Reports of Cases

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

21 June 2023 *

(Dumping – Importation of aluminium extrusions originating in China – Implementing Regulation (EU) 2021/546 – Imposition of a definitive anti-dumping duty – Article 1(4) of Regulation (EU) 2016/1036 – Definition of the product concerned – Determination of the normal value – Article 2(6a) of Regulation 2016/1036 – Report finding significant distortions in the exporting country – Burden of proof – Use of a representative country – Article 3(1), (2), (3), (5) and (6) of Regulation EU 2016/1036 – Injury – Economic factors and indices having a bearing on the state of the Union industry – Rights of the defence – Principle of good administration)

In Case T-326/21,

Guangdong Haomei New Materials Co. Ltd, established in Qingyuan (China),

Guangdong King Metal Light Alloy Technology Co. Ltd, established in Yuan Tan Town (China),

represented by M. Maresca, C. Malinconico, D. Guardamagna, M. Guardamagna, D. Maresca, A. Cerruti, A. Malinconico and G. Falla, lawyers,

applicants,

supported by

Airoldi Metalli SpA, established in Molteno (Italy), represented by M. Campa, M. Pirovano, D. Rovetta and V. Villante, lawyers,

intervener,

v

European Commission, represented by G. Luengo, P. Němečková and A. Spina, acting as Agents,

defendant,

supported by

European Parliament, represented by A. Neergaard, M. Peternel and L. Stefani, acting as Agents,

* Language of the case: Italian.

intervener,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Papasavvas, President, R. da Silva Passos, S. Gervasoni (Rapporteur), I. Reine and T. Pynnä, Judges,

Registrar: P. Nuñez Ruiz, administrator,

having regard to the written part of the procedure,

further to the hearing on 16 January 2023,

gives the following

Judgment [1]

1 By their action, the applicants, Guangdong Haomei New Materials Co. Ltd and Guangdong King Metal Light Alloy Technology Co. Ltd, seek, first, on the basis of Article 263 TFEU, the annulment, primarily, of Commission Implementing Regulation (EU) 2021/546 of 29 March 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of aluminium extrusions originating in the People's Republic of China (OJ 2021 L 109, p. 1; 'the contested regulation'), in so far as it concerns them, and, in the alternative, of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21) ('the basic regulation'), and, second, on the basis of Article 268 TFEU, compensation for the damage suffered by them by the application of the contested regulation and of the basic regulation.

I. Background to the dispute

2 The applicants are companies governed by Chinese law operating in the semi-finished aluminium goods production sector which produce aluminium extrusions and export them to the European Union.

3 On 3 January 2020, the association European Aluminium, which represented more than 25% of the total EU production of aluminium extrusions, lodged with the European Commission a complaint relating to dumping and the resulting material injury.

4 On 14 February 2020, the Commission published the notice of initiation of an anti-dumping proceeding with regard to imports into the European Union of aluminium extrusions originating in the People's Republic of China (OJ 2020 C 51, p. 26) pursuant to Article 5 of the basic regulation.

5 The product under investigation for dumping and subsequent injury was 'bars, rods, profiles (whether or not hollow), tubes, pipes, unassembled; whether or not prepared for use in structures (e.g. cut-to-length, drilled, bent, chamfered, threaded); made from aluminium, whether or not

[1] Only the paragraphs of the present judgment which the General Court considers it appropriate to publish are reproduced here.

alloyed, containing not more than 99.3% of aluminium'. That product included products commonly referred to as 'aluminium extrusions', referring to their most common manufacturing process even if they can also be produced by other production processes such as rolling, forging or casting.

6 The investigation of dumping and subsequent injury covered the period from 1 January 2019 to 31 December 2019 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period (the 'period considered').

7 By letter of 26 February 2020, the applicants were included by the Commission in the sample of exporting producers taken into consideration in its analysis.

8 On 6 April and 29 May 2020, the applicants submitted comments. Between 6 and 29 April 2020, the applicants submitted to the Commission the relevant completed questionnaires, together with annexes containing the information required. On 3, 5 and 12 June 2020, remote crosschecks took place in order to examine the accounting records submitted and to allow the submission of other documents.

9 Following a request from European Aluminium, the Commission adopted Implementing Regulation (EU) 2020/1215 of 21 August 2020 making imports of aluminium extrusions originating in the People's Republic of China subject to registration (OJ 2020 L 275, p. 16). On 30 September 2020, the applicants brought an action for annulment based on Article 263 TFEU against that implementing regulation. By the order of 22 December 2021, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission* (T-604/20, not published, EU:T:2021:952), the General Court found that there was no need to adjudicate on that action because there was no longer any legal interest in bringing proceedings.

10 On 22 September 2020, the Commission informed the applicants of the possible imposition of a provisional anti-dumping duty. On 25 September 2020, the applicants submitted fresh comments.

11 On 12 October 2020, the Commission adopted Implementing Regulation (EU) 2020/1428 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ 2020 L 336, p. 8; 'the provisional regulation'). The provisional anti-dumping duty imposed on the applicants was 30.4%.

12 On 14 December 2020, the applicants brought an action for annulment based on Article 263 TFEU against the provisional regulation. By the order of 22 December 2021, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission* (T-725/20, not published, EU:T:2021:957), the General Court dismissed that action as inadmissible.

13 On 22 December 2020, the Commission provided the applicants with the final disclosure containing the facts and considerations which it had deemed essential and on the basis of which it was about to apply definitive anti-dumping duties on the imports of aluminium extrusions originating in China. The applicants submitted their comments on that final disclosure on 7 January 2021.

14 On 8 February 2021, the Commission adopted an additional final disclosure, notified to the interested parties, in order to reflect the fact that, following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the EU market now included only 27 Member States. The applicants submitted their comments on that additional final disclosure on 16 February 2021.

15 On 29 March 2021, the Commission adopted the contested regulation. Article 1(2) of the contested regulation fixed the rate of the definitive anti-dumping duty applied to the applicants at 21.2%.

II. Forms of order sought

16 The applicants, supported by Airoldi Metalli SpA ('Airoldi'), claim that the Court should:

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

– in the alternative, annul the basic regulation;

– order the Commission to pay compensation for the damage caused by the application of the basic regulation and of the contested regulation;

– order the Commission to pay the costs.

17 The Commission, supported by the European Parliament, contends that the Court should:

– dismiss the action for damages as inadmissible;

– dismiss the action for annulment of the basic regulation as inadmissible or, in any case, unfounded;

– dismiss the action for annulment of the contested regulation as unfounded;

– order the applicants to pay the costs.

III. Law

…

A. The first head of claim, seeking the annulment of the contested regulation in so far as it concerns the applicants

33 In support of their action, the applicants rely on five pleas in law, which can be summarised, in essence, as follows:

– the first, alleging breach of the principle of good administration and a misuse of powers;

– the second, alleging breach of the rights of the defence and errors made by the Commission in defining the product concerned and in determining the existence of significant distortions on the Chinese market, the representative country and the normal value;

– the third, alleging errors made by the Commission when it found there to be injury to the Union industry and a causal link;

– the fourth and fifth, alleging infringement of international law, of the applicants' fundamental rights and of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

…

1. The second plea in law, alleging infringement of the rights of the defence and errors made by the Commission in defining the product concerned and in determining the existence of significant distortions on the Chinese market, the representative country and the normal value

44 The second plea in law consists of seven parts, alleging, in essence, first, infringement of the applicants' rights of defence; second and third, pleas which should be examined jointly, errors in defining the product concerned; fourth, errors in determining the existence of significant distortions on the Chinese market; fifth and sixth, pleas which should be examined jointly, the inappropriate choice of Türkiye as the representative country; and, seventh, an incorrect determination of the normal value.

…

(a) Definition of the product concerned

55 In the context of the second and third parts of their plea in law, the applicants criticise the Commission for having found that the aluminium extrusions from China were one single product. The Commission used an erroneous method ('physicochemical' assessment) and exceeded the limits of its discretion in defining the product concerned. They claim that they produce thousands of types of aluminium extrusions and that, for that reason, distinctions should be made, because the group to which they belong is active in niche markets not covered by EU producers.

56 In that regard, it should be observed that it follows from Article 1 of the basic regulation, entitled 'Principles', which, according to paragraph 1 thereof, covers 'any dumped product whose release for free circulation in the Union causes injury', that the anti-dumping investigation concerns a specific product. That 'product under consideration' was defined by the EU institutions when that investigation was initiated. In addition, Article 1(4) of that regulation defines a 'like product' as a product which is identical, that is to say alike to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

57 According to settled case-law, the purpose of the definition of the product concerned in an anti-dumping investigation is to aid in drawing up the list of the products which will, if necessary, be subject to the imposition of anti-dumping duties. For the purposes of that process,

the institutions may take account of a number of factors, such as, inter alia, the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality (judgments of 13 September 2010, *Whirlpool Europe* v *Council*, T-314/06, EU:T:2010:390, paragraph 138, and of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 329).

