Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

15 September 2016*

(Dumping — Imports of biodiesel originating in Argentina — Definitive anti-dumping duty — Action for annulment — Direct concern — Individual concern — Admissibility — Article 2(5) of Regulation (EC) No 1225/2009 — Normal value — Production costs)

In Case T-111/14,

Unitec Bio SA, established in Buenos Aires (Argentina), represented by J.-F. Bellis, R. Luff and G. Bathory, lawyers,

applicant,

v

Council of the European Union, represented initially by S. Boelaert and B. Driessen, and subsequently by H. Marcos Fraile, acting as Agents, and by R. Bierwagen and C. Hipp, lawyers,

defendant,

supported by

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

and by

European Biodiesel Board (EBB), established in Brussels (Belgium), represented by O. Prost and M.-S. Dibling, lawyers,

interveners,

ACTION pursuant to Article 263 TFUE for annulment of Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2) in so far as it imposes an anti-dumping duty on the applicant,

THE GENERAL COURT (Ninth Chamber),

composed of G. Berardis, President, O. Czúcz (Rapporteur) and A. Popescu, Judges,

* Language of the case: English.

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 October 2015,

gives the following

Judgment

Background to the dispute and the contested regulation

1 The applicant, Unitec Bio SA, is an Argentinian producer of biodiesel.

2 Biodiesel, an alternative fuel similar to conventional diesel, is produced in the European Union, but it is also imported in large quantities. In Argentina, it is mainly produced from soya beans and soybean oil ('the main raw materials').

3 Following a complaint lodged on 17 July 2012 by the European Biodiesel Board (EBB) on behalf of producers accounting for more than 60% of the total production of biodiesel in the European Union, the European Commission published, on 29 August 2012, a notice of initiation of an anti-dumping proceeding concerning imports of biodiesel originating in Argentina and Indonesia (OJ 2012 C 260, p. 8), in accordance with Article 5 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) ('the basic regulation').

4 The investigation of dumping and injury covered the period from 1 July 2011 to 30 June 2012 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the investigation period.

5 Owing to the large number of Argentinian exporting producers, the Commission, in the context of the investigation in question, selected a sample of three exporting producers or groups thereof on the basis of the largest representative volume of exports of the product concerned to the European Union. The applicant was not included in that sample.

6 On 27 May 2013, the Commission adopted Regulation (EU) No 490/2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 141, p. 6) ('the provisional regulation'). In that regulation, the Commission found, inter alia, that imports of biodiesel originating in Argentina were dumped, causing injury to the European Union industry, and took the view that the adoption of an anti-dumping duty on those imports was in the interest of the European Union.

7 As regards calculation of the dumping margin and, more specifically, determination of the normal value of the like product in respect of Argentina, the Commission took the view that domestic sales were not made in the ordinary course of trade, since the Argentinian market was heavily regulated by the State. Consequently, the Commission decided to apply Article 2(3) of the basic regulation, which provides that when there are no sales of that product in the ordinary course of trade it is necessary to construct the normal value of that product by calculating it on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country provided that those prices are representative.

8 As regards the costs of production of biodiesel originating in Argentina, the Commission noted that the EBB had claimed that the production costs included in the records of the Argentinian exporting producers examined did not reasonably reflect biodiesel production costs. That assertion concerned Argentina's Differential Export Tax system ('the DET system'), which, according to the complainants, created a distortion of the prices of the main raw materials. Taking the view that it did not have, at that stage, enough information to make a decision as to the most appropriate way to address that claim, the Commission decided to calculate the normal value of biodiesel on the basis of the production costs included in those records, while indicating, however, that that question would be examined in greater depth at the definitive stage of the investigation.

9 On 19 November 2013, the Council of the European Union adopted Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2) ('the contested regulation').

10 In the first place, as regards the normal value of the like product in respect of Argentina, the Council confirmed the findings in the provisional regulation, to the effect that that value should be calculated pursuant to Article 2(3) of the basic regulation, since the Argentinian biodiesel market is heavily regulated by the State (recital 28 of the contested regulation).

