Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 May 2022*

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(Appeal – Dumping – Implementing Regulation (EU) 2017/763 – Imports of certain lightweight thermal paper originating in the Republic of Korea – Definitive anti-dumping duty – Regulation (EU) 2016/1036 – Articles 6, 16 and 18 – Proof – Information provided other than by responding to an anti-dumping questionnaire – Weighting of sales affecting the dumping calculation – Article 2(1) and (3) – Calculation of the normal value – Hierarchy between the calculation methods – Article 3(2) and (3) – Injury – Calculation of the undercutting margin – Cross-appeal – Article 2(11) – Full degree of dumping – Article 18 – Exemption from responding to an anti-dumping questionnaire – Lack of non-cooperation)

In Case C-260/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 11 June 2020,

European Commission, represented initially by J.-F. Brakeland and A. Demeneix, and subsequently by J.-F. Brakeland and G. Luengo, acting as Agents,

appellant,

the other parties to the proceedings being:

Hansol Paper Co. Ltd, established in Seoul (South Korea), represented by J.-F. Bellis, B. Servais and V. Crochet, avocats,

applicant at first instance,

European Thermal Paper Association (ETPA), established in Zurich (Switzerland), represented by H. Hobbelen, B. Vleeshouwers and K. Huyghebaert, advocaten, and by J. Rivas, abogado,

intervener at first instance,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, J. Passer, F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2022,

gives the following

Judgment

1 By its appeal, the European Commission asks the Court of Justice to set aside the judgment of the General Court of the European Union of 2 April 2020, *Hansol Paper* v *Commission* (T-383/17, not published, EU:T:2020:139; 'the judgment under appeal'), by which that court annulled Commission Implementing Regulation (EU) 2017/763 of 2 May 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain lightweight thermal paper originating in the Republic of Korea (OJ 2017 L 114, p. 3; 'the regulation at issue') in so far as that regulation concerned the goods manufactured by Hansol Paper Co. Ltd ('Hansol').

2 By its cross-appeal, the European Thermal Paper Association (ETPA) asks the Court to set aside the judgment under appeal.

Legal context

World Trade Organisation law

3 By Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiation (1986-1994) (OJ 1994 L 336, p. 1), the Council of the European Union approved the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994, as well as the agreements set out in Annexes 1, 2 and 3 to that agreement, which include the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103) ('the anti-dumping agreement').

4 Article 2 of the anti-dumping agreement, entitled 'Determination of Dumping', provides:

'2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided

that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

…'

European Union law

5 Article 1 of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; 'the basic regulation') provides:

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

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

…'

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

'1. 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.

However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

…

2. Sales of the like product intended for domestic consumption shall normally be used to determine the normal value if such sales volume constitutes 5% or more of the sales volume of the product under consideration to the Union. However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

…

9. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer or are not resold in the condition in which they were imported, on any reasonable basis.

…

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Union, or by a comparison of individual normal values and individual export prices to the Union on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Union, if there is a significant difference in the pattern of export prices among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.'

7 Article 3 of that regulation, entitled 'Determination of injury', states:

'1. Pursuant to this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Union industry, threat of material injury to the Union industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of:

(a) the volume of the dumped imports and the effect of the dumped imports on prices in the Union market for like products; and

(b) the consequent impact of those imports on the Union industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Union. With regard to the effect of the dumped imports on prices, consideration shall 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. No one or more of those factors can necessarily give decisive guidance.'

8 Article 6 of that regulation, entitled 'The investigation', provides:

'1. Following the initiation of proceedings, the Commission, acting in cooperation with the Member States, shall commence an investigation at Union level. Such an investigation shall cover both dumping and injury, and they shall be investigated simultaneously.

For the purpose of a representative finding, an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings.

…

2. Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days to reply. …

…

8. Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

…'

9 Article 16 of the basic regulation, entitled 'Verification visits', provides:

'1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on dumping and injury. In the absence of a proper and timely reply, the Commission may choose not to carry out a verification visit.

…'

10 Article 18 of that regulation, entitled 'Non-cooperation', provides:

'1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided for in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, that information shall be disregarded and use may be made of facts available.

Interested parties shall be made aware of the consequences of non-cooperation.

…

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

…'

Background to the dispute

11 The background to the dispute set out in paragraphs 1 to 22 of the judgment under appeal can be summarised as follows.

12 Hansol is a company established in South Korea which produces and exports lightweight thermal paper, in particular towards the European Union.

13 Following a complaint lodged by the ETPA, a non-profit organisation which represents the interests of European producers of lightweight thermal paper, on 18 February 2016 the Commission initiated an anti-dumping investigation concerning the import of lightweight thermal paper weighing 65 gr/m^2 or less, presented in rolls of a width of 20 cm or more, a weight (including the paper) of 50 kg or more and a diameter (including the paper) of 40 cm or more ('jumbo rolls'), with or without a base coat on one or both sides, coated with a thermosensitive substance (that is, a mixture of dye and a developer that react and form an image when heat is applied) on one or both sides and with or without a top coat, originating in South Korea and falling within four separate CN codes ('the product concerned').

14 During the investigation period running from 1 January 2015 to 31 December 2015, Hansol sold the product concerned in the European Union to independent customers and a related trader, Hansol Europe BV, as well as four related converters, namely Schades Ltd, Schades Nordic A/S, Heipa technische Papiere GmbH ('Heipa') and R+S Group GmbH ('R+S'). The activity of those related converters was in particular the conversion of the product concerned into small rolls, sold in the European Union to independent or related customers.

15 Another South Korean exporting producer, Hansol Artone Co. Ltd ('Artone'), which was related to Hansol, cooperated in the anti-dumping investigation.

16 On 19 February 2016, having received the anti-dumping questionnaire intended for exporting producers of the product concerned, Hansol requested that Schades Nordic, Heipa and R+S be exempted from the obligation to complete that questionnaire, in light of the fact that no or a limited number of sales of the product concerned were made by those companies to independent customers in the European Union.

17 On 23 February 2016, the Commission accepted that request, while reserving the right to make other requests for information.

18 On 7 March 2016, having examined certain information provided by Hansol, the Commission decided that Schades Nordic, Heipa and R+S should reply to certain parts of the anti-dumping questionnaire.

19 On 21 March 2016, following a visit to Schades' premises, the Commission informed Hansol that the requests for information of 7 March 2016 were henceforth limited to Schades.

20 On 15 April 2016, the Commission acknowledged receipt of the responses to the anti-dumping questionnaires submitted by Hansol, Artone, Hansol Europe and Schades. Between 15 June and 26 August 2016, the Commission carried out verification visits at the premises of those companies.

21 On 16 November 2016, the Commission adopted Implementing Regulation (EU) 2016/2005 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea (OJ 2016 L 310, p. 1).

