Reports of Cases

JUDGMENT OF THE GENERAL COURT (Tenth Chamber)

4 October 2023*

(Protective measures – Steel products market – Imports of certain steel products – Implementing Regulation (EU) 2021/1029 – Action for annulment – Interest in bringing proceedings – *Locus standi* – Admissibility – Prolongation of a safeguard measure – Necessity – Threat of serious injury – Adjustment measures – Interest of the European Union – Manifest error of assessment)

In Case T-598/21,

European Association of Non-Integrated Metal Importers & distributors (Euranimi), established in Brussels (Belgium), represented by M. Campa, D. Rovetta, P. Gjørtler and V. Villante, lawyers,

applicant,

v

European Commission, represented by G. Luengo and P. Němečková, acting as Agents,

defendant,

THE GENERAL COURT (Tenth Chamber),

composed of O. Porchia, President, M. Jaeger (Rapporteur) and P. Nihoul, Judges,

Registrar: M. Zwozdziak-Carbonne, Administrator,

having regard to the written part of the procedure, in particular the decision of 3 November 2021 rejecting the applicant's request that it adjudicate under an expedited procedure,

further to the hearing on 7 March 2023,

gives the following

* Language of the case: English.

Judgment

1 By its action under Article 263 TFEU, the applicant, European Association of Non-Integrated Metal Importers & distributors (Euranimi), seeks annulment of Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products (OJ 2021 L 225I, p. 1, 'the contested regulation').

Background to the dispute

2 The applicant is an association of EU companies representing the interests of importers, distributors, traders and processors dealing with non-integrated steel, stainless steel and metal products.

3 On 23 March 2018, the United States of America imposed import duties pursuant to Section 232 of the Trade Expansion Act.

4 In the light of the statistical data received following the introduction of surveillance measures, the European Commission initiated a safeguard investigation to consider the situation of several categories of steel products.

5 Since its analysis of the data led it to conclude provisionally that the EU steel industry was under threat of serious injury with respect to 23 out of the 28 product categories which were the subject of the safeguard investigation, the Commission adopted Implementing Regulation (EU) 2018/1013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products (OJ 2018 L 181, p. 39).

6 Subsequently, as it considered that the EU steel industry was under threat of serious injury with respect to 26 product categories of steel products, the Commission adopted Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ 2019 L 31, p. 27). That implementing regulation put in place a definitive safeguard measure for a period of three years, with the possibility of a prolongation of up to eight years, in the form of specific tariff-rate quotas per category, the quantitative ceiling of which was set at the average import volumes of the countries concerned during the period from 2015 to 2017, increased by 5% to ensure that traditional trade flows are maintained and that the existing user and importing industry in the European Union remains sufficiently supported. The over-quota tariff rate set at 25% at the stage of the provisional measure was confirmed at the time of the adoption of the definitive measure.

7 Unlike the situation under the provisional safeguard measure, Implementing Regulation 2019/159 established country-specific quotas for countries having a significant supply interest (that is to say, countries with a share of more than 5% of imports with regard to the product category at issue). A 'residual' or 'global' tariff-rate quota was also established for other countries exporting to EU territory. The Commission also considered that, when a supplying country had exhausted its specific tariff-rate quota, it should be allowed to have access to the residual tariff-rate quota to ensure the maintenance of traditional trade flows but also to avoid that, as the case may be, parts of the tariff-rate quota would remain unused.

8 From 2 February 2019, the date of entry into force of Implementing Regulation 2019/159, to 30 June 2021, the safeguard measure was regularly reviewed and gradually liberalised, at regular intervals, in order to increase the quantitative thresholds gradually to allow the EU industry to adjust.

9 When the reviews were carried out during September 2019 and June 2020, the Commission made changes to the administration of the tariff-rate quota system, in particular to take into account the more recent trade data.

10 On 15 January 2021, the Commission received a reasoned request from 12 EU Member States to examine, pursuant to Article 19 of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ 2015 L 83, p. 16; 'the Basic Safeguard Regulation'), whether the existing safeguard measures should be prolonged.

11 On 26 February 2021, the Commission published a notice of initiation in the *Official Journal of the European Union* inviting interested parties to participate in an investigation relating to the possible prolongation of the safeguard measure by submitting their comments and evidence.

12 On 24 June 2021, considering, on the one hand, that, in the context of the COVID-19 pandemic, a removal of the safeguard measure was liable to cause a sudden import wave which would severely worsen the still fragile financial situation of the EU steel industry and, on the other hand, that users, across all product categories, had had the possibility to source free-of-duty steel from multiple sources, since around 11 million tonnes of free-of-duty tariff-rate quotas remained unused, that is, 36% of the total tariff-rate quotas available, the Commission adopted the contested regulation prolonging the safeguard measure for a period of three years until 30 June 2024.

