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TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
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SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

9 June 2016 *

(Dumping — Imports of bioethanol originating in the United States — Definitive anti-dumping duty — Action for annulment — Association — Members not directly concerned — Inadmissibility — Countrywide anti-dumping duty — Individual treatment — Sampling — Rights of the defence — Non-discrimination — Duty of diligence)

In Case T-276/13,

Growth Energy, established in Washington, DC (United States),

Renewable Fuels Association, established in Washington,

represented initially by P. Vander Schueren, lawyer, and subsequently by P. Vander Schueren and M. Peristeraki, lawyers,

applicants,

v

Council of the European Union, represented by S. Boelaert, acting as Agent, and initially by G. Berrisch, lawyer, and B. Byrne, Solicitor, and subsequently by R. Bierwagen and C. Hipp, lawyers,

defendant,

supported by

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

and by

* Language of the case: English.

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

interveners,

APPLICATION for partial 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), in so far as it affects the applicants and their members,

THE GENERAL COURT (Fifth Chamber),

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

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 20 and 21 May 2015,

gives the following

Judgment

Background to the dispute

1 The applicants, Growth Energy and Renewable Fuels Association, are associations representing US bioethanol producers as well as, in the case of Growth Energy, other organisations active in the biofuels sector, and, in the case of Renewable Fuels Association, supporters of ethanol in the United States.

2 Following a complaint lodged by ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol (European Producers Union of Renewable Ethanol Association, 'ePure'), the European Commission initiated an anti-dumping proceeding concerning imports into the European Union of bioethanol originating in the United States, pursuant to Article 5 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 regulation').

3 The applicants state that they had the status of representative associations during the anti-dumping proceeding and that they were treated as interested parties throughout the investigation.

4 By the 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), the

Commission stated that, in view of the large numbers of exporting producers in the United States and of European Union producers, it intended to use sampling in respect of both the former and the latter, in accordance with Article 17 of the basic regulation.

5 On 16 January 2012, the Commission notified, by letter, Marquis Energy LLC, Patriot Renewable Fuels LLC, Plymouth Energy Company LLC, POET LLC and Platinum Ethanol LLC ('the sampled producers'), companies which are members of the applicants, that they had been selected to be part of the sample of exporting producers in the United States. Subsequently, those companies sent the Commission their respective replies to the anti-dumping questionnaire on 22 February 2012 and the Commission carried out verification visits at the premises of those companies.

6 On 26 March 2012, the applicants sent the Commission their written observations on the initiation of the anti-dumping proceeding.

7 On 24 August 2012, the Commission sent the applicants the provisional disclosure document in which it set out the facts and considerations on the basis of which it had decided to continue the investigation without imposing provisional measures ('the provisional disclosure document'). In recitals 45 to 47 of that document, it stated, inter alia, 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 made to unrelated traders/blenders established in the United States, which then blended the bioethanol with gasoline and resold it. Consequently, the sampled producers had no knowledge of the destination of the product or its export price. Therefore, the Commission decided to continue the investigation and to extend it so as to cover the traders/blenders in order to obtain data on the export price and a full picture of the bioethanol market (recital 50 of that document).

8 On 11 September 2012, following a request by the applicants, Plymouth Energy Company and POET, a hearing took place before the Hearing Officer of the Commission.

9 On 24 September 2012, the applicants submitted their observations on the provisional disclosure document.

10 On 6 December 2012, the Commission sent the applicants the definitive disclosure document in which it examined, on the basis of the data from unrelated traders/blenders, the existence of dumping causing injury to the European Union industry ('the definitive disclosure document'). It then envisaged imposing definitive measures, at a rate of 9.6% countrywide, for a period of three years.

11 The applicants submitted their observations on that document on 17 December 2012.

12 By letter of 21 December 2012, the Commission sent an additional disclosure document in which it envisaged, in essence, increasing the period of validity of the definitive anti-dumping measure from three years to five years, and invited the applicants to provide written submissions on that amendment and on the definitive disclosure document by 2 January 2013 at the latest.

13 On 2 January 2013, the applicants submitted their observations on that document.

14 By letter of 30 January 2013, the Commission replied to the applicants' observations on the definitive disclosure document.

15 On 18 February 2013, the Council of the European Union adopted Implementing Regulation (EU) No 157/2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America (OJ 2013 L 49, p. 10, 'the contested regulation'), by which it imposed an anti-dumping duty on bioethanol, referred to as 'fuel ethanol', that is to say, ethyl alcohol produced from agricultural products, denatured or undenatured, excluding products with a water content of more than 0.3% (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products contained in blends with gasoline with an ethyl alcohol content of more than 10% (v/v) intended for fuel uses, originating in the United States and currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97 (TARIC codes 2207100012, 2207200012, 2208909912, 2710122111, 2710122592, 2710123111, 2710124111, 2710124511, 2710124911, 2710125111, 2710125911, 2710127011, 2710129011, 3814001011, 3814009071, 3820000011 and 3824909767), at a rate of 9.5% countrywide, in the form of a fixed amount of EUR 62.30 per tonne net, applicable in proportion to the total content, by weight, of the content of bioethanol, for a period of five years.

16 As regards the sampling of exporting producers in the United States, the Council stated, in recitals 12 to 16 of the contested regulation, that the investigation had shown that none of the sampled producers referred to in paragraph 5 above exported bioethanol to the European Union market. In fact, their sales had been made on the domestic market to unrelated traders/blenders, which then blended the bioethanol with gasoline and resold it on the domestic market and for export, in particular to the European Union. The Council stated that those producers were not systematically aware of whether their production was intended for the European Union market and had no knowledge of the sales prices charged by the traders/blenders. That meant that the US producers of bioethanol were not the exporters of the product concerned to the European Union. The exporters were in fact the traders/blenders. In order to complete the dumping investigation, the Council relied on the data of the two traders/blenders that had agreed to cooperate in the investigation.

17 As regards the finding of dumping, the Council explained, in recitals 62 to 64 of the contested regulation, that it was appropriate to establish a countrywide dumping margin. Even though certain producers claimed that it was possible to identify and trace their products when they were sold to US operators for export, the Council stated that they could not establish the link between their sales on the US market and the exports made by other operators to the European Union and they were not aware of the level of the export price to the European Union. According to the Council, 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.

18 By letter of 20 February 2013, the Commission replied to the observations of the applicants and Plymouth Energy Company on the additional disclosure document.

Procedure and forms of order sought

19 By application lodged at the Court Registry on 15 May 2013 and amended by letter of 17 May 2013, the applicants brought the present action.

1. *Application for joinder with Case T-277/13 Marquis Energy v Council*

20 By document lodged at the Court Registry on 18 June 2013, the applicants requested that the present case be joined with Case T-277/13 *Marquis Energy* v *Council*. In its observations, the Council requested that the Court postpone the decision on a possible joinder of the two cases until the closure of the written part of the procedure and until it had examined the parties' arguments on admissibility.

21 On 31 July 2013, the President of the Fifth Chamber of the General Court decided not to join the present case with Case T-277/13 *Marquis Energy* v *Council*.

2. *Interventions*

22 By document lodged at the Court Registry on 16 July 2013, the Commission applied for leave to intervene in the present case in support of the form of order sought by the Council. The applicants and the Council raised no objections to that intervention.

23 By document lodged on 20 September 2013, ePure applied for leave to intervene in the present case in support of the form of order sought by the Council. The applicants and the Council raised no objections to that intervention.

24 By orders of 4 February 2014, the President of the Fifth Chamber of the General Court granted the applications to intervene.

25 On 18 April 2014, the Commission and ePure submitted their statements in intervention.

3. *Measures of organisation of procedure and the oral part of the procedure*

26 On a proposal from the Judge-Rapporteur, the Court decided to open the oral part of the procedure and, by way of measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of the General Court of 2 May 1991, put written questions to the Council and to the applicants. The parties replied to the written questions within the prescribed period.

27 However, the Council informed the Court by letter of 29 April 2015 that it considered certain information needed in order to respond to those questions to be confidential and it invited the Court to adopt measures of inquiry in order to be able to 'produce the documents' and apply for confidential treatment in respect of them.

28 By letter of 19 May 2015, the applicants made three requests to the Court. They requested, first, that it adopt measures of inquiry ordering the Council to produce the documents, second, that it withdraw section (i)1 of the Council's response to the Court's written questions or, in the alternative, allow the applicants to submit written observations, and, third, that it allow the applicants to submit written observations with a view to rectifying the errors of fact contained in the Council's response.

29 The parties presented oral argument and answered the questions put by the Court at the hearing on 20 and 21 May 2015. At the hearing, the applicants waived their request of 19 May 2015 in part, by withdrawing the second and third requests set out in paragraph 28 above, of which waiver the Court took formal note in the minutes of the hearing.

30 At the end of the hearing, the President of the Fifth Chamber of the General Court deferred the close of the oral part of the procedure to a later date.

