



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

28 February 2019*

(Appeal — Dumping — Implementing Regulation (EU) No 157/2013 — Imports of bioethanol originating in the United States of America — Definitive anti-dumping duty — Country-wide dumping margin — Actions for annulment — Associations representing non-exporting producers and traders/blenders — *Locus standi* — Direct concern — Individual concern)

In Case C-465/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 August 2016, and cross-appeal under Article 176 of the Rules of Procedure of the Court, brought on 7 November 2016,

Council of the European Union, represented by S. Boelaert, acting as Agent, and by N. Tuominen, avocată,

appellant,

the other parties to the proceedings being:

Growth Energy, established in Washington (United States),

Renewable Fuels Association, established in Washington (United States),

represented by P. Vander Schueren, advocaat, and by N. Mizulin and M. Peristeraki, avocats,

applicants at first instance,

European Commission, represented by T. Maxian Rusche and M. França, acting as Agents,

ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol, represented by O. Prost and A. Massot, avocats,

interveners at first instance,

THE COURT (Third Chamber),

composed of M. Vilaras (Rapporteur), President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský, L. Bay Larsen, M. Safjan and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

* Language of the case: English.

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 3 October 2018,

gives the following

Judgment

- 1 By its appeal, the Council of the European Union asks the Court to set aside the judgment of the General Court of the European Union of 9 June 2016, *Growth Energy and Renewable Fuels Association v Council* (T-276/13, ‘the judgment under appeal’, EU:T:2016:340), by which the General Court, first, declared admissible the action brought by Growth Energy and Renewable Fuels Association for the annulment of Council Implementing Regulation (EU) No 157/2013 of 18 February 2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America (OJ 2013 L 49, p. 10) (‘the regulation at issue’), and, secondly, annulled that regulation in so far as it concerned Patriot Renewable Fuels LLC, Plymouth Energy Company LLC, POET LLC and Platinum Ethanol LLC, producers of bioethanol and members of Growth Energy and Renewable Fuels Association.
- 2 By their cross-appeal, Growth Energy and Renewable Fuels Association ask the Court, first, to set aside the judgment under appeal in so far as it held that their action was admissible only to a limited extent and, secondly, to annul the regulation at issue in so far as it affects them or, in the alternative, to refer the case back to the General Court to rule on their pleas in law.

Background to the proceedings and the regulation at issue

- 3 The background to the dispute was set out in paragraphs 1 to 18 of the judgment under appeal and may, for the purposes of the present proceedings, be summarised as follows.
- 4 Following a complaint lodged on 12 October 2011 by ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol (the European Producers Union of Renewable Ethanol Association, ‘ePure’), the European Commission published, on 25 November 2011, a notice of initiation of an anti-dumping proceeding concerning imports of bioethanol originating in the United States of America (OJ 2011 C 345, p. 7), in which it stated its intention to use sampling to select the exporting producers in the United States of America to be investigated in the context of that proceeding (‘the investigation’).
- 5 On 16 January 2012, the Commission notified five member companies of Growth Energy and Renewable Fuels Association, namely Marquis Energy, Patriot Renewable Fuels, Plymouth Energy Company, POET and Platinum Ethanol, that they had been selected to be part of the sample of exporting producers
- 6 On 24 August 2012, the Commission sent Growth Energy and Renewable Fuels Association the provisional disclosure document stating its intention to continue the investigation, without the adoption of provisional measures, and to extend the investigation to traders/blenders. That document stated that it was not possible at that stage to assess whether the exports of bioethanol originating in the United States had been made at dumped prices, on the ground that the sampled producers did not make a distinction between domestic sales and sales for export, and all their sales were to unrelated traders/blenders established in the United States, which then blended the bioethanol with gasoline and sold it on.

- 7 On 6 December 2012, the Commission sent Growth Energy and Renewable Fuels Association the definitive disclosure document in which it examined, on the basis of the data from the unrelated traders/blenders, the existence of dumping causing injury to the Union industry and envisaged imposing definitive measures at the rate of 9.6% countrywide, for a period of three years.
- 8 On 18 February 2013, the Council adopted the regulation at issue, on the basis 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'), imposing an anti-dumping duty on bioethanol, referred to as 'fuel ethanol', at a rate of 9.5% countrywide for a period of five years.
- 9 It is apparent from paragraph 16 of the judgment under appeal that the Council stated, in recitals 12 to 16 of the regulation at issue, that the investigation had shown that none of the sampled producers had exported bioethanol to the EU market and that it was not the US producers of bioethanol but the traders/blenders who were the exporters of the product concerned to the European Union, so that, in order to complete the dumping investigation, the Council had relied on the data of the two traders/blenders that had agreed to cooperate.
- 10 It is also stated, in paragraph 17 of the judgment under appeal, that the Council explained, in recitals 62 to 64 of the regulation at issue, that it was appropriate to establish a countrywide dumping margin, since the structure of the bioethanol industry and the way in which the product concerned was produced and sold on the US market and exported to the European Union made it impracticable to establish individual dumping margins for US producers.

The procedure before the General Court and the judgment under appeal

- 11 By application lodged at the General Court Registry on 15 May 2013, Growth Energy and Renewable Fuels Association brought an action for annulment of the regulation at issue.
- 12 After finding that the action of Growth Energy and Renewable Fuels Association was admissible in part, the General Court upheld the second part of their first plea in law, alleging infringement by the Council of Article 9(5) of the basic anti-dumping regulation and, therefore, annulled the regulation at issue, in so far as it concerned four of the five sampled US producers members of those two associations.
- 13 The General Court examined, in paragraphs 42 to 162 of the judgment under appeal, whether the action of Growth Energy and Renewable Fuels Association was admissible, by examining in turn the conditions for recognising their right to bring proceedings in their capacity as an association, then their standing to bring proceedings and, lastly, their interest in bringing proceedings.
- 14 The General Court therefore examined, in the first instance, in paragraphs 45 to 64 of the judgment under appeal, the conditions for recognising the right of associations to bring proceedings, and began by noting that Growth Energy and Renewable Fuels Association could be recognised as having such a right, in their capacity as associations representing the interests of US bioethanol producers, only in three situations: (i) where this is expressly recognised to be the case in a legal provision, (ii) where the undertakings they represent or some of those undertakings themselves have standing to bring proceedings or (iii) where Growth Energy and Renewable Fuels Association can prove an interest of their own, respectively.
- 15 The General Court found, first of all, in paragraphs 47 and 48 of the judgment under appeal, that Growth Energy and Renewable Fuels Association could not rely on the first situation, since they had not identified any provision conferring on them a specific right to bring an action and there was nothing in the file to support the conclusion that such a provision existed.

