

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 9(1) of Regulation (EU) 2016/1036 – Continuation of the investigation after withdrawal of the complaint – Article 2(3) and (6) of Regulation 2016/1036 – Constructed normal value – Article 9(4) of Regulation 2016/1036 – Article 21(1) of Regulation 2016/1036 – Union interest analysis – Manifest error of assessment – Error of law )

In Case T-176/23,

**PT Musim Mas**, established in Medan (Indonesia), represented by B. Servais and V. Crochet, lawyers,

applicant,

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: M. Zwodziak-Carbonne, 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 12 November 2024,

gives the following

**Judgment**

- 1 By its action under Article 263 TFEU, the applicant, PT Musim Mas, seeks 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'), in so far as it concerns the applicant.

### **Background to the dispute**

- 2 The applicant is a company established in Indonesia, which produces and exports fatty acid to the European Union. It sells its products in the European Union through related companies, including ICOF Europe GmbH.

### ***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 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.
- 5 The applicant was included, together with its related exporter and another Indonesian exporting producer, PT Wilmar Nabati Indonesia ('Wilmar'), in the sample for the purposes of the investigation.
- 6 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 49.9% be imposed on imports of that product manufactured by the applicant. The applicant submitted its comments on the final disclosure on 29 August 2022.
- 7 On 24 August 2022, the complainant withdrew the complaint. However, the Commission decided to continue the investigation.
- 8 Following a hearing of the applicant on the final disclosure, held on 9 September 2022, on 4 October 2022 the Commission communicated an additional final disclosure document ('the additional final disclosure'), in which it lowered the anti-dumping duty which it intended to impose on the applicant to 46.4%. The applicant submitted its comments on that document on 10 October 2022.
- 9 On 28 November 2022, the Commission addressed a second additional final disclosure to the applicant, on which the applicant submitted comments on 29 November 2022.

- 10 On 18 January 2023, the Commission adopted the contested regulation imposing an anti-dumping duty applicable to the applicant of 46.4%. 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***

- 11 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').
- 12 On 3 October 2022, the complainant informed the Commission that it was withdrawing that complaint. On 15 December 2022, the Commission announced its intention to terminate the anti-subsidy investigation. By Implementing Decision (EU) 2023/617 of 17 March 2023 (OJ 2023 L 80, p. 99), the Commission terminated that investigation.

### **Forms of order sought**

- 13 By its application, lodged on 31 March 2023, the applicant claims that the Court should:
- annul the contested regulation in so far as it concerns the applicant;
  - order the Commission to pay the costs.
- 14 The Commission contends that the Court should:
- dismiss the action;
  - order the applicant to pay the costs.

### **Law**

- 15 The applicant puts forward five pleas in law.

#### ***The first plea in law: infringement of the obligation to state reasons and of the principle of sound administration in deciding not to terminate the investigation following withdrawal of the complaint***

- 16 By the first plea in law, the applicant alleges, first, an infringement of the obligation to state reasons, in that the Commission did not explain why it continued the anti-dumping investigation after the withdrawal of the complaint and adopted the contested regulation, whereas it took the contrary decision to terminate the anti-subsidy investigation.
- 17 First, the applicant submits that, in so far as the applicable legal criterion was the same in both investigations and they were conducted simultaneously and covered the same product and the same periods, the Commission should have adequately justified its contradictory decisions not to terminate the anti-

dumping investigation and to terminate the anti-subsidy investigation, since the obligation to state reasons is further strengthened in the case of contradictory decisions.

- 18 Secondly, according to the applicant, the respective timetables of the two investigations were under the Commission's control and did not therefore prevent it from providing such justification. It submits that the Commission had stated its intention to terminate the anti-subsidy investigation before the publication of the contested regulation, bearing in mind that it was the Commission which decided the date of adoption of its decision terminating that investigation and it could have provided that justification in the contested regulation or, at the very least, in that decision. The applicant further submits that the obligation to state reasons did not depend on the fact that it had submitted comments on the termination of the anti-subsidy investigation after the meeting of the Trade Defence Instruments Committee regarding the draft contested regulation.
- 19 In the second place, the adoption of the contradictory decisions referred to in paragraph 17 above constitutes an infringement of the principle of sound administration. The duty of consistency implied by that principle required the Commission to terminate the anti-dumping investigation.
- 20 The Commission disputes the applicant's line of argument.
- 21 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'.
- 22 According to the case-law, it is apparent from that provision that, where a complaint is withdrawn, the institutions have the option – but not the obligation – to terminate the proceeding, although they may not do so if it would be contrary to the Union interest. Consequently, strictly speaking, the institutions are not required to rely on the fact that the continuation of the proceeding is in the Union interest. That provision expressly obliges the institutions to take account of the Union interest only if they envisage terminating the procedure further to the withdrawal of the complaint (see, to that effect and by analogy, judgments of 11 July 2013, *Hangzhou Duralamp Electronics v Council*, T-459/07, not published, EU:T:2013:369, paragraph 221, and of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, paragraph 87).
- 23 In the first place, as regards the alleged infringement of the obligation to state reasons, it follows from that case-law that the Commission was not required to set out the reasons why it had continued the anti-dumping proceeding following withdrawal of the complaint. In any event, those reasons were stated in recital 68 of the contested regulation, from which it is apparent, first, that the investigation showed that the Union industry was suffering material injury caused by the imports from Indonesia at dumped prices and, second, that the statement to the contrary by one Union producer, without any supporting evidence, did not contradict the findings of the investigation.
- 24 Nor can the Commission be criticised for having failed to state, in the contested regulation, its intention to terminate the anti-subsidy investigation nor, a fortiori, its subsequent decision to terminate that investigation. First, the decision to terminate the anti-subsidy proceeding was taken on 17 March 2023, almost two months after the adoption of the contested regulation. Consequently, the Commission cannot be criticised for having contradicted itself by deciding to continue the anti-dumping procedure through to

completion and taking a decision to terminate a separate investigation that did not yet exist when the contested regulation was adopted.

- 25 Second, the fact that the Council did not refer, in the contested regulation, to its intention to terminate the anti-subsidy proceeding cannot, in itself, amount to a failure to provide reasons, because that intention, expressed in the final disclosure relating to that investigation, set out merely a provisional position (see, to that effect, judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, paragraph 111 and the case-law cited).
- 26 In the second place, as regards the alleged infringement of the principle of sound administration, for the reasons set out in paragraph 24 above and since the intention to terminate the anti-subsidy proceeding before the adoption of the contested regulation does not amount to a decision, the Commission cannot be criticised for having failed to align its decision to continue the anti-dumping investigation through to completion with a future decision to terminate a separate investigation.
- 27 In any event, given that, in the present case, the alleged infringement of the principle of sound administration is based on an alleged inconsistency between the end of the anti-dumping investigation and that of the anti-subsidy investigation, it should be borne in mind that the lawfulness of the contested regulation must be assessed on the basis of the legal rules, in particular the provisions of the basic regulation, and not on the basis of the 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; 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 and 152 and the case-law cited).
- 28 Consequently, the arguments alleging, first, the failure to state reasons concerning the allegedly contradictory nature of the contested regulation and the decision to terminate the anti-subsidy proceeding and, second, the infringement of the principle of sound administration due to the alleged inconsistency between that regulation and that decision, must be rejected.
- 29 The Commission also disputes the argument that it was possible for it to state the reasons for its decisions to continue the anti-dumping investigation and to terminate the anti-subsidy investigation in the decision terminating the anti-subsidy investigation, on the ground that it was put forward for the first time in the reply.
- 30 In that regard, suffice it to note that, by that argument, the applicant contests, in essence, a decision other than the one against which the action is directed. The argument is therefore ineffective.
- 31 Consequently, the first plea in law must be rejected.

***The second plea in law: infringement of Article 21(1) and Article 9(4) of the basic regulation, in that it was not in the Union interest to impose anti-dumping measures, and a manifest error of assessment of the Union interest***

- 32 By the second plea in law, the applicant submits that the assessment of the Union interest is vitiated by a manifest error of assessment, since the Commission has not proven that the imposition of anti-dumping

duties was in the interest of the Union industry and nor did it find that those measures were in the users' interest. In so doing, the Commission infringed Article 21(1) and Article 9(4) of the basic regulation.