22 Between 17 November 2016 and 23 March 2017, Hansol submitted its observations regarding information documents containing the Commission's provisional and final findings.

23 On 2 May 2017, the Commission adopted the regulation at issue, which imposes a definitive anti-dumping duty on imports of the product concerned as a fixed amount of EUR 104.46 per tonne net.

The procedure before the General Court and the judgment under appeal

24 By application lodged at the Registry of the General Court on 20 June 2017, Hansol brought an action for annulment of the regulation at issue.

25 In support of its action, Hansol relied on five pleas in law. Only the first complaint in the second part of the first plea in law, the first part of the second plea in law, the fourth plea in law, and the second and third parts of the fifth plea in law are relevant to the assessment of the grounds of appeal put forward in the appeal and the cross-appeal.

26 By order of 27 November 2017, the President of the Seventh Chamber of the General Court granted the ETPA leave to intervene in support of the form of order sought by the Commission.

27 By the judgment under appeal, the General Court annulled the regulation at issue. In connection with the second part of the first plea in law, alleging infringement of Article 2(11) of the basic regulation, Hansol disputed the calculation of the dumping margin for the product concerned. It argued, in essence, that the Commission had made a manifest error of assessment in the weighting of sales in the European Union to independent customers as compared with sales to related converters, assessed at, respectively, between 15 and 25% of total sales for the former, and between 75 and 85% of total sales for the latter. In its view, the Commission had neglected to take into account the quantities sold by Schades Nordic to independent customers.

28 For the reasons set out in paragraphs 84 to 87 and paragraph 92 of the judgment under appeal, the General Court found that the alleged weighting error was established. As the calculations made by the Commission did not reflect the full extent of the dumping practised by Hansol, the General Court held that the Commission had infringed Article 2(11) of the basic regulation.

29 In connection with the first part of the second plea in law, Hansol argued that, because of that weighting error, the definitive anti-dumping duty of EUR 104.46 per tonne net imposed by the Commission in the regulation at issue reflected a level of dumping in excess of that found during the investigation. In paragraphs 100 to 106 of the judgment under appeal, the General Court upheld that part, on the ground that the definitive duty had been determined on the basis of the weighting error established earlier.

30 The fourth plea in law alleged infringement of Article 2(1) of the basic regulation. Hansol claimed that the Commission had incorrectly constructed the normal value provided for in Article 2(3) of that regulation. In paragraphs 152 to 158 of the judgment under appeal, the General Court upheld that plea in law. The General Court found, in essence, that, although Artone did not sell two product types on its domestic market and the Commission had confirmed that, for one of those two product types, Hansol's domestic sales were representative, the Commission had decided, for those two product types, to construct the normal value pursuant to Article 2(3) of the basic regulation. The General Court held that such a determination of Artone's normal value was contrary to Article 2(1) of the basic regulation, which provides that, where the exporter does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers, and not constructed on the basis of the relevant company's production costs. It

rejected the Commission's arguments based on the fact that there were significant differences between Hansol and Artone in terms of costs structures or sales prices, on the ground that these are not among the derogations from the method for establishing the normal value on the basis of actual prices. Accordingly, it concluded that the Commission had infringed Article 2(1) of the basic regulation when determining Artone's normal value.

31 By the second part of the fifth plea in law, alleging infringement of Article 3(1) to (3) and (5) to (8) of the basic regulation, of the case-law of the Courts of the European Union, of the decisions of the WTO, of the Commission's previous decision-making practice, and of the principles of fair comparison and equal treatment, Hansol disputed the determination of the injury margin. Hansol complained, inter alia, that the Commission had assessed the injury by applying Article 2(9) of the basic regulation by analogy and by artificially constructing the export price for jumbo rolls instead of relying on the final prices actually charged for those rolls during sales to independent customers.

32 In paragraphs 197 to 205 of the judgment under appeal, the General Court found that there was an error affecting the calculation of the injury margin and upheld the second part of the fifth plea in law. It held, in essence, that the Commission had erred in its assessment of the injury by constructing the export price of Schades' resales of the product concerned to independent customers, by deducting in particular the selling, general and administrative costs ('SG&A costs') and a profit margin, to obtain a hypothetical cost, insurance and freight ('CIF') EU border value instead of using the sales prices actually invoiced following those resales and deducting solely the costs incurred for the sale. It held that Schades' resales of the product concerned to independent customers did not relate to the sale of small rolls, but to the product concerned itself. It concluded from this that it was the product concerned which was in competition with the like product of the Union industry and which was inflicting injury on that industry, with the result that the 'reference point' to be taken into account in order to calculate the injury was not at the level of the EU border, but at the level of Schades' independent customers.

33 Lastly, in connection with the third part of the fifth plea in law, alleging infringement of Article 3(2), (3) and (6) of the basic regulation, Hansol considered that the errors alleged in the second part of that plea in law and in the second part of the first plea in law also distorted the calculation of the undercutting and underselling margins.

34 In paragraphs 208 to 213 of the judgment under appeal, the General Court held that the weighting error also affected the calculation of the undercutting margin, since the Commission had used that weighting for that calculation. The General Court, being unable to exclude that this error, together with the error made when calculating the injury margin, might also affect the price undercutting analysis and the assessment of the impact of dumped imports on like products of the Union industry, decided to uphold the third part of the fifth plea in law.

Forms of order sought by the parties before the Court of Justice

35 By its appeal, the Commission claims that the Court should:

– set aside the judgment under appeal, dismiss the action at first instance and order Hansol to pay the costs, and

– in the alternative, refer the case back to the General Court and reserve the costs relating to the proceedings at first instance and the appeal proceedings.

36 The ETPA takes the same view as the Commission.

37 Hansol contends that the Court should:

– dismiss the appeal;

– order the Commission to pay the costs relating to the appeal proceedings; and

– order the ETPA to pay the costs relating to the appeal proceedings.

38 By its cross-appeal, the ETPA claims that the Court should:

– set aside the judgment under appeal, dismiss the action at first instance and order Hansol to pay the costs;

– in the alternative, refer the case back to the General Court and reserve the costs relating to the proceedings at first instance and the appeal proceedings.

39 Hansol contends that the Court should:

– dismiss the cross-appeal, and

– order the ETPA to pay the costs.

The main appeal

40 In support of its appeal, the Commission, supported by the ETPA, raises three grounds of appeal. The first ground of appeal alleges distortion of the evidence and misinterpretation of the legal framework applicable to the data on which the Commission was entitled to rely in order to construct the export price. The second ground of appeal alleges misinterpretation of Article 2(1) and (3) of the basic regulation in determining the normal value in a situation where there are no sales on the domestic market. The third ground of appeal alleges misinterpretation of Article 3 of the basic regulation in determining the undercutting margin in a situation where exports are made to the Union through related entities.

