Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

27 March 2019*

(Appeal — Subsidies — Imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — Definitive countervailing duty — Regulation (EC) No 597/2009)

In Case C-237/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 May 2017,

Canadian Solar Emea GmbH, established in Munich (Germany),

Canadian Solar Manufacturing (Changshu) Inc., established in Changshu (China),

Canadian Solar Manufacturing (Luoyang) Inc., established in Luoyang (China),

Csi Cells Co. Ltd, established in Suzhou (China),

Csi Solar Power Group Co. Ltd, formerly Csi Solar Power (China) Inc., established in Suzhou,

represented by J. Bourgeois and A. Willems, avocats, and by S. De Knop and M. Meulenbelt, advocaten,

appellants,

the other parties to the proceedings being:

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

defendant at first instance,

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

intervener at first instance,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Seventh Chamber, acting as President of the Fourth Chamber, K. Jürimäe, C. Lycourgos (Rapporteur), E. Juhász and C. Vajda, Judges,

* Language of the case: English.

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeal Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., Csi Cells Co. Ltd and Csi Solar Power Group Co. Ltd, formerly Csi Solar Power (China) Inc. ('Csi Solar Power'), request the Court to set aside the judgment of the General Court of the European Union of 28 February 2017, *JingAo Solar and Others* v *Council* (T-158/14, T-161/14 and T-163/14, not published, 'the judgment under appeal', EU:T:2017:126), to the extent that the General Court, by that judgment, dismissed their action for the annulment 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'), in so far as it applies to the appellants.

2 By its cross-appeal, the European Commission requests the Court to set aside the judgment under appeal in so far as the General Court rejected the plea of inadmissibility raised by the Commission.

Legal context

3 Article 15(1) 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') provides:

'Where the facts as finally established show the existence of countervailable subsidies and injury caused thereby, and the Community interest calls for intervention in accordance with Article 31, a definitive countervailing duty shall be imposed by the Council [of the European Union], acting on a proposal submitted by the Commission after consultation of the Advisory Committee.

The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission.

...'

4 Article 1 of the regulation at issue establishes a definitive countervailing duty of 6.4% applicable to Chinese companies which, like the appellants, were not included in the sample but cooperated in the investigation and are listed in the annex to that regulation.

5 Subject to the fulfilment of certain conditions, Article 2 of that regulation provides, in essence, that imports declared for release into free circulation for the products currently falling within CN code ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) which are invoiced by companies from which undertakings have been accepted by the Commission, 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), are to be exempt from the anti-subsidy duty imposed by Article 1 of the regulation.

Background to the dispute

6 The appellants are part of the Canadian Solar group. Canadian Solar Manufacturing (Changshu), Canadian Solar Manufacturing (Luoyang), Csi Cells Co. and Csi Solar Power are exporting producers of crystalline silicon photovoltaic cells and modules. Canadian Solar Emea is presented as their associated importer in the European Union.

7 On 6 September 2012, the Commission published in the *Official Journal of the European Union* 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).

8 Alongside this, on 8 November 2012, the Commission published in the *Official Journal of the European Union* 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).

9 The Canadian Solar group cooperated in that proceeding.

10 On 23 November 2012, the appellants submitted a request for their selection in the sample provided for in Article 27 of the basic regulation. However, that request was not granted.

11 On 1 March 2013, the Commission adopted Regulation (EU) No 182/2013 making 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 subject to registration (OJ 2013 L 61, p. 2).

12 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 No 182/2013 (OJ 2013 L 152, p. 5).

13 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). That undertaking was offered by a group of Chinese cooperating exporting producers listed in the annex to that decision, including Canadian Solar Manufacturing (Changshu), Canadian Solar Manufacturing (Luoyang), Csi Cells Co. and Csi Solar Power, together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME').

14 On the same day, the Commission adopted Regulation (EU) No 748/2013 amending Regulation No 513/2013 (OJ 2013 L 209, p. 1) in order to take account of Decision 2013/423. In essence, subject to the fulfilment of certain conditions, Article 6 of Regulation No 513/2013, as amended by Regulation No 748/2013, provides, inter alia, that imports of certain products determined in that regulation, declared for release into free circulation and invoiced by companies from which undertakings have been accepted by the Commission and which are listed in the annex to Decision 2013/423, are to be exempt from the provisional anti-dumping duty imposed by Article 1 of that regulation.