- 33 The Commission disputes the applicant's line of argument.
- 34 As a preliminary point, Article 9(4) of the basic regulation 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 is to be imposed.
- 35 Article 21(1) of the basic regulation provides as follows:

'A determination as to whether the Union's interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users ... In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to apply such measures.'
- 36 According to the case-law, 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, 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; 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).
- 37 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 that the procedural rules have been complied with, that the facts on which the contested choice is based are accurate, and that there has not been a manifest error of assessment or 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).
- 38 According to settled case-law, in order to prove that an EU institution has made a manifest error of assessment such as to justify the annulment of a measure, the applicant must adduce sufficient evidence to render implausible the assessments of the facts in that measure (see, to that effect, judgment of 3 December 2019, *Yieh United Steel v Commission*, T-607/15, EU:T:2019:831, paragraph 110 and the case-law cited).
- 39 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).

*The interest of the Union industry*

- 40 The applicant submits that the Commission has not established that the imposition of anti-dumping duties was in the interest of the Union industry. In support of that claim, it submits, first, that that industry expressed its opposition to those measures through the withdrawal of the complaint and the comments submitted by the European producer KLK Emmerich GmbH ('KLK') on 15 and 19 August 2022 on the final disclosure ('KLK's comments on the final disclosure').
- 41 Secondly, according to the applicant, the Commission could not rely solely on its findings relating to material injury to the Union industry in order to establish the Union industry's interest in the imposition of anti-dumping measures. It should also have assessed the likely negative consequences of the imposition of such measures and the likely positive consequences of not applying those measures on the Union industry. However, it did not explain how the injurious economic situation of the Union industry would likely evolve with or without the measures, or how the withdrawal of the complaint demonstrated that there might be negative effects for that industry.
- 42 In that regard, in the first place, the Commission found in the contested regulation that the imposition of anti-dumping measures was 'clearly' in the interest of the Union industry (recital 427), after observing that:
- that industry, which comprised 15 companies, had suffered material injury caused by dumped imports of the product concerned by Indonesian exporting producers (recitals 420 and 421); that injury had consisted mainly of price suppression, inadequate profitability, return on investments, cash flow, ability to raise capital, a loss of market share, and falls in production, productivity, sales volume and employment (recitals 257, 259 and 372);
  - given that material injury, the imposition of measures would allow the Union industry to improve its profitability to attain sustainable levels, increase investment, and thus maintain a competitive position in its core market, and also be able to regain lost market share by increasing sales volumes in the Union market (recital 423);
  - 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 (recital 424).
- 43 It should be borne in mind that Article 21(1) of the basic regulation required the Commission, in the examination of the Union interest, to give special consideration to the need to eliminate trade distorting effects of injurious dumping and to restore effective competition. The grounds relating to the existence of the injury caused by dumping set out in recitals 257, 259 and 372 of the contested regulation (see paragraph 42, first indent, above) thus carried great importance in the assessment of the Union interest.
- 44 The applicant does not dispute either the existence of dumping or the existence or materiality of the resulting injury.

- 45 In the second place, it is apparent from recitals 423 and 424 of the contested regulation that the Commission assessed the probable consequences of both the application and non-application of the measures envisaged for the interest of the Union industry (see paragraph 42, second and third indents, above), in accordance with the case-law referred to in paragraph 36 above.
- 46 In order to call that assessment into question, the applicant relies on the withdrawal of the complaint and KLK's comments on the final disclosure, which it interprets as expressions of Union industry opposition to the imposition of anti-dumping measures running counter to that industry's interest in the imposition of such measures.
- 47 First, as regards the withdrawal of the complaint, the Commission opined the following in recital 422 of the contested regulation:
- the reason for its withdrawal, which was 'due to the influence from stakeholders', confirmed that the complainant had not questioned the analysis and conclusion on the existence of material injury caused by dumped Indonesian imports, and did not support a conclusion that it was in the Union interest to terminate proceedings for that reason alone;
  - that withdrawal had taken place at a very late stage in the proceeding, after there had been full disclosure of the findings to the parties demonstrating the existence of that injury; moreover, the subsequent comments from the parties 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 had been withdrawn.
- 48 In that regard, the laconic, unsubstantiated ground given for withdrawing 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.
- 49 That conclusion is supported by the fact that, only two days before the withdrawal of the complaint, 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 took the view in particular that the Union interest required it.
- 50 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 applicant accordingly has no basis for criticising the Commission for having failed to take account of that withdrawal as part of that assessment.
- 51 Second, in its comments of 15 August 2022, KLK stated that Europe needed imports from Asia, 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.
- 52 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.

- 53 The Commission dismissed KLK's comments on the final disclosure after having noted that they were not substantiated by any evidence (see recital 68 of the contested regulation).
- 54 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, its position in favour of the Union interest in the imposition of anti-dumping duties (see paragraph 49 above).
- 55 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.
- 56 In any event, it is not apparent from KLK's comments of 15 August 2022 that it took the view that the imposition of anti-dumping duties ran counter to the Union interest, as KLK was disputing only the level of those duties.
- 57 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 anti-dumping questionnaire addressed to the Union producers ('Annex 14 to KLK's response to the questionnaire'). 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.
- 58 That contradiction is recognised by the applicant in its comments lodged on 21 November 2024 on Annex 14 to KLK's response to the questionnaire. However, in those comments the applicant alleges infringement by the Commission of Article 19 of the basic regulation. It criticises the Commission for having failed to provide the full version of Annex 14 to KLK's response to the questionnaire during the administrative procedure, on the ground that that annex did not contain any confidential information or, at the very least, for having failed to provide a sufficiently detailed summary of that annex. It infers therefrom that the Commission ought to have excluded that document from the analysis of the Union interest.
- 59 In that regard, the Court notes that the applicant had access to the version of Annex 14 to KLK's response to the questionnaire that was accessible to the parties concerned during the administrative procedure. Moreover, at that time, it did not request the Commission for access to the redacted information in that document. Thus, under Article 76(d) and Article 84(1) of the Rules of Procedure of the General Court, the Court finds that the argument alleging infringement of Article 19 of the basic regulation was put forward out of time and is therefore inadmissible.
- 60 It follows from the foregoing that there is nothing in the file showing that KLK's comments on the final disclosure were based on actual evidence within the meaning of Article 21(7) of the basic regulation.
- 61 Consequently, the applicant has failed to adduce evidence establishing the implausibility of the Commission's assessment of the facts which led it to conclude that the imposition of anti-dumping duties served the Union industry interest.

*The interest of users*

- 62 Without having established that the imposition of anti-dumping measures was in the Union industry interest, the applicant criticises the Commission for having failed to find that such measures were in the interest of users, since it found only that those measures would not have a disproportionate effect on them. However, that position is contradicted by more than 10 users of the product concerned in the European Union.
- 63 The contested regulation therefore does not make it possible to determine which economic operators had an interest in the imposition of anti-dumping duties on the product concerned, in particular since the Commission did not have sufficient information to establish precisely the interest of unrelated importers/distributors and suppliers.
- 64 In that regard, in the first place, the first sentence of Article 21(1) of the basic regulation requires the Commission to assess all the various interests taken as a whole, including those of the Union industry, users and consumers, in order to determine whether it is in the Union interest that measures be taken (see, to that effect and by analogy, 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, paragraph 86; see also, by analogy, judgment of 3 December 2020, *Changmao Biochemical Engineering v Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 69). Under the third sentence of that provision, in such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition are to be given special consideration by the Commission.
- 65 It is apparent from the third sentence of Article 21(1) of the basic regulation that, in the determination the Union interest, the interest of Union industry producers in having their competitive position restored, where it has been affected by injurious dumping practices, is taken into account as a matter of priority (judgments of 21 December 2022, *Grünig v Commission*, T-746/20, EU:T:2022:836, paragraph 86, and of 21 December 2022, *EOC Belgium v Commission*, T-747/20, EU:T:2022:837, paragraph 86).
- 66 Moreover, the interests of Union industry producers and those of users do not necessarily converge. Whilst the former suffer the consequences of competition distorted by the dumping that is liable to affect their profitability and competitiveness, the latter are, on the contrary, able to derive a benefit from the dumping by lowering their production costs, thereby increasing their profitability.
- 67 Moreover, according to the case-law, anti-dumping measures, as a result of both their subject matter and desired effect, must permit competition to be restored in a given market by seeking to eliminate the distortions to which that market is subject and which result from dumping practices (see judgment of 11 September 2024, *Vyatsky Plywood Mill v Commission*, T-32/22, not published, EU:T:2024:617, paragraph 136 and the case-law cited).
- 68 It is therefore, in principle, contrary to the purposes of the anti-dumping legislation that, having established the existence or likelihood of the continuation or recurrence of dumping causing injury, the institutions should refrain from imposing or maintaining anti-dumping duties, in order to ensure that access of the product concerned to the EU market is not restricted in any way. Such an option risks restricting competition on that market by providing an additional benefit to exporters selling dumped products, which could allow them to oust Union producers (judgments of 30 April 2015, *VTZ and Others v Council*, T-432/12, not published, EU:T:2015:248, paragraph 167, and of 11 September 2024, *Vyatsky Plywood Mill v Commission*, T-32/22, not published, EU:T:2024:617, paragraph 137).