31 As the Court did not consider it necessary to order the abovementioned measure of inquiry, the parties were informed, by letter of 9 December 2015, that the oral part of the procedure had been closed on that same date.

4. *Applications for confidential treatment*

32 By document lodged on 22 November 2013, the applicants requested that certain documents annexed to the application, part of their reply and certain documents annexed thereto be treated as confidential as regards ePure.

33 By document lodged on 15 May 2015, the applicants requested that certain parts of the Council's response to the questions put by the Court by way of measures of organisation of procedure be treated as confidential as regards ePure.

34 ePure received only non-confidential versions of that material and raised no objection to the applications for confidential treatment made with regard to it.

5. *Forms of order sought*

35 In the application as amended by letter of 17 May 2013, the applicants claim that the Court should:

- annul the contested regulation in so far as it affects the applicants and their members;
- order the Council to pay the costs.

36 The Council contends that the Court should:

- dismiss the application as inadmissible;
- in the alternative, dismiss the application as unfounded;
- order the applicants to pay the costs.

37 The Commission contends that the Court should:

- dismiss the application as inadmissible;
- in the alternative, dismiss the application as unfounded;
- order the applicants to pay the costs.

38 ePure contends that the Court should:

- dismiss the pleas relied upon by the applicants;
- order the applicants to pay the costs.

Law

39 In support of their action, the applicants rely on 10 pleas in law. The first plea in law alleges an infringement of Article 2(8), Article 9(5) and Article 18(1), (3) and (4) of the basic regulation, a breach of the principles of legal certainty, legitimate expectations and sound administration and manifest errors of assessment. The second plea in law alleges a manifest error of assessment of the facts and an infringement of Article 2(10) of the basic regulation. The third plea in law alleges a manifest error of assessment and a breach of the principle of non-discrimination and an infringement of Article 3(2) of the basic regulation. The fourth plea in law alleges an infringement of Article 3(2) of the basic regulation and a manifest error of assessment. The fifth plea in law alleges a manifest error of assessment and an

infringement of Article 1(4), Article 3(1) to (3) and (5) to (7) and Article 4(1) of the basic regulation. The sixth plea in law alleges a manifest error of assessment and an infringement of Article 3(1) of the basic regulation. The seventh plea in law alleges a manifest error of assessment with regard to the casual link. The eighth plea in law alleges an infringement of Article 9(2) of the basic regulation and a breach of the principle of proportionality. The ninth plea in law alleges an infringement of Article 5(2) and (3) of the basic regulation and a breach of the principles of sound administration and non-discrimination. Lastly, the tenth plea in law alleges an infringement of Article 6(7), Article 19(1) and (2) and Article 20(2), (4) and (5) of the basic regulation, infringement of the rights of the defence, breach of the principles of non-discrimination and sound administration and a failure to provide adequate reasons.

40 In that context, it should be observed that, in their written pleadings, the applicants raise a series of arguments, which — although directed at establishing the unlawfulness of the contested regulation — nevertheless refer to infringements of the law committed by the 'Commission'. By way of example, the first to fifth, seventh and ninth pleas in law as summarised in paragraph 5 of the application are based on claims that the 'Commission' committed various infringements of the basic regulation. It is clear that the references to infringements arising under the contested regulation and committed by the 'Commission' rather than by the 'Council' constitute a clerical mistake in the applicants' written pleadings. First, it is unequivocally clear from reading the applicants' written pleadings that their arguments are directed at having the contested regulation annulled on account of the infringements committed by the Council. Second, the response to those arguments provided by the Council and the Commission shows that they took the view that the applicants were in fact referring to infringements committed by the Council. In those circumstances, it is necessary to examine those arguments of the applicants as understood above, this being how they were also understood by the Council and the Commission.

41 The Council, supported by the Commission and ePure, without formally raising a plea of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court, contends that the action is inadmissible. It submits that the applicants do not have standing to bring proceedings, either as representatives of their members or in a personal capacity, on the ground that, in its view, the conditions laid down in the fourth paragraph of Article 263 TFEU are not satisfied. Furthermore, the Commission contends that the applicants do not have an interest in bringing proceedings.

1. *Admissibility*

42 Since the applicants are associations representing the interests of the US bioethanol industry, it is appropriate, first of all, to examine whether such associations may assert a right to bring proceedings in the present case, before going on to examine whether they have standing to bring proceedings in their own

right and, also, whether they have standing to bring proceedings for certain of their members. Lastly, the applicants' interest in bringing proceedings in the present case must be examined.

Whether associations such as the applicants have a right to bring proceedings

43 The Council submits that the applicants, as associations representing the interests of their members, may seek the annulment of the contested regulation only in so far as it affects their members who are individually concerned. It also contends that, except in the case of Marquis Energy, which decided itself to challenge the contested regulation (in Case T-277/13, *Marquis Energy* v *Council*), the contested regulation has become final as regards the applicants' members. In that connection, it contends that the present action, brought by an association, cannot result — in the event the action is admissible and well founded — in the definitive nature of the contested regulation being put in question, as otherwise the general principle of legal certainty laid down in EU law would be infringed.

44 The applicants contest the Council's line of argument, claiming that it would deprive associations of their right to bring proceedings before the General Court. By contrast, an action for annulment brought by an association, when granted, ought to produce effects vis-à-vis all the members of the association that were legally registered with it at the time the action was brought.

45 According to the case-law, an action for annulment brought by an association entrusted with defending the collective interests of its members may be admissible in three types of situation only, namely, first, where this is expressly recognised to be the case in a legal provision (see, to that effect, order of 10 December 2004 in *EFfCI* v *Parliament and Council*, T-196/03, ECR, EU:T:2004:355, paragraph 42), second, where the undertakings that it represents or some of those undertakings themselves have standing to bring proceedings or, third, where it can prove an interest of its own (see, to that effect, judgment of 22 June 2006 in *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, ECR, EU:C:2006:416, paragraph 56 and the case-law cited, and order of 24 June 2014 in *PPG and SNF* v *ECHA*, T-1/10 RENV, EU:T:2014:616, paragraph 30).

46 It is therefore necessary to identify whether the applicants are relying, in the present case, on one or other or more of those three situations.

47 In the first place, as regards the first situation in which the action brought by an association is admissible where this is expressly recognised to be the case in a legal provision, it should be pointed out, first, that the applicants have not identified any legal provision conferring on them a specific right to bring an action and, second, that there is nothing in the file before the Court to support the conclusion that a legal provision on which the applicants might rely to that effect exists.

48 Therefore, the present action cannot be declared admissible on the ground that the applicants have the benefit of a specific legal provision permitting them to bring proceedings.

49 In the second place, as regards the second situation in which the action brought by an association is admissible where the association represents one or more undertakings itself or themselves having standing to bring proceedings, the applicants claim, in essence, that they have standing to bring proceedings on the ground that certain of their members are 'exporters of bioethanol to the EU from the US'.

50 As regards the applicants' members, it is therefore appropriate to examine whether the following four categories of operators have standing to bring proceedings:

- Marquis Energy, a US producer of bioethanol, which was sampled and which brought its own action against the contested regulation in Case T-277/13, *Marquis Energy* v *Council*;

- the four sampled US producers of bioethanol, other than Marquis Energy, which were mentioned in recital 36 of the contested regulation ('the four sampled producers'), namely Patriot Renewable Fuels, Plymouth Energy Company, POET and Platinum Ethanol, and which are each members of at least one of the applicants. Those four groups of producers are members of the first applicant, Growth Energy, and Patriot Renewable Fuels and Plymouth Energy Company are also members of the second applicant, the Renewable Fuels Association;

- the bioethanol traders/blenders Murex and CHS;

- any other member of the applicants.

51 In this connection, first, it must be held that it cannot be accepted that the present action is admissible on the first of those grounds, namely that the applicants represent Marquis Energy. According to the case-law, an association, acting as the representative of its members, has *locus standi* to bring proceedings for annulment where those members have not themselves brought an action, even though they would have been entitled to do so (see order of 29 March 2012 in *Asociación Española de Banca* v *Commission*, T-236/10, ECR, EU:T:2012:176, paragraphs 23 and 24 and the case-law cited). It therefore follows from that case-law that, in this instance, since Marquis Energy has brought its own action against the contested regulation before the Court in Case T-277/13, *Marquis Energy* v *Council*, the present action brought by the applicants is in any event inadmissible to the extent that the applicants claim that they represent Marquis Energy. That conclusion does not affect, on the other hand, the need to examine whether the applicants' action is admissible in so far as they also represent other members.

52 Second, as regards the applicants' members that are exporting traders/blenders of bioethanol, it must be noted that, at the hearing, the applicants raised the argument that two of their 'associate' members, Murex and CHS, were traders/blenders that were exporters of bioethanol. According to the applicants, Murex was an 'associate member' of Growth Energy and CHS was an 'associate member' of the Renewable Fuels Association. For that reason, they considered that they consequently had standing to bring proceedings as their representatives. In addition, the applicants observed that those two exporters had submitted sampling forms.