The first ground of appeal

Arguments of the parties

41 The Commission claims that, in paragraphs 84 to 87, 92, and 100 to 106 of the judgment under appeal, the General Court incorrectly assessed the evidence necessary to construct the export price under Article 2(9) of the basic regulation.

42 The Commission primarily submits that the General Court distorted the evidence by considering, in paragraphs 85 and 86 of the judgment under appeal, that it followed from the evidence adduced during the administrative procedure that at least one other related converter, namely Schades Nordic, had resold a certain volume of the product concerned which it had purchased from Hansol. According to the Commission, Schades Nordic had neither responded to an anti-dumping questionnaire nor been subject to a verification visit during the administrative procedure, with the result that it could not be found that evidence concerning Schades Nordic's sales had been adduced during that procedure.

43 In the alternative, the Commission claims that the General Court misinterpreted the rules of evidence. In addition, the General Court unlawfully substituted its own assessment for that of the Commission.

44 In the first place, the Commission submits that, by holding that it should have taken Schades Nordic's data into account, the General Court required it to take into consideration data which did not originate from the procedure for the collection and verification of data organised under the basic regulation. In order to determine values and prices objectively and precisely, it argues that it is required to gather, within a certain period, data from the companies under investigation by means of responses to anti-dumping questionnaires; the truthfulness of the data is then verified. The basic regulation and WTO law preclude the Commission from being required to take into account data which have neither been provided by an interested party in response to an anti-dumping questionnaire nor verified. Those considerations apply a fortiori in the present case as, given that Schades Nordic's data were brought to the Commission's attention in connection with a request for non-disclosure, they were not part of the investigation file accessible to the other interested parties.

45 In the second place, the Commission claims that the General Court's reasoning is contradictory. The General Court found that Schades' sales were representative of sales to all the related converters, and held that the Commission should have taken into account the related converters' individual data. As the judgment under appeal does not contain any finding invalidating the Commission's finding that Schades' data were representative of sales to the other three related converters for the purpose of constructing the export price under Article 2(9) of the basic regulation, the General Court erred in law by obliging the Commission to rely on data which, as they had not been provided by Schades Nordic, were unverified.

46 Hansol contends that the first ground of appeal must be rejected as manifestly inadmissible or, in the alternative, as manifestly unfounded.

Findings of the Court

47 Regarding the complaint whereby the Commission claims that the General Court relied on an incorrect interpretation of the rules of evidence, it should be borne in mind that, pursuant to the basic regulation, it is for the Commission, as the investigating authority, to establish that the product in question has been dumped, that there has been injury and that there is a causal link between the dumped imports and the injury. Those elements must be established objectively, following a reliable investigation. However, no provision in that regulation confers on the Commission any power to compel the interested parties to participate in the investigation or to provide information (see, to that effect, judgment of 14 December 2017, *EBMA* v *Giant (China)*, C-61/16 P, EU:C:2017:968, paragraph 54).

48 As is apparent from a combined reading of Articles 6, 16 and 18 of the basic regulation, when the Commission is investigating whether there is dumping and injury, it must, as a matter of priority, seek to obtain relevant information on the basis of voluntary cooperation on the part of the interested parties. To that end, it is to send anti-dumping questionnaires to those parties pursuant to Article 6(2) of that regulation. The responses to those questionnaires are an important source of information for the Commission. Under Article 6(8) of the basic regulation, it is to verify, as far as possible, the information thus obtained before basing its findings thereon. In order to fulfil that obligation, the Commission has the option of carrying out verification visits pursuant to Article 16 of that regulation.

49 It follows that, where there is voluntary cooperation on the part of the interested parties, anti-dumping questionnaires are the Commission's preferred means of conducting its anti-dumping investigations. It is only when an interested party does not cooperate in the anti-dumping investigation by refusing to grant access to the necessary information, by failing to provide that information within the prescribed period, or by significantly impeding the investigation that, pursuant to Article 18 of the basic regulation, the Commission may make its findings on the basis of the facts available.

50 However, it is not apparent from the wording of the provisions of the basic regulation that, where an interested party cooperates in the investigation and provides information other than by responding to an anti-dumping questionnaire, the Commission is required to ignore that information. Such an interpretation of those provisions would also be at odds with both the Commission's obligation to examine with all due care all the information available to it (see, to that effect, judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraphs 32 and 36) and the objective of the basic regulation, which is to establish objectively whether there is dumping and injury in order to impose suitable anti-dumping duties.

51 Accordingly, during an anti-dumping procedure, the Commission cannot exclude information provided by an interested party who is cooperating in that procedure solely on the ground that the information was provided other than by responding to an anti-dumping questionnaire.

52 In the present case, it follows from the findings of fact made by the General Court in paragraph 85 of the judgment under appeal that Hansol cooperated in the investigation and provided the Commission with information concerning the resale of the product concerned by Schades Nordic.

53 In the light of the considerations set out in paragraphs 50 and 51 of the present judgment, the fact that the information concerning the resale of the product concerned by Schades Nordic was provided by Hansol other than by means of an anti-dumping questionnaire could not exempt the Commission from assessing the relevance of, and verifying, that information.

54 Similarly, the fact that certain interested parties are exempted from the obligation to respond to the anti-dumping questionnaire does not exempt the Commission from assessing and verifying the information received outside the framework of the responses to that questionnaire, as the grant of those exemptions does not relieve the Commission of its responsibility to conduct its investigation with care.

55 Contrary to the Commission's assertions, that interpretation is not such as to compromise the impartiality of the investigation, on the ground that the information concerned has not been sent to all the other interested parties in order to guarantee their procedural rights. The Commission

cannot justify its lack of care in taking relevant information into account by relying on the risk of a breach of the procedural rights of the other interested parties which it was required to guarantee during the procedure leading to the adoption of the regulation at issue.

56 Lastly, regarding the complaints that the General Court distorted the evidence and unlawfully substituted its own assessment for that of the Commission by holding that the information concerning resales by Schades Nordic, although not verified by the Commission, constituted relevant evidence, the following should be noted.

57 The review of legality provided for in Article 263 TFEU involves review by the General Court, in respect of both the law and the facts, of the arguments relied on by an applicant against the contested act, which means that it has the power to assess the evidence and to annul that act (see, to that effect, judgment of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 53).

58 In the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, it follows from the settled case-law of the Court of Justice that the EU institutions enjoy a broad discretion by reason of the complexity of the economic and political situations which they have to examine, with the result that the judicial review of that broad discretion must be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraphs 35 and 36 and the case-law cited).

