[2014] UKUT 0274 (TCC)

Appeal number: FTC/37/2013
FTC/38/2013
FTC/39/2013

ANTI-DUMPING DUTY – whether the validity of Council Regulation (EC) No. 1470/2001 should be referred to the Court of Justice of the European Union

UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)

TARGETTI (UK) LIMITED

Appellant

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

TRIBUNAL: MR JUSTICE NEWEY

Sitting in public in London on 19, 20 and 26 March 2014

Mr Timothy Lyons QC, instructed by Dr Avv. Maurizio Gambardella and Avv. Davide Rovetta, for the Appellant

Mr Kieron Beal QC, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The question raised by this appeal is whether the validity of Council Regulation (EC) No 1470/2001 ("the Definitive Regulation") should be referred to the Court of Justice of the European Union ("CJEU"). In a decision dated 21 December 2012 ("the Decision"), the First-tier Tribunal (Judge Greg Sinfield) concluded that no such reference is necessary. However, the appellant, Targetti (UK) Limited ("Targetti"), challenges the Decision and contends that there ought to be a reference to the CJEU.

Basic facts

2. Targetti, which is a wholly-owned subsidiary of Targetti Sankey Spa, provides architectural lighting. In the course of its business, it has imported into the United Kingdom integrated electronic compact fluorescent lamps (or "CFL-i") made in the People's Republic of China ("the PRC"). The particular lamps at issue in the present proceedings were supplied by Hangzhou Duralamp Electronics Co Limited ("Hangzhou") and brought into this country in March and April 2007. HM Revenue and Customs ("HMRC") levied anti-dumping duty in accordance with the Definitive Regulation. Targetti appealed to the First-tier Tribunal ("FTT") on the basis that the Definitive Regulation is invalid.

Outline history of the relevant anti-dumping legislation

3. In 2001, following an investigation by the European Commission initiated in the previous year, a provisional anti-dumping duty was imposed on imports of CFL-i from the PRC by Commission Regulation (EC) No 255/2001 ("the Provisional Regulation"). The duty was to apply for six months, but the Definitive Regulation was adopted within that period. This provided for a definitive anti-dumping duty of up to 66.1% to be imposed on imports of CFL-i from the PRC.

4. In 2005, the anti-dumping measures were extended to imports of CFL-i from Vietnam, Pakistan and the Philippines, but in the following year direct current CFL-i were excluded from them. In October 2007, after an expiry review, it was decided that the remaining anti-dumping duties should be discontinued after a year, and there is accordingly no longer any anti-dumping duty on CFL-i originating in the PRC.

The European anti-dumping regime

5. At the relevant times, the imposition of anti-dumping duty was governed by Council Regulation (EC) No 384/96 of 22 December 1995 ("the Basic Regulation"). Article 1 of this laid down the principles. Article 1(1) stated that

an anti-dumping duty could be applied to "any dumped product whose release for free circulation in the Community causes injury". Article 1(2) explained that a product was "dumped" if "its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country". The term "like product" was, under article 1(4), to be "interpreted to mean a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration".

6. Article 2 was concerned with determining whether there was dumping and, if so, its extent. It provided for a "fair comparison" to be made between the "export price" and the "normal value" (see article 2(10)). "Normal value" was generally to be based on "the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country". The rules were, however, modified in relation to imports into the European Community from non-market economy countries such as the PRC. Unless it was shown that market economy conditions prevailed in the relevant respects, "normal value" fell to be determined under article 2(7) on the basis of:

> "the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin."

"Dumping margin" was stated to be "the amount by which the normal value exceeds the export price" (see article 2(12)).

7. Article 3 required it to be demonstrated that "the dumped imports are causing injury" within the meaning of the regulation (see article 3(6)). Article 3(2) provided for a determination of injury "to be based on positive evidence and … involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products; and (b) the consequent impact of those imports on the Community industry".

8. Under article 9(4), the Council of the European Union was to impose a definitive anti-dumping duty where "the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21". The amount of such duty was, however, not to exceed the "margin of dumping established" and was to be less than this "if such lesser duty would be adequate to remove the injury to the Community industry" (article 9(4)).

9. Article 20 of the Basic Regulation gave interested parties a right of access to the facts and considerations underlying the imposition of anti-dumping duty. Article 20(1) stated as follows with regard to provisional measures:

> "The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter."

As for definitive measures, article 20(2) said this:

> "The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, … particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures."

10. The Basic Regulation is to be interpreted in the light of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("the Anti-Dumping Code"), which was referred to in the recitals to the Basic Regulation: see e.g. Case T-256/97 *Bureau Européen des Unions des Consommateurs v Commission* [2000] ECR II-101, at paragraphs 64-67, and Case C-76/00 P *Petrotub SA v Council* [2003] ECR I-79, at paragraphs 52-57.

References to the CJEU

11. A national Court has no power to declare acts of Community institutions invalid. If, therefore, a national Court considers there to be a well-founded argument that a relevant regulation is invalid, it cannot so rule itself but must ask the CJEU to determine the regulation's effectiveness. That is not to say, however, that a national Court must make a reference whenever it is alleged by a party that a regulation is invalid, regardless of whether the point taken has any substance.

12. The position was explained as follows in Case C-344/04 *IATA v Department of Transport* [2006] ECR I-403:

> "27 It is settled case-law that national courts do not have the power to declare acts of the Community institutions invalid. The main purpose of the jurisdiction conferred on the Court by Article 234 EC is to ensure that Community law is applied uniformly by national courts. That requirement of uniformity is particularly vital where the validity