Forms of order sought

13 The applicant claims that the Court should:

– annul the contested regulation;

– order the Commission to pay the costs.

14 The Commission contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

Law

Admissibility

15 Without formally raising an objection of inadmissibility, the Commission disputes the admissibility of the present action, arguing that the applicant has neither an interest in bringing proceedings nor standing to bring proceedings. The applicant, on the other hand, submits that it has an interest in bringing proceedings and standing to bring proceedings against the contested regulation.

The interest in bringing proceedings

16 In the first place, the Commission maintains that, at the stage of lodging this action, the applicant did not show that it fulfilled the conditions for establishing an interest in bringing proceedings.

17 First of all, the contested regulation does not prevent the imports of the steel product categories concerned to the European Union, since the safeguard duty applies only in the event of serious injury because of increased imports beyond traditional trade flows. Therefore, so far as concerns the obligation to pay the 25% over-quota tariff, the applicant's interest is hypothetical.

18 Next, when the action was lodged, the tariff-rate quota regarding the product categories imported by the companies represented by the applicant was not exhausted. Therefore, according to the Commission, the annulment of the contested regulation cannot procure any advantage to the applicant, since that regulation has not yet produced any legal effects for the applicant or for its members. Accordingly, the applicant's interest in bringing proceedings is neither vested nor present.

19 In that context, the Commission submits that the fact that the applicant's members take into account the existence of tariff-rate quotas in their business planning does not mean that their legal situation has been altered by the contested regulation. Moreover, the assumption that the tariff-rate quotas have effects has already been rejected by the General Court in the judgment of 20 October 2021, *Novolipetsk Steel* v *Commission* (T-790/19, not published, EU:T:2021:706). Furthermore, the Commission contends that the fact that imports remain constant whereas the level of unused tariff-rate quotas increases shows that the safeguard measure does not cause the negative effects on trade flows alleged by the applicant.

20 Lastly, the fact that imports are subject to tariff-rate quotas does not impose any specific burden on the importers. The applicant would therefore not draw any benefit from the annulment of the contested regulation in that regard.

21 In the second place, the Commission submits that, since it conducts reviews at regular intervals during the period of application of the safeguard measure, the fact that the contested regulation might, at some point, have exerted legal effects on the products imported by the applicant's members is uncertain.

22 In the third place, the Commission states that the fact that the applicant and its members will have an interest in bringing proceedings if and when the 25% over-quota tariff applies does not mean that there is no effective remedy. Indeed, according to the Commission, in that situation, they

will be able to challenge the collection of that tariff by the national customs authorities before national courts, which may then refer the question of the validity of the contested regulation to the Court of Justice, pursuant to Article 267 TFEU.

23 The applicant disputes the Commission's arguments.

24 It is settled case-law that an interest in bringing proceedings is an essential and fundamental prerequisite for any legal proceedings. An action for annulment brought by a natural or legal person is thus admissible only in so far as that person has an interest in the annulment of the contested measure. An applicant's interest in bringing proceedings presupposes that the annulment of the contested act is capable alone of having legal consequences, that the action is therefore appropriate, by its result, to obtain a benefit for the party which brought it and that that party can show a vested and present interest in the annulment of that act (see judgment of 18 May 2022, *Uzina Metalurgica Moldoveneasca* v *Commission*, T-245/19, EU:T:2022:295, paragraph 32 and the case-law cited).

25 In the present case, it is apparent from the mechanism put in place by the contested regulation that the legal rules applicable to the importation into the European Union of the products in question is less favourable than that which applied in the absence of safeguard measures (see, by analogy, judgment of 18 May 2022, *Uzina Metalurgica Moldoveneasca* v *Commission*, T-245/19, EU:T:2022:295, paragraph 33).

26 Thus, the annulment of the contested regulation by a decision favourable to the applicant could, in itself, have legal consequences and would be appropriate, by its result, to obtain a benefit for the applicant which, accordingly, has an interest in bringing proceedings (see, by analogy, judgment of 18 May 2022, *Uzina Metalurgica Moldoveneasca* v *Commission*, T-245/19, EU:T:2022:295, paragraph 34).

27 In that regard, recitals 85 and 86 of the contested regulation provide for a process of review and liberalisation of the safeguard measure (see, in this context, paragraph 8 above). That process is intended, in particular, to enable a more open import system to be put in place, thus benefiting importers. The gradual liberalisation of tariff quotas changes the legal situation of importers. Annulment of the contested regulation would then be comparable to a complete liberalisation of those quotas. It is therefore undeniable that the applicant has an interest in the annulment of that regulation, in order to carry on its activity under legal rules free of constraints linked to quantitative thresholds.