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

60 In paragraph 84 of the judgment under appeal, the General Court observed that the weighting applied by the Commission, which is based on a comparison, relating to the total sales to the European Union of the product concerned, between direct and indirect sales to independent customers, on the one hand, and sales to related converters for conversion into small rolls, on the other, had an impact on the calculation of the dumping margin relating to the dumping practised by Hansol in so far as the level of dumping for direct and indirect sales of the product concerned was significantly lower than that for sales to related converters with a view to the conversion of the product concerned into small rolls. Next, the General Court held, in essence, in paragraphs 85 and 86 of the judgment under appeal, that, although the Commission had information available to it relating to the volume of the product concerned which Schades Nordic had purchased from Hansol and resold to independent customers, it nonetheless found that those sales by Hansol to Schades Nordic, like those to Heipa and R+S, had entirely been carried out with a view to the conversion of the product concerned into small rolls. Lastly, the General Court inferred from the

fact that the Commission had failed to take Schades Nordic's data into consideration that that institution had, when calculating the dumping margin on the basis of Schades' data, given too much weight to sales to related converters with a view to the conversion of that product into small rolls, thereby increasing the actual dumping practised by Hansol. As the Commission's calculations did not reflect the full extent of the dumping practised by Hansol, the General Court held, in paragraph 87 of the judgment under appeal, that the Commission had infringed Article 2(11) of the basic regulation.

61 In so doing, the General Court carried out the review of legality required of it under Article 263 TFEU by verifying whether the Commission had taken all the relevant data concerning the resale of the product concerned by related converters into consideration and whether the data thus taken into consideration enabled that institution to establish, with sufficient reliability, the extent of the dumping practised by Hansol.

62 The fact that the General Court did not verify the data relating to the sales by Schades Nordic of the product concerned to independent customers does not mean that it distorted the evidence or substituted its own assessment for that of the Commission. Indeed, given that those data had been duly submitted to the Commission during the investigation procedure, as is apparent from paragraphs 52 to 55 of the present judgment, and that they were a priori relevant for the dumping calculation, the Commission should have taken those data into account and verified them. The review carried out by the General Court concerned the consequences, for the Commission's findings as regards the dumping practised, of the failure by that institution to take those data into account and to verify them. The fact that, in light of those data, it was, at the very least, possible that the Commission had given too great a weighting to sales made to related converters for the purposes of conversion into small rolls, thereby increasing the actual dumping practised by Hansol, was sufficient to call in question the reliability and objective nature of the Commission's assessment of the dumping practised by Hansol.

63 Accordingly, the General Court was entitled to find, in paragraph 87 of the judgment under appeal, that the Commission's calculations did not reflect the full extent of the dumping practised by Hansol. Therefore, the General Court did not err in law in finding, on that ground, in paragraphs 87 and 105 of the judgment under appeal, that the Commission had infringed Article 2(11) of the basic regulation, as well as the second subparagraph of Article 9(4) thereof. It was thus fully entitled to uphold, in paragraph 92 of the judgment under appeal, the first complaint in the second part of the first plea in law relied on at first instance and, in paragraph 106 of the judgment under appeal, the first part of the second plea at first instance.

64 Contrary to the Commission's assertions, those findings of the General Court do not involve a contradiction between Schades Nordic's individual data being taken into account and the representative nature of Schades' data. Indeed, as is apparent from paragraphs 85 and 86 of the judgment under appeal, the Commission had decided to use Schades' data to calculate the dumping margin on Hansol's sales to the other three related converters. For the purposes of that calculation, the Commission took the view that Schades was the only converter related to the Hansol group to have resold the product concerned to independent customers. Schades Nordic's data indicated, however, that that company had also resold a certain volume of the product concerned to independent customers. In view of the fact that the Commission knew that Schades had resold certain quantities of the product concerned to independent customers without conversion, the General Court held that that institution should have reflected this in the sales of the product concerned to the other related converters. Such a line of reasoning is free of

contradiction. The representative nature of Schades' data in no way excludes the calculation based on those data from being vitiated by errors, given the failure to take account of all the relevant data in that regard.

65 Accordingly, for all the foregoing reasons, the first ground of the appeal must be rejected in its entirety.

The second ground of appeal

Arguments of the parties

66 The Commission, supported by the ETPA, submits that, in paragraphs 152 to 158 of the judgment under appeal, the General Court erred in law by applying an interpretation whereby an absolute distinction is drawn between the situation referred to in the second subparagraph of Article 2(1) of the basic regulation, in which an exporter does not sell the product under investigation on its domestic market, and the situation referred to in the first subparagraph of Article 2(3) of that regulation, in which there are no or insufficient sales of the product in the ordinary course of trade. The General Court therefore incorrectly held that the Commission had infringed Article 2(1) of the basic regulation when calculating Artone's normal value.

67 That interpretation is contrary to the wording of the second subparagraph of Article 2(1) of the basic regulation, which, in various language versions, provides that the normal value 'may' be established in accordance with the method described in that subparagraph. That provision does not lay down an obligation, but provides an option. Such an interpretation is, according to the ETPA, confirmed by the origins of that provision.

68 The interpretation of Article 2 of the basic regulation applied by the General Court is not in line with Article 2.2 of the anti-dumping agreement, which provides that the absence of sales on the domestic market means that only two methods can be used to establish the normal value: construction on the basis of the cost of production, applied by the Commission in the present case, or use of a representative price of export to an appropriate third country.

69 The General Court's interpretation is at odds, in the Commission's view, with the individual nature of the anti-dumping duty. That individual nature stems from, inter alia, the second subparagraph of Article 9(5) of the basic regulation, which is intended to encourage giving preference, when establishing the normal value, to the exporter's own data, rather than those of other producers.

70 The Commission submits that the interpretation applied by the General Court limits the protection of the procedural rights of the company under investigation. That undertaking would be placed in a less favourable situation when the investigating authority uses the data of another exporting producer to calculate the normal value. In such a situation, that undertaking would have access only to the non-confidential version of the data provided by its competitor.

71 The interpretation applied by the General Court is tantamount, in the Commission's view, to separating artificially the situation where there have been no sales whatsoever from the situation in which there have been no sales in the ordinary course of trade. However, there is a partial

overlap between those situations. The ETPA emphasises that there is no legal distinction between a situation characterised by a lack of sales and that in which there are insufficient sales in the exporting country.

72 The Commission submits that the judgment of 1 October 2014, *Council* v *Alumina* (C-393/13 P, EU:C:2014:2245), to which the General Court referred in paragraph 152 of the judgment under appeal, is not relevant to the present case, as it concerns only the definition of the concept of 'sales in the ordinary course of trade' for the purposes of Article 2(3) of the basic regulation.

