Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

16 July 2015*

(Appeal — Dumping — Imports of certain aluminium foil originating in Armenia, Brazil and China — Accession of the Republic of Armenia to the World Trade Organisation (WTO) — Article 2(7) of Regulation (EC) No 384/96 — Whether compatible with the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT))

In Case C-21/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 January 2014,

European Commission, represented by J.-F. Brakeland, M. França and T. Maxian Rusche, acting as Agents, with an address for service in Luxembourg,

appellant,

supported by:

European Parliament, represented by D. Warin and A. Auersperger Matić, acting as Agents, with an address for service in Luxembourg,

intervener,

the other parties to the proceedings being:

Rusal Armenal ZAO, established in Yerevan (Armenia), represented by B. Evtimov, lawyer,

applicant at first instance,

Council of the European Union, represented by S. Boelaert and J.-P. Hix, acting as Agents, and by B. O'Connor, solicitor, and S. Gubel, avocat, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen and K. Jürimäe, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, M. Safjan, D. Šváby, M. Berger, A. Prechal, J.L. da Cruz Vilaça (Rapporteur) and C. Lycourgos, Judges,

Advocate General: J. Kokott,

* Language of the case: English.

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 February 2015,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2015,

gives the following

Judgment

1 By its appeal, the European Commission asks the Court to set aside the judgment of the General Court of the European Union of 5 November 2013 in *Rusal Armenal* v *Council* (T-512/09, EU:T:2013:571, 'the judgment under appeal'), by which the General Court annulled Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ 2009 L 262, p. 1, 'the contested regulation') in so far as that regulation concerns Rusal Armenal ZAO ('Rusal Armenal').

Legal context

WTO rules

2 By Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), the Council of the European Union approved the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994, as well as the agreements in Annexes 1, 2 and 3 to that Agreement (together 'the WTO agreements'), which include the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 11, 'GATT 1994') and the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, 'the Anti-Dumping Agreement').

GATT 1994

3 Article VI(1) of GATT 1994 provides:

'The contracting parties recognise that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, …

…'

4 The second supplementary provision to Article VI(1) of GATT 1994, in Annex I to GATT, states:

'It is recognised that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.'

The Anti-Dumping Agreement

5 Article 2 of the Anti-Dumping Agreement, entitled 'Determination of dumping', provides:

'2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country …, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

...

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.'

EU law

Basic regulation

6 At the time of the facts underlying the dispute in the main proceedings, the provisions governing the adoption of anti-dumping measures by the European Union were laid down in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as most recently amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 (OJ 2005 L 340, p. 17, 'the basic regulation'). The basic regulation was repealed by 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).

7 Recitals 5 and 7 in the preamble to the basic regulation were worded as follows:

'(5) Whereas the new agreement on dumping, namely, the [Anti-Dumping Agreement], contains new and detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating

to anti-dumping investigations; whereas, in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible;

...

(7) Whereas when determining normal value for non-market economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country that is to be used for such purpose and, where it is not possible to find a suitable third country, to provide that normal value may be established on any other reasonable basis.'

8 Article 1(2) of that regulation provided that a product 'is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country'.

9 For the purposes of determining dumping, Article 2(1) to (7) of the basic regulation laid down rules concerning the calculation of normal value. Whereas, in accordance with Article 2(1) of that regulation, normal value was normally to be based on the prices paid in the exporting country, Article 2(7) provided, in the case of imports from non-market economy countries, for recourse to the 'analogue country' method. Article 2(7) stated:

'(a) In the case of imports from non-market economy countries [(Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan and Uzbekistan)], normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

...

(b) In anti-dumping investigations concerning imports from the People's Republic of China, the Ukraine, Vietnam and Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, normal value will be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in subparagraph (c) that market economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under subparagraph (a) shall apply.

(c) A claim under subparagraph (b) must … contain sufficient evidence that the producer operates under market economy conditions, that is if:

— decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,

— the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,

— the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and

— exchange rate conversions are carried out at the market rate.

...'

10 Where Article 2(7)(a) of the basic regulation applied, an individual duty could be specified, in accordance with Article 9(5) of the basic regulation, for the exporters which met certain conditions laid down by that provision.

Regulation (EC) No 2238/2000

11 Recitals 3 to 6 of Council Regulation (EC) No 2238/2000 of 9 October 2000, amending Regulation No 384/96 (OJ 2000 L 257, p. 2), stated:

'(3) Article 2(7) of [the basic regulation] ... lays down that ... normal value may be determined in accordance with the rules applicable to market-economy countries in cases where it can be shown that market conditions prevail for one or more producers subject to investigation in relation to the manufacture and sale of the product concerned.

