

JUDGMENT OF THE GENERAL COURT (Tenth Chamber)

2 July 2025 (\*)

( Commercial policy – Dumping – Imports of fatty acid originating in Indonesia – Definitive anti-dumping duty – Article 17(3) of Regulation (EU) 2016/1036 – Request for individual examination – Unduly burdensome – Article 9(1) of Regulation 2016/1036 – Continuation of the investigation after withdrawal of the complaint – Article 3(2) of Regulation 2016/1036 – Article 9(2) and (4) of Regulation 2016/1036 – Injury analysis – Article 21(1) of Regulation 2016/1036 – Union interest analysis – Manifest error of assessment – Error of law )

In Case T-187/23,

**PT Permata Hijau Palm Oleo**, established in Medan (Indonesia),

**PT Nubika Jaya**, established in Medan,

represented by F. Graafsma, J. Cornelis and M. Van Luchene, lawyers,

applicants,

v

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

defendant,

THE GENERAL COURT (Tenth Chamber),

composed of O. Porchia, President, L. Madise and P. Nihoul (Rapporteur), Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

having regard to the measure of inquiry of 10 October 2024 and Annex 14 to the confidential version of the response of KLK Emmerich GmbH to the anti-dumping questionnaire intended for European Union producers lodged by the Commission with the Registry of the General Court on 24 October 2024,

further to the hearing on 13 November 2024,

gives the following

**Judgment**

- 1 By their action under Article 263 TFEU, the applicants, PT Permata Hijau Palm Oleo and PT Nubika Jaya, seek the annulment of Commission Implementing Regulation (EU) 2023/111 of 18 January 2023 imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia (OJ 2023 L 18, p. 1; 'the contested regulation').

### **Background to the dispute**

- 2 The applicants are companies established in Indonesia, which produce and export fatty acid to the European Union.

### ***The anti-dumping proceeding***

- 3 Further to a complaint lodged on 18 October 2021 ('the complaint') by the Coalition Against Unfair Trade in Fatty Acid ('the complainant') under Article 5 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), as amended ('the basic regulation'), the European Commission initiated an anti-dumping investigation concerning imports into the European Union of fatty acid originating in Indonesia ('the product concerned'). The notice of initiation of the investigation ('the notice of initiation') was published on 30 November 2021 (OJ 2021 C 482, p. 5).
- 4 The investigation of dumping and injury covered the period from 1 October 2020 to 30 September 2021 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').
- 5 On 7 December 2021, the applicants submitted a reply to the sampling form, in which they requested an examination of their individual dumping margin if they were not selected for the sample.
- 6 The Commission selected two samples for the investigation, comprising, respectively, four Union producers and two groups of Indonesian exporting producers. On 4 February 2022, it notified the applicants that they were not part of the latter sample, but that they could submit a request for an individual dumping margin calculation by replying to the anti-dumping questionnaire ('the questionnaire') intended for exporting producers. On 16 March 2022, the applicants submitted their reply to that questionnaire and made such a request under Article 17(3) of the basic regulation ('the request for individual examination').
- 7 On 1 August 2022, the Commission informed interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of the product concerned ('the final disclosure'). It accordingly proposed that a duty of 32.9% be imposed on all cooperating non-sampled companies, including the applicants, and rejected the applicants' request for individual examination. The applicants submitted their comments on the final disclosure on 22 August 2022.
- 8 On 24 August 2022, the complainant withdrew the complaint. However, the Commission decided to continue the investigation.
- 9 On 4 October 2022, the Commission communicated an additional final disclosure ('the additional final disclosure'), in which it lowered the anti-dumping duty which it intended to impose on the applicants to 31.4%. The applicants submitted their comments on that document on 6 October 2022.

- 10 On 28 November 2022, the Commission addressed a second additional final disclosure to the applicants, in which that anti-dumping duty was reduced to 26.6%. The applicants submitted comments on that document on 29 November 2022.
- 11 On 18 January 2023, the Commission adopted the contested regulation imposing an anti-dumping duty applicable to the applicants of 26.6%. That regulation was published in the *Official Journal of the European Union* on 19 January 2023 and entered into force on the day following its publication.

### ***The anti-subsidy proceeding***

- 12 Following a second complaint lodged by the complainant on 31 March 2022, pursuant to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ 2016 L 176, p. 55), the Commission initiated an anti-subsidy investigation concerning imports of fatty acid originating in Indonesia on 13 May 2022 ('the anti-subsidy investigation').
- 13 On 3 October 2022, the complainant informed the Commission that the complaint referred to in paragraph 12 above had been withdrawn. By Implementing Decision (EU) 2023/617 of 17 March 2023 (OJ 2023 L 80, p. 99), the Commission terminated the anti-subsidy investigation.

### **Forms of order sought**

- 14 By their application, lodged on 11 April 2023, the applicants claim that the Court should:
- annul the contested regulation;
  - order the Commission to pay the costs.
- 15 The Commission contends that the Court should:
- dismiss the action;
  - order the applicants to pay the costs.

### **Law**

- 16 The applicants put forward two pleas in law.

#### ***The first plea in law: the request for individual examination was wrongly rejected on the ground that it would be unduly burdensome for the Commission***

- 17 By the first plea in law, which is divided into three parts, the applicants allege infringement of Article 17(3) of the basic regulation and a manifest error of assessment, inasmuch as the request for individual examination was rejected on the ground that it would be unduly burdensome for the Commission.

#### *The first part: the request for individual examination was rejected on grounds of complexity*

- 18 By the first part, the applicants argue that the rejection of their request for individual examination is based on a misinterpretation and misapplication of Article 17(3) of the basic regulation.

- 19 The Commission argues that that line of argument is unfounded.
- 20 In that regard, Article 17 of the basic regulation, which is headed 'Sampling', provides as follows:
- '1. In cases where the number of Union producers, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid, on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.
- ...
3. In cases where the investigation has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.
- ...'
- 21 It is apparent from the contested regulation that the Commission selected a sample of the interested parties in accordance with Article 17 of the basic regulation by selecting seven undertakings divided into two samples. The first sample consisted of four Union producers accounting for around 61% of the total Union production of the product concerned and 63% of the sales of that product in the Union (see recitals 36 and 181 of the contested regulation). The second comprised three exporting producers in Indonesia belonging to two groups. They were selected on the basis of the largest representative volume of exports to the European Union of the product concerned which could be investigated within the time available (see recital 40 of that regulation).
- 22 Moreover, two groups of exporting producers not included in the second sample requested an individual examination under Article 17(3) of the basic regulation, namely the group to which the applicants belong ('the Permata group') and P.T. Unilever Oleochemical Indonesia ('Unilever Indonesia').
- 23 The Commission rejected those requests on the ground that those individual examinations would have been unduly burdensome and prevented the completion of the investigation in a timely manner (see recitals 42, 44 and 49 of the contested regulation). In that regard it based itself on two criteria, namely, first, the complexity of the investigation, the structure of the two groups of exporting producers not included in the second sample and that of the two groups of exporting producers selected for that sample and, second, the remaining investigation time (see recitals 42, 44 and 45 of the contested regulation).
- 24 As regards the first criterion, relating to complexity, the Commission found that the structure of the two groups who had requested an individual examination was complex since the Permata group included two producers in Indonesia and a trader in Singapore, whereas Unilever Indonesia was part of a multinational corporation with a complex distribution channel (see recitals 42 and 44 of the contested regulation).
- 25 Moreover, the Commission noted that, in order to grant individual examination to those two groups, it would have had to verify a number of entities, namely all producers, related traders and importers involved in the sale of the product concerned to the European Union, and analyse all their distribution channels, as had been done for the sampled exporting producers, which would have been unduly burdensome. In its view, the complexity of the companies concerned determines the time required to conduct a proper analysis of each exporting producer (see recital 45 of the contested regulation).

- 26 Lastly, the Commission considered the fact that both sampled groups of exporting producers also had highly complex structures that required the dedication of significant investigative and administrative resources in order to sample them and obtain accurate results (see recital 45 of the contested regulation).
- 27 As regards the second criterion relating to the swiftness of the investigation, the Commission concluded that, if it had accepted to conduct an individual examination of the Permata group and Unilever Indonesia, it ran the risk of not being able to finalise and publish the results of those examinations on time (see recital 45 in fine of the contested regulation). In particular, it noted that, when the applicants challenged the rejection of their request for an individual examination in their observations on the final disclosure, the five months it had left before the end of the time limit fixed for instituting definitive measures was not fully dedicated to the investigation and findings stage of the procedure, as such procedures include several months of administrative proceedings: processing comments, holding hearings, internal approvals, consultations with other Commission's services, translation, among others (see recital 45, referring to recital 43, of the contested regulation).
- 28 The applicants submit that the legal criterion applied to reject their request for an individual examination is incorrect, as the concept of complexity is not referred to in Article 17(3) of the basic regulation. The only relevant criterion is the number of exporting producers putting forward such requests.
- 29 In that regard, in the first place, according to the case-law, the wording 'where the number of exporters or producers is so large' employed in Article 17(3) of the basic regulation refers to exporting producers not included in the sample who put forward a request for an individual examination, not those who were included in the sample (see, to that effect and by analogy, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraphs 104 and 148).
- 30 However, it is apparent from the wording of Article 17(3) of the basic regulation, first, that the rejection of requests for an individual examination is contingent on proof of that 'task' becoming unduly burdensome and of an impediment preventing completion of the investigation in a timely manner. Secondly, the criterion liable to lead to that double situation is not the large number of exporting producers requesting an individual examination per se, but rather the individual examinations that would result from the number of those requests.
- 31 Article 17(3) of the basic regulation thus refers to the Commission's work becoming unduly burdensome on account of the individual examinations and, therefore, implicitly the magnitude and complexity of that additional work required to complete those investigations, as well as the corresponding increase in the length of the investigation. According to the case-law, the assessment required in that regard presumes that account is taken of the size of the investigation so as to determine whether granting individual treatment to certain non-sampled exporting producers can be envisaged (see, to that effect, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraphs 149 and 150).
- 32 It is thus apparent from Article 17(3) of the basic regulation that the decisive criterion for determining whether the number of requests for an individual examination is too large to grant those requests is two-fold. It concerns, first, the scope and complexity of the investigation as a whole which must be conducted in respect of the sampled traders and, second, the additional work and corresponding extension of the length of the investigation that the individual examinations of the non-sampled traders would entail.
- 33 Accordingly, the argument alleging that the Commission admits in the contested regulation that the number of exporting producers requesting individual examination in this case was limited, in other words, the opposite of 'large' as prescribed under Article 17(3) of the basic regulation, must be rejected as unfounded.

- 34 In the second place, Article 17(3) of the basic regulation pursues a two-fold objective, namely, first, to prevent the calculation of individual dumping margins from giving rise to an excessive administrative burden for the Commission (see, by analogy, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 129) and, second, to further the swiftness of the investigation, which is an objective pursued generally by the basic regulation.
- 35 As regards the second objective, recital 26 of the basic regulation states that it is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time limits. Under Article 6(9) of that regulation, an investigation opened following a complaint must, whenever possible, be concluded within one year and no later than 14 months of initiation.
- 36 Thus, the two objectives, aimed respectively at managing the Commission's workload and guaranteeing the swiftness of the investigation, find expression in the two cumulative conditions laid down in Article 17(3) of the basic regulation (referred to in paragraph 30 above), to which rejection of requests for an individual examination is subject.
- 37 In the third place, Article 17(3) of the basic regulation forms part of the anti-dumping investigation context in which the requests for an individual examination are made. That investigation is characterised by its limited, complex and substantively and temporally restricted nature.
- 38 First, Article 17(3) of the basic regulation applies where the Commission has limited the scope of the investigation by having recourse to sampling, pursuant to Article 17(1) thereof (see, to that effect and by analogy, judgment of 11 September 2018, *Foshan Lihua Ceramic v Commission*, T-654/16, EU:T:2018:525, paragraph 43), namely where the number of Union producers, exporters or importers of types of products or transactions is large.
- 39 Under Article 17(1) of the basic regulation, the Commission is authorised in large-scale cases to limit the investigation to a reasonable number of parties, inter alia, by using a statistically representative sample (see, to that effect, judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others v Commission*, C-478/21 P, EU:C:2023:685, paragraph 215; see also, by analogy, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 156).
- 40 Sampling places a limitation on the investigation, because in principle it examines only the companies selected for the sample and does not include exporting producers not included in that sample (see, to that effect, Opinion of Advocate General Mengozzi in *Brosmann Footwear (HK) and Others v Council*, C-249/10, EU:C:2011:544, points 56, 57 and 72).
- 41 Article 17(1) of the basic regulation thus aims to allow the Commission to work with a small and manageable amount of data rather than having to look at all the available data (Opinion of Advocate General Medina in *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others v Commission*, C-478/21 P, EU:C:2023:117, point 180).
- 42 Secondly, the 'task' liable to be made unduly burdensome by the individual examinations, referred to in Article 17(3) of the basic regulation, necessarily refers to the obligations, in this case extensive and complex, incumbent on the Commission during the investigation.
- 43 In that regard, 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 (see, to that effect, judgments of 12 May 2022, *Commission v Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 47 and the case-law cited, and of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others v Commission*, C-478/21 P, EU:C:2023:685, paragraph 136).