53 It is not in dispute that CHS is an 'associate' member of the Renewable Fuels Association. However, as the Commission correctly stated at the hearing, section 4(b) of Article IV of the bylaws of the Renewable Fuels Association states that an 'associate' member of that association may attend membership meetings but is not entitled to vote, as is recorded in the minutes of the hearing.

54 So far as Murex is concerned, it is not in dispute that Murex is an 'associate' member of Growth Energy. However, as the Commission correctly stated at the hearing, the fourth article of the 'Articles of Incorporation' of Growth Energy provides for 'voting and nonvoting classes of members', as is recorded in the minutes of the hearing. More specifically, section 2.01(c) of Article II of the 'Second Amended and Restated Bylaws' of Growth Energy states that an 'associate' member of that association does not have the right to vote.

55 Without voting rights, CHS and Murex do not have the possibility of ensuring that their interests prevail when those interests are being represented by the association concerned. In those circumstances, and in the absence of other factors that might show that an 'associate' member would have such a possibility of having its interests prevail, it must be concluded that, in the present case, the Renewable Fuels Association does not have standing to bring proceedings to the extent that it claims that it represented CHS, and Growth Energy does not have standing to bring proceedings to the extent that it claims that it represented Murex.

56 It is clear from the considerations set out in paragraphs 51 to 55 above that, although it cannot be accepted that the present action is admissible in so far as the applicants rely on the fact that they represent Marquis Energy and CHS or Murex, the Court must, on the other hand, examine whether their action is admissible in so far as they rely on the fact that they represent, first, the four sampled producers other than the Marquis Energy group and, second, any member other than the four sampled producers, Marquis Energy or the traders/blenders CHS and Murex.

57 In the third place, the applicants' argument that an action for annulment brought by an association, when it is admissible, must produce effects vis-à-vis all the members of the association that were legally registered with it at the time the action was brought must be rejected also.

58 In this connection, it should be recalled that although, in the light of the criteria set out in the fourth paragraph of Article 263 TFEU, the regulations imposing anti-dumping duties are, in fact, legislative in their nature and scope, in that they apply generally to the economic operators concerned, it is none the less conceivable that certain economic operators may have standing to bring proceedings against certain of their provisions (see, to that effect, judgments of 21 February 1984 in *Allied Corporation and Others* v *Commission*, 239/82 and 275/82, ECR, EU:C:1984:68, paragraph 11, and 20 March 1985 in *Timex* v *Council and Commission*, 264/82, ECR, EU:C:1985:119, paragraph 12).

59 According to the case-law, where a regulation that introduces an anti-dumping duty imposes different duties on a series of undertakings, an undertaking has standing to bring proceedings only against those provisions which impose on it a specific anti-dumping duty and determine the amount thereof, and not in relation to those provisions which impose anti-dumping duties on other undertakings, with the result that an action brought by that undertaking will be admissible only in so far as it seeks the annulment of those provisions of the regulation that exclusively concern it (see, to that effect, judgment of 15 February 2001 in *Nachi Europe*, C-239/99, ECR, EU:C:2001:101, paragraph 22 and the case-law cited).

60 Moreover, it is clear from paragraph 29 of the judgment of 21 March 2012 in *Fiskeri og Havbruksnæringens Landsforening and Others* v *Council* (T-115/06, EU:T:2012:136), on which the applicants rely in this connection, read in conjunction with paragraphs 27 and 28 thereof, that an annulment may produce effects vis-à-vis all the members of an association only in so far as actions by those members would have been admissible.

61 If it were otherwise, a professional association could rely on the standing to bring proceedings of some of its members in order to obtain the annulment of a regulation for the benefit of all its members, including those who do not themselves satisfy the conditions set out in the fourth paragraph of Article 263 TFEU. This would effectively circumvent the rules on the conditions for admissibility of actions that may be brought against regulations imposing anti-dumping duties.

62 In the present case, therefore, the applicants may seek the annulment of the contested regulation for the benefit of their members only in so far as it affects those of their members who themselves have standing to bring an action for annulment under the fourth paragraph of Article 263 TFEU against the contested regulation.

63 In the fourth place, as regards the third situation, in which the action brought by an association is admissible where the association can prove an interest of its own, the applicants submit that they are entitled to bring an action in their own right in their capacity as representative associations of the main producers of ethanol and state that they were interested parties in the administrative anti-dumping

proceeding. It is therefore necessary to examine whether the applicants have an interest of their own in the present case, in their capacity as associations that participated in the anti-dumping proceeding (see paragraphs 75 to 87 below).

The applicants' standing to bring proceedings

64 It should be recalled that the fourth paragraph of Article 263 TFEU refers to three situations in which any natural or legal person may bring an action for annulment. Under the conditions laid down in the first and second paragraphs of Article 263 TFEU, they may, first, institute proceedings against an act addressed to them. Second, they may institute proceedings against an act which is of direct and individual concern to them, and, third, against a regulatory act which is of direct concern to them and does not entail implementing measures.

65 The criterion as to direct concern is identical in the second and third situations referred to in the fourth paragraph of Article 263 TFEU (order of 13 March 2015 in *European Coalition to End Animal Experiments* v *ECHA*, T-673/13, ECR, EU:T:2015:167, paragraph 67).

66 In the present case, it is common ground that the contested regulation is not addressed to the applicants. Therefore, it is appropriate to examine whether the applicants may bring an action for annulment against the contested regulation under the second or third situations referred to in the fourth paragraph of Article 263 TFEU, either, first, in so far as they are bringing proceedings in their own right, or, second, in so far as they are bringing proceedings as representatives of one of the categories of operators which are members.

67 The concept of direct concern referred to in the fourth paragraph of Article 263 TFEU requires two cumulative criteria to be met, namely, first, that the act that the applicants are seeking to have annulled directly affects their legal situation and, second, that that act leaves no discretion to the addressees of that measure entrusted with the task of implementing it, such implementation being purely automatic and resulting from rules of EU law without the application of other intermediate rules (order of 24 September 2009 in *Município de Gondomar* v *Commission*, C-501/08 P, EU:C:2009:580, paragraph 25, and judgment of 13 October 2011 in *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, ECR, EU:C:2011:656, paragraph 66).

68 As regards the concept of individual concern referred to in the fourth paragraph of Article 263 TFEU, it is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors the decision distinguishes them individually just as in the case of the person addressed (judgments of 15 July 1963 in *Plaumann* v *Commission*, 25/62, ECR, EU:C:1963:17, p. 107, and 13 December 2005 in

Commission v *Aktionsgemeinschaft Recht und Eigentum*, C-78/03 P, ECR, EU:C:2005:761, paragraph 33).

69 In the field of protection against dumping, first, according to settled case-law, measures imposing anti-dumping duties are liable to be of direct and individual concern to those producers and exporters who 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 (judgments in *Allied Corporation and Others* v *Commission*, cited in paragraph 58 above, EU:C:1984:68, paragraph 12, and of 23 May 1985 in *Allied Corporation and Others* v *Council*, 53/83, ECR, EU:C:1985:227, paragraph 4).

70 Second, importers of the product concerned whose resale prices were taken into account for the construction of export prices and who are therefore concerned by the findings relating to the existence of dumping are directly and individually concerned by regulations imposing anti-dumping duties (judgments of 14 March 1990 in *Nashua Corporation and Others* v *Commission and Council*, C-133/87 and C-150/87, ECR, EU:C:1990:115, paragraph 15, and *Gestetner Holdings* v *Council and Commission*, C-156/87, ECR, EU:C:1990:116, paragraph 18). The same is true of those importers associated with exporters in third countries on whose products anti-dumping duties have been imposed, particularly where the export price has been calculated on the basis of those importers' resale prices on the European Union market and where the anti-dumping duty itself is calculated on the basis of those resale prices (see, to that effect, judgment of 11 July 1990 in *Neotype Techmashexport* v *Commission and Council*, C-305/86 and C-160/87, ECR, EU:C:1990:295, paragraphs 19 and 20).

71 Third, the Court of Justice has held that an original equipment manufacturer was directly and individually concerned by the provisions of the regulation relating to the dumping practices of the producer from which it had purchased the products because of the particular features of its business dealings with that producer, without it being necessary to categorise that original equipment manufacturer as an importer or exporter. The Court of Justice observed that it was in order to reflect those particular features that the Council had fixed a certain profit margin in constructing the normal value, which had then been taken into account in calculating the dumping margin on the basis of which the anti-dumping duty had been set, with the result that the original equipment manufacturer was concerned by the findings relating to the existence of the dumping complained of (see, to that effect, judgments in *Nashua Corporation and Others* v *Commission and Council*, cited in paragraph 70 above, EU:C:1990:115, paragraphs 17 to 20, and *Gestetner Holdings* v *Council and Commission*, cited in paragraph 70 above, EU:C:1990:116, paragraphs 20 to 23).