- 16 Next, in respect of the second situation, the General Court distinguished in paragraph 50 of the judgment under appeal between four categories of economic operators that are members of Growth Energy and Renewable Fuels Association.
- 17 In that regard, first, the General Court, in paragraph 51 of the judgment under appeal, dismissed the action of Growth Energy and Renewable Fuels Association as inadmissible, in so far as it was brought on behalf of Marquis Energy, when that company had brought its own action, under Case T-277/13.
- 18 Secondly, in paragraphs 52 to 55 of the judgment under appeal, the General Court dismissed the action brought by Growth Energy and Renewable Fuels Association as inadmissible, on the ground that it was brought on behalf of two traders/blenders of bioethanol, Murex and CHS, since those traders/blenders were only 'associate' members of the associations without voting rights. The General Court found that those two undertakings did not have the possibility of ensuring that their interests prevailed when those interests were being represented by those associations, so that the associations did not have standing to bring proceedings.
- 19 Thirdly, the General Court stated, in paragraph 56 of the judgment under appeal, that it had to examine whether the action of Growth Energy and Renewable Fuels Association was admissible in so far as they represented, first, the four sampled producers other than the Marquis Energy group and, secondly, any member other than the four sampled producers, Marquis Energy or the traders/blenders Murex and CHS.
- 20 Lastly, the General Court stated, in paragraph 63 of the judgment under appeal, that it was necessary to examine, as regards the third situation, whether Growth Energy and Renewable Fuels Association had an interest of their own in their capacity as associations that participated in the anti-dumping proceeding.
- 21 The General Court analysed, in the second instance, in paragraphs 64 to 154 of the judgment under appeal, the standing to bring proceedings of Growth Energy and Renewable Fuels Association, by examining in turn their standing to bring proceedings in their own right, then their standing to bring proceedings as representatives of the sampled US producers and, lastly, their standing to bring proceedings as representatives of their members other than the sampled US producers.
- 22 The General Court held, in the first place, in paragraphs 77 to 87 of the judgment under appeal, that Growth Energy and Renewable Fuels Association had standing to bring proceedings in their own name, as regards the third situation, on the basis of the procedural guarantees granted to associations by Article 6(7), Article 19(1) and (2), and Article 20(2), (4) and (5) of the basic anti-dumping regulation, but only for the purposes of safeguarding the procedural rights they relied on in the context of their 10th plea in law.
- 23 The General Court held, in the second place, in paragraphs 90 to 150 of the judgment under appeal, that the sampled US producers had standing to bring proceedings for the annulment of the regulation at issue and, concluded, therefore, that the action brought by Growth Energy and Renewable Fuels Association was admissible in their capacity as the representatives of those producers' interests.
- 24 It found, first, in paragraphs 92 to 104 of the judgment under appeal, that the sampled US producers were directly concerned by the regulation at issue, in rejecting in paragraphs 105 to 118 of that judgment the various arguments to the contrary put forward by the Council and the Commission.
- 25 In the context of its examination of whether the sampled US producers were directly concerned, the General Court noted first of all, in paragraph 92 of the judgment under appeal, its case-law according to which a company on whose products an anti-dumping duty is imposed is directly concerned by a regulation imposing that anti-dumping duty because that regulation obliges the Member States' customs authorities to levy the duty imposed without leaving them any discretion.

- 26 It then found, in paragraphs 93 to 104 of the judgment under appeal, that the sampled US producers were directly concerned by the anti-dumping duty imposed by the regulation at issue, on the ground that they were the producers of the product, which — when imported into the European Union from the coming into force of the regulation at issue — was subject to the anti-dumping duty.
- 27 In that regard, the General Court relied, in paragraphs 93 to 97 of the judgment under appeal, on four findings relating to the operation of the bioethanol market as set out by the Council, the Council itself having considered, in the regulation at issue, that a significant volume of bioethanol from the four sampled US producers had been exported on a regular basis to the European Union during the investigation period.
- 28 Lastly, in paragraphs 105 to 118 of the judgment under appeal, the General Court rejected the various arguments advanced by the Council and the Commission. It pointed out in particular in that connection, in paragraph 114 of the judgment under appeal, that even supposing that the traders/blenders bore the anti-dumping duty and it were proven that the bioethanol marketing chain was interrupted so that they were not able to pass on the anti-dumping duty to the producers, the fact remained that the imposition of an anti-dumping duty changed the legal conditions under which the bioethanol produced by the sampled producers was to be marketed on the EU market, so that the legal position of the producers in question on that market was, in any event, directly and substantially affected.
- 29 The General Court found, secondly, in paragraphs 119 to 130 of the judgment under appeal, that the four sampled producers were individually concerned by the regulation at issue, and rejected, in paragraphs 131 to 145 of that judgment, the various arguments to the contrary advanced by the Council and the Commission.
- 30 The General Court found, thirdly, in paragraphs 151 to 153 of the judgment under appeal, that the action of Growth Energy and Renewable Fuels Association was inadmissible in so far as it was brought on behalf of all the members of those associations other than the four sampled US producers, since those associations had failed to adduce any evidence to prove that their members were directly concerned by the regulation at issue.
- 31 In the third instance, the General Court examined the interest of Growth Energy and Renewable Fuels Association in bringing proceedings. In paragraphs 155 to 160 of the judgment under appeal, it rejected the Commission's argument that Growth Energy and Renewable Fuels Association did not have a vested and present interest in the annulment of the regulation at issue since their members had not exported any bioethanol to the European Union during the investigation period nor started to do so at the date on which the application was lodged.
- 32 In that regard, the General Court found, in paragraph 157 of the judgment under appeal that while the Commission, as merely an intervener, was not entitled to raise a plea of inadmissibility alleging no interest in bringing proceedings, it was, however, for the General Court to examine that plea of its own motion. In the present case, it held, first, that Growth Energy and Renewable Fuels Association had an interest in bringing proceedings in so far as the annulment of the anti-dumping duty imposed by the regulation at issue, which is imposed on imports into the European Union of bioethanol produced by the four sampled US producers, was likely to procure an advantage to those producers. It held, secondly, that those two associations had an interest in bringing proceedings in so far as they claimed that their own procedural rights had been infringed.

33 The General Court concluded its analysis of whether the action was admissible, in paragraphs 161 and 162 of the judgment under appeal, as follows:

‘161 It follows from all the foregoing that:

- the present action must be dismissed as inadmissible to the extent that it seeks the annulment of the [regulation at issue] in so far as it concerns Marquis Energy (see paragraph 51 [of the judgment under appeal]);
- the first nine pleas in law must be rejected as inadmissible in so far as the applicants claim that they have standing to bring proceedings in their own right (see paragraph 87 [of the judgment under appeal]);
- the present action must be dismissed as inadmissible to the extent that it seeks the annulment of the [regulation at issue] in so far as it concerns the applicants’ members other than the five sampled US producers (see paragraphs 55 and 154 [of the judgment under appeal]).

