Reports of Cases

ORDER OF THE GENERAL COURT (Fifth Chamber)

14 January 2015*

(Actions for annulment — Dumping — Imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from China — Acceptance of an undertaking offered in connection with the anti-dumping proceeding — Community industry — Absence of direct concern — Inadmissibility)

In Case T-507/13,

SolarWorld AG, established in Bonn (Germany),

Brandoni solare SpA, established in Castelfidardo (Italy),

Global Sun Ltd, established in Sliema (Malta),

Silicio Solar, SAU, established in Madrid (Spain),

Solaria Energia y Medio Ambiente, SA, established in Puertollano (Spain),

represented by L. Ruessmann, lawyer, and J. Beck, Solicitor,

applicants,

v

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

defendant,

ACTION for the annulment of Commission Decision 2013/423/EU of 2 August 2013 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), and of 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),

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich, President, J. Schwarcz (Rapporteur) and V. Tomljenović, Judges,

* Language of the case: English.

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

1 The applicants, SolarWorld AG, Brandoni solare SpA, Global Sun Ltd, Silicio Solar, SAU and Solaria Energia y Medio Ambiente, SA are European Union producers of crystalline silicon photovoltaic modules and key components which support EU ProSun, an association of EU producers of like products. EU ProSun lodged, on 25 July 2012, an anti-dumping complaint with the European Commission against imports of those products from China. The applicants cooperated in the anti-dumping investigation and were involved as interested parties in the proceedings.

2 By notice published in the *Official Journal of the European Union* on 6 September 2012 (OJ 2012 C 269, p. 5), the Commission announced the opening 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.

3 By notice published in the Official Journal on 8 November 2012 (OJ 2012 C 340, p. 13), the Commission announced the opening 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.

4 In the first place, the Commission imposed provisional anti-dumping duties. In the second place, the Commission accepted the undertakings from Chinese exporters pursuant to Article 8 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51, 'the basic anti-dumping Regulation'). In the third place, the Council imposed definitive anti-dumping and anti-subsidy duties and the Commission accepted an amended undertaking.

5 In the present case, by its Regulation (EU) No 513/2013 of 4 June 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; 'the provisional anti-dumping Regulation'), the Commission imposed a provisional anti-dumping duty on imports in the European Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China, provided that certain conditions were fulfilled.

6 By Commission Decision 2013/423/EU of 2 August 2013 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; 'the first contested decision'), the Commission accepted an offer of an undertaking made by a group of cooperating Chinese exporting producers together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME'). A list of the undertakings concerned appears in the Annex to that decision.

7 It is clear from recitals 5 and 6 in the preamble to the first contested decision that the Chinese exporters in question undertook, first, to adhere to one minimum import price for photovoltaic modules and one for each of their key components (i.e. cells and wafers). Second, they proposed to ensure that the volume of imports made under the undertaking would be at annual levels corresponding roughly to their market performance at the time of making the offer. It is apparent, moreover, from recital 8 in the preamble to that decision that a provisional anti-dumping duty would be levied on imports above that annual volume.

8 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 the first contested decision. Among other amendments, that regulation inserted an article 6 in the provisional anti-dumping Regulation which provides, on condition that certain requirements are fulfilled, that imports declared for release into free circulation for certain products which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in the Annex to the first contested decision are to be exempt from the provisional anti-dumping duty imposed by Article 1 of the provisional anti-dumping Regulation.

9 The Commission adopted 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; 'the second contested decision'). It follows from recital 4 in the preamble to that decision that, following the adoption of the provisional anti-dumping measures, the Commission continued the investigation into dumping, injury and European Union interest, as well as the parallel anti-subsidy proceeding. Wafers have been excluded from the scope of both investigations, and hence from the scope of the definitive measures.

10 It is clear from recitals 7 to 10 in the preamble to the second contested decision and from Article 1 thereof that subsequent to the definitive disclosure of the anti-dumping and anti-subsidy findings, the Chinese exporting producers together with the CCCME submitted a notification to amend their initial undertaking offer. That amendment to the undertaking related to the exclusion of wafers from the scope of the investigation, the participation of a number of additional exporting producers in the undertaking and the expansion of the terms of the undertaking to eliminate any injurious effects also of the subsidised imports.

