Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

16 January 2014*

(Dumping — Subsidies — Imports of biodiesel originating in the United States — Circumvention — Article 13 of Regulation (EC) No 1225/2009 — Article 23 of Regulation (EC) No 597/2009 — Slightly modified like product — Legal certainty — Misuse of powers — Manifest errors of assessment — Obligation to state reasons — Equal treatment — Principle of sound administration)

In Case T-385/11,

**BP Products North America Inc.**, established in Naperville, Illinois (United States), represented initially by C. Farrar, Solicitor, H.-J. Prieß, B. Sachs and M. Schütte, lawyers, and subsequently by C. Farrar, H.-J. Prieß, M. Schütte and K. Arend, lawyer,

applicant,

v

**Council of the European Union**, represented by J.-P. Hix, acting as Agent, assisted by B. O'Connor, Solicitor, and S. Gubel, lawyer,

defendant,

supported by

**European Commission**, represented by M. França and A. Stobiecka-Kuik, acting as Agents,

and by

**European Biodiesel Board (EBB)**, represented by O. Prost and M.-S. Dibling, lawyers,

interveners,

APPLICATION for the partial annulment, first, of Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 1) and, secondly, of Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by

* Language of the case: English.

Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 12), in so far as those regulations affect the applicant,

THE GENERAL COURT (Fourth Chamber),

composed of M.E. Martins Ribeiro, acting as President of the Fourth Chamber, F. Dehousse and M. van der Woude (Rapporteur), Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 14 May 2013,

gives the following

## Judgment

### Legal context

1 The present dispute concerns two circumvention proceedings, for the purpose, respectively, of Article 13 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51, corrigendum OJ 2010 L 7, p. 22 ; 'the basic anti-dumping regulation') and of Article 23 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ 2009 L 188, p. 93; 'the basic anti-subsidies regulation') (collectively, 'the basic anti-dumping and anti-subsidies regulations').

2 Under the first subparagraph of Article 13(1) of the basic anti-dumping regulation, '[a]nti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place'. In accordance with that provision, '[c]ircumvention shall be defined as a change in the pattern of trade between third countries and the [European Union] or between individual companies in the country subject to measures and the [European Union], which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 [of the basic anti-dumping regulation]'. Article 23(1) and (3) of the basic anti-subsidies regulation is similarly worded, with the exception of the requirement of evidence of dumping, which is replaced by the requirement of evidence that 'the imported like product and/or parts thereof still benefit from the subsidy'.

3 The second subparagraph of Article 13(1) of the basic anti-dumping regulation and Article 23(3)(a) of the basic anti-subsidies regulation provide that the practice, process or work referred to in the definition of circumvention includes, inter alia, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics.

4 It must also be noted that Article 1(4) of the basic anti-dumping regulation and Article 2(c) of the basic anti-subsidies regulation indicate that, for the purpose of those regulations, 'like product' means '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'.

## Background to the dispute

### *The initial proceedings*

5 On 29 April 2008, the European Biodiesel Board (EBB) lodged two complaints before the European Commission on behalf of a significant number of European biodiesel producers, requesting that the Commission initiate an anti-dumping proceeding and an anti-subsidies proceeding in relation to imports of biodiesel originating in the United States, pursuant, respectively, to Article 5 of 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), as amended (OJ 2005 L 340, p. 17) (now Article 5 of the basic anti-dumping regulation), and to Article 10 of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1) (now Article 10 of the basic anti-subsidies regulation).

6 Biodiesel is an alternative to mineral diesel. It is sold in pure form or blended with mineral diesel. To clearly identify the various types of biodiesel blends or mixtures, there is an internationally recognised system known as the 'B factor', which indicates the exact amount of biodiesel in any biodiesel blend. Thus, a blend containing a certain percentage of biodiesel will be labelled 'B', followed by a number indicating that percentage, whilst pure biodiesel is referred to as B100.

7 The EBB complained of the massive subsidies in the United States for the production of biodiesel and, in particular, the existence of a federal tax credit scheme (blender's credit) of 1 United States dollar (USD) per gallon of pure biodiesel present in a biodiesel blend intended to be used as fuel. According to the EBB, those subsidies had led to a massive and artificial increase in imports into the European Union of biodiesel originating in the United States. The EBB indicated that, in order to obtain the maximum amount of subsidies, it was a common practice among North-American producers to add a minimal amount (0.1% or less) of mineral diesel to a blend composed of 99.9% pure biodiesel ('B99.9 blends'). Thus, the imports originating in the United States referred to in the EBB's complaints were primarily those of B99.9 blends.

8 According to the EBB, those imports were being dumped and causing injury to biodiesel producers in the European Union, since the North American B99.9 blends were in direct competition with the biodiesel produced in the European Union. It is clear from the file that the European industry concerned mainly produced pure biodiesel (B100).

9 The EBB stated in its complaints that the final product, namely fuel, intended for consumers in the United States corresponded, in most cases, to B20 blends. However, the applicable legislation in the European Union allowed the sale to consumers of B5 and B7 blends only.

10 By notices published in the *Official Journal of the European Union* on 13 June 2008, the Commission initiated an anti-dumping proceeding (OJ 2008 C 147, p. 5), and an anti-subsidies proceeding (OJ 2008 C 147, p. 10) (collectively, 'the initial investigation').

11 The product which was the subject-matter of the initial investigation was 'fatty acid monoalkyl esters and/or paraffinic gasoils from synthesis and/or hydro-treatment, of non-fossil origin (commonly known as "biodiesel"), whether in pure form or in a blend, mainly but not exclusively used as renewable fuel originating in the United States of America … normally declared within CN codes 38249091, ex 38249097, ex 27101941, ex 15162098, ex 15180091 and ex 15180099'. The investigation covered the period from 1 April 2007 to 31 March 2008 ('the initial investigation period').

12 On 11 March 2009, the Commission adopted Regulation (EC) No 193/2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ 2009 L 67, p. 22, 'the provisional anti-dumping regulation') and Regulation (EC) No 194/2009 imposing a provisional countervailing duty on imports of biodiesel originating in the United States of America (OJ 2009 L 67, p. 50, 'the provisional anti-subsidies regulation'). Those two regulations shall hereinafter be referred to collectively as 'the provisional regulations' and the duties imposed thereby as the 'provisional duties'.

13 In the provisional regulations, the Commission stated, in relation to the products examined, that it was necessary to clarify '[t]he definition of the product concerned as mentioned in the notice[s] of initiation … in order to identify the products which were intended to be covered by the investigation' (recital 23 in the preamble to the provisional anti-dumping regulation and recital 25 in the preamble to the provisional anti-subsidies regulation).

14 The Commission provided that clarification after having indicated that biodiesel blends having a biodiesel proportion equal to or less than 20% ('? B20 blends') – principally B20 blends, and also B6, B5 and B2 blends – were intended for direct consumption in the United States. The Commission pointed out that in the United States any diesel engine could operate on ? B20 blends while keeping the warranty from car manufactures (recital 24 in the preamble to the provisional anti-dumping regulation and recital 26 in the preamble to the provisional anti-subsidies regulation).

15 Accordingly, 'to allow a clear distinction between the various types of blends which are available on the [United States] market', the Commission 'considered [it] appropriate' to define the product concerned by the investigation as biodiesel, whether in pure form or in blends, containing by weight more than 20% of biodiesel ('> B20 blends') (recital 26 in the preamble to the provisional anti-dumping regulation and recital 28 in the preamble to the provisional anti-subsidies regulation).

16 Having defined the product concerned, the Commission also stated in the provisional regulations that '[i]t [had] been found that all types of biodiesel and the biodiesel in the blends covered by this investigation, despite possible differences in terms of raw material used for the production, or variances in the production process, [had] the same or very similar basic physical, chemical and technical characteristics and [were] used for the same purposes' and that '[t]he possible variations in the product concerned [did] not alter its basic definition, its characteristics or the perception that various parties [had] of it' (recital 27 in the preamble to the provisional anti-dumping regulation and recital 29 in the preamble to the provisional anti-subsidies regulation).

17 As regards the definition of the like product within the meaning of Article 1(4) of the basic anti-dumping regulation and of Article 2(c) of the basic anti-subsidies regulation, the Commission indicated that 'the products produced and sold on the domestic market of the [United States], which [were] covered by this investigation, [had] similar basic physical, chemical and technical characteristics and uses as those exported from [that] country to the [European Union]' and that '[s]imilarly, the products manufactured by [European Union] producers and sold on the [European Union] market [had] similar basic physical, chemical and technical characteristics and uses when compared to those exported to the [European Union] from the country concerned' (recital 29 in the preamble to the provisional anti-dumping regulation and recital 31 in the preamble to the provisional anti-subsidies regulation). The Commission also stated that 'the various types of the product concerned produced in the [United States] and exported to the [European Union] are interchangeable with those produced

and sold in the [European Union] by [European Union] biodiesel producers' (recital 31 in the preamble to the provisional anti-dumping regulation and recital 33 in the preamble to the provisional anti-subsidies regulation).

