Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

9 November 2017*

(Appeal — Subsidies — Implementing Regulation (EU) No 1239/2013 — Article 2 — Imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from China — Definitive countervailing duty — Exemption of imports covered by an accepted undertaking — Severability)

In Case C-205/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 11 April 2016,

SolarWorld AG, established in Bonn (Germany), represented by L. Ruessmann, avocat, and J. Beck, Solicitor,

applicant,

the other parties to the proceedings being:

Brandoni solare SpA, established in Castelfidardo (Italy),

Solaria Energia y Medio Ambiente, SA, established in Madrid (Spain), represented by L. Ruessmann, avocat, and J. Beck, Solicitor,

applicants at first instance,

Council of the European Union, represented by H. Marcos Fraile, acting as Agent, and N Tuominen, Avocată,

defendant at first instance,

European Commission, represented by A. Demeneix, J.-F. Brakeland and T. Maxian Rusche, acting as Agents,

China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME), established in Beijing (China), represented by J.-F. Bellis and A. Scalini, avocats, and F. Di Gianni, avvocato,

interveners at first instance,

THE COURT (Ninth Chamber),

composed of C. Vajda, President of the Chamber, E. Juhász and C. Lycourgos (Rapporteur), Judges,

* Language of the case: English.

Advocate General: E. Tanchev,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 March 2017,

after hearing the Opinion of the Advocate General at the sitting on 1 June 2017,

gives the following

Judgment

1 By its appeal, SolarWorld AG asks the Court to set aside the order of the General Court of the European Union of 1 February 2016, *SolarWorld and Others* v *Council* (T-142/14, not published, EU:T:2016:68) ('the order under appeal') in so far as, by that order, the General Court dismissed as inadmissible the action of SolarWorld, Brandoni solare SpA and Solaria Energia y Medio Ambiente SA for the annulment of Article 2 of Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 66) ('the regulation at issue').

Legal context

The basic regulation

2 Article 13 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 regulation'), entitled 'Undertakings', states:

'1. Upon condition that a provisional affirmative determination of subsidisation and injury has been made, the Commission may accept satisfactory voluntary undertakings offers under which:

(a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, so that the Commission, after specific consultation of the Advisory Committee, is satisfied that the injurious effect of the subsidies is thereby eliminated.

In such a case and as long as such undertakings are in force, the provisional duties imposed by the Commission in accordance with Article 12(3) and the definitive duties imposed by the Council in accordance with Article 15(1) shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings and in any subsequent amendment of such decision.

Price increases under such undertakings shall not be higher than is necessary to offset the amount of countervailable subsidies, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the Community industry.

…

9. In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking shall, after consultation, be withdrawn by Commission Decision or Commission Regulation, as appropriate, and the provisional duty which has been imposed by the Commission in accordance with Article 12 or the definitive duty which has been imposed by the Council in accordance with Article 15(1), shall apply, provided that the exporter concerned, or the country of origin and/or export has, except in the case of withdrawal of the undertaking by the exporter or such country, been given an opportunity to comment.

…'

The regulation at issue

3 According to recital 753 of the regulation at issue, 'interested parties have pointed out that … price elasticity of demand can be very high. Whereas it is correct that an important increase in prices may lead to an important reduction of demand … it is very unlikely that price increases caused by the measures will be important, for the following reasons. … the economic effect of the undertaking that has been accepted by the Commission is that Chinese exporting producers will supply the product concerned at a minimum import price of less than 60 c/W, which is far below the price that has been observed during the IP, at a volume that corresponds roughly to their current market share. At this price level, demand is very unlikely to drop in a significant manner, as that price level ensures sufficient demand both under the current level of support provided by support schemes and under the current levels of grid parity. Furthermore, the price of electricity for final consumers is expected to increase, whereas the price of the product concerned is expected to decrease. Through an indexation formula, the undertaking ensures that further price decreases of the product concerned are taken into account for the minimum import price. … '

4 According to Article 1(1) of the regulation at issue, a definitive countervailing duty is imposed on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels originating in or consigned from China and falling within certain codes established under the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), in the version applicable when the regulation at issue was adopted ('the CN'). Article 1(2) of that regulation establishes the rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in Article 1(1) and manufactured by the companies listed in Article 1(2).