- 69 In that context, it is apparent from Article 21 of the basic regulation that, in the examination of the Union interest, the Commission must engage in a balancing of all of the interests present including, in particular, the potentially divergent interests of the Union industry and users (see, to that effect and by analogy, judgment of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 44) and that, in that balancing, the respective weight attached to the interest of the Union industry and that of users is not the same.
- 70 That asymmetry is also confirmed by the last sentence of Article 21(1) of the basic regulation, under which, in order for anti-dumping measures not to be applied despite a finding of dumping and resulting injury, the Commission must 'clearly' be able to conclude that such measures are not in the Union interest. In other words, the balancing of interests must clearly lean in favour of the parties opposed to such measures. Conversely, it must be possible to impose anti-dumping duties where they do not have a disproportionate effect on the interests of those latter parties.
- 71 It follows from the foregoing that the applicant has no grounds to dispute the Commission's not finding that the imposition of such measures served the interest of users.
- 72 In the second place, it should be borne in mind that, according to the case-law, although the Commission must take all the different interests into account, it is apparent from Article 21(7) of the basic regulation that it is for the parties concerned to adduce the evidence in support of their allegations (see, to that effect and by analogy, judgment of 15 June 2017, *T.KUP*, C-349/16, EU:C:2017:469, paragraph 47).
- 73 It is apparent from the contested regulation that, first of all, the Commission considered that the imposition of anti-dumping duties was 'clearly' in the Union interest (see recital 427 of that regulation). The applicant has not adduced any evidence capable of calling into question the plausibility of that assessment.
- 74 Next, the Commission examined the interest of unrelated importers/traders (see recitals 428 to 430 of the contested regulation), users (see recitals 431 to 483 of that regulation), and suppliers (see recital 484 of that regulation) in the imposition of anti-dumping measures.
- 75 First of all, the Commission found that the imposition of anti-dumping measures would not have a disproportionate impact for unrelated importers/traders (see recitals 429 and 430 of the contested regulation) and was in the long-term interest of suppliers (see recital 484 of that regulation).
- 76 The applicant merely alleges, without further clarification, that the Commission did not have sufficient information to establish precisely the interest of those two categories of traders.
- 77 Next, after having examined the interest of users (see recitals 431 to 483 of the contested regulation), the Commission concluded that nor would they be disproportionately affected by the imposition of measures (see recitals 459 and 483 of that regulation).
- 78 In order to call that conclusion into question, the applicant relies solely on two series of arguments put forward by users in recitals 440, 451 and 460 to 463 of the contested regulation and on the Commission's response in recitals 452, 471, 477 and 481 of that regulation.
- 79 First, the applicant relies on recitals 440 and 451 of the contested regulation in order to claim that, according to the users, the imposition of measures would increase their production costs and, therefore, their prices significantly and that that factor was particularly important in view of increasing raw material and energy

prices, inflation and supply chain issues. It criticises the Commission for having failed to examine, in recital 452 of that regulation, first, whether the additional costs had been passed on to customers and, second, what impact there had been on the profitability of products containing fatty acids.

80 Secondly, the applicant refers to recitals 460 to 463 of the contested regulation to argue that, according to the users, the imposition of measures would disrupt the Union market and lead to supply issues for certain product types. Referring to recitals 471, 477 and 481 of that regulation, it criticises the Commission for merely stating that those disruptions would be mitigated over time as Union producers and their customers would adapt to the market conditions created by the measures.

81 In that regard, the Commission responded to the arguments of users opposed to the measures, after having emphasised that it had not been able to confirm the veracity of many of their allegations, in particular those put forward by 11 of them in their comments on the final disclosure, as most of them had not cooperated in the investigation (see recital 443 of the contested regulation), a point not disputed by the applicant.

82 It is in fact apparent from the contested regulation that only four small-scale users, belonging to two groups and accounting for only 6 to 9% of total imports from Indonesia, 4 to 7% of total Union consumption and 2 to 4% of total imports from other countries during the investigation, cooperated in the investigation and provided replies to the users' questionnaire (see recitals 52, 432, 434, 455 and 479 of the contested regulation).

83 However, none of the large multinational group users cooperated, with the result that the Commission was unable to ascertain in respect of them the quantity of fatty acid used in production or the importance of fatty acid in the production cost (see recitals 446 to 449 and 454 of the contested regulation).

84 Nor did five smaller companies and groups who had purchased smaller quantities of the product concerned cooperate (see recital 456 of the contested regulation).

85 In that context:

- one large group, Procter and Gamble International Operations SA ('P&G'), stated inter alia that the imposition of measures would jeopardise its access to a reliable source of supply of fatty acid, would lead to increased production costs which would eventually be passed on to its customers and would disrupt supply chains from Indonesia at a time when demand for fatty acid was strong and Union producers were running at full capacity (see recital 440 of the contested regulation);
- the Greven group, composed of the users Peter Greven Nederlands CV and Peter Greven GmbH & Co. KG, claimed that that demand could not be met without the imports from Indonesia (see recital 440 of the contested regulation);
- four other groups stated that the assessment of the interest of users should take account of increasing raw material and energy prices, inflation and supply chain issues (see recital 451 of the contested regulation).

86 The Commission replied to the arguments referred to in paragraph 85 above as follows:

- it had not been able to assess the impact of the imposition of measures on P&G's activity, as that group had not submitted a reply to the user questionnaire and had not provided detailed information on its purchases of fatty acid and their weight in terms of cost in the finished goods (see recital 441 of the contested regulation);
  - the potential impact of the parameters referred to in recital 451 of that regulation (see paragraph 85, third indent, above) on the user industry had not been substantiated and it did not have evidence for determining whether extra costs had been passed on to users' customers, what impact there had been on the profitability of products containing fatty acids and whether, in any event, those developments were of a lasting nature (see recital 452 of that regulation).
- 87 The Commission's position in that regard is in accordance with Article 21(7) of the basic regulation.
- 88 The Commission also replied to P&G and the Greven group to the effect that the measures would not lead to a shortage of supply of fatty acid on the Union market, given that the Union industry and Malaysia had sufficient production capacity (see recital 442 of the contested regulation).
- 89 Next, it is apparent from the contested regulation that the unproven allegations of the large users could be relativised by the public information showing the size and increase of their turnover and profits, and also their high profitability levels (see recitals 446, 448 and 454 of that regulation). The Commission considered that that information supported its view that those large purchasers of fatty acid would not be disproportionately affected by the measures (see recitals 448 and 454 of that regulation).
- 90 The Commission further noted that the information submitted by the smaller user companies that 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 (see recital 456 of the contested regulation).
- 91 The Commission considered, however, that the impact of measures on all users would be mitigated by the fact that, first, users did not exclusively sell products which contained fatty acids; second, 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; and, third, the finished goods made using fatty acid were often exported outside the European Union, which meant that processing arrangements under customs control would be available to reduce the impact of measures (see recital 456 of the contested regulation).
- 92 The applicant has not adduced any evidence capable of calling into question the plausibility of the Commission's assessments referred to in paragraphs 88 to 91 above.
- 93 Lastly, the Commission considered that the potential impact of the measures, in terms of price increases, had to be balanced against the risk of a discontinuation of Union industry activity, given that the situation found during the investigation was not sustainable and that not imposing measures would lead to less reliable and stable sources of supply and, inevitably, to price increases on the Union market (see recital 439 of the contested regulation).
- 94 The applicant submits that the Commission has not established the risk of activity disruption, referring in that regard to the position of the Union producers. Yet the only evidence on which it relies to substantiate

that alleged position are the withdrawal of the complaint and KLK's comments on the final disclosure which, for the reasons set out in paragraphs 47 to 49, 51 to 57 and 60 above, are not probative.