11 According to recital 5 in the preamble to the second contested decision, the anti-dumping investigation confirmed the provisional findings of injurious dumping.

12 The definitive findings of the investigation are set out in Council Implementing Regulation (EU) No 1238/2013 of 2 December 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; 'the definitive anti-dumping Regulation'). According to Article 1 of that regulation, a definitive anti-dumping duty on imports of certain crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels originating in or consigned from the People's Republic of China was imposed provided that certain conditions are fulfilled.

13 As provided in Article 3(1) of the definitive anti-dumping Regulation, which applies to certain products whose references are specified in terms of the customs nomenclature and which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in the Annex to the second contested decision, imports declared for release into free circulation are exempt from the anti-subsidy duty imposed by Article 1 of that regulation, subject to compliance with certain conditions.

14 Article 3(2) of the definitive anti-dumping Regulation provides 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 3(1) are not fulfilled or when the Commission withdraws its acceptance of the undertaking.

15 Moreover, by its 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 definitive anti-subsidy Regulation'), the Council also imposed a definitive countervailing duty on crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from China provided that certain conditions are fulfilled.

16 As provided in Article 2(1) of the definitive anti-subsidy Regulation, which applies to certain products whose references are specified in terms of the customs nomenclature and which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in the Annex to the second contested decision, imports declared for release into free circulation are to be exempt from the anti-subsidy duty imposed by Article 1 of that regulation, subject to compliance with certain conditions.

17 Article 2(2) of the definitive anti-subsidy Regulation provides 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.

Procedure and forms of order sought

18 By application lodged at the Court Registry on 23 September 2013, the applicants brought the present action.

19 By document lodged also on 23 September 2013, the applicants requested that the case be adjudicated upon under the expedited procedure.

20 By letter lodged at the Court Registry on 8 October 2013, the Commission objected to adjudication under the expedited procedure.

21 By decision of 24 October 2013, the Court (Fifth Chamber) rejected the application for an expedited procedure.

22 By letter lodged at the Court Registry on 11 December 2013, the applicants requested the Court to grant leave to adapt the application so that the request for the annulment would also cover the second contested decision and consequent infringements 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).

23 By letter lodged at the Court Registry on 8 January 2014, the Commission stated that it had no objection with regard to the admissibility of the adaptation of the application for annulment.

24 By letter lodged at the Court Registry on 31 January 2014, the applicants proposed in essence that the Court adopt measures of organisation of procedure and of inquiry.

25 By letter lodged at the Court Registry on 20 February 2014, the Commission requested the Court to reject the application for adoption of measures of organisation of procedure and of inquiry.

26 In the application, the applicants claim that the Court should:

— declare the application admissible and well-founded;

— annul the first contested decision;

— order the Commission to pay the costs of the proceedings.

27 In the request for leave to adapt their application, the applicants claim that the Court should:

— grant leave to adapt the application for annulment;

— declare the application as adapted admissible and well-founded;

— annul the first contested decision and the second contested decision;

— order the Commission to pay the costs of the proceedings.

28 In the defence, the Commission contends that the Court should:

— dismiss the application as inadmissible;

— in the alternative, declare the application as unfounded in law;

— order the applicants to pay the costs.

29 In the rejoinder, the Commission contends that the Court should:

— declare the application as devoid of purpose, in so far as it seeks annulment of the first contested decision;

— dismiss the application as inadmissible in so far as it seeks annulment of the second contested decision, and, in the alternative, also in so far as it seeks annulment of the first contested decision;

— in the alternative, declare the application as unfounded in law;

— order the applicants to pay the costs.

Law

Preliminary observations

30 Under Article 113 of the Rules of Procedure, the General Court may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with an action or declare that the action has become devoid of purpose and that there is no need to adjudicate on it.