162 However, the present action is admissible to the extent that the applicants are seeking:

- first, the annulment of the [regulation at issue] in so far as it concerns the four sampled US producers (see paragraph 150 [of the judgment under appeal]) and,
- second, the annulment of the [regulation at issue] in so far as they claim, in the 10th plea in law, that their own procedural rights were infringed during the anti-dumping proceeding (see paragraph 87 [of the judgment under appeal]).’

Procedure before the Court of Justice and forms of order sought

34 In the main appeal, the Council claims that the Court should:

- set aside the judgment under appeal;
- dismiss the action brought at first instance by Growth Energy and Renewable Fuels Association;
- order Growth Energy and Renewable Fuels Association to pay the costs incurred by the Council in the proceedings at first instance and on appeal.

35 In the alternative, the Council claims that the Court should:

- refer the case back to the General Court for reconsideration;
- reserve the costs of the proceedings at first instance and on appeal.

36 In its response, the Commission claims that the Court should:

- set aside the judgment under appeal;
- declare the action at first instance inadmissible;
- order Growth Energy and Renewable Fuels Association to pay the costs of the proceedings before the General Court and before the Court of Justice.

- 37 In the alternative, the Commission claims that the Court should:
- set aside the judgment under appeal;
 - reject the second part of the first plea in law raised by Growth Energy and Renewable Fuels Association at first instance and, as regards the other parts of the first plea and the other pleas, refer the case back to the General Court for reconsideration;
 - reserve the costs of both sets of proceedings.
- 38 In their response, Growth Energy and Renewable Fuels Association contend that the Court should:
- dismiss the appeal in its entirety and confirm point 1 of the operative part of the judgment under appeal;
 - order the Council to pay the costs incurred by them in the proceedings at first instance and in the appeal proceedings.
- 39 In the cross-appeal, Growth Energy and Renewable Fuels Association claim that the Court should:
- set aside point 2 of the operative part of the judgment under appeal, in so far as it dismisses their action for annulment;
 - annul the regulation at issue in its entirety, in so far as it affects them and all their members;
 - order the Council, first, to pay the costs incurred by them at first instance before the General Court and in the main appeal and cross-appeal before the Court of Justice and, secondly, bear its own costs.
- 40 In the alternative, in the event that the Court considers that the state of the proceedings does not permit judgment to be given, Growth Energy and Renewable Fuels Association claim that the Court should:
- refer the case back to the General Court for a decision on the first nine pleas in law seeking annulment which they put forward in their own right and on all the pleas in law seeking annulment which they put forward on behalf of their members other than the four sampled US producers;
 - order the Council to pay the costs incurred by them to date in the proceedings at first instance and in the main appeal and cross-appeal, and reserve the costs relating to the remainder of the proceedings.
- 41 In its response, the Council contends that the Court should:
- dismiss the cross-appeal in its entirety and confirm point 2 of the operative part of the judgment under appeal;
 - order Growth Energy and Renewable Fuels Association to pay the costs incurred by the Council both at first instance before the General Court and in the main appeal and cross-appeal, and to bear their own costs.
- 42 In its response, the Commission contends that the Court should:
- dismiss the cross-appeal as inadmissible and, in the alternative, as unfounded;

- order Growth Energy and Renewable Fuels Association to pay the costs.

The main appeal

- 43 In its appeal, the Council raises three grounds. The first ground alleges that the General Court misinterpreted Article 263 TFEU and the relevant case-law, and failed to state reasons in the judgment under appeal. The second ground of appeal alleges that the General Court misinterpreted Article 9(5) of the basic anti-dumping regulation. The third ground of appeal alleges that the General Court was wrong to conclude that it was not impracticable in the present case to apply individual duties to the US sampled producers.
- 44 In its pleadings in support of the Council, the Commission states that it fully supports the Council's main appeal and endorses the arguments presented by the Council in its reply. It does, however, also raise a plea not raised by the Council, but which it argues the Court may examine of its own motion. The Commission submits that the action of Growth Energy and Renewable Fuels Association ought to have been declared inadmissible, since the defence of the commercial interests of the members of those associations does not fall within the purpose of those associations as defined in their articles of incorporation.
- 45 Growth Energy and Renewable Fuels Association submit that the appeal is inadmissible in its entirety. First, they submit that, in its first and second grounds of appeal, the Council essentially contests factual issues, without raising distortion of the evidence by the General Court. Secondly, they submit that, in its third ground of appeal, the Council does not set out its arguments sufficiently clearly.
- 46 The Court will examine, first of all, the plea advanced by Growth Energy and Renewable Fuels Association alleging that the main appeal is inadmissible, then the plea brought by the Commission in its pleading in support of the Council, alleging that the General Court erred in declaring the action of Growth Energy and Renewable Fuels Association admissible and, lastly, the Council's first ground of appeal, disputing the standing of those two associations to bring proceedings and, more specifically, the first part of that first ground, which alleges that the General Court erred in law in concluding that the sampled US bioethanol producers and, hence, Growth Energy and Renewable Fuels Association, were directly concerned by the regulation at issue.

The admissibility of the main appeal

- 47 It should be noted that the assessment of facts and evidence does not indeed constitute, save where the clear sense of the facts and evidence has been distorted, a question of law which is subject, as such, to review by the Court of Justice in the context of an appeal. However, where the General Court has determined or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review their legal characterisation and the legal conclusions which were drawn therefrom (judgments of 28 May 1998, *Deere v Commission*, C-7/95 P, EU:C:1998:256, paragraph 21; of 10 December 2002, *Commission v Camar and Tico*, C-312/00 P, EU:C:2002:736, paragraph 69; and of 28 June 2018, *Andres (insolvency of Heitkamp BauHolding) v Commission*, C-203/16 P, EU:C:2018:505, paragraph 77).
- 48 In the present case, by its first ground of appeal, the Council submits that the General Court made two errors of law in its interpretation of the fourth paragraph of Article 263 TFEU, in concluding that Growth Energy and Renewable Fuels Association were first directly, and secondly individually, concerned by the regulation at issue, in their capacity as representatives of the four sampled US bioethanol producers. In the context of that first ground of appeal, the Council denies, more specifically, that those producers may be considered directly concerned by the regulation at issue, since, in essence, they did not directly export bioethanol to the European Union.