- 44 The complexity relates to both the substantive questions and the procedural obligations incumbent on the Commission.
- 45 On that point, the applicants criticise the Commission for having taken into consideration the number of exporting producer entities who requested an individual examination and then gone on to infer therefrom that their structure was too complex. In their view, the complexity of the structure of the parties requesting an individual examination, being the number of exporting producer entities who should be subjected to a verification, is not the correct legal criterion. The 'individual examinations' refer to those requested by the exporting producers as groups, as the entities of which they consist are not empowered to make a request for an individual examination.
- 46 Moreover, the applicants criticise the Commission for having rejected their request for an individual examination due to their supposedly overly complex structure in order to address its primary concern about completing the investigation rapidly. In so doing, the Commission failed to observe the balancing of interests provided for by Article 17(3) of the basic regulation between the need to establish that the product in question has been dumped, as a general rule, for each exporting producer and that of completing the investigation within the strict statutory time limits.
- 47 In that regard, first, the applicants do not dispute the fact that, had their request for an individual examination been accepted, the anti-dumping duty that would have been applicable to them would have been calculated at group level, including all entities related to them, and that, consequently, those entities ought to have been examined as well in the investigation, which would have given rise inter alia to on-site inspections. Nor do they dispute the fact that the calculation would have required information relating to those related entities involved in the manufacture and sale of the product concerned to be taken into account.
- 48 Secondly, it is apparent from recitals 42 to 45 and 49 of the contested regulation (referred to in paragraphs 23 to 27 above) that, although the complexity of the applicants' structure was a factor taken into account in rejecting their request for an individual examination and that of Unilever Indonesia, it was not the only one. In particular, the Commission explained the additional work that an individual examination of the Permata group and Unilever Indonesia would have entailed. It also placed that extra workload in the broader context of the already complex investigation into the sampled exporting producers, which required the dedication of significant resources, before going on to conclude that that workload would have been disproportionate and it thus ran the risk of not being able to finalise the investigations of different groups and publish the results on time (see recital 45 in fine of that regulation).
- 49 Thirdly, the Commission stated in the defence that the complexity of the investigation and of the structure of sampled or non-sampled companies played a central role as part of the burdensomeness analysis for the purposes of Article 17(3) of the basic regulation and that the complex corporate structure of a group could require significantly more investigative efforts and thus place a strain on its available resources. It thus stated that a complex corporate structure entailed, in essence, for it a large volume of data to be analysed, in order to guarantee the accuracy of the calculation of the dumping and injury margins, and verifications to be carried out, and therefore the dedication of additional resources.

- 50 The applicants submit that the arguments set out in paragraph 49 above were not referred to in the contested regulation. However, the Commission observes, correctly, that their relevance was summarised in recital 45 of the contested regulation, referred to in essence in paragraphs 25 to 27 above.
- 51 Moreover, the questionnaire, to which inter alia the three exporting producers included in the sample and four distinct entities from the Permata group responded, acknowledges that the investigation would have been made more complicated if it had been necessary to calculate an individual dumping margin for that group. That 50-page document reflects the magnitude of the volume and the complexity of the information the Commission had to process for each group included in the investigation. It therefore also reveals how voluminous the additional complex data was that it would have had to process and verify if it had had to include the Permata group as well. In particular, the questionnaire required the exporting producers to provide highly detailed information about natural and legal persons related to them and their activity.
- 52 Thus the questionnaire shows that the anti-dumping investigative proceeding obliged the Commission to investigate all companies of a group involved in the production, sale or distribution of the product concerned.
- 53 In responding to the questionnaire, the applicants therefore knew already that their being included in the investigation would have required processing and verification of voluminous, complex information about several entities in their group.
- 54 Moreover, the questionnaire and the annex thereto stated that all information provided in response could be audited and verified by the Commission. Those visits would have been in addition to the 12 others that the Commission had had to conduct at the premises of the three exporting producers included in the sample and of the five companies related to them, those of the complainant and those of the four sampled Union producers (see recitals 53 and 179 of the contested regulation).
- 55 Lastly, the applicants' claim that, in any event, their structure was not complex is not substantiated by any evidence.
- 56 It follows from the foregoing that the interpretation of Article 17(3) of the basic regulation advocated for by the applicants, which is based solely on the criterion of the absolute value of the number of requests for individual examinations, but which disregards completely the complete wording of that provision, its objectives and the context of the investigation of which it forms a part, is unfounded.
- 57 The other arguments put forward by the applicants do not call that conclusion into question.
- 58 In the first place, the applicants submit that, under Article 17(3) of the basic regulation, granting an individual examination to each exporting producer not included in the sample who requested one is the rule and refusing that examination is the exception, which must be interpreted narrowly.
- 59 In that regard, the possibility of granting an individual examination under Article 17(3) of the basic regulation must necessarily be reconciled with the two-fold condition required by that provision, consisting in its not becoming unduly burdensome and there being no impediment to completing the investigation on time, to which the grant of such an examination is subject.
- 60 Requests for an individual examination are made in the context of an already complex investigation which is constrained by the need to dedicate considerable resources and comply with a strict timetable.

- 61 Consequently, the question whether one or more individual examinations may be granted must be assessed on a specific, case-by-case basis having regard to the resource and time constraints of the investigation in question, in such a way as to ensure that those examinations do not entail an excessive burden for the Commission.
- 62 The argument for a restrictive interpretation of the possibility of refusing requests for an individual examination under Article 17(3) of the basic regulation must therefore be rejected.
- 63 In the second place, the applicants argue that the Commission's interpretation of Article 17(3) of the basic regulation deprives that provision of its useful effect.
- 64 The applicants take the view that, although the Commission could take account of the complexity of the investigation and the structure of the sampled and non-sampled exporting producers in order to consider a request for an individual examination, those criteria could discourage the large-scale exporting producers or those with complex structures from requesting an individual examination. Those criteria would thus be contrary to Article 6.10.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103; 'the Anti-Dumping Agreement'), contained in Annex 1 A to the Agreement establishing the World Trade Organization (WTO) (OJ 1994 L 336, p. 3).
- 65 In particular, according to the applicants, if it was necessary to take into account the complexity of the investigation, the volume of information collected and submissions lodged by interested parties, it would be virtually impossible for exporting producers to obtain an individual examination in cases which are technically complex or where the submissions lodged by the parties are lengthy or complex. They further argue that such an interpretation could incentivise interested parties to put forward lengthy submissions intentionally so as to preclude individual examinations of competing exporting producers.
- 66 In that regard, the provisions of the basic regulation must be interpreted, in so far as possible, in the light of the corresponding provisions of the Anti-Dumping Agreement (judgment of 16 December 2020, *Changmao Biochemical Engineering v Commission*, T-541/18, not published, EU:T:2020:605, paragraph 61; 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 54; see also, to that effect and by analogy, judgment of 8 September 2015, *Philips Lighting Poland and Philips Lighting v Council*, C-511/13 P, EU:C:2015:553, paragraphs 60 and 61 and the case-law cited).
- 67 Article 6.10.2 of the Anti-Dumping Agreement, aside from the second sentence, according to which 'voluntary responses shall not be discouraged', has been transposed by Article 17(3) of the basic regulation (judgment of 11 September 2018, *Foshan Lihua Ceramic v Commission*, T-654/16, EU:T:2018:525, paragraph 42). Accordingly, that latter provision should, in so far as possible, be interpreted in the light of the former.
- 68 The report of the Panel of the WTO in the case 'European Union – Anti-dumping measures on certain footwear from China' of 28 October 2011 (WT/DS405/R), adopted on 22 February 2012, states, in paragraphs 7.143, 7.144 et 7.146, that the Commission did not infringe Article 6.10.2 of the Anti-Dumping Agreement by deciding not to grant the requests for an individual examination made in that case by Chinese exporting producers under Article 17(3) of the basic regulation, on the ground that it would make its task unduly burdensome and prevent it from completing the investigation in a timely manner. The Panel found in that regard that it was inappropriate to intervene in anti-dumping investigations conducted by the authority charged with the investigation concerning the grant of available resources. It thus refused to review the Commission's application in that case of the two cumulative conditions provided for by that provision as a basis for refusing those requests for an individual examination.

- 69 The WTO Panel's interpretation of Article 6.10.2 of the Anti-Dumping Agreement accordingly runs counter to the argument relied on by the applicants.
- 70 That argument is, moreover, speculative. First, the applicants have not established, or even alleged, that, in the present case, large-scale or structurally complex exporting producers were discouraged from requesting an individual examination. Secondly, the applicants have not referred to any specific evidence showing that interested parties would allegedly be incentivised to submit lengthy sets of observations in order to prevent the conduct of individual examinations of competing exporting producers.
- 71 For all of the reasons set out above, the first part must be rejected.

*Second part: error of law in rejecting the request for individual examination even though it was the only remaining request*

- 72 By the second part, the applicants allege an error of law based on the refusal of their request for an individual examination with no account taken of the fact that, four to five months before the end of the investigation, theirs was the only remaining request, as Unilever Indonesia had not maintained its request following the final disclosure. As of then, the Commission could no longer exercise its discretion under Article 17(3) of the basic regulation to determine whether individual examinations would be unduly burdensome and would prevent completion of the investigation in a timely manner and was under an obligation to grant that sole request. The use of the plural in that provision, to refer to the 'number of exporters or producers [being] so large' means that at least two requests are required for the exercise of that discretion.
- 73 The Commission disputes the applicants' arguments.
- 74 In that regard, it is apparent from the analysis of the first part, first, that the cause of the Commission's task becoming unduly burdensome or the impediment to completion of the investigation in a timely manner for the purposes of Article 17(3) of the basic regulation is not the large number of requests for individual examination per se, but rather the scope and complexity of the individual examinations that would have had to be conducted if those requests had been granted. Second, in that assessment, the Commission must take account of all relevant factors forming part of the investigation. Thus, in addition to the number of exporting producers making such a request and the complexity of their structure, the Commission must also take account of the scope and complexity of the investigation as a whole, including the number and complexity of the exporting producers included in the sample who are already concerned by the investigation.
- 75 It follows from the foregoing that the argument to the effect that upholding the sole request for individual examination would negate the Commission's discretion under Article 17(3) of the basic regulation and require it to grant the request is unfounded.
- 76 That conclusion cannot be called into question by the findings of the Appellate Body of the WTO in 'European Communities – Anti-dumping duties on imports of cotton-type bed linen from India' (WT/DS141/AB/R, report of 1 March 2001) relied on by the applicants.
- 77 The applicants submit that the passage from those findings interpreting Article 2.2.2(ii) of the Anti-Dumping Agreement provides guidance on the interpretation, referred to in paragraph 72 above, of the plural used in Article 17(3) of the basic regulation to refer to the number of exporting producers making a request for an individual examination.

- 78 In that regard, Article 2.2.2(ii) of the Anti-Dumping Agreement concerns a parameter for calculating the dumping margin and thus regulates a question unrelated to the conditions in which requests for an individual examination may be refused. The findings of the Appellate Body of the WTO referred to in paragraph 76 above are accordingly not relevant for interpreting those conditions.
- 79 The error of law alleged is therefore not established.
- 80 In any event, in order to demonstrate that Unilever Indonesia withdrew its request for an individual examination, first, the applicants rely on Unilever Indonesia's comments of 22 August 2022 on the final disclosure and the fact that, at the hearing on 12 September 2022, it did not withdraw its request for an individual examination, instead merely proffering comments on the imposition of anti-dumping duties. Secondly, the applicants state that, although they requested an individual examination for a third time, in their comments of 6 October 2022 on the additional final disclosure, Unilever Indonesia did not submit comments on that disclosure.
- 81 In that regard, the Court finds that, in its comments on the final disclosure, lodged on 22 August 2022, Unilever Indonesia confirmed that it had requested an individual examination and that that request had been refused. It also contested the 32.9% anti-dumping duty calculated for all exporting producers who had cooperated but were not included in the sample, which the Commission then intended to apply to it.
- 82 According to Unilever Indonesia, first of all, its exports of fatty acid to the European Union did not cause injury to the Union producers. Next, the imposition of that duty was detrimental to its European activities and its unrelated European clients and was potentially passed on in the form of price increases charged to clients and consumers in the EU. Lastly, there is no sufficiently short supply chain in the EU and in Malaysia, which forces Union producers to import substitutable products directly from suppliers in third countries, certain of whom produce short-chained fatty acids of lower quality. Unilever Indonesia also requested a hearing.
- 83 Secondly, in recital 48 of the contested regulation, the Commission observed that Unilever Indonesia had contested the rejection of its request for an individual examination, arguing that the timing of the investigation could not be a reason for rejecting it, given the detrimental effects that anti-dumping measures could have on the business of Unilever Europe BV ('Unilever') in Europe.
- 84 It is also apparent from the document prepared by Unilever Indonesia for its hearing, relied on by the applicants, that while it was true that it did not expressly contest the rejection of its request for an individual examination or reiterate such a request in that document, it did however once again contest the 32.9% duty that the Commission wanted to impose on it following the rejection of that request. Unilever Indonesia relied inter alia on the fact that its exports of fatty acid to the EU did not cause any injury to Union producers and that the imposition of that duty would affect Unilever's business in Europe and its unrelated European clients.
- 85 It follows from the foregoing that none of the documents relied on by the applicants, referred to in paragraphs 80 to 82 and 84 above, refer to a waiver by Unilever Indonesia of the benefit of an individually calculated anti-dumping duty. On the contrary, those documents show that Unilever Indonesia contested the imposition on it of the duty calculated for all exporting producers who had cooperated but were not included in the sample, which is consistent with the request to be granted an individual anti-dumping duty.
- 86 Thirdly, in the additional final disclosure, the Commission did not provide any reasons or additional facts about the individual treatment, and the cover note to that document gave the instruction that 'any comments should be limited exclusively to this disclosure'. It is accordingly plausible that, for that reason,

Unilever Indonesia did not raise the issue of individual examination in its comments on the additional final disclosure.