18 In adopting the provisional regulations, the Commission used the sampling method laid down in Article 17(1) of the basic anti-dumping regulation and Article 27(1) of the basic anti-subsidies regulation. Thus, in determining the rates applicable to the provisional duties, the Commission distinguished between three categories of undertakings.

19 The first category covered the undertakings which were selected in the sample and which cooperated. In respect of each of those undertakings, referred to in Article 1 of both provisional regulations, the Commission carried out an individual calculation of the dumping margin, the amount of subsidies and the injury, setting individual rates (recital 55 of the provisional anti-dumping regulation and recital 158 of the anti-subsidies regulation).

20 The second category covered the undertakings which cooperated, but which were not selected in the sample. Those undertakings were set out in a list annexed to the provisional regulations. The dumping, subsidy and injury margins in relation to those undertakings corresponded to the weighted average of the margins established in respect of the undertakings included in the sample (recital 56 in the preamble to the provisional anti-dumping regulation and recital 159 in the preamble to the provisional anti-subsidies regulations).

21 Lastly, the third category covered all the other undertakings on which residual rates were imposed. In order to establish the dumping margins and the levels of subsidies and of injury in relation to those undertakings, the Commission first determined the overall level of cooperation of the operators during the initial investigation. For that purpose, it made a comparison between the total export quantities of the product concerned by the cooperating operators and the total imports of that product from the United States, as derived from United States export statistics. The level of overall cooperation was found to be 81%, which was deemed to be high. On that basis, the Commission considered it appropriate to set the dumping margin and the subsidies and injury levels for those undertakings at the level of the highest margins found in relation to the exporting producers included in the sample (recital 57 in the preamble to the provisional anti-dumping regulation and recital 160 in the provisional anti-subsidies regulation).

22 In accordance with the lesser duty rule, the rates applicable to the provisional duties were fixed, for each of the three categories of undertaking, at the level of the lower of the dumping/subsidy or injury margins (recital 166 in the preamble to the provisional antidumping regulation and recital 271 in the preamble to the anti-subsidies regulation). The provisional anti-dumping and countervailing duties were imposed only to the extent that it was necessary to eliminate the injury (recital 167 in the preamble to the provisional anti-dumping regulation).

23 The provisional anti-dumping activities imposed on the > B20 blends were, in essence, imposed in proportion to the total biodiesel content of those blends (recitals 169 and the last subparagraph of Article 1(2) of the provisional anti-dumping regulation and recital 273 and the last subparagraph of Article 1(2) of the provisional anti-subsidies regulation).

24 On 7 July 2009, the Council of the European Union adopted Regulation (EC) No 598/2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ 2009 L 179, p. 1; 'the initial anti-subsidies regulation') and Regulation (EC) No 599/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ 2009 L 179, p. 26; 'the initial anti-dumping regulation'). Those two regulations will hereinafter be referred to as 'the initial regulations' and the definitive duties imposed thereby as the 'initial duties'.

25 The definition of the product concerned and that of the like product in respect of the product concerned, as established by the Commission in the provisional regulation, were maintained in the initial regulations. The Council emphasised, in that respect, that 'the investigation [had] showed that B20, and potentially lower level blends, were actually sold directly to consumers in the [United States]' and that 'the market for blending and the market for consumer products were different markets with different customers: one market where biodiesel and biodiesel blends [were] destined to further blending by traders and blenders and one market where the blends [were] destined to the distribution network and thus to consumers'. According to the Council, '[d]efining the threshold for the product concerned above B20 [had] allowed to draw a clear dividing line and avoided confusion between the products, the markets and the various parties in the [United States]' (recital 33 in the preamble to the initial anti-dumping regulation and recital 34 in the preamble to the initial anti-subsidies regulation).

26 The rates of the initial duties were determined on the basis of the three categories of undertakings referred to in paragraphs 19 to 21 above. As can be seen from recitals 8 to 12 in the preamble to the initial regulations, the Council added to the second category of undertakings certain operators which were unknown at the time of the initiation of initial investigation and which had made themselves known after the adoption of the provisional regulations. The initial anti-dumping duties ranged from EUR 0 to EUR 198 per tonne of biodiesel and the initial countervailing duties ranged from EUR 211.2 to EUR 237 per tonne of biodiesel. Under Article 1(2) of each of the initial regulations, the duties imposed on the B20 blends were imposed in proportion to their biodiesel content.

27 The initial regulations entered into force on the day following their publication in the Official Journal of the European Communities, which occurred on 10 July 2009.

*The circumvention proceedings*

28 On 30 June 2010, the EBB lodged a complaint with the Commission requesting the opening of two circumvention proceedings on the basis of Article 13(3) of the basic anti-dumping regulation and Article 23(4) of the basic anti-subsidies regulation.

29 The complaint alleged two types of circumvention of the initial duties: first, the consignment of the product concerned via Canada and Singapore and, secondly, the importation of biodiesel from the United States in the form of ? B20 blends.

30 On 11 August 2010, on the basis of the EBB's complaint, the Commission adopted Regulation (EU) No 720/2010 of 11 August 2010 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not and by imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and making such imports subject to registration (OJ 2010 L 211, p. 1), and Regulation (EU) No 721/2010 of 11 August 2010 initiating an investigation concerning the possible circumvention of countervailing measures imposed by Council Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not and by imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and making such imports subject to registration (OJ 2010 L 211, p. 6). The two proceedings initiated by those regulations shall hereinafter be referred to collectively as 'the circumvention proceedings'.

31 Under Article 2 of both Regulation No 720/2010 and of Regulation No 721/2010, the customs authorities of the Member States were directed to register the imports into the European Union concerned by the circumvention proceedings from the date of entry into force of the regulations, which occurred on 13 August 2010.

32 The investigation covered the period from 1 April 2009 to 30 June 2010 ('the anti-circumvention investigation period').

33 The applicant, BP Products North America Inc., had exported blends originating in the United States with a biodiesel content of less than 15% ('< B15 blends') to the European Union during the anti-circumvention investigation period, in particular blends of between B10.1 and B14.8, and it cooperated with the Commission by providing it with information on its activities. In particular, the applicant responded to the exporters' questionnaires on 21 September 2010. Its related importer, BP France SA, along with other importer companies of the BP group, responded to the importers' questionnaires on 22 December 2010. Inspections were carried out on the applicant's premises on 7 and 8 December 2010, and in the United Kingdom on 1 February 2011. On 28 March 2011, the applicant's lawyers sent a submission to the Commission concerning the disclosure documents sent by the latter on 16 March 2011.

34 On 5 May 2011, the Council adopted Implementing Regulation (EU) No 443/2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 1; 'the contested anti-subsidies regulation'). On the same day, the Council also adopted Implementing Regulation (EU) No 444/2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 12; 'the contested anti-dumping regulation'). Those two regulations are hereinafter referred to collectively as 'the contested regulations'.

35 As regards the imports of ≤ B20 blends originating in the United States, the Council first noted, in the contested regulations, that five North American biodiesel producers, including the applicant, had cooperated in the circumvention proceedings, and that, of those five companies, only the applicant had exported ≤ B20 blends originating in the United States to the European Union during the anti-circumvention investigation period (recitals 52 and 54 in the preamble to the contested anti-subsidies regulation and recitals 57 and 59 in the preamble to the contested anti-dumping regulation). The Council observed that the applicant had not cooperated in the initial investigation, since it had begun its biodiesel activities only at the beginning of 2009 and had started to export that product to the European Union only in December 2009, after the imposition of the initial duties (recital 62 in the preamble to the contested anti-subsidies regulation and recital 67 in the preamble to the contested anti-dumping regulation).

36 The Council indicated that, in the European Union, the applicant had sold blends containing a biodiesel content less than or equal to 15% in the UK, France and the Netherlands and that, in all cases, the product was further blended in order to respect the relevant legislation in force in certain Member States (recital 63 in the preamble to the contested anti-subsidies regulation and recital 68 in the preamble to the contested anti-dumping regulation). The Council also stated that the applicant

had argued that < B15 blends were not a like product in respect of the product concerned (recital 64 in the preamble to the contested anti-subsidies regulation and recital 69 in the preamble to the contested anti-dumping regulation).

37 In that respect, the Council noted that '[t]he objective of [the] circumvention investigation [was] to establish whether [≤ B20] biodiesel [had] circumvented the measures in force'. According to the Council, '[i]t [might] well be the case that lower blends attract lower shipping costs'. However, the Council noted that, 'a [≤ B20] blend [was] effectively only a different composition of the blend, in comparison to the process of producing … a [> B20] blend …' The Council added that '[i]t is a simple process to change the composition of a blend', that '[p]utting into existence B20 and below is considered to be merely a slight modification of the product concerned, the only difference being the biodiesel proportion in the blend'. The Council also noted that 'the product concerned as well as [the ≤ B20 blend] ultimately [were] destined for the same uses in the Union' and that, '[f]urthermore, biodiesel in [≤ B20] blends … as well as biodiesel in [> B20] blends … [had] the same essential characteristics' (recital 65 in the preamble to the contested anti-subsidies regulation and recital 70 in the preamble to the contested anti-dumping regulation).

