Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

14 December 2017*

(Appeal — Dumping — Regulation (EU) No 502/2013 — Imports of bicycles originating in China — Regulation (EC) No 1225/2009 — Article 18(1) — Cooperation — Definition of 'necessary information' — Article 9(5) — Request for individual treatment — Risk of circumvention)

In Case C-61/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 February 2016,

European Bicycle Manufacturers Association (EBMA), established in Brussels (Belgium), represented by L. Ruessmann, avocat, and J. Beck, Solicitor,

appellant,

the other parties to the proceedings being:

Giant (China) Co. Ltd, established in Kunshan (China), represented by P. De Baere, avocat,

applicant at first instance,

Council of the European Union, represented by H. Marcos Fraile, acting as Agent, B. O'Connor, Solicitor, and S. Gubel, avocat,

defendant at first instance,

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

intervener at first instance,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, E. Juhász, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2017,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

* Language of the case: English.

gives the following

Judgment

1 By its appeal, the European Bicycle Manufacturers Association (EBMA) seeks to have set aside the judgment of the General Court of the European Union of 26 November 2015, *Giant (China)* v *Council* (T-425/13, not published, 'the judgment under appeal', EU:T:2015:896), by which that court annulled Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ 2013 L 153, p. 17) ('the regulation at issue'), in so far as that regulation concerned Giant (China) Co. Ltd ('Giant').

I. Legal context

2 At the time of the investigation which led to the adoption of the regulation at issue, the provisions governing the adoption of anti-dumping measures by the European Union were those in Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; corrigendum OJ 2010 L 7, p. 22) ('the basic regulation').

3 Recital 28 of the basic regulation stated as follows:

'It is necessary to provide that where parties do not cooperate satisfactorily other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated.'

4 Article 2(7) of the basic regulation provided as follows:

'(a) In the case of imports from non-market economy countries …, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits; where appropriate, a market economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

(b) In anti-dumping investigations concerning imports from the People's Republic of China, Vietnam and Kazakhstan and any non-market-economy country which is a member of the [World Trade Organisation (WTO)] at the date of the initiation of the investigation, normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in subparagraph (c), that market economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under subparagraph (a) shall apply.

…’

5 Article 5 of the basic regulation was worded as follows:

‘…

10 The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information, if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(5).

11. The Commission shall advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received pursuant to paragraph 1 to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association.

…’

6 Article 6(2) of that regulation provided as follows:

‘Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days to reply. The time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension to the 30 day period may be granted, due account being taken of the time-limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.’

7 Article 9(5) of the basic regulation stated as follows:

‘An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted. The Regulation imposing the duty shall specify the duty for each supplier or, if that is impracticable, and in general where Article 2(7)(a) applies, the supplying country concerned.

Where Article 2(7)(a) applies, an individual duty shall, however, be specified for the exporters which can demonstrate, on the basis of properly substantiated claims that:

(a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

(b) export prices and quantities and conditions and terms of sale are freely determined;

(c) the majority of the shares belong to private persons; State officials appearing on the boards of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

(d) exchange rate conversions are carried out at the market rate; and

(e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.'

8 Article 18 of the basic regulation provided as follows:

'1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. Interested parties should be made aware of the consequences of non-cooperation.

…

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

…

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.'

II. Background to the proceedings and the regulation at issue

9 In 1993, the Council of the European Union imposed a definitive anti-dumping duty of 30.6% on imports into the European Union of bicycles originating in China. Subsequently, that anti-dumping duty was maintained at the same level. In 2005, the duty was raised to 48.5% and was thereafter maintained at that level.

10 On 9 March 2012, the Commission announced the initiation, ex officio, of an interim review of the anti-dumping measures applicable to imports of bicycles originating in China, pursuant to Article 11(3) of the basic regulation.

11 Four groups of Chinese exporting producers reported exports to the European Union during the period covered by the investigation, namely from 1 January to 31 December 2011. The group to which Giant belonged ('the Giant group'), a company established in China which manufactures bicycles for domestic and export sales, including to the European Union, was one of those four groups of exporting producers. The ultimate shareholder of the Giant group is G.M., a company established in Taiwan. Since the joint venture Shanghai Giant & Phoenix Bicycle Co. Ltd ('GP'), one of the companies forming part of the Giant group, had ceased all operations in September 2011 and was in liquidation, Giant asked the Commission to exclude it from the investigation.