15 On 27 August 2013, the Commission disclosed the essential facts and considerations on the basis of which it intended to propose the imposition of anti-dumping duties on imports of modules and key components (cells) originating in or consigned from China.

16 Subsequent to the definitive disclosure of the anti-dumping and anti-subsidy findings, the exporting producers together with the CCCME submitted a notification to amend their initial undertaking offer. The Commission accepted the terms of the undertaking with a view also to eliminating the injurious effects of the subsidised imports. In addition, a number of additional exporting producers asked to participate in that undertaking.

17 On 2 December 2013, the Council adopted the regulation at issue. On the same day, the Council also adopted Implementing Regulation (EU) No 1238/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed 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. 1).

18 On 4 December 2013, the Commission adopted Implementing Decision 2013/707, by which it accepted the amended undertaking offered by the exporting producers listed in the annex to that decision, together with the CCCME, in the context of 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 China for the period of application of definitive measures.

19 After the application for annulment was lodged in the case that gave rise to the judgment under appeal, the Commission adopted Implementing Regulation (EU) 2015/866 of 4 June 2015 withdrawing the acceptance of the undertaking for three exporting producers under Implementing Decision 2013/707 (OJ 2015 L 139, p. 30). Under Article 1 of that implementing regulation, the acceptance of the undertaking in relation to, inter alia, Canadian Solar Manufacturing (Changshu), Canadian Solar Manufacturing (Luoyang), Csi Cells Co. and Csi Solar Power, was withdrawn. That implementing regulation entered into force the day after its publication in the *Official Journal of the European Union*, that is to say, 6 June 2015.

The procedure before the General Court and the judgment under appeal

20 In support of their action, the appellants raised three pleas in law, alleging, first, infringement of Article 10(12) and (13) of the basic regulation, secondly, infringement of Articles 1 and 27 of that regulation and, thirdly, infringement of Article 2(c) of that regulation.

21 The General Court first rejected the plea of inadmissibility raised by the Council and the Commission, concluding, inter alia, that the acceptance of an undertaking offer affects neither the admissibility of an action brought against an act imposing a countervailing duty nor the assessment of the pleas in law put forward in support of that application and that the appellants maintained an interest in the annulment of the regulation at issue.

22 The General Court then examined the pleas raised by the appellants in support of their action. It rejected the first two pleas as inadmissible and the third as unfounded. Consequently, the General Court dismissed the action in its entirety.

Forms of order sought by the parties

23 By their appeal, the appellants claim that the Court should:

– set aside the judgment under appeal;

– uphold the application at first instance and annul the regulation at issue in so far as it concerns the appellants;

– order the defendant at first instance to pay the costs incurred by the appellants, and its own costs, both at first instance and on appeal;

– order any other parties to the appeal to pay their own costs; or, in the alternative,

– set aside the judgment under appeal;

– refer the case back to the General Court for judgment;

– reserve the costs incurred at first instance and on appeal for final judgment by the General Court; and

– order any other parties to the appeal to pay their own costs.

24 The Council contends that the Court should:

– dismiss the appeal; and

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

25 The Commission claims that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs.

26 By its cross-appeal, the Commission, supported by the Council, claims that the Court should:

– set aside the judgment under appeal;

– declare the action at first instance inadmissible; or

– in the alternative, declare the action at first instance devoid of purpose; or

– in the further alternative, declare the action at first instance unfounded and reverse the interpretation of causality, for the purpose of Article 8 of the basic regulation, given by the General Court in the context of the third plea in law at first instance; and

– order the appellants to pay the costs.

27 The appellants claim that the Court should:

– dismiss the cross-appeal in its entirety;

– order the Commission to pay the appellants' costs, and its own costs, both at first instance and on cross-appeal; and

– order the Council to pay its own costs.

The cross-appeal

28 The cross-appeal submitted by the Commission is intended, primarily, to contest the admissibility of the action at first instance, which is a preliminary issue as regards the substantive issues raised in the main appeal. It should therefore be examined first.

29 In support of its cross-appeal, the Commission, supported by the Council, relies on two grounds. The first, and primary, ground alleges an error of law in that the General Court considered that the regulation at issue was capable, in itself, of having legal consequences for the appellants. The second ground, relied on in the alternative, alleges a failure to state reasons and an error of law in that the General Court held that the appellants still had an interest in having the regulation at issue annulled at the time the judgment under appeal was delivered.