5 According to Article 2(1) of the regulation at issue, which applies to certain products the references to which are specified in terms of the CN and which are invoiced by companies from which the Commission has accepted undertakings and whose names are listed in the Annex to Commission Implementing Decision 2013/707/EU of 4 December 2013 confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures (OJ 2013 L 325, p. 214), imports declared for release into free circulation are exempt from the countervailing duty imposed by Article 1 of the regulation at issue, subject to compliance with certain conditions.

6 Article 2(2) of the regulation at issue states that a customs debt is incurred at the time of acceptance of the declaration for release into free circulation whenever it is established that one or more of the conditions listed in Article 2(1) of that regulation are not fulfilled or when the Commission withdraws its acceptance of the undertaking.

Background to the dispute

7 SolarWorld is a European producer of crystalline silicon photovoltaic modules and key components.

8 Following a complaint lodged by EU ProSun, an association of European producers of crystalline silicon photovoltaic modules and key components, the Commission published, on 6 September 2012, a Notice of initiation of an anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China (OJ 2012 C 269, p. 5).

9 On 8 November 2012, the Commission published a Notice of initiation of an anti-subsidy proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China (OJ 2012 C 340, p. 13).

10 On 4 June 2013, the Commission adopted Regulation (EU) No 513/2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration (OJ 2013 L 152, p. 5).

11 By letter to the Commission of 27 July 2013, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) offered, in connection with the anti-dumping investigation, to consent to an undertaking, together with several Chinese exporting producers. In essence, on behalf of those producers and in its own name, the CCCME offered to apply minimum import prices for photovoltaic modules and for each of their key components (i.e. cells and wafers) up to a certain annual level of imports ('the MIP').

12 On 2 August 2013, the Commission adopted Decision 2013/423/EU, accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China (OJ 2013 L 209, p. 26) by a group of cooperating Chinese exporting producers, together with the CCCME, and which are listed in the annex to that decision.

13 Commission Regulation (EU) No 748/2013 of 2 August 2013 amending Regulation No 513/2013 (OJ 2013 L 209, p. 1) was adopted to take account of Decision 2013/423. Among other amendments, that regulation inserted Article 6 in Regulation No 513/2013 which provides that, on condition that certain requirements are fulfilled, imports of certain products declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in the annex to Decision 2013/423 are exempt from the provisional anti-dumping duty imposed by Article 1 of Regulation No 513/2013.

14 By letter of 25 September 2013, in its own name and on behalf of the exporting producers whose initial offer of an undertaking had been accepted, the CCCME requested the Commission to accept the terms of that undertaking with a view also to eliminating any injurious effects of the subsidised imports.

15 On 4 December 2013, the Commission adopted Implementing Decision 2013/707.

16 On 2 December 2013, the Council adopted the regulation at issue.

The procedure before the General Court and the order under appeal

17 By application lodged at the General Court Registry on 28 February 2014, the applicants at first instance brought an action seeking annulment of Article 2 of the regulation at issue.

18 In support of their action, the applicants at first instance raised three pleas in law. The first and second pleas in law alleged that Article 2 of the regulation at issue is the result of a manifest error of assessment and infringes Article 13 of the basic regulation, in so far as it exempts from anti-subsidy measures Chinese producers from which the Commission accepted an unlawful joint undertaking in violation of the rights of defence of the applicants at first instance, their right to a fair legal process and the principle of sound administration, as well as Article 13(4) and Article 29(2) of the basic regulation. The third plea in law alleged that Article 2 of that regulation infringes Article 101(1) TFEU in so far as it grants certain Chinese producers an exemption from anti-subsidy measures on the basis of an offer of an undertaking, accepted and confirmed by the regulation at issue, which amounts to a horizontal pricing agreement.