58 It follows that products which are not identical may, in certain circumstances, be grouped together under the same definition of 'the product concerned' and, together, be subject to an anti-dumping investigation. The basic regulation does not in itself require the concept of 'product under consideration' necessarily to refer to a product envisaged as a homogeneous whole composed of similar products (see, by analogy, judgment of 17 March 2016, *Portmeirion Group*, C-232/14, EU:C:2016:180, paragraph 42). The definition of the 'product under consideration', at the time the investigation is initiated, does not prevent the EU institutions from subdividing that product into individual product types or models or from relying on model-by-model or type-by-type comparisons between the price of the product on the EU market and the price of the imports (see, by analogy, 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 59).

59 In addition, a claim that the product concerned is incorrectly defined should be based on arguments demonstrating either that the institutions made an error of assessment with regard to the factors which they deemed were relevant, or that the application of other, more relevant factors meant that the definition of the product concerned had to be restricted (judgment of 13 September 2010, *Whirlpool Europe* v *Council*, T-314/06, EU:T:2010:390, paragraph 141).

60 In that context of review, account should be taken of the fact that, in the sphere of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see judgment of 18 October 2018, *Gul Ahmed Textile Mills* v *Council*, C-100/17 P, EU:C:2018:842, paragraph 63 and the case-law cited). In that regard, since it has already been held that the determination of the 'like product' fell within the exercise of the broad discretion given to the institutions and was therefore subject to limited review, the same approach must be adopted when reviewing the merits of the definition of 'the product concerned' (judgment of 10 October 2012, *Gem-Year and Jinn-Well Auto-Parts (Zhejiang)* v *Council*, T-172/09, not published, EU:T:2012:532, paragraph 62).

61 However, as the applicants rightly submit, the discretion enjoyed by the Commission in that regard is not unlimited. The Commission's assessments are subject to review by the General Court which, in that context, involves ascertaining whether the applicable rules of law have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been any manifest error of assessment of those facts or any misuse of powers (see judgment of 17 December 2008, *HEG and Graphite India* v *Council*, T-462/04, EU:T:2008:586, paragraph 120 and the case-law cited).

62 It is therefore necessary to determine whether, in the present case, the Commission exceed its broad discretion in regarding 'bars, rods, profiles (whether or not hollow), tubes, pipes, unassembled; whether or not prepared for use in structures (e.g. cut-to-length, drilled, bent, chamfered, threaded); made from aluminium, whether or not alloyed, containing not more than 99.3% of aluminium', commonly referred to as 'aluminium extrusions', as the goods concerned

(see recitals 38 and 40 of the provisional regulation, confirmed by recital 94 of the contested regulation, subject to the further details provided in recitals 90 to 93 of the latter). The Commission stated that the product concerned was to be treated as one single product (recitals 56 and 197 of the contested regulation).

63 The Commission justified that choice, in recital 56 of the contested regulation, by explaining that the products included in the definition of the product concerned shared the same basic physical, chemical and technical characteristics as the product concerned.

64 It must be observed, with regard to the method used to define the product concerned, that the Commission clarified, in recitals 56 and 69 of the contested regulation, that, although specific extrusions could be used only for a specific application, that was the result of the fact that those products were bespoke and produced expressly for their intended use. The Commission took into account the fact that the commercial practice had introduced a number of distinctions, including between hard and soft alloys, medium and large size profiles, standard and special profiles and extrusions to be used for a specific application. However, while many producers are present in several of those categories, they produce according to the technical characteristics of their machines and on the basis of the requirements of their various customers. As regards alloys more specifically, the Commission concluded after the investigation that a number of aluminium alloys existed and that different alloys could be appropriate for a certain application. The Commission took into account the argument put forward by various parties that a market distinction had to be made on the basis of the abovementioned criteria. Nevertheless, in view of the lack of any clear demarcation or distinguishing criterion between the various products which would justify a segment-by-segment analysis, the Commission concluded that the dumping and injury assessment had to be made for the Union industry as a whole, examining all types of aluminium extrusions jointly and ensuring due comparability of the products concerned.

65 In recital 61 of the contested regulation, the Commission pointed out that it had not disputed the complexity of many aluminium extrusions, including those of the railway sector, nor the fact that different product types could have different specific characteristics or uses or a different specific production process; that they could follow different product standards; or that interchangeability might not be universal amongst each and every one of such product types. The information provided regarding type-related specificities had not disproven the fact that the types at hand shared the same basic physical, chemical and technical characteristics, regardless of the sector in which they were used. In addition, in recital 197 of the contested regulation, the Commission stated that the Union industry was active in the hard and soft alloys market, the medium and large size profiles market and the standard and special profiles market, and that it faced competition from dumped Chinese imports for all those product types. It also pointed out that both EU and Chinese producers could produce a number of product types and could decide to concentrate on some of them when the market conditions allowed.

66 It appears, having examined the Commission's analysis, that that institution took into account several relevant factors within the meaning of the case-law cited in paragraph 57 above, such as, inter alia, the physical, technical and chemical characteristics of the products, their use, interchangeability, customer demand and the manufacturing process.

67 In addition, the applicants have failed to demonstrate, in accordance with the rule that the burden of proof rests with the applicant, who must provide conclusive evidence in support of its claim (see judgment of 19 September 2019, *Zhejiang Jndia Pipeline Industry* v *Commission*, T-228/17, EU:T:2019:619, paragraph 127 and the case-law cited), that the Commission had made an error

of assessment with regard to the factors which it had deemed appropriate, or which other, relevant factors should have been used. The fact that the applicants' prices were in line with or higher than the prices of the EU producers, assuming that were proven to be the case, is irrelevant for the purposes of this analysis.

68 Accordingly, the applicants have failed to demonstrate that the Commission made a manifest error of assessment in defining the product concerned. The second and third parts of the second plea in law must therefore be dismissed.

(b) The existence of significant distortions on the Chinese market

69 The applicants, supported by Airoldi, claim that the Commission made their products subject to countervailing anti-dumping duties on the basis of a vague and hypothetical analysis, founded on the Commission Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations of 20 December 2017 (SWD(2017) 483 final/2; 'the report on significant distortions on the Chinese market'), and disregarded the evidence adduced by them. In addition, exporters must be entitled to be heard and to demonstrate the lack of distortions in their case.

70 For its part, Airoldi contests the lawfulness of the report on significant distortions on the Chinese market, used by the Commission, which it claims does not comply with the requirements under Article 2(6a)(c) of the basic regulation.

71 The Commission argues that Airoldi's challenge to the lawfulness of the report on significant distortions on the Chinese market is inadmissible because it has not been raised by the applicants.

72 In that regard, it must observed that the determination of the normal value of a product constitutes one of the essential steps required to prove the existence of dumping. The first subparagraph of Article 2(1) of the basic regulation provides, in that regard, that 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.

73 It must also be noted that, in the determination of the normal value, it is apparent from both the wording and the scheme of that provision that it is the price actually paid or payable in the ordinary course of trade which must, as a matter of priority, be taken into consideration in principle to establish the normal value (judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 20). Under Article 2(6a)(a) of the basic regulation, that principle may be derogated from only where it is deemed inappropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions (see, to that effect and by analogy, judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 20).

74 Article 2(6a)(b) of the basic regulation defines the concept of 'significant distortions' as 'distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention' and contains an indicative list of elements that can be taken into account when analysing the existence of such distortions.

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

'Where the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector. Such reports and the evidence on which they are based shall be placed on the file of any investigation relating to that country or sector. Interested parties shall have ample opportunity to rebut, supplement, comment or rely on the report and the evidence on which it is based in each investigation in which such report or evidence is used. In assessing the existence of significant distortions, the Commission shall take into account all the relevant evidence that is on the investigation file.'

76 The concept of 'significant distortions' and the method of constructing the normal value when such distortions exist in the exporting country were introduced into the basic regulation by Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending the basic regulation and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ 2017 L 338, p. 1) ('the regulation amending the basic regulation').

77 It is apparent from the provisions of Article 2(6a) of the basic regulation that, when the Commission produces a report describing the market circumstances in the exporting country, it takes into account, in the analysis of the existence of significant distortions, the elements mentioned in Article 2(6a)(b) of that regulation.

78 In that regard, it must be observed that the broad discretion enjoyed by the EU institutions in the sphere of measures to protect trade, by reason of the complexity of the economic and political situations which they have to examine (see judgment of 18 October 2018, *Gul Ahmed Textile Mills* v *Council*, C-100/17 P, EU:C:2018:842, paragraph 63 and the case-law cited), also covers the determination of the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic regulation and the decision to produce the report provided for in Article 2(6a)(c) of that regulation. The same applies to factual situations of a legal and political nature in the country concerned which the EU institutions must assess in order to determine whether an exporter operates in market conditions without significant State interference (see, by analogy, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraph 163 and the case-law cited).

79 However, whilst, in the sphere of measures to protect trade, in particular anti-dumping measures, the EU judicature cannot interfere in the assessment reserved to the EU authorities, its task is nevertheless to satisfy itself that the institutions concerned have taken account of all the relevant circumstances and appraised the facts of the matter with all due care (see, by analogy, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraph 164 and the case-law cited).