- 49 In so doing, the Council therefore puts in issue the legal conclusions which the General Court drew from its findings of fact, in this case recognising that Growth Energy and Renewable Fuels Association had standing to bring proceedings for the annulment of the regulation at issue, as provided for in the fourth paragraph of Article 263 TFEU, so that the main appeal must, at the very least to that extent, be declared admissible (see, to that effect, judgments of 10 December 2002, *Commission v Camar and Tico*, C-312/00 P, EU:C:2002:736, paragraph 71; of 28 June 2018, *Germany v Commission*, C-208/16 P, not published, EU:C:2018:506, paragraph 76; and of 28 June 2018, *Germany v Commission*, C-209/16 P, not published, EU:C:2018:507 paragraph 74).
- 50 It follows that without needing at this stage to rule on whether the two other grounds of appeal raised by the Council are admissible, the plea of Growth Energy and Renewable Fuels Association alleging that the first ground of the main appeal is inadmissible must be rejected.

The plea put forward independently by the Commission alleging that the first-instance action of Growth Energy and Renewable Fuels Association was inadmissible

Arguments of the parties

- 51 The Commission submits that the General Court ought to have dismissed the first-instance action of Growth Energy and Renewable Fuels Association as inadmissible, since essentially their articles of incorporation did not allow them to defend the commercial interests of a given sector and/or their members. The Court of Justice is, moreover, required to examine that argument of its own motion.
- 52 The Commission considers that in describing Growth Energy and Renewable Fuels Association as ‘associations representing US bioethanol producers’, in paragraph 1 of the judgment under appeal, and then as ‘associations representing the interests of the US bioethanol industry’, in paragraph 42 of that judgment, the General Court distorted the facts. The two associations, as non-profit associations incorporated under the District of Columbia Nonprofit Corporation Act, cannot engage in activities for the protection of the commercial interests of a given sector and/or their members.
- 53 Such an activity would also be incompatible with the specific purpose of Growth Energy, which is ‘to promote ethanol as a sustainable, clean, and renewable energy source’, as well as the objects of Renewable Fuels Association, namely ‘to promote and assist the development of a viable and competitive domestic renewable fuels industry’. In addition, Growth Energy and Renewable Fuels Association have in no way sought to argue that their action fell within the scope of their objects, as defined in their articles of incorporation, the General Court having found, on the contrary, in paragraph 75 of the judgment under appeal, that the purpose of their legal action was to ‘protect the US ethanol industry’.
- 54 Growth Energy and Renewable Fuels Association contend that the fact that they are non-profit-making in no way implies that they cannot defend the commercial interests of a given sector and/or their members, but merely that they cannot obtain financial gain from their activity and distribute dividends to shareholders. They add that the Commission arbitrarily concluded that Renewable Fuels Association’s objects were limited to domestic considerations and excluded the defence of commercial interests of its members in third countries. The promotion of a domestic industry is also linked to its growth, of which exports form part, so that the regulation at issue, in so far as it affects the competitiveness of that industry, does fall within the scope of Renewable Fuels Association’s mandate.
- 55 In any event, Growth Energy and Renewable Fuels Association contend that the Commission, in its capacity as ‘other party’ to the appeal, cannot raise the claim of distortion of the evidence in that respect at this stage of the proceedings — which was not raised by the Council on that point — and

cannot claim that the findings of the General Court as regards the association's objectives are in fact more limited. It ought to have brought a cross-appeal under Article 178 of the Rules of Procedure of the Court of Justice.

Findings of the Court

- 56 Under Article 174 of the Rules of Procedure of the Court of Justice, a response must seek to have the appeal allowed or dismissed, in whole or in part. Moreover, pursuant to Articles 172 and 176 of those rules, parties authorised to lodge a response may submit, by a document separate from the response, a cross-appeal, which, in accordance with Article 178(1) and (3), second sentence, of the rules must seek to have set aside, in whole or in part, the judgment under appeal on the basis of pleas in law and arguments separate from those relied on in the response.
- 57 It is apparent from those provisions, read together, that the response may not seek to have the judgment under appeal set aside on the basis of distinct and independent grounds from those raised in the appeal, since such grounds may be raised only as part of a cross-appeal (judgments of 10 November 2016, *DTS Distribuidora de Televisión Digital v Commission*, C-449/14 P, EU:C:2016:848, paragraphs 99 to 101, and of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 20).
- 58 In the present case, as the Advocate General observed, in points 45 and 46 of his Opinion, the Commission raises a plea alleging, in essence, that the General Court distorted the facts in finding that Growth Energy and Renewable Fuels Association were empowered under their articles of incorporation to defend the commercial interests of the bioethanol sector or their members — a plea which the Council has not raised — and which, therefore, constitutes a distinct and independent plea seeking to have the judgment under appeal set aside, which may be raised only in a cross-appeal.
- 59 However, according to settled case-law, the Court, in an appeal before it under Article 56 of its statute, may rule, if necessary of its own motion, whether there is an absolute bar to proceeding arising from disregard of the conditions as to admissibility laid down in Article 263 TFEU (see judgment of 29 April 2004, *Italy v Commission*, C-298/00 P, EU:C:2004:240, paragraph 35, and orders of 15 April 2010, *Makhteshim-Agan Holding and Others v Commission*, C-517/08 P, not published, EU:C:2010:190, paragraph 54, and of 7 December 2017, *Eurallumina v Commission*, C-323/16 P, not published, EU:C:2017:952, paragraph 31).
- 60 The plea raised by the Commission cannot, however, succeed.
- 61 First, the fact that Growth Energy and Renewable Fuels Association are non-profit-making does not mean that they are not allowed to defend before the courts the collective interests of the legal persons they represent. The Commission has, in any event, neither proven nor even argued that they lacked the capacity to bring or defend legal proceedings.
- 62 Secondly, contrary to what the Commission argues, it is in no way obvious that the objects of Growth Energy and Renewable Fuels Association do not allow them to defend their members' commercial interests in third countries. As the Advocate General observed, in point 51 of his Opinion, the objects of both associations are set out in a sufficiently broad manner to encompass an action before the courts intended to defend the interests of their members against trade-protection measures.
- 63 It follows that the Commission's independent plea must be rejected as lacking any foundation in law.