38 Next, the Council found that the conditions set out in the first subparagraph of Article 13(1) of the basic anti-dumping regulation and in Article 23(3) of the basic anti-subsidies regulation for establishing the existence of circumvention were met.

39 First, the Council pointed out that a change in the pattern of trade between the European Union and the United States had taken place. It noted, in that regard, that although there was a mandatory B5 blend in the Union during the initial investigation, exports of ≤ B20 blends from the USA to the Union only began following the imposition of the initial duties. The Council stated that, according to the data obtained from the sampled cooperating exporting producers, it was mainly B99.9 blends that were exported to the European Union during the initial investigation (recital 67 in the preamble to the contested anti-subsidies regulation and recital 72 in the preamble to the contested anti-dumping regulation). On the basis of Eurostat data concerning imports of > B96.5 biodiesel blends into the European Union during the anti-circumvention investigation period, the Council found that exports of B99.9 blends originating in the United States had virtually ceased (recitals 18, 19 and 66 in the preamble to the contested anti-subsidies regulation and recitals 18, 19 and 71 in the preamble to the contested anti-dumping regulation). The Council at the same time found that the United States had declared during the same period the export of 358 291 tonnes of blends with a biodiesel content of 96.5% or less ('≤ B96.5 blends') to the European Union and that the applicant had carried out a 'significant proportion' of those exports in the form of ≤ B20 blends (recitals 20, 21, 54, 60 and 61 in the preamble to the contested anti-subsidies regulation and recitals 20, 21, 59, 65 and 66 in the preamble to the contested anti-dumping regulation).

40 Secondly, the Council considered that there was insufficient due cause or economic justification for the imports of ≤ B20 blends other than the avoidance of the payment of the initial duties (recital 71 in the preamble to the contested anti-subsidies regulation and recital 76 in the preamble to the contested anti-dumping regulation).

41 Thirdly, the Council stated that, considering the non-injurious price level established in the initial investigation, United States imports of ≤ B20 blends showed both undercutting and underselling. The Council noted that the imports of ≤ B20 had come into existence following the imposition of the initial duties and that the quantities involved were not insignificant. It was therefore concluded that the initial duties were being undermined in terms of quantities and prices (recitals 72 and 73 in the preamble to the contested anti-subsidies regulation and recitals 77 and 78 in the preamble to the contested anti-dumping regulation).

42 Fourthly, the Council found, in recital 74 in the preamble to the contested anti-subsidies regulation, that the main subsidy scheme found in the initial investigation had been retroactively reinstated in December 2010. The Council also indicated, in recital 79 in the preamble to the contested anti-dumping regulation, that it had been examined 'whether there was evidence of dumping in relation to the normal value established in the [initial] investigation' and that it had been found that '[t]he comparison of the weighted average normal value and the weighted average export price [of ≤ B20 blends had shown] the existence of dumping'.

43 Lastly, in recital 77 in the preamble to the contested anti-subsidies regulation and in recital 82 in the preamble to the contested anti-dumping regulation, the Council rejected the applicant's requests for exemption on the basis, respectively, of Article 23(6) of the basic anti-subsidies regulation and Article 13(4) of the basic anti-dumping regulation.

44 In those circumstances, the Council, in Article 2(1) of each of the contested regulations, extended the initial duties to imports of ≤ B20 blends originating in the United States ('the extended duties').

45 The rates fixed for the extended duties were those defined in Articles 1(2) of the respective initial regulations (see paragraph 26 above), determined for the three categories of undertakings referred to in paragraphs 19 and 21 above.

46 In accordance with Article 2(2) of each of the contested regulations, the collection of the extended duties took place retroactively, from the date of registration of imports of ≤ B20 blends, which had become compulsory on 13 August 2010 (see paragraph 31 above).

47 It is apparent from the file that the rates established for the third category of undertakings (see paragraph 21 above) were retroactively applied to the applicant from the date of registration of certain imports which were carried out before the adoption of the contested regulations.

48 By letter of 6 May 2011, the Commission replied to the applicant's submission of 28 March 2011 referred to in paragraph 33 above.

49 By letter of 20 June 2011, the applicant expressed to the Commission its disagreement with the outcome of the circumvention proceedings. It also indicated that it was considering bringing an action before the General Court against the contested regulations and suggested a meeting with the Commission in order to discuss the possibility of granting it either individual treatment as a new exporter, on the basis of Article 11(4) of the anti-dumping regulation and Article 20 of the basic anti-subsidies regulation, or a partial exemption from the extended duties, which it considered to be excessive. That meeting took place on 15 July 2011. The Commission did not grant the applicant's requests.

## Procedure and forms of order sought

50 By application lodged at the Court Registry on 21 July 2011, the applicant brought the present action.

51 By documents lodged at the Court Registry, on 3 October 2011 and 11 November 2011 respectively, the Commission and the EBB sought leave to intervene in the present case in support of the form of order sought by the Council.

52 By order of 22 November 2011 the President of the Fourth Chamber of the Court granted the Commission's application to intervene.

53 By letter of 24 November 2011, by way of measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, the Court put questions in writing to the applicant, the Council and the Commission, inviting them to respond, respectively, in the reply, the rejoinder and the statement in intervention. The Court also invited the Council to lodge certain documents. The parties filed those pleadings and complied with those measures of organisation of procedure within the prescribed periods.

54 By order of 9 February 2012 the President of the Fourth Chamber of the Court granted the EBB's application for leave to intervene.

55 By letter of 13 February 2012, by way of measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, the Court put questions in writing to the EBB, inviting it to respond to them in its statement in intervention. The EBB filed that pleading and responded to the questions within the prescribed period.

56 The Council and the applicant requested, on 26 March 2012 and 5 June 2012 respectively, that certain confidential matters in the rejoinder and in the applicant's observations on the EBB's statement in intervention, and in some of their annexes, be excluded from the notification to the EBB. For the purposes of that notification, they produced a non-confidential version of those various pleadings. The notification of those pleadings to the EBB was confined to that non-confidential version. No objection was raised by the EBB in that regard.

57 As two members of the Chamber was unable to sit, the President of the Court designated two other judges to complete the Chamber pursuant to Article 32(3) of the Rules of Procedure.

58 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 64 of its Rules of Procedure, put certain questions in writing to the parties. The Court also invited the EBB to lodge certain documents. The parties replied to those questions and lodged those documents within the prescribed period.

59 At the hearing on 14 May 2013, the parties presented oral argument and replied to oral questions put by the Court.

60 The applicant claims that the Court should:

— annul Article 2 of each of the contested regulations, in so far as those provisions affect the applicant;

— order the Council to pay the costs.

61 The Council contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

62 At the hearing, the Council submitted, in addition, that the action should be declared inadmissible.

63 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

64 The EBB contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

**Law**

1. *Admissibility*

65 Without formally raising an objection of inadmissibility within the meaning of Article 114 of the Rules of Procedure, the Council submitted, at the hearing, that the action was inadmissible on the ground that the applicant was not individually concerned by the contested regulations for the purpose of the fourth paragraph of Article 263 TFEU.

66 In that regard, the Council emphasised that the applicant was not a biodiesel producer, but rather a trader comparable to an importer. The Council noted in that respect that the applicant had never stated during the circumvention proceedings or before the Court that it produced biodiesel. On the contrary, in point 46 of the reply, the applicant acknowledged that neither it nor its subsidiaries had biodiesel plants. In accordance with the judgment of 19 April 2012 in Case T-162/09 *Würth and Fasteners (Shenyang)* v *Council* (not published in the ECR), importers or traders, such as the applicant, are in a different position from that of producers and normally cannot be regarded as being individually concerned by a regulation imposing anti-dumping duties or countervailing duties, even if they participated in the procedure which led to the adoption of that regulation.

67 In response to an oral question put by the Court, the Council stated that it had not contested the admissibility of the action during the written procedure because, at that stage, *Würth and Fasteners (Shenyang)* v *Council*, cited in paragraph 66 above, had yet to be delivered. The Council noted, however, that a party's *locus standi* before the Court was a matter of public policy which the Court must raise of its own motion.

68 At the hearing, the applicant claimed that the Court should reject the Council's reservations as regards the admissibility of the action. The applicant indicated that it was not an importer, but rather an exporter of the products at issue, which the Council itself acknowledged in recital 66 in the preamble to the contested anti-dumping regulation. In addition, the applicant stated that it produced neither pure biodiesel (B100), nor B99.9 blends, but that, as a refiner, it purchased those products for the purpose of subsequently diluting them with mineral diesel, in order to produce the blends with a lesser biodiesel content which it exported. Therefore, the applicant is part producer and part exporter of biodiesel blends. The applicant also stated that it had participated in the circumvention proceedings and that it is expressly mentioned in the contested regulations. Lastly, the applicant observed that the Council had contested the admissibility of the action at a late state in the proceedings.