73 The ETPA submits that the first subparagraph of Article 2(1) of the basic regulation refers to a different situation from that referred to in the second subparagraph of that provision. Accordingly, the interpretation of the first subparagraph of that provision resulting from the judgment of 1 October 2014, *Council* v *Alumina* (C-393/13 P, EU:C:2014:2245), cannot be applied to the second subparagraph of that provision. The ETPA adds that, contrary to what is stated by the General Court in paragraph 157 of the judgment under appeal, the differences between Hansol and Artone as regards cost structure and sales prices are not the reason why the Commission did not determine Artone's normal value on the basis of that company's prices. Under Article 2(2) of the basic regulation, the Commission determined that the sales volumes of two of Artone's products were not representative and, accordingly, it turned to the method prescribed in Article 2(3) of that regulation. The Commission justified its decision to use the cost of production instead of the prices of other sellers or producers on the basis of the differences between Artone and Hansol in terms of the cost structures and sales prices practised.

74 Hansol contends that there is a hierarchy between the methods for determining the normal value referred to in Article 2 of the basic regulation. It is apparent from the subdivision of Article 2(1) of the basic regulation into several subparagraphs that the normal value must primarily be based on domestic prices. However, the fact that, pursuant to the structure of those subdivisions, preference must be given to the domestic prices of the exporting producer rather than the domestic prices of other sellers or producers for the purpose of determining the normal value does not mean that preference should be given to a constructed normal value over a normal value based on domestic prices. Such an interpretation would be contrary to the finding of the Court in the judgment of 1 October 2014, *Council* v *Alumina* (C-393/13 P, EU:C:2014:2245, paragraph 20), that the determination of the normal value on the basis of prices is the rule while the construction of the normal value is the exception.

75 Hansol also contends that the Commission's reasoning is at odds with its previous practice and that neither the anti-dumping agreement, which contains no provision similar to the second subparagraph of Article 2(1) of the basic regulation, nor the protection of the procedural rights of the interested parties precludes the interpretation of Article 2(1) and (3) of the basic regulation applied by the General Court.

Findings of the Court

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

77 In order to determine that normal value, the first subparagraph of Article 2(1) of the basic regulation provides that it is normally to be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country. The second subparagraph of that provision specifies that, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

78 Article 2(1) of the basic regulation thus lays down the general principle in accordance with which the normal value must, as a rule, be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country (judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, paragraph 19).

79 That general principle applies as a matter of priority in the determination of the normal value. As the General Court recalled in paragraph 148 of the judgment under appeal, the Court of Justice has previously held that it is apparent from both the wording and the scheme of the first subparagraph of Article 2(1) of the basic regulation 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 (see, to that effect, judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 20 and the case-law cited). As the second subparagraph of Article 2(1) of the basic regulation specifies that that general principle applies when the conditions laid down in the first subparagraph of that provision are not satisfied, it must also be interpreted as applying as a matter of priority in relation to the methods for determining the normal value.

80 Under the first subparagraph of Article 2(3) of the basic regulation, it is possible to derogate from the application of the general principle set out in Article 2(1) of that regulation only when there are no or insufficient sales of the like product in the ordinary course of trade or where, because of the particular market situation, such sales do not permit a proper comparison, by calculating the normal value either on the basis of the cost of production in the country of origin plus a reasonable amount for costs and for profits or on the basis of representative export prices (see, to that effect, judgment of 1 October 2014, *Council* v *Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 20 and the case-law cited).

81 The first and second subparagraphs of Article 2(1) of the basic regulation, together with the first subparagraph of Article 2(3) thereof, thus establish a hierarchy between the methods for determining the normal value set out in those provisions. It follows that, contrary to the Commission's assertions, there is no overlap between the situations covered by each of those methods.

82 That interpretation is not in breach of the obligation to interpret Article 2(1) and (3) of the basic regulation in line with Article 2.2 of the anti-dumping agreement. It is true that the primacy of international agreements concluded by the European Union over secondary EU legislation requires that the latter be interpreted, as far as possible, in a manner consistent with those agreements (judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 31 and the case-law cited). However, as was also noted by the Advocate General in point 108 of his Opinion, the anti-dumping agreement does not contain a provision similar to Article 2(1) of the basic regulation, which has no connection with the circumstance, covered by Article 2.2 of the anti-dumping agreement, of an absence of sales.

83 In addition, contrary to the Commission's assertions, the interpretation referred to in paragraphs 78 to 81 of the present judgment does not infringe the procedural rights of exporters. Indeed, if the normal value is established on the basis of the prices of other exporters or producers under the second subparagraph of Article 2(1) of the basic regulation, those rights can be guaranteed by non-confidential summaries of the data of those other exporters or producers.

84 Lastly, regarding the ETPA's complaint directed against paragraph 157 of the judgment under appeal, it should be borne in mind, as is apparent from paragraphs 79 and 80 of the present judgment, that it is not possible to derogate from the application of the methods for determining the normal value on the basis of the price of sales of the like product on the domestic market of the exporting country except when there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison. It is only in such cases that Article 2(3) of the basic regulation permits the normal value either to be constructed on the basis of the cost of production in the country of origin or to be determined on the basis of export prices. The General Court thus did not err in finding, in paragraph 157 of the judgment under appeal, that the differences between Artone and Hansol's cost structures and sales prices are not among the derogations from the method for establishing the normal value on the basis of actual prices on the domestic market of the exporting country.

85 Accordingly, the General Court did not err in law in finding, in essence, in paragraphs 152 to 158 of the judgment under appeal, that it follows from Article 2(1) of the basic regulation that, where the exporter does not sell the like product, the normal value is to be established on the basis of prices of other sellers or producers, and not on the basis of the production costs of the company concerned, and that the Commission had infringed that article when calculating the normal value for Artone's types of the product concerned.

86 The second ground of appeal must therefore be rejected as unfounded.

The third ground of appeal

Arguments of the parties

87 The Commission, supported by the ETPA, argues that the grounds set out in paragraphs 196 to 205 and 208 to 213 of the judgment under appeal are vitiated by an error of law. The General Court found that the Commission, in the context of the calculation of the injury margin, was required to calculate the undercutting margin relating to resales of jumbo rolls by related companies on the basis of sales prices agreed between Schades and its independent customers and not, as it did, by applying, by analogy, Article 2(9) of the basic regulation by reducing the actual sales prices to a CIF EU border value. However, since there is no definition of, or method for calculating, the undercutting margin, the Commission submits that that calculation was within its broad discretion. In addition, its calculation was justified in view of Article 3(3) of the basic regulation, which provides that the issue of whether there has been significant price undercutting must be examined at the level of 'the dumped imports' and not at the level of their subsequent resale price on the Union market. The General Court's assessment incorrectly consisted of an assessment under competition law instead of trade policy law and incorrectly constructed, in a discriminatory manner, a separate export price for the calculation of the amount of dumping from the export price taken into account for the purpose of establishing injury.