72 Fourth, the Court of Justice has held that a European Union producer had standing to bring proceedings where the regulation imposing the anti-dumping duty was based on that producer's own situation, that producer being the leading

manufacturer of the product concerned in the European Union. In reaching that conclusion, the Court of Justice held that the complaint which led to the opening of the investigation procedure owed its origin to the complaints submitted by that producer, that that producer's views had been heard during that procedure, the conduct of which was largely determined by those observations, and that the anti-dumping duty had been set in the light of the effect of the dumping on that producer (see, to that effect, judgment in *Timex* v *Council and Commission*, cited in paragraph 58 above, EU:C:1985:119, paragraphs 14 and 15).

73 Fifth, the Court of Justice has also held that the recognition of the right of certain categories of economic operators to bring an action for the annulment of an anti-dumping regulation cannot prevent other operators from also being able to claim that they are individually concerned by such a regulation by reason of certain attributes which are peculiar to them and which differentiate them from all other persons. Consequently, it held that the action brought by the applicant in that case was admissible, on the ground that it was the largest importer of the product covered by the anti-dumping measure, the end-user of the product and its economic activities depended, to a very large extent, on those imports and were seriously affected by the regulation at issue (see, to that effect, judgment of 16 May 1991 in *Extramet Industrie* v *Council*, C-358/89, ECR, EU:C:1991:214, paragraphs 16 to 18).

74 It is in the light of those considerations that the applicants' standing to bring proceedings in the present case should be examined.

The applicants' standing to bring proceedings in their own right

75 The applicants submit that they are associations whose membership consists of the main US producers of ethanol, who actively participated in the administrative proceeding that led to the adoption of the contested regulation. Their objective is to protect the US ethanol industry. Given that the adoption of the contested regulation constitutes a major issue for the applicants and that they were recognised as interested parties throughout the anti-dumping proceeding, they submit that they ought to have standing to bring the present action in their own name, in their own right.

76 The Council, supported by the Commission, contends that it is not sufficient for the applicants to claim that they represent the US bioethanol industry as a whole or that they promote its interests or that they cooperated with the Commission during the investigation by representing the interests of their members in order to have standing to bring proceedings before the General Court. It contends that there are no particular circumstances that distinguish the applicants individually.

77 It is therefore necessary to examine whether, in the present case, the contested regulation directly and individually affects the applicants themselves, by bringing

about a change in their legal situation within the meaning of the case-law cited in paragraph 67 above.

78 First, it must be observed at the outset that it is common ground that the contested regulation imposes an anti-dumping duty on all imports of bioethanol in its pure state, that is to say, ethyl alcohol produced from agricultural products, and of bioethanol contained in blends with gasoline with an ethyl alcohol content of more than 10% (v/v), at the level of the supplying country, namely the United States. Second, it is not disputed that, although the applicants are associations with regard to which it is common ground that they represent the interests of the US bioethanol industry and that they participated in the anti-dumping proceeding, they themselves however are not required to pay that duty.

79 Therefore, it must be held that the contested regulation, in so far as it imposes anti-dumping duties only on the products of the applicants' members, does not bring about a change in the applicants' legal situation. The imposition, by the contested regulation, of anti-dumping duties on the products of the applicants' members did not bring about a change in the applicants' own rights or in the obligations borne by them.

80 Although the fact that the applicants were parties to the anti-dumping proceeding does not affect the finding that the imposition of anti-dumping duties on the products of the applicants' members does not create any rights for or any obligations on the applicants, it must be observed that, in the tenth plea in law in the application, the applicants claim that, as interested parties in the anti-dumping proceeding, they have an interest of their own in seeking to have the contested regulation annulled on the ground that their procedural rights were infringed, namely those based on Article 6(7), Article 19(1) and (2), and Article 20(2), (4) and (5) of the basic regulation.

81 However, it follows from the case-law that the fact that a person is involved in some way or other in the procedure leading to the adoption of an EU measure is capable of distinguishing that person individually in relation to the measure in question only if the applicable EU legislation grants him certain procedural guarantees (see, by analogy, judgments of 4 October 1983 in *Fediol* v *Commission*, 191/82, ECR, EU:C:1983:259, paragraph 31, and 17 January 2002 in *Rica Foods* v *Commission*, T-47/00, ECR, EU:T:2002:7, paragraph 55).

82 It is therefore appropriate to examine whether the provisions of the basic regulation referred to in paragraph 80 above grant procedural guarantees to persons who have been involved in the procedure leading to the adoption of a regulation imposing anti-dumping duties, as the applicants claim.

83 Article 6(7) of the basic regulation affords representative associations, such as the applicants, which have made themselves known in accordance with Article 5(10) thereof, the right, upon written request, to inspect all information made available

by any party to an investigation, as distinct from internal documents prepared by the authorities of the European Union or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and which is used in the investigation. In addition, the right to respond that information is afforded to those parties and their comments must be taken into consideration, wherever they are sufficiently substantiated in the response.

84 Moreover, Article 20(2), (4) and (5) of the basic regulation affords representative associations the right to request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures. They have the right to make representations on final disclosure within a period of at least 10 days. In the present case, it is common ground that the applicants had access to the non-confidential file of the investigation and that they received final disclosure, as provided for in Article 20(2) of the basic regulation, and the additional disclosure of 21 December 2012.

85 Therefore, in so far as the applicants base their action on 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 regulation, it must be held that the present action is admissible in so far as it concerns the applicants acting in their own right.

86 In that context, the applicants state that they have standing to bring proceedings on the ground that they participated in the anti-dumping proceeding as representative associations that were the interlocutors between the Commission and 'the US bioethanol industry as a whole'. They rely, in this connection, on the judgment of 24 March 1993 in *CIRFS and Others* v *Commission* (C-313/90, ECR, EU:C:1993:111, paragraphs 28 to 30), in which the Court of Justice acknowledged that the position of an association in its capacity as negotiator was affected by the decision at issue. However, first, it must be stated that the applicants' position as representative associations as referred to in the basic regulation is not comparable to that of a negotiator acting formally on behalf of its members. Second, it should be observed that that judgment concerned an application, made by an association, for the annulment of a decision adopted in the field of State aid, namely a refusal by the Commission to initiate the procedure provided for in Article 108(2) TFEU seeking a declaration that aid granted is not compatible with the internal market. CIRFS notably did not represent the interests of the company to which the aid in question had been granted. The present case, however, concerns a regulation adopted in the field of anti-dumping. By the contested regulation, the Council did not refuse to initiate any form of procedure and the applicants submit that they are the representatives of the interests of the economic operators whose product is subject to the anti-dumping measure. The present case therefore concerns a different situation to that which gave rise to the judgment in *CIRFS and Others* v *Commission* (EU:C:1993:111) referred to above, which is not relevant in the circumstances of this case.

87 In the light of the considerations set out in paragraphs 77 to 86 above, the applicants must be recognised — as interested parties in the proceeding — as having standing to bring proceedings, on the ground that they are directly and individually concerned, but they are entitled to rely only on the tenth plea in law in the application, that plea in law being the only plea in law seeking to safeguard their procedural rights.

The applicants' standing to bring proceedings as representatives of their members

88 The Council, supported by the Commission, submits that the applicants do not have standing to bring proceedings as representatives of their members.

89 The applicants contest that line of argument.

90 In the present case, a distinction should be drawn, for the purposes of examining standing to bring proceedings, between the four sampled US producers of bioethanol and the applicants' other members.

91 In order to determine whether the four sampled US producers have standing to bring proceedings against the contested regulation, it is necessary to examine whether they are directly and individually concerned by that regulation under the terms of the second situation referred to in the fourth paragraph of Article 263 TFEU.

– Whether the applicants are directly concerned as representatives of the sampled producers of bioethanol

92 As regards the question whether the four sampled producers were directly affected by the contested regulation, it must be noted that a company on whose products an anti-dumping duty is imposed is directly concerned by a regulation imposing that anti-dumping duty because it obliges the Member States' customs authorities to levy the duty imposed without leaving them any discretion (see, to that effect, judgments of 25 September 1997 in *Shanghai Bicycle* v *Council*, T-170/94, ECR, EU:T:1997:134, paragraph 41 and the case-law cited, and 19 November 1998 in *Champion Stationery and Others* v *Council*, T-147/97, ECR, EU:T:1998:266, paragraph 31).

93 In the present case, first, it is clear that rather than imposing an individual duty on each supplier of the product in question, Article 1(1) of the contested regulation imposes a single anti-dumping duty on all imports of bioethanol in its pure state, that is to say, ethyl alcohol produced from agricultural products, and of bioethanol contained in blends with gasoline with an ethyl alcohol content of more than 10% (v/v), at the level of the supplying country, namely the United States. More specifically, it imposes a countrywide anti-dumping duty at a rate of EUR 62.30 per tonne net, applicable in proportion, by weight, of the total content of bioethanol. Therefore, the contested regulation does not identify imports of

bioethanol by their individual source by indicating the relevant exporting operators in the marketing chain.

94 Second, the Council notes, in recital 12 of the contested regulation and in the defence, that since none of the four sampled producers themselves exported bioethanol to the European Union market, their sales were made on the domestic market to unrelated traders/blenders, which then blended the bioethanol with gasoline for the purpose of reselling it on the domestic market and for export, in particular to the European Union.