87 It is apparent from the foregoing that the applicants have not proven to the requisite legal standard that Unilever Indonesia had withdrawn its request for an individual examination and that, as from that procedural stage, there remained only one request – theirs. The factual premiss on which that part is based is thus not established.

88 The second part must accordingly be rejected.

*Third part: manifest error of assessment in the Commission's finding that the applicants' individual examination would be unduly burdensome*

89 By the third part, which is divided into three complaints, the applicants claim that the Commission committed a manifest error of assessment in finding that their individual examination and, as the case may be, that of Unilever Indonesia would have been unduly burdensome and would have prevented completion of the investigation in a timely manner.

90 That line of argument is disputed by the Commission.

– *The first complaint*

91 Starting with the premiss that, on 12 September 2022, the date of Unilever Indonesia's hearing, there remained only one request for an individual examination, being theirs, the applicants submit that that examination would not have been unduly burdensome. They submit in that regard that, on that date, the Commission still had four and a half months until the conclusion of the investigation to review and verify the information submitted by the applicants. Moreover, within that time, the Commission had managed to process the information provided by the eight companies in the two groups included in the sample.

92 That complaint is based on the unsubstantiated premiss that Unilever Indonesia had withdrawn its request for an individual examination during the administrative procedure (see paragraphs 81 to 87 above). It must accordingly be rejected.

– *The second complaint*

93 The applicants begin by stating that the number of sampled Indonesian exporting producers was not abnormally high, as there were only three of them belonging to only two groups, and that the structure of those exporting producers was not abnormally complex.

94 The applicants go on to submit that the Commission failed to establish that the investigation was particularly more complex than its previous investigations in the course of which it had granted requests for an individual examination whilst complying with its administrative procedures within much shorter time frames. Thus, eight verification visits were necessary to investigate the two sampled groups, plus three additional visits if the applicants' request for an individual examination had been granted, which is not an abnormally high number compared to the Commission's usual practice. In other cases, it has granted requests for an individual examination in investigations where the workload was considerably heavier and, conversely, investigations in which the Commission had found it unduly burdensome to calculate an individual margin, were investigations involving a large number of requests for an individual examination. Those cases are relevant because they show the scope of the Commission's investigative capacities.

- 95 In in that regard, it is settled case-law that the lawfulness of a regulation imposing anti-dumping duties must be assessed in the light of legal rules, in particular the provisions of the basic regulation, and not in the light of an alleged earlier decision-making practice (see, to that effect, judgment of 10 February 2021, *RFA International v Commission*, C-56/19 P, EU:C:2021:102, paragraph 79 and the case-law cited). Moreover, where the institutions enjoy, as they do in the area of anti-dumping measures and particularly in the application of Article 17(3) of the basic regulation, a margin of discretion in the choice of the means needed to achieve their policies, traders are unable to claim that they have a legitimate expectation that the means initially chosen will continue to be employed, since those means may be altered by the institutions in the exercise of their discretionary power (see, to that effect, judgments of 9 June 2021, *Puma and Others v Commission*, T-781/16, not published, EU:T:2021:328, paragraphs 105, 143 and 160 and the case-law cited, and of 9 June 2021, *Roland v Commission*, T-132/18, not published, EU:T:2021:329, paragraphs 110, 111 and 152 and the case-law cited).
- 96 Consequently, the earlier cases referred to by the applicants are irrelevant for the determination of whether, in the present case, the Commission's assessment of the conditions for refusing requests for an individual examination laid down in Article 17(3) of the basic regulation is vitiated by a manifest error of assessment.
- 97 In the second place, as regards the alleged absence of an abnormally high number of sampled exporting producers and abnormally complex structure of those traders, it is apparent from Article 17(1) and (2) of the basic regulation that the Commission is authorised in large-scale cases to limit the investigation to a reasonable number of parties by using a statistically representative sample (see, by analogy, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 156).
- 98 In the present case, the scope of the investigation was not limited to the sample consisting of three exporting producers, but rather also included a second sample comprising four Union producers judged to be representative of the Union industry, representing 61% of the estimated total volume of production and 63% of sales (see recital 36 of the contested regulation). It is apparent from that regulation that the information provided by those producers inter alia enabled the Commission to clarify the definition of the product and to determine that there was injury resulting from the dumping, the level of anti-dumping measures and the Union's interest in imposing those measures.
- 99 As regards the three sampled exporting producers, who belonged to two separate groups, namely the group made up of the exporting producer PT Musim Mas ('Musim Mas') and its related exporter PT Intibenua Perkasatama and the group that included the exporting producer PT Wilmar Nabati Indonesia ('Wilmar'), three traders and three importers were related to those groups and the Commission had to investigate all of those companies (see recitals 52 and 53 of the contested regulation). Thus, those nine companies responded to the questionnaire (see recital 52 of that regulation) and accordingly provided information that had to be analysed and verified by the Commission for the purpose of determining dumping, resulting injury and Union interest. In particular, the Commission had to conduct verifications at the premises of eight of them (see recital 53 of that regulation).
- 100 Moreover, the Commission received responses to the questionnaire from a total of 19 of those entities. Apart from the three exporting producers sampled and their six related entities, those responses came from the complainant, Indonesian public authorities, the four sampled Union producers and four users (see recital 52 of the contested regulation).
- 101 In addition to the verifications carried out at the premises of the three sampled exporting producers and five of their related entities, the Commission also conducted verification visits at the premises of five other companies or bodies, namely those of the complainant and of the four sampled Union producers (see recital 53 of the contested regulation).

- 102 Lastly, the Commission observes correctly, without being contradicted on the point by the applicants, that a number of substantive questions made the investigation complicated and required the dedication of significant resources, being, first, the question of the definition of the product concerned, which was the subject of numerous comments, which it had to address before proceeding with the sampling (see recitals 71 and 79 to 128 of the contested regulation); second, the need to conduct a relative analysis of the raw materials distortions under Article 7(2a) of the basic regulation, in order to determine the level of anti-dumping duties for one of the sampled groups (see recitals 401 to 417 of the contested regulation); and, thirdly, the question of the Union interest under Article 21 of the basic regulation, on which it also received a large number of comments (see recitals 418 to 485 of the contested regulation).
- 103 The applicants do not contest either the use of sampling and, consequently, the large scale of the investigation in question which justified the use of such a measure, or the composition or representative nature of the samples used, or the complexity of the investigation viewed as a whole, as is apparent from the points referred to in paragraph 102 above.
- 104 In that context, the applicants may not merely rely on the supposedly low number of exporting producers included in one of the samples of the investigation or the fact that the structure of those traders was not abnormally complex – a point, moreover, not proven – in order to call into question the plausibility of how the investigation would have become unduly burdensome had their request for an individual examination been granted.
- 105 The other arguments put forward by the applicants do not call that conclusion into question.
- 106 In the first place, the applicants submit that the suspension of the investigation for almost two months in order to clarify the definition of the product stated in the complaint and the notice of initiation was attributable to the complainant, that they did not take part in the discussions on the subject and that that suspension cannot deprive them of their procedural right to an individual examination. Moreover, they submit, rather than clarifying that definition in a note two months following the initiation of the investigation, the Commission could have published a new notice of initiation of the procedure in order to have more time to conduct verification visits and conclude the investigation.
- 107 In that regard, the notice of initiation defined the product under investigation as ‘... fatty acids saturated or unsaturated with a carbon chain length of C6, C8, C10, C12, C14, C16 or C18 with an iodine value below 105 g/100 g originating in Indonesia, including: ... single fatty acid (also referred to as “pure cut”); and ... blends containing a combination of two or more carbon chain lengths’.
- 108 It is apparent from the contested regulation that, following the notice of initiation and throughout the investigation, the Commission received comments about the definition of the product from 11 interested parties (see recitals 71 and 79 to 128 of that regulation). Those comments led it first to clarify that definition in a note of 21 January 2022, in which it stated that only fatty acids with a degree of split of at least 97% were covered by the investigation (see recitals 71 and 91 of that regulation), then to exclude a number of products from that definition (see recitals 20, 91, 102 and 103 of that regulation).
- 109 The contested regulation also shows that the exact definition of the product was a fundamental question in the investigation, which gave rise to verifications carried out during the visits conducted by the Commission (see recitals 99, 100 and 120 of that regulation), and influenced the analysis of dumping, resulting injury (see recitals 106, 113, 195, 196 and 274 of that regulation) and Union interest (see recitals 410 and 411 of that regulation) and, therefore, necessarily the level of definitive anti-dumping duties.

- 110 Thus, irrespective of the fact that the applicants did not take part in the discussions on the definition of the product, that question was part of the 'task' incumbent on the Commission for the purposes of Article 17(3) of the basic regulation and which had to be discharged before requests for individual examinations could be analysed.
- 111 As to the argument that, once the definition of the product had been clarified in the note of 21 January 2022, the Commission ought to have opened a new investigation, thereby triggering a new time limit, it is apparent from recitals 71 and 93 of the contested regulation that that clarification did not alter the definition of the product as stated in the notice of initiation, which was based on that in the complaint, and merely served to describe the product better. The comments of the interested parties thus enabled the Commission, first, to clarify that certain types of fatty acids were not included in the definition adopted and therefore had to be excluded and, second, to confirm that others were actually included in that definition and, as a result, were covered by it.
- 112 The applicants have emphasised that they do not challenge the definition of the product. Nor have they adduced any evidence liable to call into question the conclusion that the clarification provided did not affect that definition and that it accordingly did not justify the initiation of a new investigation.
- 113 The first argument must therefore be rejected.
- 114 In the second place, the applicants submit that the question concerning the need in the present case to conduct an analysis under Article 7(2a) of the basic regulation of potential raw materials distortions did not concern them. In their view, the need to conduct such an analysis pursuant thereto is relevant only for the purpose of determining whether or not the so-called 'lesser duty' rule ('the lesser duty rule') should be applied, and is not relevant for the calculation of an individual dumping margin.
- 115 In that regard, it should be borne in mind that the second subparagraph of Article 9(4) of the basic regulation lays down the lesser duty rule, under which the amount of the anti-dumping duty is not to exceed the margin of dumping established if such lesser duty would be adequate to remove the injury to the Union industry. It adds that, as a result, Article 7(2a) and (2b) applies.
- 116 The lesser duty rule is therefore liable to apply where the dumping margin exceeds the injury margin. However, under Article 7(2a) and (2b) of the basic regulation, that rule does not apply where the investigation reveals that there are distortions on raw materials with regard to the product concerned.
- 117 In the present case, it is apparent from the contested regulation that the investigation required an analysis to be carried out to determine whether there were distortions on raw materials under Article 7(2a) of the basic regulation, as alleged in the complaint. That analysis enabled the Commission to find that there were such distortions on two raw materials, crude palm oil and crude palm kernel oil, which accounted for over 30% and over 40% respectively of the total cost of manufacturing of the product concerned for Musim Mas, one of the sampled exporting producers. That finding led the Commission to refrain from applying the lesser duty rule to that exporting producer and to fix its anti-dumping duty at the level of its dumping margin (see recitals 388 to 415 of the contested regulation).
- 118 The applicants do not dispute that the analysis carried out in the present case under Article 7(2a) of the basic regulation complicated the study. They merely allege that the calculation of an individual dumping margin did not require such an analysis to be carried out.
- 119 In that regard, it should be remembered that, under the last subparagraph of Article 9(6) of the basic regulation, individual rights are to be applied to exporting producers who are granted individual treatment pursuant to Article 17 of that regulation.

- 120 The applicants have not adduced any evidence establishing that, if the Commission had granted such individual treatment, the question of applying the lesser duty rule to them and, consequently, the question of there being distortions on raw materials preventing the application of that rule would not have arisen.
- 121 The second argument must therefore be rejected.
- 122 In the third place, the applicants submit that the large number of comments on the Union interest received by the Commission is generally dealt with by the Commission's team responsible for injury. Consequently, those comments do not affect the workload of the team responsible for calculating the individual dumping margin under Article 17(3) of the basic regulation.
- 123 In that regard, it should be borne in mind that the Union interest is taken into account at two stages of the investigation. First of all, under Article 7(2b) of the basic regulation, the Commission examined whether it could clearly conclude that it was in the Union interest to determine the amount of definitive duties for Musim Mas in accordance with Article 7(2a) of that regulation, that is to say, at the level of its dumping margin and without applying the lesser duty rule (see recitals 401 to 415 of the contested regulation). The determination of the Union interest was based on an appreciation of all information pertinent to the investigation, including the spare capacities in the exporting country, competition for raw materials and the effect on supply chains for Union companies (see recitals 401 to 413 of that regulation).
- 124 Secondly, the Union interest was taken into account under Article 21 of the basic regulation for determining whether the Commission could clearly find that it was not in the Union interest to adopt anti-dumping measures in the present case, despite proof being made out of injurious dumping. That determination was based on the assessment of the different interests at stake, namely those of the Union industry, unrelated importers and traders, and users and suppliers (see recitals 418 to 485 of the contested regulation).
- 125 It is apparent from recitals 413 and 460 of the contested regulation that the Commission received comments from 13 interested parties on the Union interest, coming within the scope of Article 7(2b) and Article 21 of the basic regulation, relating to inter alia disruption of the Union market and supply issues resulting from the imposition of measures. It also received comments from 15 interested parties on the interest of users under Article 21 of that regulation (see recital 443 of the contested regulation).
- 126 The Commission considers that the applicants incorrectly categorise the close relationship between the investigative teams responsible for dumping and injury. It explains in that regard that it is the same team which investigates dumping and individual examinations and which is responsible, for the most part, for analysing distortions on raw materials under Article 7(2a) of the basic regulation.
- 127 The Commission adds that the individual examinations also affect the workload of the injury team, whose mission it is to examine the numerous comments relating to the Union interest, as it is responsible for calculating undercutting margins. That calculation involves a comparison between the exporting producers' EU landed sales price and the Union industry target price. According to the Commission, since, under the lesser duty rule, the undercutting margin may become the definitive anti-dumping duty imposed on individual producers, the calculation of undercutting margins may not be done – and the definitive duty may not be determined – as long as the individual examination has not been completed.
- 128 The Commission infers therefrom that the decision to carry out an individual examination affects the completion of the investigation as a whole.

