a legally binding decision taken within the multilateral system of international trade, with a number of objective factors potentially used to determine that date, namely the date of the invoice, the date of the contract, of the purchase order or of the order confirmation. I drew attention to this aspect in my preliminary remarks. [49] That said, there is nothing in the judgments under appeal to suggest that the General Court adopted a contrary position. It cannot, therefore, be concluded that any error of law was made.

76. If, on the other hand, the appellants argue that, in the absence of precise rules of EU law concerning *the currency that applies to the conversion*, it falls exclusively to trading partners to determine that currency in their hedging contracts, such an interpretation must be rejected. That interpretation disregards the fact that, first of all, the goods in question were exported to the European Union, so that the euro is the applicable currency of reference, and, second, Article 2(10)(j) of the basic regulation confers a *discretion* on the Commission in the absence of any provision to the contrary. It is not in dispute that the Commission bases its calculations on the exchange rate for the currency of the exporting country – in this case, the Turkish lira. [50] That choice of currency conversion into the currency of the country concerned is neither random nor arbitrary. The Commission did not carry out a currency conversion that had no relationship with the export transactions at issue, and the appellants, moreover, do not suggest otherwise. [51]

77. In the present case, the sole purpose of the hedging contracts concluded by the appellants was to eliminate potential exchange rate risks associated with conversion between the euro and the US dollar. However, the Commission carried out a direct conversion from euros into Turkish lira, without any intermediate conversion into US dollars. The General Court therefore rightly took the view that there was no legal basis or factual element justifying the taking into account of currencies other than the euro and the Turkish lira, or recourse to an intermediate conversion into US dollars. Since all the export prices that were converted were denominated in euro, [52] as is clear from recital 98 of the contested regulation, with no apparent reference to the US dollar, and given the destination of the goods, no intermediate conversion into US dollars was required by Article 2(10)(j) of the basic regulation.

78. That conclusion is not undermined by the appellants' argument that the Commission carried out an intermediate conversion into euros rather than converting US dollars directly into Turkish lira. As the General Court pointed out in paragraphs 20 to 24 of the judgment under appeal in Case C-499/24 P, the appellants that were applicants in that case had invoiced certain domestic sales and declared their production costs in US dollars. In that context, the Commission decided to carry out a conversion via the euro, so as to ensure a fair comparison. While that method may

[49] See point 44 of this Opinion.

[50] See point 47 of this Opinion.

[51] Even if the appellants seek to argue that the Commission could, at its own discretion, convert the transactions in euros into any other currency, such as Danish kroner, so as to avoid having to take account of hedging operations between euros and Turkish lira, they do not allege or in any way substantiate that the choice of conversion into the currency of the exporting country was made with the aim of excluding their hedging contracts from consideration.

[52] See paragraph 85 of the judgment under appeal in Case C-499/24 P and paragraph 196 of the judgment under appeal in Case C-498/24 P.

seem questionable – it being doubtful whether it was necessary or advantageous to carry out such an intermediate conversion in view of the 'interlinking' of exchange rates [53] – that discrepancy has no bearing on the analysis. In fact, there is no legal obligation to take account of foreign currency transactions on the futures markets in a currency other than that used by the Commission to make the comparison.

79. The hedging contracts concluded by the appellants were not relevant to the currency conversion at issue. There was therefore no objective reason to take them into account in the calculation. The General Court was therefore right to conclude in the judgments under appeal that the conversion between euros and US dollars stipulated in the hedging contracts had no bearing on the conversion which the Commission carried out and could be disregarded.

80. In the General Court's view, that finding was sufficient in order for the plea raised by the appellants to be dismissed. That does not, to my mind, constitute an error of law. As the General Court rightly pointed out, the Commission was not required to take the exchange rates fixed in the hedging contracts into account, but could – as recital 98 of the contested regulation expressly states – follow its established administrative practice and use the currency of the exporting country, namely the Turkish lira, for the purpose of comparing the normal value and the export price.

*(c) Additional observations*

81. Although the grounds for the judgments under appeal are already sufficiently precise and detailed in order for the common ground of appeal to be dismissed, I would like to make a few additional observations in order to further clarify the legal context and to enable the Court to better apprehend the central issues in the cases in question.

82. First, it does not appear from the documents before the Court that a conversion into US dollars would have substantially altered the outcome of the calculation, all the more so since the appellants have furnished no evidence of damage. They have confined themselves – as is stated in recital 99 of the contested regulation – to asserting that the conversion affected price comparability, and have provided a theoretical example to support their claim that the exchange rate stipulated in the hedging contracts should have been be used. As stated in recital 100 of the contested regulation, that theoretical example does not constitute evidence, since it reflects neither the appellants' actual transactions nor the calculation of the dumping margin. Since the appellants have not put forward any convincing argument to challenge that conclusion, the Commission's analysis should be followed.