(4) The process of reform in ... Vietnam and Kazakhstan has fundamentally altered the economies of those countries and has led to the emergence of firms for which market-economy conditions prevail. These ... countries have as a result moved away from the economic circumstances which inspired the use of the analogue-country method.

(5) It is appropriate to revise the Community's anti-dumping practice in order to be able to take account of the changed economic conditions ...

(6) It is also appropriate to grant similar treatment to imports from such countries which are members of the [WTO] at the date of the initiation of the relevant anti-dumping investigation.'

Background to the dispute

12 Rusal Armenal is a manufacturer and exporter of aluminium products and has been established in Armenia since 2000.

13 Following a complaint lodged on 28 May 2008, the Commission initiated an anti-dumping proceeding concerning imports of certain aluminium foil originating in Armenia, Brazil and China. Rusal Armenal disputed whether Article 2(7) of the basic regulation was applicable in the present case, having regard in particular to the accession, on 5 February 2003, of the Republic of Armenia to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994. In addition, Rusal Armenal submitted a claim to be granted market economy treatment ('MET treatment') or individual treatment for the purposes of Article 9(5) of the basic regulation.

14 On 7 April 2009, the Commission adopted Commission Regulation (EC) No 287/2009 imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ 2009 L 94, p. 17). Turkey was designated as an analogue country for the purposes of calculating a normal value for exporting producers to which MET treatment would not be granted.

15 As regards the grant of MET treatment to Rusal Armenal, the Commission noted that the Republic of Armenia could not be regarded as a market economy country, since it was mentioned in the footnote referred to in Article 2(7)(a) of the basic regulation. In addition, the Commission found that Rusal Armenal did not meet the criteria relating to accounting records and production costs referred to in the second and third indents of Article 2(7)(c) of the basic regulation. As far as the calculation of the dumping margin is concerned, the Commission found that Rusal Armenal satisfied the conditions to be granted individual treatment.

16 On 24 September 2009, the Council adopted the contested regulation in which it confirmed the Commission's assessment. In particular, as regards the conclusion that Rusal Armenal should be refused MET treatment, recital 20 of that regulation states that 'Armenia is specifically mentioned in the footnote to Article 2(7)(a) of the basic Regulation as being included among non-market economy countries', that 'treatment of exporting producers in non-market economy countries which are WTO members is set out in Article 2(7)(b)', and that '[t]hese provisions have been fully complied with in the current investigation'.

17 In those circumstances, in accordance with Article 1(2) of the contested regulation, the Council imposed a definitive anti-dumping duty of 13.4% on the imports of certain aluminium products manufactured by Rusal Armenal.

The proceedings before the General Court and the judgment under appeal

18 By an application lodged at the General Court Registry on 21 December 2009, Rusal Armenal sought the annulment of the contested regulation.

19 In support of its action, Rusal Armenal put forward five pleas in law. Only the first plea in law, a plea of illegality raised under Article 277 TFEU, which is based on the infringement, by the application of Article 2(7) of the basic regulation, of Article 2(1) to (6) of that regulation and of Article 2.1 and 2.2 of the Anti-Dumping Agreement, was examined by the General Court, and is therefore of interest for the purposes of the present appeal.

20 In the context of that first plea in law, in order to establish that the EU Courts are able to review legality in the light of Article 2 of the Anti-Dumping Agreement, Rusal Armenal argued that recital 5 of the basic regulation referred to the Anti-Dumping Agreement and that that regulation had been adopted with the aim of transposing into EU law the international obligations of the EU institutions pursuant Article 2 of the Anti-Dumping Agreement; it stressed that, according to the case-law of the Court, the possibility of such review exists when the EU measure refers expressly to specific WTO provisions or when the European Union intended to implement a particular obligation assumed by it in the context of the WTO.

21 In essence, Rusal Armenal stated that the exception in Article 2(7) of the basic regulation did not apply to it, since that exception was not consistent with Article 2.7 of the Anti-Dumping Agreement, read in conjunction with the second supplementary provision to paragraph 1 of Article VI of GATT 1994, set out in Annex I thereto. In establishing an exception not provided for by those provisions for imports from Armenia, Article 2(7) of the basic regulation infringes the general scheme of Articles 2.1 and 2.2 of the Anti-Dumping Agreement as regards the determination of dumping.

22 By the judgment under appeal, the General Court upheld the first plea in law in the action and therefore annulled the contested regulation in so far as it concerned Rusal Armenal.