19 By the order under appeal, the General Court dismissed the action of the applicants at first instance as inadmissible on the ground that Article 2 of the regulation at issue, the sole provision challenged, was not severable from the other provisions of that regulation.

Forms of order sought by the parties

20 By its appeal, SolarWorld claims that the Court should:

– declare the appeal admissible and well-founded;

– set aside the order under appeal;

– rule on the substance and annul Article 2 of the regulation at issue, or refer the case back to the General Court for a decision on the substance of the application for annulment; and

– order the Council to pay the costs.

21 The Council contends that the Court should:

– dismiss the appeal; and

– order the appellant to pay the costs of the appeal and of the proceedings before the General Court.

22 The Commission contends that the Court should:

– dismiss the appeal as unfounded in law; and

– order the appellant to pay the costs.

The appeal

23 In support of its appeal, SolarWorld raises two grounds of appeal. The first ground of appeal alleges that the General Court erred in finding that Article 2 of the regulation at issue is not severable from the remainder of that regulation. The second ground of appeal alleges infringement of Article 20 and Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

The first ground of appeal, alleging that Article 2 of the regulation at issue is severable

Admissibility

24 The Council argues that the first ground of appeal is inadmissible due to the fact that, first, SolarWorld merely repeats the complaint relating to the severability of Article 2 of the regulation at issue which it raised before the General Court and, second, the assessment relating to the severability of that provision is an assessment of fact.

25 It should be noted, in the first place, that, where an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be raised again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (judgment of 19 January 2017, *Commission* v *Total and Elf Aquitaine*, C-351/15 P, EU:C:2017:27, paragraph 31 and the case-law cited).

26 In the present case, by its first ground of appeal, SolarWorld is not seeking a mere re-examination of the application submitted to the General Court, but seeks, specifically, to call into question the legal reasoning which led the General Court to hold that Article 2 of the regulation at issue was not severable from the remainder of the provisions of that regulation, as well as the conclusion that the General Court drew from that finding, namely that SolarWorld's action was inadmissible. For that purpose, SolarWorld has indicated, to the requisite legal standard, the passages of the order under appeal that it considers to be vitiated by an error of law and the legal arguments relied on in support of its claim, thus enabling the Court of Justice to carry out a review.

27 In the second place, it should be pointed out that an error by the General Court in the assessment of the severability of a provision of an act of EU law is an error of law which is subject to review by the Court of Justice (for such a review, see, inter alia, judgment of 29 March 2012, *Commission* v *Estonia*, C-505/09 P, EU:C:2012:179, paragraphs 110 to 122).

28 It follows that the first ground of appeal is admissible.

Substance

– *Arguments of the parties*

29 SolarWorld takes the view that Article 2 of the regulation at issue is severable from the other provisions of that regulation and, in particular, from Article 1(2) thereof, and that, consequently, the annulment of that provision would not change the scope of that regulation. In that regard, the General Court's reasoning in paragraphs 55 and 59 of the order under appeal was based on a fundamental misunderstanding of the concepts of 'countervailing measures' and 'countervailing duties'.

30 SolarWorld states that countervailing measures may take various forms (ad valorem duties, fixed Euro amounts or MIP). With regards, more specifically, to the MIP, Article 13 of the basic regulation allows the Council and the Commission to accept MIP undertakings from individual exporting producers if the prices offered eliminate the injurious effects of the subsidies. Those producers are then exempt from paying the ad valorem duty because they are subject to another form of measures, namely the MIP in the context of their undertaking. Accordingly, the objective of countervailing measures, regardless of their form, is characterised by their adequacy to remove the injury to EU producers of the same product, and, in that regard, has a remedial effect.

31 Consequently, according to SolarWorld, altering the form of the countervailing measures does not alter the scope of the regulation which imposed them since those measures cover all imports from exporting producers which were found to have benefited from injurious subsidies.