The first ground of cross-appeal

Arguments of the parties

30 The first, and primary, ground of cross-appeal is divided into two parts.

31 By the first part of this ground, which refers to paragraphs 38 to 44 of the judgment under appeal, the Commission submits that the General Court did not give sufficient reasons for its conclusion that the regulation at issue, and not Implementing Decision 2013/707, affects the appellants' legal position, and that, in any event, in making that conclusion, the General Court infringed the general principle of EU law relating to institutional balance and Articles 13 and 14 of the basic regulation.

32 The Commission argues, first, that the General Court's finding that seeking the annulment of the regulation at issue is the appropriate way of challenging the findings of subsidisation, injury and causality completely fails to take into account that the appellants needed to challenge Implementing Decision 2013/707 if their aim was to contest those findings. The General Court's findings only support the conclusion that an action may lie against either the regulation at issue or Implementing Decision 2013/707. This constitutes a failure to state reasons, because it is impossible to understand, from the judgment under appeal, why an action would lie necessarily, or even usually, against the regulation at issue, and not against Implementing Decision 2013/707, from which the rights and/or obligations attaching to the importer in fact arise.

33 Secondly, according to the Commission, by deciding that an action lies against the regulation at issue, rather than against Implementing Decision 2013/707, the General Court infringed the general principle of institutional balance and the distribution of powers between the Council and the Commission as set out in Articles 13 and 14 of the basic regulation. The General Court's conclusion implies that that implementing decision is not self-sufficient, but requires validation by the independent rights and obligations created by the Council though the adoption of the regulation at issue.

34 Furthermore, the Commission submits that those errors of law cannot be remedied by the finding in paragraph 39 of the judgment under appeal, according to which the EU Courts 'implicitly but necessarily' upheld the admissibility of actions against regulations imposing definitive duties brought by interested parties whose undertaking had been accepted. That issue was simply not discussed in the case-law cited in that paragraph, and, moreover, that case-law is in direct contradiction to the judgment of 29 March 1979, *NTN Toyo Bearing and Others* v *Council* (113/77, EU:C:1979:91).

35 By the second part of the first ground of cross-appeal, the Commission submits that the acceptance of an undertaking is a favourable act, the adoption of which was requested by the appellants and which does not affect their legal position. The contrary conclusion of the General Court, in paragraph 43 of

the judgment under appeal, even if it were correct, would only establish an interest in seeking the annulment of Implementing Decision 2013/707, but not the regulation at issue. Paragraph 43 of the judgment under appeal contains two errors of law.

36 First, that paragraph does not provide any reasons as to why acceptance of an undertaking by the Commission would be different from a Commission decision declaring a concentration that has been notified to it to be compatible with the internal market; a declaration from the Commission that an agreement does not infringe Article 101(1) TFEU; or a decision declaring notified State aid to be compatible with the internal market.

37 Secondly, the Commission submits that Article 13 of the basic regulation does not provide for the adoption of a separate act once the Commission has completed its investigation of subsidisation and injury. The conclusion of the General Court would mean that a company offering an undertaking would have to make a preemptive challenge to the decision accepting the undertaking, even before the anti-subsidy investigation has been completed, several months later.

38 The Commission submits, for the sake of completeness, that paragraph 44 of the judgment under appeal contains two errors of law. First, the General Court's assertion that the regulation at issue altered the legal position of the appellants as regards 'countervailing duties on products not covered by the undertaking' is based on an error of law in relation to the interpretation of the undertaking offer or to a distortion of the evidence by the General Court, if that offer were to be classified as a 'matter of fact'. According to the Commission, it follows clearly and without ambiguity from the text of the offer of an undertaking that the appellants were not allowed to sell the product concerned except according to the provisions of the undertaking. Accordingly, there could only be duties on products that exceeded the annual level, but not duties on 'products not covered by the undertaking'.

39 Secondly, since the duties on 'products ... exceeding the annual level' were already included in the offer of an undertaking, that is not a new right or obligation created by the regulation at issue.

40 The appellants contend that the first ground of cross-appeal should be rejected.

Findings of the Court

41 By the first ground of cross-appeal, the Commission submits, in essence, that the General Court, in paragraphs 38 to 44 of the judgment under appeal, erred in law in finding that the regulation at issue was capable, by itself, of having legal consequences for the appellants.