The proceedings before the Court and the forms of order sought by the parties

23 By decision of the President of the Court of 24 April 2014, the European Parliament was granted leave to intervene in support of the form of order sought by the Commission.

24 The Commission and the Council claim that the Court should:

— set aside the judgment under appeal;

— reject the first plea in the action before the General Court;

— refer the case back to the General Court to rule on the second to fifth pleas in that action;

— reserve the costs.

25 Rusal Armenal contends that the appeal should be dismissed and the Commission and the Council ordered to pay the costs.

The appeal

26 The Commission relies on three grounds in support of its appeal.

The first ground, alleging that the General Court ruled ultra petita

Arguments of the parties

27 By its first ground, the Commission submits that the judgment under appeal is vitiated by an error of law in that the General Court ruled on the plea of illegality directed at Article 2(7) of the basic regulation, raised by Rusal Armenal in its application at first instance.

28 The Commission contends that Rusal Armenal withdrew that plea of illegality in the reply at first instance, so that the content of the first plea in its action before the General Court was then limited solely to the Council's failure to have regard to the principle of consistent interpretation.

29 Rusal Armenal contests the Commission's arguments.

Findings of the Court

30 It must be pointed out that it cannot be concluded from an examination of all the considerations relied on by Rusal Armenal in its pleadings before the General Court that, in the course of the proceedings, it withdrew the plea alleging illegality in respect of Article 2(7) of the basic regulation, raised under Article 277 TFEU.

31 It is apparent from those considerations, first, that Rusal Armenal sought a declaration from the General Court that Article 2(7) of the basic regulation was inapplicable in the present case, since the calculation of normal value in relation to it, in accordance with the rules relating to imports from non-market economy countries, infringed Article 2(1) to (6) of that regulation and Articles 2.1 and 2.2 of the Anti-Dumping Agreement and, secondly, that in its reply at first instance, Rusal Armenal continued to rely expressly on Article 277 TFEU and merely clarified its arguments on that point.

32 In those circumstances, the first ground of the present appeal must be rejected as unfounded.

The second ground of appeal, alleging that the General Court erred in law in holding that Article 2(7) of the basic regulation is intended to implement the particular obligations assumed in the context of the WTO

Arguments of the parties

33 By its second ground of appeal, the Commission complains essentially that the General Court misconstrued the judgment in *Nakajima* v *Council* (C-69/89, EU:C:1991:186) when it held, on the basis of the considerations set out in paragraphs 36 and 53 to 55 of the judgment under appeal, that the EU legislature intended, in adopting Article 2(7) of the basic regulation, to implement particular obligations created by Article 2 of the Anti-Dumping Agreement and the second supplementary provision to paragraph 1 of Article VI of GATT 1994, in Annex I thereto. In so doing, the General Court wrongly held that it was tasked with reviewing the legality of Article 2(7) of the basic regulation in the light of the rules of the WTO agreements.

34 In that regard, the Commission contends that Article 2(7) is intended to implement a 'special market economy regime' applicable to economies in transition towards a market economy. Instead of taking the text of the rules of the WTO agreements as a basis, that special regime forms part of a political strategy of the European Union intended to provide incentives for former State-trading countries and to encourage the pursuit of economic reforms by economies in transition as well as trade liberalisation.

35 Rusal Armenal contends that the criterion put forward by the Commission to determine the scope of review by the EU Courts in the light of the rules of the WTO agreements is incorrectly based solely on whether the EU legislature intended to implement particular obligations assumed in the context of the WTO. It is apparent from the case-law of the Court that it is appropriate to examine also whether the EU measure at issue refers expressly to specific provisions of WTO law, the text of recital 5 of the basic regulation supporting the conclusion that there is such a reference.

36 In any event, Rusal Armenal contends that in adopting the provisions of Article 2 of that regulation concerning the calculation of normal value, the EU legislature essentially intended to implement, in identical terms, the provisions in Article 2 of the Anti-Dumping Agreement and the second supplementary provision to paragraph 1 of Article VI of GATT 1994, in Annex I thereto to which Article 2.7 of the Anti-Dumping Agreement refers. That conclusion follows essentially, first, from recital 5 of that regulation, secondly, from the absence of EU law criteria concerning the grant of MET treatment which derogate from that second supplementary provision and, thirdly, from the fact that the instruments of accession of the Republic of Armenia to the WTO do not provide for any possibility of derogating from Articles 2.1 and 2.2 of the Anti-Dumping Agreement.