11 As regards the production costs, the Council accepted the Commission's proposal to alter the findings of the provisional regulation and to disregard the costs of the main raw materials indicated in the records of the Argentinian exporting producers examined pursuant to Article 2(5) of the basic regulation. According to the Council, that data did not reasonably reflect the costs associated with biodiesel production in Argentina, on account of the fact that the DET system created a distortion of the prices of the main raw materials in the Argentinian domestic market. It replaced them with the average of the reference prices of soya beans published by the Argentinian Ministry of Agriculture for free-on-board (FOB) export during the investigation period ('the reference price') (recitals 35 to 40 of the contested regulation).

12 In the second place, the Council confirmed most of the findings included in the provisional regulation and stated that the European Union industry had suffered significant injury within the meaning of Article 3(6) of the basic regulation (recitals 105 to 142 of the contested regulation) and that that injury had been caused by dumped imports of biodiesel originating in Argentina (recitals 144 to 157 of the contested regulation). In that context, the Council noted that other factors, including, inter alia, imports made by the European Union industry (recitals 151 to 160 of the contested regulation), low capacity utilisation of the European Union industry (recitals 161 to 171 of the contested regulation) and the system of double counting of biodiesel produced from waste oils existing in some Member States (recitals 173 to 179 of the contested regulation) had not been capable of breaking that causal link.

13 In the third place, the Council confirmed that the adoption of the anti-dumping measures in question remained in the European Union's interest (recitals 190 to 201 of the contested regulation).

14 In view of the dumping margins found and the level of injury caused to the European Union industry, the Council decided, inter alia, that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional regulation, should be definitively collected (recital 228 and Article 2 of the contested regulation) and that a definitive anti-dumping duty should be imposed on imports of biodiesel originating in Argentina (Article 1(1) of the contested regulation).

15 In Article 1(2) of the contested regulation, the rates of definitive anti-dumping duties applicable to the product in question, in respect of Argentinian imports, were as follows:

Company	Duty rate euro per tonne net	TARIC additional code
Aceitera General Deheza SA, General Deheza, Rosario; Bunge Argentina SA, Buenos Aires	216.64	B782
LDC Argentina SA, Buenos Aires	239.35	B783
Molinos Río de la Plata SA, Buenos Aires; Oleaginosa Moreno Hermanos SAFICI y A, Bahia Blanca; Vicentin SAIC, Avellaneda	245.67	B784
Other cooperating companies: Cargill SACI, Buenos Aires; Unitec Bio, Buenos Aires; Viluco SA, Tucuman	237.05	B785
All other companies	245.67	B999

16 Following a further complaint from the EBB, the Commission also conducted, at the same time as the anti-dumping proceeding, an anti-subsidy proceeding in respect of imports into the European Union of biodiesel originating in Argentina and Indonesia. After that complaint was withdrawn by letter of 7 October 2013, that proceeding was closed, without the imposition of definitive duties, by Commission Regulation (EU) No 1198/2013 of 25 November 2013 terminating the anti-subsidy proceeding concerning imports of biodiesel originating in Argentina and Indonesia and repealing Regulation (EU) No 330/2013 making such imports subject to registration (OJ 2013 L 315, p. 67).

Procedure and forms of order sought

17 By application lodged at the Court Registry on 17 February 2014, the applicant brought the present action.

18 On 2 June 2014, the Council lodged its defence. The reply and rejoinder were lodged, respectively, on 6 August 2014 by the applicant and 21 October 2014 by the Council.

19 By documents lodged at the Court Registry, on 13 May and 2 June 2014 respectively, the Commission and the EBB sought leave to intervene in the present proceedings in support of the form of order sought by the Council. By orders of 17 July and 22 September 2014, the President of the Ninth Chamber of the General Court granted them leave to intervene. The interveners submitted their statements in intervention and the other parties submitted their observations thereon within the prescribed time limits.

20 Acting on a report of the Judge-Rapporteur, the Court (Ninth Chamber) decided to open the oral part of the procedure.

21 By order of 30 September 2015, the present case and Cases T-112/14, *Molinos Río de la Plata* v *Council*, T-113/14, *Oleaginosa Moreno Hermanos* v *Council*, T-114/14, *Vicentin* v *Council*, T-115/14, *Aceitera General Deheza* v *Council*, T-116/14, *Bunge Argentina* v *Council*, T-117/14, *Cargill* v *Council*, T-118/14, *LDC Argentina* v *Council*, and T-119/14, *Carbio* v *Council*, were joined for the purposes of the oral part of the procedure. The parties presented oral argument and answered the questions put to them by the Court at the hearing on 28 October 2015.