69 The fourth paragraph of Article 263 TFEU provides that '[a]ny natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

70 It should be borne in mind that the condition laid down in the fourth paragraph of Article 263 TFEU that proceedings brought by a natural or legal person against a decision addressed to another person are admissible only if the decision is of direct and individual concern to the former raises an absolute bar to proceeding which the European Union judicature may consider at any time, even of its own

motion (Case C-341/00 P *Conseil national des professions de l'automobile and Others* v *Commission* [2001] ECR I-5263, paragraph 32, and judgment of 29 November 2007 in Case C-176/06 P *Stadtwerke Schwäbisch Hall and Others* v *Commission*, not published in the ECR, paragraph 18).

71 It can be seen from the first subparagraph of Article 13(1) of the basic anti-dumping regulation and from Article 23(1) of the basic anti-subsidies regulation that the effect of regulations extending duties in the event of circumvention is only to enlarge the scope of the initial regulations. A regulation extending an anti-dumping or countervailing duty therefore has the same legal effects on undertakings subject to the duty thus extended as a regulation establishing a definitive duty has on undertakings subject to such a duty (see, to that effect, Joined Cases T-74/97 and T-75/97 *Büchel* v *Council and Commission* [2000] ECR II-3067, paragraph 52).

72 In the present case, the Council does not contest that the applicant is directly concerned by the contested regulations. The Member States' customs authorities are required, without having any margin of discretion, to levy the duties imposed by the contested regulations on imports of ≤ B20 blends originating in the United States (see, to that effect, Case T-170/94 *Shanghai Bicycle* v *Council* [1997] ECR II-1383, paragraph 41).

73 As regards the individual concern condition, it must be pointed out that, although it is true that, in the light of the criteria set out in the fourth paragraph of Article 263 TFEU, regulations imposing anti-dumping duties and countervailing duties are, by virtue of their nature and scope, of a legislative character in that they apply generally to the economic operators concerned, their provisions may none the less be of individual concern to particular traders (Joined Cases 239/82 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, paragraph 11; Case T-597/97 *Euromin* v *Council* [2000] ECR II-2419, paragraph 43, and Case T-598/97 *BSC Footwear Supplies and Others* v *Council* [2002] ECR II-1155, paragraph 43).

74 The European Union judicature has held that particular provisions of regulations imposing anti-dumping duties and countervailing duties may be of individual concern to the producers and exporters of the product in question which are charged with dumping on the basis of data relating to their commercial activities. That is the case, in general, for producers or exporters which are able to demonstrate that they were identified in the measures adopted by the Commission or the Council, or that they were concerned by the preliminary investigations (see, to that effect, *Allied Corporation and Others* v *Commission*, cited in paragraph 73 above, paragraphs 11 and 12; *Euromin* v *Council*, cited in paragraph 73 above, paragraph 45, and Case T-58/99 *Mukand and Others* v *Council* [2001] ECR II-2521, paragraph 21).

75 In the present case, the Council acknowledged that the applicant was a producer. In recitals 52 and 54 in the preamble to the contested anti-subsidies regulation and in recitals 57 and 59 in the preamble to the contested anti-dumping regulation, the Council indicated that the applicant was one of the five '[United States] producers of biodiesel or biodiesel blends' which had cooperated in the circumvention proceedings. As can be seen from point 46 of the reply and the clarifications provided by the applicant at the hearing, the latter and its subsidiaries are not involved in the process of production of pure biodiesel (B100) or of B99.9 blends, but rather they purchase those products from producers and third-parties and subsequently mix them with mineral diesel in order to produce the blends with a lesser biodiesel content which it exports. The applicant also purchases biodiesel blends from third parties. It must therefore be found that the applicant is part producer and part exporter of biodiesel blends.

76 It must also be pointed out that the applicant played a significant role in the circumvention proceedings. The Council noted, in recital 52 in the preamble to the contested anti-subsidies regulation and in recital 57 in the preamble to the contested anti-dumping regulation, that of the five biodiesel producers established in the United States which cooperated, the applicant was the only one to have exported ≤ B20 blends originating in the United States to the European Union during the

anti-circumvention investigation period (see paragraph 35 above). The Council acknowledged, in recital 61 in the preamble to the contested anti-subsidies regulation and in recital 66 in the preamble to the contested anti-dumping regulation, that the applicant's exports had constituted 'a significant proportion' of the total quantity of imports of ≤ B96.5 blends originating in the United States during that period. The Council does not contest that the applicant fully cooperated with the institutions during the circumvention proceedings by providing information concerning its commercial activity and that that information was taken into consideration in order to determine the scope of the contested regulations. Lastly, the Council expressly rejected, in recital 77 in the preamble to the contested anti-subsidies regulation and in recital 82 in the preamble to the contested anti-dumping regulation, the applicant's requests for exemption on the basis, respectively, of Article 23(6) of the basic anti-subsidies regulation and Article 13(4) of the basic anti-dumping regulation.

77 In those circumstances, in the light of the criteria which result from the case-law, as referred to in paragraph 74 above, there is no doubt that the applicant is individually concerned by the contested regulations.

78 Therefore, the reservations expressed by the Council at the hearing regarding the applicant's *locus standi* must be rejected, and the action declared admissible.

2. *Substance*

79 The applicant relies on four pleas in law in support of its application. According to the first plea, the Council infringed the basic anti-dumping and anti-subsidies regulations as well as the principle of legal certainty and misused its powers by extending the initial duties by means of a circumvention proceeding. The second plea alleges manifest errors in the assessment of the facts concerning the applicant. The third plea alleges infringement of the duty to state reasons. The fourth plea alleges breach of the principles of non-discrimination and sound administration.

*The first plea in law, alleging infringement of the basic anti-dumping and anti-subsidies regulations as well as the principle of legal certainty and misuse of powers through the extension of the initial duties by means of a circumvention proceeding*

80 In the first plea in law, the applicant denies that the ≤ B20 and > B20 blends can be considered as 'slightly modified like products' within the meaning of the first subparagraph of Article 13(1) of the basic anti-dumping regulation and Article 23(1) of the basic anti-subsidies regulation and alleges an infringement of those regulations and the principle of legal certainty and misuse of power.

81 This plea consists essentially of two parts.

82 In the first part, the applicant emphasises the differences between the > B20 blends and the ≤ B20 blends, and the express exclusion of the ≤ B20 blends from the scope of the initial regulations.

83 In the second part, the applicant disputes the existence of a modification of the product concerned for the purpose of Article 13(1) of the basic anti-dumping regulation and of Article 23(1) and (3)(a) of the basic anti-subsidies regulation, given the fact that the ≤ B20 blends have always existed and were not created specifically for the purpose of evading the duties.

The first part of the first plea in law, concerning the differences between the > B20 blends and the ≤ B20 blends, and the express exclusion of the ≤ B20 blends from the scope of the initial regulations

84 In the first part of the first plea, the applicant puts forward, essentially, four complaints.

85 First, the applicant claims that, as a result of the differences between the > B20 blends and the ≤ B20 blends, the ≤ B20 blends cannot be regarded as a 'slightly modified like product', within the meaning of Article 13(1) of the basic anti-dumping regulation and Article 23(1) of the basic anti-subsidies regulation, in respect of the > B20 blends.

86 Secondly, the applicant claims that the legal framework does not allow the European Union institutions to extend, by means of a circumvention proceeding, the definition of a product concerned by an anti-dumping or countervailing duty, especially where, as in the present case, the products in question have been expressly excluded from the initial definition of the product concerned and of the like product. In those circumstances, the extension of the initial duties to the ≤ B20 blends imported by the applicant infringes the basic anti-dumping and anti-subsidies regulations and the principle of legal certainty.

87 Thirdly, the applicant claims that the European Union institutions misused their powers, in so far as they extended the initial duties by means of circumvention proceedings, instead of carrying out a new investigation in relation to the imports of ≤ B20 blends. The applicant adds in the reply that the Commission should have, at the very least, carried out an interim review within the meaning of Article 11(3) of the basic anti-dumping regulation and of Article 19 of the basic anti-subsidies regulation.

88 Fourthly, the applicant submits that the extension of the initial duties by means of the circumvention proceedings deprived it of the procedural rights provided under the basic anti-dumping and anti-subsidies regulations. In that regard, the applicant states in the reply that it was, inter alia, deprived of the possibility of obtaining individual rates and that the calculation of dumping carried out by the Commission in the contested regulations and accepted by the Council was too simplistic. In its view, the Commission did not have enough data concerning the ≤ B20 blends to make a fair assessment of the market conditions and the dumping margin. In response to the EBB's statement in intervention, the applicant states that it did not practice dumping and that the subsidies it received were far lower than the amounts alleged by the EBB and, moreover, that the injury to the European Union industry was not examined. At the hearing, the applicant again claimed that its imports had not neutralised the remedial effect of the initial duties.