80 In accordance with Article 2(6a)(c) of the basic regulation, the report on the market circumstances in a country and the evidence on which it is based are to be placed on the file of the investigation. With a view to assessing the existence of significant distortions, the Commission is to take into account all the relevant evidence that is on the investigation file, including that relied on by the interested parties. Interpreted in the light of recital 7 of the regulation amending the basic regulation, that provision means that, in order to analyse the existence of significant distortions in a third country, the Commission must take account of all relevant evidence regarding the

circumstances prevailing on the domestic market of exporters and producers from that country, which has been placed on the file and upon which interested parties have had an opportunity to comment. Where it is apparent from the report referred to in Article 2(6a)(c) of the basic regulation, which has been placed on the file, that significant distortions exist on the domestic market in the country concerned, the Commission must allow such exporters and producers to call those findings into question and can arrive at a conclusion on that issue only after having duly examined the evidence put forward by them to establish inter alia that their domestic prices and costs are not distorted.

81 Thus, under the system established by Article 2(6a) of the basic regulation, the findings made in the report referred to in that provision may, where appropriate, have the effect of placing the burden of adducing evidence to the contrary on a producer wishing to be recognised as an undertaking whose domestic prices are not distorted. It is, however, the task of the Commission, in any event, to assess whether the evidence supplied by the producer is sufficient in that regard, and it is for the EU judicature to examine whether that assessment is vitiated by a manifest error (see, by analogy, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraph 165 and the case-law cited).

82 In addition, it follows from the principle of sound administration, which is one of the general principles of EU law, that the burden of proof which may thus fall on exporting producers pursuant to Article 2(6a)(c) of the basic regulation must not be unreasonable (see, by analogy, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraph 166 and the case-law cited).

83 It is in the light of those considerations that the arguments raised by the applicants and by Airoldi concerning the Commission's analysis of the existence of significant distortions on the Chinese market must be examined.

84 In the first place, it is necessary to examine Airoldi's arguments that the report on significant distortions on the Chinese market, as it takes the form merely of a Commission staff working document, does not comply with the requirements under Article 2(6a)(c) of the basic regulation.

85 The Commission argues that those arguments raised by Airoldi are inadmissible because they go beyond the framework provided by the forms of order sought and pleas in law raised by the applicants.

86 In that regard, it must be recalled that Article 142(1) of the Rules of Procedure provides that the form of order sought in an intervention is to be limited to supporting, in whole or in part, the form of order sought by one of the parties.

87 According to case-law, a party who is granted leave to intervene in a case may not alter the subject matter of the dispute as defined by the forms of order sought by the main parties and the pleas in law raised by those parties. It follows that arguments submitted by an intervener are not admissible unless they fall within the framework provided by those forms of order and pleas in law (judgment of 7 October 2014, *Germany* v *Council*, C-399/12, EU:C:2014:2258, paragraph 27). Although, under Article 145(2)(b) of the Rules of Procedure, the statement in intervention is to contain the pleas in law and arguments relied on by the intervener, that does not mean that the intervener is free to rely on new pleas in law, distinct from those relied on by the applicant. That provision falls within the context of the limits established by the intervention procedure and must be read in the light of Article 142 of those rules of procedure, which states that the intervention is

to be limited to supporting, in whole or in part, the form of order sought by one of the parties, that it is ancillary to the main proceedings and that the intervener must accept the case as he finds it at the time of his intervention (judgment of 10 November 2016, *DTS Distribuidora de Televisión Digital* v *Commission*, C-449/14 P, EU:C:2016:848, paragraph 121).

88 In addition, in the case which gave rise to the judgment of 13 March 2019, *Poland* v *Parliament and Council* (C-128/17, EU:C:2019:194), which concerned the annulment of a directive, the applicant Member State argued that it had been denied the information necessary to enable it to participate effectively in the procedure that led to the adoption of the contested directive. An intervening Member State had argued, for its part, that the legislative procedure had not been conducted in accordance with the Rules of Procedure of the Council of the European Union because some information and documents had been sent belatedly. The Court of Justice held that the arguments thus raised by the intervening Member State did not come within the framework provided by the forms of order sought and pleas in law raised by the main party in support of whom it had intervened, and that they were therefore inadmissible (judgment of 13 March 2019, *Poland* v *Parliament and Council*, C-128/17, EU:C:2019:194, paragraphs 78 to 80).

89 It is therefore for the General Court, in ruling on the admissibility of the arguments raised by Airoldi, to determine whether they come within the framework provided for by the forms of order sought and pleas in law raised by the applicants, in support of whom it intervenes.

90 In the present case, by its arguments, the admissibility of which the Commission contests, Airoldi questions the compliance of the report on significant distortions on the Chinese market with Article 2(6a)(c) of the basic regulation. Firstly, Airoldi argues that the report on significant distortions on the Chinese market is merely a staff working document produced by the Commission's 'Trade' Directorate-General (DG), which does not appear to have been the subject of any approval procedure by the college of its members. It is an internal, administrative staff document of the Commission's DG 'Trade' which has not been revised by the Commission's other services. Secondly, the report has not been published, in accordance with the requirements of Article 2(6a)(c) of the basic regulation, because it was published only in English on the website of the Commission's DG 'Trade'. Thirdly, nor has the report been updated and the data cited date back to 2017.

91 At the hearing, Airoldi explained that, by those arguments, it contested the legality of the drafting process of the report on significant distortions on the Chinese market. It argued that that report was an act of general application that was unlawful in origin, and that its arguments should be interpreted as being raised in support of a plea of illegality for the purposes of Article 272 TFEU.

92 By those arguments, Airoldi in fact raises a new plea in law in support of the criticism of the construction of the normal value contained in the contested regulation. It is true that the applicants do, in the context of the first part of the first plea in law and the fourth part of the second plea in law, challenge the Commission's conclusions based on the report on significant distortions on the Chinese market regarding the significant distortions, and they also claim, by the seventh part of their second plea in law, that the Commission erred in determining the normal value on the basis of that report. However, they do not raise a plea in law alleging, by way of an objection, that the report on significant distortions on the Chinese market to which they refer on several occasions is unlawful. Specifically, in paragraph 115 of the application, they question merely the lack of an in-depth analysis in that report of the terms that they themselves applied.

93 At the hearing, the applicants clarified that, in their view, the report on significant distortions on the Chinese market had no legal effect. They stated that they did not contest the lawfulness of that report.

94 It follows that Airoldi's arguments concern an aspect of the contested regulation which has not been disputed by the applicants, namely the lawfulness of the drafting process of the report on significant distortions on the Chinese market, on the basis of which the contested regulation was adopted. However, the applicants' arguments, which relate exclusively to the use of that report, are based on the assumption that that report is valid. It follows that the plea in law raised by Airoldi falls outside the framework provided by the forms of order sought and pleas in law raised by the applicants.

95 In addition, contrary to Airoldi's arguments in the course of the hearing, an objection of illegality such as that relied on here cannot be examined by the General Court of its own motion, since it is not a plea involving a matter of public policy.

96 Accordingly, this plea in law raised by Airoldi and the arguments in support of it are inadmissible and must be dismissed as such.

97 In the second place, it is necessary to examine the applicants' arguments that the Commission made them subject to countervailing anti-dumping duties on account of an overall assessment painting an unfavourable picture of the Chinese economy and on the basis of a vague and hypothetical analysis, founded on the report on significant distortions on the Chinese market. They allege that the process adopted was based on vague facts and possibilities and that the investigation conducted in their regard was based not on facts but on preconceived notions.

98 In that regard, it must be noted that, as has been stated in paragraphs 78 and 80 above, first, the Commission enjoys a broad discretion in determining the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic regulation and, second, it must take account of all relevant evidence regarding the circumstances prevailing on the domestic market of exporters and producers from the country concerned and give those exporters and producers the opportunity to demonstrate convincingly that their domestic prices and costs are not distorted.

99 In the present case, in recital 139 of the contested regulation, the Commission stated that it had found there to be significant distortions in the sector of the product concerned, and that therefore the application of Article 2(6a) of the basic regulation was appropriate. It referred, in that regard, to section 3.2.1 of the provisional regulation, to the analysis of the existence of significant distortions in the aluminium sector, including the product concerned, in China.

100 More specifically, in the provisional regulation, the Commission conducted a point-by-point analysis of the various elements that must be taken into account in particular, pursuant to Article 2(6a)(b) of the basic regulation, namely the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country (recitals 98 to 104 of the provisional regulation); state presence in firms allowing the state to interfere with respect to prices or costs (recitals 105 to 112 of the provisional regulation); public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces (recitals 113 to 135 of the provisional regulation); the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws (recitals 136 to 140 of the provisional regulation); wage costs being distorted (recitals 141 and 142 of the provisional

regulation); and access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state (recitals 143 to 153 of the provisional regulation). The Commission inferred from those elements, taking into account in addition the lack of cooperation on the part of the Chinese Government, that it was not appropriate to use domestic prices and costs to establish normal value in this case (recital 157 of the provisional regulation).

101 In its analysis, the Commission took into account the report on significant distortions on the Chinese market, placed on the file (recital 73 of the provisional regulation), as well as the studies and reports contained in the complaint lodged by European Aluminium (recital 74 of the contested regulation), namely a report on overcapacities in China, published by the European Union Chamber of Commerce in China, the Organisation for Economic Co-operation and Development (OECD) paper entitled 'Measuring distortions in international markets: the aluminium value chain' (*OECD Trade Policy Papers*, No 218, Paris), and Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of the basic regulation (OJ 2019 L 146, p. 63). It is apparent from a number of recitals of and footnotes to the provisional regulation that the Commission also took into account a variety of available data from Chinese news agencies, documents and websites as well as an International Monetary Fund (IMF) working paper entitled 'Resolving China's Corporate Debt Problem' (WP/16/203) (recitals 91 to 156 of the provisional regulation).