> of a Community act is in question. Differences between courts of the Member States as to the validity of Community acts would be liable to jeopardise the very unity of the Community legal order and undermine the fundamental requirement of legal certainty …. The Court of Justice alone therefore has jurisdiction to declare a Community act invalid ….
>
> 28 Article 234 EC does not constitute a means of redress available to the parties to a case pending before a national court and therefore the mere fact that a party contends that the dispute gives rise to a question concerning the validity of Community law does not mean that the court concerned is compelled to consider that a question has been raised within the meaning of Article 234 EC …. Accordingly, the fact that the validity of a Community act is contested before a national court is not in itself sufficient to warrant referral of a question to the Court for a preliminary ruling.
>
> 29 The Court has held that courts against whose decisions there is a judicial remedy under national law may examine the validity of a Community act and, if they consider that the arguments put forward before them by the parties in support of invalidity are unfounded, they may reject them, concluding that the act is completely valid. In so doing, they are not calling into question the existence of the Community act ….
>
> 30 On the other hand, where such a court considers that one or more arguments for invalidity, put forward by the parties or, as the case may be, raised by it of its own motion …, are well founded, it is incumbent upon it to stay proceedings and to make a reference to the Court for a preliminary ruling on the act's validity ….
>
> 32 Consequently, the answer to the eighth question must be that, where a court against whose decisions there is a judicial remedy under national law considers that one or more arguments for invalidity of a Community act which have been put forward by the parties or, as the case may be, raised by it of its own motion are well founded, it must stay proceedings and make a reference to the Court for a preliminary ruling on the act's validity."

13. Having regard to the *IATA* case, among others, Mitting J considered in *R (Telefonica O2 Europe plc) v Secretary of State for Business Enterprise and Regulatory Reform* [2007] EWHC 3018 (Admin) (at paragraph 4) that he should refer an issue as to the validity of a regulation to the CJEU if "satisfied that the challenge to its validity is reasonably arguable or, put negatively, not unfounded". Mr Timothy Lyons QC, who appeared for Targetti, said that he was happy to proceed on the basis that this is an appropriate approach.

Challenges to anti-dumping regulations

14. It is clear from the authorities, first, that the European institutions are recognised as having a wide discretion in relation to anti-dumping measures but, secondly, that there are grounds on which the CJEU will annul an anti-dumping measure as regards an applicant. The position was summarised in these terms in Case T-158/10 *The Dow Chemical Company v Council* [2012] ECR II-0000 (at paragraph 21):

> "At the outset, it must first be noted that, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the institutions of the European Union enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine …. In that respect it must be held that the examination of the likelihood of a continuation or recurrence of dumping and of injury involves the assessment of complex economic matters and the judicial review of such an appraisal must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there have been manifest errors in the assessment of those facts or a misuse of powers …."

Did Judge Sinfield apply the right test?

15. Mr Lyons argued that, in the present case, Judge Sinfield applied the wrong test. What he had to consider was whether Targetti's challenge to the validity of the Definitive Regulation was "reasonably arguable or, put negatively, not unfounded" (to quote from Mitting J), but he in fact (so it was said) simply decided whether or not he accepted Targetti's contentions.

16. At the beginning of the Decision, however, Judge Sinfield noted that, if the FTT considered that one or more of the arguments in relation to the validity of the Definitive Regulation was reasonably arguable or not unfounded, it had to stay the proceedings and make a reference to the CJEU (paragraph 4 of the Decision). Judge Sinfield returned to the test he had to apply in paragraph 34 of the Decision, where he concluded that he:

> "should make a reference if I am satisfied that Targetti's submissions that the Definitive ADD Regulation is invalid are reasonably arguable".

Earlier on (in paragraph 5 of the Decision), Judge Sinfield had summarised his overall view in these terms:

> "For the reasons set out below, I have concluded that none of Targetti's submissions that the Definitive ADD Regulation is invalid

> are reasonably arguable and, therefore, the Tribunal should not make a reference to the CJEU for a preliminary ruling."

When Targetti applied for permission to appeal, Judge Sinfield explained (in paragraph 4 of his decision on the application):

> "I set out at [4] and discussed at [34] of the decision the task of the Tribunal when considering whether to refer a question on validity of an EU instrument to the CJEU. I had the passage from *IATA and ELFAA* cited by Targetti in its grounds of appeal (and in the Decision) as well as the commentary by Mitting J in *Telefonica* in mind when considering whether or not to make a reference. I did not state in relation to each point that I did not consider it to be reasonably arguable, to use Mitting J's formulation, but that was implicit in the rejection of the various arguments put forward by Targetti for the reasons given."

17. In the circumstances, I do not accept that Judge Sinfield applied the wrong test. He did not decide whether Targetti's criticisms of the Definitive Regulation were in fact correct, but rather (as Mr Lyons said that he should have) whether its points were reasonably arguable.

Does the grant of permission to appeal mean that Targetti's challenge to the Definitive Regulation is reasonably arguable?

18. Judge Sinfield acceded in part to Targetti's application for permission to appeal. To take just one example, he said in his decision on the application:

> "Targetti contends that I applied too narrow an interpretation of Article 253 [of the Treaty establishing the European Community] and erred in concluding that the methodology for calculating the dumping margin was 'too remote to qualify as a reason'. I accept that the issue of whether the methodology for calculating the dumping margin is too remote is an issue of law turning on the proper application of the duty to give reasons. I consider that is an arguable point and I give permission to appeal."

19. Mr Lyons submitted that it can be seen that Judge Sinfield himself saw some of Targetti's points as reasonably arguable and, accordingly, that he should have made a reference to the CJEU. When, however, dealing with costs issues, Judge Sinfield said (at paragraph 17 of his decision):

> "I do not accept the submission that the grant of permission to appeal means that Targetti has a reasonably arguable case that the Regulation is invalid (i.e. that Targetti effectively won its appeal). If I had considered that Targetti had a reasonably arguable case then I would have made a reference to the CJEU. The grant of permission to appeal

> by me and by the Upper Tribunal means no more than that it is arguable that my refusal to make a reference was an error of law. To put it another way, the grant of permission to appeal is an acceptance that it is arguable that Targetti has an arguable case."

20. Mr Lyons suggested that it is not useful to try to distinguish between cases that are "arguable" and cases that are "arguably arguable". To my mind, however, the distinction Judge Sinfield drew is an intelligible one. Even, however, if there were an inconsistency between (a) declining to make a reference and (b) granting permission to appeal, it would not necessarily follow that Judge Sinfield ought to have referred the validity of the Definitive Regulation to the CJEU. The true position could rather be that Targetti should not have been granted permission to appeal.