32 Furthermore, SolarWorld claims that, pursuant to Article 13(9) of the basic regulation, according to which, in the event of a breach or a withdrawal of acceptance of the MIP undertaking, it is the ad valorem duties which would apply, the Commission enjoys flexibility in order to modify the form of countervailing measures, without it being a question of modifying the scope of those measures. In the present case, Article 2(2)(b) of the regulation at issue refers specifically to Article 13(9) of the basic regulation and, since the adoption of the regulation at issue, the Commission has withdrawn the acceptance of the MIP undertaking in respect of several Chinese exporting producers, imposing ad valorem duties on them. Thus, there has never been a time, since the entry into force of the regulation at issue, when those exporting producers were not subject to countervailing measures.

33 Accordingly, if the General Court had upheld the action at first instance and annulled Article 2 of the regulation at issue on the ground that the MIP does not remove the injury caused to the Union industry, nothing would have prevented the Council and the Commission from establishing a new MIP at a level capable of removing that injury in accordance with Article 13(1) of the basic regulation. In that regard, SolarWorld indicates that such a declaration of invalidity would not necessarily have brought about a change of the scope of the measures, which is at the very core of the General Court's reasoning in paragraph 55 of the order under appeal. The only legal consequence of such a declaration would have been that the Council and the Commission would either have had to accept new undertakings containing a new MIP, eliminating the injurious effects of the subsidies, or decide to apply ad valorem duties to all the Chinese exporting producers.

34 Moreover, SolarWorld submits that the case-law relied on by the General Court, in paragraph 57 of the order under appeal, does not support the finding that Article 2 of the regulation at issue is not severable.

35 Lastly, as regards the latter part of paragraph 55 of the order under appeal, according to which 'imports consigned by Chinese exporting producers that had not consented to the undertaking accepted by the Commission [correspond] to 30% of the total imports of the product at issue', SolarWorld notes that Article 13(1) of the basic regulation requires that the MIP be established at a level adequate to remove injury, irrespective of the percentage of imports subject to countervailing measures in the form of a MIP. In addition, according to SolarWorld, the large number of Chinese exporting producers subject to the MIP does not alter the fact that the regulation at issue imposes countervailing measures and that the form of those measures is an issue which relates to neither the scope nor the subject matter of those measures.

36 The Council, supported by the Commission, submits that SolarWorld's first ground of appeal must be rejected as unfounded. They take the view that the partial annulment of the regulation at issue is excluded because the result of such an annulment would be to substitute that regulation for an act with a different content, which does not correspond to the intentions of the author of that regulation and which, consequently, would affect its substance.

– *Findings of the Court*

37 By its first ground of appeal, SolarWorld contests, in essence, the General Court's assessment, in paragraphs 55 and 59 of the order under appeal, by which it found that the annulment of Article 2 of the regulation at issue would affect the substance of that regulation and that, consequently, that provision is not severable from the remainder of the provisions of that regulation.

38 It is clear from the settled case-law of the Court of Justice that the partial annulment of an EU act is possible only if the elements whose annulment is sought may be severed from the remainder of the act. In that regard, the Court of Justice has repeatedly held that the requirement of severability is not satisfied in the case where the partial annulment of an act would have the effect of altering its substance (judgment of 12 November 2015, *United Kingdom* v *Parliament and Council*, C-121/14, EU:C:2015:749, paragraph 20 and the case-law cited).

39 Consequently, review of whether elements of an EU act are severable requires consideration of the scope of those elements in order to assess whether their annulment would alter the spirit and substance of the act (judgments of 29 March 2012, *Commission* v *Estonia*, C-505/09 P, EU:C:2012:179, paragraph 112, and of 12 November 2015, *United Kingdom* v *Parliament and Council*, C-121/14, EU:C:2015:749, paragraph 21).

40 In the present case, under Article 1 of the regulation at issue, a definitive countervailing duty is imposed on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels falling within certain CN codes originating in or consigned from China, the rate of that countervailing duty changing depending on the companies which produce those products.