- 129 The foregoing shows that the examination of the Union interest constituted a complex stage of the investigation and that individual examinations under Article 17(3) of the basic regulation heightened that complexity and potentially extended the length of the investigation.
- 130 Moreover, the review by the General Court, limited in this case to the manifest error of assessment, does not extend to the manner in which the Commission uses its available resources to carry out all of the administrative tasks relating to the investigation.
- 131 It follows from the foregoing that the third argument must be rejected, as must also the second complaint.
- *The third complaint*
- 132 The applicants submit that the Commission had sufficient time to conduct the individual examination and complete the investigation in good time, for the reasons set out below:
- the Commission published the contested regulation 10 days before the end of the maximum investigation period;
  - when the applicants reiterated their request for an individual examination in their comments on the final disclosure, the Commission still had more than five months to complete the investigation; calculating an individual dumping margin for them involved a limited workload, in particular since, at that time, the Commission had already disclosed its findings regarding the definition of the product, material injury, causation and the Union interest;
  - the Commission verified the two sampled groups in seven days and needed only four and a half months to investigate them, that is to say, to verify and process the information provided by the eight companies in those groups and to disclose the dumping margin; consequently, verifying and processing the information provided by three companies in the Permata group in the same period of time would not have been unduly burdensome; the same would have been true if the Commission had needed two to three months to comply with the administrative proceedings and if it had had between two and a half and three and a half months left to examine their request for an individual examination;
  - when they reiterated their request for an individual examination for the second time in their comments on the additional final disclosure and emphasised that the only other company which had made such a request appeared to have withdrawn it, the Commission's workload was even more limited and it still had almost four months before the end of the investigation;
  - the Commission had almost six months between the final disclosure and the imposition of definitive measures, whereas its decision-making practice shows that the average period between those two procedural stages is two to three months, even when the number of exporting producers is much higher.
- 133 In that regard, the argument alleging a lighter workload for the Commission almost four months before the end of the investigation following the supposed withdrawal by Unilever Indonesia of its request for an individual examination is based on an unsubstantiated premiss (see recitals 47 and 48 of the contested regulation and paragraphs 81 to 87 above) and, for that reason, must be rejected.
- 134 Moreover, the argument to the effect that the Commission had almost six months between the final disclosure and the imposition of definitive measures is based on a comparison with earlier decision-

making practice which is irrelevant for the reasons referred to in paragraphs 95 and 96 above. That argument must also be rejected.

135 Moreover, the different conclusions drawn in a definitive regulation cannot be interpreted alone, but in the light of all the reasoning developed therein (see judgment of 28 February 2017, *Canadian Solar Emea and Others v Council*, T-162/14, not published, EU:T:2017:124, paragraph 210 and the case-law cited).

136 In the present case, the Commission found that, due to the complexity of the investigation and the complex structure of the exporting producers not included in the sample, it was not possible to grant individual examination and finalise the investigation within the statutory deadline (see recitals 42, 44 and 45 in fine of the contested regulation). It was thus because individual examination requests would have been unduly burdensome that completion of the investigation in good time could have been prevented (see recital 49 in fine of that regulation).

137 That conclusion is supported by the following considerations which emerge from recital 45 of the contested regulation, which have not been validly disputed by the applicants:

- due to the complex structure of the two exporting producers not included in the sample, an individual examination would have required verification of a number of entities, namely all producers, related traders and importers involved in the sale of the product concerned to the European Union, and an analysis of all distribution channels, as done for the sampled exporting producers;
- the five-month period the Commission still had in which to take anti-dumping measures when the applicants submitted their comments on the final disclosure, in which they contested the rejection of their request for an individual examination, was not dedicated solely to the investigation; in fact several months had to be devoted to administrative tasks such as processing comments, holding hearings, internal approvals, consultations with other Commission services and translation;
- the two sampled groups of exporting producers also had highly complex structures that required the dedication of significant investigative and administrative resources in order to sample them and obtain accurate results.

138 The Commission also took the view, correctly, that all those factors as well as the complexity of the companies involved dictated the time necessary to conduct a proper analysis of each exporting producer and needed to be taken into account together (see recital 45 of the contested regulation).

139 Thus, the fact that the contested regulation was published 10 days before the end of the maximum procedural deadline does not establish that a manifest error of assessment was made as to the risk of not being able to complete the investigation within the required time limits if the individual examinations had been granted.

140 Lastly, the allegation that a limited workload would have been sufficient to calculate an individual dumping margin for the Permata group has not been substantiated. In particular, none of the four responses to the questionnaire submitted by that group was produced.

141 It follows from all the foregoing that the third complaint must be rejected.

142 Consequently, the third part must be rejected, as must the first plea in law.

***The second plea in law: the investigation was wrongly continued and anti-dumping duties were imposed despite withdrawal of the complaint***

143 By the second plea in law, which is divided into three parts, the applicants contest the fact that the investigation was continued to completion and gave rise to the imposition of anti-dumping duties, whereas the complaint was withdrawn in the course of the procedure. They allege:

- misinterpretation of Article 9(1) of the basic regulation;
- combined infringement of Articles 9(2) and (4), and of Article 3(2) of that regulation, and also of Articles 5.7 and 5.8 of the Anti-Dumping Agreement;
- combined infringement of Articles 9(2) and (4), and Article 21(1) of that regulation, and a manifest error of assessment.

*The first part: error of law in that the Commission interpreted Article 9(1) of the basic regulation as allowing it not to take into consideration the withdrawal of the complaint*

144 By the first part, the applicants argue that the Commission made an error of law in interpreting Article 9(1) of the basic regulation as allowing it to continue the procedure without taking into account the withdrawal of the complaint or the Union interest.

145 The Commission argues that the applicants' line of argument is unfounded.

146 In that regard, Article 9(1) of the basic regulation provides that 'where the complaint is withdrawn, proceedings may be terminated unless such termination would not be in the Union's interest'.

147 In the present case, on 24 August 2022, the complainant informed the Commission that it was withdrawing the complaint 'due to the influence from stakeholders'.

148 It is apparent from recitals 64, 68 and 69 of the contested regulation that, following that withdrawal, the Commission decided to continue the investigation on the basis of Article 9(1) of the basic regulation and of the interpretation of that text resulting from the judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council* (T-469/07, EU:T:2013:370).

149 In particular, in recital 68 of the contested regulation, the Commission considered, first, that it was apparent from the judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council* (T-469/07, EU:T:2013:370), that the EU institutions enjoyed wide discretion to continue or terminate an investigation following a withdrawal, that the Union interest needed to be taken into account only if the Commission was considering termination and that, in that case, it had to check that termination was not against the Union interest; second, that, in that context, the recent investigations that the Commission had decided to terminate after the withdrawal of the complaint had no general value of binding precedent and that the decisions had instead been made on a case-by-case analysis; third, that investigation had shown that the Union industry had suffered material injury caused by the imports from Indonesia at dumped prices; and, fourth, that a simple statement in a letter from one Union producer, without any supporting evidence, did not contradict the Commission's findings of the investigation.

150 The applicants dispute the Commission's position, putting forward, in essence, three complaints.

- *The first complaint*

- 151 The applicants contest the application in the present case of the judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council* (T-469/07, EU:T:2013:370), since, in the case which gave rise to that judgment, relating to a review of expired anti-dumping measures, the anti-dumping complaint had not been withdrawn. Article 9(1) of the basic regulation was therefore not directly applicable and the question whether the Commission had to carry out a Union interest analysis in order to continue the investigation was therefore not raised. Consequently, the interpretation of that provision given in that judgment was merely *obiter dictum* and not a binding legal precedent having the force of *res judicata*.
- 152 In that regard, the Commission observed, correctly, in recital 64 of the contested regulation, that the wording of Article 9(1) of the basic regulation, which employs the verb ‘may’, meant that the termination of the procedure following withdrawal of the complaint was not an obligation, but merely an option available to it (see, to that effect and by analogy, judgment of 10 March 2009, *Interpipe Niko Tube et Interpipe NTRP v Council*, T-249/06, EU:T:2009:62, paragraph 139).
- 153 It is thus apparent from the wording of Article 9(1) of the basic regulation, first, that, in the event of withdrawal of a complaint once the investigation has been initiated, that provision provides implicitly, but not necessarily, for the possibility for the Commission to continue it (see, to that effect and by analogy, judgment of 8 September 2015, *Philips Lighting Poland and Philips Lighting v Council*, C-511/13 P, EU:C:2015:553, paragraph 52).
- 154 Second, only the option of terminating the procedure following withdrawal of the complaint is provided for, in the sense that termination is not an option if it is not in the interest of the Union, in which case the Commission is under an obligation to continue the procedure. The option of continuing the procedure following withdrawal of the complaint is, on the other hand, not subject to any condition (see, to that effect and by analogy, judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, paragraph 87).
- 155 In particular, according to the case-law, the Commission is not required to rely on the fact that the continuation of the review procedure following withdrawal of the complaint is in the interest of the Union, since Article 9(1) of the basic regulation obliges it to take account of that interest only if it envisages terminating the procedure further to the withdrawal of the complaint. It is thus apparent from that provision that, where a complaint is withdrawn, the Commission has the option – but not the obligation – to terminate the procedure, although it may not do so if it would be contrary to the Union interest (see, to that effect and by analogy, judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, paragraph 87).
- 156 Contrary to the applicants’ assertions, the relevance of the interpretation of Article 9(1) of the basic regulation resulting from paragraph 87 of the judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council* (T-469/07, EU:T:2013:370), referred to in paragraphs 154 and 155 above, cannot be disregarded on the ground that that passage of that judgment allegedly is *obiter dictum*, since such an interpretation, upheld in essence by the Court of Justice, is not vitiated by any error of law (see, to that effect, judgment of 8 September 2015, *Philips Lighting Poland and Philips Lighting v Council*, C-511/13 P, EU:C:2015:553, paragraphs 50 and 52).
- 157 For the abovementioned reasons, the first complaint must be rejected.
- *The second complaint*
- 158 The applicants submit that the possibility of continuing the procedure after the complaint has been withdrawn is subject to compliance with the Union interest test. They argue in that regard that the basic regulation attaches particular importance to the complaint and its withdrawal. They rely in that respect,

first, on Article 5(1) and (4) of the basic regulation and, secondly, on the context and overall structure of that regulation, from which it follows that such a withdrawal must be taken into account as a relevant factor within the meaning of Article 9(1) and (2), Article 3(2) and Article 21(1) of that regulation.

- 159 In the first place, the applicants argue that Article 5(1) and (4) of the basic regulation provides, as a general rule, that an anti-dumping investigation may be initiated only upon a written complaint made on behalf of the Union industry and expressly supported by Union producers. Withdrawal of the complaint is tantamount to withdrawal of the complainant's support for the measures and its request for protection of the Union industry against injurious dumping.
- 160 In that regard, it is apparent from the first subparagraph of Article 5(1) of the basic regulation that the principle that the initiation of an anti-dumping investigation is triggered by the submission of a complaint subject to the power of the Commission, conferred on it by Article 5(6) of that regulation, to initiate an investigation of its own motion where it has sufficient evidence of dumping, injury and a causal link to justify the initiation of such an investigation. Moreover, the last subparagraph of Article 5(1) of that regulation provides that where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to the Union industry, it must immediately communicate such evidence to the Commission.
- 161 Furthermore, although Article 5(4) of the basic regulation makes the initiation of an anti-dumping investigation, in the event of a complaint, subject to the condition that that complaint must be supported by a sufficient proportion of the Union industry, those provisions do not concern the phase subsequent to the initiation of the procedure.
- 162 It is apparent in particular from the case-law that there is no provision in the basic regulation as regards the measures to be taken, during the course of the investigation, if the support of the producers for the complaint falls. It follows that the Commission must be able to continue that investigation, including in cases where the level of support for it falls and even where that drop leads that support to fall below one of the two minimum thresholds of production provided for in Article 5(4) of that regulation (see, by analogy, judgments of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 153, and of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, paragraph 84 and the case-law cited). Such an interpretation is all the more appropriate since, during the investigation, the positions of the representatives of the Union industry may change in opposite directions and such variations cannot impede the proper conduct of the investigation at issue (see, by analogy, judgment of 8 September 2015, *Philips Lighting Poland and Philips Lighting v Council*, C-511/13 P, EU:C:2015:553, paragraphs 51 to 54).
- 163 Lastly, it is apparent from Article 5(3) and (9) of the basic regulation that, where the Commission has received a complaint, first, it must, in so far as possible, examine the accuracy and adequacy of the evidence provided in the complaint, to determine whether there is sufficient evidence to justify the initiation of an investigation (Article 5(3)) and, second, where there is sufficient evidence to justify initiating proceedings, it is under an obligation to initiate the procedure within 45 days of the date on which the complaint was lodged (Article 5(9)) (see, to that effect and by analogy, judgment of 18 September 2012, *Since Hardware (Guangzhou) v Council*, T-156/11, EU:T:2012:431, paragraph 76).
- 164 Thus, first, although the complaint plays a central role in the initiation of the investigation, it is not the only triggering factor. The basic regulation confers on the Commission a specific power to initiate an investigation when no complaint has been lodged where it has sufficient evidence to conduct it.
- 165 Second, where it has received a complaint, the Commission has, in principle, the obligation to initiate the investigation if the complaint is sufficiently representative of the Union industry and is accompanied by

sufficient evidence. However, any reduction in Union industry support for the complaint while the investigation is under way does not affect its power to continue it and to impose anti-dumping duties. Nor is the continuation of the investigation contingent on the complaint's being upheld. The continuation of the investigation after the complaint has been withdrawn is justified, unless it is proven that there is no dumping or resulting injury or Union interest in imposing measures.

