

In support of its action, the applicant puts forward three pleas in law alleging:

- error of law in that the Commission did not establish to the requisite legal standard the existence of State aid. The Commission failed to comply with the evidential rules relating to State aid with regard both to the burden of proof and the standard of proof;
- errors in fact and in law in that the Commission found the existence of an implicit unlimited guarantee in favour of La Poste;
- error in applying the concept of advantage within the meaning of Article 107(1) TFEU. First, the Commission erred in concluding that a guarantee created an advantage in favour of La Poste and, secondly, the Commission erred in considering that La Poste's positive rating was a result of the existence of the alleged guarantee.

Action brought on 9 April 2010 — Dow Chemical v Council

(Case T-158/10)

(2010/C 161/70)

Language of the case: English

Parties

Applicant: The Dow Chemical Company (represented by: J.-F. Bellis, R. Luff and V. Hahn, lawyers)

Defendant: Council of the European Union

Form of order sought

- annul Council Implementing Regulation (EU) No 54/2010 ⁽¹⁾ insofar as it concerns the applicant,
- order the Council to bear the costs.

Pleas in law and main arguments

In support of its application, the applicant puts forward a single plea in law by which it claims that the contested regulation violates Article 11(2) of the basic regulation ⁽²⁾, on the following grounds:

- the determination that dumping of ethanolamines from the US will continue is erroneously based on a finding of

dumping during the review investigation period in relation to exporting producers representing only a very minor proportion of imports from the US; the institutions ignored the fact that the producer who accounted for the overwhelming majority of imports from the US was found not to have engaged in dumping and that, as a result, imports of ethanolamines from the US taken globally were not dumped;

- the determination that the alleged dumping of ethanolamines from the US increased after review investigation period is based on an arbitrary selection of price quotes which do not reflect the trend of prices after the review investigation period;
- the determination that spare capacity in the US will lead to an increase in exports of ethanolamines to the EU is based on a manifest error since there was no unused capacity in the US;
- the determination that the anti-dumping measures on ethanolamines from the US imposed by China since 2004 will induce the US ethanolamines exporters to sell increased quantities to the EU is contradicted by the development of trade flows since 2005;
- the determination that the possible development of demand in the US and other markets will lead US producers to shift exports to the EU is purely speculative;
- the determination that very weak prices and capacity expansions for monoethylene glycol — which, like ethanolamines, is a downstream product of ethylene oxide — would provide an incentive for producers to shift from monoethylene glycol to ethanolamines production is inconsistent with the facts on record and is vitiated by an error of assessment;
- the defendant develops a contradictory reasoning as regards the relationship between US and EU prices since they seem to argue at the same time that higher EU prices provide an incentive for US exporters to shift their sales to the EU and that lower prices in the EU force US producers to sell at dumped prices in the EU.

⁽¹⁾ Council Implementing Regulation (EU) No 54/2010 of 19 January 2010 imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America, OJ 2010 L 17, p. 1

⁽²⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)