42 The first part of this ground alleges, in essence, that the General Court did not give sufficient reasons for its conclusion that the regulation at issue — and not Implementing Decision 2013/707, by which the Commission accepted the undertaking offered by the exporting producers referred to in the annex thereto, including the exporting producers of the Canadian Solar Group — affects the legal position of the appellants and that, in any event, in making that finding, the General Court infringed the principle of institutional balance.

43 It must be noted, in the first place, that, contrary to the Commission's arguments, in paragraphs 38 to 44 of the judgment under appeal, the General Court does not state that the regulation at issue must necessarily, or even usually, be the contested measure, nor that the action for annulment had to be brought against that regulation and not against Implementing Decision 2013/707. Thus, the Commission's argument is based on a misreading of the judgment under appeal. In those circumstances, the General Court cannot be criticised for failing to state reasons for an assertion that it did not make.

44 In the second place, it is appropriate, first, to note that, if the Commission's position were accepted, it would be tantamount to preventing companies whose minimum import price undertaking ('MIP') was accepted by the Commission from challenging a regulation imposing a definitive countervailing duty on them. As the General Court pointed out, in paragraph 39 of the judgment under appeal, neither the General Court nor the Court of Justice found, in their judgments cited in that paragraph, that the action for annulment brought by a company against a regulation imposing definitive anti-dumping duties on it was inadmissible because an MIP undertaking offered by that company had been accepted by the Commission.

45 Secondly, it must be observed that the regulation at issue necessarily affects the legal position of the appellants since, if that regulation were annulled, the undertaking offer would become null and void. That is precisely what the General Court stated in paragraph 42 of the judgment under appeal.

46 It should also be borne in mind that, as is apparent from paragraphs 41 and 42 of the judgment under appeal, the appellants are still subject to the countervailing duties provided for in the regulation at issue, in accordance with Articles 1 and 2 thereof, for imports which exceed the annual limit provided for in the MIP undertaking.

47 In that context, the Commission cannot validly claim that the General Court breached the principle of institutional balance. On the contrary, the Commission's position that the appellants needed to challenge Implementing Decision 2013/707, if their aim was to contest the findings relating to the existence of subsidisation, could be accepted only if the Council were required, once an MIP undertaking offered by an undertaking was accepted by the Commission, to adopt a regulation imposing definitive countervailing measures. However, the Council's power in that respect is not a circumscribed power, as is clear from Article 15(1) of the basic regulation, according to which the Commission's proposal is to be adopted by the Council, unless it decides to reject it.

48 It should be borne in mind, in that respect, that the Commission's role forms an integral part of the Council's decision-making process. It follows from the provisions of the basic regulation that the Commission is responsible for carrying out investigations and for deciding, on the basis of those investigations, whether to terminate the proceedings or, on the contrary, to continue them by adopting provisional measures and by proposing that the Council adopt definitive measures. However, it is the Council which has the power to give a final decision (see, to that effect, judgment of 14 March 1990, *Nashua Corporation and Others* v *Commission and Council*, C-133/87 and C-150/87, EU:C:1990:115, paragraph 8).

49 The first part of the first ground of cross-appeal must therefore be rejected.

50 As regards the second part of that first ground — according to which the acceptance of an MIP undertaking is a favourable act for the appellants, which does not affect their legal position, contrary to paragraph 43 of the judgment under appeal — it is sufficient to note that that issue is irrelevant since the application for annulment which the General Court held to be admissible was brought against the regulation at issue and not Implementing Decision 2013/707, by which the Commission accepted that undertaking.

51 As regards the two errors of law allegedly vitiating paragraph 44 of the judgment under appeal, which the Commission states it raises only for the sake of completeness, those errors cannot, in view of the considerations set out in paragraphs 41 to 48 above, have any bearing on the validity of the General Court's conclusion that the plea of inadmissibility raised by the Council and the Commission had to be rejected because the regulation at issue affects the legal position of the appellants.

52 It should be added that the Court has already held that the EU legislature, in adopting that regulation, put in place trade defence measures constituting a set or a 'package' intended to achieve a common goal, namely the removal of the injurious effect on the EU industry of Chinese subsidies relating to

the products concerned, while safeguarding the interests of that industry, and that Article 2 of that regulation was not severable from its remaining provisions (see, to that effect, judgment of 9 November 2017, *SolarWorld* v *Council*, C-205/16 P, EU:C:2017:840, paragraphs 46 and 57).