Findings of the Court

37 First of all, it must be noted that the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, those provisions appear, as regards their content, to be unconditional and sufficiently precise (see, in particular, the judgment in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 54 and the case-law cited). It is therefore only when both those conditions are met that such provisions may be relied upon before the EU Courts as a criterion in order to assess the legality of an EU act.

38 As regards the WTO agreements, it is the settled case-law of the Court that, given their nature and purpose, those agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the EU institutions (see, in particular, judgments in *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraph 47; *Van Parys*, C-377/02, EU:C:2005:121, paragraph 39; and *LVP*, C-306/13, EU:C:2014:2465, paragraph 44).

39 In that regard, the Court has held, in particular, that to accept that the Courts of the European Union have the direct responsibility for ensuring that EU law complies with the WTO rules would deprive the European Union's legislative or executive bodies of the discretion which the equivalent bodies of the European Union's commercial partners enjoy. It is not in dispute that some of the contracting parties, which are amongst the most important commercial partners of the European Union, have concluded from the subject-matter and purpose of the WTO agreements that they are not among the rules applicable by their courts when reviewing the legality of their rules of domestic law. Such lack of reciprocity, if accepted, would risk introducing an anomaly in the application of the WTO rules (see, in particular, judgments in *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraphs 43 to 46; *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 119; and *LVP*, C-306/13, EU:C:2014:2465, paragraph 46).

40 However, in two exceptional situations, which are the result of the EU legislature's own intention to limit its discretion in the application of the WTO rules, the Court has accepted that it is for the Courts of the European Union, if necessary, to review the legality of an EU measure and of the measures adopted for its application in the light of the WTO agreements.

41 The first such situation is where the European Union intends to implement a particular obligation assumed in the context of those WTO agreements and the second where the EU act at issue refers explicitly to specific provisions of those agreements (see, to that effect, in particular judgments in *Fediol* v *Commission*, 70/87, EU:C:1989:254, paragraphs 19 to 22; *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraphs 29 to 32; *Biret et Cie* v *Council*, C-94/02 P, EU:C:2003:518, paragraph 73; and *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 56).

42 In the present case, it must be noted that the General Court held, in paragraph 36 of the judgment under appeal, as regards the examination of the position of the Anti-Dumping Agreement in the EU legal order, and after finding that it was clear from recital 5 of the basic regulation that the European Union had adopted that regulation in order to satisfy its international obligations, that by Article 2 of that regulation, entitled 'Determination of dumping', the European Union had intended to implement particular obligations created by Article 2 of the Anti-Dumping Agreement, which also relates to the determination of whether there is dumping.

43 In those circumstances, it is necessary to ascertain whether, as the Commission maintains, the judgment under appeal is vitiated by an error of law in so far as it reaches the conclusion in question as regards Article 2(7) of the basic regulation.

44 It must first of all be noted, in that regard, that the Court has in certain cases acknowledged that the WTO's anti-dumping system could constitute an exception to the general principle that the EU Courts cannot review the legality of the acts of the EU institutions in light of whether they are consistent with the rules of the WTO agreements (see, to that effect, judgments in *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraphs 29 to 32; *Petrotub and Republica* v *Council*, C-76/00 P, EU:C:2003:4, paragraphs 55 and 56; and *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 59).

45 However, in order for such an exception to be allowed in a specific case, it must also be established, to the requisite legal standard, that the legislature has shown the intention to implement in EU law a particular obligation assumed in the context of the WTO agreements.

46 To that end, it is not sufficient, as the Advocate General observed in point 42 of her Opinion, for the preamble to an EU act to support only a general inference that the legal act in question was to be adopted with due regard for international obligations entered into by the European Union. It is, on the other hand, necessary to be able to deduce from the specific provision of EU law contested that it seeks to implement into EU law a particular obligation stemming from the WTO agreements.

47 As regards Article 2(7) of the basic regulation, it must be pointed out at the outset that that provision, following on from recital 7 of that regulation, introduces a special regime laying down detailed rules for the calculation of normal value for imports from non-market economy countries, including Armenia. As regards those imports, Article 2(7)(a) provides that normal value must be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the European Union, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the European Union for the like product, duly adjusted if necessary to include a reasonable profit margin. In addition, Article 2(7)(b) stipulates that in anti-dumping investigations concerning imports from any non-market economy country which is a member of the WTO at the date of the initiation of the investigation, normal value is to be determined in accordance with Article 2(1) to (6), if it is shown that the market economy conditions, set out in Article 2(7)(c), prevail for this producer or producers in respect of the manufacture and sale of the like product concerned.