12 On 15 May 2012, the Commission sent market economy treatment ('MET') claim forms to the four groups of exporting producers referred to in the previous paragraph, in accordance with Article 2(7)(b) of the basic regulation. In the letter sent to it, Giant was informed that, if it wished to

claim MET, each of the related companies situated in China would have to complete a MET claim form, including GP, since that company produced bicycles and was the Giant group's biggest exporter to the European Union during the investigation period.

13 On 4 June 2012, Giant submitted MET claim forms for six Giant group companies, including GP. In its MET claim form, GP was described as a joint venture established by a company established in Taiwan, namely B.I., itself related to G.M., and two companies established in China, S.G. and Jinshan Development and Construction ('Jinshan'). B.I. and Jinshan each held 45% of G.P.'s shares and S.G. held 10%.

14 By letter of 14 June 2012, the Commission sought clarification concerning the relationship between the Giant group and Jinshan. On the basis of a preliminary assessment, the Commission concluded that that group was related to Jinshan and that the principal investments of the latter related to the manufacture and sale of bicycles. Consequently, the applicant was informed that it had to return the MET claim form for Jinshan and all the companies belonging to that company ('the Jinshan group'). The Commission indicated that, without those forms, it could draw conclusions on the basis of the facts available, in accordance with Article 18 of the basic regulation, and reject the MET claim for the Giant group as a whole.

15 On 21 June 2012, Giant submitted observations on the Commission's letter of 14 June 2012. It stated, inter alia, that because it was related to Jinshan only very indirectly through GP and Jinshan was not a producer of the product concerned, it was not required to submit a MET claim for Jinshan.

16 By letter of 4 July 2012, the Commission confirmed that it considered that Giant was in fact related to Jinshan and that, as the entities of the Jinshan group had failed to complete the MET claim form, it intended to apply Article 18 of the basic regulation and to reject the MET claim submitted by the Giant group. Furthermore, the Commission repeated its request to Giant to submit responses to the anti-dumping questionnaire for all the bicycle exporting producers related to it, including those belonging to the Jinshan group.

17 By letter of 16 July 2012, Giant maintained its position that its relationship with Jinshan was only indirect and that the latter was therefore not required to complete a MET claim or the anti-dumping questionnaire.

18 On 20 July 2012, Giant submitted the responses to the anti-dumping questionnaire for 11 companies that were part of the Giant group and involved in the production and export of the product concerned, including GP, and for 6 sales subsidiaries established in the European Union.

19 On 28 August 2012, at an oral hearing held at the Commission's premises, Giant raised objections to the Commission's intention to apply Article 18 of the basic regulation in the context of its MET claim, arguing that it was neither necessary nor possible to submit MET claims or questionnaire responses for the other companies in which Jinshan had invested.

20 On 23 October 2012, the Commission informed Giant that, not having received MET claims for the Jinshan group companies, it could not examine the merits of its claim for MET. Consequently, the Commission decided to apply Article 18(1) of the basic regulation and to disregard the information submitted by Giant in relation to its MET claim as a whole.

21 On 21 March 2013, the Commission informed Giant that it intended to apply Article 18(1) of the basic regulation and to base its findings on the facts available also for the purpose of establishing the export price, given that, in the absence of complete information on all the parties related to GP, it was impossible to carry out complete and reliable calculations concerning the export price and thereby determine an individual margin of dumping for GP and, consequently, for the Giant group as a whole.

22 On 5 June 2013, the Council adopted the regulation at issue. That regulation maintained the definitive anti-dumping duty of 48.5% applicable to Giant.

23 In recitals 63 and 64 and 131 to 138 of that regulation, the Council, first, confirmed that it relied on Article 18(1) of the basic regulation and that it was unable to determine an individual margin of dumping for the Giant group and, second, rejected Giant's arguments in which it sought to demonstrate that, if an individual margin of dumping were calculated for the Giant group, there would be no risk of circumvention of the anti-dumping measures.

III. The procedure before the General Court and the judgment under appeal

24 By application lodged at the Registry of the General Court on 19 August 2013, Giant brought an action for annulment of the regulation at issue in so far as that regulation concerns it.