22 By way of measures of organisation of procedure, the Court (Ninth Chamber) requested information from the parties and invited them to submit their comments on the replies of the other parties.

23 The applicant claims that the Court should:

— annul the contested regulation in so far as it concerns the applicant;

— order the Council to pay the costs.

24 The Council, supported by the Commission and by the EBB, contends that the Court should:

— dismiss the action as inadmissible and, in the alternative, as unfounded;

— order the applicant to pay the costs.

Admissibility

25 The Council, while not raising a formal plea of inadmissibility under Article 114 of the Rules of Procedure of the General Court of 2 May 1991, contests the admissibility of the action. In essence, it claims that the applicant does not have *locus standi* to institute proceedings for annulment within the meaning of the fourth paragraph of Article 263 TFEU. Since the applicant is not part of the selected sample (see paragraph 5 above), it was not sufficiently identified in the contested regulation, in that it is referred to only among the 'other cooperating companies', and the dumping calculation was not made on the basis of any data relating to its commercial activity. The applicant's participation in the administrative procedure was only indirect and was not sufficient, in itself, to substantiate its individual interest. Furthermore, the applicant has not demonstrated that it was individually concerned by the contested regulation by reason of certain attributes which are peculiar to it and which differentiate it from other persons.

26 In that regard, it should be recalled at the outset that, under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, 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.

27 In the present case, the Court considers that it is appropriate first to examine whether the applicant is directly and individually concerned by the contested regulation within the meaning of the fourth paragraph of Article 263 TFEU.

28 The Council does not dispute that that company is directly concerned by the contested regulation. The customs authorities of the Member States are required, without having any margin of discretion, to levy the duties imposed by the contested regulation.

29 As regards whether the applicant is individually concerned, it should be borne in mind that it is apparent from the case-law that natural and legal persons may claim to be individually concerned by a measure only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons (judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 96, 107).

30 In that context, it must be noted that Article 1 of the contested regulation imposes an individual definitive anti-dumping duty of EUR 237.05 per tonne on the applicant and refers explicitly to it.

31 Contrary to the Council's view, that circumstance is sufficient in itself to conclude that the applicant is individually concerned (see, to that effect, judgment of 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraph 22).

32 Since the applicant is directly and individually concerned by the contested regulation, the objection of inadmissibility raised by the Council must be rejected.

Substance

33 In support of the action, the applicant puts forward three pleas in law.

34 The first and second pleas in law seek to call into question the Council's disregarding of the costs of the main raw materials included in the records of the Argentinian exporting producers examined, on account of the distortion of the prices of those raw materials caused by the DET system, and their replacement with the reference price. In its first plea in law, the applicant claims that such action does not comply with the first and second subparagraphs of Article 2(5) of the basic regulation. In the second plea in law, the applicant claims that that action does not comply with the Agreement on Implementation of Article VI of the GATT (OJ 1994 L 336, p. 103).

35 The third plea in law alleges that, in finding that there was a causal link between the imports of biodiesel originating in Argentina which are the subject of the investigation and the injury caused to the European Union industry, the Council infringed Article 3(7) of the basic regulation.

36 As regards the first plea in law, the applicant claims that the Council infringed Article 2(5) of the basic regulation by failing to take into account the costs associated with the main raw materials actually incurred by the Argentinian exporting producers in question on the ground that the prices for those materials indicated in the records of the Argentinian exporting producers examined were artificially low. The applicant maintains that, in Argentina, the prices of the main raw materials are not regulated. They are freely set by the producers and are not lower than those of the raw materials sold for export. The approach adopted by the Council and the Commission ('the institutions') to determine the cost of those materials amounts to adding export tax to the Argentinian prices indicated in those records. In any event, even assuming that the domestic prices of those materials are distorted by the DET system, the institutions have not shown that those records did not reasonably reflect their costs and could therefore be disregarded under Article 2(5) of the basic regulation.