166 For the reasons set out above, the first argument must be rejected.

167 In the second place, the applicants argue that the significance of the withdrawal of the complaint is apparent from the following factors:

- a combined reading of Article 9(1) and (4) of the basic regulation allows the Commission to terminate the proceedings without imposing measures when a complaint is withdrawn, irrespective of the stage of the proceedings and whether the facts as finally established show that there is dumping and injury caused thereby;
- under Article 9(2) of that regulation, which transposes Articles 5.7 and 5.8 of the Anti-Dumping Agreement into EU law, if one of the four conditions laid down in Article 9(4) of that regulation is not met, the investigation must be terminated without measures; accordingly, if the Commission does not have sufficient evidence of injury or if there is evidence showing that the imposition of measures is not in the Union interest, it must promptly terminate the investigation;
- the withdrawal of the complaint was a relevant factor in determining whether there was sufficient evidence of injury for the purposes of Article 3(2) of the basic regulation and whether the measures were necessary for the purposes of Article 9(2) of that regulation;
- Article 21(1) of that regulation requires the Commission to take into account the withdrawal of the complaint when considering whether the Union's interest calls for measures to be taken, which it failed to do.

168 In that regard, first, the limit placed on the Commission's power under Article 9(1) of the basic regulation applies only when it is considering terminating the procedure following the withdrawal of the complaint. In that case, it must verify whether the Union interest precludes that termination.

169 Such diligence is justified in the light of Article 21(1) of that regulation, which requires, in the Union interest assessment, 'special consideration' to be given to 'the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition'. It is also justified in the light of the first subparagraph of Article 9(4) of that regulation, which provides that 'where the facts as finally established show that there is dumping, and injury caused thereby, and the Union interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Commission'.

170 However, under Article 9(2) of the basic regulation, 'where protective measures are unnecessary, the investigation or proceedings shall be terminated'.

171 The parties agree that Article 9(2) of the basic regulation must be interpreted in the light of Article 9(4) thereof. As a result, 'protective measures are unnecessary' within the meaning of Article 9(2) and the investigation must be terminated only when dumping (Article 2 of that regulation), injury (Article 3 of that regulation) or the Union interest in the imposition of measures (Article 21 of that regulation) have not been established.

- 172 Secondly, as regards the argument that Article 9(2) of the basic regulation transposes Articles 5.7 and 5.8 of the Anti-Dumping Agreement into EU law, the Court notes that the two latter provisions provide that the obligation to terminate the investigation applies not when the complaint is withdrawn, but when there is insufficient evidence of dumping and resulting injury.
- 173 In the present case, the sole, laconic ground for withdrawal of the complaint, namely ‘the influence from stakeholders’, put forward without further clarification, does not establish the link to the evidence of the presence or absence of dumping or resulting injury. This is a fortiori so since, two days before that withdrawal, namely on 22 August 2022, the complainant lodged six pages of comments on the final disclosure, in which it reiterated the need to impose anti-dumping duties and emphasised the presence and magnitude of injurious consequences of the established dumping in the final disclosure.
- 174 It follows from the foregoing that, contrary to the applicants’ assertions, Article 9(1) of the basic regulation, read in conjunction with Article 9(4) of that regulation, does not allow the Commission to terminate the procedure without imposing measures when a complaint is withdrawn without examining beforehand whether the established facts demonstrate injurious dumping.
- 175 Thirdly, the argument that the Commission ought to have taken the withdrawal of the complaint into account as a relevant factor in determining whether there was sufficient evidence of injury for the purposes of Article 3(2) of the basic regulation and whether the measures were necessary for the purposes of Article 9(2) of that regulation must be rejected, for the reasons set out in paragraph 173 above. The ground put forward by the complainant does not establish a link between that withdrawal and any elimination of dumping or injury caused thereby, a fortiori in view of the arguments put forward by it two days before that withdrawal, in its comments on the final disclosure.
- 176 Fourthly, as regards the alleged obligation to take account of the withdrawal of the complaint to examine whether it is in the Union interest, for the purposes of Article 21(1) of the basic regulation, that measures be taken, the Court notes that that provision makes no reference to such withdrawal.
- 177 Article 21(1) of the basic regulation requires the Commission to verify whether it is in the Union interest that measures be taken, even when dumping and resulting injury have been established. In that examination, the Commission must assess all the various interests taken as a whole, including those of the Union industry, users and consumers (see, to that effect, judgments of 5 April 2017, *CPME and Others v Council*, T-422/13, EU:T:2017:251, paragraph 144, and of 21 December 2022, *Grünig v Commission*, T-746/20, EU:T:2022:836, paragraphs 86 and 87), and give special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition. The Commission may not apply measures determined on the basis of the established dumping and injury where, on the basis of all the information provided, it can ‘clearly’ conclude that it is not in the Union’s interest to apply such measures.
- 178 Thus, the examination of the Union’s interest in accordance with Article 21(1) of the basic regulation requires an assessment of the likely consequences both of applying and of not applying the measures proposed for the interest of the Union industry and for the other interests at stake, in particular those of the various parties referred to in that provision. That evaluation involves a forecast based on hypotheses regarding future developments, which includes an appraisal of complex economic situations (see judgment of 5 April 2017, *CPME and Others v Council*, T-422/13, EU:T:2017:251, paragraph 144 and the case-law cited; see also, to that effect and by analogy, judgment of 25 October 2011, *Transnational Company ‘Kazchrome’ and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 224).
- 179 The determination of the Union interest in taking measures is not, therefore, limited to taking into account the interest of the Union industry as set out in the complaint.

- 180 In that context, the withdrawal of the complaint can be taken into consideration in the examination of the Union's interest for the purposes of Article 21(1) of the basic regulation only if the grounds for that withdrawal enable an assessment to be made of the likely consequences both of applying and of not applying the measures proposed for the interest of the Union industry and for the other interests at stake.
- 181 Moreover, according to the case-law, where assessment of a complex economic situation is involved, the Commission has a broad measure of discretion when evaluating the Union interest for the purposes of Article 21(1) of the basic regulation. The judicature of the European Union must therefore restrict its review to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based are accurate or whether there has been a manifest error of appraisal or a misuse of powers (see, by analogy, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 227 and the case-law cited).
- 182 Moreover, under Article 21(7) of the basic regulation, information submitted to the Commission is to be taken into account only where it is supported by actual evidence which substantiates its validity. Where such evidence is not available, the Commission cannot be found to have made a manifest error of assessment (see, to that effect and by analogy, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 231).
- 183 In the present case, the laconic, unsubstantiated ground given for withdrawing the complaint does not establish how the Union interest called for the non-imposition of anti-dumping duties. This holds all the more true given that, in its comments on the final disclosure lodged two days before that withdrawal, the complainant reiterated the need to impose anti-dumping duties, stating in particular that the Union interest required it.
- 184 In view of the foregoing, the applicant's second argument must be rejected, as must therefore the second complaint.
- *The third complaint*
- 185 The applicants submit that there was no reasonable basis for continuing the investigation after the complaint had been withdrawn. First, that approach is at odds with the decision to terminate the anti-subsidy investigation, when both investigations were being carried out in parallel, were based on the same facts and the injury assessment carried out in the context of the anti-dumping proceeding was being used in the anti-subsidy proceeding. Thus, according to the applicants, the Commission could not distinguish the two investigations by relying, on the one hand, on the fact that, in the anti-dumping investigation, the withdrawal of the complaint had occurred after a preliminary finding of injury and, on the other hand, on the fact that, in both sets of proceedings, no interested party had called for the imposition of measures following the withdrawal of the complaints.
- 186 Secondly, the continuation of the anti-dumping investigation following the withdrawal of the complaint is at odds with the Commission's previous decision-making practice. This is the first case in which the Commission has decided to continue an anti-dumping investigation despite the withdrawal of the complaint, even though the continuation of the investigation had met with significant opposition from interested parties.
- 187 In that regard, in the first place, the decision to terminate the anti-subsidy investigation was taken on 17 March 2023, two months after the adoption of the contested regulation. Consequently, the Commission cannot be found to have contradicted itself in deciding to continue the anti-dumping investigation through to the end in view of the decision to terminate a separate investigation which did not yet exist when the contested regulation was adopted.

188 In the second place, the alleged previous decision-making practice is irrelevant for examining the lawfulness of the contested regulation and interpreting a provision of the basic regulation (see, to that effect, judgment of 24 February 2022, *Eurofer v Commission*, C-226/20 P, EU:C:2022:122, paragraph 60 and the case-law cited; see also paragraphs 95 and 96 above). Consequently, the argument based on the Commission's previous decision-making practice in the area of termination of an anti-dumping investigation following withdrawal of the complaint must be rejected.

189 In view of the foregoing, the third complaint must be rejected, as must therefore the first part.

*The second part: unlawful continuation of the investigation in that the withdrawal of the complaint was not taken into account in the injury analysis*

190 By the second part, which is divided into two complaints, the applicants complain that the Commission continued the investigation without taking the withdrawal of the complaint into account in the injury analysis, contrary to Article 3(2) of the basic regulation and Article 9(2) of that regulation, interpreted in the light of Articles 5.7 and 5.8 of the Anti-Dumping Agreement.

191 The applicants further submit that the continuation of the investigation and the imposition of anti-dumping measures resulted in an infringement of Article 9(4) of that regulation, since one of the conditions laid down in that provision, namely the existence of material injury, was not established.

192 The Commission contends that the applicants' arguments are unfounded.

– *The first complaint*

193 According to the applicants, the withdrawal of the complaint in itself showed that the Union industry was no longer suffering injury and that anti-dumping measures were therefore unnecessary. They argue in that regard that:

- it is the first case which was not closed following the withdrawal of a complaint; thus, in view of the Commission's previous practice, the complainant was aware that, in withdrawing the complaint, the proceeding would probably be terminated without the imposition of measures and, if it had regarded the measures as necessary, it would not have withdrawn the complaint;
- in withdrawing the complaint, the complainant acknowledged that the Union industry was not, or was no longer, suffering injury;
- if there had been injury to the industry, the Commission would not have terminated the anti-subsidy investigation.

194 In that regard, for the purpose of determining that injury, Article 3(2) of the basic regulation provides that it is necessary, on the basis of positive evidence, to carry out an objective examination of the volume of the dumped imports and their effect on prices for like products on the Union market, as well as their impact on the Union industry.

195 Article 3(3) of the basic regulation specifies the factors to be taken into account for determining that volume and those prices. Under that provision, first, with regard to the volume of the dumped imports, consideration must be given to whether there has been a significant increase in those imports, either in absolute terms or relative to production or consumption in the Union. Second, as regards the effect of the imports on prices, consideration must 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.

- 196 Article 3(5) of the basic regulation provides that the examination of the impact of the dumped imports on the Union industry concerned must include an evaluation of all economic factors and indices having a bearing on the state of that industry, including:
- the magnitude of the actual margin of dumping;
  - actual and potential decline in sales, profits, output, market share, productivity, return on investments and utilisation of capacity;
  - factors affecting Union prices;
  - actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.
- 197 Article 3(6) of the basic regulation provides that the demonstration that the dumped imports are causing injury must be made based on evidence put forward in relation to Article 3(2), which involves demonstrating that the volume and/or price levels identified pursuant to Article 3(3) are responsible for an impact on the EU industry as provided for in Article 3(5) thereof and that that impact can be regarded as material.
- 198 Moreover, under Article 9(2) of the basic regulation, where protective measures are unnecessary, the investigation or proceedings are to be terminated. By contrast, under Article 9(4) of that same regulation, where the facts as finally established show that there is dumping, and injury caused thereby, and the Union interest calls for intervention in accordance with Article 21 thereof, a definitive anti-dumping duty is to be imposed by the Commission.
- 199 Article 9(2) and (4) of the basic regulation reflects, in essence, the requirements of Article 5.7 and 5.8 of the Anti-Dumping Agreement, also relied on by the applicants, which provide as follows:
- ‘5.7 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.
- 5.8 [A]n investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. ...’
- 200 In the first place, it is apparent from Article 3(2), (3), (5) and (6) of the basic regulation that the Commission must base its injury analysis on positive and sufficiently probative economic evidence. That analysis is therefore necessarily done on a case-by-case basis. Thus, the Commission cannot be bound by its previous, irrelevant decision-making practice relating to cases the facts of which were necessarily different (see paragraphs 95 and 96 above).
- 201 It is, moreover, apparent from those provisions that the factors the Commission must take into account in order to determine whether there is injury are solely of an economic nature. No factor of a procedural nature, such as the withdrawal of a complaint, is relied on in those provisions on the categorisation of the injury.
- 202 Furthermore, the justification for the withdrawal of the complaint does not make any reference to specific, relevant economic factors capable of demonstrating the lack or elimination of injury resulting from

dumping suffered by the Union industry, or even a request to terminate the procedure or not impose anti-dumping measures.