31 In the present case, the parties already expressed their views, in their pleadings, on the issue of the admissibility of this action and, in particular, on whether the applicants are directly concerned. Accordingly, the Court considers that the parties have been heard, that it has sufficient information from the documents in the file and that there is no need to open the oral procedure.

32 While not formally raising an objection of inadmissibility under Article 114 of the Rules of Procedure, the Commission submits that the action is inadmissible. In particular, the Commission submits that the first contested decision is not a regulatory act and entails implementing measures, that that decision does not affect directly and individually the applicants and does not express the final position of the EU institutions, that the action against the first contested decision is devoid of purpose and that the applicants do not have a legal interest in bringing proceedings in the present case.

33 As regards the applicants' request, dated 11 December 2013, to adapt their form of order sought, it should be borne in mind that, since the admissibility of an action must be assessed at the time when it is brought, an applicant can be allowed to adapt the form of order sought and pleas, so as to cover new acts supervening during the proceedings, only in so far as its application for annulment of the act initially challenged was itself admissible on the date on which it was brought (order of 20 November 2012 in *Shahid Beheshti University* v *Council*, T-120/12, EU:T:2012:610, paragraph 57).

34 Accordingly, the adaptation of the form of order seeking annulment of the second contested decision is admissible only in so far as the action, inasmuch as it seeks annulment of the first contested decision, is declared admissible. It is therefore necessary to examine whether, to the extent that it seeks annulment of the first contested decision, the action is admissible.

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

36 With respect to the second situation referred to in the fourth paragraph of Article 263 TFEU, the conditions that the act of which annulment is sought should be of direct concern and individual concern are cumulative (judgment of 3 October 2013 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, ECR, EU:C:2013:625, paragraph 76). As regards the third situation referred to in that article, the condition that a regulatory act of which annulment is sought should be of direct concern and the condition of the absence of implementing measures are also cumulative.

37 Thus, it is necessary to examine the condition referred to in those two situations which are referred to in the fourth paragraph of Article 263 TFEU, namely whether the applicants, in so far as they are not addressees of the first contested decision, are directly concerned by that decision.

The plea of inadmissibility on the ground of lack of interest in bringing proceedings because the applicants are not directly concerned

38 The applicants submit that the first contested decision directly affects their legal situation as it removes the anti-dumping duties for about 70% of EU imports of the product concerned from China. Moreover, that decision allows continued importation of the product concerned at price levels that remove neither dumping nor injury. This threatens the applicants' survival on the EU market. As EU producers of the like product, the applicants are directly and individually concerned by the first contested decision. More specifically, the applicants participated actively in the anti-dumping and anti-subsidy proceedings as interested parties. They are *de facto* a limited and closed group and hold an important position on the EU market and the acceptance of the undertaking in question causes significant harm to their economic and legal interests.

39 The Commission maintains that the acceptance of an undertaking directly concerns exclusively the exporters which offered the undertaking and not the applicants.

40 It must be stated that, in an action brought by natural or legal persons under the second and third situations referred to in the fourth paragraph of Article 263 TFEU (Opinion of Advocate General Kokott in *Telefónica* v *Commission* (C-274/12 P, ECR, EU:C:2013:204, paragraph 59) and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (C-583/11 P, ECR, EU:C:2013:21, paragraph 69)), in order to satisfy the requirement of direct concern, two cumulative criteria must be met, namely, first, that the act the annulment of which the applicants seek must directly affect their legal situation and, second, that that act must leave no discretion to the addressees of that measure, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see, to that effect, order of 24 September 2009 in *Município de Gondomar* v *Commission*, C-501/08 P, EU:C:2009:580, paragraph 25; judgment of 13 October 2011 in *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, ECR, EU:C:2011:656, paragraph 66).

41 As regards companies which offer an undertaking, the case-law has recognised that Commission decisions relating to the withdrawal of acceptance of an undertaking and of the Council regulation imposing a definitive anti-dumping duty on imports of that exporter may be the subject of an action by the exporter concerned before the European Union Courts (see, to that effect, judgment of 22 November 2012 in *Usha Martin* v *Council and Commission*, C-552/10 P, ECR, EU:C:2012:736).