41 Under Article 2 of the regulation at issue, which applies to certain products the references to which are specified in terms of the CN and which are invoiced by companies from which the Commission has accepted undertakings, imports declared for release into free circulation are exempt from the countervailing duty imposed by Article 1 of that regulation subject to compliance with certain conditions, that exemption ceasing whenever it is established that one or more of those conditions are not fulfilled or when the Commission withdraws its acceptance of the undertaking. As was noted in paragraph 11 above, the MIP for the panels and photovoltaic modules at issue and for each of their key components (i.e. cells and wafers) applies only up to a certain level of annual imports.

42 It thus follows from the provisions of Articles 1 and 2 of the regulation at issue that the latter article establishes, by means of the undertaking relating to a MIP, an exemption from payment of countervailing duties imposed under Article 1 thereof, up to a certain level of annual imports.

43 It is against that legislative background that the General Court held, in paragraph 55 of the order under appeal, that Article 2 of the regulation at issue 'exempts, within a certain quantitative limit, certain named economic operators from countervailing duties, subject to compliance with the conditions that it lays down. Consequently, by removing the applicable exemption of duties within that quantitative limit, the annulment of [that] measure would confer a greater scope on the countervailing duties than that which arises from the application of the [regulation at issue] as adopted by the Council for, in such a case, the countervailing duties would apply to all imports of the product at issue consigned from China whereas, under the [regulation at issue] taken as a whole, those duties would apply only to imports consigned by Chinese exporting producers that had not consented to the undertaking accepted by the Commission in Implementing Decision 2013/707, since those imports correspond, according to the parties, to 30% of the total imports of the product at issue. Such a result would alter the substance of the act in which the measure of which the annulment is sought is contained, namely the [regulation at issue]'.

44 In paragraph 59 of the order under appeal, the General Court found that, in light of the alteration of the substance of the regulation at issue that would result from the annulment of Article 2 of that regulation, which would cancel the exemption from countervailing duties for imports from Chinese exporting producers that had consented to the undertaking accepted by the Commission, such a provision is not severable from the remainder of that regulation.

45 It must be noted that, contrary to SolarWorld's argument in the context of the first ground of appeal, the General Court's finding in paragraph 59 of the order under appeal is not vitiated by an error in law.

46 First, it is apparent from the provisions of Article 1 and Article 2 of the regulation at issue, as was confirmed by all the parties to the present case, that the EU legislature, when adopting that regulation, put in place trade defence measures constituting a set or a 'package'. That regulation imposes two separate and complementary measures which seek to achieve a common goal, namely the removal of the injurious effect on the Union industry of Chinese subsidies relating to the products at issue, while safeguarding the interests of that industry.

47 It is necessary, in that regard, to refer to recital 753 of the regulation at issue which, in the analysis of the impact of the imposition of trade defence measures on the interests of the Union industry, concerns the effects which, according to the Council, the undertaking relating to the MIP will have on the demand and supply of the products at issue. Two findings result from an examination of that recital. First, such an undertaking will have a positive economic effect on the European market for those products, to the extent that the MIP, by providing a lower price than that observed during the investigation period, would allow for the maintenance of a sufficient demand for the products at issue in the European Union. That measure thus appears to have had a significant and separate effect from that of the imposition of an ad valorem duty.

48 Second, the undertaking relating to the MIP is evidently a measure which the Council took into account when assessing the impact of all the trade defence measures on the objective of the regulation at issue, which was to remove the injurious effect on the Union industry of Chinese subsidies relating to the products at issue, while safeguarding the interests of that industry.

49 It follows that the EU legislature considered the undertaking relating to the MIP, as well as the imposition of ad valorem duty, to be a key means of achieving the objective pursued by that regulation.

50 Accordingly, the Court cannot accept SolarWorld's argument that the annulment of Article 2 of the regulation at issue — even though it would lead, for the companies that had consented to an undertaking relating to the MIP, to the removal of the benefit of that undertaking and to the imposition of ad valorem duty — would not affect the scope of the regulation at issue, in so far as the imposition of an ad valorem duty itself achieves the same objective as that covered by that undertaking.