53 It follows that the first ground of cross-appeal must be rejected.

The second ground of cross-appeal

Arguments of the parties

54 By the second ground of cross-appeal, the Commission, supported by the Council, submits that, even if the General Court had been right to consider, in paragraph 44 of the judgment under appeal, that the regulation at issue altered the legal position of the appellants because it was solely on account of that regulation that they had to pay duties on the solar panels in question that exceeded the annual volume, the action for annulment before the General Court became devoid of purpose on the day of entry into force of Implementing Regulation 2015/866, which withdrew the acceptance of the undertaking offered by the appellants.

55 The Commission notes that the annual level of imports of the product concerned, stipulated in the acceptance of the appellants' undertaking offer, had never been reached before the entry into force of that implementing regulation. Thus, even if the appellants had had an interest in bringing proceedings on the basis of the provision of the undertaking that envisaged the payment of duties for products imported in excess of that annual level, that interest in any event ceased to exist at the date of the entry into force of that implementing regulation, and the action for annulment therefore become devoid of purpose on that date. The General Court failed to address that argument raised by the Commission at the hearing before the General Court.

56 The Commission adds that, even if the General Court did respond to that argument, in paragraph 44 of the judgment under appeal, its reply does not address the issue raised by the Commission. It is precisely because the Commission withdrew the acceptance of the undertaking offered by the appellants as a result of the failure to comply with the undertaking that the legal consequences of that acceptance could no longer provide them with a legitimate interest in bringing proceedings.

57 The appellants submit that this ground must be rejected since it is incomprehensible and, in any event, ineffective.

Findings of the Court

58 It should be noted that the rejection of the first ground of cross-appeal entails the rejection of the second ground. It is clear from the assessment which led to the rejection of the first ground that the regulation at issue affects the legal position of the appellants, irrespective of the existence of Implementing Decision 2013/707.

59 Thus, the fact that Implementing Regulation 2015/866 withdrew the acceptance of the undertaking offered by the appellants provided for in Implementing Decision 2013/707, where the annual level of imports of the product concerned, stipulated in that undertaking, had never been reached, cannot have any bearing on the finding that the regulation at issue affects the appellants' legal position, and that, accordingly, they were entitled to bring an action before the General Court seeking the annulment of the regulation at issue.

60 The second ground of cross-appeal must therefore be rejected.

61 The Commission's claim, made in the further alternative, that the Court should declare the action at first instance unfounded and reverse the interpretation of causality, for the purpose of Article 8 of the basic regulation, given by the General Court in the context of the third plea in the action at first instance, must be rejected as inadmissible since that claim is not supported by any legal arguments.

62 In the light of the foregoing considerations, the cross-appeal must be dismissed in its entirety.

The appeal

63 In support of their appeal, the appellants raise a single ground, alleging that the General Court erred in law, in paragraphs 61 to 71 of the judgment under appeal, by requiring the appellants to demonstrate their interest in raising the first and second pleas in their action for annulment and, in any event, that the General Court erred in law in its legal characterisation of the facts, since the appellants have such an interest.

Arguments of the parties

64 The appellants argue, in the first place, that, by applying, by analogy, the case-law of the Court of Justice according to which every applicant must show that it has an interest in bringing proceedings — that is to say, an interest in the annulment of the contested act — to the possibility of raising individual pleas, the General Court erred in law for four reasons.

65 First, the General Court's finding goes against the Court's case-law, which requires applicants to show only an interest in the annulment of the contested act.

66 Moreover, the General Court failed to distinguish the first and second pleas in the action for annulment from the circumstances in which a plea is inadmissible because the applicant has no legal interest in raising it. These circumstances, as identified in the Court's case-law, are when a plea (i) does not relate to the applicant, but pursues a public interest or the interests of the law, or (ii) concerns rules that are not intended to ensure protection for individuals, such as the rules of procedure of an institution. The first and second pleas in the action for annulment do not concern such circumstances, and the General Court did not claim that they did.

67 Secondly, the appellants allege that the General Court infringed their rights of defence by preventing them from raising the pleas which they considered appropriate, in breach of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

68 Thirdly, the appellants consider that, even if they were required to show an interest in raising the first and second pleas in the action for annulment, the General Court's conclusion that those pleas are inadmissible breaches their right to an effective remedy, as provided for in Article 47 of the Charter. The appellants had to bring an action for annulment within the period laid down in the sixth paragraph of Article 263 TFEU in order to avoid being time-barred from exercising their rights, since, otherwise, in the light of the case-law stemming from the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), they risked being deprived of the possibility of contesting the validity of the regulation at issue before the court of a Member State with a view to obtaining a request for a preliminary ruling.