The grounds on which the Definitive Regulation is challenged

21. Targetti challenges the validity of the Definitive Regulation in part on substantive grounds and in part on the basis that the Provisional and Definitive Regulations did not adequately explain the reasons for which they were made. I shall first consider the substantive grounds of challenge (in paragraphs 22-71 below) before moving on to address the reasons given for the regulations.

Manifest error: Community interest

22. Several provisions of the Basic Regulation referred to the "Community interest". Article 7(1) stated that provisional measures could be imposed if, among other things, "a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury". Article 9(4) provided for a definitive anti-dumping duty to be imposed where:

> "the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21".

Article 21 read as follows:

> "A determination as to whether the Community 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 and consumers; and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. 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 Community interest to apply such measures."

23. In the present case, having provisionally concluded that dumped imports had caused material injury to the Community industry (see e.g. recital (99) of the Provisional Regulation), the Commission devoted recitals (100) to (118) of the Provisional Regulation to the Community interest. Recital (102) explained that:

> "it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures in this particular case."

At the end of this section of the recitals, recital (118) stated:

> "Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties."

24. The Definitive Regulation explained that the findings of dumping, injury and causation were confirmed, and Community interest was addressed in recitals (36) to (46). Recital (46) read:

> "On the basis of the above, the findings set out in recitals 100 to 118 of the provisional Regulation are confirmed, i.e. there are no compelling reasons on the grounds of Community interest against the imposition of anti-dumping duties."

25. Mr Lyons criticised this recital. Under the Basic Regulation, he said, anti-dumping duty was to be imposed only where it was positively called for. In contrast, recital (46) of the Definitive Regulation (like recital (118) of the Provisional Regulation) merely stated that there were no compelling reasons *against* imposing anti-dumping duty. In the circumstances, it must (so it was said) be at least reasonably arguable that there has been manifest error.

26. As, however, Judge Sinfield noted (in paragraph 47 of the Decision), recital (46) of the Definitive Regulation reflected the third sentence of Article 21 of the Basic Regulation ("Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities … can clearly conclude that it is not in the Community interest to apply such measures"). Moreover, Article 9(4) of the Basic Regulation specifically cross-referred to article 21: anti-dumping duty was to be imposed where "the Community interest calls for intervention *in accordance with Article 21*" (emphasis added). The Community interest was thus to be assessed on the basis for which article 21 provided.

27. Article 21 was recently considered by the General Court ("the GCEU") in Case T-459/07 *Hangzhou Duralamp Electronics Co, Ltd v Council*. In paragraph 182 of the judgment, the GCEU said:

> "[I]t is apparent from the third sentence of Article 21 [of the Basic Regulation] that, where the other conditions for the imposition of an anti-dumping duty – namely dumping, injury and a causal link – have been fulfilled, the institutions may refrain from applying duties only where they can clearly conclude that such action is not in the Community interest. In other words, if it is found that injurious dumping exists, anti-dumping measures must be imposed unless the interests against such an action clearly outweigh the interest in eliminating trade distorting effects and restoring effective competition."

28. In the circumstances, I do not think it is reasonably arguable that the Definitive Regulation is invalid because recital (46), in keeping with the third sentence of article 21 of the Basic Regulation, stated that there were "no compelling reasons on the grounds of Community interest against the imposition of anti-dumping duties" rather than, affirmatively, that there were compelling reasons to impose duties.

Manifest error: assessment by European Union institutions

Order of adjustments to normal value

29. As mentioned earlier (paragraph 6), the export price had to be compared with "normal value" to determine whether there was dumping and, if so, its extent. Where, as here, the relevant imports were from a non-market economy country, "normal value" had to be assessed by reference to prices in a third, market economy country (the "analogue" country). In the present context, Mexico was used as the analogue country. The normal values of products from Mexico thus had to be adjusted to take account of differences between those products and those exported from the PRC.

30. The recitals of the Provisional Regulation said this about the adjustments:

> "(39) For the purposes of a fair comparison between normal value and the export price at an ex-works level due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability. These adjustments were made, where appropriate, in respect of physical characteristics, level of trade, discounts and rebates, transport, insurance, handling, loading and ancillary costs, commissions and credit costs in accordance with Article 2(10) of the basic Regulation.

(40) With regard to adjustments for differences in physical characteristics, it should be noted that Mexican production covered 17 product types, all of which were sold in the ordinary course of trade. For those product types exported by the Chinese exporting producers to the Community but not sold on the Mexican domestic market, normal values were determined by applying adjustments to the normal value of the closest-resembling product type sold on the Mexican market. Adjustments were made for differences in voltage, lifetime, wattage and type of cover …."

31. An adjustment of 8.66% was made in relation to wattage. Where that was the only adjustment, it affected normal value by 2.45 pesos. If, on the other hand, it was the second of two adjustments, the effect on normal value was reduced to a little less than 2.00 pesos.

32. Targetti argued before the FTT that it was manifestly erroneous to adopt a methodology that denied a constant factor a constant effect. However, the expert called by Targetti, Mr Cliff Stevenson, did not maintain that the approach adopted by the Commission was an impermissible one. Judge Sinfield explained (in paragraph 52 of the Decision):

> "Mr Stevenson did not say that the methodology of sequential or layered adjustments was flawed. In reply to a question from Mr Beal [counsel for HMRC], Mr Stevenson said that if the Commission had said that they would use layered adjustments then he would have no criticism of the methodology per se. The criticism was that Mr Stevenson did not know what methodology had been used ie whether they made a single adjustment or sequential adjustments."

33. In the circumstances, I do not consider it reasonably arguable that there has been manifest error as regards the wattage adjustments made. I shall come later to the adequacy of the reasons given in the regulations. In the light, however, of Mr Stevenson's concession, I cannot see how any challenge to the methodology as such could possibly succeed before the CJEU.

