Appeal brought on 20 August 2016 by Council of the European Union against the judgment of the General Court (Fifth Chamber) delivered on 9 June 2016 in Case T-276/13: Growth Energy and Renewable Fuels Association v Council of the European Union

(Case C-465/16 P)

(2016/C 402/23)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: S. Boelaert, Agent, N. Tuominen, Avocat)

Other parties to the proceedings: Growth Energy, Renewable Fuels Association, European Commission, ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 9 June 2016, notified to the Council on 10 June 2016, in Case T-276/13 Growth Energy and Renewable Fuels Association v Council of the European Union;

— reject the application at first instance brought by Growth Energy and Renewable Fuels Association for the annulment of the Contested Regulation ([1]);

— order Growth Energy and Renewable Fuels Association to pay the Council's costs both at first instance and on appeal.

Alternatively,

— refer the case back to the General Court for reconsideration;

— reserve the costs of the proceedings at first instance and on appeal in case of referral back to the General Court.

Pleas in law and main arguments

By the present appeal, the Council respectfully requests that the Contested Judgment be set aside on the following grounds:

The General Court's findings on the admissibility of the action, and in particular its conclusions on the Applicants' direct and individual concern are legally erroneous.

a. First, the General Court takes the view that for finding direct concern, it is sufficient that the four sampled US producers are producers of bioethanol. However, this finding on direct effect cannot be reconciled with established case-law which rejects direct effect on the basis of purely economic consequences.

b. Second, it is not clear how the mere fact that the US producers have sold their bioethanol to domestic traders/blenders, which was subsequently resold domestically or exported by the domestic traders/blenders in significant quantities to the Union, prior to the imposition of duties, would substantially affect their market position. In order to show a substantial affectation of their market position by virtue of the introduction of the duties, it would have been necessary, at the very least, for the Applicants to establish the impact of the duties on the level of imports into the Union following the imposition of the anti-dumping duties. However, the Applicants did not provide any information in that regard, and the Contested Judgment does not contain any finding on that point either. This is both an error of law in the application of the test for individual concern, as well as a failure to state reasons.

Insofar as the merits are concerned, the General Court committed an error of law in so far as the interpretation of the Basic Regulation ([2]) is concerned and a further two errors in law in so far as WTO law is concerned.

a. First, the General Court has wrongly interpreted the Basic Regulation when it considers that Article 9(5) of the Basic Regulation implements both Article 9.2 and Article 6.10 of the AD Agreement. On the one hand, as can be seen from the wording of Article 9(5) of the Basic Regulation, the latter provision does not deal with the question of sampling. On the other hand, Article 6.10 of the AD Agreement is implemented by Article 17 and Article 9(6) of the Basic Regulation, and not by Article 9(5) of the Basic Regulation.

b. Second, the General Court has wrongly interpreted the term 'supplier' in Article 9(5) of the Basic Regulation and Article 9.2 of the AD Agreement. It follows from the logic and general scheme of Article 9(5) that only a 'source found to be dumped and causing injury' can be a supplier. However, as the US producers had no export price, they could not have been charged with dumping. Consequently, the General Court erred in law by qualifying them as 'suppliers' in the sense of Article 9(5) of the Basic Regulation and Article 9.2 of the AD Agreement.

c. Third, the General Court has wrongly interpreted the term 'impracticable' in Article 9(5) of the Basic Regulation and Article 9.2 of the AD Agreement, by relying on an erroneous interpretation of Article 9(5) of the Basic Regulation in light of Article 6.10 of the AD Agreement, as well as on the Appellate Body report in EC — Fasteners ([3]). The latter report only deals with Article 9.2 of the AD Agreement and hence its examination of the term 'impracticable' only relates to the situation and treatment that Article 9(5) of the Basic Regulation provides for exporters in non-market economies. The Appellate Body therefore did not provide an interpretation of 'impracticable' that could be transposed to the current proceedings which do not concern exporters in nonmarket economies.

Finally, the General Court has made substantially incorrect findings of fact when it concluded that the calculation of individual duties was 'practicable'. A situation in which the producers of bioethanol do not have an export price, but only a domestic price, clearly renders it impracticable and impossible to establish an individual dumping margin, and authorises the Commission to establish one single countrywide dumping margin.

([1]) Council Implementing Regulation (EU) No 157/2013 of 18 February 2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of AmericaOJ L 49, p. 10

([2]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European CommunityOJ L 343, p. 51

([3]) European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners fromChina — AB-2011-2 — Report of the Appellate Body, WT/DS397/AB/R ('EC — Fasteners,WT/DS397/AB/R')

Appeal brought on 20 August 2016 by Council of the European Union against the judgment of the General Court (Fifth Chamber) delivered on 9 June 2016 in Case T-277/13: Marquis Energy LLC v Council of the European Union

(Case C-466/16 P)

(2016/C 402/24)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: S. Boelaert, Agent, N. Tuominen, Avocat)

Other parties to the proceedings: Marquis Energy LLC, European Commission, ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 9 June 2016, notified to the Council on 10 June 2016, in Case T-277/13 Marquis Energy v Council of the European Union;