The first part of the first ground of the main appeal concerning whether the sampled US producers were directly concerned

Arguments of the parties

- 64 The Council submits that the General Court erred in law in concluding, in paragraph 104 of the judgment under appeal, that the four sampled US bioethanol producers were directly concerned by the regulation at issue, that conclusion being justified moreover by the factors set out in paragraphs 114, 116 and 117 of that judgment.
- 65 The Council states that the General Court held that those four producers were directly concerned since they were producers of the product which — when imported into the European Union — was subject to the anti-dumping duty. The imposition of such a duty changed the legal conditions under which the bioethanol was marketed on the EU market. According to the Council, the finding of such a direct effect is incompatible with the finding by the Court of Justice in its judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284, paragraphs 44 to 51). As producers with no direct sales into the European Union, they can at most be indirectly affected in an economic manner, in that they are potentially placed at a competitive disadvantage compared to other bioethanol manufacturers on whose products there are no duties.
- 66 The Council argues that the General Court erred in finding that the anti-dumping duties changed the legal conditions under which the relevant product was marketed and therefore directly and substantially affected the position of all — exporting or non-exporting — sampled producers. In concluding that all producers were by default directly concerned, the General Court went beyond the settled case-law it cites, thereby engaging in judicial ‘overreach’.
- 67 The General Court therefore disregarded the requirement relating to direct concern laid down in the fourth paragraph of Article 263 TFEU — which requires that the contested EU measure must directly affect the legal situation of the individual and leave no discretion to its addressees responsible for implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules — in accepting as sufficient a presumed and indirect change in the four sampled producers’ economic situation.
- 68 Growth Energy and Renewable Fuels Association contend that the General Court did not err in law in concluding that they were directly concerned by the regulation at issue.

Findings of the Court

- 69 In accordance with the settled case-law of the Court of Justice, referred to by the General Court in paragraph 67 of the judgment under appeal, the condition that a natural or legal person must be directly concerned by the measure being challenged requires two cumulative criteria to be met, namely, first, the contested measure must directly affect the legal situation of that person and, secondly, it must leave no discretion to its 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, in particular, judgment of 5 May 1998, *Compagnie Continentale (France) v Commission*, C-391/96 P, EU:C:1998:194, paragraph 41, and orders of 10 March 2016, *SolarWorld v Commission*, C-142/15 P, not published, EU:C:2016:163, paragraph 22, and of 21 April 2016, *Makro autoservicio mayorista and Vestel Iberia v Commission*, C-264/15 P and C-265/15 P, not published, EU:C:2016:301, paragraph 45).
- 70 As the Advocate General observed, in point 58 of his Opinion, it is the General Court’s assessment of the first criterion that is being challenged by the Council and the Commission.

- 71 The institutions contend, in essence, that the General Court erred in law in concluding that the sampled US producers were directly concerned by the regulation at issue because a significant volume of their bioethanol production had been exported on a regular basis to the European Union, by traders/blenders, during the investigation period, so that their legal position on the EU market had been substantially affected as a result of the imposition of the anti-dumping duty.
- 72 It should be recalled in that regard that, in accordance with the Court's settled case-law, while regulations imposing anti-dumping duties on a product are by their nature and scope of a legislative nature, in that they apply generally to the economic operators concerned, it is conceivable that they may be of direct and individual concern to some of those operators, in particular, under certain conditions, to producers and exporters of that product (see, to that effect, judgment of 16 April 2015, *TMK Europe*, C-143/14, EU:C:2015:236, paragraph 19 and the case-law cited).
- 73 In that regard, the Court has repeatedly held that measures imposing anti-dumping duties are liable to be of direct and individual concern to producers and exporters of the product at issue who are alleged to be involved in dumping on the basis of data concerning their commercial activities. That is so where producers and exporters are able to establish that they were identified in the measures adopted by the Commission or the Council, or were concerned by the preliminary investigations (see, to that effect, in particular, judgments of 21 February 1984, *Allied Corporation and Others v Commission*, 239/82 and 275/82, EU:C:1984:68, paragraphs 11 and 12, and of 7 May 1987, *NTN Toyo Bearing and Others v Council*, 240/84, EU:C:1987:202, paragraph 5).
- 74 It is apparent from that case-law that an undertaking cannot be considered directly concerned by a regulation imposing an anti-dumping duty solely on account of its capacity as a producer of the product subject to the duty, since the capacity of exporter is essential in that regard. It is apparent from the wording of the case-law cited in the preceding paragraph that whether certain producers and exporters of the product at issue are directly concerned by a regulation imposing anti-dumping duties is connected, in particular, with the fact that they are alleged to be involved in dumping practices. A producer that does not export its production to the EU market, but simply sells it on its national market, cannot be alleged to be involved in dumping.
- 75 Consequently, as the Advocate General observed in point 77 of his Opinion, the mere fact that a product enters the EU market, even in a significant volume, is not a sufficient basis for finding that, once an anti-dumping duty has been imposed on that product, the legal situation of its producer is directly affected by that duty.
- 76 In the present case, as is apparent from recitals 12 and 63 of the regulation at issue and as the General Court found in paragraph 94 of the judgment under appeal, the sampled US producers did not directly export their production to the EU market during the investigation period. They were not, therefore, alleged to be involved in any dumping and no individual dumping margin could be established for them, as is apparent from recitals 64 and 76 of the regulation at issue and as found by the General Court in paragraphs 107 to 112 of the judgment under appeal.
- 77 Since those producers did not directly export their production to the EU market and were not, therefore, definitively identified in the regulation at issue as being exporters, they were neither directly concerned by the findings concerning the existence of a dumping practice, nor even directly affected in terms of their assets, since their production was not directly made subject to the anti-dumping duties imposed.
- 78 While the US bioethanol producers were indeed identified in the acts of the institutions, in so far as they had initially been selected by the Commission in the sample of US exporting producers, that fact, noted moreover by the General Court in paragraph 119 of the judgment under appeal on the analysis of the sampled US producers' individual concern, is insufficient for it to be concluded that the latter are directly concerned by the regulation at issue.

- 79 It is apparent from the case-law referred to in paragraph 73 above that only ‘producers and exporters’ of the product subject to anti-dumping duties alleged to be involved in dumping and also able to establish that they were identified in the acts of the institutions are considered directly concerned by the regulation imposing that duty.
- 80 As noted in paragraph 76 above, it is common ground that the sampled US producers did not directly export their bioethanol production to the EU market.
- 81 While the regulation at issue may indeed place US bioethanol producers at a competitive disadvantage, such a fact, if proven, cannot of itself allow the view to be taken that their legal position was affected by the provisions of that regulation and that those provisions were, therefore, of direct concern to them (see, to that effect, judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 37, and of 17 September 2015, *Confederazione Cooperative Italiane and Others v Anicav and Others*, C-455/13 P, C-457/13 P and C-460/13 P, not published, EU:C:2015:616, paragraph 49).
- 82 The General Court erred in law, therefore, in concluding that the sampled US bioethanol producers were directly concerned by the regulation at issue. Consequently, there is no need to examine the other grounds of appeal and the judgment under appeal must be set aside, inasmuch as it annulled the regulation at issue, in so far as that regulation concerned Patriot Renewable Fuels, Plymouth Energy Company, POET and Platinum Ethanol.