203 Nor has the complainant relied on the Commission's previous decision-making practice on withdrawal of complaints – which is, moreover, not probative – or any consequences to be drawn therefrom concerning the termination or continuation of the investigation. On the contrary, only two days before withdrawing its complaint, the complainant lodged six pages of comments on the final disclosure, in which it reiterated the need to impose anti-dumping duties and emphasised the presence and magnitude of injurious consequences of the established dumping in the final disclosure (see paragraph 173 above).

204 Consequently, the withdrawal of the complaint and the previous decision-making practice have no probative value whatsoever in the examination of whether there is injury.

205 In the second place, for the reasons set out in paragraph 187 above, the argument relating to the termination of the anti-subsidy investigation must be rejected.

206 The first complaint must therefore be rejected.

– *The second complaint*

207 According to the applicants, the injury analysis prior to the withdrawal of the complaint showed positive trends towards the end of the investigation period, in relation to the profitability of the Union industry, its return on investments and its sales prices. Relying on recitals 236, 244 and 256 of the contested regulation, they argue that:

- the profitability of the Union industry increased by 28% during the period considered, by 155% between 2019 and the end of that period and by 236% between 2020 and the end of that period;
- the return on investments of the Union industry increased by 34% during the period considered, by 127% between 2019 and the end of that period and by 182% between 2020 and the end of that period;
- the sale price of that industry increased by 25% during the period considered, whilst production costs had increased by only 23% during that period; that increase reached 37% between 2019 and the end of that period, whilst production costs had increased by only 35%.

208 The applicants further submit:

- the most recent data from the period considered provided the most reliable basis for determining the situation of the Union industry;
- the positive trends in the injury factors required the Commission to provide a compelling explanation of why, despite those positive trends, it had concluded that the Union industry was still suffering injury;
- the withdrawal of the complaint indicates that the positive trends thus observed at the end of the period considered resulted in the complainant no longer considering that measures were necessary;

- two Union producers, KLK Emmerich GmbH ("KLK") and AAK AB, confirmed that the Union industry was not, or was no longer, suffering any injury during or at the end of the investigation period; however, in the contested regulation, the Commission acknowledged KLK's comments but did not take account of AAK's comments; moreover, it is contradictory to dismiss the relevance of KLK's comments because they were not supported by evidence and not to have done so with respect to the reason for withdrawal of the complaint.

209 In that regard, according to well-established case-law, the determination of injury caused to the Union industry involves the assessment of complex economic matters. Consequently, in an anti-dumping procedure, the EU institutions enjoy a broad discretion in the determination of whether there is such injury and the causal factors thereof. The judicial review of such an appraisal must therefore be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see, to that effect, judgments of 10 July 2019, *Caviro Distillerie and Others v Commission*, C-345/18 P, not published, EU:C:2019:589, paragraph 15 and the case-law cited, and of 28 September 2023, *Changmao Biochemical Engineering v Commission*, C-123/21 P, EU:C:2023:708, paragraph 137 and the case-law cited).

210 Also, it is for the applicant to adduce evidence enabling the Court to find that the Commission made a manifest error of assessment in the determination of injury (see judgment of 22 September 2021, *Severstal v Commission*, T-753/16, not published, EU:T:2021:612, paragraph 173 and the case-law cited).

211 In the first place, as regards the economic indicators relied on (see paragraph 207 above), it should first be borne in mind that, according to the case-law, the injury analysis must take account of the entire period considered, not just the investigation period (see, to that effect, 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 93).

212 In the present case, the applicants do not dispute that injury was caused to the Union industry at the beginning of the period considered, during the first year thereof, that is to say, in 2018. In their view, the positive trends alleged concerned only the end of that period.

213 The letter of withdrawal of the complaint makes no reference to those alleged positive trends, however.

214 In addition, first, it should be noted that, according to the case-law, although the examination by the institutions must lead to the 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. Secondly, 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 (see judgment of 23 April 2018, *Shanxi Taigang Stainless Steel v Commission*, T-675/15, not published, EU:T:2018:209, paragraph 93 and the case-law cited).

215 First, the percentages relied on relating to the evolution of Union industry sale prices (see paragraph 207, third indent, above) are based on recital 236 of the contested regulation, which states that the unit sale prices on the free market in the Union (unrelated customers) declined between 2018 and 2020, going from EUR 879 per tonne in 2018 to EUR 770 per tonne in 2019, then rose again to EUR 861 per tonne in 2020, to reach EUR 1 101 per tonne during the investigation period.

216 Moreover, the percentages referred to by the applicants relating to the profitability of the Union industry (see paragraph 207, first indent, above) are based on recital 244 of the contested regulation, from which it is apparent that that profitability decreased between 2018 and 2020. It totalled 1.9% in 2018 and became negative for the two following years, dropping to -0.5% in 2019, then to -2.1% in 2020. It then

rose again to 2.5% during the investigation period, that is to say, between 1 October 2020 and 30 September 2021.

- 217 It is apparent from recital 256 of the contested regulation, however, first, that the investigation showed that the positive development of sales prices was related to the development in raw material prices, which had increased significantly during that period. Second, the results obtained during the period considered remained at levels insufficient to ensure the viability of the Union industry over the medium and long term.
- 218 In that regard, the Commission considered that the profitability of the Union industry had been negatively affected by the dumped Indonesian imports throughout the period considered, that it had suffered losses in 2019 and 2020 and that the 2.5% peak in profitability attained during the nine months of the investigation had been in a context of major disturbances in the supply chain on the market due to the COVID-19 pandemic, which had had a serious impact on Indonesian exports to the Union (see recitals 244, 266 and 267 of the contested regulation).
- 219 Moreover, the Commission found that the Union industry had not attained a profitability level in accordance with normal market conditions of competition throughout the period considered and that, due to that fact, it had not brought its prices back up to a level that would enable it to cover its costs and reach the target profit margin of 6%, as prescribed by Article 7(2c) of the basic regulation (see recitals 257, 265 and 268 of the contested regulation).
- 220 The Commission also noted that no evidence had been put forward showing that such a level was manifestly inappropriate for the industry in question (see recitals 265 and 268 of the contested regulation).
- 221 Next, the Commission found that the profitability level achieved by the Union industry throughout the period considered had been insufficient to undertake the required level of investment needed in that sector and remain competitive, as that industry serves a diverse customer base which has continuously evolving requirements (see recitals 258 and 269 of the contested regulation).
- 222 The Commission noted that the investments made by that industry had been limited during the period considered due to its negative or low profitability level throughout that period. It further noted that, during that same period, depreciation expenses represented only around 2% of the cost of production, whilst an increase of the depreciation expenses following investments to 4% of cost of production would make the Union industry break even in the scenario that it would manage to maintain the higher prices of the investigation period, which is highly unlikely given the reasons for which those prices had increased in that period (see recital 269 of the contested regulation).
- 223 Secondly, the percentages relating to the Union industry's return on investments referred to by the applicants (see paragraph 207, second indent, above) are based on recital 244 of the contested regulation, from which it is apparent that that return showed a steady and significant decrease between 2018 and 2020, going from 9% in 2018 to 0.6% in 2019, then falling to -4.4% in 2020. That return then reached 12.1% during the investigation period.
- 224 The Commission noted in that regard, however, that the level of the Union industry's return on investments was inadequate and compromised its future ability to raise capital and thus its survival in the medium and long term (see recitals 253 and 254 of the contested regulation).
- 225 Moreover, Article 3(3) of the basic regulation, which lays down the factors to be taken into account for determining the first two criteria provided for in Article 3(2) of that regulation, namely the volume of

dumped imports and the effect of those imports on the prices of like products on the Union market, also stipulates that no one or more of those factors can necessarily give decisive guidance.

- 226 Moreover, as regards the impact of dumped imports on the Union industry, it follows from Article 3(5) of the basic regulation that the EU institutions have the task of evaluating all relevant economic factors and indices which have a bearing on the state of that industry and that, there as well, any one or more of those factors does not necessarily give decisive guidance. That provision thus confers discretion on those institutions in the examination and assessment of the various indices (see judgment of 28 September 2023, *Changmao Biochemical Engineering v Commission*, C-123/21 P, EU:C:2023:708, paragraph 142 and the case-law cited).
- 227 In the present case, it should be noted that, in addition to the three injury factors contested by the applicants (see paragraph 207 above), the Commission also found that a number of other factors had shown decreases.
- 228 In particular, the volume indicators analysed, namely production, capacity, capacity utilisation, sales volume and market share on the Union market all declined during the period considered (see recital 259 of the contested regulation). The Union industry market share on the free market declined by almost 4 percentage points during the period considered, from 72.1% in 2018 to 68.3% during the investigation period. It also continued to decrease during the investigation period as compared to 2020, going from 68.4% to 68.3% (see recitals 282 and 288 of the contested regulation). Furthermore, declines were also seen in employment and productivity, which were related to the lower levels of production and sales volume (see recital 259 of that regulation).
- 229 Lastly, it is apparent from the contested regulation that the Commission based the injury assessment on macroeconomic data provided by the complainant in its response to the questionnaire, as well as on microeconomic data provided by the four sampled Union producers in their responses to the questionnaire (see recital 212 of that regulation) and that it verified both those sets of data at the premises of the complainant and those four producers (see recital 53 of that regulation).
- 230 Neither the laconic, unspecified ground given for withdrawing the complaint nor the arguments relied on by the applicants relating to the improvement of certain injury indicators at the end of the period considered suffice to call into question the plausibility of the injury suffered by the Union industry, as referred to in paragraphs 215 to 229 above.
- 231 In the second place, in its comments of 15 August 2022, KLK took the view that the European Union needed imports from Asia to ensure a competitive environment, that the imposition of anti-dumping duties of almost 50% would create turbulence and that it was fair and appropriate to reduce those duties significantly.
- 232 Next, in its comments of 19 August 2022, KLK expressed its opposition to the imposition of anti-dumping measures, considering them to be against its own interests, those of its customers and those of the European Union. KLK thus argued that anti-dumping duties could jeopardise its customers' operations, as it would lead to price increases for fatty acid, which would come in addition to the energy crisis and supply restrictions. KLK further argued that the European Union had to maintain a competitive environment for fatty acids in the interest of all stakeholders and that it was able to remain competitive and profitable with the Indonesian imports.
- 233 The Commission dismissed KLK's comments of 15 and 19 August 2022 (collectively, 'KLK's comments on the final disclosure') after having noted that they were not supported by any evidence (see recital 68 of the contested regulation).

- 234 The Commission further stated at the hearing that KLK's comments on the final disclosure preceded those of the complainant of 22 August 2022, thus reaffirming, on behalf of the Union industry, the need to impose anti-dumping duties and emphasising the presence and magnitude of injurious consequences of the established dumping in the final disclosure (see paragraph 173 above).
- 235 KLK's comments on the final disclosure are in fact merely allegations which were not supported by any evidence and did not reflect the position defended at that time by the complainant.
- 236 In any event, it is not apparent from KLK's comments of 15 August 2022 that it took the view that the Union industry had not suffered injury during or at the end of the period considered, as KLK was disputing only the level of anti-dumping duties that the Commission was considering imposing. Moreover, KLK's comments of 19 August 2022 do not rule out the existence of the injury caused by the imports of the product concerned, but rather relate to its own ability to overcome that injury in the absence of anti-dumping measures and, more broadly, to the absence of an interest in imposing such measures. However, even if KLK did have that ability, it has not been demonstrated that that was also the case for the rest of the Union industry.
- 237 In the third place, it is apparent from the comments put forward by AAK at its hearing on 13 September 2022 that that Union producer was opposed to the measures, taking the view that they were too disruptive and jeopardised customers of producers of oleochemical products. AAK further took the view that it was improbable that there was sufficient alternative production capacity for fatty acids.
- 238 In that regard, the Court finds that those allegations are not substantiated and that, in any event, they do not relate to the injury, but rather to the separate question of the interest in imposing anti-dumping measures.
- 239 It follows from the foregoing that the second complaint must be rejected, as must also the second part.

*The third part: the Commission wrongly concluded that the Union interest required action despite the withdrawal of the complaint*

- 240 By the third part, divided in essence into three complaints, the applicants allege:
- infringement of Article 21(1) of the basic regulation due to the continuation of the investigation and the imposition of anti-dumping measures on imports of the product concerned, without account taken of the withdrawal of the complaint in the analysis of the Union interest in imposing those measures;
  - a manifest error of assessment resulting from the fact that the withdrawal of the complaint showed that the imposition of the measures was against the Union interest;
  - infringement of Article 9(4) of the basic regulation resulting from the continuation of the investigation and the imposition of those measures, in that one of the conditions laid down in that provision, namely that the Union interest required action, had not been duly established.
- 241 The Commission argues that the applicants' line of argument is unfounded.
- *The first complaint*
- 242 The applicants submit that the continuation of the investigation and the imposition of anti-dumping measures despite the withdrawal of the complaint infringe Article 21(1) of the basic regulation, since

those measures were not justified by the Union interest. In their view, the infringement of that provision results from the failure to take account in that regard of the probative nature of the withdrawal of the complaint and the respective comments of KLK on the final disclosure and of AAK of 13 September 2022.