37 The Council, supported by the Commission and the EBB, contends, in the present case, that the application of Article 2(5) of the basic regulation is based on the fact that sales of the main raw materials on the Argentinian market were not made in the ordinary course of trade. The Council maintains that the DET system led to distortion of the production costs of Argentinian biodiesel producers, as shown by a considerable difference between the domestic price and the international price, which makes it necessary to adjust those costs. The records of the Argentinian exporting producers examined would not serve as a basis for calculating the normal value if the costs associated with the production of a product under investigation were not reasonably reflected in those records. The fact that the prices are regulated is only one of the possible reasons why, for the purposes of the investigation, the costs are not reasonably reflected in those records. The data used by the institutions, namely the reference prices of soya beans during the investigation period, reflecting the level of international prices, is a reliable source.

38 In the present case, it must be stressed that, in the contested regulation, in the context of determining the normal value of the like product, the institutions did not calculate the costs of production associated with the main raw materials by reference to their prices as reflected in the records of the companies examined, but, as is apparent, inter alia, from recital 29 et seq. of that regulation, disregarded those prices and replaced them with the reference price on the basis of Article 2(5) of the basic regulation.

39 In that regard, it must be recalled that, by virtue of Article 2(3) of the basic regulation, where there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison, the normal value of that product is to be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative. That provision provides that a particular market situation for the product concerned within the meaning of the preceding sentence may be deemed to exist, inter alia, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements.

40 Furthermore, it follows from the first subparagraph of Article 2(5) of the basic regulation that, when the normal value of the like product is calculated in accordance with Article 2(3) of that regulation, the costs of production are normally to be calculated on the basis of the records kept by the party under investigation, provided that those records are in accordance with the generally accepted accounting principles of the country concerned and reasonably reflect the costs associated with the production and sale of the product in question.

41 Under the second subparagraph of Article 2(5) of the basic regulation, if costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they are to be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

42 The objective of the first and second subparagraphs of Article 2(5) of the basic regulation is to ensure that the costs associated with the production and sale of the like product used in calculating the normal value of that product reflect the costs that a producer would have incurred on the domestic market of the exporting country.

43 Moreover, it follows from the wording of the first subparagraph of Article 2(5) of the basic regulation that the records kept by the party under investigation are the prime source of information in order to establish the costs of production of the like product and that the use of the data included in those records constitutes the rule and the adaptation or replacement of that data on another reasonable basis is the exception.

44 Since a derogation from or exception to a general rule must be interpreted narrowly (see judgment of 19 September 2013, *Dashiqiao Sanqiang Refractory Materials* v *Council*, C-15/12 P, EU:C:2013:572, paragraph 17 and the case-law cited), it must be considered, as the applicant argues, that the exception arising from Article 2(5) of the basic regulation must be interpreted narrowly.

45 In the present case, without calling into question the reasons leading the institutions to calculate the normal value of the like product on the basis of Article 2(3) of the basic regulation, the applicant contests the application of Article 2(5) of that regulation on the basis of which, as regards that calculation, the institutions did not rely on the prices of the main raw materials included in the records of the companies examined.

46 In the contested regulation, the institutions did not state that the records of the Argentinian exporting producers examined did not comply with the accounting principles generally accepted in Argentina. By contrast, they maintained that those records did not reasonably reflect the costs associated with the main raw materials.

47 As is clear from recitals 29 to 42 of the contested regulation, the institutions took the view that, inasmuch as it included differential export taxes on the main raw materials and biodiesel, the DET system had caused distortion of the prices of those raw materials in so far as that system depressed their prices on the Argentinian market to an artificially low level.

48 On the basis of the judgment of 7 February 2013, *Acron and Dorogobuzh* v *Council* (T-235/08, not published, EU:T:2013:65), the institutions considered in recital 31 of the contested regulation that when the prices of the main raw materials were regulated in such a way that they were artificially low on the domestic market, it could be presumed that the cost of producing the product concerned was affected by a distortion. Under such circumstances, they considered that the data included in the records of the Argentinian exporting producers examined may not be considered reasonable and, consequently, should be adjusted.