The cross-appeal

- 83 In their cross-appeal, Growth Energy and Renewable Fuels Association raise two grounds alleging errors on the part of the General Court in its analysis of whether their action at first instance was admissible. They submit, first, that the General Court erred in law in limiting the scope of their standing in their own right to their 10th plea in law, which sought to safeguard their procedural rights. They dispute, therefore, the conclusion by which the General Court rejects their first nine pleas in law as inadmissible in the second indent of paragraph 161 of the judgment under appeal.
- 84 They submit, secondly, that the General Court also erred in law in finding that they did not have standing to bring proceedings on behalf of their members other than the sampled US bioethanol producers, that is to say on behalf of first, the traders/blenders Murex and CHS and, secondly, the other non-sampled members. They dispute, therefore, the conclusion by which, in the third indent of paragraph 161 of the judgment under appeal, the General Court dismissed the action as inadmissible to the extent that it seeks the annulment of the regulation at issue insofar as it concerns the members of Growth Energy and Renewable Fuels Association other than the five sampled US producers.
- 85 The Council contends that the two grounds of the cross-appeal should be rejected.
- 86 The Commission also contends, in the alternative, that those two grounds of the cross-appeal should be rejected as manifestly unfounded, but also raises, principally, two pleas of inadmissibility.

Admissibility of the cross-appeal

- 87 The Commission contends, first, that the cross-appeal has been electronically signed by a person who claims to be a member of the Athens bar (Greece) and the Brussels bar (Belgium), but that neither that person’s practising certificate nor power of attorney has been submitted which, if not rectified, is sufficient for the cross-appeal to be declared inadmissible.

- 88 It contends, secondly, that the cross-appeal brought by Growth Energy and Renewable Fuels Association must be dismissed as inadmissible, as their action at first instance before the General Court ought to have been, since it fell outside their competence, as defined in their articles of incorporation. The Commission puts forward more specifically the same arguments as those it relied on to challenge the admissibility of the response to the appeal lodged by those two associations, which are summarised in paragraphs 51 to 53 above.
- 89 In that regard, it must be noted that the original of the cross-appeal submitted by Growth Energy and Renewable Fuels Association was, as is observed by the Advocate General in point 113 of his Opinion, duly signed by a lawyer, whose status is not in dispute and who has, in any event, in accordance with Article 44(1)(b) of the Rules of Procedure, duly produced, first, a certificate that she is authorised to practise before a court of a Member State and, secondly, the authorities to act issued by Growth Energy and Renewable Fuels Association.
- 90 The Commission's first plea of inadmissibility must, therefore, be rejected as manifestly lacking any foundation.
- 91 The Commission's second plea of inadmissibility must also be rejected, on the same grounds as those set out in paragraphs 60 to 63 above.

The first ground

Arguments of the parties

- 92 The first ground raised by Growth Energy and Renewable Fuels Association is divided into two parts
- 93 The first part of the first ground alleges that the General Court erred in finding, in paragraph 79 of the judgment under appeal, that the regulation at issue did not bring about a change in the legal situation, rights and obligations of those two associations.
- 94 They submit, first of all, that an anti-dumping regulation may affect the legal situation of an individual other than simply by requiring that individual to pay anti-dumping duty. In the present case, the regulation at issue brought about changes to the rights and obligations of Growth Energy and Renewable Fuels Association since their very existence is based on their mandate and mission to defend and represent the rights of the US bioethanol industry on behalf of their members, whether sampled or non-sampled producers.
- 95 Growth Energy and Renewable Fuels Association state, next, that with the objective of ensuring that their members would be properly represented before the EU institutions, they participated intensively in the anti-dumping administrative procedure which resulted in the adoption of the regulation at issue. Consequently, a regulation imposing an anti-dumping duty would be detrimental to an association, in its own right and in its distinct professional capacity, which would have failed to obtain the desired outcome out of this process.
- 96 They submit, lastly, that the General Court erred in law in rejecting, in paragraph 86 of the judgment under appeal, the judgment of 24 March 1993, *CIRFS and Others v Commission* (C-313/90, EU:C:1993:111), as irrelevant, on the ground that their position as representative associations was not comparable to that of a negotiator acting formally on behalf of its members, which was the situation in the case giving rise to that judgment.

- 97 In the second part of their first ground, Growth Energy and Renewable Fuels Association dispute the General Court's conclusion, set out in paragraph 85 of the judgment under appeal, that they could be considered directly and individually concerned by the regulation at issue only by virtue of their 10th plea in law, seeking the protection of the procedural guarantees granted to them by Article 6(7), Article 19(1) and (2), and Article 20(2), (4) and (5) of the basic anti-dumping regulation.
- 98 They state that the two judgments relied on by the General Court in that regard, namely the judgments of 4 October 1983, *Fediol v Commission* (191/82, EU:C:1983:259, paragraph 31), and of 17 January 2002, *Rica Foods v Commission* (T-47/00, EU:T:2002:7, paragraph 55), cannot support that conclusion. While it may be inferred from those judgments that a person can be individually concerned by a measure only 'if the applicable EU legislation grants him certain procedural guarantees', those judgments nevertheless do not support the argument that standing to bring proceedings should be limited solely to pleas in law alleging infringement of procedural rights.
- 99 They argue that once it has been established that the individual is directly and individually concerned, his action must be regarded as admissible in its entirety. All interested parties within the meaning of the basic anti-dumping regulation, whether producers, exporters, importers or their representative associations, enjoy the same rights under that regulation. In denying them 'full standing rights', the General Court also admitted that representative associations should be treated differently when they initiate complaints than when they contest measures which cause harm to them and their members.
- 100 The Council and the Commission contend that the first ground should be rejected, arguing, in particular, that the General Court was fully entitled to find that the scope of the two associations' standing to bring proceedings was limited to defending their procedural rights.