102 The Chinese Government did not submit comments or provide evidence capable of contradicting the evidence on the file at the initiation stage, and the Commission informed the Chinese Government that it intended to apply Article 18 of the basic regulation, which allows findings to be made on the basis of the facts available (recitals 66 and 76 of the provisional regulation).

103 The applicants submitted comments in that regard prior to the adoption of the provisional regulation (recital 77 of the provisional regulation) and comments on the provisional regulation (recitals 95 and 96 of the contested regulation).

104 It is clear from the analysis of the various aspects of the Chinese market, from the variety of sources of available information reviewed, which are not restricted to the report on significant distortions on the Chinese market, and from the conclusions drawn from those sources that the Commission, far from simply undertaking a vague and hypothetical analysis, as the applicants allege, based its findings of the existence of significant distortions on the Chinese market on an objective analysis of the relevant information available, examined with care and impartiality all the relevant factors of the case in question and did not exceed the broad discretion afforded to it by the relevant case-law (see paragraph 77 above).

105 In the third place, the applicants submit that the existence of significant distortions on the Chinese market cannot be regarded as being automatically proven in the case of all the exporters concerned. The interested parties are entitled to be heard with a view to proving the lack of distortions as far as they are concerned. The Commission disregarded the evidence adduced by them.

106 They claim, first, that the Commission failed to take into consideration the fact that their prices on the European market are in line with those of European producers, that the method of calculating the average price of the European extrusions is manifestly incorrect and that the shares of the relevant market in Europe have changed.

107 However, as the Commission rightly points out and as the applicants acknowledged at the hearing, the prices applied by them on the European market have no bearing on the construction of the normal value, which is based on the prices in the exporting country (Article 2(1) of the basic regulation) or on the corresponding costs of production or sale in an appropriate representative country (Article 2(6a)(a) of the basic regulation). Nor are the prices applied by the applicants on the European market relevant to the determination of the existence of significant distortions within the meaning of Article 2(6a) of the basic regulation, as the relevant criterion for that determination is, in the present case, whether the aluminium extrusions sector is affected by significant distortions on the Chinese market.

108 Those arguments must therefore be dismissed.

109 Secondly, the applicants claim that they have proven that they did not benefit from preferential terms in connection with the financing obtained during the investigation period, or from preferential policies, and submit information concerning the interest rate applicable to their financing over that period. The Commission failed to take those elements into consideration in recital 103 of the contested regulation.

110 However, on reading recital 103 of the contested regulation, it appears that the Commission took into consideration the loans extended by State-owned banks and not the interest rate of those loans. The interest rate, even though it is a significant variable, is just one of the elements to be taken into consideration when determining the existence of advantageous financing. Other considerations, such as the terms on which financing can be accessed, the creditworthiness of the entities financed and the processing and payment time frames may also be decisive factors. The applicants' arguments, which are limited to the interest rates applied to their financing, are therefore not enough to invalidate the Commission's reasoning.

111 Thirdly, the applicants submit that the Commission did not give them the opportunity to prove that their prices are not distorted.

112 In that regard, it is sufficient to state that, as is made clear in paragraphs 10 and 13 above, the applicants had the opportunity to submit their comments on the existence of significant distortions on the Chinese market both before the provisional regulation was adopted and after the contested regulation was adopted. Furthermore, it appears, from reading those regulations, that part of the sections devoted to the analysis of the existence of significant distortions on the Chinese market is devoted to the replies given to the applicants' arguments.

113 Thus, the applicants were placed in a position in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence used by the Commission in support of its conclusion concerning significant distortions on the Chinese market. Moreover, nor do they put forward any evidence which they were not able to use and which they did not have the opportunity to submit to the Commission (see, to that effect, judgment of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, EU:T:2014:1076, paragraph 42).

114 In addition, the applicants do not present in any greater detail the alleged evidence, other than that examined in paragraphs 106 to 110 above, which the Commission failed to take into consideration. That argument is therefore not sufficiently precise to enable the defendant to prepare its defence and the General Court to rule on the action and must be rejected as inadmissible (see, to that effect, judgment of 19 September 2019, *Zhejiang Jndia Pipeline Industry* v *Commission*, T-228/17, EU:T:2019:619, paragraphs 166 and 167 and the case-law cited).

115 Fourthly, at the hearing, the applicants added that they were not consulted when the report on significant distortions on the Chinese market was drawn up, meaning that its use in relation to their situation is vitiated by a breach of their rights of defence.

116 In that regard, it must be borne in mind that, under Article 84(1) of the Rules of Procedure, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure or amplifies a plea put forward previously, directly or by implication, in the application initiating proceedings, and is closely connected with that plea (see judgment of 7 November 2019, *Intas Pharmaceuticals* v *EUIPO – Laboratorios Indas (INTAS)*, T-380/18, EU:T:2019:782, paragraph 26 (not published) and the case-law cited). According to case-law, Article 84(1) of the Rules of Procedure also applies to complaints and arguments. Furthermore, the general nature of the heading of a plea put forward in the application at first instance cannot cover the development, at a later stage in the proceedings, of specific arguments which are not sufficiently closely related to the arguments raised in the application (see judgment of 14 July 2021, *AQ* v *eu-LISA*, T-164/19, not published, EU:T:2021:456, paragraph 59 and the case-law cited).

117 In the present case, it must be held that it is by no means apparent from the application that a breach of the rights of the defence, as described in paragraph 115 above, was alleged therein. In addition, as stated in paragraphs 92 to 94 above, the applicants did not, in the pleadings, call into question the legality of the drafting process of the report on significant distortions on the Chinese market.

118 In any event, first, the basic regulation does not provide for the consultation of the exporting producers of the third country concerned by the report provided for in Article 2(6a)(c) of that regulation for the purpose of producing that report, which is a document of general application and which may apply to a number of situations. Second, the applicants' rights were fully observed when the report on significant distortions on the Chinese market was applied, as is clear from paragraphs 103 and 105 above.

119 Accordingly, the argument put forward by the applicants at the hearing, which must be regarded as new and therefore inadmissible, must, in any case, be dismissed as unfounded.

120 Those arguments raised by the applicants must therefore be dismissed, as must the fourth part of the second plea in law as a whole.

(c) The choice of Türkiye as the representative country

121 In the first place, in the fifth and sixth parts of their plea in law, the applicants submit that the Commission erred in its finding of the existence of significant distortions on the Chinese market, which, in any case, do not concern them. Therefore, according to the applicants, the Commission was wrong to use a representative country to construct the normal value. Furthermore, there was no exchange of arguments regarding the choice of the representative country.

122 In that regard, it must be observed that the applicants' arguments regarding the Commission's finding as to the existence of significant distortions on the Chinese market have been rejected in the examination of the third part of this plea in law and of the fourth part of the second plea in law. In addition, as it argues, the Commission published, on 16 March 2020, a first note on the sources used in determining the normal value, by which, based on the criteria guiding the choice of undistorted prices or benchmarks, it identified a number of potential representative countries. The Commission received comments on that first note and published a second on 25 June 2020, in which it addressed the comments received and informed the interested parties that it intended to use Türkiye as the representative country.

123 Since the applicants do not put forward any additional arguments in the context of this part of this plea in law in that regard, those claims must be dismissed.

124 In the second place, the applicants argue that Türkiye was incorrectly chosen as the representative country.

125 In that regard, it must be observed that Article 2(6a)(a) of the basic regulation provides that, if it is determined that it is inappropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions, the normal value is to be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks. To that end, the Commission may use sources of information which include, inter alia, corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country.

126 That provision was inserted into the basic regulation by the regulation amending the basic regulation, which also replaced the provisions of ex Article 2(7)(a) of the basic regulation, under which 'an appropriate market-economy third country [was to be] selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection'. It is clear from their wording that Article 2(6a)(a) of the basic regulation and ex Article 2(7)(a) of that same regulation pursue the same objective, namely to determine the method of constructing the normal value in the case of imports from countries the domestic prices and costs of which cannot be taken into consideration owing to market conditions in the country concerned. Those two provisions are however worded differently, which means, as the Commission rightly points out, that the case-law that interpreted ex Article 2(7)(a) of the basic regulation can be transposed only in part for the purpose of interpreting Article 2(6a)(a) of the basic regulation. The latter provision introduces a different definition of the representative country, which must be 'appropriate' and have 'a similar level of economic development as the exporting country'. As regards the data to be taken into consideration, that same provision clarifies that those data must be 'relevant', once provided that they are available. A factor by which several appropriate representative countries are ranked is also introduced, because it is specified that, in choosing the representative country, preference is to be given to countries 'with an adequate level of social and environmental protection'.