25 In support of its action before the General Court, Giant relied on eight pleas in law. Only the first part of the third plea and the fifth and seventh pleas were examined by the General Court. Those pleas concerned, essentially, first, the term 'necessary information' within the meaning of Article 18(1) of the basic regulation and, second, whether the refusal to grant individual treatment may be based on the existence of a risk of circumvention.

26 The General Court upheld those pleas and found that it was necessary to annul the regulation at issue in so far as it concerned Giant, without there being any need to examine the other pleas.

IV. Forms of order sought by the parties to the appeal

27 EBMA claims that the Court should:

– set aside the judgment under appeal;

– rule on the substance and dismiss the application for annulment or refer the case back to the General Court for a decision on the substance of the application for annulment, and

– order Giant to pay the costs of the appeal and its intervention before the General Court.

28 Giant contends that the Court should:

– declare the appeal manifestly inadmissible and/or manifestly unfounded and, as a consequence, dismiss the appeal in its entirety by way of a reasoned order, pursuant to Article 181 of the Rules of Procedure of the Court of Justice;

– in any event, dismiss the appeal as inadmissible and/or unfounded, and

– order EBMA to pay the costs of the present proceedings.

29 The Council and the Commission claim that the Court should:

– set aside the judgment under appeal;

– rule on the substance and dismiss the application for annulment or refer the case back to the General Court for a decision on the substance of the application for annulment, and

– order Giant to pay the costs incurred before the General Court and the Court of Justice.

V. The appeal

30 EBMA relies on three grounds of appeal. The first and second grounds allege misinterpretation and misapplication of Article 18 of the basic regulation. The third ground of appeal alleges that the General Court erred in law, in that it considered that there would be no risk of circumvention if Giant were given an individual anti-dumping duty.

31 Giant contends that all three grounds of appeal are inadmissible.

A. Admissibility

32 Giant claims that the appeal is inadmissible, in that the three grounds of appeal raised by EBMA relate to the assessment of the facts, which is not subject to review by the Court of Justice, unless it is claimed that the facts or evidence were distorted.

33 In that regard, it should be noted that, according to the Court's settled case-law, it follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, secondly, to assess those facts. When the General Court has established or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them. The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 29, and orders of 29 November 2012, *Dimos Peramatos* v *Commission*, C-647/11 P, not published, EU:C:2012:764, paragraph 28, and of 9 February 2017, *Syndial* v *Commission*, C-410/16 P, not published, EU:C:2017:112, paragraph 9).

34 By its arguments in support of the first and second grounds of appeal, EBMA claims, in essence, that the General Court (i) showed that it misunderstood Article 18(1) of the basic regulation; (ii) misapplied that provision in its assessment of Giant's cooperation; (iii) imposed too onerous a burden on the Commission by asking it to demonstrate how the information it sought in connection with the related companies was 'necessary'; and (iv) substituted grounds.

35 In its third ground of appeal, Giant takes issue with the General Court for taking the view that the Council was not entitled to invoke a risk of circumvention as justification for the refusal to impose an individual anti-dumping duty on Giant.

36 While some of EBMA's arguments call into question certain of the General Court's findings of fact, the three grounds of appeal nonetheless raise questions concerning that court's interpretation of legal rules and therefore relate to points of law which may be reviewed by the Court of Justice in an appeal.

37 Giant's plea that the appeal is inadmissible cannot, therefore, be accepted.

B. The first and second grounds of appeal

1. Arguments of the parties

38 The first and second grounds of appeal concern paragraphs 56 to 78 of the judgment under appeal.

39 In its first ground of appeal, EBMA, supported by the Council and the Commission, submits that the General Court was incorrect in its view that the main issue arising in the present case is that of the application of Article 18(1) of the basic regulation to Giant's export price, when, in the regulation at issue, the Council applied that provision to the Giant group globally because it did not have complete and exhaustive information on the related companies. The General Court thereby misunderstood Article 18(1) and (3) of that regulation.