95 Third, the Council notes, again in recital 12 of the contested regulation, that the five US producers included in the sample 'mentioned exports of bioethanol to the Union in their sampling form'.

96 Fourth, in recitals 10 and 11 of the contested regulation, the Council states that, in the administrative anti-dumping proceeding, the Commission selected a sample of six US bioethanol producers based on the largest representative quantity of exports of bioethanol to the European Union which could reasonably be investigated within the time available. One company was removed from the sample during the investigation because it was found that its production had not been exported to the European Union during the investigation period, that is to say, the period from 1 October 2010 to 30 September 2011, whereas the other five sampled producers remained in the sample.

97 It is therefore clear from the findings set out in paragraphs 92 to 96 above, relating to the operation of the bioethanol market as set out by the Council, that the Council itself considered, in the contested regulation, that a significant volume of bioethanol from the four sampled producers had been exported on a regular basis to the European Union during the investigation period.

98 The finding made in paragraph 97 above is confirmed moreover by the assessments of the Council and the Commission made in the course of the anti-dumping proceeding and in their written and oral pleadings.

99 First of all, it must be noted that the Council stated, in its response to the Court's written questions, that 'it seem[ed] very likely' that the bioethanol meeting the specifications of European standards ('EN specifications') sold to the European Union by the two traders/blenders that cooperated with the Commission during the investigation 'comprise[d] bioethanol produced by [*confidential*]'. [1] In addition, the Council considered that it was 'likely' that the bioethanol sold to the European Union by two other traders/blenders 'comprise[d] bioethanol produced by [*confidential*]'.

100 Next, the Commission confirmed in the course of the investigation, in its letter of 30 January 2013 addressed to the applicants, that the eight traders/blenders that it

[1] Confidential information redacted.

had identified, which sold the bioethanol produced by the sampled producers, represented over 90% of total exports of bioethanol to the European Union during the investigation period.

101 Furthermore, in its response to the Court's written questions, the Council provided figures for the total quantities, which met EN specifications, sourced from the five US producers included in the sample during the investigation period by the eight traders/blenders to whom questions were put by means of a questionnaire in the course of the investigation. Those figures corresponded to over [*confidential*] of the imports of bioethanol from the United States by the eight traders/blenders during the same period.

102 Lastly, the Council stated at the hearing that it did not dispute that the majority of sales of bioethanol meeting EN specifications had been exported to the European Union. In this connection, in the defence, the Council indicated merely that the traders/blenders that had cooperated during the proceeding sourced bioethanol from various producers, blended it and sold it for export. According to the Council, it was therefore no longer possible to identify the producer at the moment of the export to the European Union, nor to trace all purchases individually and compare the normal values with the relevant export prices.

103 It follows from those considerations that it has been established to a sufficient standard that the very significant volumes of bioethanol that were purchased during the investigation period by the eight traders/blenders surveyed from the five sampled US bioethanol producers were in large part exported to the European Union. The Council has not provided any information that might disprove or invalidate that finding.

104 Therefore, it must be held that the four sampled US producers are directly concerned, within the meaning of the case-law cited in paragraphs 67 and 92 above, by the anti-dumping duty imposed by the contested regulation, 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 contested regulation — was subject to the anti-dumping duty.

105 That finding cannot be invalidated by the other arguments of the Council and the Commission.

106 First, the Council, supported by the Commission, observes that, so far as the investigation period is concerned, the applicants represented producers of bioethanol but not exporters of bioethanol. Producers of bioethanol, unlike blenders/exporters, are not directly concerned by the contested regulation since, in the contested regulation, the Council does not 'charge' them with dumping practices and since their direct sales are not subject to the anti-dumping duties.

107 In this connection, it should be pointed out that, contrary to what the arguments of the Council and the Commission imply, it cannot be ruled out as a matter of

principle that the sampled producers, by contrast with exporters, are entitled to bring an action against the contested regulation.

108 As is clear from the case-law cited in paragraphs 67, 69 and 92 above, the admissibility of an action against a regulation imposing anti-dumping duties does not depend on an applicant's status as a producer or exporter.

109 In addition, it should be recalled that the anti-dumping rules are aimed at protecting against dumped imports. First, under Article 1(1) of the basic regulation, an anti-dumping duty may be applied to any dumped product whose release for free circulation in the European Union causes injury. Second, according to the case-law, anti-dumping proceedings relate in principle to all imports of a certain category of products from a third country and not to imports of products manufactured by specific undertakings (judgment of 7 December 1993 in *Rima Eletrometalurgia* v *Council*, C-216/91, ECR, EU:C:1993:912, paragraph 17). In examining direct concern, it is therefore irrelevant whom the institutions 'charge' with the dumping practices in question.

110 It follows from the foregoing that, since the anti-dumping duties are linked to exported products, a producer, even if it is not the exporter of those products, may find itself substantially affected by the imposition of such anti-dumping duties on imports of the product concerned into the European Union.

111 In this connection, it must be noted that, in the present case, it is common ground that the four sampled producers produced bioethanol in its pure state during the investigation period and that it was their products that the traders/blenders blended with gasoline and exported to the European Union.

112 It follows from the considerations set out in paragraphs 107 to 111 above that the circumstances referred to by the Council and the Commission, that the contested regulation does not 'charge' the applicants' members with dumping practices, that their direct sales are not subject to anti-dumping duties and that, in essence, they are not exporters, do not preclude, as a matter of principle, these members being directly affected by the adoption of the contested regulation in their capacity as sampled producers.

113 Second, the Commission contends that the contested regulation does not have legal effects on the applicants' members and may have only indirect effects on them because they sold bioethanol to third parties which might then export part of that bioethanol to the European Union. According to the Commission, the mere finding of an economic effect on the situation of the applicants' members is not sufficient to show that they are directly concerned.

114 In this connection, 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, it must nevertheless be recalled that the imposition of an anti-dumping duty changes the

legal conditions under which the bioethanol produced by the four sampled producers will be marketed on the European Union market. Therefore, the legal position of the producers in question on the European Union market will, in any event, be directly and substantially affected.

115 For the same reason, it must therefore be held that the Commission is also wrong in disputing the fact that an undertaking in the marketing chain other than the exporter found to engage in dumping practices ought to be able to challenge an anti-dumping duty 'that targets the dumping practice of the exporter, and not of the companies in the supply chain'.

116 Third, the Commission submits that the contested regulation has only indirect effects on the applicants' members because the anti-dumping duty directly affects the transaction between the trader/blender and the importer. In this connection, it should be pointed out that the structure of the contractual arrangements between economic operators in the bioethanol marketing chain has no bearing on whether a producer of bioethanol is directly concerned by the contested regulation. First, to conclude otherwise would effectively mean that only a producer which sells its product directly to an importer in the European Union may be directly concerned by a regulation imposing an anti-dumping duty on the products manufactured by it, a proposition for which there is no support in the basic regulation. Second, such an approach would have the effect of restricting the legal protection of producers of products subject to anti-dumping duties solely according to the export marketing structure of the producer in question.

117 In that context, the Commission's argument, raised at the hearing, that in order to have standing to bring proceedings, a producer must be aware that its specific product is exported to the European Union, must also be rejected as ineffective. The fact that a producer knows exactly which goods manufactured by it are exported to the European Union has no bearing on whether it is directly affected by the contested regulation.

118 It follows from the examination carried out in paragraphs 106 to 117 above that the arguments of the Council and the Commission that the four sampled producers are not directly concerned by the contested regulation must be rejected.

– Whether the applicants are individually concerned as representatives of the sampled producers of bioethanol

119 As regards whether the four sampled US producers were individually concerned by the contested regulation, it should be recalled, as stated in paragraph 69 above, that measures imposing anti-dumping duties are liable to be of individual concern to those producers and exporters who 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.

120 It is true that the parties disagree as to whether the four sampled producers are exporters of the product manufactured by them in the present case.

121 However, it must be noted that, according to the case-law cited in paragraph 73 above, it is conceivable that such operators may also be individually concerned by such a regulation, by reason of certain attributes which are peculiar to them and which differentiate them from all other persons. If, on behalf of the four sampled producers, the applicants call in question the merits of the decision imposing an anti-dumping duty as such, they must demonstrate that those producers have a particular status within the meaning of the judgment in *Plaumann* v *Commission*, cited in paragraph 68 above (EU:C:1963:17, p. 107) (see, to that effect and by analogy, judgment in *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, cited in paragraph 68 above, EU:C:2005:761, paragraph 37).

122 In this connection, it must be held that, even in the case of producers of a product subject to an anti-dumping duty but which are in no way involved in the export of that product, that would certainly be the case where, first, those producers 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 and by analogy, judgment in *Allied Corporation and Others* v *Commission*, cited in paragraph 58 above, EU:C:1984:68, paragraph 12) and, second, their market position is substantially affected by the anti-dumping duty to which the contested regulation relates (see, to that effect and by analogy, judgment in *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, cited in paragraph 68 above, EU:C:2005:761, paragraph 37).