127 That said, it is settled case-law that the institutions of the European Union enjoy broad discretion when determining the normal value in respect of non-market economy countries (see judgment of 19 September 2019, *Zhejiang Jndia Pipeline Industry* v *Commission*, T-228/17, EU:T:2019:619, paragraph 126 and the case-law cited) and that the choice of analogue country to that end also falls within the broad discretion enjoyed by the EU institutions in the sphere of the common commercial policy, by reason of the complexity of the economic and political situations which they have to examine (see judgment of 29 July 2019, *Shanxi Taigang Stainless Steel* v *Commission*, C-436/18 P, EU:C:2019:643, paragraph 30 and the case-law cited). That case-law also applies to Article 2(6a)(a) of the basic regulation, which does, however, limit the discretion enjoyed by the Commission in that the country chosen must have a similar level of economic development as the exporting country.

128 It has also been held that it was necessary to verify that the Commission had not neglected to take account of essential or relevant factors for the purpose of establishing the appropriate nature of the country chosen and that the information contained in the file in the case had been considered with all the care required for it to be held that the normal value had been determined in an appropriate and not unreasonable manner (see judgments of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 51 and the case-law cited, and of 23 April 2018, *Shanxi Taigang Stainless Steel* v *Commission*, T-675/15, not published, EU:T:2018:209, paragraph 32 and the case-law cited; see also, to that effect, judgment of 29 May 1997, *Rotexchemie*, C-26/96, EU:C:1997:261, paragraphs 23 and 24). That case-law can be transposed to situations in which the existence of significant distortions in the exporting country justifies the use of data from an appropriate representative country to construct the normal value, which also entails examining complex economic and political situations.

129 In addition, as is clear from Article 2(6a)(a) of the basic regulation, the Courts of the European Union must ensure that the Commission has not neglected to take account of essential factors for the purpose of establishing the appropriate nature of the country chosen. To that end, it is for those institutions, in taking account of the possible alternatives, to find a third country with a similar level of economic development as the exporting country. Where more than one country could be chosen in the light of the readily available data, the Commission makes a comparative analysis of those different countries and gives preference to countries with an adequate level of social and environmental protection.

130 In the present case, the Commission published, on 16 March 2020, a first note to the file on the sources used to determine the normal value, by which, based on the criteria guiding the choice of undistorted prices or benchmarks, it identified the following potential representative countries: Brazil, Colombia, Ecuador, Islamic Republic of Iran, Kazakhstan, Malaysia, Mauritius, Mexico, Montenegro, Russian Federation, Serbia, Sri Lanka, Thailand and Türkiye (recitals 35 and 161 of the provisional judgment). Further to the comments received by it, it informed the interested parties, by a note of 25 June 2020, that it intended to use Türkiye as the representative country (recitals 37 and 164 of the provisional regulation). The criteria used to select the representative country were, first, a level of economic development similar to China; second, that the product under investigation was produced in that country; and, third, the availability of relevant public data in that country (recital 159 of the provisional regulation). The Commission observed that preference would be given, where appropriate, to the country with an adequate level of social and environmental protection (recital 159 of the provisional regulation). After examining the comments submitted by the interested parties following the final disclosure, the Commission confirmed the choice of Türkiye as the representative country in recital 152 of the contested regulation.

131 In that context, given that the burden of proof rests with the applicant, which must provide conclusive evidence in support of its claim (see judgment of 19 September 2019, *Zhejiang Jndia Pipeline Industry* v *Commission*, T-228/17, EU:T:2019:619, paragraph 127 and the case-law cited), it is necessary to determine whether the applicants have adduced evidence capable of demonstrating that the Commission made a manifest error of assessment in choosing Türkiye as the representative country.

132 The applicants submit that the Commission went along with European Aluminium when it chose Türkiye as the representative country. They claim that that choice fails to take account of the population of China and of Türkiye and of the domestic demand which, because of the principle of economies of scale, means that an increase in production leads to a reduction of fixed costs. According to the applicants, that choice is incompatible with the criteria established in earlier case-law, namely that it is for the EU institutions, in taking account of the possible alternatives, to try to find a third country in which the prices for a like product are formed in circumstances which are as similar as possible to those in the country of export, provided that it is a market economy country (judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 49).

133 In that regard, it must be observed that the case-law relied on by the applicants concerns the choice of a 'market economy third country', pursuant to ex Article 2(7)(a) of the basic regulation. Thus, not all the parameters set by the judgment of 10 September 2015, *Fliesen-Zentrum Deutschland* (C-687/13, EU:C:2015:573), can be automatically transposed as such to Article 2(6a)(a) of the basic regulation. More specifically, the latter provision requires that the appropriate representative country has 'a similar level of economic development as the exporting country', and not that it is a market economy country, and lays down an additional parameter relating to the application of an adequate level of social and environmental protection. It follows that the criterion that must now be met is the similar level of economic development to the exporting country. It is by satisfying that criterion that the core of the case-law relating to ex Article 2(7)(a) of the basic regulation remains applicable, namely that the Commission must use a third country in which the prices for a like product are formed in circumstances which are as similar as possible to those in the country of export, in accordance with the duty of due diligence borne by the Commission pursuant to the case-law cited in paragraph 127 above.

134 The Commission based its choice of Türkiye as the representative country on the criteria reproduced in paragraph 130 above. The first of those criteria is a similar level of economic development to China. The Commission explained, in recital 159 of the provisional regulation, that it had used countries with a gross national income similar to China on the basis of the database of the World Bank. It clarified, in recital 151 of the contested regulation, that Türkiye had the same level of development as China according to the World Bank classification (upper middle income) and was therefore a representative country. It also took into account the fact that the investigation had revealed that aluminium extrusions made from the two types of alloys (hard and soft) were produced in Türkiye.

135 The applicants do not contest the fact that Türkiye has a similar level of development as China. Their arguments, which are based on an argument of economies of scale, namely that China has a greater population than Türkiye and that the domestic demand is different, cannot invalidate the Commission's findings. First, it does not follow from any provision of the basic regulation that the Commission is required to take the population of countries into consideration when choosing the representative country. Second, since China is the country with the largest

population in the world, it would be unreasonable to require the Commission to use a country with an equivalent population as the representative country. For the same reason, nor can the applicants' argument regarding domestic demand and economies of scale be accepted.

136 The applicants have therefore failed to demonstrate that the Commission had made a manifest error of assessment in choosing Türkiye as the representative country.

137 In the third place, the applicants argue that the choice of the reference country is vitiated by a failure to state reasons. The Commission did not specify why the price applied by the Turkish producers cited in the provisional regulation could be a basis of comparison and failed to explain the price-setting process of those undertakings. Moreover, in the contested regulation, the Commission did not state the reasons for the comparability of Türkiye as a representative country and disregarded their comments concerning the difference in the types and quantities of the products manufactured.

138 According to settled case-law, a claim that there is no, or only an inadequate, statement of reasons constitutes a plea of infringement of an essential procedural requirement, which, as such, is different from a plea that the grounds of the decision are inaccurate, the latter plea being a matter to be reviewed by the Court when it examines the substance of that decision (judgments of 19 June 2009, *Qualcomm* v *Commission*, T-48/04, EU:T:2009:212, paragraph 175, and of 18 October 2016, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-351/13, not published, EU:T:2016:616, paragraph 110). The statement of reasons required by the second paragraph of Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its powers of review (judgments of 30 September 2003, *Eurocoton and Others* v *Council*, C-76/01 P, EU:C:2003:511, paragraph 88, and of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, EU:T:2014:1076, paragraph 129 (not published)).

139 However, the institutions are not required to reply, in the statement of reasons for the provisional or definitive regulation, to all the points of fact and law raised by the persons concerned during the administrative procedure (see judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, T-192/08, EU:T:2011:619, paragraph 256 and the case-law cited).

140 In that context, it must be observed that, in recitals 159 to 165 of the provisional regulation and recitals 142 to 152 of the contested regulation, the Commission provided a clear and unequivocal summary of the relevant criteria when choosing the representative country and of the reasons which led it to choose Türkiye. The Commission began by setting out the criteria used (recital 159 of the provisional regulation); listing the potential representative countries (recital 161 of the provisional regulation); explaining the process of consultation with the interested parties (recitals 160 to 163 of the provisional regulation and recitals 143 and 144 of the contested regulation); and setting out why the comments of certain interested parties could not be accepted (recitals 163 and 164 of the provisional regulation and recitals 145 to 151 of the contested regulation). The Commission thus explained that the two types of alloys (hard and soft) were produced in Türkiye (recital 164 of the provisional regulation); that the customs union could not make Türkiye an inappropriate representative country (recital 147 of the contested regulation); that Türkiye was the most appropriate representative country on the basis

of the data available in relation to environmental and social standards (recital 148 of the contested regulation); and that Türkiye had the same level of development as China according to the World Bank classification (recital 151 of the contested regulation).

141 In addition, the argument that the Commission disregarded the applicants' comments about the difference in the types and quantities of the products manufactured is intended to call into question the validity of the contested regulation. That argument has been dismissed in paragraphs 51 and 56 to 68 above.

142 Accordingly, in view of the fact that the institutions are not required to reply to all the points of fact and law raised by the persons concerned during the administrative procedure, the applicants cannot allege that the Commission breached the duty to state reasons.

143 Those arguments raised by the applicants and the fifth and sixth parts of the second plea in law as a whole must therefore be dismissed.