Voltage adjustments

34. Mr Lyons argued that, although voltage adjustments should have been made, there is evidence that they were not.

35. However:

(a) It is for an applicant to adduce evidence of manifest error (see Case T-35/01 *Shanghai Teraoka Electronic Co. Ltd v Council* [2004] ECR II-3663, at paragraph 119 of the judgment);

(b) Recital (40) of the Provisional Regulation spoke of adjustments having been made for, among other things, differences in voltage;

(c) There are references to adjustments in respect of voltage in the disclosure that the Commission gave (in accordance with normal practice – see paragraph 9 above) following the making of the Provisional Regulation. For example, a spreadsheet mentions a 19.03% "General adjustment", and another documents explains that "the Mexican normal values had to be adjusted downwards to take into account the two general differences mentioned above [one of which related to voltage], which affected the comparison of all the products types";

(d) In a letter dated 10 December 2010 to Targetti's lawyers, the Commission stated:

"As to the normal value, it has to be kept in mind that this company was not granted Market Economy Treatment (MET). This means that its export prices were compared with the normal value of Philips Mexicana. The adjustment of 19.03% you mentioned in your question (i) was made on this normal value. However, as the company has not waived confidentiality, in these circumstances the listing of the normal value cannot be disclosed."

36. In the light of these matters, I do not think Targetti would have any real prospect of establishing manifest error in relation to voltage adjustments.

Zeroing

37. As explained earlier, the extent of a dumping margin was established by comparing normal value and export price. A dumping margin existed where the normal value was greater than the export price. Where, on the other hand, the normal value was less than the export price, there was no (or a negative) dumping margin. In the past, it was, I gather, common to treat the dumping margin in such circumstances as zero rather than a negative figure. The practice (which is known as "zeroing") is, however, now recognised to contravene the Basic Regulation. The CJEU explained the position as follows in Case C-351/04 *Ikea Wholesale Ltd v Commissioners of Customs & Excise* [2007] ECR I-7723:

"56. Article 2(11) of the basic regulation states that the weighted average normal value is to be compared with 'a weighted average of prices of all export transactions to the Community'. In this case, in making that comparison, the use of the practice of 'zeroing' negative dumping margins was in fact made by modifying the price of the export transactions. Therefore, by using that method the Council did not calculate the overall dumping margin by basing its calculation on

comparisons which fully reflect all the comparable export prices and, therefore, in calculating the margin in that way, it committed a manifest error of assessment with regard to Community law.

57. It follows that the Community institutions acted in a manner incompatible with Article 2(11) of the basic regulation by applying, in the calculation of the dumping margin for the product under investigation, the practice of 'zeroing' to negative dumping margins for each of the relevant product types."

38. It transpires that zeroing was used when calculating the dumping margin by reference to which the duty levied in the present case was set. Mr Lyons submitted that there has, accordingly, been manifest error. Judge Sinfield agreed, but took the view that this did not matter because the zeroing had not in the event altered the amount of levy charged (see paragraphs 58 and 59 of the Decision).

39. Mr Lyons suggested that Judge Sinfield might have gone too far when he said that the zeroing had had no impact on the relevant levies. It seems to me, however, that the evidence fully justified the Judge's conclusion. The rate of duty applied as regards Targetti's imports was the 66.1% rate used for all companies other than the particular ones specified in the Definitive Regulation. The 66.1% rate can be seen to have been derived from a weighted average of figures for (a) cooperating companies (63.1%) and (b) non-cooperating companies (66.3%). It is apparent from information provided by the Commission that zeroing was adopted in the calculation of the 63.1%, which was based on data relating to exporters known as Firefly and Ningbo Super Trend. Without the zeroing, the dumping margin would have been 63.0971% instead of 63.0998%. Since, however, the figure was rounded to one decimal place, the zeroing was of no practical significance. The figure for cooperating companies would have been 63.1% (to one decimal place) with or without zeroing.

40. Mr Lyons also argued that the use of zeroing warranted a reference to the CJEU even if it plainly had no effect on the amount of the relevant duty. He submitted that the implications of zeroing in such a case have not yet been addressed by the CJEU and that it is not for a national Court to decide that a regulation can stand where zeroing was used.

41. As, however, was pointed out by Mr Kieron Beal QC, who appeared for HMRC, the authorities show that the CJEU looks to see whether a manifest error was significant. Thus, in the *Shanghai Teraoka* case, the Court of First Instance, having found an error, said (in paragraph 167):

> "As a second step, it is necessary to examine the effects of that error in the present case …. For the judgment to be annulled it is not sufficient that the Council committed an error. That error must also have had an

impact on the determination of whether there is injury and thus on the content of the regulation itself."

Case T-410/06 *Foshan City Nanhai Golden Step Industrial Co. Ltd v Council* [2010] ECR II-879 is to similar effect (see paragraph 97 of the judgment of the GCEU).

42. Judge Sinfield referred to the reasoned order the CJEU made in Case C-348/11 *Thomson Sales Europe SA v Administration des Douanes* [2012] ECR I-0000, of which at the time there was no English translation. Now that an English version is available, it can be seen that the order does not provide secure support for the proposition for which Judge Sinfield cited it. I do not think, however, that that matters. The cases mentioned in the previous paragraph show that an error will not justify the annulment of a regulation if it can be seen to have been of no significance.

43. In short, I do not think there is any real prospect of Targetti obtaining the annulment of the Definitive Regulation on the basis of the use of zeroing.

Identification of the Community industry

44. Article 3(6) of the Basic Regulation required it to be demonstrated that dumped imports were causing "injury" within the meaning of the regulation (see paragraph 7 above). "Injury" was defined in article 3(1) as "material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry". The term "Community industry" was itself explained in article 4 as "referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion … of the total Community production of those products". Where, however, "producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers" (article 4(1)(a)).

45. In the present case, one of the Community producers that had originally complained of dumping informed the Commission that it no longer wished to be treated as a complainant. Data relating to this producer were not therefore taken into account, and the two remaining Community producers were deemed to constitute the Community industry (recitals (49) and (52) of the Provisional Regulation). Recital (50) of the Provisional Regulation recorded that these producers "account for more than 85% of the Community production of CFL-i during the IP [i.e. investigation period]".

46. Recital (51) of the Provisional Regulation referred to the fact that the relevant Community producers themselves imported product from the PRC. As to this, the recital said:

> "During the IP [i.e. investigation period], on average 14.6% of the total sales of CFL-i by these producers in the Community originated in the country concerned. However, despite these sales of imported CFL-i, the primary activity of these companies remained in the Community. Furthermore, the sales are explained by the need for the complainants to complete their product range so as to be able to satisfy demand, as well as by the attempt to defend themselves against low priced imports due to dumping. Consequently, the described trading activity of these producers did not affect their status as Community producers."