123 In the present case, as regards the participation of the four sampled US producers in the administrative proceeding, first of all, it should be observed that, as the applicants state, those producers, as US producers of bioethanol, submitted sampling forms in response to the Commission's notice of initiation [of an anti-dumping proceeding] (see paragraph 4 above). They were included in the sample and remained members of the sample throughout the investigation.

124 Next, it is clear that the four sampled US producers participated in the preliminary investigation. As sampled producers, they inter alia cooperated in the investigation by providing responses to the Commission's questionnaires and by hosting the Commission's staff on their premises in order for verification visits to be carried out.

125 Furthermore, their data was used for calculating the normal value at the provisional disclosure document stage.

126 Lastly, other evidence indicates that some of the four sampled US producers were also involved in other stages of the anti-dumping proceeding in question. Thus, in the report of the Commission of 15 November 2012 relating to the hearing of 11 September 2012, the Hearing Officer confirmed that the hearing had been

requested by the applicants and by Plymouth Energy Company and POET. In the letter of 20 February 2013 addressed to the applicants' lawyers, the Commission indicated that it was responding to the arguments raised, inter alia, by 'Plymouth' concerning their written observations on the disclosure document of 21 December 2012.

127 Therefore, it must be held that the four sampled US producers were intensively engaged in the preliminary investigation. They were, from both their own point of view and that of the Commission, parties participating in the preliminary investigation, and their position was examined by the Commission in the course of the proceeding which led to the imposition of the anti-dumping duty.

128 Moreover, as regards whether the market position of the four sampled US producers was substantially affected by the anti-dumping duty to which the contested regulation relates, it has already been stated, in paragraphs 93 to 103 above, that the very significant volumes of bioethanol that were purchased during the investigation period by the eight traders/blenders surveyed from the sampled US bioethanol producers were in large part exported to the European Union, and that the bioethanol produced by the four sampled US producers has been subject, from the coming into force of the contested regulation, to the anti-dumping duty imposed by that regulation when imported into the European Union. Indeed, it is not in dispute that it was the sampled producers that produced the bioethanol exported to the European Union during the investigation period, and not the traders/blenders which blended it with gasoline and exported it to the European Union. On that point, it must be observed that the latter are not defined as producers of the product concerned in the contested regulation.

129 It is clear from those findings that the four sampled US producers were concerned by the preliminary investigations because they participated intensively in them and that they were substantially affected by the anti-dumping duty to which the contested regulation relates.

130 It follows from the considerations set out in paragraphs 119 to 129 above that the four sampled producers, which are members of the applicants, are individually concerned by the contested regulation under the terms of the second situation referred to in the fourth paragraph of Article 263 TFEU.

131 That conclusion is not called in question by the other arguments raised by the Council and by the Commission.

132 First, the Council, supported by the Commission, submits that the applicants' members are not individually concerned by the contested regulation because even though some of their members were identified as producers in the contested regulation, the dumping was carried out by the traders/blenders and it was the latter that were charged with dumping.

133 First of all, it must be pointed out at the outset that, as stated in paragraphs 123 to 127 above, the four sampled producers participated fully in the preliminary investigation and their position was examined by the Commission in the course of the proceeding which led to the imposition of the anti-dumping duty. In addition, as explained in paragraphs 128 and 129 above, the market position of the four sampled producers was substantially affected by the anti-dumping duty to which the contested regulation relates. On those grounds, the four sampled producers must be held to be individually concerned by the contested regulation.

134 Next, in so far as the Commission adds that the four sampled producers were not 'charged' with dumping practices and that the contested regulation does not constitute a decision affecting them on the basis of their own conduct, it should be recalled that that regulation imposes a countrywide anti-dumping duty on the import of bioethanol into the European Union, including that manufactured by the four sampled producers. The question of exactly who implemented the dumping practices in question is therefore irrelevant for the purpose of determining whether the four sampled producers are individually concerned by the contested regulation. The producers in question suffer from the fact that there is a dumping practices charge even if they themselves have not been charged with such practices.

135 Lastly, in so far as the Council contends that the four sampled producers are not individually concerned under the terms of paragraph 45 of the judgment of 28 February 2002 in *BSC Footwear Supplies and Others* v *Council* (T-598/97, ECR, EU:T:2002:52), because they cannot be regarded as producers or exporters 'who are charged with practising dumping', it must be held that it is not a necessary condition that an undertaking — the standing to bring proceedings of which is being examined — is charged with dumping practices in order to conclude that that undertaking is individually concerned. According to the case-law cited in paragraph 73 above, the recognition of the right of certain categories of economic operators to bring an action for the annulment of an anti-dumping regulation cannot prevent other operators also from claiming to be individually concerned by such a regulation by reason of certain attributes which are peculiar to them and which differentiate them from all other persons. In this connection, it should be observed that charging a producer or an exporter with dumping is a factor that may distinguish that producer or exporter individually, but it is not a prerequisite for those economic operators. Thus, the courts of the European Union have acknowledged the individual concern of such economic operators without requiring that they could be charged with the dumping practices (judgments in *Allied Corporation and Others* v *Council*, cited in paragraph 69 above, EU:C:1985:227, paragraph 4; *Shanghai Bicycle Corporation* v *Council*, cited in paragraph 92 above, EU:T:1997:134, paragraph 39; and *Champion Stationery and Others* v *Council*, cited in paragraph 92 above, EU:T:1998:266, paragraph 47).

136 Therefore, the Council's argument that the applicants' members are not individually concerned because they 'do not qualify as producers or exporters that

are "charged with practising dumping on the basis of data relating to their commercial activities"' cannot be accepted. If it were otherwise, this would be contrary to the principle, as set out in the case-law cited in paragraphs 69 to 73 above, that it is conceivable that importers as well as European Union producers may also have standing to bring proceedings.

137 Second, the Council, supported by the Commission, submits that the element that distinguishes some undertakings from other undertakings in the value chain is the fact that the dumping was established by reference to data provided by them and relating to their commercial activities. The Council and the Commission refer in that regard to the case-law relating to the individual concern of related importers. More specifically, the Commission observes that it is apparent from the judgment in *Nashua Corporation and Others* v *Commission and Council*, cited in paragraph 70 above (EU:C:1990:115), and the order of 7 March 2014 in *FESI* v *Council* (T-134/10, EU:T:2014:143), that the decisive factor is whether the institutions have actually used the data in a manner that individualises the undertaking that has provided the data.

138 In this connection, it must be pointed out that the case-law relied on by the Commission is not relevant to the present case because the situation of the four sampled producers is not comparable to that of related importers. The case-law draws a distinction concerning the conditions under which producers and exporters, on the one hand, and importers, on the other, are individually concerned by regulations imposing anti-dumping duties (judgments in *Nashua Corporation and Others* v *Commission and Council*, cited in paragraph 70 above, EU:C:1990:115, paragraphs 14 and 15, and *Gestetner Holdings* v *Council and Commission*, cited in paragraph 70 above, EU:C:1990:116, paragraphs 17 and 18).

139 Furthermore, contrary to what the Council maintains, the fact that it decided not to use the data provided by the sampled producers of bioethanol to calculate an individual dumping margin for them, a point that is specifically challenged by the applicants under their first plea in law, cannot preclude the admissibility of an action brought by those producers.

140 In this connection, it must be pointed out that the Court held, in the *Shanghai Bicycle* v *Council* case (cited in paragraph 92 above, EU:T:1997:134, paragraph 38) in which a single anti-dumping duty was imposed on imports of the product concerned originating in China, that the judicial protection afforded to undertakings individually concerned by an anti-dumping duty cannot be affected by the mere fact that the duty in question is a single duty and is imposed by reference to a State and not to individual undertakings. For the same reason, the fact that the anti-dumping duty imposed by the contested regulation in the present case is a single anti-dumping duty, imposed on a countrywide basis and not by reference to sampled producers, cannot preclude the applicants' members being afforded judicial protection.

141 First, the mere use of samples by the institutions cannot constitute a valid ground for denying producers outside the sample, whose data were not used by the institutions, standing to bring proceedings. This is clear, in particular, from the judgment of 11 July 1996 in *Sinochem Heilongjiang* v *Council* (T-161/94, ECR, EU:T:1996:101, paragraphs 47 and 48), in which the Court held that the fact that the Commission decided not to accept the information provided by an exporter with regard to the central points at issue in the case did not affect the finding that that exporter was concerned by the preliminary investigations. The same is therefore true, *a fortiori*, of the situation of a producer forming part of a sample.

142 Second, the effect of making the admissibility of an action brought by a producer or an exporter included in the sample turn on the use of data provided by it would be to allow the Council, at its pleasure, to remove the application of the provisions of the basic regulation to producers such as those in the present case from any direct review by the General Court.

143 Therefore, the argument that the element that distinguishes some undertakings from others in the value chain is the fact that the dumping was established by reference to data provided by them must be rejected.