28 Furthermore, contrary to the contention of the Commission (see paragraph 18 above), that interest was vested and present on the date when the action was lodged. It is apparent from recital 1 of the contested regulation that the safeguard mechanism established consists of two stages, the first consisting of the imposition of tariff quotas, the second consisting of the application of an additional duty to imports where the quantitative thresholds fixed for those tariff quotas are exceeded. If, by definition, the second stage occurs only after the first, the first stage exists on the date of application of the regulation providing for it, which in the present case is 1 July 2021. The applicant brought its action on 20 September 2021.

29 Similarly, in accordance with settled case-law to the effect that the interest in bringing proceedings may not concern a future and hypothetical situation and cannot arise from mere hypothetical situations (see order of 28 September 2021, *Airoldi Metalli* v *Commission*, T-611/20, not published, EU:T:2021:641, paragraph 42 and the case-law cited), the interest of the

applicant in the present case is certain, contrary to what the Commission maintains (see paragraphs 17 and 21 above), since, by the effect of Article 2 of the of the contested regulation, the quota system becomes effective on the date of application of that regulation. In that regard, it should be noted that the Commission's argument based on the existence of periodic reviews is irrelevant (see paragraph 21 above), in so far as, between each review, there is no uncertainty as to the imposition of a quota and, consequently, as to the legal effects associated with the quota system.

30 The Commission's position that an interest in bringing proceedings can exist only on the date, if any, of the imposition of the additional duty on account of the fact that the thresholds have been surpassed seems to stem from confusion between the two stages referred to in paragraph 28 above. The applicant's interest is not limited to challenging the imposition of the additional duty but extends to challenging the quota system which, by its very existence, alters the legal position of its members. The annulment of the contested regulation would therefore entail the reversal of that amendment in so far as it would restore the previous legal position of the applicant's members, which was more favourable than that of being subject to a quota system, thus procuring an advantage for them, contrary to what the Commission contends (see paragraph 20 above).

31 In that regard, it is irrelevant to point out, as the Commission does (see paragraph 19 above), on the one hand, that the tariff quotas allegedly preserve historical import levels and, on the other, that the contested regulation does not prevent imports, all the more so in view of the fact that the tariff quotas have not been exhausted. Without addressing the difficulties put forward by the applicant, in its written pleadings and at the hearing, in order to explain the reasons for the failure to exhaust the tariff quotas, it should be pointed out that, in any event, those considerations relate not to legal consequences but to factual consequences destined to occur, as the case may be, subsequently.

32 Moreover, making the existence of the applicant's interest in bringing proceedings in relation to challenging the quota system conditional on the imposition of an additional duty could have the effect of requiring the applicant to import volumes above the quantitative thresholds in order to be able to challenge that system and of ignoring the unfavourable situation for an importer represented by the application of such a system in itself.

33 Finally, it should be noted that the Commission's argument, recalled in paragraph 19 above and reiterated at the hearing, to the effect that the Court, in its judgment of 20 October 2021, *Novolipetsk Steel* v *Commission* (T-790/19, not published, EU:T:2021:706), rejected the assumption that the tariff quotas have effects, is irrelevant.

34 First, in its judgment of 20 October 2021, *Novolipetsk Steel* v *Commission* (T-790/19, not published, EU:T:2021:706), the Court did not rule on the admissibility of the action before it. The considerations on which the Commission relies are therefore irrelevant in the context of the examination of the applicant's interest in bringing proceedings in the present action.

35 Second, in the case that gave rise to the judgment of 20 October 2021, *Novolipetsk Steel* v *Commission* (T-790/19, not published, EU:T:2021:706), the Court noted that the applicant had not demonstrated to the requisite legal standard that there are effects before the application of the above-quota tariff. That conclusion results from an examination of the effects of the tariff quotas in order to determine whether there has been a manifest error of assessment in the Commission's

analysis. In that context, the level of review carried out by the General Court is an essential element, which, on the other hand, is irrelevant to the examination which that court must carry out in order to determine whether an applicant has a legal interest in bringing proceedings.

36 Third, in the context of that determination, the effects in question must be of a legal nature, as is pointed out by the case-law referred to in paragraph 24 above. The General Court's examination in the judgment of 20 October 2021, *Novolipetsk Steel* v *Commission* (T-790/19, not published, EU:T:2021:706), relates to the evidence adduced to demonstrate the existence of effects satisfying the requisite degree of intensity before the tariff quotas were exhausted. Thus, the General Court's reasoning is based on statistical data on flows and an importer's statement seeking to demonstrate the existence of sufficiently serious effects on trade, as required by the legislation at issue in that case.

37 Accordingly, the plea of inadmissibility alleging that the applicant has no interest in bringing proceedings must be rejected.