The Definitive Regulation stated that further investigation had "confirmed that, during the IP, on average 14.6% of the total sales of CFL-i by the Community producers originated in the country concerned" (recital (26)).

47. It is apparent from information provided to Targetti by the Commission in 2010 that between 50% and 60% of the product sold by one of the Community producers originated in the PRC. However, this producer accounted for only 15-25% of the total Community sales, while the producer with the larger market share (75-85% of total Community sales) imported only between 0.5% and 5% of product from the PRC.

48. Targetti complains, first, that the two Community producers were not considered separately and, secondly, that the evidence did not show either that the Community producers needed to complete their product range or that they were attempting to defend themselves against low-priced imports. The producer that imported the majority of its product from the PRC ought, it is said, to have been excluded from the Community industry.

49. With regard to the first of these points, Judge Sinfield expressed the view that the fact that the Community producers had been described together in the recitals did not mean that they had not been assessed separately. I agree. That is especially so since, as noted in recital (53) of the Provisional Regulation, the Commission considered that "all figures relating to [the producers] had to be indexed for confidentiality reasons".

50. Further, I do not think it is reasonably arguable that there was no evidence that the Community producers needed to complete their product range or were attempting to defend themselves. Judge Sinfield referred to such evidence in paragraph 77 of the Decision.

51. As for whether, overall, the producer that imported 50-60% of product from the PRC should have been excluded from the Community industry, it is apparent from the authorities that the Commission and Council had a discretion as to whether a Community producer should be excluded from the Community industry pursuant to article 4(1)(a) of the Basic Regulation. For example, in Case C-156/87 *Gestetner Holdings plc v Council* [1990] ECR I-781 the CJEU said (in paragraph 43 of the judgment):

"it is for the institutions, in the exercise of their discretion, to determine whether they should exclude from the 'Community industry' producers which are related to exporters or importers or are themselves importers of the dumped product."

The Court went on to say (in paragraph 49 of the judgment) that, on the facts of the case, the Council and Commission "did not exceed the margin of discretion which they enjoy".

52. It seems to me that, similarly, it is not reasonably arguable that the Council and Commission were *bound* to exclude from the Community industry the producer that imported from the PRC a majority of the product it sold.

Injury margin

53. The term "injury margin" is used to refer to the level of anti-dumping duty needed to remove injury to the Community industry in question. Injury margin need not correspond to the price *undercutting* margin (i.e. the extent to which the price of imported goods undercuts the price of equivalent Community products). Community producers may have lowered their prices in response to dumping. The price *underselling* (or "injury") margin thus compares the price of imported goods with the price that would have been charged by the Community industry assuming normal competitive conditions.

54. The recitals of the Provisional Regulation said this about the assessment of injury margins (under the heading "Injury elimination level"):

"(121) In order to establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of comparisons, per product type, at the same level of trade, of the weighted average export price, with the corresponding non-injurious price of CFL-i sold by the Community industry on the Community market.

(122) The non-injurious price has been obtained by deducting from the sales price of the Community industry its average actual profit and by adding a profit margin that may reasonably be reached in the absence of injurious dumping. In view of the financial situation of the Community industry in previous years (1996/97) and taking into account the need for long-term investments, a profit margin of 8 % has been found appropriate."

55. "Undercutting" was the subject of recitals (60) to (63) of the Provisional Regulation. Recital (60) stated:

> "The Commission has examined whether the exporting producers of the country concerned undercut the prices of the Community industry during the IP. For this purpose, the exporting producers' prices have been duly adjusted to a cif level, whereas the Community producers' prices have been adjusted to an ex-works level. For the analysis of the price undercutting, the exported CFL-i as well as those manufactured in the Community by the Community industry, were grouped according to the lifetime, wattage and the type of cover of the lamp. Within each group, the weighted average ex-works prices charged by the Community producers were compared, at the same level of trade, to the weighted average export prices. Adjustments for differences in physical characteristics were made where appropriate."

56. One of Targetti's complaints arises from the fact that, while recital (60) referred to adjustments for differences in physical characteristics in the context of undercutting, nothing similar was to be found in the recitals dealing with "Injury elimination level". While, however, undercutting and underselling are distinct concepts, they are not unrelated. In the present context, recital (122) of the Provisional Regulation pointed to the fact (which is confirmed by the provisional disclosure documentation) that the underselling and undercutting margins were based on the same product classification and intimately related: the underselling margin was arrived at by stripping out the actual profit on a product and substituting an 8% profit margin.

57. The recent decision of the GCEU in *Hangzhou Duralamp Electronics Co, Ltd v Council* is significant in this context. That case involved a challenge to Council Regulation (EC) No 1205/2007, which extended the validity of the Definitive Regulation. It was argued that the European Union ("EU") institutions had made a manifest error of assessment in considering that various categories of CFL-i were like products. Rejecting that submission, the Court said, among other things, in paragraph 73 of the judgment:

> "[A]s is clear from recital 9 in particular of the preamble to Regulation No 1470/2001 [i.e. the Definitive Regulation] and recital 60 in the preamble to the contested regulation, the institutions calculated the level of injury and the undercutting margins by comparing CFL-i with comparable lifetimes. As the Council explained both in its written submissions and at the hearing, the institutions compared prices by grouping the various types of CFL-i under different 'product control numbers', established on the basis of the specific features of the product, such as its lifetime, its power, its recovery, the potential presence of other integrated systems, its length and its diameter."

It is fair to say (as Mr Lyons did) that the decision will have been based on the specific evidence that was before the Court, but it is consistent with my own conclusions.