144 Third, unlike the applicants, the Commission submits that the size of production of the applicants' members is not a relevant element for the purpose of determining whether they are individually concerned by the contested regulation. In this connection, it should be observed that it is clear from the findings set out in paragraphs 119 to 130 above that the four sampled producers, which are members of the applicants, are individually concerned by the contested regulation, and it is not necessary to examine the size of their production of the product in question.

145 Consequently, it is clear from the findings made in paragraphs 132 to 144 above that the arguments of the Council and the Commission that the four sampled producers are not individually concerned by the contested regulation must be rejected.

– The existence of alternative legal remedies

146 The Commission contends that the applicants' members are not deprived of legal remedies should they wish to start exporting bioethanol to the European Union. First, in their contracts with the importers, they could agree to bear the customs duties in order to be able to challenge the customs debt before the courts of the Member States. Second, the members concerned by an anti-dumping duty would also have the possibility of requesting a 'newcomer review' under Article 11(4) of the basic regulation. According to the Commission, under that provision, new exporters in the exporting country in question, which have not exported the product during the period of investigation on which the measures were based, are entitled to the initiation of such a newcomer review where they can show that they have actually exported to the European Union following the investigation period,

or where they can demonstrate that they have entered into an irrevocable contractual obligation to export a significant quantity of products to the European Union. The duty in force is repealed for those imports, which are subject to registration. The institutions carry out an accelerated review, at the end of which they establish whether there is dumping in respect of the new exporter. If so, they levy the duty retroactively.

147 First of all, it should be stated that whether the applicants' members have other legal remedies in order to assert their rights has no bearing on the examination of direct and individual concern in relation to the contested regulation.

148 Next, in so far as, by that argument, the Commission proposes that the producer or exporter sell the goods under the commercial contracts implementing condition (incoterm) 'Delivered Duty Paid' (DDP) in order to be able to challenge the communication of the customs debt by the national authorities before the national courts, or structure a commercial transaction with a buyer in the European Union with the sole objective of being able to challenge the customs debt before the national courts and possibly before the Court of Justice, it must be pointed out that, in accordance with the considerations set out in paragraphs 69 to 73 and 122 above, no such restriction exists on the admissibility of an action for annulment brought by producers such as the four sampled producers. As observed in paragraphs 109 and 110 above, anti-dumping duties attach to the product in question. It follows that the contractual links between an exporter and a producer have no bearing on whether the conditions laid down in that case-law have to be satisfied. Consequently, the Commission's argument on that point must be rejected.

149 Lastly, in so far as, by its argument, the Commission relies on the possibility of requesting a newcomer review under Article 11(4) of the basic regulation, first, it is clear that the fourth subparagraph of Article 11(4) expressly excludes the possibility of such a review in situations in which the Commission has used the sampling method. Second, Article 11(4) does not constitute, in any event, an appropriate alternative legal remedy for a producer that satisfies the conditions laid down in the case-law cited in paragraphs 69 to 73 above. It does not enable it, for example, to remedy the effects of the anti-dumping duty on its production where the producer in question has not started to export that production directly to the European Union. Consequently, that argument must be rejected.

150 It follows from all the considerations set out in paragraphs 92 to 149 above that, under the terms of the second situation referred to in the fourth paragraph of Article 263 TFEU, the applicants do have standing to bring the present action to the extent that it seeks the annulment of the contested regulation in so far as it concerns the four sampled producers.

The applicants' standing to bring proceedings as representatives of their members other than the four sampled producers

151 It must be stated that the applicants have not put forward any specific argument in their written pleadings and have not provided any information that is in the file before the Court that would enable the Court to conclude that one or more of their members, who did not form part of the sample of US producers, were directly concerned by the anti-dumping duty imposed by the contested regulation.

152 Indeed, apart from the four sampled US producers, Marquis Energy, Murex and CHS, the applicants have not identified by name any other of their members who, according to the applicants, might have standing to bring proceedings in the present case.

153 Furthermore, the applicants have not adduced any evidence showing that the bioethanol of one or more other members was exported to the European Union and was, consequently, subject to the anti-dumping duty at issue. In those circumstances, it cannot be concluded that the applicants' other members might have been directly concerned by the contested regulation.

154 Since it has not been established that the applicants' members — other than the four sampled producers — were directly concerned by the contested regulation, according to the case-law cited in paragraph 65 above, the applicants do not have standing under the terms of the second and third situations referred to in the fourth paragraph of Article 263 TFEU to bring the present action to the extent that it seeks the annulment of the contested regulation in so far as that regulation concerns their members other than the four sampled producers.

Interest in bringing proceedings

155 The Commission submits that the applicants do not have a vested and present interest in the annulment of the contested regulation. It contends that the applicants have not contested that their members had not exported any bioethanol to the European Union during the investigation period, nor have they demonstrated that their members had started to do so at the date on which the application was lodged. It contends that none of their sales were therefore subject to the anti-dumping duty imposed by the contested regulation. As a result, the annulment of the contested regulation is not capable of having legal consequences for their members.

156 The applicants contest those arguments.

157 In this connection, it must be recalled that, under the fourth paragraph of Article 40 of the Statute of the Court of Justice of the European Union, submissions made in the statement in intervention must be limited to supporting the form of order sought by one of the main parties. Furthermore, under Article 142(3) of the Rules of Procedure, the intervener must accept the case as he

finds it at the time of his intervention. It follows that the Commission is not entitled to raise a plea of inadmissibility, based on the applicants having no interest in bringing proceedings, which was not raised by the Council, and that the Court is therefore not bound to consider the present plea of inadmissibility. However, since this is a plea of inadmissibility involving public policy considerations, the Court should examine of its own motion the applicants' interest in bringing proceedings (see, to that effect, judgment in *CIRFS and Others* v *Commission*, cited in paragraph 86 above, EU:C:1993:111, paragraphs 20 to 23).

158 It should be stated that an interest in bringing proceedings is an essential and fundamental prerequisite for any legal proceedings (judgment of 10 April 2013 in *GRP Security* v *Court of Auditors*, T-87/11, EU:T:2013:161, paragraph 44) and must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible. The interest in bringing proceedings must continue until the final decision (see judgment of 7 June 2007 in *Wunenburger* v *Commission*, C-362/05 P, ECR, EU:C:2007:322, paragraph 42 and the case-law cited).

159 An interest in bringing proceedings presupposes that the action is likely, if successful, to procure an advantage to the party bringing it (see, to that effect, judgments of 19 July 2012 in *Council* v *Zhejiang Xinan Chemical Industrial Group*, C-337/09 P, ECR, EU:C:2012:471, paragraph 46 and the case-law cited, and 18 March 2009 in *Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision* v *Council*, T-299/05, ECR, EU:T:2009:72, paragraph 43 and the case-law cited).

160 In the present case, suffice it to state that, in essence, the Commission submits that the anti-dumping duty imposed by the contested regulation does not affect the bioethanol manufactured by the applicants' members on the ground that it is exported by the traders/blenders. However, it has already been held in paragraph 104 above that the four sampled US producers were the producers of the product which — when imported into the European Union — was subject to the anti-dumping duty. Consequently, first, the applicants do have an interest in bringing proceedings in the present case in so far as the annulment of the anti-dumping duty imposed by the contested regulation, which is imposed on imports into the European Union of bioethanol produced by their members included in the sample, is likely to procure an advantage to those members. Second, it should be pointed out that the applicants have an interest in bringing proceedings in the present case in so far as they claim, in the tenth plea in law, that their own procedural rights were infringed.

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 contested regulation in so far as it concerns Marquis Energy (see paragraph 51 above);

– 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 above);

– the present action must be dismissed as inadmissible to the extent that it seeks the annulment of the contested regulation in so far as it concerns the applicants' members other than the five sampled US producers (see paragraphs 55 and 154 above).

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

– first, the annulment of the contested regulation in so far as it concerns the four sampled US producers (see paragraph 150 above) and,

– second, the annulment of the contested regulation in so far as they claim, in the tenth plea in law, that their own procedural rights were infringed during the anti-dumping proceeding (see paragraph 87 above).

2. *Substance*

The first plea in law, alleging an infringement of Article 2(8), Article 9(5) and Article 18(1), (3) and (4) of the basic regulation, a breach of the principles of legal certainty, legitimate expectations and sound administration and manifest errors of assessment by the Council on account of its refusal to calculate an individual dumping margin and to assign an individual anti-dumping duty, if any, to the applicants' members included in the sample

163 Since the present action is admissible on the ground that it was brought on behalf of the four sampled US producers, it is appropriate to begin the examination of the substance of the case by considering the first plea in law.

164 By their first plea in law, the applicants claim, in essence, that by refusing to calculate individual dumping margins for their members, who are producers of the product concerned in the United States included in the sample of producers/exporters, and by establishing in their place a countrywide dumping margin, the Council infringed several provisions of the basic regulation and was in breach of the principles of legal certainty, legitimate expectations and sound administration.