Standing to bring proceedings

38 According to settled case-law, the fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are accorded standing to institute proceedings against an act which is not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see judgments of 16 May 2019, *Pebagua* v *Commission*, C-204/18 P, not published, EU:C:2019:425, paragraph 26 and the case-law cited, and of 18 May 2022, *Uzina Metalurgica Moldoveneasca* v *Commission*, T-245/19, EU:T:2019:295, paragraph 35 and the case-law cited).

39 In the light of the documents in the case file, it is appropriate to examine the second scenario first.

40 As a preliminary point, it should be recalled that, according to the case-law, the applicant, as an association representing the interests of importers, distributors, traders and processors dealing with non-integrated steel, stainless steel and metal products, is entitled to bring an action for annulment only if it can prove an interest of its own or, if that is not the case, if the undertakings which it represents or some of those undertakings themselves have standing to bring proceedings (judgment of 13 March 2018, *European Union Copper Task Force* v *Commission*, C-384/16 P, EU:C:2018:176, paragraph 87).

41 In the present case, in accordance with the final limb of the fourth paragraph of Article 263 TFEU, if (i) the contested act is a regulatory act which is of direct concern to the applicant's members, and (ii) that act does not entail implementing measures, those members' standing to bring proceedings will be demonstrated.

42 In that context, the Commission takes the view that the applicant cannot bring an action for annulment of the contested regulation on the basis of the fourth paragraph of Article 263 TFEU, since, first, it has not shown that its members were directly concerned by that regulation and, second, it has not established the absence of implementing measures in respect of its members.

– *The regulatory nature of the contested act*

43 According to settled case-law, the concept of regulatory act, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, refers, in principle, to all acts of general application other than legislative acts (see, to that effect, judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraphs 23 and 28 and the case-law cited). The distinction between a legislative act and a non-legislative act, according to the FEU Treaty, is based on the criterion of the procedure, legislative or not, which led to its adoption (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 58, and order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 65).

44 In the present case, first, the contested regulation, in so far as it prolongs a safeguard measure against imports of certain steel products, is of general application. Second, that regulation is not a legislative act, as it was not adopted following an ordinary or special legislative procedure.

45 Therefore, the contested regulation is a regulatory act within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

– *Direct concern*

46 The condition that the measure forming the subject matter of the proceedings must be of direct concern to a natural or legal person requires the fulfilment of two cumulative criteria, namely the contested measure must, first, directly affect the legal situation of the individual and, second, leave no discretion to the addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see judgment of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 58 and the case-law cited).

47 In the present case, the Commission argues that the applicant's situation does not satisfy the conditions relating to direct concern. It maintains that any legal effects of the contested regulation cannot materialise *ex officio* from the regulation alone, since, at the time the action was brought, the applicant's members could continue to go about their business in the same way as before the contested regulation.

48 In that regard, the Commission states that any importer in the European Union would only become affected once the customs authorities of the Member States took a position on the amount of safeguard duty by implementing the contested regulation in the form of a notification of the customs debt or similar declaration.

49 As regards the fulfilment of the first criterion referred to in paragraph 46 above, it should be noted that the contested regulation determines the legal framework and the conditions under which the applicant's members may import into the European Union, in terms both of volume and pricing, since their products are subject to a quota system and no longer to release for free circulation within the European Union, which requires neither the determination of quantities nor authorisation from the Commission. Under such a quota system, the entitlement of the applicant's members to use the free-of-duty quota is subject to the Commission's determination of such quota with regard to their products (see, by analogy, judgment of 18 May 2022, *Uzina*

Metalurgica Moldoveneasca v *Commission*, T-245/19, EU:T:2022:295, paragraph 44). It must therefore be concluded that the contested regulation directly affects the legal situation of the applicant's members.

50 In this context, it should be emphasised that following the Commission's position would amount to undermining the importance of separating the two stages of the safeguard mechanism (see paragraph 28 above) and the substantial difference between legal effects and commercial effects (see paragraph 31 above).

51 As regards whether the second criterion referred to in paragraph 46 above is satisfied, the relevant legal test is that there is no discretion left to those to whom the measure in question is addressed and who are responsible for implementing it (see, to that effect, order of 14 January 2015, *SolarWorld and Others* v *Commission*, T-507/13, EU:T:2015:23, paragraph 40).

52 In the present case, the contested regulation leaves no discretion to the competent authorities of the Member State in the implementation of safeguard measures (see, by analogy, judgments of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 59, and of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, not published, EU:T:2014:1076, paragraph 28), both in the context of the first stage of the safeguard mechanism, with the quota system becoming effective on the date of application of the contested regulation (see paragraph 28 above), that, in the second stage of that mechanism, the competent authorities are required to apply an above-quota tariff of 25% once the tariff quotas have been exhausted (see, by analogy, judgment of 18 May 2022, *Uzina Metalurgica Moldoveneasca* v *Commission*, T-245/19, EU:T:2022:295, paragraph 46).