40 In that regard, EBMA maintains that, under those provisions, the EU institutions may rely on the facts available in three ways: (i) globally, in respect of all information and data submitted by a party; (ii) in respect of a complete set of information or data, for example a request for individual treatment, or (iii) simply in respect of certain aspects of a set of information or data, for example, export sales commission. In the second and third instances, the EU institutions would substitute only the rejected information or data and use other information or data. In the first instance, the institutions reject the submitted information and data entirely.

41 In the second ground of appeal, EBMA, supported by the Council and the Commission, contends, first, that the General Court erred in law in its analysis of whether there had been a failure to cooperate for the purpose of Article 18(1) of the basic regulation. EBMA maintains that the General Court's reasoning is based on an incorrect premiss, namely that the purpose of the information and data provided by Giant was simply to enable the EU institutions to establish the export price. Initially, the information required was the bare minimum necessary to enable those institutions to obtain a complete and accurate picture of the Giant group and of the related companies. The data provided by Giant was insufficient for the purpose of creating such a picture. Second, EBMA submits that the General Court erred in imposing an excessive burden on the Commission by asking it to demonstrate how the information it sought in connection with the related companies was necessary. Third, EBMA maintains that, in view of the broad discretion enjoyed by the Council and the Commission in anti-dumping proceedings, the General Court cannot take the place of the Council by finding that conclusions have been drawn from partial evidence.

42 Giant contends that the grounds of appeal are unfounded.

2. Findings of the Court

43 By its first and second grounds of appeal, which it is appropriate to examine together, EBMA submits, first, that the General Court misinterpreted and misapplied Article 18(1) of the basic regulation. Second, EBMA contends, in essence, that the General Court unlawfully substituted its own assessment for that of the Council.

(a) The alleged error of law in the interpretation and application of Article 18(1) of the basic regulation

(1) The interpretation of Article 18(1) of the basic regulation

44 EBMA considers, in essence, that the General Court's finding in paragraph 77 of the judgment under appeal that the Council infringed Article 18(1) of the basic regulation by relying on the facts available for the purpose of calculating the export price is based on a misinterpretation of that provision.

45 Article 18(1) of the basic regulation provides that the EU institutions may rely on the facts available to make provisional or final, affirmative or negative, findings, inter alia where any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in the regulation.

46 The basic regulation does not define the term 'necessary information'. It follows that, in order to determine the scope of Article 18(1) of that regulation, it is necessary to take account of the wording, context and objectives of that provision (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 52 and the case-law cited).

47 In the first place, with regard to the wording of Article 18(1) of the basic regulation, the adjective 'necessary', in its usual meaning, refers to what is required or essential in order to achieve a particular purpose. Accordingly, only information without which the anti-dumping investigation cannot be properly concluded may be regarded as 'necessary' within the meaning of that provision.

48 Furthermore, that provision states that the facts available which may be relied on by the EU institutions where an interested party fails to provide the necessary information must be used to make provisional or final, affirmative or negative, findings.

49 It follows that information is regarded as 'necessary' if, in a particular investigation, it enables such findings to be made. Given that an item of information may make it possible to reach such 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.

50 In the second place, as regards the context of Article 18(1) of the basic regulation, it should be noted that Article 5(10) of the regulation provides that the notice of initiation of the anti-dumping proceedings, which must be published by the Commission, is to state the periods within which interested parties may make themselves known, present their views in writing and submit information, if such views and information are to be taken into account during the anti-dumping investigation. Furthermore, Article 5(11) of that regulation provides that the Commission is to advise, inter alia, the exporters, importers and representative associations of importers or exporters known to it to be concerned, of the initiation of the investigation. Moreover, it is apparent from Article 6(2) of the regulation that a questionnaire is prepared by the Commission's staff for the purpose of obtaining the information necessary for the investigation. That questionnaire is sent to the interested parties, which, as a rule, have 30 days within which to reply.

51 It therefore follows from Article 5(10) and (11) and Article 6(2) of the basic regulation that the interested parties are required to provide the Commission's staff with the information that will enable it to complete the anti-dumping investigation. Therefore, in the light of those provisions, the term 'necessary information' in Article 18(1) of the basic regulation refers to such information.

52 Moreover, it follows from Article 18(3) and (6) of the basic regulation that the information which the interested parties are required to provide to the Commission must be used by the EU institutions for the purpose of establishing the findings of the anti-dumping investigation and that those parties must not omit relevant information. As a particular item of information may play a decisive role in one investigation and be irrelevant in another, it follows from Article 18(3) and (6) of the regulation that whether an item of information is 'necessary' must be ascertained on a case-by-case basis.