58. A separate criticism that Targetti advances is that the EU institutions failed to make adequate adjustments for differences that were identified in the evidence of Dr Nardi Dei, who gave expert evidence on Targetti's behalf before the FTT. As to this, Judge Sinfield said the following (in paragraph 87 of the Decision):

> "The burden of proving that the adjustments were not adequate rests on Targetti. In my view, Targetti has not established that the adjustments were inadequate for the purpose of ensuring that like products were compared with like. Mr Nardi Dei's evidence showed that there are a number of features that might distinguish the CFL-i produced in the PRC from those produced in Mexico. The evidence did not establish that the adjustments that were made produced an unreasonable estimate of the market value of the differences between the products as required by Article 2(10)(a) of the Basic Regulation. My conclusion is that Targetti has not established that there was a failure to make the necessary adjustments for the different characteristics of the products in order to calculate the injury margin and the price undercutting margin."

59. Mr Beal submitted that, whether or not Targetti disagrees with Judge Sinfield's factual evaluation, it discloses no error of law. I agree. On top of that, the case law indicates that the EU institutions will not be found to have committed a manifest error for failing to deal with contentions of fact that were not advanced to them by the interested parties (see e.g. paragraph 24 of the opinion of the Advocate General in Case C-535/06 P *Moser Baer India Ltd v Council* [2009] ECR I-7051), and the matters to which Dr Nardi Dei referred were not put before the Commission as relevant differences.

60. In short, I do not consider it reasonably arguable that the Definitive Regulation is invalidated by manifest error in relation to adjustments for the purpose of calculating injury margin.

Substitutability

61. It is Targetti's case that the Commission and Council committed a manifest error because they failed to investigate whether PRC products could be substituted for Community products. Injury to the Community industry could not, Mr Lyons argued, be caused by "like products" from the PRC unless they competed in the same market as those produced by the Community industry.

62. Judge Sinfield disposed of this point as follows (in paragraph 90 of the Decision):

> "My view is that there is no requirement that allegedly dumped products must be substitutable in order for injury to be established. The test to be applied is whether the product is a like product as defined by

> Article 1(4) of the Basic Regulation, that is to say a product that is alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. Recitals 12 and 13 to the [Provisional Regulation] state that the Commission found, after considering representations by exporting producers, that the CFL-i produced in the EU and the CFL-i from the PRC had the same basic physical and technical characteristics and so were alike within the meaning of Article 1(4) of the Basic regulation. Recitals 8 and 9 to the [Definitive Regulation] confirmed that the CFL-i made in the PRC were comparable with those made in the EU and that comparisons made for the purpose of calculating injury and undercutting margins were based on CFL-i with comparable lifetimes. I consider that the recitals show that the Commission applied the correct test, namely whether the products were alike rather than any stricter test of substitutability. Further, I consider that the representations of exporting producers and the use of CFL-i from the EU and the PRC with similar lifetimes for the purposes of comparison provided an adequate evidential basis for the conclusion that the PRC and EU products were alike."

63. Judge Sinfield's conclusions now derive a degree of support from the *Hangzhou* case, where the GCEU rejected arguments comparable to those advanced by Targetti. While the judgment will have been influenced by the particular evidence before the Court, the Court made the point that "the determination of 'the like product' falls within the exercise of the wide discretion given to the institutions and is therefore subject to limited review" (paragraph 71 of the judgment) as well as finding that CFL-i from the PRC and the EU "have the same basic physical and technical characteristics, are used for the same purpose, and are to a great extent interchangeable" (paragraph 74 of the judgment).

64. To my mind, it is not reasonably arguable that the Definitive Regulation is invalidated as a result of failure by the Commission and Council to give separate consideration to whether the different CFL-i were substitutable rather than (in accordance with article 1(4) of the Basic Regulation) whether they were "like" products.

Attribution of injury

65. Targetti complains that injury to the Community industry was wrongly attributed to imports from the PRC. This, it says, can be deduced from recital (35) of the Definitive Regulation, which stated:

> "In the absence of any new evidence, the findings on causation set out in recitals 84 to 99 of the provisional Regulation are confirmed, i.e.

that the dumped imports caused the material injury suffered by the Community industry."

According to Targetti, this shows that the EU institutions disregarded imports from Poland and Hungary (which were not at the time members of the EU).

66. The relevant legal principles can be seen from Case C-535/06 P *Moser Baer India Ltd v Council* [2009] I-7051. The CJEU said in its judgment in that case:

> "87 In determining injury, the Council and the Commission are under an obligation to consider whether the injury on which they intend to base their conclusions actually derives from the subsidised imports and must disregard any injury deriving from other factors, particularly from the conduct of Community producers themselves ….
>
> 88 In that regard, it is for the Community institutions to ascertain whether the effects of those other factors were not such as to break the causal link between, on the one hand, the imports in question and, on the other, the injury suffered by the Community industry. It is also for them to verify that the injury attributable to those other factors is not taken into account in the determination of injury within the meaning of Article 8(7) of the basic regulation and, consequently, that the countervailing duty imposed does not go beyond what is necessary to offset the injury caused by the subsidised imports."

67. It is apparent from this passage that it was incumbent on the EU institutions to consider whether the injury to the Community industry was attributable to imports from the PRC or, rather, to imports from Poland and Hungary. This, however, they plainly did. Recitals (87) to (91) of the Provisional Regulation were devoted to imports from Poland and Hungary. The Commission explained in recital (91) of the Provisional Regulation that it was "provisionally concluded that these imports did not break the causal link between dumping and injury", and recitals (33) to (35) of the Definitive Regulation returned to the subject. The work the Commission undertook is, moreover, evident from the disclosure it has given. Imports from Poland and Hungary were specifically considered in, for example, paragraph 4.3 of the provisional disclosure documentation and paragraph 5.4 of the definitive disclosure documentation.

68. In the circumstances, I do not think it is reasonably arguable that the Definitive Regulation can be impugned for manifest error in relation to the attribution of injury.

Comparison between dumping and injury margins

69. The "lesser duty rule" for which article 9(4) of the Basic Regulation provided (see paragraph 8 above) meant that anti-dumping duty was not to exceed the

lower of the dumping margin and the injury margin. It follows, Targetti contends, that it had to be possible to make a fair comparison between the two. That, however, was (so it is said) made difficult or impossible by the fact that the Commission used different product groupings when assessing the injury margin from those it adopted when assessing the dumping margin.