53 Consequently, the applicant's members are directly affected by the contested regulation, within the meaning of the case-law cited in paragraph 46 above.

– *The absence of implementing measures*

54 In the Commission's view, the effects of the common commercial policy materialise through implementing measures that the Member States apply to the individual situation of the importer. In the field of the common commercial policy, implementing measures are the only measures that materialise the effects of a regulation.

55 Thus, that importer may challenge those implementing measures before the national courts concerned, which may subsequently refer a question to the Court of Justice for a preliminary ruling under Article 267 TFEU, relating to the assessment of the legality of the regulation on which those implementing measures are based.

56 In that regard, the Commission states that the limitations challenged by the applicant, deriving from the complementarity between the legal remedies, have their basis in the FEU Treaty and therefore cannot be ignored.

57 In the present case, it should be noted that the contested regulation prolongs the safeguard measure which consists, on the one hand, of establishing tariff quotas for certain steel products and, on the other, the application of an above-quota tariff of 25% for all imports above the

quantitative thresholds of those quotas. The result of this system is the introduction of a condition linked to a volumetric level of imports and, for importers wishing to obtain supplies above that level, the application of a tariff increase.

58 In that regard, even assuming that the measures applied in the present case to the individual situation of an importer are implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, it is apparent from the case-law that the fact that a regulatory act of the European Union entails implementing measures, such that certain legal effects of the regulation only materialise through those measures, does not exclude that that regulation produces, in the legal situation of a natural or legal person, other legal effects, which do not depend on the adoption of implementing measures (see, to that effect, judgment of 13 March 2018, *European Union Copper Task Force* v *Commission*, C-384/16 P, EU:C:2018:176, paragraph 45).

59 In the present case, the introduction of the quota system, which constitutes an effect of the contested regulation in the same way as the application of the above-quota tariff, coincides with the adoption of that regulation. Therefore, an importer must act within a new legal framework, as from the adoption of the contested regulation, which differs from the previous legal framework. The production of the legal effects of the quota system, as identified in paragraph 49 above, does not depend on any implementing measure. In that regard, it may be noted that the measures on which the Commission relies to consider that the criterion relating to the absence of implementing measures is not satisfied do not concern those legal effects (see paragraph 58 above).

60 It follows that, before the tariff-rate quota is exhausted, there are not necessarily any implementing measures which the applicant's members whose legal situation is affected by the establishment of the quota system could challenge before the national courts.

61 Consequently, importers, such as the applicant's members, are in a situation corresponding to the situation provided for in the final limb of the fourth paragraph of Article 263 TFEU and are thus entitled to bring an action against the contested regulation.

62 In those circumstances and in accordance with the case-law referred to in paragraph 40 above, the applicant, as a representative association, has standing to bring proceedings against the contested regulation on the basis of the final limb of the fourth paragraph of Article 263 TFEU.

63 The action must therefore be declared admissible.

Substance

64 The applicant raises two pleas in support of its action.

65 By its first plea, the applicant alleges that the conditions for the prolongation of the safeguard measure under Article 19 of the Basic Safeguard Regulation are not met.

66 By its second plea, the applicant claims that that prolongation is not in the interests of the European Union.

67 As a preliminary point, it should be observed that, according to settled case-law, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the institutions of the European Union enjoy a broad discretion by reason of the complexity of the economic and political situations which they have to examine. The judicial review of such an appraisal must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see, to that effect, judgments of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 47 and the case-law cited, and of 18 May 2022, *Uzina Metalurgica Moldoveneasca* v *Commission*, T-245/19, EU:T:2022:295, paragraphs 74 and 75).

The first plea, alleging infringement by the Commission of Article 19 of the Basic Safeguard Regulation

68 In essence, the applicant's first plea is divided into two parts.

69 By the first part, the applicant submits that the data on which the Commission based its analysis in adopting the contested regulation do not support the conclusion that the prolongation of the safeguard measure was necessary to prevent or remedy serious injury, within the meaning of Article 19(2)(a) of the Basic Safeguard Regulation.

70 By the second part, the applicant submits that the Commission erred in concluding that there was evidence that EU industry made adjustments, as required by Article 19(2)(b) of the Basic Safeguard Regulation.

71 The Commission contests the merits of the first plea.

– The first part of the first plea, relating to the necessity of the prolongation of the safeguard measure to prevent or remedy serious injury

72 Under Article 19(2)(a) of the Basic Safeguard Regulation, a safeguard measure may be prolonged if it is determined that such prolongation is necessary to prevent or remedy serious injury.