- 243 The applicants conclude from this that the Commission also infringed Article 9(2) of the basic regulation, interpreted in the light of Articles 5.7 and 5.8 of the Anti-Dumping Agreement, in not terminating the investigation.
- 244 In that regard, it is apparent from recitals 421 and 422 of the contested regulation that the Commission assessed the probative value of the withdrawal of the complaint as part of its examination of the interest of the Union industry in imposing or not imposing anti-dumping measures on the product concerned, pursuant to Article 21 of the basic regulation.
- 245 The Commission concluded that the imposition of such measures was 'clearly' in the interest of the Union industry (see recital 427 of the contested regulation), after observing, first, that it had established that the Union industry had suffered material injury caused by the imports of the product concerned dumped by Indonesian exporting producers (see recital 421 of that regulation).
- 246 Next, in recitals 421 in fine and 422 of the contested regulation, the Commission stated that:
- it enjoyed a wide margin of discretion on the decision to continue or terminate a proceeding further to the withdrawal of the complaint;
  - the reasons for that withdrawal confirmed that the complainant had not called into question its proof of there being material injury suffered by the Union industry caused by the dumped Indonesian imports and did not establish that it would be in the Union interest to terminate the proceedings;
  - the withdrawal of the complaint had occurred at a very late stage in the proceeding, when the conclusions establishing that injury had been communicated to the parties;
  - the comments received further to the disclosure had not altered that conclusion, thereby supporting the conclusion that, in any event, it was not in the Union interest to terminate proceedings without imposing measures, even though the complaint was withdrawn.
- 247 The Commission further took the view that, given that the Union industry had suffered material injury, the imposition of measures would enable it, first, to improve its profitability to attain sustainable levels, increase investments, thereby maintaining a competitive position on its principal market and, second, recapture market shares that it had lost by increasing sales volumes on the Union market (see recital 423 of the contested regulation).
- 248 On the other hand, according to the Commission, the absence of measures was likely to have further significant negative effects on the Union industry in terms of lower sales and production volumes, further price depression leading to further financial deterioration of its economic situation in terms of profitability and investment, jeopardising its future and employment (see recital 424 of that regulation).
- 249 In the first place, the laconic, unsubstantiated ground given for the withdrawal of the complaint, namely 'the influence from stakeholders', put forward without further clarification, does not establish that, by that withdrawal, the Union industry was making known its opposition to the anti-dumping duties, nor explain how the Union interest called for the non-imposition of such duties.

- 250 That analysis is supported by the fact that, two days before the withdrawal of the complaint, the complainant lodged six pages of comments on the final disclosure, in which it reiterated the need to impose anti-dumping duties and took the view in particular that the Union interest required it.
- 251 For the reasons set out in the preceding paragraphs, the withdrawal of the complaint could not in itself constitute actual evidence, within the meaning of Article 21(7) of the basic regulation, for assessing the Union interest. The applicants accordingly have no basis for criticising the Commission for having failed to take account of that withdrawal as part of that assessment.
- 252 In the second place, it is apparent from the file that, in the administrative procedure, AAK requested that two types of fatty acid be excluded from the definition of the product concerned, namely palmitic acid and food grade oleic acid (see recitals 109, 112, 114, 116 and 119 of the contested regulation), and that that Union producer's opposition to the anti-dumping measures as set out in its comments of 13 September 2022 concerned only those two types of fatty acid, in so far as the Commission refused to exclude them (see also recitals 111, 113, 115, 118, 120 and 122 of that regulation).
- 253 However, the applicants contest the Union interest in applying anti-dumping measures to the product concerned taken as a whole and do not put forward any line of argument relating specifically to the two types of fatty acid that AAK attempted to have excluded from the definition of the product concerned.
- 254 In the third place, contrary to what the applicants assert, KLK did not oppose the anti-dumping measures in its comments of 15 August 2022 (see paragraph 231 above).
- 255 Next, the Commission was correct in observing that KLK's comments of 19 August 2022 were not supported by any evidence (see recital 68 of the contested regulation; see paragraph 233 above).
- 256 Moreover, KLK's comments on the final disclosure precede those of the complainant of 22 August 2022 reaffirming, on behalf of the Union industry, its position in favour of the Union interest in imposing anti-dumping duties (see paragraph 234 above).
- 257 Lastly, further to a measure of inquiry ordered by the Court on 10 October 2024, the Commission produced the full version of Annex 14 to KLK's response to the questionnaire addressed to the Union producers. In that document, that producer maintained, in essence, that the envisaged duties were absolutely necessary, contrary to what its comments on the final disclosure suggest.
- 258 That contradiction is recognised by the applicants in their comments lodged on 28 November 2024 on Annex 14 to KLK's response to the questionnaire, referred to in paragraph 257 above. However, in those comments, the applicants dispute the relevance of that annex, arguing that KLK's subsequent change of position could be explained by the events that had affected the market and to which KLK had referred in its comments of 19 August 2022, namely the increase in inflation and energy costs, as well as disruptions in the supply chain caused by the Russian Federation's invasion of Ukraine.
- 259 It should be borne in mind that KLK's allegations in its comments of 19 August 2022 on the energy crisis, the increase in costs and any supply constraints were not supported by specific evidence of their validity, which, under Article 21(7) of the basic regulation, prevented the Commission from taking them into account.
- 260 In that context, the infringement of Article 21(1) of the basic regulation due to the failure to take account of the withdrawal of the complaint and the comments of AAK and KLK in order to determine the Union interest in taking measures for the purposes of that provision has not been established.

- 261 That conclusion is not called into question by the applicants' argument to the effect that the fact that that withdrawal occurred 265 days after the notice of initiation and when the final disclosure had been communicated was not decisive for determining whether the withdrawal of the complaint was relevant for the examination of the Union interest in imposing measures. In that regard, the applicants rely on the approach taken by the Commission in a number of previous cases, from which it is apparent that the proceedings had been closed following the withdrawal of the complaint, irrespective of whether or not the final disclosure had been issued and provisional measures imposed.
- 262 In that regard, first, it should be remembered that the argument based on the Commission's previous decision-making practice must be rejected, for the reasons set out in paragraphs 95 and 96 above. Second, the Commission was correct in stating, in recital 422 of the contested regulation, that the non-probative ground for the withdrawal of the complaint did not call into question the conclusions set out in the final disclosure relating to material injurious dumping (see paragraph 246 above). Nor can that ground call into question the complainant's comments lodged only two days before that withdrawal, in which it emphasised the need to impose anti-dumping measures and, in particular, that the Union interest called for it.
- 263 Nor have the applicants demonstrated that the conditions laid down in Article 9(2) of the basic regulation and Article 5.7 and 5.8 of the Anti-Dumping Agreement were satisfied.
- 264 The first complaint must therefore be rejected.
- *The second complaint*
- 265 The applicants submit that the Commission made a manifest error of assessment in imposing measures against imports of the product concerned, since the withdrawal of the complaint demonstrated that the imposition of those measures was contrary to the Union interest. They put forward two arguments.
- 266 In the first place, the applicants argue that the ground for withdrawal of the complaint is supported by KLK's comments on the final disclosure and by those of AAK of 13 September 2022 opposing the imposition of measures due to the risk of disruption in supply of fatty acids. However, the Commission rejected that argument on the basis of the complainant's comments of 22 August 2022, reproduced in recital 464 of the contested regulation, since, in withdrawing the complaint, the complainant also withdrew those comments and the Union industry thus recognised that it was no longer in its interest to impose measures. In so doing, the Commission made a manifest error of assessment in finding that the imposition of the measures would not have caused a risk of disruption in supply. Moreover, following the withdrawal of the complaint, the Commission received no comments at all in support of the imposition of the measures.
- 267 In that regard, first, the letter of withdrawal of the complaint does not refer to KLK's comments on the final disclosure lodged before that withdrawal. Similarly, nor do AAK's comments of 13 September 2022 refer to that withdrawal, which occurred almost three weeks before those comments were lodged. Moreover, although KLK's and AAK's comments refer to a risk of disruption of fatty acid supply, they do not refer to the letter of withdrawal of the complaint.
- 268 Consequently, the alleged link between the withdrawal of the complaint and KLK's comments on the final disclosure and AAK's comments of 13 September 2022 is not established.
- 269 Secondly, it cannot successfully be argued that, by the laconic, unsubstantiated ground given for the withdrawal of the complaint, the complainant intended to withdraw its comments lodged two days

beforehand, in which it reaffirmed the need to impose anti-dumping duties due to the injurious dumping caused to the Union industry and the fact that it was in the Union interest for such measures to be taken.

- 270 In any event, it must be borne in mind that the Commission has the power to continue the investigation and to import anti-dumping duties even where support for the complaint falls (judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 153; see also, to that effect, judgments of 8 September 2015, *Philips Lighting Poland and Philips Lighting v Council*, C-511/13 P, EU:C:2015:553, paragraphs 51 to 54, and of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, paragraph 84 and the case-law cited).
- 271 Thirdly, it is apparent from the contested regulation that several parties submitted that the anti-dumping duties carried a risk for fatty acid supply (see recitals 460 to 463 of that regulation), but that the complainant took the view that the Union industry, together with imports from both Indonesia and third countries, would ensure adequate supply of the Union market in the event of measures (see recital 464 of that regulation).
- 272 In that regard, the applicants conflate the line of argument put forward by the complainant relating to the question of the supply risk, referred to in recital 464 of that regulation, with that articulated by the Commission in recitals 465 to 469 of that regulation in order to reject that argument.
- 273 The Commission took the view, first of all, that fatty acid supply to the various Union user industry sectors was essential because fatty acids cannot be adequately replaced with other products (see recital 465 of the contested regulation). According to the Commission, there were unused capacities in the Union during the investigation period, in the 20% range. It relied on that regard on the data provided by the complainant, which it nevertheless took care to verify (see recital 466 of the contested regulation, referring to recitals 219, 220 and 407 of that regulation).
- 274 The Commission further noted that the investments in the Union industry had been restricted during the period considered and that investments of the sampled companies had continued, but were limited to projects not aimed at increasing capacities and removing obstacles to production. The imposition of measures would relieve the price pressure on the industry and enable them to set prices at a level whereby profitability would be at reasonable levels. It took the view that production and sales could be increased to supply the Union thanks to better market conditions. The industry would also be able to raise capital to increase capacity (see recital 467 of the contested regulation).
- 275 The Commission further considered that supply issues were to be expected during the period considered if an industry had suffered material injury affecting its sales prices leading to low profitability and an inability to raise capital for investment. However, the imposition of measures would create better market conditions for the Union industry and it would be able to increase production and improve the quantity and range of the fatty acid it supplies to the market (see recital 468 of the contested regulation).
- 276 Lastly, the Commission emphasised that it was not expected that the measures imposed would prohibit imports from Indonesia, since the purpose of those measures was to restore the level playing field on the market and that, accordingly, the claim that there would be a general shortage on the Union market, which would cause disproportionate price rises, should be rejected (see recital 469 of the contested regulation).
- 277 It follows from the foregoing that, contrary to what the applicants claim, it is not apparent from the contested regulation that the Commission dismissed the argument relating to the supply risks and merely referred to the complainant's arguments alluded to in recital 464 of the contested regulation. Nor have

the applicants adduced any evidence liable to call into question the Commission's assessment referred to in paragraph 273 to 276 above.

- 278 Consequently, the first argument must be rejected.
- 279 In the second place, the applicants submit that numerous users claimed that they would be adversely affected by the imposition of measures in their comments on the final disclosure, and refer to recitals 443, 446 to 453, 455 to 458 and 460 to 463 of the contested regulation. They criticise the Commission for dismissing those comments on the ground that they concerned post-investigation period developments or could not be properly verified, referring to recitals 452, 454, 458, 470 and 476 of the contested regulation. However, those submissions, together with the reason given for the withdrawal of the complaint, prove that the claims of adverse effects on users were substantiated.
- 280 In that regard, since neither the 'stakeholders' nor the nature of their 'influence' referred to in the ground for withdrawal of the complaint are identified, it is speculative to read into it a confirmation of the comments lodged by the users in the context of the investigation aimed at opposing the measures.
- 281 Next, it should be borne in mind that the third subparagraph of Article 6(1) of the basic regulation provides that information relating to a period subsequent to the investigation period is normally not taken into account.
- 282 It is apparent from the case-law, however, that that provision concerns only information relating to the determination of whether there is dumping and injury, but does not apply to the determination of the Union interest for the purposes of Article 21 of the basic regulation (see, to that effect and by analogy, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraphs 221 to 223).
- 283 Article 21 of the basic regulation does not contain any temporal restriction as to the information which may be taken into account by the institutions for the purposes of determining whether there is Union interest. The examination of the Union's interest in accordance with Article 21(1) of that regulation requires an assessment of the likely consequences both of applying and of not applying the measures proposed for the interest of the Union industry and for the other interests at stake. That evaluation involves a forecast based on hypotheses regarding future developments, which includes an appraisal of complex economic situations (see, by analogy, judgment of 5 April 2017, *CPME and Others v Council*, T-422/13, EU:T:2017:251, paragraph 144 and the case-law cited). Since the analysis provided for in Article 21 of that regulation is forward-looking, the institutions may find it necessary to take into account information which does not relate to the investigation period, but post-dates that period (see, to that effect and by analogy, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 224 and the case-law cited).
- 284 The Commission thus erred in law in applying Article 6(1) of the basic regulation in the context of determining whether there was a Union interest (see, to that effect, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 225).
- 285 However, although the Commission is required to take account of the relevant factors relating to the determination of Union interest when they concern the post-investigation period, that is subject to the condition that those factors are substantiated by actual, validating evidence, in accordance with Article 21(7) of the basic regulation.