89 The Council, supported by the Commission and the EBB, disputes the applicant's arguments.

90 It must be pointed out, as a preliminary, that the applicant does not dispute that the Commission and the Council respected, in its regard, the procedural rights laid down in the context of circumvention proceedings by Article 13 of the basic anti-dumping regulation and by Article 23 of the basic anti-subsidies regulation. Under the guise of the breach of procedural rights, criticised in the fourth complaint, the applicant actually complains of a failure to initiate new proceedings, through which it could have enjoyed individual rates, established on the basis of the precise calculation of the dumping margin, the subsidy margin and the injury attributable to the imports at issue. Thus, the fourth complaint is merely a consequence of the third complaint, alleging misuse of power.

91 Moreover, it must be noted that the criticisms made by the applicant in fourth complaint, regarding the manner in which the dumping, the injury and the neutralisation of the remedial effects of the initial duties had been determined by the Commission, were put forward by the applicant only in the reply, in its observations on the EBB's statement in intervention and at the hearing. As the applicant acknowledged at the hearing, the application does not call into question the assessments made by the Council in the contested regulations, according to which the ≤ B20 blends were being dumped and neutralised the remedial effects of the initial duties. Therefore, the applicant's arguments in that regard must be considered as a new plea in law which is inadmissible on the ground that it is out of time, in accordance with Article 48(2) of the Rules of Procedure.

92 As regards the examination of the other three complaints, it must be noted that, according to settled case-law, in the sphere of measures to protect trade, the European Union institutions enjoy a wide discretion by reason of the complexity of the economic, political and legal situations which they have to examine (see Case T-35/01 *Shanghai Teraoka Electronic* v *Council* [2004] ECR II-3663, paragraph 48 and the case-law cited). Consequently, the review by the European Union judicature of the assessments by the institutions must be confined to ascertaining whether the procedural rules have been complied with, whether the facts on which the contested decision is based have been accurately stated and whether there has been any manifest error of assessment of the facts or any misuse of powers (see *Shanghai Teraoka Electronic* v *Council*, cited in paragraph 34 above, paragraph 49 and the case-law cited).

93 It is appropriate to begin by examining the applicant's first complaint. If the Court were to find, on the basis of an objective examination of the essential characteristics of the blends at issue, that the European Union institutions made a manifest error of assessment in concluding that the ≤ B20 blends imported by the applicant constituted a slight modification of the > B20 blends, it would be necessary to grant the application without examining the other complaints and pleas. If, on the contrary, it were to be found that the contested regulations are not vitiated by such a manifest error of assessment, it would still be necessary to examine whether the Commission could, without misusing its powers and without infringing the basic anti-dumping and anti-subsidies regulations and the principle of legal certainty, initiate circumvention proceedings in relation to the applicant's imports, even though ≤ B20 blends had been explicitly excluded from the scope of the initial regulations.

– The essential characteristics of the ≤ B20 and > B20 blends

94 The applicant claims that the lower biodiesel blends, in particular the < B15 blends that it exported to the European Union, do not form part of the same market as the higher blends and have different characteristics. It puts forward three sets of arguments in support of that position. The first set of arguments concerns the particular characteristics of the biodiesel market in the United States. The second relates to the objective differences between the blends on the basis of the biodiesel content. The third is based on the Commission's alleged acknowledgment that the > B20 and ≤ B20 blends were different when it refused to treat the applicant as a new exporter within the meaning of Article 11(4) of the basic anti-dumping regulation and Article 20 of the basic anti-subsidies regulation.

95 The Council, supported by the Commission and the EBB, disputes the applicant's arguments.

96 Taking into consideration the wide discretion enjoyed by the European institutions in the sphere of measures to protect trade (see paragraph 92 above), it is necessary to examine whether the applicant has proved that the Council made a manifest error of assessment in finding that the ≤ B20 blends exported by the applicant constituted a slight modification of the product concerned and that those blends could therefore be regarded, in respect of the > B20 blends, as a 'slightly modified like product' with the same 'essential characteristics', for the purpose of Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3)(a) of the basic anti-subsidies regulation. For that purpose, the Court will examine the applicant's three sets of arguments, though in a different order than that in which they were put forward.

97 As regards, in the first place, the objective differences between the blends on the basis of their biodiesel content, the applicant claims that, according to the diesel industry, the classification of biodiesel blends as mineral or petroleum products or as chemical products is determined on the basis of their biodiesel content. The Combined Nomenclature also differentiates on the basis of the composition and biodiesel content of blends. For example, Code CN 2710, as set out in the Combined Nomenclature in the chapter on mineral oils, would not apply to B30 blends. In its contracts and invoices, the applicant itself uses different descriptions depending on the biodiesel percentage.

98 The applicant then notes that, from a logistical perspective, Annex II to the International Convention for the Prevention of Pollution from Ships (MARPOL) of 2 November 1973 classifies blends with a biodiesel content of 15% or more ('≥ B15 blends') as chemical products which must be transported on specialised ships, in contrast to < B15 blends, which are regarded as mineral or oil products. Therefore, according to the applicant, at least some of the ≤ B20 blends, namely the < B15 blends which it exported, differed from the > B20 blends. The applicant also notes that storage time is more limited for blends with a higher proportion of biodiesel and that pure biodiesel and B99.9 blends must be stored in specialised 'Fatty acid methyl esters' ('FAME') tanks, which are smaller and more expensive than those used for blends with a lower proportion of biodiesel. The applicant adds that, in order to obtain B7 and B5 blends, it is easier to continue to dilute a lower blend as opposed to a higher blend.

99 Lastly, the applicant states in the reply that blends with a higher proportion of biodiesel have neither the same end use nor the same power and efficiency as blends with a lower proportion of biodiesel.

100 In that respect, it must be observed, first, that the commercial classifications that the industry confers on the products at issue and those which arise from the Combined Nomenclature are of a formal nature and do not necessarily mean that the products which are subject to those various classifications do not have the same essential characteristics for the purpose of the second subparagraph of Article 13(1) of the basic anti-dumping regulation and Article 23(3)(a) of the basic anti-subsidies regulation (see paragraph 3 above). As the Council rightly observes, certain circumvention practices are in fact intended to export a slightly modified product that does not fall within a specific CN code covered by the initial duties.

101 Secondly, it must be pointed out that, with the exception of the arguments concerning the legislation in the sphere of maritime transport, the arguments raised by the applicant concerning the differences between the blends from a logistical perspective do not refer to the specific percentages of biodiesel contained in the blends. Those arguments point out differences between blends with a high or low proportion of biodiesel, but do not deal with the essential question of whether the ≤ B20 blends have the same essential characteristics, for the purpose of the anti-dumping and anti-subsidies regulations, as the > B20 blends.

102 As regards the arguments concerning the legislation in the sphere of maritime transport, it must be noted that the only difference in classification between the ≥ B15 and < B15 blends in the MARPOL does not concern, as such, the basic physical, chemical and technical characteristics, nor the commercial uses of ≤ B20 blends. Moreover, it must be observed that the maritime legislation in question does not differentiate on the basis of a percentage of 20%, which is the focus of the present dispute, but rather on the basis of a percentage of 15%.

103 Thirdly, the applicant in no way substantiates the claim set forth in the reply that blends with a higher proportion of biodiesel have neither the same power nor efficiency as those with a lower proportion. With regard to the uses of blends depending on their biodiesel content, the applicant does not dispute that the dilution of biodiesel with mineral diesel is relatively simple to carry out from a technical perspective. Nor does the applicant dispute that the < B15 blends which it exported were, like the > B20 blends, intended to be further diluted with mineral diesel in order to manufacture fuel in the European Union. All of those blends, whether they be the B99.9 blends, which were the most affected by the initial duties, or the < B15 blends exported by the applicant, must again be transformed in order to obtain the ratios corresponding to the blends authorised for sale to end-users in the European Union, namely the B7 and B5 blends (see paragraph 36 above). It follows that all the imports of biodiesel blends must undergo the same transformation process and are targeted at the same final demand and that they therefore injure the same European industry.

104 As regards, in the second place, the specific characteristics of the biodiesel market in the United States, it is common ground between the parties that any diesel engine could operate on ? B20 blends while keeping the warranty from car manufactures, with the result that those blends are sold directly to

consumers in the United States (see paragraph 14 above). However, the applicant does not explain sufficiently how that single circumstance could preclude the Council and the Commission from considering that the ≤ B20 blends that it exported were 'slightly modified similar products' in respect of the > B20 blends. In any event, that feature of the United States market does not change the fact, pointed out by the Council in recital 65 in the preamble to the contested anti-subsidies regulation and in recital 70 in the preamble to the contested anti-dumping regulation, that the basic physical, chemical and technical characteristics of the > B20 blends and those of the ≤ B20 blends were sufficiently similar that they could undergo the same dilution processes in order to make them suitable for final consumption in the European Union (see paragraph 37 above).