73 First, the applicant submits that, by failing to take into account certain aspects of the market during the period covered by the investigation relating to the possible prolongation of the safeguard measure, namely the years 2018 to 2020 ('the investigation period'), which contradict the conclusion that the prolongation of the safeguard measure was necessary to remedy serious injury, the Commission committed a manifest error of assessment in determining the need for the prolongation within the meaning of Article 19(2)(a) of the Basic Safeguard Regulation.

74 In the first place, the applicant complains that the Commission failed to take into consideration the factors relating to the production capacity of the EU industry and the market shares held by that industry in the European Union.

75 In a first step, it is necessary to qualify the relevance which the applicant ascribes to each of those factors.

76 First, the applicant claims that the production capacity of the EU industry has remained stable. However, it is clear from the analysis in recital 12 of the contested regulation, which compares the development of production volume, production capacity and the use of that capacity, that the use of production capacity fell by 13 percentage points.

77 Second, the applicant states that the market share of the EU industry increased from year to year. That positive trend is also apparent from the Commission's additional analysis by product family or category. However, as is apparent from recital 13 of the contested regulation, that increase was combined with a decline in consumption throughout the period concerned. Thus, the significance of the increase in market shares in the context of an analysis of the economic situation of the EU steel industry must be put into perspective, since, in practice, that increase did not lead to an improvement in profitability. In that regard, it should be noted that that situation is specifically referred to in recital 15 of the contested regulation, which states that the EU industry became loss-making between 2018 and 2019 and that profitability continued to decrease between 2019 and 2020.

78 In a second step, the method underlying the analysis proposed by the applicant in relation to those factors must be put into perspective.

79 First, the applicant's approach suffers from a lack of contextualisation. It is important not to overlook the fact that, in order to determine the significance of a positive or negative development of a factor, it must be placed in the appropriate context. Thus, the increase in market share of the EU industry over the period considered must be assessed in the light of the fact that the level of market shares in question in 2019 and 2020 was close to that in 2017, when the EU industry was affected by an increase in imports. Therefore, it cannot be inferred from the increase in the EU industry's market shares that the situation of the EU industry was no longer fragile or vulnerable. Moreover, since the safeguard measure is based on the maintenance of traditional trade flows in terms of import volumes based on the period from 2015 to 2017, an increase in EU market shares at those levels does not demonstrate the absence of injury.

80 Second, it must be borne in mind that the analysis of the economic situation of the steel industry which the Commission must carry out requires several factors to be taken into account, none of which is decisive in isolation. Thus, the identification of any manifest error of assessment by the Commission in the conduct of its analysis must take account of the method which it followed. In particular, it is apparent from the findings expressly set out in paragraph 3.1 of the contested regulation that the conclusion reached by the Commission in recital 17 of that regulation, namely the fragile and vulnerable nature of the situation of the EU industry, is based on numerous other injury indicators, almost all of which showed strong negative trends. Thus, the indicators relating to production, sales, return on capital and employment all showed a decrease in a context in which sales and selling prices on the domestic market had also fallen, resulting in a reduction in the profitability of the EU industry.

81 In the light of the foregoing, it must be held that the applicant's assessments are fragmentary and isolated.

82 In the second place, the applicant complains that the Commission failed to take into account the decrease in imports during the investigation period, as shown by the data in the contested regulation.

83 However, in order to reject that complaint, it suffices to note that the applicant's assessments lack relevance, in so far as they are not contextualised. First, the volume of imports reached in 2020 corresponds to that in 2015, already considered to be injurious, and, second, the decrease in imports in terms of market share leads to a level equivalent to that observed in 2017, as is expressly stated in recital 25 of the contested regulation. Moreover, it should be noted that the applicant does not directly contradict the Commission's conclusion that, in the light of the contextualised approach described above, imports into the EU steel market have actually increased in relative terms compared to the period prior to the imposition of the safeguard measure.

84 Therefore, the Commission cannot be criticised for not having taken into account the alleged decrease in imports.

85 Second, the applicant claims that, on the basis of a positive and objective examination of the data referred to in paragraphs 74 and 82 above, the Commission could not conclude that a prolongation of the safeguard measure was necessary in order to prevent serious injury without committing a manifest error of assessment in the light of Article 19(2)(a) of the Basic Safeguard Regulation.

86 As a preliminary point, it should be noted that it is apparent from the contested regulation that the Commission carried out a forward-looking examination, which the applicant does not dispute. In that regard, the applicant raises two objections.

87 First, the applicant complains that the Commission failed to take into consideration the increase in profits of the main players in the EU industry. However, in so far as that complaint is based on factors whose temporal scope extends beyond the period considered by the Commission, it must be rejected as ineffective.

88 Second, the applicant complains that the Commission failed to take into consideration the absence of pressure on the EU industry from imports from the People's Republic of China. However, it is apparent from recitals 39 and 43 of the contested regulation that the forward-looking examination carried out by the Commission took account of the state of overproduction and of overcapacity worldwide. Accordingly, that complaint must also be rejected.