- 95 It follows from the foregoing that the applicant has failed to adduce evidence capable of calling into question the plausibility of the Commission's assessment of the facts which led it to conclude that the imposition of anti-dumping duties would serve the Union interest and would not have a disproportionate effect on users.
- 96 Consequently, the alleged manifest error of assessment and the infringement of Article 21(1) of the basic regulation have not been established.
- 97 It is also apparent from the contested regulation that the Commission concluded that the imports of the product concerned were being dumped in a manner injurious to the Union industry, a point not disputed by the applicant. Consequently, nor is the alleged infringement of Article 9(4) of the basic regulation proven.
- 98 It follows from the foregoing that the second plea in law is unfounded and must, therefore, be rejected in its entirety.

***The third plea in law: infringement of Article 2(3) and (6) and Article 9(4) of the basic regulation through the use of an unreasonable profit margin to construct the normal value of two product types sold in non-representative quantities on the domestic market***

- 99 By the third plea in law, which is divided into three parts, the applicant contests the normal value taken into account by the Commission for two product types, bearing Product Control Numbers (PCN) IV1121418NY0 and IV418XXXXNY0, which it exported to the European Union but did not sell in representative quantities on the Indonesian domestic market.

*The first part: infringement of Article 2(3) of the basic regulation*

- 100 By the first part, the applicant submits that the normal value of two product types referred to in paragraph 99 above was constructed contrary to Article 2(3) of the basic regulation. It criticises the Commission for having constructed that value by applying the first sentence of Article 2(6) of that regulation and thus used in that calculation a profit margin of 35.32% for the first product type and 91.24% for the second, which was unreasonable. It argues in that regard that:

- that margin corresponded to the profit made on a volume of sales on the Indonesian domestic market ('the domestic sales') of those two product types which was not sufficiently representative, within the meaning of Article 2(2) of that regulation, to be taken into account;
- the margin used for the second product type (PCN IV418XXXXNY0) resulted in its constructed normal value being identical to its average sales price on the domestic market; however, that normal value constructed in accordance with Article 2(3) and (6) of that regulation could not be identical to the normal value calculated on the basis of the prices of non-representative sales on that market;
- in accordance with the first sentence of Article 2(6) of the basic regulation, although the amount of profit should preferably be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, that is on condition that that option leads to a reasonable amount, in accordance with Article 2(3) of that regulation; where this is not the case, the

Commission must use the alternative bases provided for in the second sentence of Article 2(6) of that regulation.

- 101 The Commission disputes the applicant's line of argument.
- 102 In that regard, the first subparagraph of Article 2(1) of the basic regulation sets out the principal method which must, in principle, be used for determining the normal value. The normal value is, in principle, based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country (see, to that effect, judgment of 12 May 2022, *Commission v Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 78 and the case-law cited).
- 103 Under Article 2(2) of the basic regulation, sales of the like product intended for domestic consumption are normally to be used to determine the normal value if such sales volume constitutes 5% or more of the sales volume of the product under consideration in the European Union. However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.
- 104 Article 2(3) of the basic regulation provides that the principal method must be disapplied and that the normal value of the like product must then be constructed, inter alia when there are no or insufficient sales of the like product in the ordinary course of trade, that is to say, when they are not representative within the meaning of Article 2(2) of that regulation (see, to that effect and by analogy, judgment of 15 September 2016, *PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council*, T-139/14, not published, EU:T:2016:499, paragraph 44). One of the alternative methods applicable in those circumstances is the calculation of the normal value on the basis of the cost of production in the country of origin, plus a reasonable amount for selling, general and administrative costs and for a reasonable profit margin.
- 105 The methods for calculating that reasonable profit margin in order to construct the normal value under Article 2(3) of the basic regulation are governed by Article 2(6) of that regulation (see, to that effect, judgment of 14 July 2021, *Interpipe Niko Tube and Interpipe Nizhnedneprovsky Tube Rolling Plant v Commission*, T-716/19, EU:T:2021:457, paragraph 78).
- 106 The first sentence of Article 2(6) of the basic regulation provides that the amounts for profits which are to be used in the calculation of the normal value under the first subparagraph of Article 2(3) of that regulation are to be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product by the exporter or producer under investigation. Three other methods are then listed in that provision in the event that those amounts may not be determined thusly.
- 107 Thus, the basic principle governing the determination of the normal value is that that value must be based on elements relating to the ordinary course of trade (judgment of 14 July 2021, *Interpipe Niko Tube and Interpipe Nizhnedneprovsky Tube Rolling Plant v Commission*, T-716/19, EU:T:2021:457, paragraph 71), the objective being to determine the price level of the product concerned to be determined as it would result from normal market forces in the absence of dumping (judgment of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraph 220 (not published)). That criterion guides the assessment of the reasonableness of the values and parameters used for determining the normal value

(see, to that effect, judgment of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraph 96).

- 108 It follows from Article 2(4) of the basic regulation that domestic sales of the like product may be deemed not to have taken place in the ordinary course of trade and must, in that case, be excluded from the determination of the normal value, when they do not make a profit. That is the case when it is established that, over a period of at least six months, the weighted average selling price is below the weighted average unit cost, or that sales below the unit cost represent at least 20% of sales being used to determine normal value (judgments of 28 April 2022, *Yieh United Steel v Commission*, C-79/20 P, EU:C:2022:305, paragraph 47, and of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraph 230 (not published)).
- 109 In the present case, the parties agree that the domestic sales of the product types referred to in paragraph 99 above made by the applicant were not representative within the meaning of Article 2(2) of the basic regulation, because they accounted for less than 5% of the sales of those product types exported to the European Union and that, consequently, the normal value of those product types had to be constructed as provided for in Article 2(3) and (6) of the basic regulation.
- 110 In the application and the reply, nor did the applicant dispute the point that the domestic sales of the product types referred to in paragraph 99 above during the investigation period were made in the ordinary course of trade within the meaning of Article 2(3), (4) and (6) of the basic regulation. The Commission found in that regard that 100% of the domestic sales of the second product type (PCN IV418XXXNY0) and 80% of those of the first product type (PCN IV1121418NY0) were profitable, that is to say, they were made at a price exceeding production costs and selling, general and administrative costs.
- 111 In that context, in order to construct the normal value of the product types referred to in paragraph 99 above, the Commission used the actual profit margin from the domestic sales of the product types made in the ordinary course of trade.
- 112 That position is in accordance with the first sentence of Article 2(6) of the basic regulation, inasmuch as it requires the Commission, in principle, to base itself on actual data pertaining to production and sales, provided that those sales are made in the ordinary course of trade and, therefore, when they cover a sufficient share of production costs. The use of those actual data is not, however, subject to any quantitative criterion relating to the volume of those sales and, in particular, their representativeness within the meaning of Article 2(2) of that regulation.
- 113 In that regard, first, it is apparent from the case-law that the methods for constructing the normal value provided for in Article 2(6) of the basic regulation should be considered in the order in which they are set out and that, consequently, the profit margin for constructing the normal value must be calculated primarily by reference to the profit realised by the exporting producer on profitable sales of like products on the domestic market and it is only if the data are unavailable, unreliable or not suitable for use that the profit margin is to be calculated by reference to data other than the actual profits realised on domestic sales of the like product by the exporting producer concerned (see, to that effect and by analogy, judgments of 7 May 1991, *Nakajima v Council*, C-69/89, EU:C:1991:186, paragraph 36, and of 13 February 1992, *Goldstar v Council*, C-105/90, EU:C:1992:69, paragraphs 35 and 36).