49 In that regard, it is necessary to recall that, in paragraph 44 of the judgment of 7 February 2013, *Acron and Dorogobuzh* v *Council* (T-235/08, not published, EU:T:2013:65), the Court held that, given that natural gas was necessarily supplied at a very low price to the exporting producers concerned by virtue of Russian law, the production price of the product concerned in the case giving rise to that judgment was affected by a distortion of the domestic Russian market regarding the price of gas, as that price was not the result of market forces. The Court therefore considered that the institutions were fully entitled to conclude that one of the items in the records of the applicants in that case could not be regarded as reasonable and that, consequently, that item had to be adjusted by having recourse to other sources from markets which the institutions regarded as more representative.

50 However, as the applicant correctly claims, unlike the situation at issue in the case which gave rise to the judgment of 7 February 2013, *Acron and Dorogobuzh* v *Council* (T-235/08, not published, EU:T:2013:65), it is not apparent from the file that the prices of the main raw materials were directly regulated in Argentina. The DET system referred to by the institutions merely provided for export taxes with different rates on the main raw materials and biodiesel.

51 The fact that the DET system does not directly regulate the prices of the main raw materials in Argentina nevertheless does not, in itself, rule out the application of the exception referred to in Article 2(5) of the basic regulation.

52 It must be recalled, as the institutions point out, that the provision corresponding to the second subparagraph of Article 2(5) of the basic regulation was inserted into the preceding basic regulation, namely 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), by Council Regulation (EC) No 1972/2002 of 5 November 2002 amending Regulation No 384/96 (OJ 2002 L 305, p. 1).

53 It is apparent from recital 4 of Regulation No 1972/2002 that the insertion of the provision corresponding to the second subparagraph of Article 2(5) of the basic regulation sought to give some guidance as to what should be done if the records did not reasonably reflect the costs associated with the production and sale of the product under consideration, in particular in situations where, because of a particular market situation, sales of the like product did not permit a proper comparison. In such a case, that recital states that the relevant data should be obtained from sources which are unaffected by ‘such distortions’.

54 Recital 4 of Regulation No 1972/2002 therefore envisages the possibility of relying on Article 2(5) of the basic regulation, in particular in a situation where the sales of the like product do not permit a proper comparison on account of distortion. It also follows from it that such a situation may arise, in particular, when a particular market situation exists, such as that referred to in the second subparagraph of Article 2(3) of the basic regulation, concerning artificially low prices of the product concerned, but that type of situation is not limited to cases in which there is direct regulation of prices of the like product or the main raw materials of that product by the exporting State.

55 By contrast, it cannot reasonably be considered that any measure of the public authorities of the exporting State which could have an influence on the prices of the main raw materials and, as a result, on the price of the product in question, may be the source of a distortion that permits, in the context of the calculation of the normal value of the like product, the prices included in the records of the party under investigation to be disregarded. As the applicant rightly states, if any measure taken by the public authorities of the exporting country which is capable of influencing, even slightly, the prices of the main raw materials could be taken into account, the principle enshrined in the first subparagraph of Article 2(5) of the basic regulation, to the effect that those records are the prime source of information in order to establish the costs of production of the like product, would risk being deprived of any useful effect.

56 Accordingly, a measure of the public authorities of the exporting country may lead the institutions to disregard, in the context of calculating the normal value of the like product, the prices of the raw materials included in the records of the party under investigation only when it causes appreciable distortion of the prices of those raw materials. Another interpretation of the exception provided for in Article 2(5) of the basic regulation, allowing, in a situation such as that in the present case, that data to be replaced by costs established on another reasonable basis, risks disproportionately impairing the principle that those records are the prime source of information in order to establish the costs of production of that product.

57 Furthermore, as regards the burden of establishing the existence of factors justifying the application of the first subparagraph of Article 2(5) of the basic regulation, it must be considered that, where the institutions consider that they must disregard the costs of production contained in the records of the parties under investigation and replace them with another price deemed reasonable, the institutions must rely on direct evidence, or at least on circumstantial evidence pointing to the existence of the factor for which the adjustment was made (see, by analogy, judgment of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP* v *Council*, T-249/06, EU:T:2009:62, paragraph 180 and the case-law cited).