88 Hansol contends that the General Court did not err in finding that the Commission had used an incorrect method to calculate the undercutting margin in the regulation at issue.

89 First, Hansol argues that the application by analogy of Article 2(9) of the basic regulation is manifestly in breach of Article 3(1) of that regulation, as those provisions have different purposes.

90 Secondly, Hansol contends that it follows from the practice of the WTO and the Commission that the examination of the issue of whether there has been significant price undercutting requires that prices be compared not at the level of 'the dumped imports' but at the same level of trade, which is defined depending on the type of customers. Applying Article 2(9) of the basic regulation in order to calculate the undercutting margin would be tantamount, in the present case, to comparing prices which are not comparable, as they do not include the same pricing components. The application of that provision of the basic regulation would lead to adjustments being made at a level further upstream in the distribution chain than EU sales.

91 Thirdly, Hansol argues that the methods for calculating dumping are not comparable to those for calculating injury, which has been acknowledged by the Commission in its previous practice. Moreover, that practice and the judgments of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council and Commission* (T-107/08, EU:T:2011:704, paragraph 63), and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission* (T-301/16, EU:T:2019:234, paragraph 187), contradict the argument that it is at the level of the EU border that the price effects caused by the dumped imports should be assessed. According to Hansol, the prices must be compared not at the level of the EU border, but at the level of the sale to the first independent customer, as this is the level at which competition in the European Union takes place.

92 Fourthly, Hansol asserts that sales made in the European Union through related entities and those made directly to independent customers are two different situations which the Commission treated in the same way, in breach of the principle of equal treatment.

93 Hansol contends that the Commission's complaints directed against paragraph 204 of the judgment under appeal are inadmissible, as they concern factual matters.

Findings of the Court

94 According to Article 1(1) of the basic regulation, in order for it to be possible to impose an anti-dumping duty on a dumped product, it is necessary that its release for free circulation in the Union cause injury.

95 For the purpose of determining that injury, Article 3(2) of that regulation provides that it is necessary to carry out an objective examination of the volume of the dumped imports and their effect on prices in the Union market for like products, as well as their impact on the Union industry. Regarding the effect of the imports on prices, Article 3(3) of that regulation specifies that consideration will be given to whether there has been significant price undercutting by those imports as compared with the price of a like product of the Union industry.

96 It should be observed that, in paragraphs 196 to 205 of the judgment under appeal, the General Court held that the Commission had made a manifest error of assessment by determining the injury caused in the event of resale of the product concerned by a related converter, not on the basis of the price of the product concerned upon its resale by Schades to its first independent

customers on the Union market, but on the basis of a constructed CIF EU border value, as was done for the calculation of the injury caused by the sale by Schades of the product concerned converted into small rolls on the same market.

97 The General Court, in paragraph 199 of the judgment under appeal, deduced from the judgment of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council and Commission* (T-107/08, EU:T:2011:704), that, in the context of determining injury and the reference point to be used for calculating the prices of Hansol's goods which were to be compared with the Union industry prices, it was the prices negotiated between an undertaking and its customers and not prices at an intermediate stage which could determine the decision of those customers to purchase that undertaking's product and not that of the Union industry. In the event of resale, the General Court held that it was the product concerned itself which was in competition with the like product of the Union industry and which was causing injury to that industry. The General Court inferred from this, in paragraph 201 of the judgment under appeal, that, regarding resales of the product concerned by Schades, the 'reference point' was not at the level of the EU border, but at the level of that related converter's independent customers. The General Court held, in paragraph 203 of the judgment under appeal, that the Commission had erred in taking into account, in the context of determining the injury in respect of those resales to independent customers, an export price from which SG&A costs and a profit margin had been deducted.

98 In order to assess whether the General Court erred in law in those findings, it is necessary to recall that, as is apparent from paragraph 58 of the present judgment, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion, with the result that the judicial review of that discretion must be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers.

99 As the assessment of whether there has been price undercutting is an economically complex issue in respect of which the basic regulation does not lay down any particular methodology, the Commission enjoys a broad discretion in that regard. It follows that, in accordance with the case-law cited in paragraph 58 of the present judgment, the application, by analogy, of the price construction method referred to in Article 2(9) of the basic regulation in order to assess price undercutting may be considered, provided that that method is consistent with the legal framework laid down by the basic regulation and does not lead to a manifestly incorrect result.

100 In that regard, it is necessary to take account of two particular requirements imposed by the basic regulation when calculating price undercutting.

101 First, Article 3(2) of the basic regulation requires that that calculation be made by objectively examining the effect of the imports on prices. That requirement itself requires that the comparison of the prices be carried out at the same level of trade of the goods in question. It is only on that condition that (i) the actual effect of the imports on the prices of a like product of the Union industry can properly be taken into account, (ii) the sales of the product in question and the sales of the like product of the Union industry can be considered as having the same 'reference point', (iii) the prices of sales of the products in question to the first independent customers can objectively be taken into consideration for the purpose of calculating undercutting, and (iv) the comparison of the prices at the level where competition in the European Union takes place can be relevant.

102 Secondly, it follows from a combined reading of Article 1(1) and Article 3(2) of the basic regulation that the injury must be assessed at the time of the dumped product's 'release for free circulation in the Union'. Consequently, the calculation of undercutting must, in principle, be made at the level of the dumped imports.

103 In the present case, it is apparent from the statements made by the General Court that the Commission assessed whether there was price undercutting in relation to the product concerned by comparing the ex-works price charged by European producers marketing products equivalent to the product concerned with the CIF EU border value of the product concerned. The CIF EU border value of that product corresponds to the price at which it was released for free circulation in the Union, that is to say, the import price immediately after the clearance of that product at the EU border. The Commission thus compared the prices charged by the European producer and by the importer, at the initial level of trade of the product concerned.

104 As the Commission rightly submits, the General Court erred in law in finding that that reasoning was vitiated by a manifest error of assessment. Indeed, that reasoning was intended, in accordance with the requirements of Article 3(2) of the basic regulation, to ensure that the comparison of the prices was carried out objectively at the same level of trade and that it corresponded, as regards the dumped product, to the level of imports.

105 In particular, it was open to the Commission, in order to ensure an objective comparison of the prices at the level of the first release for free circulation in the Union of the product concerned, to construct that CIF EU border value by deducting SG&A costs and a profit margin from the price of resale of the product concerned by Schades to independent customers. That application, by analogy, of Article 2(9) of the basic regulation was within the broad discretion which the Commission enjoys when implementing Article 3(2) of that regulation and could not therefore be regarded, in itself, as vitiated by a manifest error of assessment.