…

2. The third plea in law, alleging errors made by the Commission when it found there to be injury to the Union industry and a causal link

153 In the context of their third plea in law, the applicants rely, in essence, on four parts and are supported by Airoldi, which also puts forward two parts.

154 As a preliminary point, it must be observed that Article 3(1) of the basic regulation defines the concept of 'injury' as meaning, unless otherwise specified, inter alia, material injury to the Union industry or a threat of material injury to that industry, and that it refers to the provisions of that article for the interpretation of that concept.

155 Article 3(2) of the basic regulation governs the determination of injury. That determination must be based on positive evidence and involve an objective examination of, first, the volume of the dumped imports and the effect of those imports on the prices in the EU market for like products and, second, the consequent impact of those imports on the Union industry.

156 Article 3(3) of the basic regulation provides, with regard to the volume of the dumped imports, that it is necessary to consider 'whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Union'; that, 'with regard to the effect of the dumped imports on prices, consideration [must] be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Union industry or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree'; and that 'no one or more of those factors can necessarily give decisive guidance'.

157 Article 3(5) of the basic regulation provides that the examination of the impact of the dumped imports on the Union industry concerned is to include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, whilst Article 3(6) of the basic regulation states that the EU institutions are required to establish, from all the relevant evidence relating to the state of the Union industry, the existence of injury suffered by that industry. In particular, that article provides that such proof is to entail demonstrating that the volume or

price levels identified pursuant to paragraph 3 of the article are responsible for an impact on the Union industry, as provided for in paragraph 5 of the article, and that that impact exists to a degree which enables it to be classified as material (see, by analogy, judgment of 19 December 2013, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, C-10/12 P, not published, EU:C:2013:865, paragraph 49).

158 In accordance with well-established case-law, determination of injury involves the assessment of complex economic matters. In that respect, the EU institutions enjoy a broad discretion (see judgments of 7 May 1991, *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraph 86 and the case-law cited, and of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 226 and the case-law cited). The judicial review of such an appraisal must therefore be limited to verifying whether applicable rules of law have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or any misuse of powers. That is particularly the case as regards the determination of the factors causing injury to the Union industry in an anti-dumping investigation (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 36 and the case-law cited).

159 In addition, it is for the applicants to adduce evidence enabling the General Court to find that the Commission made a manifest error of assessment when determining injury (see, to that effect, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 228 and the case-law cited).

160 The applicants' third plea in law must be examined in the light of those principles.

(a) The economic factors and indices having a bearing on the state of the Union industry

161 In the context of the first part of their plea in law, the applicants put forward, in essence, four complaints with a view to arguing that the Commission incorrectly assessed the various economic factors and indices having a bearing on the state of the Union industry.

(1) Account taken of the market share of the Union industry

162 In their first complaint, the applicants submit that the market share held by EU producers is over 85%. It follows from the case-law of the Court of Justice and of the General Court that, when EU producers hold a significant market share, there can be no injury to the Union industry. A large market share of the Union industry naturally affords the Union industry a position of strength that precludes a finding of vulnerability on the part of EU undertakings.

163 In that regard, it must be observed, as is apparent from paragraphs 154 to 159 above, that the basic regulation does not provide for a threshold for the market share held by the Union industry below which that industry cannot be regarded as having suffered material injury within the meaning of Article 3(1) of that regulation. In addition, the Commission enjoys a broad discretion in that regard.

164 That being said, it cannot be disputed that the development of the Union industry's market share constitutes a significant factor for an assessment of the existence of material injury to that industry (see, to that effect, judgment of 14 March 2007, *Aluminium Silicon Mill Products* v *Council*, T-107/04, EU:T:2007:85, paragraph 65).

165 It should also be observed that, although the examination by the institutions must lead to a finding that the injury to the Union industry is material, it is not necessary for all the relevant economic factors and indices to show a negative trend (judgment of 25 October 2011, *CHEMK and KF* v *Council*, T-190/08, EU:T:2011:618, paragraph 114). Furthermore, the mere fact that certain injury factors improved during the period considered does not, however, mean that the Union industry has not sustained material injury (judgment of 23 April 2018, *Shanxi Taigang Stainless Steel* v *Commission*, T-675/15, not published, EU:T:2018:209, paragraph 93; see also, to that effect, judgment of 30 March 2000, *Miwon* v *Council*, T-51/96, EU:T:2000:92, paragraph 105).

166 In the present case, in order to find that the Union industry has suffered material injury, in sections 4 and 5 of the contested regulation the Commission analysed the impact of the dumped imports by assessing various economic factors, pursuant to Article 3(5) of the basic regulation.

167 Thus, it follows from Table 5, reproduced in recital 229 of the contested regulation, that the market share of free market sales of the Union industry was 84.4% during the investigation period and that it fell by 4% over the period considered. The Commission also provided a table that takes account of the United Kingdom's withdrawal from the European Union (see recital 35 of the contested regulation), even though that withdrawal became effective after the investigation period and the period concerned. Thus, Table 5bis, reproduced in recital 275 of the contested regulation, shows that, excluding the United Kingdom, the market share of the Union industry was 85.4% during the investigation period and had lost 3.0 percentage points over the period considered.

168 In recitals 226 and 227 of the contested regulation, it is explained that EU free market consumption increased by 6%, a percentage confirmed for the Union industry, excluding the United Kingdom, by Table 4bis, reproduced in recital 271 of the contested regulation.

169 In recital 254 of the contested regulation, the Commission confirmed the conclusions concerning the situation of the Union industry set out in recitals 271 to 274 of the provisional regulation. Those conclusions in question state, inter alia, as follows:

> '271. Several indicators showed a positive trend such as production, capacity, sales volume on the Union market and employment. However, the positive development of these indicators related to the increase in consumption and, in fact, such indicators should have increased more strongly, if the Union industry would have been able to fully benefit from the growing market. Indeed, despite the increase in sales volume, the Union industry lost market share in the free market.
>
> 272. The prices of sales on the free market increased by 19%. However, these price increases did not keep up with increases in costs (20%). This development was caused by price suppression. The Union industry was unable to raise prices at the same extent as costs were increasing because of the downward pressure caused by imports from China which undercut the prices of the Union industry. Bearing in mind that profitability levels were below the target profit level throughout the period considered, and the volumes and low prices of the Chinese imports, the Commission concluded that price increases had been suppressed throughout the period considered. As a consequence, all financial performance indicators, namely profitability, return on investment and cash flow showed a declining trend, and profits made were below the target profit level throughout the period considered. This is particularly damaging because the market for the product under investigation was growing in the period considered, but the Union industry still suffered

> low and falling profits. Despite keeping investments as high as possible in order to remain competitive, the Union industry was clearly not delivering sufficiently high profit levels to encourage future investment. Furthermore, the decline of the Union industry was taking place in a period of growth on the Union market. The Union industry lost 5% in market share [this figure was modified in the contested regulation] in a growing market, and was visibly not able to take advantage from the growth of the Union market.'

170 It follows from those elements that the Commission gave due consideration to the large market shared held by the Union industry and the existence of certain indicators recording a positive trend. The applicants have not put forward any argument or evidence capable of demonstrating that the Commission's findings in recitals 271 and 272 of the contested regulation, in particular the effect on prices, were manifestly incorrect. Thus, they have failed to demonstrate that, in the light of the principles set out in paragraphs 163 to 165 above, the Commission made a manifest error of assessment in finding there to be a negative development of the Union industry's market share and in concluding that that industry had suffered material injury, taking into account all the relevant factors and particularly the loss of market shares and the decline in profitability of the Union industry. On the contrary, the Commission observed that the increase in the volume of sales had been only 2% (see Table 5, reproduced in recital 245 of the provisional regulation) at a time when EU consumption had risen by 6% (see Table 4, reproduced in recital 226 of the contested regulation) and that the increase in prices had not kept up with the increase in costs (see Table 7, reproduced in recital 256 of the provisional regulation).

171 That finding is not called into question by the case-law of the Court of Justice and of the General Court cited by the applicants, as the Commission rightly points out.

172 It is true that the judgments of 4 February 2021, *eurocylinder systems* (C-324/19, EU:C:2021:94), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), which both concern Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ 2009 L 262, p. 19), recognised the importance of the Union industry's market shares as a factor in determining injury.

173 However, the main lesson provided by the judgments of 4 February 2021, *eurocylinder systems* (C-324/19, EU:C:2021:94), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), is that the different indicators, including the Union industry's market share, must not be seen in isolation but rather holistically as a whole (see, to that effect, judgments of 4 February 2021, *eurocylinder systems*, C-324/19, EU:C:2021:94, paragraph 49, and of 29 January 2014, *Hubei Xinyegang Steel* v *Council*, T-528/09, EU:T:2014:35, paragraphs 61 to 63).

174 In addition, in the cases which gave rise to the judgments of 4 February 2021, *eurocylinder systems* (C-324/19, EU:C:2021:94), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), the economic factors were all positive, despite the development of the Union industry's market share (judgment of 29 January 2014, *Hubei Xinyegang Steel* v *Council*, T-528/09, EU:T:2014:35, paragraphs 59 to 61). In the present case, the provisional regulation states that capacity utilisation (Table 4, reproduced in recital 240 of the provisional regulation), profitability and return on investments of the Union industry (Table 10, reproduced in recital 265 of the provisional regulation) had shrunk over the period considered.