Findings of the Court

- 101 As is apparent from paragraphs 77 to 87 of the judgment under appeal, the General Court held, in essence, that Growth Energy and Renewable Fuels Association had to be recognised as having standing to bring proceedings against the regulation at issue, albeit of a limited nature only, for the purposes of ensuring their procedural rights are safeguarded.
- 102 It held more specifically, first, in paragraph 79 of the judgment under appeal, that Growth Energy and Renewable Fuels Association were not directly concerned by the regulation at issue, in that it imposed anti-dumping duties only on their members' products, since it did not bring about a change in the legal situation of Growth Energy and Renewable Fuels Association. The General Court did, however, hold, secondly, in paragraphs 80 to 85 and 87 of the judgment under appeal, that those two associations did nonetheless have standing to bring proceedings against the regulation at issue, in their capacity as representative associations who have been involved in the procedure leading to the adoption of that regulation, but only in a limited manner, solely for the purposes of ensuring that their procedural rights under the basic anti-dumping regulation are safeguarded. The General Court held, thirdly, in paragraph 86 of the judgment under appeal, that Growth Energy and Renewable Fuels Association could not rely on the judgment of 24 March 1993, *CIRFS and Others v Commission* (C-313/90, EU:C:1993:111, paragraphs 28 to 30), since their position as representative associations as referred to in the basic anti-dumping regulation is not comparable to that of a negotiator acting formally on behalf of its members.
- 103 In the first part of their ground, which is directed at paragraphs 79 and 86 of the judgment under appeal, Growth Energy and Renewable Fuels Association submit, in essence, that the General Court ought to have recognised that they had full and complete standing to bring proceedings, since they actively participated in the anti-dumping administrative procedure. In their view, the General Court therefore erred in law in finding, first, in paragraph 79 of the judgment under appeal, that they were

not directly concerned by the regulation at issue and, secondly, in paragraph 86 of that judgment, that they were not a situation comparable to that which gave rise to the judgment of 24 March 1993, *CIRFS and Others v Commission* (C-313/90, EU:C:1993:111, paragraphs 28 to 30)

- 104 The arguments thus put forward by Growth Energy and Renewable Fuels Association cannot, however, succeed.
- 105 First, as the Advocate General observed in point 153 of his Opinion, the regulation at issue cannot be considered to have altered the rights and obligations of Growth Energy and Renewable Fuels Association simply because they had the authority and task of defending and representing the rights of the US bioethanol industry on behalf of their members. Secondly, as the Advocate General observed in points 160 to 165 of his Opinion, the General Court correctly found that the situation of Growth Energy and Renewable Fuels Association was in no way analogous to the exceptional situation of a negotiator examined in the case which gave rise to the judgment of 24 March 1993, *CIRFS and Others v Commission* (C-313/90, EU:C:1993:111, paragraphs 28 to 30).
- 106 In the second part of their first ground, Growth Energy and Renewable Fuels Association essentially submit that the General Court erred in law in limiting the scope of their right to bring proceedings against the regulation at issue only to defending their procedural rights and in therefore only finding their 10th plea in law admissible.
- 107 In that regard, the Court of Justice has held that a natural or legal person enjoying procedural rights in the context of the adoption of an EU act will not, as a rule, where there is any type of procedural guarantee, have standing to bring proceedings contesting the legality of that act in terms of its substantive content. The precise scope of an individual's right of action against an EU measure depends on his legal position as defined by EU law with a view to protecting the legitimate interests thus afforded him (judgments of 25 October 1977, *Metro SB-Großmärkte v Commission*, 26/76, EU:C:1977:167, paragraph 13, and of 4 October 1983, *Fediol v Commission*, 191/82, EU:C:1983:259, paragraph 31, and order of 5 May 2009, *WWF-UK v Council*, C-355/08 P, not published, EU:C:2009:286, paragraph 44).
- 108 Consequently, as the Advocate General stated in point 157 of his Opinion, the mere fact of relying on the existence of procedural guarantees does not mean that an action will be admissible where it is based on pleas alleging infringement of substantive rules of law (see, to that effect, order of 5 May 2009, *WWF-UK v Council*, C-355/08 P, not published, EU:C:2009:286, paragraph 47).
- 109 It follows that the first ground of Growth Energy and Renewable Fuels Association must be rejected as unfounded.

The second ground

Arguments of the parties

- 110 In their second ground, which is divided into two parts, Growth Energy and Renewable Fuels Association submit that the General Court also erred in law in denying them standing to bring proceedings on behalf of their members other than the sampled US bioethanol producers, that is to say first, on behalf of the traders/blenders Murex and CHS and, secondly, the other non-sampled members.
- 111 First of all, they submit that the General Court was wrong to find, in paragraphs 52 to 55 of the judgment under appeal, that the protection of the interests of Murex and CHS could not provide grounds for the admissibility of the action, since those traders/blenders were only 'associate' members

of Growth Energy and Renewable Fuels Association and did not, therefore, have voting rights. The Court's case-law recognising that associations have standing to bring proceedings makes no distinction between associate and other members, and, on the contrary, makes it clear that an action brought by an association acting in place of one or more of its members who could themselves have brought an admissible action will itself be admissible.

- 112 The General Court, it is submitted, was also wrong to find, in paragraphs 152 to 154 of the judgment under appeal, that the other members of Growth Energy and Renewable Fuels Association, not included in the sample of exporting producers, were not directly concerned by the regulation at issue, since, first, those two associations had not identified those other members and, secondly, Growth Energy and Renewable Fuels Association had not adduced any evidence showing that those other members had exported bioethanol to the European Union and that their products had been made subject to the anti-dumping duty imposed by that regulation. They submit, in that regard, that, since it imposes a countrywide anti-dumping duty on imports of bioethanol originating in the United States, the regulation at issue is deemed to be of direct concern to all US producers, the legal situation of the latter being directly affected by the anti-dumping duty from the moment that their product enters the EU market. Potential exporters are also directly concerned, since the anti-dumping duty impacts the locations from which the product is exported.
- 113 Growth Energy and Renewable Fuels Association add that the General Court also failed to examine the issue of whether they were individually concerned. They participated in the proceedings as representatives of all their members, in submitting evidence that the US imports did not cause material injury to the Union industry. The particularity of the present case is, therefore, the fact that the regulation at issue was adopted on the basis of their submissions, which represented the views and position of their members. Not to recognise that they have standing to bring proceedings would enable the Council to escape from any effective legal review. In that regard, the statement of the General Court in paragraph 161 of the judgment under appeal is incorrect and exaggerated.
- 114 The Council contends that the second ground of the cross-appeal should be rejected as inadmissible and, in any event, as lacking any foundation in law.

Findings of the Court

- 115 The General Court held, in paragraphs 52 to 55 of the judgment under appeal, that Growth Energy and Renewable Fuels Association did not have standing to bring proceedings as representatives, respectively, of their 'associate' members Murex and CHS. It pointed out in that regard, in paragraph 53 of the judgment under appeal, that as an associate member of Renewable Fuels Association, CHS had the right under the latter's bylaws to attend membership meetings, but was not entitled to vote. It also pointed out, in paragraph 54 of the judgment under appeal, that as an associate member of Growth Energy, Murex also, under that association's bylaws, did not have the right to vote. The General Court concluded from this that CHS and Murex did not have the possibility of ensuring that their interests prevailed when those interests were being represented by their association.
- 116 The General Court also noted, in paragraphs 151 to 153 of the judgment under appeal, that Growth Energy and Renewable Fuels Association had, first, failed to identify by name, apart from the sampled US producers and the traders/blenders Murex and CHS, any of their members who might have had standing to bring proceedings and, secondly, had failed to adduce any evidence showing that such members had exported bioethanol to the European Union and had, consequently, been subject to the anti-dumping duty imposed by the regulation at issue. The General Court concluded from this that it could not be considered that those members could have been directly concerned by the regulation at issue.