42 By contrast, the Court of Justice has held that an importer whose action sought the annulment of the provisions of a regulation accepting price undertakings offered by an exporter was not concerned directly and individually by those provisions (see, to that effect, order of 8 July 1987 in *Garelly* v *Commission*, 295/86, ECR, EU:C:1987:344, paragraphs 2, 13 and 14).

43 Moreover, it has been held that the rejection by the Commission of a proposed undertaking is not a measure having binding legal effects of such a kind as to affect the interests of a company offering an undertaking, because the Commission may revoke its decision or the Council may decide not to introduce an anti-dumping duty. Such a rejection is an intermediate measure whose purpose is to prepare for the final decision, and is not therefore even a measure which may be challenged (judgment of 14 March 1990 in *Gestetner Holdings* v *Council and Commission*, C-156/87, ECR, EU:C:1990:116, paragraph 8). However, traders can raise any irregularity associated with the rejection of their proposed undertakings by challenging the regulation introducing definitive anti-dumping duties (judgment of 14 March 1990 in *Nashua Corporation and Others* v *Commission and Council*, C-133/87 and C-150/87, ECR, EU:C:1990:115, paragraph 10).

44 As regards undertakings within the meaning of the basic anti-dumping Regulation, it should be recalled that, according to the case-law, the objective of Article 8 of the basic anti-dumping Regulation is to eliminate the injurious effects of dumping suffered by the Union industry, it being specified that that objective is based primarily on the exporter's obligation to cooperate and the monitoring of the proper fulfilment of the undertaking given by the exporter (judgment in *Usha Martin* v *Council and Commission*, paragraph 41 above, EU:C:2012:736, paragraph 36).

45 However, it must be stated that it does not follow from that objective that traders such as the applicants may bring an application for annulment against a decision accepting an undertaking pursuant to Article 8(1) of the basic anti-dumping Regulation, such as, in the present case, the first contested decision.

46 It must be observed that the adoption of the first contested decision did not alter the applicants' legal situation. An examination of the system established under the basic anti-dumping Regulation leads to the conclusion that a decision accepting an undertaking adopted under Article 8(1) of that regulation does not produce legal effects such as to affect directly the situation of the European Union producers of the products concerned such as the applicants in the present case.

47 Under the provision in question, which concerns undertakings, where a determination of dumping and injury has been made, the Commission has the power to accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices in order to ensure that the products concerned are not exported at dumped prices if it is satisfied that the injurious effect of the dumping is eliminated as a result of the undertaking (judgment in *Usha Martin* v *Council and Commission*, paragraph 41 above, EU:C:2012:736, paragraph 22).

48 It follows from the system established under the basic anti-dumping Regulation that it is not because of the decision accepting undertakings that the imports covered by those undertakings are exempt from anti-dumping duties, since the exemption stems from the provisions adopted, either by the Commission in the amended provisional anti-dumping Regulation, or by the Council in the definitive anti-dumping Regulation, in order to implement the undertakings accepted by the Commission. The Council is under such an obligation pursuant to Article 9(5) of the basic anti-dumping Regulation, which provides that a regulation must impose a definitive anti-dumping duty on imports of a dumped product which causes injury, including an exception on imports from sources from which undertakings have, where applicable, been accepted.

49 It must be stated that, even if a decision accepting undertakings has been adopted, provisional or definitive anti-dumping duties are to be imposed, under Article 14(1) of the basic anti-dumping Regulation, only by regulation, that provision stating also that such duties are collected by Member States according to the other criteria laid down in the regulation imposing such duties, which include the conditions laid down for the implementation of the undertakings accepted.

50 Moreover, in cases where, on the contrary, a negative determination of dumping or injury is made, Article 8(6) of the basic anti-dumping Regulation provides that an undertaking which has already been accepted automatically lapses, except in cases where such a determination is due in large part to the existence of an undertaking. That provision therefore leaves discretion to the institutions if an undertaking is still in place.