175 Furthermore, the extracts of the judgments of 4 February 2021, *eurocylinder systems* (C-324/19, EU:C:2021:94), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), cited by the applicants, concern a different aspect of injury, namely the assessment of the vulnerable state of the Union industry at the end of the investigation period in order to find there to be a threat of material injury.

176 In addition, the judgment of 2 May 1995, *NTN Corporation and Koyo Seiko* v *Council* (T-163/94 and T-165/94, EU:T:1995:83), on which the applicants rely, concerns a situation in which the Council had made errors of fact which had shown trends contrary to the true evolution of the market (see paragraph 114 of that judgment), errors which are not alleged in the present proceedings. As for the judgment of 14 March 2007, *Aluminium Silicon Mill Products* v *Council* (T-107/04, EU:T:2007:85), also invoked by the applicants, it concerns a situation in which the Council had made an error of fact in presenting a picture of the development of the Union industry's market share that was contrary to the data given in the provisional regulation (see paragraphs 63 to 66 of that judgment).

177 Airoldi claims, however, first, that some data relating to the injury, in particular those concerning the Union industry's market share, are incorrect, because recent data about various factors such as the production volume were not provided at the definitive stage. Airoldi links that argument to the exclusion of a significant proportion of the imports under code CN 7610 90 90, which also includes products falling outside the scope of the investigation (see recital 202 of the contested regulation), and the United Kingdom's withdrawal from the European Union.

178 As a preliminary point, it should be observed that that argument raised by Airoldi is connected with the applicants' plea in law concerning the analysis of the injury suffered by the Union industry. More specifically, it concerns the various factors and indices having a bearing on the state of the Union industry, which the applicants address in the context of the first part of their third plea in law.

179 It follows that, contrary to what the Commission contends, those arguments do fall within the framework provided by the forms of order sought and pleas in law raised by the applicants, in accordance with the case-law cited in paragraph 87 above. They are therefore admissible.

180 That being said, as the Commission states, the contested regulation states, in recital 278 thereof, that sales volumes by the Union industry to the UK market were assessed at around only 2% of the total sales of that industry, a volume which could not have any material impact on economic indicators of the Union industry. On that basis, the contested regulation concludes that the indicators relating to the Union industry are representative, including in the light of the withdrawal of the United Kingdom, and are confirmed, as are the findings reached on the basis of those indicators. In addition, the market share of the Union industry, excluding that established in the United Kingdom, was recalculated by the Commission (see Table 5bis, reproduced in recital 275 of the contested regulation). In addition, the exclusion of a proportion of the imports under code CN 7610 90 90 was taken into account by the Commission, as is apparent from recitals 202 to 216 and Tables 1, 2 and 3, reproduced, respectively, in recitals 208, 217 and 220 of the contested regulation).

181 Airoldi does not put forward any arguments to demonstrate that the Commission's explanations are manifestly incorrect or that adjustments were needed. Thus, in view of the burden of proof borne by it, these arguments must be dismissed.

182 Secondly, Airoldi also submits that, if the Commission had taken into consideration the segmentation of the aluminium market, the reduction in the allegedly injurious products imported under code CN 7610 90 90, the increase in the Union industry's market share from 81.1% to 85.4% and the decline in imports from China from 9.6% to 5%, which occurred between the adoption of the provisional regulation and that of the contested regulation, it would have found that the Union industry's position had, in fact, been strengthened.

183 It must be observed, once again, that that argument put forward by Airoldi relates to the applicants' plea in law concerning the analysis of the injury suffered by the Union industry and concerns, more specifically, the various factors and indices having a bearing on the state of the Union industry, which the applicants address in the context of the first part of their third plea in law. It is also linked to the second and third parts of the second plea in law, by which the applicants criticise the Commission for having taken the view that the aluminium extrusions from China were one single product.

184 It follows that those arguments fall within the framework provided by the forms of order sought and pleas in law raised by the applicants, in accordance with the case-law cited in paragraph 87 above. They are therefore admissible, contrary to what the Commission contends.

185 That being said, as the Commission states, the contested regulation explains, in recital 56, why it considers the product concerned to be one single product (see paragraphs 62 and 63 above). In addition, the exclusion of a proportion of the imports under code CN 7610 90 90 was taken into account by the Commission, as is apparent from recitals 202 to 216 and from Tables 1, 2 and 3, reproduced, respectively, in recitals 208, 217 and 220 of the contested regulation.

186 With regard to the alleged decline in the market share held by imports from China and the increase in the Union industry's market share, the following should be observed.

187 It is apparent from Table 5, reproduced in recital 245 of the provisional regulation, that at that stage of the procedure the Commission had estimated the Union industry's market share on the free market over the investigation period to be 81.1%. At the end of the administrative procedure, that figure was revised upwards, namely to 84.4%, further to the revision of the import volumes from China (see Table 5, reproduced in recitals 229 and 230 of the contested regulation). The market share on which Airoldi relies, a market share of 85.4%, does concern the Union industry's market share on the free market during the investigation period, but factoring in the United Kingdom's withdrawal from the European Union (see Table 5bis, reproduced in recital 275 of the contested regulation). First, it follows that the figures invoked by Airoldi are not directly comparable because their geographic scope is different. Second, the Commission explained, in recital 276 of the contested regulation, that, although the market share of the Union industry was reassessed to be slightly higher for the period considered, that market share had still decreased by 3.0 percentage points.

188 The same findings apply to the fall in imports from China. First, Airoldi compares the data taken into consideration in the provisional regulation with the data in the contested regulation excluding the United Kingdom (see Table 2, reproduced in recital 225 of the provisional regulation, and Table 2bis, reproduced in recital 262 of the contested regulation). Second, the Commission took the view, in recital 263 of the contested regulation, that, on the basis of the adjusted import volumes, significant levels of imports could be observed in both relative and

absolute terms, reaching 5% of market share in the investigation period. In absolute figures, imports from China had increased by 56% during the period considered and the total market share of the dumped imports had grown by 48%.

189 Airoldi does not submit any arguments to demonstrate that the Commission's findings are manifestly incorrect and that the Union industry was in fact strengthened. Thus, in view of the burden of proof borne by it, these arguments must be dismissed.

190 The first complaint must therefore be dismissed.

(2) The growth and profitability of the Union industry

191 In the context of the second complaint, the applicants allege that the Commission disregarded the purpose of the anti-dumping legislation in finding there to be injury to the Union industry against a backdrop of significant growth in consumption and in the profitability of the Union industry.

192 In that regard, as far as concerns EU consumption on the free market, it is, admittedly, established that it increased by 6% during the period considered (see Table 4, reproduced in recital 226 of the contested regulation, and Table 4bis (Union industry excluding the United Kingdom), reproduced in recital 271 of the contested regulation).

193 However, it is not necessary for all the relevant economic factors and indices to show a negative trend in order to find that the Union industry suffers injury such as to justify the adoption of anti-dumping duties (judgment of 25 October 2011, *CHEMK and KF* v *Council*, T-190/08, EU:T:2011:618, paragraph 114).

194 In addition, the Commission qualified the increase in Union consumption, pointing out that, whilst it had increased over the period considered, it had fallen between 2018 and the investigation period (see recital 216 of the provisional regulation and Table 4, reproduced in recital 226 of the contested regulation). In addition, and in particular, the Commission rightly observed, in recital 271 of the provisional regulation, that, in the light of the available data, the Union industry had lost market shares despite the growth in demand.

195 As regards the profitability of the Union industry, it must be observed that it is apparent from Table 10, reproduced in recital 265 of the provisional regulation, that it is indeed 2% over the investigation period, but that it fell from 4.9% to 2% during the period considered. The Commission could infer from that fact that prices were being suppressed in a context in which, as is clear from Table 7, reproduced in recital 275 of the provisional regulation, the Union industry's prices did not keep pace with costs.

196 It follows from the foregoing that the applicants have failed to demonstrate that the Commission made a manifest error of assessment in finding there to be material injury to the Union industry, despite the increase in Union consumption and the 2% profitability of that industry.

197 The applicants' second complaint must therefore be dismissed.

(3) Account taken of the price and volume of imports from China

198 In the context of their third complaint, the applicants submit, first, that the Commission emphasised the price of the products imported from China whilst failing to acknowledge the relevance of the volume of the imports. Secondly, they argue that the contested regulation is vitiated by a contradiction between recitals 201 and 249 on that issue.

199 That complaint raised by the applicants is based on a misreading of the contested regulation.

200 First, it follows from section 4.3 of the contested regulation, entitled 'Imports from the country concerned', and more specifically from Tables 1, 2 and 3, that the Commission took into consideration, in a balanced way, not only the price of the products imported from China but also the volume of the imports of those products.

201 Secondly, there is no contradiction between recitals 201 and 249 of the contested regulation, since those recitals are concerned with different matters. Recital 201 of the contested regulation, under the heading 'General', explains in particular that 'continuous pressure was exerted by abnormally low Chinese prices[, and that] this pressure had multiple implications[, since,] inter alia, it suppressed Union industry prices, prevented those prices from reflecting the international increase in raw material (aluminium) prices, and depressed profitability', and that, 'for this injurious picture to occur, massive import volumes are not necessary[, since] even relatively modest imports, or even the existence of a significant amount of low-priced imports (like indisputably in the present case), suffice to set a low price ceiling which affects the entire market'.