105 In the third and last place, the Commission's refusal to treat the applicant as a new exporter within the meaning of Article 11(4) of the basic anti-dumping regulation and Article 20 of the basic anti-subsidies regulation concerns legal considerations which cannot have any impact on the technical circumstances referred to in the previous paragraph. In accordance with those provisions, the review for a new exporter is to be carried out only with regard to operators which started to import the product concerned by an anti-dumping regulation or by an anti-subsidies regulation after the adoption of those regulations. In the present case, the initial regulations did not concern the ≤ B20 blends. However, that is irrelevant to the issue of whether those blends could be considered as 'slightly modified like products' in respect of the > B20 blends.

106 It follows from the foregoing considerations that the applicant has not shown that the Council made a manifest error of assessment in concluding that the ≤ B20 blends exported by the applicant constituted a slight modification of the product concerned and that those blends could therefore be considered as a 'slightly modified like product' in respect of the > B20 blends, inasmuch as they have the same 'essential characteristics', for the purpose of Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3)(a) of the basic anti-subsidies regulation.

107 The applicant's first complaint must therefore be rejected.

– The express exclusion of the ≤ B20 blends from the scope of the initial regulations

108 The applicant submits that the initial definitions of the product concerned and the like product are of decisive importance in examining whether the initial duties were circumvented and that they must remain consistent. In its view, the circumvention proceedings and the principle of legal certainty do not allow the European Union institutions to extend the initial definition of the product concerned, especially when the extension relates to a product which had been expressly excluded from the definition of the product concerned and that of the like product. It claims that the judgment of 10 September 2008 in Case T-348/05 *JSC Kirovo-Chepetsky Khimichesky Kombinat* v *Council* (not published in the ECR) confirms that view.

109 The Council, supported by the Commission and the EBB, contests the applicant's arguments.

110 In that respect, it must be pointed out, first, that the circumvention proceedings laid down in Article 13(1) of the basic anti-dumping regulation and in Article 23(1) of the basic anti-subsidies regulation are aimed at precisely those products which were not formally covered by the initial definition of the product concerned and the like product, but which nevertheless constitute 'slightly modified like products' in so far as they have the same 'essential characteristics' as the products covered by the initial decision. In extending the initial duties to the ≤ B20 blends, the Council therefore acted in accordance with the aims of those provisions.

111 Secondly, *JSC Kirovo-Chepetsky Khimichesky Kombinat* v *Council*, cited in paragraph 108 above, confirms those principles, contrary to what is claimed by the applicant. That judgment does not concern a circumvention proceeding, but rather a partial interim review procedure for the purpose of

Article 11(3) of the basic anti-dumping regulation. In the context of that review procedure, the Council had broadened the initial definition of the product concerned in order to impose the duties at issue on products which included, as a component, the product initially concerned. The Court held that the Council could not amend the initial definition of the product concerned in the context of an interim review procedure for the purpose of Article 11(3) of the basic anti-dumping regulation in order to include new products which were not covered by the initial regulation (*JSC Kirovo-Chepetsky Khimichesky Kombinat* v *Council*, cited in paragraph 108 above, paragraphs 61 to 65). The Court indicated, however, that the European Union institutions should have examined whether the new products, which included the product concerned as a component, could be considered as 'slightly modified like products', within the meaning of Article 13(1) of the basic anti-dumping regulation. It concluded that the Council could not get around the requirement of an investigation under the latter provision by amending the definition of the product concerned in the context of the application of Article 11(3) of the basic anti-dumping regulation (*JSC Kirovo-Chepetsky Khimichesky Kombinat* v *Council*, cited in paragraph 108 above, paragraphs 66 to 70).

112 As regards, thirdly, the express exclusion of ≤ B20 blends from the scope of the initial regulations, it must be pointed out that, contrary to what is suggested by the applicant in the reply and in response to the Commission's statement in intervention, that exclusion was not based on differences relating to the basic physical, chemical and technical characteristics of the blends at issue, nor on the situation in the European Union.

113 As indicated in paragraphs 13 to 15 and 25 above, the exclusion of ≤ B20 blends from the scope of initial regulations was based solely on the specific features of the United States market, where the ≤ B20 blends, in contrast to the > B20 blends, were intended to be sold directly to consumers and were therefore not exported. That circumstance led the Council to set the threshold > B20, in order to 'draw a clear dividing line and [avoid] confusion between the products, the markets and the various parties in the [United States]' (recital 33 in the preamble to the initial anti-dumping regulation and recital 34 in the preamble to the initial anti-subsidies regulation).

114 It follows that the position of the European Institutions as regards the essential characteristics of the ≤ B20 and > B20 blends was not contradictory and that the applicant cannot therefore invoke a breach of the principle of legal certainty in the present case.

115 Moreover, for the reasons set forth in paragraph 104 above, the specific market conditions in the United States did not preclude the Council and the Commission from considering that the ≤ B20 blends that it exported were 'slightly modified similar products' in respect of the > B20 blends, for the purpose of Article 13(1) of the basic anti-dumping regulation and of Article 23(1) and (3)(a) of the basic anti-subsidies regulation.

116 In those circumstances, the exclusion of ≤ B20 blends from the initial regulations on the basis of the specific features of the market in the United States did not preclude the Commission and the Council from initiating circumvention proceedings in respect of those blends.

117 The applicant's second complaint must therefore be rejected.

– The misuse of power

118 By its third complaint, the applicant claims that the Commission and the Council could not, without misusing their powers, extend the initial duties to imports of ≤ B20 blends by means of circumvention proceedings, and that it should have carried out new investigations concerning those imports on the basis of Article 5 of the basic anti-dumping regulation and Article 10 of the basic anti-subsidies

regulation. The applicant adds in the reply that the Commission should have, at the very least, carried out an interim review within the meaning of Article 11(3) of the basic anti-dumping regulation and Article 19 of the basic anti-subsidies regulation.

119 The Council, supported by the Commission and the EBB, contends that the applicant's arguments are unfounded. Furthermore, the applicant's argument that the Commission was required to carry out, at the very least, an interim review, was put forward in neither the course of the circumvention proceedings nor in the application. That argument is therefore inadmissible. The Court invited the applicant to state its views on that issue at the hearing.

120 It should be noted that a decision is vitiated by misuse of powers only if it appears, on the strength of objective, relevant and consistent evidence, to have been adopted with the exclusive or at least the main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see Case T-266/97 *Vlaamse Televisie Maatschappij* v *Commission* [1999] ECR II-2329, paragraph 131 and the case-law cited).

121 In the present case, as is clear from paragraph 106 above, the applicant has not shown that the Council made a manifest error of assessment in concluding that the ≤ B20 blends exported by the applicant constituted a slight modification of the product concerned for the purpose of Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3)(a) of the basic anti-subsidies regulation. Likewise, the exclusion of ≤ B20 blends from the scope of the initial regulations did not preclude the Commission and the Council from initiating circumvention proceedings in respect of the applicant's imports (see paragraphs 116 above).

122 It follows from the foregoing that the Commission and the Council did not evade the procedure specifically prescribed by the basic anti-dumping and anti-subsidies regulations for dealing with the circumstances of the present case.

123 The third complaint must therefore be rejected, without it being necessary to examine the admissibility of the applicant's argument concerning the Commission's obligation to carry out, at the very least, an interim review procedure instead of a circumvention proceeding.

124 Having regard to all the foregoing, the first part of the applicant's first plea in law, concerning the differences between the > B20 and ≤ B20 blends and the express exclusion of the ≤ B20 blends from the scope of the initial regulations, must be rejected.

The second part of the first plea in law, alleging the absence of modification of the product concerned

125 The applicant claims that the ≤ B20 blends were not 'slightly modified' within the meaning of Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3)(a) of the basic anti-subsidies regulation, since those blends have always existed and were not specifically created in order to avoid the imposition of the initial duties.

126 It must be noted in that respect that, as the Council points out, it is not necessary under the provisions of the basic anti-dumping and anti-subsidies regulation that the 'slightly modified like product', within the meaning of those provisions, have been specifically created so as to avoid paying duties.

127 In the present case, as is clear from paragraphs 13 to 15, 25 and 39 above, the ≤ B20 blends existed on the United States market, but were not exported to the European Union. It was only after the institution of the initial duties that the ≤ B20 blends began to be imported into Europe. Since those blends and the ≤ B20 blends have very similar basic physical, chemical and technical characteristics and the same use in the European Union (see paragraph 104 above), the Council was entitled to

conclude, in recital 65 in the preamble to the contested anti-subsidies regulation and in recital 70 in the preamble to the contested anti-dumping regulation, that the ≤ B20 blends imported by the applicant constituted a slight modification of the product concerned.