51 Admittedly, in its second sentence, Article 8(1) of the basic anti-dumping Regulation provides that, where the Commission accepts such an offer, and as long as the undertakings in question are in force, provisional duties imposed by the Commission in accordance with Article 7(1) of the basic anti-dumping Regulation or definitive duties imposed by the Council in accordance with Article 9(4) of that regulation as the case may be are not to apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended. However, it should be noted that the second sentence of Article 8(1) of the basic anti-dumping Regulation is addressed to the Commission and the Council and requires, for the period during which an undertaking is in force, the exemption from anti-dumping duties which stems from the provisions which are adopted, either by the Commission in the amended provisional anti-dumping Regulation, or by the Council in the definitive anti-dumping Regulation.

52 It follows from those considerations that a decision accepting an undertaking adopted under Article 8(1) of the basic anti-dumping Regulation does not produce legal effects such as to affect directly the legal situation of European Union producers, such as the applicants in the present case.

53 That conclusion cannot be called into question by the other arguments raised by the applicants.

54 In the first place, as regards the applicants' argument that the harm to their legal interests is apparent from the pleas raised in their application, it should be noted that the general reference to the pleas in the application does not suffice to explain how the applicants consider that, in the light of the case-law mentioned in paragraph 40 above, the first contested decision directly affects their legal situation and that that act leaves no discretion to the addressees of the measure in question, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules. To the extent that the applicants attempt in reality

to rely on the fact that the legal protection of their alleged rights warrants the finding that the first contested decision is of direct concern to them, it must be held that, even though it is settled case-law that individuals must be entitled to effective judicial protection of the rights they derive from the Union legal order, the right to such protection cannot call into question the conditions laid down in the fourth paragraph of Article 263 TFEU (see order in *Município de Gondomar* v *Commission*, paragraph 40 above, EU:C:2009:580, paragraph 38 and the case-law cited).

55 In that context, it should be noted that, in the application, the applicants essentially put forward three pleas against the first contested decision. First, they submit that the Commission reached an agreement with the Chinese Government and the CCCME, acting on behalf of a large group of Chinese exporting producers, without making a proper and adequate disclosure of the key terms of the undertaking under discussion, and without giving an opportunity to make timely and effective comments thereon. Second, the applicants submit that the Commission arbitrarily accepted minimum price levels that are manifestly inadequate to remove injury to EU producers. Third, the applicants argue that the first contested decision accepted and reinforced a horizontal price-fixing arrangement.

56 In any event, as regards the first plea concerning procedural rights, the applicants claim in essence that the adoption of the first contested decision infringed their right of access to a non-confidential version of the undertaking under Article 8(4) of the basic anti-dumping Regulation. However, according to the case-law, Article 8(4) of that regulation does not mention — and, *a fortiori*, imposes no obligation — as regards the precise time at which a copy of the price undertaking must be added to the non-confidential file of the proceeding (judgment of 25 October 2011 in *CHEMK and KF* v *Council*, T-190/08, ECR, EU:T:2011:618, paragraph 85). The applicants incorrectly submit that that case-law is not applicable in the present case because of the alleged role of the Chinese Government in negotiating the undertaking in question.

57 In the second and third pleas, the applicants merely contest the merits of the first contested decision.

58 Accordingly, those arguments do not demonstrate in the present case that the first contested decision directly affects the applicants' legal situation. In that regard, it should be noted that it is possible that the applicants could raise the pleas on which they rely in an action for annulment of the provisional or definitive anti-dumping Regulation to the extent that they have standing to bring proceedings in such a case.

59 In the second place, the applicants claim that a direct effect of the first contested decision stems from the fact that it does not entail implementing measures and is directly applicable in all Member States.

60 It should be borne in mind that, as regards the conditions of admissibility of an action which are referred to in the fourth paragraph of Article 263 TFEU, the criterion that the contested act must be of direct concern to the applicants and the criterion that it must not entail implementing measures are separate criteria. It follows that the alleged fulfilment of one of those criteria set out in the fourth paragraph of Article 263 TFEU does not show that the other criterion has been met.