48 In that regard, it must be found that Article 2(7) of the basic regulation is the expression of the EU legislature's intention to adopt in that sphere an approach specific to the EU legal order.

49 As is apparent from the preamble to Regulation No 2238/2000, amending the basic regulation, the rules laid down in Article 2(7) of the basic regulation and applicable to imports from non-market economy countries which are members of the WTO are based on the emergence, in those countries, following the economic reforms adopted, of firms for which market-economy conditions prevail.

50 Since there are no specific rules relating to such a category of countries in the Anti-Dumping Agreement, a correlation cannot be established between, on the one hand, the rules in Article 2(7) of the basic regulation directed at the imports from non-market economy WTO member countries and, on the other, the rules set out in Article 2 of the Anti-Dumping Agreement. It follows that that provision of the basic regulation cannot be considered to be a measure intended to ensure the implementation in the EU legal order of a particular obligation assumed in the context of the WTO.

51 Article 2.7 of the Anti-Dumping Agreement, read in conjunction with the second supplementary provision to paragraph 1 of Article VI of GATT 1994, in Annex I thereto, to which Article 2.7 refers, cannot call such a finding into question. In addition to the fact that that second supplementary provision does not lay down any specific rule governing the calculation of normal value, it is directed only at cases where a country has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State.

52 Nor is the finding called in question by the fact that recital 5 of the basic regulation states that the rules of the Anti-Dumping Agreement should be brought into EU legislation 'as far as possible'. As the Advocate General observed in points 44 and 46 of her Opinion, that expression must be understood as meaning that even if the EU legislature intended to take into account the rules of the Anti-Dumping Agreement when adopting the basic regulation, it did not, however, show the intention of transposing all those rules in that regulation. The conclusion that the purpose of Article 2(7) of the basic regulation is to implement the particular obligations created by Article 2 of the Anti-Dumping Agreement can therefore in no case be based in isolation on the wording of recital 5 of the basic regulation.

53 In such circumstances, it must be found that, as the Advocate General observed in paragraphs 50 and 51 of her Opinion, the EU legislature exercised its regulatory competence, as regards the calculation of normal value in respect of imports from non-market economy countries members of the WTO, by taking an approach specific to the EU legal order and, therefore, it cannot be established that it was the EU legislature's intention, by the adoption of Article 2(7) of the basic regulation, to implement the particular obligations created by Article 2 of the Anti-Dumping Agreement.

54 It follows from all the foregoing that, having reached a different finding in its judgment, the General Court erred in law.

55 In those circumstances, the second ground of appeal must be upheld.

56 Accordingly, the judgment under appeal must be set aside in its entirety, and there is no need to examine the third ground relied on by the Commission in support of its appeal, relating to the infringement of the general principle of institutional balance.

The action before the General Court

57 In accordance with Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court and may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

58 In the present case, the Court considers that final judgment must be given on the first plea in law in the action brought by Rusal Armenal for the annulment of the contested regulation.

59 In that regard, it must be noted that none of the two exceptional situations set out in paragraph 41 above is established in the present case. First, as has been found in paragraph 53 above, the intention of the EU legislature to implement, by the adoption of Article 2(7) of the basic regulation, the particular obligations created by Article 2 of the Anti-Dumping Agreement, is not established. Secondly, Article 2(7) of the basic regulation does not refer expressly to a specific provision of the Anti-Dumping Agreement, the general reference to the provisions of that agreement in recital 5 of that regulation being insufficient in itself to conclude that there is such a reference (see, to that effect, the judgments in *Van Parys*, C-377/02, EU:C:2005:121, paragraph 52; *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraphs 113 and 114; and *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 58).

60 In those circumstances, the first plea in law in the action brought by Rusal Armenal for the annulment of the contested regulation must be rejected, since the EU Courts are called upon by the legislature to review the legality of the calculation of normal value as regards the products manufactured by Rusal Armenal solely in the light of Article 2(7) of the basic regulation.

61 However, as the General Court did not examine the second to fifth pleas in law relied on by Rusal Armenal in support of its action for annulment, the Court considers that the state of the proceedings does not permit judgment to be given.

62 Consequently, the case must be referred back to the General Court for judgment on the second to the fifth pleas in law.

Costs

63 Since the case is being referred back to the General Court, it is appropriate to reserve the costs.

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

1. **Sets aside the judgment of the General Court of the European Union in *Rusal Armenal* v *Council* (T-512/09, EU:T:2013:571);**

2. **Refers the case back to the General Court of the European Union for it to rule on the pleas in law on which it did not adjudicate;**

3. **Reserves the costs.**

[Signatures]