69 In that regard, the appellants submit that, according to the General Court, their interest in raising the first two pleas in the action for annulment is hypothetical, which implies that, if their interest in raising those pleas arose after the expiry of the two-month period referred to in the sixth paragraph of Article 263 TFEU, they would be denied access to justice. That situation is all the more problematic

since one of the appellants, Canadian Solar Emea, an importing company, would have been able to challenge the validity of the regulation at issue before a national court at any time if it had not been linked to the other appellants, which are exporting companies.

70 Fourthly, the appellants argue that the General Court breached their right to be heard because the question of the admissibility of the first two pleas in the action for annulment was not fully discussed before the General Court. That issue was not invoked by the Council and the Commission during the written proceedings, nor fully addressed during the hearing before the General Court, which prevented the appellants from proving that they produced and exported to the European Union, and imported into the European Union, modules originating in a third country, but consigned from China, and imported into the European Union modules originating in China, but consigned from a third country.

71 In the second place, the appellants submit that the General Court erred in its legal characterisation of the facts by finding, in paragraphs 66 to 70 of the judgment under appeal, that the appellants did not have an interest in raising the first and second pleas in the action for annulment.

72 First, it follows from settled case-law of the Court that the appellants have an interest in bringing proceedings to prevent the institutions from repeating errors based on an incorrect interpretation of the provisions of the basic regulation, which would have occurred in the present case, since the Commission adopted a new regulation, namely Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037 (OJ 2017, L 56, p. 1), which extends the duration of the regulation at issue by a further 18 months and which repeats the same errors.

73 Secondly, the pleas raised by the appellants concerned the scope of the anti-subsidy investigation, which in turn affects the countervailable subsidy, injury, causation, and Union interest assessments that led the Council to adopt the regulation at issue.

74 The Council and the Commission contend that the first ground should be rejected as partly inadmissible and partly unfounded and, in any event, as a whole, unfounded.

Findings of the Court

75 First of all, the General Court rightly noted, in paragraph 61 of the judgment under appeal, that, according to the Court's settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in having the contested act annulled. Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it. The proof of such an interest, which is evaluated at the date on which the action is brought and which is an essential and fundamental prerequisite for any legal proceedings, must be adduced by the applicant (judgment of 18 October 2018, *Gul Ahmed Textile Mills* v *Council*, C-100/17 P, EU:C:2018:842, paragraph 37).

76 As the General Court also stated in paragraphs 62 and 63 of the judgment under appeal, an applicant's interest in bringing proceedings must be vested and current. It may not concern a future and hypothetical situation. That interest must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible, and continue until the final decision, failing which there will be no need to adjudicate (judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 56 and 57 and the case-law cited). The

Court hearing the case may raise of its own motion and at any stage of the proceedings the objection that a party has no interest in maintaining its application, by reason of the occurrence of a fact subsequent to the date on which the document instituting the proceedings was lodged (see, to that effect, judgment of 18 October 2018, *Gul Ahmed Textile Mills* v *Council*, C-100/17 P, EU:C:2018:842, paragraph 38).

77 As regards the allegation that the General Court wrongly required the appellants to prove their interest in raising the first and second pleas in their action for annulment, it should be noted, first, that the Court has already held that a plea for annulment is inadmissible on the ground of lack of interest in bringing proceedings where, even if it were well founded, annulment of the contested act on the basis of that plea would not give the applicant satisfaction (see, to that effect, judgment of 9 June 2011, *Evropaïki Dynamiki* v *ECB*, C-401/09 P, EU:C:2011:370, paragraph 49 and the case-law cited).

78 As regards the allegation that the General Court erred in its legal characterisation of the facts, it should be noted that it indeed follows from the Court's case-law that, in certain circumstances, an applicant may retain an interest in seeking the annulment of an act repealed in the course of proceedings, in order to induce the author of the contested act to make suitable amendments in the future, and thereby avoid the risk that the unlawfulness alleged in respect of that act will be repeated (judgment of 6 September 2018, *Bank Mellat* v *Council*, C-430/16 P, EU:C:2018:668, paragraph 64).

79 However, the possible persistence of such an interest, in order to prevent the institutions from repeating errors based on an incorrect interpretation of a provision of EU law, cannot be accepted in a situation where the applicant never had an interest in bringing proceedings.