61 In any event, it was already observed in paragraph 48 above that the exemption from anti-dumping duties enjoyed by the imports covered by the undertakings stems from the provisions which must be adopted, either by the Commission in the amended provisional anti-dumping Regulation, or by the Council in the definitive anti-dumping Regulation, in order to implement the undertakings in question. In the present case, that exemption therefore arose, when this action was brought, through the provisional anti-dumping Regulation, as amended by Regulation No 748/2013. Therefore, since the first contested decision was implemented by another act which was capable of forming the subject-matter of an action either before the European Union Courts or before Member State courts (see, to that effect, order of 21 January 2014, *Bricmate* v *Council*, T-596/11, EU:T:2014:53, paragraph 23 and the case-law cited), that decision entailed implementing measures.

62 Accordingly, and contrary to a third argument of the applicants, an alleged loss of sales revenues caused by imports of the product in question from China at prices lower than the applicants' — on the assumption that there was such a loss — would not stem, in the case of the applicants, from the first contested decision.

63 Given that the first contested decision is not of direct concern to the applicants and that, as a result, one of the conditions of the second situation referred to in the fourth paragraph of Article 263 TFEU has not been fulfilled, it is not necessary to examine whether other criteria of the second and third situations referred to in the fourth paragraph of Article 263 TFEU have been fulfilled.

64 In any event, it should be noted that the first contested decision does not constitute a regulatory act within the meaning of the third situation referred to in the fourth paragraph of Article 263 TFEU. As regards the applicants' argument that the first contested decision is a regulatory act because it constitutes a non-legislative act, it must be stated that it is true that the meaning of 'regulatory act' for the purposes of the third situation referred to in the fourth paragraph of Article 263 TFEU must be understood as covering all acts of general application apart from legislative acts (orders of 4 June 2012 in *Eurofer* v *Commission*, T-381/11, ECR, EU:T:2012:273, paragraph 42, and of 7 March 2014 in *FESI* v *Council*, T-134/10, EU:T:2014:143, paragraph 23). In the present case, the first contested decision does not constitute a legislative act, since it was not adopted in accordance with either the ordinary legislative procedure or a special legislative procedure within the meaning of paragraphs 1 to 3 of Article 289 TFEU (see, to that effect, judgment of 25 October 2011 in *Microban International and Microban (Europe)* v *Commission*, T-262/10, ECR, EU:T:2011:623, paragraph 21; order in *FESI* v *Council*, EU:T:2014:143, paragraph 25). However, that decision is not of general application in that it does not apply to objectively determined situations and does not produce legal effects with respect to categories of persons envisaged in general and in the abstract (see, to that effect, orders in *Bricmate* v *Council*, paragraph 61 above, EU:T:2014:53, paragraph 65, and *FESI* v *Council*, EU:T:2014:143, paragraph 24). The first contested decision relates to the acceptance of a specific undertaking by the Commission and is addressed solely to the companies listed in the Annex thereto, accepting their undertaking offer. It does not therefore constitute a regulatory act, which also precludes the action's being admissible under the third situation referred to in the fourth paragraph of Article 263 TFEU.

65 It follows from all the foregoing considerations that, in the light of the second and third situations referred to in the fourth paragraph of Article 263 TFEU, the action, inasmuch as it seeks the annulment of the first contested decision, must be dismissed as inadmissible. For that reason, it is also necessary, in the light of the case-law recalled in paragraph 33 above, to declare the request for leave to adapt the form of order sought inadmissible. In those circumstances, it is also no longer necessary to adjudicate on the proposal seeking the adoption of measures of organisation of procedure and of inquiry.

Costs

66 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to bear their own costs and pay those incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby orders:

1. The action is dismissed as inadmissible.

2. SolarWorld AG, Brandoni solare SpA, Global Sun Ltd, Silicio Solar, SAU and Solaria Energia y Medio Ambiente, SA shall pay the costs.

Luxembourg, 14 January 2015.

E. Coulon
Registrar

A. Dittrich
President