106 In addition, contrary to what was held by the General Court, in essence, in paragraph 201 of the judgment under appeal, taking account of the price of the first resale to an independent customer on the Union market by a related converter does not correspond to the ex-works level of trade of the like product of the Union industry, but to a later level of trade of that product. The price of the sale made by that related converter to the first independent customer is not the import price but a resale price.

107 It follows that the General Court erred in law in holding, in paragraph 203 of the judgment under appeal, that the Commission had incorrectly decided to deduct SG&A costs and a profit margin for resales of the product concerned by Schades to independent customers for the purpose of establishing the export prices of that product in the context of the determination of the injury.

108 The finding of the General Court, in paragraph 204 of the judgment under appeal, as regards the effect of the Commission's alleged error on the validity of the level of price undercutting applied in the regulation at issue is therefore also incorrect, and it is not necessary to give a ruling on the issue of whether that finding constitutes a finding of fact which the Commission could not raise in its appeal.

109 It follows that the General Court was wrong to uphold, in paragraph 205 of the judgment under appeal, the second part of the fifth plea at first instance.

110 It should also be observed that, in paragraphs 208 to 212 of the judgment under appeal, the General Court held, in essence, that the calculation of the price undercutting margin of 9.4% applied by the Commission in the regulation at issue was also based on the error in the weighting of sales made when calculating the dumping. In so far as it could not be excluded that those errors might affect the Commission's finding relating to the price undercutting analysis and the assessment of the injury suffered by the Union industry, the General Court also upheld the third part of the fifth plea at first instance.

111 As is apparent from paragraphs 47 to 65 of the present judgment, the General Court concluded, correctly, that the Commission had made an error affecting the reliability of the weighting of sales for the purposes of the dumping calculation. In addition, it is not disputed that that same weighting was used to calculate the price undercutting. The error affecting the calculation of the weighting of sales thus calls in question the reliability of the Commission's findings as regards the price undercutting margin applied in the regulation at issue.

112 Accordingly, notwithstanding the fact that, as is apparent from paragraphs 98 to 107 of the present judgment, the General Court erred in law in penalising the calculation method used by the Commission to determine the injury caused by the resale of the product concerned by a related converter, the General Court was correct to find that it could not be excluded that the error made by the Commission when calculating the weighting of sales had affected the price undercutting analysis and the assessment of the impact of the dumped imports on like products of the Union industry. The General Court was therefore fully entitled to uphold, in paragraph 212 of the judgment under appeal, the third part of the fifth plea at first instance. The third ground of appeal must therefore be rejected as ineffective.

113 In the light of all of the foregoing, the General Court was entitled to conclude, in paragraph 213 of the judgment under appeal, that the regulation at issue should be annulled in so far as it concerns Hansol.

114 It follows from all the foregoing considerations that the main appeal must be dismissed.

The cross-appeal

115 In support of its cross-appeal, the ETPA puts forward two grounds alleging, respectively, infringement of Article 2(11) of the basic regulation and infringement of Article 18 of that regulation by the General Court in its assessment of the weighting between sales of the product concerned to independent customers, on the one hand, and sales of that product to related converters with a view to its conversion into small rolls, on the other.

The first ground

Arguments of the parties

116 The ETPA submits that the General Court erred in law in holding, in paragraphs 84 to 87, 92, and 100 to 106 of the judgment under appeal, that the Commission had infringed Article 2(11) of the basic regulation by calculating the dumping margin on the basis of a weighting without taking account of the fact that the proportion of sales to related converters intended for resale and not conversion was larger than that taken into consideration by the Commission.

117 Primarily, the ETPA argues that the General Court infringed Article 2(11) of the basic regulation, because that provision does not contain any requirements or guidance as to the exact method for calculating the weighting. The judgment under appeal merely refers to an infringement of that provision without elaborating on the specific parts or requirements allegedly infringed by the Commission.

118 In the alternative, the ETPA argues that the General Court's assessment is vitiated by an error of law, because Article 2(11) of the basic regulation does not require that the method used for the construction of the export price be applied to the calculation of the weighting.

119 The ETPA submits that Schades' data were representative only for the purpose of calculating the price of export to the related converters; they were not representative for the purpose of calculating the sales volumes of the non-cooperating related converters which could not be verified. The basic regulation does not require the Commission to calculate those volumes for the purposes of the weighting. The General Court was not entitled to hold that those volumes would accurately reflect the sales volumes of the related converters.

120 The General Court's findings that the calculations carried out by the Commission did not reflect the full extent of the dumping practised and that the allocation of the same percentage as Schades' percentage to sales of non-converted jumbo rolls for the other three related converters' sales would more fully reflect the extent of the dumping have no factual or legal basis.

121 Regarding the lack of factual basis, the ETPA argues that, given that there was no information available concerning two non-cooperating related converters and that the information concerning the third related converter were not verified, the General Court could not know what would accurately reflect the sales volumes of those converters. In addition, if Schades' sales of jumbo rolls to independent customers, which represented the largest volume, had been used for the related converters, this would have lowered the dumping margin by artificially inflating the proportion of sales of jumbo rolls made to independent customers.

122 Regarding the lack of legal basis, the ETPA argues that neither the case-law nor the wording of Article 2(11) of the basic regulation suggests that, where there is no verified information available, a dumping margin based on an approximate weighting will mean that that dumping margin will not reflect the full extent of the dumping.

123 Hansol contends that the first ground of the cross-appeal must be rejected as manifestly unfounded.

Findings of the Court

124 The General Court correctly recalled, in paragraphs 74 and 75 of the judgment under appeal, that Article 2(11) of the basic regulation lays down two methods for establishing the existence of dumping margins during the investigation period, namely (i) the 'symmetrical' method, based either on the comparison of a weighted average normal value with the weighted average of prices of all export transactions to the Union or on a transaction-to-transaction comparison of individual normal values and individual export prices to the Union, and (ii) the 'asymmetrical' method, based on the comparison of a weighted average normal value with the prices of all individual export transactions to the Union.

125 Although that provision does not lay down a method for calculating the weighting between direct and indirect sales of the product concerned to independent customers, on the one hand, and direct and indirect sales to related converters with a view to the conversion of that product into small rolls, on the other, the fact remains that it follows from the intended purpose of that provision that, whatever method is chosen and however the Commission applies that method in practice, it must serve to reflect the full degree of dumping being practised (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 54).

126 As is apparent from paragraphs 57 to 65 of the present judgment, the General Court correctly held, in paragraphs 84 to 87 of the judgment under appeal, that when the Commission implemented the symmetrical method it had selected in the present case, it had not succeeded in reliably reflecting the full extent of the dumping being practised.