53 Therefore, the analysis of the context of Article 18(1) of the basic regulation supports the interpretation of the term 'necessary information' arrived at the conclusion of the literal analysis of that provision. Accordingly, information is to be regarded as 'necessary' within the meaning of that provision if it is such as to enable the EU institutions 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.

54 In the third place, the definition of the term 'necessary information' must take account of the objective of Article 18 of the basic regulation. As the Advocate General observed in point 50 of his Opinion, 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, no provision in the basic regulation confers on the Commission any power to compel the interested parties to participate in the investigation or to provide information. The Commission is therefore reliant on the voluntary cooperation of those parties in supplying the necessary information (see, by analogy, judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraphs 31 and 32).

55 In that context, it follows from recital 28 of the basic regulation that the EU legislature intended to provide that, where parties do not cooperate satisfactorily, other information may be used to establish findings, and that such information may be less favourable to the parties than it would be if they had cooperated. Thus, 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.

56 Accordingly, as the Advocate General observed in points 53 and 54 of his Opinion, given that the interested parties are required to cooperate to the best of their ability, they must provide all the information that they have which the EU institutions consider necessary for the purpose of reaching their findings.

57 It therefore follows from the wording, context and objective of Article 18(1) of the basic regulation that the term 'necessary information' refers to information held by the interested parties which the EU institutions ask them to provide in order to enable them to reach the appropriate findings in an anti-dumping investigation.

58 It is in the light of the term 'necessary information', as defined in the preceding paragraph, that it is necessary to determine whether the General Court erred in law, in its application of Article 18(1) of the basic regulation, by considering that the Council had been incorrect to rely on the facts available in calculating the export price.

(2) The General Court's application of Article 18(1) of the basic regulation

59 In the first place, with regard to the argument that the General Court's reasoning is based on an incorrect premiss, it should be noted that the EBMA claims, in essence, that the General Court misunderstood the regulation at issue. It considered, incorrectly, that the main issue arising in the present case is that of the application of Article 18(1) of the basic regulation to Giant's export price, even though, in the regulation at issue, the Council applied that provision to the Giant group globally because it did not have complete information on the related companies.

60 In that regard, as the Advocate General observed in point 67 of his Opinion, the Council stated in recital 131 of the regulation at issue that Article 18(1) of the basic regulation was applied for the purpose of determining the export price. Moreover, it is apparent from, inter alia, paragraph 52 of the judgment under appeal that the General Court addressed Giant's argument that, contrary to what the Council claimed in the regulation at issue, the information requested by the Commission concerning the Jinshan group companies was not necessary for the purpose of calculating a reliable export price and, therefore, determining an individual dumping margin. Lastly, in paragraph 23 of the judgment under appeal, the General Court referred to a letter from the Commission to Giant of 21 March 2013 in which that institution informed Giant that it intended to apply that provision for the purpose of determining the export price.

61 It follows that the argument that the General Court based its reasoning on an incorrect premiss in reaching the view that the main issue arising in the present case is that of the application of Article 18(1) of the basic regulation to the export price must be rejected.

62 In the second place, as regards the General Court's assessment of Giant's cooperation, as observed in paragraph 57 above, the term 'necessary information' refers to information of such a nature as to enable the EU institutions to reach the appropriate findings in an anti-dumping investigation.

63 In the present case, the General Court verified, in paragraphs 63 to 69 of the judgment under appeal, whether the information relating to the Jinshan group companies which the EU institutions wished to obtain in order, inter alia, to determine Giant's export price, was likely to influence that determination. That court concluded, in paragraph 74 of the judgment under appeal, that that information was irrelevant to the calculation of the export price.

64 In those circumstances and in the light of the definition of the term 'necessary information' established in paragraph 57 above, it must be concluded the General Court did not err in law in finding, in paragraph 77 of the judgment under appeal, that the Council had infringed Article 18(1) of the basic regulation by relying on the facts available to calculate the export price.