- 117 First of all, the Council's plea that the second ground is inadmissible must be rejected. Contrary to the Council's claims, Growth Energy and Renewable Fuels Association do not call in question the General Court's assessment of the facts, but rather the legal characterisation of those facts and, more specifically, the General Court's conclusions that, first, those two associations do not have standing to bring legal proceedings on behalf of the traders/blenders Murex and CHS and, secondly, that the non-sampled US bioethanol producers are not directly concerned by the regulation at issue.
- 118 Next, the second part of the second ground raised by Growth Energy and Renewable Fuels Association, alleging that the General Court erred in finding that those two associations did not have standing to bring proceedings on behalf of the their members not forming part of the sample of exporting producers, must be rejected.
- 119 As is apparent from paragraphs 69 to 82 above, neither the fact that part of the US bioethanol producers' production — albeit a substantial part — is exported to the European Union nor the fact they may have to pay the anti-dumping duty imposed by the regulation at issue constitute sufficient evidence to support the conclusion that they are directly concerned by that regulation, within the meaning of the fourth paragraph of Article 263 TFEU.
- 120 The first part of the second ground must, by contrast, be upheld. The General Court erred in law in concluding that the defence of the interests of the traders/blenders Murex and CHS could not justify the admissibility of the action of Growth Energy and Renewable Fuels Association since Murex and CHS had only associate member status of those associations and did not, therefore, have the right to vote within those associations.
- 121 Such a fact is insufficient to show that such associations lack standing to bring proceedings.
- 122 As the Advocate General stated, in point 129 of his Opinion, the admissibility of an action for annulment brought by a trade association which is responsible for protecting the collective interests of its members depends, in the second situation envisaged by the General Court in paragraph 45 of the judgment under appeal, on whether the undertakings which it represents themselves have *locus standi* (see, to that effect, order of 18 December 1997, *Sveriges Betodlares and Henrikson v Commission*, C-409/96 P, EU:C:1997:635, paragraphs 46 and 47; judgments of 22 June 2006, *Belgium and Forum 187 v Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 56; of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, EU:C:2008:757, paragraph 33; and of 13 March 2018, *European Union Copper Task Force v Commission*, C-384/16 P, EU:C:2018:176, paragraph 87).
- 123 It cannot be accepted that the absence of the right to vote of certain members of an association, or of another instrument enabling them to enforce their interests within that association, is sufficient to prove that the association does not have the purpose of representing such members.
- 124 Furthermore, such an additional condition may, as the Advocate General observed in point 141 of his Opinion, be difficult to assess, in particular in the light of the possible differences depending on the law governing the statutes of the association concerned.
- 125 It follows that the General Court erred in law in finding that it was for Growth Energy and Renewable Fuels Association to show not only that their members were directly and individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, but also that the members whose interests they intended to defend also had to be able to enforce their individual interests within those associations.

126 Consequently, the judgment under appeal must be set aside in so far as it dismissed as inadmissible the action for annulment of Growth Energy and Renewable Fuels Association in their capacity as an association ensuring the defence of their members' collective interests and, more specifically, of the traders/blenders Murex and CHS, without examining whether the latter were directly and individually concerned by the regulation at issue.

The action before the General Court

127 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, after quashing a decision of the General Court, refer the case back to it for judgment or, where the state of the proceedings so permits, itself give final judgment in the matter.

128 In the present case, the Court considers that it has before it all the necessary information to give judgment itself on the admissibility of the action brought before the General Court by Growth Energy and Renewable Fuels Association in their capacity as representatives of the interests of sampled US bioethanol producers.

129 As is apparent from paragraphs 69 to 82 above, the General Court erred in law in finding that the sampled US producers were directly concerned by the regulation at issue, inasmuch as very considerable volumes of the bioethanol exported to the European Union had been purchased during the investigation period by the traders/blenders from them.

130 In so far as Growth Energy and Renewable Fuels Association simply relied, in order to prove that they were directly concerned by the regulation at issue in their capacity as representatives of the sampled US producers, on the status of those producers, whose competitive situation was likely to be substantially affected by the imposition of the anti-dumping duty laid down by that regulation, it is sufficient to note that Growth Energy and Renewable Fuels Association have not shown that those producers were directly concerned, within the meaning of the fourth paragraph of Article 263 TFEU.

131 Consequently, bearing in mind that it was for Growth Energy and Renewable Fuels Association to prove that their members were not only individually, but also directly, concerned by the regulation at issue, since those two conditions are cumulative (see, to that effect, judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 76, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 93), the plea of inadmissibility raised by the Council must be upheld and the action for annulment of the regulation at issue dismissed as being inadmissible on that point.

The referral of the case back to the General Court

132 By contrast, the Court does not consider that it is in a position to rule itself on the admissibility of the action brought by Growth Energy and Renewable Fuels Association, in their capacity as representatives of the interests of the traders/blenders Murex and CSH, their action having been dismissed on that point by the General Court as inadmissible without examining whether those traders/blenders were directly and individually concerned by the regulation at issue.

133 The present case must, therefore, be referred back to the General Court for it to rule on the admissibility of the action of Growth Energy and Renewable Fuels Association in so far as they brought it in their capacity as representatives of the interests of the traders/blenders Murex and CHS.

134 The costs must, in those circumstances, be reserved.

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

1. **Sets aside the judgment of the General Court of the European Union of 9 June 2016, *Growth Energy and Renewable Fuels Association v Council* (T-276/13, EU:T:2016:340), except inasmuch as it dismissed the action brought by Growth Energy and Renewable Fuels Association in their own right as interested parties in the proceedings;**
2. **Dismisses the action for annulment of Growth Energy and Renewable Fuels Association as inadmissible in so far as they brought that action in their capacity as representatives of the interests of the sampled US bioethanol producers;**
3. **Refers the case back to the General Court of the European Union for it to rule on the action for annulment of Growth Energy and Renewable Fuels Association in so far as they brought that action in their capacity as representatives of the interests of the traders/blenders Murex and CHS;**
4. **Reserves the costs.**

Vilaras

Malenovský

Bay Larsen

Safjan

Šváby

Delivered in open court in Luxembourg on 28 February 2019.

A. Calot Escobar
Registrar

K. Lenaerts
President