128 The second part of the first plea in law and, accordingly, the first plea in its entirety must therefore be rejected.

*The second plea in law, alleging manifest errors in the assessment of facts concerning the applicant*

129 The second plea in law, which alleges several manifest errors of assessment made by the Commission, is comprised of three parts.

130 The first part concerns the reversibility of the modification of the product concerned and is based on the finding that, following the importation, ≤ B20 blends can no longer be transformed back into > B20 blends.

131 In the second part, the applicant disputes the existence of a change in the pattern of trade, within the meaning of Article 13(1) of the basic anti-dumping regulation and Article 23(3) of the basic anti-subsidies regulation, in its regard.

132 In the third part, the applicant claims that the Council did not correctly assess the economic justification that it put forward concerning its imports of < B15 blends.

The first part of the second plea in law, concerning the impossibility of transforming > B20 blends back into > B20 blends

133 The applicant argues that the < B20 blends cannot be transformed back into > B20 blends, with the result that a circumvention of the initial duties would actually be impossible. In stating the opposite, the contested regulations contain manifest errors of assessment.

134 The Council, supported by the Commission, disputes the applicant's arguments.

135 First of all, it must be pointed out that the Council never indicated in the contested regulations that the ≤ B20 blends could be transformed back into > B20 blends, contrary to what the applicant claims.

136 Subsequently, it must be noted, as the Council pointed out, that by requiring that the modified product, once it has been imported, be transformed back into the product concerned, the applicant adds a new criterion for establishing existence of a circumvention which is not laid down by the basic anti-dumping and anti-subsidies regulations. The applicant therefore seems to be confusing the different types of circumvention referred to in those regulations. In the present case, the investigation concerned, inter alia, the importation of 'slightly modified like products' within the meaning of Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3)(a) of the basic anti-subsidies regulation. That circumvention practice differs from the practice covered by Article 13(2) of the basic anti-dumping regulation, which consists in importing the product concerned in separate parts in order to assemble those parts in the European Union subsequently and thereby avoid paying the duties imposed on the entire product.

137 Lastly, as indicated in paragraph 104 above, the ≤ B20 blends imported by the applicant have the same basic physical, chemical and technical characteristics as those of the > B20 blends and the same use in the European Union. Those circumstances are sufficient to find that those blends constitute 'slightly modified like products' within the meaning of Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3)(a) of the basic anti-subsidies regulation.

138 The first part of the second plea in law must therefore be rejected.

The second part of the second plea in law, concerning the absence of a change in the pattern of trade

139 The applicant states that there was no change in the pattern of trade in its regard. It claims that it neither changed its conduct, nor ceased to import the products concerned by the initial duties, since it had never imported those products before the adoption of the initial regulations. It cannot therefore be accused of circumventing a measure that did not concern it.

140 The Council disputes the applicant's arguments.

141 It must be observed that, contrary to what is claimed by the applicant, Article 13(1) of the basic anti-dumping regulation and Article 23(3) of the basic anti-subsidies regulation do not require, in order to establish the existence of a change in the pattern of trade, that the undertakings targeted by a circumvention proceeding have previously imported the products concerned by the initial duties. Such a condition would considerably and unjustifiably restrict the scope of circumvention proceedings.

142 Those proceedings are intended to protect European Union industry against certain imports, irrespective of the identity of the undertakings involved in those imports. The present case concerns the importation of 'slightly modified like products'. It therefore concerns the importation of substitute products for the purpose of eluding the imposition of the initial duties, while those products are still being dumped or subsidised, thereby injuring the industry of the European Union or neutralising the remedial effects of the initial duties. Thus, in order to establish the existence of a change in the pattern of trade, it is sufficient that the institutions find the emergence of imports of the substitute product to the detriment of imports of the products affected by the initial duties, irrespective of whether or not the new imports were carried out by undertakings already affected by the initial duties.

143 In the present case, it is not disputed that the imports of the products originally concerned practically ceased following the imposition of the initial duties and that the exports to the European Union of ≤ B20 blends originating in the United States began at the same time.

144 In those circumstances, the Commission and the Council were entitled to find the existence of a change in the pattern of trade between the United States and the European Union, in accordance with Article 13(1) of the anti-dumping regulation and Article 23(3) of the basic anti-subsidies regulation.

145 The second part of the second plea in law must therefore be rejected.

The third part of the second plea in law, concerning the assessment of the economic justifications put forward by the applicant

146 The applicant claims that the Council made a manifest error in law in concluding, as regards the applicant, that there was insufficient due cause or economic justification to begin exporting the < B15 blends other than the circumvention of the initial duties.

147 In that regard, the applicant notes that it was only at the beginning of 2009 that it commenced its activity in the biodiesel sector in order to support the activities of the BP group and indicates that it decided to import < B15 blends into the European Union for economic reasons. According to the applicant, that type of blend enabled it, first, to avoid the use of smaller and more expensive specialised ships, which are obligatory for the maritime transport of ≥ B15 blends under the MARPOL (see paragraph 98 above), and to transport the blends on non-specialised ships from its own fleet or chartered on a long-term basis. Secondly, those blends did not need to be stored in specialised FAME

tanks and could be more easily stored in the Amsterdam-Rotterdam-Anvers zone ('the ARA zone'), where it had surplus diesel production which it wished to use to produce B7 and B5 blends. Thirdly, the applicant states that BP France's terminal in Frontignan in the south of France, where it exported a 'significant volume' of biodiesel, could not accommodate the specialised ships on which ≥ B15 had to be transported. At the hearing, the applicant emphasised the last argument, explaining that there was significant demand for B7 and B5 blends in the south of France and that, in the Frontignan terminal, it diluted the < B15 blends originating in the United States with the surplus diesel from the ARA zone.

148 The Council, supported by the Commission and the EBB, disputes the applicant's arguments.

149 As a preliminary point, it must be observed that the applicant essentially puts forward logistical reasons in order to justify the imports of < B15 blends into the European Union. Although logistical considerations may play a role in the decision to carry out an economic activity, they cannot by themselves justify such a decision. An economic activity is generally begun only after an analysis of its profitability is carried out. In such an analysis, avoiding the initial duties – the high level of which is not disputed – may be an economic factor which is more important than logistical considerations.

150 In that respect, it must be pointed out, first, that the applicant has not contested the Council's finding that the savings arising from the use of non-specialised ships for the transport of ≥ B15 blends, alleged by the applicant, represented only 2.3% of the amount of the initial duties it avoided during the anti-circumvention investigation period. In those circumstances, the Council was right to disregard the economic justifications alleged by the applicant linked to the ability to use non-specialised ships for the transport of biodiesel blends.

151 Second, as regards the difficulties of storing B100 and B99.9 blends in the tanks in the ARA zone, the existence of a surplus of mineral diesel in that zone and the technical limits of the Frontignan terminal, it must be noted that the applicant's explanations in that regard are unconvincing. In any event, the applicant does not put forward any concrete evidence showing the profitability of those operations. Nor does the applicant submit any numerical, quantified or documented evidence showing the existence of a demand for that type of blend in the south of France. It must also be noted that that argument was put forward only at the stage of the hearing. Furthermore, the applicant's complex and unsupported argument concerning the demand for biodiesel in the south of France contrasts with the concrete figures put forward by the Commission and the Council. According to those figures, the imports of > B20 blends practically ceased after the imposition of the initial duties, whereas the imports of ≤ B20 blends did not appear until after that date (see paragraph 39 above). It is also undisputed that the level of the initial duties was considered to be relatively high, with the result that imports of substitute products, such as the ≤ B20 blends, were economically attractive.

152 In the light of those considerations, it must be concluded that the Council was entitled to consider that there was insufficient due cause or economic justification for the importation of the applicant's < B15 blends other than the imposition of the initial duties.

153 Therefore, the third part of the second plea in law and, consequently, the second plea in its entirety must be rejected.

*The third plea in law, alleging breach of the obligation to state reasons*

154 The applicant claims that the statement of reasons for the contested regulation is inadequate to justify the extension of the initial duties. According to the applicant, the Council was required to provide a more extensive statement of reasons because of the significant effects of that extension on the applicant.

155 In that respect, the applicant claims, first, that the Council did not respond to the arguments it had raised that the ≤ B20 blends could not be reconverted, after their importation, into higher concentrate blends, nor to the arguments that it could not circumvent a measure which did not originally concern it. Secondly, the applicant considers that the Council concluded from the outset that the only economic justification for the exportation of ≤ B20 blends was the grant of subsidies in the United States and the intention to avoid paying the initial duties. Thirdly, the applicant claims that the Council did not explain how it could extend the measures at issue to ≤ B20 blends when it had expressly excluded those blends from the definition of the product concerned and of the like product in the initial investigation. Fourthly, the applicant added at the hearing that recital 79 in the preamble to the contested anti-dumping regulation did not state how the existence of dumping had been determined in the circumvention proceeding. According to the applicant, it is clear from the explanations given by the Council and the Commission before the Court that the Commission relied on the information relating to the ≤ B20 blends provided by an operator during the initial investigation and on the initial normal value established for the > B20 blends adjusted for the ≤ B20 blends.