89 It follows from the foregoing that, contrary to the applicant's claims, the Commission did not ignore certain data or their importance. In so far as the applicant bases its challenge on that alleged failure to take data into account, it must be concluded, in accordance with the principles referred to in paragraph 67 above, that the Commission did not commit a manifest error of assessment in the analysis which led it to take the view that the prolongation of the safeguard measure was necessary to prevent or remedy serious damage.

90 Finally, third, the applicant complains that the Commission failed to carry out an appropriate non-attribution analysis concerning the exceptional market circumstances in 2020 caused by the COVID-19 pandemic. In that regard, it observes that that question is addressed only incidentally in the contested regulation.

91 As a preliminary point, it should be noted that, first, it is not disputed that it is apparent from numerous passages of the contested regulation that the Commission examined the effects of the COVID-19 pandemic in its analysis and that, second, the applicant's argument does not identify precisely those passages which reveal, in its view, that that aspect was dealt with inadequately,

but merely describes the Commission's analysis in that regard as incomplete. Therefore, the vagueness of that complaint precludes the identification of a manifest error of assessment committed by the Commission.

92 In any event, first, at the hearing, in response to the Court's request for clarification of the content of that complaint, the applicant maintained its objections relating to the incomplete nature of the Commission's analysis having regard to the data available at the time. However, it failed to specify the content of those data and referred, in general terms, to the fact that the Commission had had detailed information on the situation as a result of investigations carried out in the context of other trade defence measures. In addition, the applicant has failed to identify specifically the inadequacies of the considerations set out in the contested regulation in that regard.

93 Second, in the context of the review which it is for the General Court to carry out in the present case, in accordance with the principles referred to in paragraph 67 above, account must be taken of the particularly significant factor of uncertainty linked to an extraordinary crisis in the assessment of the forward-looking analyses carried out by the Commission. The applicant's argument that the Commission could have relied on more precise data, allegedly in its possession, in order to carry out a non-attribution analysis does not take account of the very high degree of uncertainty associated with the development of a crisis of exceptional proportions such as the COVID-19 pandemic.

94 In the light of all the foregoing, the first part of the first plea in law must be rejected.

– *The second part of the first plea in law, concerning proof of adjustments*

95 Under Article 19(2)(b) of the Basic Safeguard Regulation, a safeguard measure may be prolonged if it is determined that there is evidence indicating that EU producers are adjusting.

96 First, the applicant claims that the Commission erred in concluding that such evidence existed, in so far as there is not sufficient evidence in the contested regulation to conclude that the EU industry took appropriate measures to adapt to the increase in imports. In that regard, the applicant points out that no adjustment plan has been provided and claims that it is clear that EU producers did not take adequate adjustment measures during the last two and a half years.

97 As a preliminary point, it is apparent from the contested regulation that the Commission took into account a number of factors revealing adjustment measures adopted by the EU industry. Although it is stated in recital 68 of the contested regulation that confidential information relating to the adjustment measures adopted by EU producers was sent to the Commission, detailed information is nevertheless set out in recitals 69 and 70 of that regulation. It must be stated that the applicant dispensed with any analysis of that information and merely stated that none of the references to adjustment activities reported by the Commission were supported by any evidence.

98 In accordance with the principles referred to in paragraph 67 above, it is irrelevant that, in the absence of a specific challenge to the evidence on which the Commission's analysis is based, the applicant states that other types of information would have been relevant.

99 Second, according to the applicant, no evidence has been adduced either of the EU industry's lack of production capacity or of its inability to supply all the goods required for the EU market.

100 That complaint must be rejected as irrelevant, given that, although all the measures taken by the EU industry concerned actions aimed at increasing the efficiency of the measures intended to support the effectiveness of the EU industry and properly supporting competition in a market scenario characterised by an increase in imports, those measures were not on the other hand, aimed at making the EU industry capable of covering the supply needs on the EU market.

101 In that regard, the applicant's claims concerning the Commission's failure to take into account the increase in the EU industry's market share and the decrease in imports, reiterated in that context, must be rejected for the reasons set out in paragraphs 77, 83 and 84 above.

102 Third, the applicant considers that the EU industry did not make any adjustment, since it was not in a situation of injury or threat of injury, as illustrated by the substantial profits realised by EU producers and the absence of pressure from imports from the People's Republic of China. In that regard, it is sufficient to recall that it has been concluded, in paragraphs 87 and 88 above, that the premisses of that reasoning should be rejected.

103 In the light of the foregoing, the second part of the first plea must be rejected as unfounded.

104 In so far as it has been held that the two parts of the first plea have been found to be unfounded, that plea must be rejected in its entirety.