- 286 In the present case, the recitals of the contested regulation relied on by the applicants to challenge the rejection of comments relating to developments which were subsequent to the investigation period or not capable of verification show the following:
- the general comments of 11 users and three exporting producers on users' interest and the Commission's response thereto (recitals 443 and 446 to 458);
  - one part of the users' comments relating to the specific question of market disruption and supply issues (recitals 460 to 463) and one part of the Commission's responses thereto (recitals 470 and 476).
- 287 First, as regards the general comments on users' interest, the Commission observed that, following the communication of the final disclosure, it had received comments from inter alia 11 users, but several of them had not cooperated fully with the investigation and had not submitted comments previously and that, therefore, it had not been able to verify the truthfulness of all the comments made (see recital 443 of the contested regulation). That is the case, inter alia, first, of the large multinational groups which manufacture a large number of finished goods using the product concerned as a key raw material, for which it was not possible to ascertain the quantity of fatty acid used in their production, or the importance of fatty acid in their production costs (see recital 446 of that regulation), and also certain smaller companies and groups that purchased smaller quantities of the product concerned (see recital 456 of that regulation).
- 288 Secondly, the Commission considered that, as regards Procter and Gamble International Operations SA ('P&G'), Unilever and Henkel Global Supply Chain BV ('Henkel'), the public data showed that:
- in recent years turnover and profits of those three groups had increased substantially (see recital 446 in fine of the contested regulation);
  - P&G's European operations had generated a very large turnover in 2021, 16.7 billion United States dollars (USD), and Henkel's turnover in 2021 for Western and Eastern Europe was EUR 9.1 billion; in addition, P&G's worldwide profitability was 23% whilst Henkel's profitability in Europe was 18.9% (see recital 448 of that regulation).
- 289 The Commission considered that that information supported its view that the large buyers of fatty acids in the biggest user industries would not be disproportionately affected by the measures proposed (see recital 448 of the contested regulation).
- 290 Moreover, it is apparent from recital 451 of the contested regulation that four large groups – being three users, including Henkel, and the exporting producer Wilmar – stated that the interest of users should be seen in the context of recent developments preceding the disclosure such as increasing raw material and energy prices, inflation and supply chain issues.
- 291 In recital 452 of the contested regulation, the Commission observed that those issues concerned post-investigation period developments and that it had not been substantiated what impact those developments could have on the user industry. It thus stated that it was not in a position to determine, first, whether extra costs had been passed on to customers and what impact there had been on the profitability of products containing fatty acids and, second, whether such developments were of a lasting nature. It concluded that the allegations referred to in recital 451 of that regulation could not therefore be accepted.

- 292 It is apparent from the foregoing that, although the Commission emphasised that the allegations referred to in recital 451 of the contested regulation concerned the post-investigation period, it did not however refuse to examine them. It did dismiss them, however, because they were not substantiated, as required under Article 21(7) of the basic regulation. The applicants have not adduced any evidence liable to call into question the plausibility of the Commission's assessment and, in particular, capable of showing that it had specific evidence of those allegations in its possession.
- 293 Furthermore, it is apparent from the contested regulation that those unsubstantiated allegations were liable to be contradicted by the public information showing the sizeable turnover and profits and also the high profitability levels of inter alia the large user groups, referred to in recitals 446 and 448 of that regulation (see paragraph 288 above).
- 294 Next, it is apparent from recital 453 of the contested regulation that Unilever claimed that a certain product would be affected by the measures, since, first, prices would increase considerably, and that it might have to import that product, with a consequential impact on its Union production and employment and, second, consumer prices for that product would increase as a result, and that the vast majority of sales of that product were exported outside the Union.
- 295 In recital 454 of the contested regulation, the Commission stated that it had not been able to verify those claims, as Unilever had not completed the questionnaire. It was therefore unable to ascertain the importance of that product in Unilever's Union operations in terms of profitability and turnover, the importance of fatty acid in Unilever's costs for that product or other products, or the impact of the anti-dumping duties on the profitability of Unilever's Union market profitability.
- 296 The Commission also took account of the importance of Unilever's turnover from its European operations in 2021 and the high profitability of those operations (see recital 454 of the contested regulation).
- 297 The Commission inferred from the points set out in paragraphs 295 and 296 above that, first, it had not been given any information to demonstrate that the impact of the measures would be disproportionate on Unilever's sales of that product or, more generally, on its Union operations. Secondly, the claim regarding increases in consumer prices and import volumes of that product was clearly not substantiated, in view of the overall profitability of Unilever's Union operations. Thirdly, processing arrangements under customs control would be available to Unilever to mitigate the impact of the measures (see recital 454 of the contested regulation).
- 298 It follows from the foregoing that the Commission dismissed Unilever's allegations, first, because they were not substantiated by specific evidence and, secondly, because other, verified information tended to contradict them. That latter information is not disputed by the applicants. The Commission's position is accordingly above all reproach.
- 299 Thirdly, in recital 456 of the contested regulation, the Commission observed that the information submitted by the smaller user companies which had cooperated fully in the investigation showed that they were likely to be more affected by measures, because fatty acid represented a larger proportion of their total costs, and sales of the respective downstream products had limited profitability.
- 300 The Commission found, however, that the impact of the measures on the users as a whole would be mitigated by the fact that:
- users did not exclusively sell products which contained fatty acids;

- most fatty acid purchased was sourced from either the Union industry or third country suppliers, which meant that price increases for those purchases would be expected to be lower than those sourced from Indonesian exporting producers;
- finished goods made using fatty acid were often exported outside the Union, meaning that processing arrangements under customs control would be made available to reduce the impact of measures (see recital 456 of the contested regulation).

301 The applicants have not adduced any evidence calling the plausibility of those assessments into question.

302 Moreover, it is apparent from recital 457 of the contested regulation that one exporting producer, Ecogreen, claimed that the weighted average duties applicable to it would harm its two related companies in the Union, that all of its sales to the Union were intended for captive use and that, therefore, those exports could not cause injury to the Union industry.

303 The Commission dismissed those arguments in recital 458 of the contested regulation after having noted that, first, as Ecogreen affiliates had not filled in a user's questionnaire, that exporting producer's claims concerning injury could not be verified and, second, according to Ecogreen's submission, one of its subsidiaries in the Union purchased certain types of fatty acid from the Union industry. Consequently, the possibility could not be ruled out that there was competition between Ecogreen's products and the Union industry's products, at least on certain segments of the market.

304 In recital 459 of the contested regulation, the Commission concluded, on the basis of the information on file, that the measures proposed would not impact users disproportionately.

305 Thus, the Commission did accept that Ecogreen's comments were not substantiated, but that finding did not prevent it from also examining the merits thereof.

306 The applicants have not adduced the slightest evidence calling into question the plausibility of the Commission's assessments relating to Ecogreen's comments nor, more generally, those relating to smaller companies.

307 Fourthly, recitals 460 to 463 of the contested regulation reproduce the comments put forward by a number of users and exporting producers relating to market disruption and supply issues resulting from the imposition of measures. The following is apparent from those comments:

- the proposed level of measures was too high and would disproportionately affect the Union downstream industries' interest (see recital 460 of that regulation);
- imports from Indonesia would cease, or be restricted, to such an extent that there would be a general shortage on the Union market, which would also cause price rises (see recital 460 of that regulation);
- certain types of fatty acid could not be adequately supplied from the Union industry (see recital 460 of that regulation);
- according to the NYCO user group ('NYCO'), imports of short chain fatty acids such as C8-C10 fatty acids ('C8-C10') would be affected by the measures; C8-C10 had become more and more difficult to find on the Union market because producers had increased their captive use; as a result of that shortage, prices had increased sharply since September 2021 and it would have an impact on the aeronautic and defence industries (see recital 461 of that regulation);

- certain users would be put at a disadvantage with manufacturers of the same products located outside the Union and might have to relocate outside the Union (see recital 462 of that regulation);
- the limited substitutability of many product types imported from Indonesia would heavily affect the profitability of the user Stéarinerie Dubois due to the increase in its production costs; Union producers did not necessarily produce the same fatty acid in sufficient quantities of the type required by that user; no Union producer could match the technical characteristics which were important for some of its customers; as there was no Union market for fatty acids compliant with the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation and kosher and halal certifications, no injury would be caused to the Union industry by imports of those products (see recital 463 of that regulation).

308 The applicants merely refer to recital 470 of the contested regulation containing the Commission's response to the argument put forward by NYCO alleging a sharp price increase for C8-C10 (see paragraph 307, fourth indent, above), in which it observed that:

- that increase concerned the global market, rather than only the Union market; therefore, the effects of anti-dumping measures on the global competitiveness of Union users of C8-C10 would not be different from the effects on users of other types of fatty acid;
- market developments after the end of the investigation period were normally not taken into account in its assessment;
- claims of market disruption relating to the aeronautic and defence industries were not substantiated.

309 It is apparent from recital 470 of the contested regulation that the Commission did not merely dismiss the argument put forward by NYCO on the basis of the reference to market developments after the end of the investigation period, since it referred in particular to its analysis of the effects on users of other types of fatty acid (see paragraph 308, first indent, above). The applicants do not dispute that analysis.

310 Moreover, the Commission also used the following relevant points in dismissing the alleged supply risks:

- there were 250 000 tonnes of spare capacity in the Union during the investigation period (see recital 466 of the contested regulation);
- the imposition of measures would relieve the price pressure on the industry and enable Union producers to set prices at a level whereby profitability would be at reasonable levels (see recital 467 of that regulation);
- production and sales could be increased to supply the Union industry due to better market conditions (see recitals 467 and 468 of that regulation);
- the Union industry would be able to raise capital to increase capacity (see recital 467 of that regulation);
- imports from Indonesia would be maintained (see recital 469 of that regulation);
- Indonesian and Union industry products were highly substitutable and the fact that certain Union producers were unable to supply certain product types, at certain times under the market

conditions applicable in the period considered, did not mean that supply problems would persist following the imposition of measures (see recital 471 of that regulation);

- the impact of the measures on the costs and profitability of the user NYCO was not substantiated and, because it had not replied to the questionnaire, the Commission was unable to assess how important fatty acid costs were for that company as a percentage of total costs or turnover (see recital 471 of that regulation);
- the likely impacts vis-à-vis competitors outside the Union and risk of relocation were not substantiated (see recital 472 of that regulation).

311 The applicants do not dispute any of the Commission's assessments referred to in paragraph 310 above and, accordingly, have not adduced the slightest evidence capable of calling the plausibility thereof into question.

312 Lastly, the applicants refer to recital 476 of the contested regulation, containing the Commission's response to Wilmar's argument set out in recital 475 of that regulation, to the effect that reduced vegetable oil imports, especially from Ukraine, would limit the Union industry's ability to source raw materials.

313 The Commission dismissed that argument, considering that Wilmar's arguments concerned developments subsequent to the investigation period and that Article 6(1) of the basic regulation provided that information relating to the period subsequent to the investigation period was not normally taken into account. The Commission added that it had not been substantiated what impact those developments could have on the Union market or whether such developments were of a lasting nature (see recital 476 of the contested regulation).

314 The Commission went on to conclude, in recital 477 of the contested regulation, that it could not accept the arguments that there would be a general lack of supply of fatty acid to users in the Union and that, in respect of supply problems involving specific products, any market disruption was likely to be temporary whilst producers and their customers adjusted to the new market situation.

315 It follows from the foregoing that the Commission erred in law in recitals 470 and 476 of the contested regulation, in finding that, in principle, it did not have to take account of allegations relating to post-investigation period developments in the examination of the Union interest in imposing anti-dumping measures (see paragraphs 308 and 313 above; see, to that effect, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 225).

316 However, as that finding did not prevent it from examining the substance of those allegations, that error of law is not in itself capable of affecting the lawfulness of the contested regulation (see, to that effect, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 226).

317 Moreover, the Commission dismissed such allegations in recitals 452 and 476, after having found that they were not substantiated (see paragraphs 291 and 313 above). It is also clear that the applicants have not adduced the slightest evidence calling into question the plausibility of such a finding. Hence, under Article 21(7) of the basic regulation, the Commission cannot be found to have made a manifest error of assessment (see, to that effect, judgment of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council*, T-192/08, EU:T:2011:619, paragraph 231).

318 The applicant's second argument must be rejected, as must therefore the second complaint.

– *The third complaint*

319 The applicants claim that the continuation of the investigation and the imposition of measures resulted in an infringement of Article 9(4) of the basic regulation, in that one of the conditions laid down by that provision, namely that the Union interest called for action, was not properly established.

320 In that regard, it is apparent from the contested regulation that the Commission found that the imports of the product concerned were dumped in a manner injurious to the Union industry and that it was in the Union's interest under Article 21 of the basic regulation to impose remedial measures.

321 Moreover, the applicants do not dispute the existence of the dumping established by the Commission and nor have they adduced evidence capable of calling the categorisation of the resulting injury into question. In particular, they have not demonstrated that the withdrawal of the complaint or KLK's comments on the final disclosure and those of AAK of 13 September 2022 were sufficient to call into question the existence of that injury (see second part). Lastly, they have not established that there has been an infringement of Article 21(1) of the basic regulation or a manifest error of assessment of the Union's interest in imposing measures to remedy the injurious dumping.

322 Consequently, the alleged infringement of Article 9(4) of the basic regulation has not been established.

323 The third complaint must therefore be rejected. Consequently, the third part and the second plea in law must also be rejected.

324 It follows from the foregoing that the action must be dismissed in its entirety.

**Costs**

325 Under Article 134(1) of the Rules of Procedure of the General Court, 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 pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Tenth Chamber)

hereby:

- 1. Dismisses the action.**
- 2. Orders PT Permata Hijau Palm Oleo and PT Nubika Jaya to pay the costs.**

Porchia

Madise

Nihoul

Delivered in open court in Luxembourg on 2 July 2025.

V. Di Bucci

M. van der Woude

Registrar

President