70. The Commission commented on this in the definitive disclosure documentation, where it said:

> "Some Chinese exporting producers claimed that the price undercutting calculations are invalid, as a wattage grouping was used which was different to that used for the calculation of the dumping margins.
>
> In this respect, it is confirmed that not exactly the same wattage grouping was used for the dumping calculations and for the price undercutting calculations, the latter grouping having a larger number of categories. However, it is to be noted that both the groupings covered the full wattage range of the product concerned. Moreover, in the case of the undercutting margin calculations, it was possible to have more narrowly defined ranges of wattage than in the case of dumping calculations. Furthermore, even if the same groupings would have been used, this would not have led to significantly different results."

71. In the light of this explanation, I cannot see that it is reasonably arguable that the approach that was taken to product groupings discloses manifest error. The different groupings were adopted for justifiable reasons, and the case law confirms that it is open to the EU institutions to use varying methodologies where that is appropriate on the particular facts (see Case C-511/09 P *Dongguan Nanzha Leco Stationery Mfg Co Ltd v Council* [2011] ECR I-10625, at paragraphs 25 and 26 of the judgment, and Case C-191/09 *Council v Interpipe Niko Tube ZAT* [2012] ER I-0000, at paragraphs 51 and 79 of the judgment).

Failure to give reasons

The obligation to give reasons

72. Article 296 of the Treaty on the Functioning of the European Union ("TFEU") provides:

> "Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties."

Similarly, article 253 of the Treaty establishing the European Community, which applied when the Provisional and Definitive Regulations were made, stated:

> "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty."

73. Reasons must, accordingly, be given for a regulation. These "must show clearly and unequivocally the reasoning of the Community authority which adopted the … measure, so as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to exercise its powers of review" (the *IATA* judgment, at paragraph 66). On the other hand, "[i]t is not necessary for the reasoning to go into all the relevant facts and points of law" (the *Petrotub* case, at paragraph 81). What is required depends (see *Petrotub*, at paragraph 81):

> "on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations."

In Case T-190/08 *CHEMK v Council* [2011] ECR II-7359, the GCEU explained (in paragraph 45 of the judgment):

> "[T]he statement of reasons need not give details of all relevant factual or legal aspects, and the question whether it meets the applicable requirements must be assessed with particular regard to the context of the measure and to all the legal rules governing the matter in question …. It is sufficient if the Council sets out the facts and legal considerations which have decisive importance in the context of the regulation …."

74. A failure to comply with the obligation to give reasons can of itself justify the annulment of a regulation. An anti-dumping regulation was annulled on this ground in the *Petrotub* case.

Order of adjustments to normal value

75. I have dealt above (paragraphs 29-33) with the contention that the EU institutions' approach to wattage adjustments was manifestly erroneous. Targetti also maintains that the approach was not adequately explained in the Provisional and Definitive Regulations. Mr Lyons argued that recitals (39) and (40) of the Provisional Regulation (which state, among other things, that

"[a]djustments were made for differences in … wattage …") were, at best, not full enough.

76. Judge Sinfield disagreed. He said (in paragraph 103(1) of the Decision):

> "Targetti submitted that there is no indication of the manner in which multiple adjustments were made …. The complaint seems to me to be that the methodology for calculating the dumping margin was not described in the recitals. In my view, the methodology is a step in the process of determining the dumping margin. I consider that it is too remote to qualify as a reason on which the [Provisional and Definitive] Regulations were based. It follows that the failure to include an explanation of the manner in which adjustments were made does not constitute a failure to state reasons."

77. I agree with the Judge's conclusion. I would not myself wish to say that matters of methodology cannot amount to reasons. In the circumstances of the present case, however, I am in no doubt that the Provisional and Definitive Regulations cannot be successfully impugned for failure to spell out the manner in which wattage adjustments were made. It is sufficient that the Regulations recorded that there had been such adjustments. There was no need "to go into all the relevant facts".

78. A comparable point arose in the *Hangzhou Duralamp* case. It was argued that the EU institutions had "failed to explain the methodology used in order to extrapolate the data relating to imports from China from the Eurostat data" (paragraph 106 of the judgment). The submission was, however, rejected. The GCEU said (in paragraph 107 of the judgment):

> "It must be emphasised that, contrary to what the applicant implies in its line of argument, the institutions were not required to specify all of the various matters of fact or law on which their findings are based. As regards the Eurostat data at issue, the institutions needed only to explain why and how those data were adjusted. The abovementioned recitals in the preamble to the contested regulation provide sufficient detail in that respect."

Voltage adjustments

79. As mentioned above (paragraph 35(b)), recital (40) of the Provisional Regulation referred to adjustments for differences in voltage. Mr Lyons argued that such adjustments had not in fact been made and, on that basis, that the recital was defective. The latter point adds nothing, however, to the former. I have already explained why I do not accept the substantive criticism (see paragraphs 34-36 above). If I am right that there is no prospect of Targetti establishing that voltage adjustments were not made, it equally cannot show that the assertion to that effect in the Provisional Regulation was wrong.

Zeroing

80. As I have said (paragraphs 38 and 39 above), the practice of zeroing proves to have been employed in the calculation of the dumping margin. Judge Sinfield accepted that that gave rise to manifest error, but decided that the error did not warrant a reference to the CJEU because the evidence showed the zeroing to have made no difference in practice.

81. Mr Lyons argued that, regardless of whether the validity of the Definitive Regulation should be referred to the CJEU on the basis of the manifest error, there should be a reference because the Provisional and Definitive Regulations did not mention that zeroing had been employed. If, he submitted, the EU institutions choose to adopt an approach that is contrary to both EU law and the Anti-Dumping Code, they must say so in recitals. It is essential, he contended, that the use of zeroing is apparent on the face of a regulation if the CJEU is to be able to exercise its powers of review.

82. For his part, Mr Beal said that he was not aware of any case in which the CJEU had decided that there had been both a manifest error and, in the relevant respect, a failure to give reasons but had then annulled the measure only on the latter basis. Such an outcome would, Mr Beal maintained, involve an entirely formalistic approach. The recitals in a regulation are supposed to alert those affected to ways in which it could be open to challenge. Where an applicant has in fact been able to identify a ground of challenge, any deficiency in that regard in the statement of reasons must be neither here nor there. The CJEU is concerned with substance, not mere form.