- 114 Moreover, it should be borne in mind that the provisions of the basic regulation must be interpreted, in so far as possible, in the light of the corresponding provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103), contained in Annex 1 A to the Agreement establishing the World Trade Organization (WTO) (OJ 1994 L 336, p. 3) (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).
- 115 Article 2(6) of the basic regulation reproduces, in essence, Article 2.2.2 of the Agreement on Implementation of Article VI of the GATT. The interpretation of that latter provision is related to that of the former provision, referred to in paragraph 113 above, by imposing, for the construction of the normal value, the use of actual data, where available, pertaining to sales made in the ordinary course of trade, on the domestic market of the exporting country, to determine inter alia the amounts corresponding to profits (see, to that effect, report of the Appellate Body of the WTO on the dispute 'European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil', adopted on 18 August 2003 (WT/DS219/AB/R, paragraph 97); report of the Panel of the WTO on the dispute 'European Union – Anti-dumping measures on biodiesel from Argentina', adopted on 26 October 2016 (WT/DS473/R, paragraphs 7.236, 7.337 and 7.338), and report of the Appellate Body of the WTO on that dispute, adopted on 26 October 2016 (WT/DS473/AB/R, paragraph 6.34)).
- 116 Secondly, the condition relating to the normal commercial nature of the domestic sales must, in principle, be distinguished from the representativeness of those sales, inasmuch as, where those sales do not attain the representativeness threshold of 5%, that does not necessarily mean that they did not take place in the ordinary course of trade (see, to that effect, judgment of 30 April 2013, *Alumina v Council*, T-304/11, EU:T:2013:224, paragraphs 24 and 25, and of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraphs 205, 208 to 210, 212 and 213 (not published)).
- 117 Thus, the volume and profitability of those sales must not be conflated. Accordingly, low sales volumes in the ordinary course of trade should not be excluded from the calculation of the normal value (see, to that effect, report of the Appellate Body of the WTO on the dispute 'European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil', adopted on 18 August 2003 (WT/DS219/AB/R, paragraph 98), and report of the Panel of the WTO on the dispute 'European Communities – Anti-Dumping Measure on Farmed Salmon from Norway', adopted on 15 January 2008 (WT/DS337/R, paragraphs 7.304, 7.306 and 7.308)).
- 118 Furthermore, that interpretation must prevail, even if it means that, for the construction of the normal value, values identical to those which were not taken into consideration because they corresponded to non-representative sales are used (see, to that effect, report of the Panel of the WTO on the dispute 'European Communities – Anti-Dumping Measure on Farmed Salmon from Norway', adopted on 15 January 2008 (WT/DS337/R, paragraph 7.303)).
- 119 Thirdly, the reliability of the data used by the Commission is not questioned by the applicant. It does not dispute the level of profit margins actually realised by it on domestic sales of the product types referred to in paragraph 99 above.

- 120 Consequently, the fact that the application of the method provided for in the first sentence of Article 2(6) of the basic regulation gave rise to the use of high profit margins for the product types referred to in paragraph 99 above does not in itself constitute an indication that such margins are unreasonable, since they were caused by the applicant's own pricing policy pursued on the Indonesian domestic market (see, to that effect, judgment of 13 February 1992, *Goldstar v Council*, C-105/90, EU:C:1992:69, paragraph 38) and in the ordinary course of trade.
- 121 Thus, the use of actual margins to construct the normal value for the product types referred to in paragraph 99 above cannot give rise to an infringement of Article 2(3) of the basic regulation. The fact that the domestic sales which gave rise to those margins are not representative is not in itself an impediment thereto.
- 122 None of the other arguments put forward by the applicant can call that conclusion into question.
- 123 In the first place, the applicant submits that the profit margins used to calculate the normal value for the product types referred to in paragraph 99 above are, respectively, about six times and fifteen times higher than the reasonable profit margin of 6% used to determine the underselling margin for the Union industry.
- 124 In that regard, the Commission was correct in stating in the contested regulation that that percentage, provided for by Article 7(2c) of the basic regulation, was the minimum profit of the Union industry, suffering injury caused by the dumped imports, which served to calculate the target price and injury margin. Accordingly, that is a different concept than the profit margin on domestic sales in the ordinary course of trade for exporters, which serves to construct the normal value (see recital 164 of that regulation).
- 125 Consequently, the minimum profit of the Union industry is irrelevant for determining whether the method provided for in the first sentence of Article 2(6) of the basic regulation to construct the profit margin using the actual profit margin realised by exporting producers on domestic sales must be applied.
- 126 In the second place, the applicant refers to the fact that the profit margins used for the product types referred to in paragraph 99 above are up to six times and higher than those used in the anti-dumping investigation which gave rise to Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 141, p. 6) and Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2). It submits that, in the case that led to the adoption of those two acts ('the biodiesel case'), which concerned a sector related to that of the present investigation and which was subject to the same type of government regulation, the Commission did not use the profit based on actual data pertaining to production and sales, but used a profit amount which it had deemed reasonable.
- 127 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, not on the basis of alleged previous 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, 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).

- 128 The determination of the profit margins is accordingly based on an assessment which must be carried out on a case-by-case basis (see, to that effect, judgment of 1 October 2014, *Council v Alumina*, C-393/13 P, EU:C:2014:2245, paragraph 30).
- 129 In any event, in the biodiesel case, the Council of the European Union and the Commission had based themselves on the fact that domestic biodiesel sales had not been done in the ordinary course of trade to rule out the use of actual profit and production costs in the construction of the normal value of that product (see, to that effect, judgment of 15 September 2016, *PT Musim Mas v Council*, T-80/14, not published, EU:T:2016:504, paragraph 9, 15 and 16).
- 130 In the present case, the applicant has not disputed in the application the fact that domestic sales of the like product had been in the ordinary course of trade and that, consequently, the fact set out in paragraph 129 above concerning the biodiesel case did not correspond to the situation of those domestic sales.
- 131 However, at the hearing and in its comments of 21 November 2024 referred to in paragraph 58 above, the applicant stated that the raw materials distortions had led to the application, on domestic sales of the like product incorporating the same raw materials as those used in the biodiesel case, of artificially high profit margins which had not been achieved in normal conditions of competition on a free and open market. It inferred therefrom that the Commission ought to have applied to the two product types referred to in paragraph 99 above a profit margin of 15% identical to that which it had applied in the biodiesel case in which it had been found that there was a market distortion relating to those same raw materials.
- 132 In that regard, under Article 76(d) and Article 84(1) of the Rules of Procedure, the argument referred to in paragraph 131 above is a new argument which was put forward out of time and must therefore be dismissed as inadmissible.
- 133 The first part must therefore be rejected.

*The second part: infringement of the first sentence of Article 2(6) of the basic regulation*

- 134 By the second part, put forward in the alternative, the applicant submits that the Commission infringed the first sentence of Article 2(6) of the basic regulation, in calculating the profit margin to be used for constructing the normal value of the two product types referred to in paragraph 99 above solely on the basis of the profit derived from the respective profitable domestic sales of those two product types. In so far as those domestic sales were not representative within the meaning of Article 2(2) of that regulation, the profit margin for those two product types should have been calculated on the basis of the profit from all profitable domestic sales made in the ordinary course of trade of the like product, that is to say all product types taken together, otherwise the provisions of Article 2(2), (3) and (6) of that regulation would be rendered meaningless.