127 Thus, contrary to the ETPA's assertions, the General Court expressly stated which requirement of Article 2(11) of the basic regulation had been infringed by the Commission in the regulation at issue, namely that corresponding to the intended purpose of that provision, which is to ensure that the method used reflects the full degree of dumping being practised.

128 Accordingly, the primary complaint put forward in connection with the first ground of the cross-appeal must be rejected as unfounded.

129 Regarding the alternative complaint put forward, according to which Article 2(11) of the basic regulation does not require the Commission to apply, when calculating the weighting, the method used to construct the export price, it must be found that that complaint is based on an incorrect reading of the judgment under appeal.

130 It is in no way apparent from paragraphs 83 to 87 of the judgment under appeal that the General Court held that the Commission should have relied on Article 2(9) of the basic regulation in order to calculate the weighting of the dumping margins. The General Court found that the weighting of the dumping margins between the sales of the product concerned to independent customers and the sales to related converters applied by the Commission did not reflect the full extent of the dumping practised by Hansol as is required by Article 2(11) of the basic regulation.

131 Next, the ETPA contests the General Court's findings in paragraphs 85 and 86 of the judgment under appeal that the Commission had decided to use Schades' data to calculate the dumping margin on the sales made by Hansol to the other three related converters, omitting to take the data relating to Schades Nordic into account. It must be pointed out that that line of argument is directed against a factual assessment.

132 It is clear from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, secondly, to assess those facts. It follows that, provided that the evidence which the General Court has accepted in support of those facts has been properly obtained, and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced before it. Save where the clear sense of the evidence

has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (judgment of 2 June 2016, *Photo USA Electronic Graphic* v *Council*, C-31/15 P, not published, EU:C:2016:390, paragraphs 50 and 51 and the case-law cited).

133 Given that the ETPA is challenging a factual assessment without relying on a distortion of the facts, the Court does not have jurisdiction to rule on that issue.

134 Furthermore, the ETPA's line of argument according to which the General Court erred in holding, in paragraphs 86 and 87 of the judgment under appeal, that the use of Schades' sales volumes for the sales of the other three related converters more accurately reflected the dumping practised by Hansol stems from an incorrect reading of the judgment under appeal. In those paragraphs, the General Court stated only that, by failing to take account of the fact that it was apparent from the information made available to it that not only Schades but also one of the other three related converters, namely Schades Nordic, were reselling the product concerned to independent customers, the Commission had allocated too great a weighting to sales made to related converters for the purposes of conversion into small rolls, thereby increasing the actual dumping practised by Hansol.

135 Lastly, the ETPA submits that neither the case-law nor the wording of Article 2(11) of the basic regulation precludes a finding that a dumping margin based on an approximate weighting, where there is no verified information, will prevent that dumping margin from reflecting the full extent of the dumping. However, it is sufficient to recall that, as is apparent from paragraphs 47 to 65 and from paragraphs 124 and 125 of the present judgment, the Commission was required to verify Schades Nordic's data and to ensure that its calculations reflected the full degree of dumping being practised.

136 In the light of the foregoing considerations, the alternative complaint put forward in connection with the first ground of the cross-appeal must also be rejected as unfounded and, therefore, the first ground of the cross-appeal must be rejected in its entirety.

The second ground

Arguments of the parties

137 The ETPA submits that paragraphs 86 and 87 of the judgment under appeal are vitiated by an error of law. Under Article 18 of the basic regulation, the Commission was permitted to calculate the weighting of the different sales channels on the basis of the best facts available. According to the ETPA, Hansol was aware of this because, during the investigation, the Commission had informed it of the consequences of non-cooperation. As Hansol had requested that three related converters not complete the anti-dumping questionnaire, it should have known that the volumes of sales would be determined on the basis of the best facts available.

138 Given that the Commission had a broad discretion to determine what constitutes the best facts available in each particular case and that, in the judgment under appeal, the General Court did not find that the Commission had made a manifest error in its assessment of the facts but held that the use of Schades' sales data would have more accurately reflected Hansol's dumping margin, the General Court exceeded the limits of its review and unlawfully substituted its own point of view for that of the Commission.

139 Hansol contends that the second ground of the cross-appeal is manifestly unfounded.

Findings of the Court

140 Under Article 18(1) of the basic regulation, the Commission may make findings on the basis of the facts available in cases in which any interested party refuses to cooperate or supplies false or misleading information.

141 In the present case, it is common ground that, during the anti-dumping investigation, Hansol requested that the related converters other than Schades be exempted from responding to the anti-dumping questionnaires. It is also not disputed that that request was accepted by the Commission, with the result that it limited its requests for information concerning the related converters to that relating to Schades.

142 Such a request cannot be regarded as a refusal to cooperate for the purposes of Article 18(1) of the basic regulation. It follows that, contrary to the ETPA's assertions, that provision did not apply in the present case.

143 The fact that only Schades responded to the anti-dumping questionnaire and that the other related converters were exempted from responding thereto does not affect the Commission's obligation to take into account the relevant data of which it could have become aware during the administrative procedure in order to assess the full degree of dumping being practised. Indeed, as has been explained in paragraphs 49 to 51 of the present judgment, the Commission is required to take those data into account in view of the objective of the basic regulation and its duty to take care.

144 Accordingly, the ETPA is incorrect in its assertion that the General Court exceeded the limits of its review and unlawfully substituted its own point of view for that of the Commission when, in paragraphs 85 and 86 of the judgment under appeal, it held that the Commission had allocated too great a weighting to sales made to related converters for the purposes of conversion into small rolls and had thereby increased the actual dumping practised by Hansol. Even if the Commission knew that a proportion of sales of the product concerned to Schades had been resold to independent customers without being converted, and even if it knew that at least one related converter other than Schades was also reselling the product concerned, it had nonetheless found that all of Hansol's sales to the three related converters other than Schades had been made with a view to the conversion of the product concerned into small rolls.

145 It follows that the second ground of the cross-appeal must also be rejected as unfounded and, therefore, that the cross-appeal must be dismissed in its entirety.

Costs

146 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs. Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

147 As regards the main appeal, since Hansol has applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs relating to that appeal.

148 Since the ETPA has been unsuccessful in its cross-appeal and Hansol has applied for costs, the ETPA must be ordered to pay the costs relating to the cross-appeal.

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

1. **Dismisses the main appeal and the cross-appeal;**

2. **Orders the European Commission to pay the costs relating to the main appeal;**

3. **Orders the European Thermal Paper Association (ETPA) to pay the costs relating to the cross-appeal.**

Prechal Passer Biltgen

Wahl Arastey Sahún

Delivered in open court in Luxembourg on 12 May 2022.

A. Calot Escobar
Registrar

A. Prechal
President of the Second Chamber