58 Consequently, given the fact that the disregard, in the context of calculating the normal value of the like product, of the production costs of that product included in the records of the parties under investigation falls within the scope of an exception (see paragraph 44 above), where the distortion relied upon by the institutions is not an immediate consequence of the State measure from which it originates, as in the case giving rise to the judgment of 7 February 2013, *Acron and Dorogobuzh* v *Council* (T-235/08, not published, EU:T:2013:65), but of the effects that that measure is deemed to produce on the market, those institutions must ensure that they explain the operation of the market in question and demonstrate the specific effects of that measure on it, without relying in that regard on mere conjecture.

59 It is necessary to examine, in the light of those considerations, whether the institutions have established to the requisite legal standard that the conditions were met for disregarding, in the context of calculating the normal value of the like product, the prices of the main raw materials contained in the records of the Argentinian exporting producers examined.

60 First, the measure of the Argentinian public authorities identified as the source of the distortion of the prices of the main raw materials, as indicated inter alia in recital 29 of the contested regulation, is the DET system, in that it includes differential levels of tax imposed on the main raw materials and biodiesel. According to recital 35 of that regulation, during the investigation period, biodiesel exports were taxed at a nominal rate of 20% with an effective rate of 14.58%, while, during the same period, the taxation rates for exports of soya beans and exports of soybean oil were 35 and 32% respectively.

61 Secondly, as regards the effects of the DET system, the Council maintained, inter alia, in recital 30 of the contested regulation, that a further investigation had shown that that system depressed the domestic prices of the main raw materials on the Argentinian market to an artificially low level.

62 Although, in that context, the Council indicated, in recital 68 of the contested regulation, as regards the effects of the DET system applied in Indonesia, that that system limited the possibilities of exporting raw materials, since larger quantities of those materials were available on the domestic market and depressed their prices on that market, it must be noted that that regulation did not establish the extent to which that system, in that it included export taxes at differential rates on the main raw materials and biodiesel, had led to appreciable distortion of the prices of those raw materials on the Argentinian market.

63 In recital 37 of the contested regulation, the Council noted that the domestic prices and international prices of the main raw materials followed the same trends and that the difference between those prices corresponded to the export taxes imposed on them. In recital 38 of that regulation, it stated that the domestic prices of the main raw materials used by biodiesel producers in Argentina were artificially lower than the international prices owing to the distortion created by the DET system. However, by merely stating that the difference between the domestic prices and the international prices of the main raw materials corresponded essentially to the export taxes on the latter, the Council did not establish the effects that the difference between the rate of the taxes on those raw materials and the rate of tax on biodiesel could have had in itself on the prices of those raw materials on the Argentinian market. The finding in recital 37 of that regulation at most allows conclusions to be drawn as regards certain effects that imposing an export tax could have on the prices of the main raw materials, but does not allow conclusions to be drawn on the effects that the difference between the rate of the taxes on those raw materials and the rate of the tax on biodiesel could have had on the prices of those raw materials on that market.

64 Nor does the information provided by the Council in recitals 39 and 42 of the contested regulation, to the effect that the prices of the main raw materials included in the records of the relevant companies were replaced by the prices at which those companies would have purchased them on the domestic market in the absence of distortion, namely the reference price, allow conclusions to be drawn as to the effects that the difference between the rate of export taxes on raw materials and the rate of export tax on biodiesel could have on the price of those raw materials on that market. In so far as those recitals must be read as a finding of the Council that, in the absence of such a difference in rates, the price of the main raw materials on that market would have been identical to the reference price, it suffices to note that that has not been established either in the contested regulation or in the proceedings before the Court.

65 As regards the economic studies on which the institutions relied during the proceedings before the Court, it should be noted that it is true that it may be inferred that export taxes lead to an increase in the export price of the product affected by the tax compared with its price on the domestic market, a reduced export volume of that product and downward pressure on the prices of that product on the domestic market. It may also be inferred that a system of export taxes which taxes the main raw materials at a higher level than products on a downstream market protects and favours downstream domestic industries by providing them with raw materials in sufficient quantities at advantageous prices.