202 By contrast, in recital 249 of the contested regulation, the Commission replies to the arguments by which the group to which the applicants belong had contested the existence of material injury because the price comparisons performed by the Commission were inappropriate. In that regard, the Commission made the following comment:

'The investigation has shown that when performing a comparison on a product type basis, the prices of these exporters were undercutting the Union industry ones by a significant margin, therefore resulting not only aligned but sensibly lower. Haomei Group also suggested using importer prices as a source for the price comparisons. However, …, the Commission based its price comparisons on an objective basis using a detailed methodology and calculations which were disclosed to Haomei Group. This methodology compared products on a type for type basis using several objective criteria and was therefore the most representative method available to the Commission.'

203 It follows from the foregoing that the Commission did not make a manifest error of assessment and nor did it contradict itself by adopting recitals 201 and 249 of the contested regulation, which concern different matters.

204 The applicants' third complaint must therefore be missed.

(4) The growth in the market share of imports from China

205 In the context of their fourth complaint, the applicants put forward a number of arguments to claim that the Commission made errors in the consideration given to the market share of the imports from China.

206 In the first place, they allege that, following the additional final disclosure of 8 February 2021, the quantity of the products concerned imported from China fell from more than 300 000 tonnes (at the start of the procedure) to 128 853 tonnes. In that context, the Commission failed to take account of that decrease and made no alteration whatsoever to its injury and dumping assessment.

207 As is clear from Table 2bis, reproduced in recital 262 of the contested regulation, the figure of 128 853 tonnes refers to the volume of the imports under eight codes of the combined nomenclature over the investigation period, taking into account the United Kingdom's withdrawal from the European Union. The total volume of imports into the European Union from China over the same period and on the same basis was 152 551 tonnes and China's market share was 5% (see Table 2bis, reproduced in recital 262 of the contested regulation). Excluding the United Kingdom's withdrawal from the European Union, imports from China under eight codes of the combined nomenclature amounted to 164 641 tonnes and the total volume of imports from China was 191 981 tonnes, giving a market share of 6.2% (see Table 2, reproduced in recital 217 of the contested regulation). It is established that those figures are significantly lower than those presented in Table 2, reproduced in recital 225 of the provisional regulation, that is to say a volume of imports from China over the investigation period of 309 853 tonnes, giving a market share of 9.6%.

208 That being said, firstly, it must be observed that the applicants' argument is based on a comparison between, on the one hand, the volume of the imports from China under eight codes of the combined nomenclature over the investigation period as found in the contested regulation and taking into account the United Kingdom's withdrawal from the European Union and, on the other hand, the total volume of imports from China at the provisional regulation stage and before adjustments. It follows that that comparison is based on figures for volumes corresponding to different substantive and geographic scopes and which cannot be directly compared.

209 Secondly, it must be observed that, as the Commission rightly points out, although the Chinese import figures were revised downwards on account of differences of opinion about one CN code, in view of the data available, the Commission was able to confirm that the total volume of Chinese imports had remained significant and that a growth trend identical to that at the provisional stage could have been observed.

210 Following a more in-depth analysis of the volumes of imports from China, due to the fact that code CN 7610 90 90, which also includes products falling outside the scope of the investigation, gave rise to conflicting views (see recital 202 of the contested regulation), the Commission revised the figures downwards. The Commission considered that Chinese penetration would still have remained significant (recital 203 of the contested regulation) and that, while the Chinese market share had been revised downwards as a result, imports had remained significant and the same trend of growth as at the provisional stage had been observed (recital 213 of the contested regulation). After an analysis of the various factors and of the arguments of the interested parties in recitals 208 to 249 of the contested regulation, the Commission found, in recital 252 of that regulation, that the key indicators, which demonstrated the injury in this investigation, still showed evidence of the existence of injury even if Chinese imports were assessed excluding one CN code.

211 It follows that the applicants are wrong to claim that the Commission failed to take account of the downwards revision of the volumes of imports from China. Their arguments must therefore be rejected.

212 In the second place, the applicants submit that the market share of imports from China increased by only 49% between 2016 and the investigation period, an extremely modest figure which cannot be regarded as a threat to the Union industry, the results of which are stable and positive. In addition, any increase in market share is irrelevant, since the initial market share, in absolute terms, is minimal, that is to say, below 15%.

213 First, it must be observed that there is no basis for the applicants' claim that a market share of imports from China below 15% is 'minimal'. Although Article 5(7) of the basic regulation provides that proceedings are not to be initiated where the imports from a country represent a market share of below 1%, the market share of imports from China is significantly higher than that percentage (see Table 2, reproduced in recital 217 of the contested regulation, and Table 2bis, reproduced in recital 262 of the contested regulation). The basic regulation does not specify any other market share threshold for the finding that imports from a third country are incapable of causing injury.

214 Secondly, the total volume of imports from China increased by 49% between 2016 and the investigation period, and the market share of those same imports rose by 41% between 2016 and that period. That increase cannot be regarded as 'modest' and the applicants do not put forward any arguments capable of calling into question that finding.

215 Thirdly, the applicants' arguments concerning the state of the Union industry have been rejected in paragraphs 162 to 197 above, and the applicants do not raise, in the context of this complaint, any other arguments capable, if linked to the market share of imports from China, of supporting the conclusion that the Commission made a manifest error of assessment.

216 Those arguments raised by the applicants must therefore be dismissed.

217 In the third place, the applicants claim that the imports from China gained market shares to the detriment of third-country producers and not of EU producers. In addition, it is clear from the Hydro Group's annual reports that the alleged increase by four percentage points of the market share of imports from China perhaps occurred to the detriment of the market shares held by that group, which is a company governed by Norwegian law and not an EU producer.

218 In that regard, the data relied on by the applicants in paragraphs 140 and 141 of the application regarding imports from third countries other than China and imports from China are taken, as the applicants explained at the hearing, from Table 2bis, reproduced in recital 262 of the contested regulation (data relating not to the total volume of imports but to imports under eight CN codes), and from Table 6bis, reproduced in recital 304 of the contested regulation, and take into account the United Kingdom's withdrawal from the European Union.

219 It is apparent from the data contained in those tables that the total volume of imports from third countries other than China rose from 238 937 tonnes in 2016 to 295 248 tonnes over the investigation period, increasing the market share of those imports from 8.2% to 9.6%, whilst the total volume of imports from China rose from 97 535 tonnes in 2016 to 152 551 tonnes over the investigation period, pushing up the market share of those imports from 3.4% to 5%. Whilst it is established, as is likewise clear from the data submitted by the applicants, that imports from third countries other than China did fall between 2017 and the investigation period, the addition of the tonnes imported from third countries other than China and the tonnes imported from

China each year points to a constant increase (and not a stable quantity, as the applicants allege). It is clear from that fact that the increase in the volume of imports from China exceeds the reduction in the volume of imports from third countries other than China.

220 In addition, it is apparent from Table 2, reproduced in recital 217 of the contested regulation, that over the period considered the total volume of imports from China increased by 49% (or by 56% taking into account the United Kingdom's withdrawal from the European Union, as set out in Table 2bis, reproduced in recital 262 of the contested regulation). At the same time, it follows both from Table 5, reproduced in recital 229 of the contested regulation, and from Table 5bis, reproduced in recital 275 of the same regulation, that the Union industry's market share declined over the same period.

221 Furthermore, the applicants' arguments that imports from China perhaps occurred to the detriment of the market shares of the Hydro Group, a company governed by Norwegian law, cannot be accepted.

222 The claims relating to the Hyrdo Group, assuming they were proven to be true, do not support the argument put forward by the applicants because, as the Commission observes without being contradicted by the applicants, the Hydro Group is part of the Union industry and one of the group's companies, Hydro Extrusion Hungary k.f.t, established in Székesfehérvár (Hungary), was one of the sampled EU producers, as is clear from recital 22 of the provisional regulation.

223 The argument that the imports from China increased not to the detriment of Union industry sales but to the detriment of imports from third countries other than China must therefore be dismissed.

224 Accordingly, those arguments raised by the applicants must be dismissed, as must the first part of the third plea in law in its entirety.

…

IV. Costs

270 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, as applied for by the latter.

271 In accordance with Article 138(1) of the Rules of Procedure, pursuant to which institutions which have intervened in the proceedings are to bear their own costs, the European Parliament shall bear its owns costs.

272 Under Article 138(3) of the Rules of Procedure, the General Court may order an intervener other than those referred to in paragraphs 1 and 2 to bear its own costs. Since Airoldi intervened in support of the applicants, who have been unsuccessful, it shall bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Guangdong Haomei New Materials Co. Ltd and Guangdong King Metal Light Alloy Technology Co. Ltd to bear their own costs and to pay those incurred by the European Commission;**

3. **Orders the European Parliament and Airoldi Metalli SpA to bear their own costs.**

Papasavvas da Silva Passos Gervasoni

Reine Pynnä

Delivered in open court in Luxembourg on 21 June 2023.

[Signatures]