65 In the third place, the argument that the General Court imposed too onerous a burden on the EU institutions by asking them to demonstrate how the information they wished to obtain was 'necessary' cannot succeed. Indeed, it follows from, inter alia, paragraphs 54 to 57 above that the burden lies with those institutions to prove 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 and also, therefore, that certain information is 'necessary' for the purpose of reaching the appropriate conclusions in the anti-dumping investigation.

66 It follows that EBMA's argument that the General Court erred in law in its interpretation and application of Article 18(1) of the basic regulation must be rejected as unfounded.

(b) The argument that the General Court unlawfully substituted itself for the EU institutions

67 EBMA submits that, in view of the broad discretion enjoyed by the EU institutions in anti-dumping proceedings, the General Court cannot substitute itself for those institutions in finding that conclusions have been drawn from partial evidence. The General Court encroached on that broad discretion and exceeded its power of judicial review.

68 It must be observed in that regard that, according to the Court's case-law, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine. The judicial review of such discretion must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (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 and the case-law cited).

69 The Court of Justice has also held 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 of 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 (judgment of 26 January 2016, *Maxcom* v *City Cycle Industries*, C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62, paragraph 89 and the case-law cited).

70 As is apparent from paragraph 63 above, the General Court simply carried out a review of whether the Council had complied with Article 18(1) of the basic regulation, on the basis of the factual evidence submitted to it. It considered that, in the particular circumstances of the present case, that institution was not entitled to rely on the facts available to determine Giant's export price because, first, it was apparent from the information provided by Giant that there was no need for information concerning the Jinshan group companies for the purpose of calculating that export price and, second, that institution had been unable to specify what additional information concerning those companies might be necessary for the calculation of that price.

71 That being the case, the General Court did not exceed the limits of its power of review, which it is required to carry out in the light of the case-law cited in paragraph 68 above.

72 It follows from the foregoing considerations that the first and second grounds of appeal must be rejected as unfounded.

C. The third ground of appeal

1. Arguments of the parties

73 By its third ground of appeal, EBMA, supported by the Council, challenges paragraphs 79 to 91 of the judgment under appeal, in which the General Court held that the Council was not entitled to rely on the risk of circumvention to justify the refusal to impose an individual anti-dumping duty on Giant.

74 EBMA considers, first, that the General Court erred in relying on the premiss that the case primarily concerns the determination of the export price. It was on the basis of that incorrect premiss that the General Court stated, in paragraphs 81 and 82 of the judgment under appeal, that the EU institutions cannot rely on the risk of circumvention where they have not applied Article 9(5) of the basic regulation or referred to any other provision of that regulation which provides that the existence of a risk of circumvention may justify a refusal to grant an individual anti-dumping duty to an exporting producer.

75 Secondly, according to EBMA, where companies are related, such as the Giant and Jinshan groups, there is always a risk of circumvention if one related entity is granted a lower anti-dumping duty than another entity belonging to the same group. That is why the established practice of the European Union is to impose anti-dumping duty at group level, not at entity level. Therefore, paragraph 83 of the judgment under appeal, which refers to the theoretical risk of circumvention between unrelated entities, is fundamentally flawed and incorrect as a matter of law, as circumvention is more likely to occur and more difficult to detect between related companies. Furthermore, according to EBMA, paragraph 84 of the judgment under appeal misses the point. The Panel Report and the Appellate Body Report of the WTO Dispute Settlement Body cited in that paragraph concern whether Article 9(5) of the basic regulation is consistent with Article 9.2 of the Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103).

76 Third, with regard to paragraphs 85 to 89 of the judgment under appeal, EBMA argues that it cannot be ruled out that the Giant and Jinshan groups were related during the investigation period in a way that goes beyond what is apparent from Giant's replies to the questionnaire and the financial statements of Jinshan.

77 Giant contends that those arguments are unfounded.

2. Findings of the Court

78 By its third ground of appeal, EBMA takes issue with the General Court for finding, in paragraphs 79 to 91 of the judgment under appeal, that the Council was not entitled to rely on the risk of circumvention to justify the refusal to apply an individual anti-dumping duty to Giant.