80 Thus, since the appellants did not demonstrate their interest in raising the first two pleas when they lodged their application for annulment, and since, in accordance with the case-law cited in paragraphs 75 and 76 above, that interest must be evaluated at the date on which the action is brought and may not concern a future and hypothetical situation, they cannot justify such an interest by invoking the need to prevent the institutions from repeating errors based on an incorrect interpretation of a provision of EU law.

81 As regards the allegation that, since the first and second pleas in the action for annulment related to the scope of the anti-subsidy investigation, those pleas should be declared admissible, that allegation cannot be accepted. The fact that, as regards their substance, those pleas concern elements of that investigation, such as, in particular, the subsidisation, the injury or the causal link, cannot by itself entail the admissibility of those pleas in a situation where the appellants have not demonstrated an interest in raising those pleas.

82 It follows that the General Court was right to conclude, in paragraph 71 of the judgment under appeal, on the basis of the Court's case-law referred to in paragraphs 75 and 76 above, that those first two pleas in the action for annulment should be rejected as inadmissible.

83 Secondly, in relation to the argument that the General Court infringed Article 47 of the Charter, it must be observed that, having regard to the protection conferred by that article, it 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 brought before the Courts of the European Union, as is apparent also from the Explanation on Article 47 of the Charter, which must, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, be taken into consideration for the interpretation of the Charter (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 97 and the case-law cited).

84 Consequently, the protection conferred by Article 47 of the Charter does not require that an individual should have an unconditional entitlement to bring an action for annulment of EU legislative acts directly before the Courts of the European Union (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 105).

85 In those circumstances, the appellants cannot validly allege that the requirement to show an interest in putting forward a plea for annulment infringes their right to an effective remedy, as provided for in Article 47 of the Charter.

86 In addition, as regards the allegation that the General Court infringed the appellants' right to be heard, flowing from that article of the Charter, it must be noted that the appellants do not dispute that, at the hearing before the General Court, the various interveners discussed the plea of inadmissibility lodged by the Council relating to the first two pleas in the action for annulment. Thus, the appellants cannot validly allege that the General Court did not allow them to discuss all the elements of law that were decisive for the outcome of the proceedings or to adduce the necessary evidence in support of their position.

87 Thirdly, as regards the argument that, in view of the case-law flowing from the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), the General Court's conclusion would deny the appellants access to justice if their interest in raising the first and second pleas arose after the expiry of the two-month period referred to in the sixth paragraph of Article 263 TFEU, it is sufficient to note that, in such a case, the case-law in question would not, in principle, constitute an obstacle to their raising such pleas before a national court.

88 It follows from the foregoing considerations that the single ground of appeal must be rejected and the appeal as a whole must be dismissed.

Costs

89 Under Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to the costs.

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

91 Since Canadian Solar Emea, Canadian Solar Manufacturing (Changshu), Canadian Solar Manufacturing (Luoyang), Csi Cells Co. and Csi Solar Power have been unsuccessful in their main appeal, and the Council and the Commission have applied for costs to be awarded against them, those companies must be ordered to pay the costs relating to that appeal.

92 In accordance with Article 140(1) of the Rules of Procedure, which also applies to the procedure on appeal by virtue of Article 184(1) thereof, the Commission, which intervened in the proceedings relating to the main appeal, is to bear its own costs.

93 Since the Commission has been unsuccessful in its cross-appeal and Canadian Solar Emea, Canadian Solar Manufacturing (Changshu), Canadian Solar Manufacturing (Luoyang), Csi Cells Co. and Csi Solar Power have applied for costs to be awarded against the Commission, it must be ordered to pay the costs relating to the cross-appeal.

94 In accordance with Article 140(1) of the Rules of Procedure, which also applies to the procedure on appeal by virtue of Article 184(1) thereof, the Council, which intervened in the proceedings relating to the cross-appeal, is to bear its own costs.

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

1. **Dismisses the appeals;**

2. **Orders Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., Csi Cells Co. Ltd and Csi Solar Power Group Co. Ltd to pay the costs relating to the main appeal;**

3. **Orders the European Commission to bear its own costs relating to the main appeal;**

4. **Orders the Commission to pay the costs relating to the cross-appeal;**

5. **Orders the Council of the European Union to bear its own costs relating to the cross-appeal.**

von Danwitz Jürimäe Lycourgos

Juhász Vajda

Delivered in open court in Luxembourg on 27 March 2019.

A. Calot Escobar
Registrar

K. Lenaerts
President