83. In addition, the appellants' argument concerning the 'interlinking' of currencies does not in any way demonstrate an adverse effect of the conversion into Turkish lira. On the contrary, it tends to refute that hypothesis. If such interlinking does exist, the necessary conclusion is that no disadvantage results from the conversion. The Commission was therefore right to argue that the appellants had failed to demonstrate that a manifest error in the exercise of its discretion led to an unfair comparison being made between the normal value and the export price.

84. Second, in finding that the Commission was not required to take the hedging contracts into account, the General Court ultimately held that the Commission was not obliged to depart from its established administrative practice for determining the dumping margin. I would endorse that

[53] See points 70 and 83 of this Opinion.

point of law. As I have explained in this Opinion, maintaining that administrative practice is justified in the field of international trade relations, as it ensures the neutrality, objectivity, stability, independence and transparency of administration action. [54]

85. Those objectives of general interest take precedence over the private interests of economic operators. Hedging contracts are private law agreements whose sole purpose is the internal management of risk and they cannot, in principle, legally affect the method used by an investigating authority to calculate the dumping margin. The Commission was therefore not required to adapt its calculations to the currencies or exchange rates chosen by the parties.

86. It must be borne in mind that, according to settled case-law, the EU institutions enjoy a broad discretion in the sphere of the common commercial policy, particularly with regard to trade protection measures, because of the technical and economic complexity of the underlying analyses. [55] If currencies or exchange rates chosen solely to protect private financial interests were taken into account, that would call that discretion into question.

87. Third, the hedging contracts should have been taken into consideration only if the transactions complied with the conditions in Article 2(10)(j) of the basic regulation, which provides for an exception for forward transactions directly linked to the exports. It must be borne in mind that exceptions are to be interpreted narrowly. [56] In the present case, the Commission expressed doubts as to whether those conditions were met. In the absence of convincing evidence, it should be considered that they were not met.

88. In that regard, the Commission noted that US dollar sales in foreign markets were not 'directly linked' to the export sales, as is required by Article 2(10)(j) of the basic regulation. Recital 101 of the contested regulation further states that certain hedging operations could be adjusted after the sale to reflect developments in the financial outlook and to maximise the companies' return, something which the appellants disputed before the General Court at first instance. The General Court did not, however, examine those arguments, taking the view that the Commission's reasoning in recital 98 of the contested regulation was sufficient to justify the rejection of the claim for adjustment under Article 2(10)(j) of the basic regulation. On the other hand, should the Court find that that reasoning was not sufficient in order for the plea alleging infringement of that provision to be dismissed and decide to refer the case back to the General Court, it will then fall to the General Court to consider the potentially speculative nature of those operations.

89. In conclusion, I would point out that, according to settled case-law, the review carried out by the EU judicature of economic assessments made by the Commission, including in the field of anti-dumping law, is limited to verifying whether the procedural rules have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers. [57] However, it does not seem to me that the General Court's reasoning, even if subjected to a particularly stringent judicial review, could be considered to be vitiated by an error of law.

[54] See point 51 et seq. of this Opinion.

[55] See judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P et C-193/14 P, EU:C:2016:209, paragraph 34).

[56] See judgments of 29 September 2011, *Commission* v *Ireland* (C-82/10, EU:C:2011:621, paragraph 44); of 19 September 2013, *Dashiqiao Sanqiang Refractory Materials* v *Council* (C-15/12 P, EU:C:2013:572, paragraph 17); and of 10 February 2021, *RFA International* v *Commission*, C-56/19 P, EU:C:2021:102, paragraph 54).

[57] See judgment of 29 February 2024, *Methanol Holdings (Trinidad)* v *Commission* (C-688/22 P, EU:C:2024:180, paragraph 34).

90. On the basis of the elements set out in my analysis, I consider that the fourth ground of appeal in Case C-498/24 P and the sixth ground of appeal in Case C-499/24 P should be dismissed as unfounded.

## V. Conclusion

91. In the light of all of the foregoing considerations, I propose that the Court dismiss the fourth ground of appeal in Case C-498/24 P (*Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret* v *Commission*) and the sixth ground of appeal in Case C-499/24 P (*Ereğli Demir ve Çelik Fabrikaları and Others* v *Commission*).