51 Second, it should be recalled that the trade defence measures laid down by the regulation at issue contain objective differences as regards their nature. As was correctly pointed out by the Commission in its statement of intervention, when an ad valorem duty is imposed within the meaning of Article 1(1) of the regulation at issue, Chinese exporting producers are free to set their selling price to the European Union, a duty being subsequently imposed on that price once the product at issue is imported into the European Union. The revenue accruing from that duty is paid into the EU budget. By contrast, when a MIP is applied, those exporting producers may no longer freely set their price, that price having to be increased to the level of that MIP for imports of the product at issue declared for the free circulation. The additional revenue from that price increase accrues to the exporting producers in question.

52 Accordingly, the regulation at issue is based on the possibility of applying those two separate measures alternatively, which allows Chinese exporting producers to rely on the MIP undertaking accepted by the Commission, within the meaning of Article 2 of the regulation at issue, and thus to avoid an ad valorem countervailing duty, such as that laid down by Article 1 of that regulation, from being imposed on their products. The annulment of Article 2 of that regulation would remove such a possibility and eliminate the alternative which the EU legislature wished to offer to Chinese exporting producers when adopting the regulation at issue. Taking account of the differences in the economic consequences of those two types of trade defence measures, such an annulment would therefore affect the very substance of the regulation at issue.

53 It follows that SolarWorld's argument that, in the event of the annulment of Article 2 of that regulation, Chinese exporting producers would, at all times, have been subject to a countervailing measure, does not in any way alter the finding that Chinese exporting producers are deprived of the choice which the EU legislature gave them when adopting that regulation.

54 Third, as is clear from paragraph 55 of the order under appeal, 70% of imports of the products at issue from China are subject to the application of Article 2 of the regulation at issue.

55 Consequently, it appears that the EU legislature implemented a set of measures, under which the imposition of ad valorem duties appears formally to be the rule and the application of an undertaking relating to the MIP to be the exception to that rule, but, in fact, the application of the exception concerned the vast majority of cases with effect from the adoption of the regulation at issue. That undertaking therefore appears to be intended to apply primarily in the context of the imports from China concerned by the regulation at issue. Accordingly, the annulment of that undertaking would necessarily affect the substance of the regulation.

56 Finally, as regards SolarWind's argument that the annulment by the General Court of Article 2 of the regulation at issue would not have prevented the EU legislature from setting a new MIP at a level adequate to remove injury to the Union industry, in accordance with Article 13(1) of the basic regulation, it must be noted that the analysis of the effect on the substance of an act of EU law depends solely on the consequences which result automatically from annulment of the provision at issue in that act. Thus, the various measures which the author of that act may take following such an annulment cannot affect that analysis.

57 It follows from the foregoing considerations that the General Court did not err in law in holding that Article 2 of the regulation at issue was not severable from the remaining provisions of that regulation.

58 Consequently, SolarWorld's first ground of appeal must be rejected.

The second ground of appeal, alleging infringement of Article 20 and Article 47 of the Charter

Arguments of the parties

59 SolarWorld argues that the General Court infringed its right to an effective remedy arising under Article 47 of the Charter and its right to equality before the law within the meaning of Article 20 of the Charter.

60 If the order under appeal was not found to be invalid for the reasons explained in the context of the first ground of appeal, that would have the unacceptable consequence that the appellant, as the EU complainant in a trade defence case, would be de jure deprived of an effective legal remedy and that it would be treated disadvantageously in comparison with the Chinese exporting producers which seek the annulment of the entire regulation at issue before the Courts of the European Union.

61 Since the very purpose of the basic regulation is to protect Union industries from injury caused by subsidies, SolarWorld considers that, where the EU institutions find injurious subsidies but fail to impose countervailing measures, in whatever form, at a level adequate to remove the injury suffered by the EU producers, the rights of the Union industry are violated. SolarWorld takes the view that, if the order under appeal was not found to be invalid, the photovoltaic industry in the present case would have no legal remedy when the Council and the Commission illegally impose countervailing measures in an amount which is inadequate to remove the injury suffered by EU producers.