- 135 The applicant relies on the fact that Article 2(6) of the basic regulation uses the concept of 'like product' and that, in the present case, the Commission considers that that concept covers all types of the product concerned or of the product under investigation.
- 136 The Commission disputes the applicant's line of argument.
- 137 As a preliminary point, it is apparent from Article 2(10) and (11) of the basic regulation that the dumping margin is calculated by making a fair comparison between the export price of the product concerned under investigation and the normal value of the like product sold on the domestic market of the exporting country and that calculation must reflect the full degree of dumping being practised (see, to that effect and by analogy, judgments of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener v Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraphs 54 and 67, and of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraphs 49 and 52).
- 138 The subdivision of the product concerned and the like product sold on the domestic market into product types enables a fair comparison to be ensured under Article 2(10) of the basic regulation (see, to that effect and by analogy, judgments of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener v Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 59, and of 15 October 2020, *Zhejiang Jiuli Hi-Tech Metals v Commission*, T-307/18, not published, EU:T:2020:487, paragraph 53).
- 139 In fact, since the dumping margin is not necessarily the same for all product types, a comparison is made of the normal value and export prices by product type, which makes it possible to take into account the differences in the dumping margin according to those types and to attach weight to the respective importance of the product types according to their share in the total amount of dumping and, in so doing, properly reflect the full degree of dumping (see, to that effect and by analogy, judgment of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraphs 84 and 170 (not published)).
- 140 In the present case, for each exporting producer included in the sample, the Commission subdivided the like product by product type and identified the product types sold on the Indonesian domestic market that were identical or comparable to those sold for export to the European Union (see recital 131 of the contested regulation). It is apparent from the file that the applicant exported 12 product types to the European Union, sold seven of those on that domestic market and did not sell the five others on that market.
- 141 The Commission then examined whether the domestic sales by each sampled exporting producer for each product type that was identical or comparable to a product type sold for export to the European Union were representative within the meaning of Article 2(2) of the basic regulation. It concluded that certain of those sales were not (see recital 132 of the contested regulation).
- 142 Lastly, the Commission defined the proportion of profitable sales on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic regulation (see recital 133 of the contested regulation).
- 143 It is apparent from the file that that method by product type showed that the domestic sales of the two product types referred to in paragraph 99 above were not representative, but that 80% of those of the

first (PCN IV1121418NY0) and all of those of the second (PCN IV418XXXXNY0) had been profitable. Following that finding, the Commission, acting pursuant to Article 2(3) and the first sentence of Article 2(6) of the basic regulation, constructed the normal value for each of those two product types using actual data from the profitable domestic sales (see the first sentence of recital 140 of the contested regulation).

- 144 The applicant does not dispute the subdivision of the like product into product types in order to construct the normal value, or the construction of that value using actual data from domestic sales under the first sentence of Article 2(6) of the basic regulation.
- 145 The applicant does, however, maintain that the domestic sales of the two product types referred to in paragraph 99 above were not representative and argues that they should be excluded from the product type-based method for calculating their profit margin. It submits that the two product types were like and infers therefrom that the first sentence of Article 2(6) of the basic regulation required the profit margin for those two product types sold in insufficient quantities to be calculated on the basis of all profitable domestic sales of the like product, that is to say, all products taken together.
- 146 That position is at odds with the Commission's 'product type by product type' method, the full application of which to the five other product types sold on the Indonesian domestic market is not disputed by the applicant.
- 147 That position is also at odds with the requirement that the choice of data for determining the profit margin for the two product types referred to in paragraph 99 above and constructing their normal value leads to the calculated dumping margin accurately reflecting the extent of the dumping. The applicant's position is in fact based on the premiss that the average profit margin of the five other product types sold by it on the domestic market accurately reflects those of those two product types. However, the actual data available show that that is not the case, since the respective profit margin of those five product types ranges from 34.1% to 57.7%.
- 148 Consequently, under Article 2(6) of the basic regulation, the profit margin for constructing the normal value for the two product types had to be calculated primarily by using the profit realised by the applicant on profitable domestic sales of like products and it is only if the data were unavailable, unreliable or not suitable for use that that profit margin had to be calculated by reference to data other than the actual profits realised on domestic sales of two like product types (see, to that effect and by analogy, judgments of 7 May 1991, *Nakajima v Council*, C-69/89, EU:C:1991:186, paragraph 36, and of 13 February 1992, *Goldstar v Council*, C-105/90, EU:C:1992:69, paragraphs 35 and 36).
- 149 In the present case, however, the data relating to the respective domestic sales for the two product types referred to in paragraph 99 above were available. Secondly, the applicant does not validly dispute that those domestic sales were realised under normal trade conditions (see paragraphs 130 to 132 above). Thirdly, the fact that those sales were not representative within the meaning of Article 2(2) of the basic regulation does not prove that those data were unreliable or not suitable for use.
- 150 Consequently, the first sentence of Article 2(6) of the basic regulation required the Commission to calculate the profit margin for the product types referred to in paragraph 99 above using domestic sales of those product types; the fact that those sales were not representative is irrelevant (see paragraphs 112 to 118 above). Whilst the comparison of the normal value and the export price by product type makes it possible

to properly reflect the extent of dumping in accordance with Article 2(11) of the basic regulation, the volume of sales of product types on the domestic market does not in itself have any impact on the overall dumping margin (see, to that effect and by analogy, judgment of 20 September 2019, *Jinan Meide Casting v Commission*, T-650/17, EU:T:2019:644, paragraphs 170 and 177 (not published)).

151 The second part must accordingly be rejected.

*The third part: infringement of Article 9(4) of the basic regulation*

152 By the third part, the applicant maintains that the methodology used by the Commission to construct the normal value for the two product types referred to in paragraph 99 above results in an inflated normal value and that, consequently, the definitive anti-dumping duty of 46.4% imposed on it infringes Article 9(4) of the basic regulation, since it exceeds the amount of the dumping margin.

153 The Commission disputes the applicant's line of argument.

154 In that regard, the applicant has not established that the method used to construct the normal value of the two product types referred to in paragraph 99 above was unlawful or that the anti-dumping imposed on it thereby exceeded the dumping margin. The alleged infringement of Article 9(4) of the basic regulation has accordingly not been established.

155 It follows from the foregoing that the third part must be rejected, as must therefore the third plea.

***The fourth plea in law: error of law resulting from the construction of the normal value of the product types not sold on the domestic market on the basis of Article 2(3) of the basic regulation, without first establishing whether that value could be determined on the basis of the second subparagraph of Article 2(1) of that regulation***

156 By the fourth plea in law, the applicant contests the normal value taken into account by the Commission for five product types which it exported to the European Union but did not sell on the Indonesian domestic market ('non-matching product types').

157 The applicant alleges in that regard an infringement of the second subparagraph of Article 2(1) of the basic regulation. It complains that the Commission constructed the normal value of five non-matching product types on the basis of Article 2(3) and (6) of that regulation, without having examined whether that value could be calculated on the basis of the second subparagraph of Article 2(1) of that regulation, that is to say, on the basis of the price of the domestic sales of those product types in the ordinary course of trade by Wilmar, the other sampled exporting producer.

158 The applicant submits that there is nothing in the contested regulation to suggest that the Commission examined, or even envisaged, such a possibility. It further submits that that question formed part of the essential facts and considerations which should have been included in the final disclosure.

159 The Commission disputes the applicant's line of argument as inadmissible, on the ground that it was not put forward during the administrative procedure, and unfounded.

160 In that regard, the first and second subparagraphs of Article 2(1) of the basic regulation provides as follows:

'The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

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

- 161 According to the case-law, the first and second subparagraphs of Article 2(1) and the first subparagraph of Article 2(3) of the basic regulation establish a hierarchy between the methods for determining the normal value laid down therein, by giving priority to the method based on sales of the like product sold on the domestic market, provided for by the first provision, over the construction based on production costs, provided for in the second provision (see, to that effect, judgments of 12 May 2022, *Commission v Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraphs 78 to 81 and 84 and the case-law cited).
- 162 Thus, under the first subparagraph of Article 2(3) of the basic regulation, the general principle laid down in Article 2(1) of that regulation may be derogated from only when there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison. Under that derogation, the normal value is then calculated either on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, that is to say, by constructing the normal value, or on the basis of representative export prices. Those derogations from the method for fixing the normal value on the basis of actual prices are exhaustive (see, to that effect and by analogy, judgment of 1 October 2014, *Council v Alumina*, C-393/13 P, EU:C:2014:2245, paragraphs 20 and 21 and the case-law cited; see also, to that effect, judgment of 12 May 2022, *Commission v Hansol Paper*, C-260/20 P, EU:C:2022:370, paragraph 80).
- 163 In the present case, the Commission stated in paragraph 103 of the final disclosure that, where it had not found domestic sales for a particular product type in the ordinary course of trade, where those sales were insufficient or where a product type was not sold in representative quantities on the domestic market, it had calculated the normal value in accordance with Article 2(3) and (6) of the basic regulation, unless it was considered more appropriate to use the price of a sufficiently comparable product type sold on the domestic market which could be adjusted for differences in physical characteristics for the purposes of ensuring a fair comparison with the relevant export price, in accordance with Article 2(10) of the basic regulation.
- 164 Paragraph 103 of the final disclosure was reproduced in the same terms in recital 138 of the contested regulation.
- 165 Next, it is apparent from Annex 2 to the final disclosure that the Commission constructed the normal value for all non-representative product types, that is to say, those for which the total volume of domestic sales accounted for less than 5% of the total sales of comparable product types exported to the European Union. That category included the product types not sold on the domestic market.
- 166 Moreover, in an annex to the additional final disclosure, it was stated first, that, of the 12 product types that the applicant had exported to the European Union, 5 were not sold by it on the Indonesian domestic market; secondly, that the Commission had constructed the normal value of those five product types in accordance with Article 2(3) of the basic regulation; and, thirdly, the factors taken into account in that calculation and the result thereof were set out.