The second plea in law, alleging manifest errors committed by the Commission in the assessment of the European Union interest in prolonging the safeguard measure

105 By its second plea, the applicant claims that the Commission's position that there are no compelling economic reasons that could lead to the conclusion that it is not in the interest of the European Union to prolong the existing safeguard measure is flawed.

106 In the first place, the applicant contests the validity of the statement, in the contested regulation, that free-of-duty tariff quotas were commensurate with demand. The applicant states that, during the general economic recovery following the COVID-19 pandemic, there was an imbalance between the strong demand for raw materials and the weak supply of EU producers which were unable to satisfy it, which led to a significant price growth within the European Union. In that context, the applicant maintains that, in the third quarter of 2021, the exhaustion of the quotas of the main non-EU steel suppliers made it difficult for users and importers to supply steel.

107 It must be noted that the applicant's argument is based on an approach which does not take into account the mechanism of the safeguard measure, which leads the importer to diversify its sources of supply by turning, where appropriate, to producers located in third countries for which the tariff quota has not been exhausted. In the present case, it is apparent from the case file that free-of-duty quotas remained unused, which the applicant does not dispute.

108 In that context, it must be concluded that no manifest error of assessment affecting the Commission's analysis has been demonstrated.

109 In the second place, the applicant maintains that the assertions in the contested regulation that, first, there is no direct link between the safeguard measure and the increase in steel prices and, second, that the level of those prices will not be maintained once the market has adjusted to the post-pandemic situation, are not corroborated by the data on which the Commission's analysis is based.

110 First of all, however, it should be noted that, if the increase in prices were due to the safeguard measure, it would be clear from the analysis data that the EU steel industry could free itself from any binding competitive pressure. The Commission could not reach such a conclusion in the presence of a large number of non-exhausted, free-of-duty quotas from several sources in virtually all product categories during the last period of the safeguard measure, which was the case here, as noted in paragraph 107 above.

111 Next, the impact of other factors – such as the parallel increase in raw material prices referred to in recital 100 of the contested regulation – cannot be excluded in the determination of the causes responsible for the price increase in the EU market.

112 Finally, it is apparent from the evidence in the file that, since those price increases were observed in the main steel markets worldwide, where the safeguard measure did not apply, the applicant's submissions as to the causal link between the safeguard measure and the price increase are not convincing.

113 Consequently, the Commission's assessment of the increase in prices in the context of the assessment of the European Union interest in seeing the safeguard measure prolonged is not manifestly erroneous.

114 In the third place, the applicant takes issue with the fact that the Commission, in the contested regulation, describes as 'transitory' the problems of supply experienced after the general economic recovery, since, unlike the Commission, it maintains that the return to operation of the plants left inactive by the EU industry is not able to guarantee the restoration, in a reasonably short time, of the normal conditions for the supply of steel existing before the COVID-19 pandemic.

115 The applicant claims that the increase in demand after the general economic recovery led, inter alia, to a gradual shortage of raw materials, affecting the activity of processors of those materials. Accordingly, deliveries are regularly cancelled or suspended. In addition, maritime transport costs have increased exponentially and logistics are increasingly difficult to manage.

116 First, it should be noted that, since the tariff-rate quotas were not exhausted (see paragraph 107 above), the safeguard measure cannot be the cause of the alleged incapacity of the EU industry to meet demand in the EU market.

117 Moreover, since the applicant has failed to show that there is insufficient supply in the EU market, its arguments relating to delivery times and logistics costs are irrelevant.

118 Finally, the information set out in recitals 110 and 111 of the contested regulation, relating to the ability of the EU industry to guarantee restoration, within a reasonable period of time, of normal supply conditions, cannot be challenged by a mere assertion to the contrary by the applicant without providing any evidence in support thereof.

119 Consequently, the applicant has failed to demonstrate the existence of a manifest error of assessment on the part of the Commission as regards the interest of the European Union in prolonging the safeguard measure.

120 For the sake of completeness, it may be noted that the applicant's arguments based on data relating to developments subsequent to the investigation period are ineffective, in so far as those arguments are not capable of demonstrating the existence of a manifest error of assessment

affecting the Commission's analysis of the EU interest in having the safeguard measure prolonged, since those data cannot be taken into consideration during the investigation relating to the possible prolongation of the safeguard measure.

121 In the light of all the foregoing, the second plea in law must be rejected as unfounded and, consequently, the action must be dismissed in its entirety.s

Costs

122 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

123 Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Tenth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the European Association of Non-Integrated Metal Importers & distributors (Euranimi) to pay the costs.**

Porchia Jaeger Nihoul

Delivered in open court in Luxembourg on 4 October 2023.

V. Di Bucci
Registrar

M. van der Woude
President