62 Moreover, SolarWorld submits that the fact that it is possible for Chinese exporting producers, which caused the injury to the Union industry, to bring an action against a regulation adopting trade defence measures, while a European producer does not have that possibility, constitutes an infringement of the principle of equality before the law as laid down by Article 20 of the Charter. An EU producer, such as the appellant in the present case, has, in principle, an interest in not having the entire regulation imposing the trade defence measures annulled, but only the unlawful parts of that regulation.

63 The Council contends that the second ground of appeal, inasmuch as it pleads, for the first time, in the context of the appeal, infringement of Article 20 of the Charter, must be regarded as inadmissible. The Council takes the view that, in any event, as was also indicated by the Commission, the second ground of appeal is unfounded in its entirety.

Findings of the Court

64 At the outset, it should be recalled that, in an appeal, the jurisdiction of the Court of Justice is, in principle, confined to a review of the findings of law on the pleas argued at first instance (judgment of 17 September 2015, *Total* v *Commission*, C-597/13 P, EU:C:2015:613, paragraph 22 and the case-law cited).

65 In the present case, infringement of Article 20 of the Charter is raised for the first time before the Court of Justice, even though SolarWorld had the opportunity to argue that there was an infringement of that article in the context of the two grounds of inadmissibility of the action put forward by the Council before the General Court. SolarWorld's second ground of appeal is therefore inadmissible to the extent that it relates to an infringement of Article 20 of the Charter.

66 As regards the argument alleging infringement of Article 47 of the Charter, SolarWorld argues that if it were not in a position to challenge the regulation at issue in part, it would have no legal remedy where the EU institutions illegally impose countervailing measures in an amount which is inadequate to remove the injury suffered by EU producers.

67 In the first place, it should be recalled, in that regard, that that article is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions before the Courts of the European Union (judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 97, and of 24 November 2016, *Ackermann Saatzucht and Others* v *Parliament and Council*, C-408/15 P and C-409/15 P, not published, EU:C:2016:893, paragraph 49).

68 In the second place, the protection conferred by Article 47 of the Charter does not require an individual to be unconditionally entitled to bring an action for annulment of such an EU legislative act directly before the courts of the European Union (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 105).

69 In the third place, it is settled case-law that judicial review of compliance with the European Union legal order is ensured, as can be seen from Article 19(1) TEU, by the Court of Justice and by the courts and tribunals of the Member States. To that end, the FEU Treaty has established, by Articles 263 and 277 TFEU, on the one hand, and Article 267 TFEU, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the European Union judicature (judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 90 and 92, and of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 57).

70 In those circumstances, the fact that SolarWind cannot bring an action only against a part of the regulation at issue that cannot be severed is not such as to infringe its rights under Article 47 of the Charter, in so far as that company could challenge the regulation at issue in its entirety. It could, subject to meeting the requirements as to standing laid down by Article 263(4) TFEU, challenge the regulation at issue directly before the General Court and request the suspension of the effects of that annulment until the adoption by the EU institutions of the necessary measures to implement the judgment bringing about the annulment, or challenge the validity of the regulation at issue before the national courts and get them to request a preliminary ruling from the Court of Justice.

71 It follows from the above considerations that the order under appeal, in so far as the General Court held therein that, since Article 2 of the regulation at issue is not severable from the remainder of that regulation, SolarWorld's application was inadmissible, does not infringe Article 47 of the Charter.

72 Accordingly, SolarWorld's second ground of appeal must be rejected as being inadmissible in part and unfounded in part.

73 It follows that the appeal must be dismissed in its entirety.

Costs

74 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs.

75 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

76 Since the Council has applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs incurred by the Council.

77 Under Article 140(1) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States and institutions which intervene in the proceedings are to bear their own costs.

78 In the present case, the Commission, which was an intervener at first instance, shall bear its own costs.

On those grounds, the Court (Ninth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders SolarWorld AG to pay the costs incurred by the Council of the European Union;**

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

Vajda Juhász Lycourgos

Delivered in open court in Luxembourg on 9 November 2017.

A. Calot Escobar
Registrar

C. Vajda
President of the Ninth Chamber