83. Mr Beal sought to draw an analogy with the *Huangzhou Duralamp* case. One of the complaints there was that the applicant had not been given access to some statistical information referred to in a recital. The GCEU rejected the point on, among others, this ground (paragraph 116 of the judgment):

> "[I]t has not been established to a sufficient degree of probability that the administrative procedure could have resulted in a different outcome if the applicant had had access to the confidential statistical information at issue. It does not appear that this information could have had even the slightest effect on the institutions' assessments and findings concerning the likelihood of continuation or recurrence of injury …. Therefore, the applicant did not need the confidential statistical data at issue in order to exercise its rights of defence."

Similarly, Targetti had not needed zeroing to be mentioned in the recitals of the Provisional and Definitive Regulations to challenge their validity on the basis of zeroing.

84. I have concluded that Mr Beal must be right. In the circumstances, I do not think Targetti would have any real prospect of persuading the CJEU that the Definitive Regulation should be annulled because the recitals did not refer to zeroing.

Related producer

85. Article 2(1) of the Basic Regulation included this:

> "Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship."

86. In the present case, the Commission concluded that it was appropriate to use information from a Mexican producer even though it was related to a Community producer. Recital (31) of the Provisional Regulation dealt with the point as follows:

> "The cooperating Mexican producer was found to be related to a Community producer. In this respect it should be noted that this relationship does not, *per se*, render the information provided by the Mexican producer unreliable. It was found that the Mexican producer sold substantial quantities of the product concerned on the domestic market and that these sales were made in the ordinary course of trade. It was carefully checked whether the relationship in question had any distorting impact on costs of production and, consequently, on profitability of the Mexican producer concerned. No indication was found that this was the case."

87. Mr Lyons argued that this recital did not adequately explain the Commission's thinking. Recital (31) of the Definitive Regulation was, he submitted, no better than a recital that the CJEU found wanting in the *Petrotub* case. On this aspect, the CJEU said this in its judgment in the *Petrotub* case:

> "85. It … follows from the first and third subparagraphs of Article 2(1) of the basic regulation that, in principle, prices between parties which have a compensatory arrangement with each other may not be taken into account in determining normal value, and that there is no exception to this, unless it is determined that those prices are unaffected by the relationship.
>
> 86. In those circumstances, it must be held that, by merely stating, in the contested regulation, that it had been found that sales made using compensation were indeed made in the ordinary course of trade, the

Council did not satisfy the requirements of the obligation to state reasons.

87. Such a peremptory statement, which amounts to no more than a reference to the provisions of Community law, does not contain any explanatory element of such a kind as to enlighten the parties concerned and the Community judicature as to the reasons which led the Council to consider that the prices charged in connection with those sales made using compensation had not been affected by the relationship (see, to similar effect, Case 185/85 *Usinor* v *Commission* [1986] ECR 2079, paragraph 21).

88. Consequently, that statement does not enable the parties concerned to know whether those prices were, by way of exception, correctly taken into consideration for the purpose of calculating normal value, or whether this latter circumstance may constitute a flaw affecting the legality of the contested regulation."

Mr Lyons contended that, similarly, recital (31) of the Provisional Regulation involved a "peremptory statement" that amounted to "no more than a reference to the provisions of Community law".

88. Judge Sinfield did not accept the point. He said (in paragraph 103(7) of the Decision):

> "In the case of recital 31 of the Provisional ADD Regulation, the statement goes further than a mere reference to the Basic Regulation. It sets out that the effects of the relationship were carefully checked and no indication was found that it distorted the costs or profitability of Philips Mexicana [i.e. the Mexican producer]. The recital does not set out the evidence that was reviewed but that is not what the CJEU in *Petrotub* held was required. The CJEU held that there must be some explanatory element to enlighten the parties and the courts as to the reasons for the conclusion. In this case, the reason for the conclusion is explained as, after careful checking, nothing was found that indicated that the relationship had any distorting impact. Targetti has not provided any evidence that the data from Philips Mexicana was unreliable. In the circumstances, I consider that recital 31 contains an adequate statement of reasons."

89. I agree with Judge Sinfield that recital (31) of the Provisional Regulation must be adequate. As he said, it went further than a mere reference to the Basic Regulation. In fact, it is not altogether easy to see what more could have been said without going into the detailed evidence.

90. In short, I have not been persuaded that it is reasonably arguable that there should be annulment because of deficiencies in recital (31) of the Provisional Regulation.

Identification of Community industry

91. The last respect in which Mr Lyons complained of inadequate reasons relates to recital (51) of the Provisional Regulation and recital (26) of the Definitive Regulation. I have quoted these in paragraph 46 above.

92. Mr Lyons pointed out that the recitals in question stated that "on average 14.6% of the total sales of CFL-i" by the Community producers originated in the PRC. Mr Lyons said in his skeleton argument:

> "There is no indication … as to what the figure of 14.6% relates. It could be volume of sales. It could be value of sales. Furthermore, there is no indication of the figures of which 14.6% is the average. Given that there are only two Community producers in question it is entirely possible that the total sales of one of them consisted of a very large amount of CFL-i imported from the PRC and that it should, therefore, be excluded from Community industry. The CJEU is in no position to exercise judicial review given the paucity of information provided."

93. To my mind, there is no question of the Definitive Regulation being annulled on the basis of such points. Whether or not it would have been helpful if the recitals had made clear that the 14.6% referred to volume (as was Judge Sinfield's view – see paragraph 103(8) of the Decision), it is plain, in my view, that recital (51) of the Provisional Regulation and recital (26) of the Definitive Regulation did enough. As I have said, a statement of reasons "need not give details of all relevant factual or legal aspects".

Overall conclusion

94. Like Judge Sinfield, I have not been persuaded that the arguments for invalidity advanced by Targetti are well-founded. On the contrary, I take the view that Targetti's points are unfounded and that it would have no real chance of obtaining the annulment of the Definitive Regulation before the CJEU. I shall therefore dismiss the appeal.

Mr Justice Newey

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