- 167 The procedure described in paragraph 103 of the final disclosure, reproduced in recital 138 of the contested regulation, is consistent with the hierarchy introduced by Article 2(1) and (3) of the basic regulation, referred to in paragraphs 161 and 162 above. In particular, the Commission states that it resorted to construction of the normal value in accordance with Article 2(3) and (6) of the basic regulation for the product types for which no domestic sales in the ordinary course of trade had been made or for which those sales were insufficient. That category of product types accordingly included non-matching product types for which relevant sales data were unavailable from either the applicant or Wilmar.
- 168 The Commission confirmed this point in the defence, stating that it had not found sales prices for non-matching product types on the Indonesian domestic market from Wilmar or a sufficiently comparable product type and that it had accordingly constructed the normal value for those product types.
- 169 The applicant has not adduced any evidence capable of casting doubt on the fact that the Commission followed the procedure described in recital 138 of the contested regulation and in paragraph 103 of the final disclosure for the non-matching product types.
- 170 It submits, however, that the explanations given in the defence on this matter were not provided in the contested regulation or during the administrative procedure and that they should accordingly be disregarded.
- 171 In that regard, the defence confirm information that could be implicitly inferred from recital 138 of the contested regulation and paragraph 103 of the final disclosure (see paragraph 167 above).
- 172 Moreover, the detail of the calculations of the normal value 'product type by product type' and the result of those calculations are essential considerations for the purposes of Article 20(2) of the basic regulation which the Commission must communicate in the final disclosure (see, to that effect and by analogy, judgment of 30 June 2016, *Jinan Meide Casting v Commission*, T-424/13, EU:T:2016:378, paragraphs 136 and 198).
- 173 However, Article 20(2) of the basic regulation does not require the Commission to specify in the final disclosure all the factual or legal matters on the basis of which it is considering imposing definitive anti-dumping duties (see, to that effect and by analogy, judgment of 10 mars 2009, *Interpipe Niko Tube and Interpipe NTRP v Council*, T-249/06, EU:T:2009:62, paragraph 146 and the case-law cited).
- 174 Moreover, according to settled case-law, it is sufficient for the Commission to set out in a regulation imposing definitive anti-dumping duties only those facts and legal considerations having decisive importance in the scheme of that regulation, and also a clear justification for the principal factors included in its analysis (see, to that effect and by analogy, judgment of 30 June 2016, *Jinan Meide Casting v Commission*, T-424/13, EU:T:2016:378, paragraph 126 and the case-law cited, and of 14 December 2022, *PT Ciliandra Perkasa v Commission*, T-138/20, not published, EU:T:2022:810, paragraph 148 and the case-law cited).
- 175 However, the Commission is not required to mention in such a regulation matters which were manifestly irrelevant or insignificant or plainly of secondary importance (see judgment of 15 June 2010, *Mediaset v Commission*, T-177/07, EU:T:2010:233, paragraph 143 and the case-law cited).

- 176 In particular, it is not possible to require that the EU institutions should set out the various facts, which may be very numerous and complex, on the basis of which the regulation was adopted, or a fortiori that they should provide a more or less complete evaluation of those facts (see judgments of 20 January 2022, *Commission v Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 89 and the case-law cited, and of 30 June 2016, *Jinan Meide Casting v Commission*, T-424/13, EU:T:2016:378, paragraph 126 and the case-law cited).
- 177 The statement of reasons can be reinforced in that regard only when the interested parties insist during the administrative procedure on obtaining answers or clarifications in respect of the key method to be used by the Commission in making the calculations, in such a way that the persons concerned are able to understand the calculations thus made (see, to that effect, judgment of 14 December 2022, *PT Ciliandra Perkasa v Commission*, T-138/20, not published, EU:T:2022:810, paragraph 149 and the case-law cited).
- 178 It is thus for the interested parties in an anti-dumping investigation procedure to place the institutions in a position to assess the difficulties which the absence of an element in the information put at their disposal could cause them. A fortiori, such an interested party is not entitled to complain before the Court that information was not put at its disposal if, in the course of the investigation procedure that led to the contested anti-dumping regulation, it did not make any request to the institutions in relation to that particular information (see judgments of 30 June 2016, *Jinan Meide Casting v Commission*, T-424/13, EU:T:2016:378, paragraphs 93 and 169 and the case-law cited, and of 14 December 2017, *AETMD v Council*, T-460/14, not published, EU:T:2017:916, paragraph 66 and the case-law cited).
- 179 In the present case, the Commission informed the applicant during the administrative procedure of the following:
- the procedure followed to calculate the normal value of the non-matching product types, in paragraph 103 of the final disclosure, which was in accordance with the hierarchy introduced by Article 2(1) and (3) of the basic regulation (see paragraph 167 above), and the basis for calculating the normal value of each of those product types thus used in that procedure; that information was reproduced in the contested regulation;
  - the data taken into account in that calculation, the different steps in the calculation and its result (see paragraphs 163 to 166 above).
- 180 That information comprised essential facts and considerations on the basis of which the Commission intended to recommend the imposition of anti-dumping duties within the meaning of Article 20(2) of the basic regulation, which it was required to communicate to the applicant during the administrative procedure, since that information related to data actually used to calculate the normal value of the non-matching product types, which it did.
- 181 By contrast, the information relating to the verification of the availability of data that could have been used to calculate the normal value of the non-matching product types, but that turned out to be unavailable, is not an essential consideration, since by definition that data could not be used as a basis for the imposition of the anti-dumping duties envisaged.

- 182 During the administrative procedure, the applicant did not put forward any remark or request for clarification from the Commission concerning the calculation of the normal value of the non-matching product types or, in particular, concerning the lack of information relating to any relevant data from Wilmar that might have enabled modifications to the calculation method used.
- 183 In that context, in accordance with the case-law referred to in paragraphs 174 to 178 above, the Commission did not have to provide additional clarification in the contested regulation about the calculation of the normal value of the non-matching product types, in particular about the unavailability of data that prevented the application of the second subparagraph of Article 2(1) of the basic regulation, and the applicant may not complain before the EU Courts that that information was not made available to it.
- 184 Lastly, as regards the insufficient statement of reasons in the contested regulation relied on by the applicant, in that recital 138 does not state that the Commission ascertained whether Wilmar or other producers were selling the non-matching product types on the Indonesian market, that information could be implicitly inferred from that recital (see paragraph 167 above). Moreover, that same information had been communicated to the applicant in the final disclosure and, in the absence of any reaction by it on that matter, the statement of reasons in the regulation did not have to be further elaborated on in that regard. That argument must accordingly be rejected.
- 185 First of all, it follows from the foregoing that the applicant has not established that the Commission had not examined whether the normal value of the non-matching product types could be calculated on the basis of the second subparagraph of Article 2(1) of the basic regulation, before constructing that value in accordance with Article 2(3) of that regulation.
- 186 Moreover, without its being necessary to rule on the plea of inadmissibility put forward (see, to that effect, judgment of 11 July 2014, *DTS Distribuidora de Televisión Digital v Commission*, T-533/10, EU:T:2014:629, paragraphs 170 and 171), the Commission has satisfied its obligation to provide the information required of it by setting out the essential facts and considerations concerning the manner in which the normal value of the non-matching product types had been calculated.
- 187 Consequently, the fourth plea in law must be rejected.