79 In the first place, EBMA calls into question paragraphs 81 and 82 of the judgment under appeal. In paragraph 81 of that judgment, the General Court summarised the content of Article 9(5) of the basic regulation. It stated, in paragraph 82 of the judgment, that the existence of a risk of circumvention could not be invoked by the Council to justify the refusal to grant an individual anti-dumping duty because, first, that provision had not been taken into consideration when Giant's situation was examined and, second, no reference had been made to any other provision in the basic regulation that provides that a risk of circumvention may be taken into account.

80 EBMA maintains that those paragraphs of the judgment under appeal are based on the incorrect premiss that the case primarily concerns the determination of the export price. However, as is apparent from paragraphs 60 and 61 above, the Council did in fact apply Article 18(1) of the basic regulation to the determination of the export price, which was challenged by Giant both in the anti-dumping investigation and before the General Court.

81 The argument based on that alleged incorrect premiss must therefore be rejected as unfounded.

82 In the second place, EBMA calls into question paragraphs 83 and 84 of the judgment under appeal. In those paragraphs, the General Court stated that the Council was not entitled to rely on a purely hypothetical risk of circumvention. It also referred, in that regard, to certain Panel Reports and Appellate Body Reports of the WTO Dispute Settlement Body.

83 According to EBMA, the General Court's reasoning in those paragraphs is defective because, in the case of related companies, there is always a risk of circumvention.

84 That argument cannot be accepted. Even though the risk of circumvention of anti-dumping measures is higher in the case of related exporters on which different anti-dumping duties might be imposed, the EU institutions are nonetheless required to demonstrate that, in the light of the particular circumstances of the investigation concerned, there is a genuine risk of circumvention.

85 As the General Court was correct to observe in paragraph 83 of the judgment under appeal, any other interpretation would leave the grant of an individual anti-dumping duty to the sole discretion of the EU institutions.

86 Moreover, that interpretation is confirmed by the wording of Article 9(5) of the basic regulation, which provides that an individual anti-dumping duty may be specified for exporters which can demonstrate, on the basis of properly substantiated claims that, inter alia, State interference is not such as to permit circumvention of anti-dumping measures. It follows that the absence of a risk of circumvention, in the same way as the existence of such a risk, cannot be presumed.

87 In the third place, as regards paragraphs 85 to 89 of the judgment under appeal, EBMA contends that it cannot be ruled out that the Giant and Jinshan groups were related during the investigation period.

88 The General Court demonstrated, in paragraphs 85 to 89 of the judgment under appeal, that the information available to the EU institutions when adopting the regulation at issue was sufficient for it to be concluded that there was no risk of circumvention between the Giant and Jinshan groups.

89 In that regard, as the Advocate General observed in point 108 of his Opinion, although EBMA claims that a link between the Giant and Jinshan groups cannot be ruled out, it does not call into question the evidence set out in paragraphs 86 to 89 of the judgment under appeal, on which the General Court based its conclusion that there was no such link.

90 The Court must therefore reject the argument alleging that, contrary to the finding of the General Court, it cannot be ruled out that the Giant and Jinshan groups were related during the investigation period, as well as the third ground of appeal in its entirety, as unfounded.

91 In the light of the above considerations, the appeal must be dismissed in its entirety.

Costs

92 In accordance with Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Article 138(1) and (2) of those rules, applicable to the procedure on appeal by virtue of Article 184(1) thereof, provides, first, that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings and second, that, where there is more than one unsuccessful party, the Court is to decide how the costs are to be shared.

93 As Giant has applied for costs against EBMA and the latter has been unsuccessful, it must be ordered to bear its own costs and to pay the costs incurred by Giant. As the Council has been unsuccessful, it is to bear its own costs.

94 Under Article 184(4) of its Rules of Procedure, the Court of Justice may decide that an intervener at first instance who has taken part in the written or oral part of the proceedings before the Court is to bear its own costs.

95 Consequently, the Commission is to bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Dismisses the appeal.**

2. **Orders the European Bicycle Manufacturers Association (EBMA) to bear its own costs and to pay the costs incurred by Giant (China) Co. Ltd.**

3. **Orders the Council of the European Union and the European Commission to bear their own costs.**

von Danwitz Vajda Juhász

Jürimäe Lycourgos

Delivered in open court in Luxembourg on 14 December 2017.

A. Calot Escobar
Registrar

T. von Danwitz
President of the Fourth Chamber