156 The Council disputes the applicant's arguments.

157 It should be noted that the statement of reasons for a measure of the European Union institutions must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for it and defend their rights and to enable the Court to exercise its power of review (Joined Cases T-134/03 and T-135/03 *Common Market Fertilizers* v *Commission* [2005] ECR II-3923, paragraph 156). Furthermore, the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, to that effect, Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 86, and Case T-290/94 *Kaysersberg* v *Commission* [1997] ECR II-2137, paragraph 150).

158 The Council respected those principles in the present case, for the reasons set out below.

159 As regards, first, the lack of an express response in the contested regulations to certain arguments of the applicant, it must be recalled that a regulation imposing anti-dumping duties or countervailing duties has to state reasons only as regards all the elements of fact and of law that are relevant for the purposes of the findings made in it (see, to that effect, Case T-314/06 *Whirlpool Europe* v *Council* [2010] ECR II-5005, paragraph 116).

160 As indicated in paragraphs 136 and 141 above, Article 13(1) of the basic anti-dumping regulation and Article 23(1) and (3) of the basic anti-subsidies regulation do not require that the modified product, once imported, be transformed back into the product concerned, nor that the undertakings concerned by a circumvention proceeding have previously imported the products affected by the initial duties. The Council was therefore not required to adopt a position on the arguments put forward by the applicant in that respect.

161 Secondly, as regards the economic justifications for the importation of ≤ B20 blends, it must be pointed out that the applicant's criticism of the contested regulations is intended to contest the validity of the Council's conclusion on that issue, as set out in recitals 70, 71 and 76 in the preamble to the contested anti-subsidies regulation and recitals 75, 76 and 81 in the preamble to the contested anti-dumping regulation, instead of targeting a failure to state reasons in respect of those justifications. The applicant's argument must therefore be rejected.

162 Thirdly, as regards the reasons for the extension of the initial duties to ≤ B20 blends previously excluded from the scope of the initial regulations, the Council noted, in recitals 55 and 56 in the preamble to the contested anti-subsidies regulation and recitals 60 and 61 in the preamble to the

contested anti-dumping regulation, the arguments that the National Biodiesel Board (NBB), which represents the American biodiesel industry, and other interested parties had made regarding that exclusion. In response to those arguments, the Council indicated, in recitals 57 to 59 in the preamble to the contested anti-subsidies regulation and recitals 62 to 64 in the preamble to the contested anti-dumping regulation, that there was 'sufficient prima facie evidence … showing that circumvention [was] taking place', for the purpose of Article 13(1) of the basic anti-dumping regulation and Article 23 of the basic anti-subsidies regulation. The Council also indicated that the procedure provided for in those provisions did not modify the definition of the product concerned or the like product. In recital 65 in the preamble to the contested anti-subsidies regulation and in recital 70 in the preamble to the contested anti-dumping regulation, the Council explained why it considered that the ≤ B20 blends could be regarded as a 'slight modification of the product concerned', in respect of which a circumvention proceeding could be carried out.

163 That statement of reasons is in no way flawed, contrary to what is claimed by the applicant.

164 Fourthly, as regards the statement of reasons for the manner in which the dumping was established, referred to by the applicant at the hearing, it must be recalled, first of all, that the fact that a statement of reasons is lacking or inadequate constitutes a matter of public interest which may, and even must, be raised by the European Union judicature of its own motion (see, by analogy, Case C-166/95 P *Commission* v *Daffix* [1997] ECR I-983, paragraph 24). It follows that the applicant's argument cannot be rejected because it is out of time.

165 It must be observed that the Council stated, in recital 79 in the contested anti-dumping regulation, that '[i]n accordance with Article 13(1) and (2) of the basic anti-dumping regulation it [had been] examined whether there was evidence of dumping in relation to the normal value established in the [initial] investigation' and that '[t]he comparison of the weighted average normal value and the weighted average export price [had] showed the existence of dumping'.

166 That statement of reasons shows, to the requisite legal standard, the evidence on which the existence of dumping was established.

167 It follows that the applicant's third plea in law must be rejected.

*The fourth plea in law, alleging breach of the principles of non-discrimination and sound administration*

168 In the fourth plea in law, the applicant submits that it fully cooperated in the circumvention proceeding, but that the rate imposed on it was nevertheless the same as that imposed on the other undertakings which had not cooperated or which had not made themselves known during the initial investigation (the third category of undertakings referred to in paragraph 21 above). Although the applicant did not participate in the initial investigation, that was because it was not a biodiesel exporter at the time.

169 In the light of its specific situation, the applicant claims, first, that, according to the principle of non-discrimination, the Council should have imposed on it the rate applicable to companies which cooperated during the initial investigation and which were not selected in the sample, set out in the list annexed to the initial regulations (the second category of undertakings referred to in paragraph 20 above). The applicant is of the view that it is in the same situation as those undertakings.

170 Secondly, the applicant claims that the information which it provided in the course of the circumvention proceeding should have been sufficient for it to be granted individual treatment. In accordance with the principle of sound administration, the Council should have treated the companies not concerned by the initial investigation individually, rather than applying the measures to them on an

arbitrary basis and without any consideration of the extent to which those companies were, or were not, dumping. In response to the EBB's statement in intervention, the applicant indicates that it was led to believe by the Commission that the latter did not consider that its exports constituted circumvention. However, it does not expressly complain of a breach of the principle of sound administration, nor draw any inferences from the latter claim.

171 The Council, supported by the Commission, is of the view that the applicant's arguments are irrelevant.

172 As regards, first, the complaint alleging breach of the principle of non-discrimination, it must be pointed out that, as the Council notes, the applicant is not in the same situation as the companies which cooperated in the course of the initial investigation and were not selected in the sample. Although the applicant cooperated with the European Union institutions in the circumvention proceedings, its imports circumvented the imposition of the initial duties. In contrast to the standard anti-dumping and anti-subsidies proceedings, which may lead to the imposition of lower duties on companies which cooperated, the circumvention proceedings do not lead to the creation of any duty, but merely extend the initial duty which has been circumvented.

173 In the present case, the duties which would have been applied to the applicant if it had not circumvented the measures at issue would, in principle, have been those applicable to all other companies, unless it had requested and obtained, before carrying out its imports of the > B20 blends, individual treatment as a new exporter, on the basis of Article 11(4) of the basic anti-dumping regulation and Article 20 of the basic anti-subsidies regulation.

174 In those circumstances, the Council did not infringe the principle of non-discrimination by imposing on the applicant the residual rates applicable to all other companies which did not cooperate or which did not make themselves known during the initial investigation.

175 It must be observed, moreover, that the residual rates applied to the applicant, though high, already take into account a high general level of cooperation (81%) of the undertakings in the initial investigation (see paragraph 21 above).

176 As regards, secondly, the complaint alleging breach of the principle of sound administration as a result of the failure to treat the applicant individually, it must be pointed out that such treatment was not possible in the context of the circumvention procedures. As indicated in paragraph 172 above, those procedures are intended to extend to the imports concerned the initial duties imposed by the Council in the regulation which was circumvented, but do not lead to the creation of new duties established on the basis of a calculation of the dumping margin or the amount of subsidies and the injury attributable to imports by the operators which circumvented the measures. Furthermore, the possibility of granting the applicant individual treatment as a new exporter was excluded for the reasons referred to in paragraph 105 above.

177 It must be added that the fact that the applicant did not participate in the initial investigation, because at the time it did not import biodiesel into the European Union, does not justify exceptional individual treatment on the basis of the principle of sound administration. As indicated in paragraph 141 above, the basic anti-dumping and anti-subsidies regulations do not require that the undertakings targeted by a circumvention proceeding have previously imported the products concerned by the initial duties. In those circumstances, as emphasised by the Commission, it is not unusual for extended duties to be imposed on producers or importers which were not concerned by the initial regulations following a circumvention proceeding. In that case, the extended duties correspond to the residual duties established in the initial regulations.

178 Therefore, the applicant's complaint alleging breach of the principle of sound administration arising from the lack of individual treatment in its regard is unfounded.

179 It follows from all of the foregoing that the applicant's fourth plea in law must be rejected and, accordingly, the action in its entirety must be dismissed.

**Costs**

180 Under Article 87(2) 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.

181 Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those of the Council and the EBB, in accordance with the forms of order sought by those parties.

182 Pursuant to Article 87(4) of the Rules of Procedure, the Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders BP Products North America Inc. to bear its own costs and to pay those of the Council of the European Union and the European Biodiesel Board (EBB);**

3. **Orders the European Commission to bear its own costs.**

Martins Ribeiro Dehousse Van der Woude

Delivered in open court in Luxembourg on 16 January 2014.

[Signatures]

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