***The fifth plea in law: infringement of Article 9(4) of the basic regulation and manifest error of assessment resulting from the application of an incorrect exchange rate to certain values relating to transactions of ICOF Europe***

- 188 By the fifth plea in law, the applicant alleges that an incorrect exchange rate was used for the purpose of converting into its accounting currency, the US dollar (USD), the net invoice values and the cost, insurance and freight values ('CIF values') relating to 11 transactions made by its related trader, ICOF Europe ('the 11 transactions'). It argues in that regard that:
- in so far as the 11 transactions were invoiced in USD, the Commission should have used the net invoice values of those transactions denominated in that currency; instead, it applied to those values, as converted into euros by the applicant, a fixed EUR/USD exchange rate of 1.00 to convert them again into USD;

- the Commission should have converted into USD the CIF values of those transactions reported in euros by applying the daily EUR/USD exchange rates and not that same fixed exchange rate of 1.00.
- 189 The application of the exchange rate fixed at 1.00 to those two types of values led to the fixing of a dumping margin which was 0.31% too high and, consequently, to the imposition of an anti-dumping duty exceeding the margin of dumping as it should have been established, contrary to Article 9(4) of the basic regulation. The Commission also made a manifest error of assessment by imposing such a duty, which was not substantiated by the facts.
- 190 The Commission submits that that the plea in law is inadmissible inasmuch as it has not been substantiated and, in the alternative, is based on factual arguments that were not put forward during the administrative procedure.
- 191 The applicant submits that it is entitled to rely for the first time on the argument underlying that plea in the application. First, that plea is based on facts known to the Commission when it adopted the contested regulation. Secondly, it is a plea in law and not a plea in fact, since the application of an incorrect exchange rate constitutes an error of assessment which led to the imposition of an anti-dumping duty exceeding the margin of dumping as it should have been established.
- 192 In that regard, it is apparent from the file and undisputed points of the parties' written pleadings that:
- a list of 2 295 transactions of ICOF Europe was provided to the Commission in response to the questionnaire sent to exporting producers in an Excel file; the list of the 11 transactions produced in two tables in Annex A.22 to the application ('the tables') is an extract from that file;
  - most of those 2 295 transactions were invoiced by ICOF Europe in euros, but the 11 transactions were invoiced in USD;
  - the Commission requested the applicant inter alia to produce, for each of the 11 transactions, the following eight series of data: the value invoiced by ICOF Europe (column 34 of the tables), the invoice currency (column 40), the exchange rate (column 41), the net invoice value in accounting currency (column 44), the CIF value in accounting currency (column 45), the exchange rate for conversion in currency of exporting country (column 67), the net invoice value in currency of exporting country (column 68) and the CIF value in currency of exporting country (column 69);
  - the applicant provided the first five series of the aforementioned data, but did not provide information for the last three series of aforementioned data;
  - the Commission deduced and calculated those missing data itself using that data that had been provided to it; in particular, it applied an exchange rate of 1.00 (in column 67 of the tables) to convert, first, the net invoice value in accounting currency (column 44) communicated by the applicant in net invoice value in currency of exporting country (column 68) and, second, the CIF value in accounting currency (column 45) communicated by the applicant in CIF value in currency of exporting country (column 69).
- 193 It follows from the foregoing that, in applying such an exchange rate of 1.00 (column 67 of the tables), the Commission believed, wrongly in the applicant's view, that, for the 11 transactions, the accounting

currency for the values in columns 44 and 45 of the tables and the currency of exporting country for the values in columns 68 and 69 of those tables were the same, namely USD.

- 194 According to settled case-law, the legality of a contested measure falls to be assessed on the basis of the elements of fact and of law available to the EU institution which was the author of that measure at the time when the measure was adopted. In particular, the assessments made by that institution must be examined solely on the basis of the information available to it at the time when those assessments were made (see judgment of 12 February 2014, *Beco v Commission*, T-81/12, EU:T:2014:71, paragraph 44 and the case-law cited; see also, to that effect, judgments of 16 December 2015, *VTZ and Others v Council*, T-108/13, not published, EU:T:2015:980, paragraph 91 and the case-law cited, and of 20 March 2019, *Foshan Lihua Ceramic v Commission*, T-310/16, EU:T:2019:170, paragraph 129 and the case-law cited).
- 195 It follows that an applicant may not rely on facts which were not known to the Commission and which it did not bring to the Commission's attention during the administrative procedure. On the other hand, there is nothing preventing the applicant from formulating against the contested decision a legal plea which was not put forward at the stage of that procedure (see, to that effect, judgments of 11 May 2005, *Saxonia Edelmetalle and ZEMAG v Commission*, T-111/01 and T-133/01, EU:T:2005:166, paragraph 68 and the case-law cited, and of 9 November 2022, *Cambodia and CRF v Commission*, T-246/19, EU:T:2022:694, paragraph 38).
- 196 In the present case, the plea is based on an alleged error in calculation relating to the currency conversion of the net invoice amounts and the CIF values of the 11 transactions.
- 197 The applicant maintains that it is an error of law for the purposes of the case-law referred to in paragraph 195 above, as it led to an infringement of Article 9(4) of the basic regulation, inasmuch as it led to a distortion in the calculation of the dumping margin and the fixing of the anti-dumping duty.
- 198 In that regard, Article 9(4) of the basic regulation provides, first, that a definitive anti-dumping duty is to be imposed 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 of that regulation (first subparagraph) and, second, that the amount of the anti-dumping duty is not to exceed the margin of dumping established (second subparagraph).
- 199 The Commission observes, correctly, that Article 9(4) of the basic regulation does not regulate how the dumping margin is to be calculated, that is to say, the matter concerned by the alleged error. The applicant may not, therefore, allege infringement of that provision in order to categorise the error in calculation it alleges as an error of law. It is, on the contrary, a mere error of fact which, according to the case-law referred to in paragraph 195 above, the applicant is barred from raising for the first time in the application if it did not raise it beforehand with the Commission during the administrative procedure.
- 200 In that regard, first, the Commission submits, without being contradicted on the point by the applicant, that the alleged error concerned data that it ought to have produced, but did not communicate and that it ought to have deduced itself from the other information provided.
- 201 Secondly, nor does the applicant dispute the point that at no time during the administrative procedure did it bring the alleged error to the Commission's attention and that, in particular:

- on 1 August 2022, the Commission provided the applicant with all data used in the dumping calculation with the final disclosure, including the data concerned by the alleged error, in order to enable it to lodge any comments it may have had; yet, in its comments on the final disclosure lodged on 29 August 2022, the applicant did not flag up any error concerning the currency conversion of those data;
- as the Commission had accepted certain comments from the applicant concerning other matters, it revised its conclusion and sent the applicant the additional final disclosure on 4 October 2022, on which the applicant lodged comments on 10 October 2022, but nor did those comments flag up any error concerning the exchange rates used.

202 It follows from the foregoing that the applicant has not established that, during the administrative procedure, the Commission had been made aware of all factual elements that would have enabled it to avoid making the alleged error concerning the currency exchange of certain values relating to the 11 transactions. In particular, whilst that error is in part attributable to the applicant, since it did not provide the relevant data requested, it did not flag it up to the Commission during the administrative procedure, whereas it had the opportunity to do so on at least two occasions during that procedure. Thus, it did not enable the allegedly incorrect data to be rectified, if necessary.

203 Consequently, in accordance with the case-law referred to in paragraph 195 above, the applicant was barred from alleging such an error of fact for the first time in the action. Nor, therefore, may it allege a manifest error of assessment arising from that error of fact.

204 For the foregoing reasons, the fifth plea in law must be rejected.

205 Consequently, the action must be dismissed in its entirety.

### **Costs**

206 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it 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 Musim Mas to pay the costs.**

Porchia

Madise

Nihoul

Delivered in open court in Luxembourg on 2 July 2025.

V. Di Bucci

M. van der Woude