66 However, it must be noted that those studies merely analyse the effects of export taxes on the prices of the main raw materials and not the effects of the differential rates used for export taxes on the main raw materials and biodiesel.

67 The institutions therefore merely explained the relationship between the international prices and the domestic prices of the main raw materials and gave indications as regards the impact of the export tax on the availability of those raw materials on the domestic market and on their prices, without, however, establishing specifically the effects that the DET system as such could have had on the domestic prices of the main raw materials and the extent to which those effects differ from those of a taxation system without differential rates for export taxes on the main raw materials and biodiesel.

68 Accordingly, it must be considered that the institutions failed to establish to the requisite legal standard that there was appreciable distortion of the prices of the main raw materials in Argentina as a result of the DET system, in that it included differential rates for export taxes on the main raw materials and biodiesel. Therefore, by taking the view that the prices of those raw materials were not reasonably reflected in the records of the Argentinian exporting producers examined and by disregarding them, the institutions infringed Article 2(5) of the basic regulation.

69 Contrary to what the institutions claim, that conclusion is not invalidated by the fact that they have broad discretion in the field of the common commercial policy, in particular, as regards complex economic assessments concerning commercial defence measures and that, in that regard, the Court must be restricted to checking that the rules governing procedure have been complied with, that the facts taken into account are materially accurate, and that there has been no manifest error of assessment of the facts or misuse of power (see, to that effect, judgment of 18 September 2002, *Since Hardware (Guangzhou)* v *Council*, T-156/11, EU:T:2012:431, paragraphs 134 to 136 and the case-law cited).

70 A review by the Court which merely determines whether the elements on which the European Union institutions base their findings are capable of substantiating the conclusions which they draw from them does not encroach on their broad discretion in the field of commercial policy (see, to that effect, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 68).

71 In the present case, the Court has simply examined whether the institutions demonstrated that the conditions were met for disregarding, in the context of calculating the normal value of the like product, the costs associated with the production and sale of that product, as reflected in the records of the Argentinian exporting producers examined, in accordance with the rule laid down in Article 2(5) of the basic regulation.

72 It follows that the first plea in law must be upheld.

73 It is also necessary to examine the extent to which the error found justifies the annulment of the contested regulation, in so far as it concerns the applicant.

74 Contrary to the Council's contention, in the circumstances of the present case, it is not possible partially to annul Article 1 of the contested regulation solely with regard to the error found concerning the method of calculation of the anti-dumping duty rate.

75 According to case-law, partial annulment of a European Union act is possible only if the elements whose annulment is sought may be severed from the remainder of the act. That requirement of severability is not satisfied where the partial annulment of an act would have the effect of altering its substance (judgment of 10 December 2002, *Commission* v *Council*, C-29/99, EU:C:2002:734, paragraphs 45 and 46).

76 As explained in relation to the examination of the first plea in law, the institutions' calculation of the normal value of the like product is based on incorrect considerations. Since the normal value is an essential condition for determining the applicable rate of anti-dumping duty, Article 1 of the contested regulation cannot be maintained, in so far as it imposes an individual anti-dumping duty on the applicant.

77 Having regard to the interrelationship between the definitive anti-dumping duty and the provisional anti-dumping duty provided for in Article 10(2) and (3) of the basic regulation, Article 2 of the contested regulation must also be annulled with respect to the applicant in so far as it provides that the amounts secured by way of the provisional anti-dumping duties are to be definitively collected.

78 The contested regulation must therefore be annulled in so far as it concerns the applicant, without there being any need to examine the second and third pleas in law.

Costs

79 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to bear its own costs and to pay those of the applicant in accordance with the form of order sought by the applicant.

80 The Commission and the EBB shall bear their own costs, in accordance with the provisions of Article 138(1) and (3) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. **Annuls Articles 1 and 2 of Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia, in so far as they concern Unitec Bio SA;**

2. **Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Unitec Bio;**

3. **Orders the European Commission and the European Biodiesel Board (EBB) to bear their own costs.**

Berardis Czúcz Popescu

Delivered in open court in Luxembourg on 15 September 2016.

[Signatures]