165 The first plea in law is divided into four parts. The first part concerns an infringement of Article 2(8) of the basic regulation as regards the determination of the export price. The second part concerns an infringement of Article 9(5) of that

regulation, which sets out the obligation on the institutions to impose individual duties for each supplier. The third part concerns alleged infringements of Article 18(1), (3) and (4) of that regulation, relating to use of the best facts available, in that the institutions used data provided by unrelated traders/blenders to calculate a countrywide dumping margin. Lastly, the fourth part concerns a breach of the principles of legal certainty, legitimate expectations and sound administration.

166 It is appropriate, next, to begin by examining the second part of the first plea in law.

167 By the second part of the first plea in law, the applicants claim, in essence, that the Council ought to have calculated an individual dumping margin and an individual anti-dumping duty for each of the four sampled US producers. In using instead a countrywide dumping margin and anti-dumping duty for all parties operating in the bioethanol industry in the United States, the Council infringed Article 9(5) of the basic regulation, and was in breach of the principles of legal certainty and legitimate expectations and of its obligation to state reasons.

168 More specifically, the applicants submit that Article 9(5) of the basic regulation transposes into EU law Articles 6.10 and 9.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103, 'the WTO Anti-Dumping Agreement'). According to the applicants, Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement impose an obligation to calculate individual dumping margins and assign individual anti-dumping duties to producers and exporters, except in respect of 'exporters' not included in the sample in the case of sampling and except in the case of exporters that form a single economic entity with the State. Therefore, the Commission's interpretation of the term 'impracticable', used in Article 9(5) of the basic regulation, to the effect that it is possible to apply derogations to the obligation to assign individual dumping margins and anti-dumping duties other than those referred to above, such as the structure of US bioethanol exports or the way in which the product is exported, is wrong and unlawful.

169 The Council, supported by ePure, contests those arguments. In essence, first, it submits that, where the institutions are unable to trace each purchase or to compare the normal values with the corresponding export prices, as in the present case, Article 9(5) of the basic regulation cannot require them to specify individual anti-dumping measures for each producer. It would be impossible for the Council to do so. Second, it contends that the term 'impracticable' used in Article 9(5) of the basic regulation is broader in scope than that used in Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement, thereby enabling the application of an exception to the obligation to assign individual dumping margins and anti-dumping duties in the present case.

170 In this connection, it must be pointed out that the first subparagraph of Article 9(5) of the basic regulation, in its original version, which is applicable in the present case since the second paragraph of Article 2 of Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending the basic regulation (OJ 2012 L 237, p. 1) provides that the amended version of Article 9(5) of the basic regulation is to apply to all investigations initiated following the entry into force of Regulation No 765/2012, states that an anti-dumping duty is to be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of the basic regulation have been accepted. The same subparagraph provides also that the regulation imposing the duty is to specify the duty for each supplier or, if that is impracticable, and in general where Article 2(7)(a) of the basic regulation applies, the supplying country concerned.

171 Article 6.10 of the WTO Anti-Dumping Agreement provides as follows:

'The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.'

172 Article 9.2 of the WTO Anti-Dumping Agreement provides as follows:

'When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned.'

173 In order to determine whether the Council was entitled to calculate a countrywide dumping margin and, consequently, impose a countrywide anti-dumping duty, it is therefore appropriate to examine, first, whether the WTO Anti-Dumping Agreement is relevant to the interpretation of Article 9(5) of the basic regulation in the present case; second, whether the four sampled US producers have, as a general rule, a right to have applied to them an individual anti-dumping duty under Article 9(5) of the basic regulation; and, third, whether the Council was

entitled to take the view that there was an exception to that general rule, on the ground that it was 'impracticable' to specify in the contested regulation the individual amounts for each supplier.

Application of the WTO Anti-Dumping Agreement in the present case

174 It is clear from the preamble to the basic regulation, and in particular recital 3 thereof, that the purpose of that regulation is, inter alia, to transpose into EU law the new and detailed rules contained in the WTO Anti-Dumping Agreement (see, by analogy, judgments of 9 January 2003 in *Petrotub and Republica* v *Council*, C-76/00 P, ECR, EU:C:2003:4, paragraph 55, and 24 September 2008 in *Reliance Industries* v *Council and Commission*, T-45/06, ECR, EU:T:2008:398, paragraph 89). Furthermore, that same recital states that, in order to ensure a proper and transparent application of those rules, the language of the agreement should be brought into EU legislation as far as possible. The rules listed in that recital, which are transposed into EU law by the basic regulation, include, inter alia, those relating to the imposition of anti-dumping duties, namely Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement.

175 However, it has repeatedly been held that, given their nature and purpose, the agreements of the World Trade Organisation (WTO), of which the WTO Anti-Dumping Agreement forms part, are not in principle among the rules in the light of which the courts of the European Union are to review the legality of measures adopted by the institutions of the European Union (see judgments in *Petrotub and Republica* v *Council*, cited in paragraph 174 above, EU:C:2003:4, paragraph 53 and the case-law cited, and of 18 December 2014 in *LVP*, C-306/13, ECR, EU:C:2014:2465, paragraph 44 and the case-law cited).

176 Furthermore, the Court of Justice has held 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 effectively 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, including the European Union's most important commercial partners, 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 imbalance in the application of the WTO rules (see judgments of 9 September 2008 in *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, ECR, EU:C:2008:476, paragraph 119 and the case-law cited, and *LVP*, cited in paragraph 175 above, EU:C:2014:2465, paragraph 46 and the case-law cited).

177 It is only where the European Union intended to implement a particular obligation assumed in the context of the WTO or where the EU measure refers expressly to specific provisions of the WTO agreements that the courts of the European Union

can review the legality of the EU measure at issue in the light of the WTO rules (see judgments in *Petrotub and Republica* v *Council*, cited in paragraph 174 above, EU:C:2003:4, paragraph 54 and the case-law cited, and *LVP*, cited in paragraph 175 above, EU:C:2014:2465, paragraph 47).

178 As regards the transposition of the WTO Anti-Dumping Agreement by Article 9(5) of the basic regulation, it should be observed that that provision, the original version of which is applicable in the present case, was amended by Regulation No 765/2012 because of the adoption, by the WTO Dispute Settlement Body ('the DSB'), of the Report of the Appellate Body of 15 July 2011 (WT/DS397/AB/R, 'the Report of the Appellate Body of 15 July 2011 in the "fasteners" case') and the Report of the Panel of 3 December 2010 (WT/DS397/R), modified by the Report of the Appellate Body, in the case entitled 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China' ('the "fasteners" case').

179 In the preamble to Regulation No 765/2012, the legislature of the European Union states that, in the WTO Reports, it was found, inter alia, that Article 9(5) of the basic regulation was inconsistent with Articles 6.10, 9.2 and 18.4 of the WTO Anti-Dumping Agreement and Article XVI:4 of the Agreement Establishing the WTO (OJ 1994, L 336, p. 3). The legislature of the European Union confirmed, in recitals 5 and 6 of Regulation No 765/2012, that it had made amendments to Article 9(5) of the basic regulation with the intention of implementing the recommendations and rulings of the DSB in the 'fasteners' case in a manner that complied with the European Union's WTO obligations.

180 It is clear that it follows from the very adoption of Regulation No 765/2012 that the legislature of the European Union considered that, by Article 9(5) of the basic regulation, the European Union had intended to implement a particular obligation assumed in the context of the WTO contained, in this instance, in Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement.

181 First, it follows from those findings that Regulation No 765/2012 acknowledges that Article 9(5) of the basic regulation transposes into EU law the obligations arising under Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement, as the applicants correctly note.

182 Second, it must be noted that the amendments to the wording of Article 9(5) of the basic regulation made under Regulation No 765/2012 concern the amendment of an exception to the obligation to impose individual anti-dumping duties in relation to exporters to whom Article 2(7)(a) of the basic regulation applied. They do not relate, in essence, to the part of Article 9(5) of the basic regulation that is relevant to the present case and according to which the regulation imposing the duty is to specify the duty for each supplier or, if that is impracticable, the supplying country concerned.

183 More specifically, it must be noted that the legislature of the European Union did not consider it necessary to amend the term 'imports of a product from all sources found to be dumped and causing injury' or the terms 'supplier' and 'impracticable' for the purpose of implementing the recommendations and rulings of the DSB in the 'fasteners' case in a manner that complied with its WTO obligations. Therefore, the relevant terms in the present case have the same meaning in Article 9(5) of the basic regulation in its original version as in the version following the amendment by Regulation No 765/2012.

184 Consequently, it follows from the foregoing considerations that Article 9(5) of the basic regulation in its original version, in so far as it is relevant to the present case, must be interpreted in a manner that is consistent with Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement.

Whether the four sampled US producers have a right to have applied to them an individual anti-dumping duty under Article 9(5) of the basic regulation

185 The applicants submit that producers included in the sample, such as the four sampled US producers, have the right to have applied to them an individual anti-dumping duty under Article 9(5) of the basic regulation.

186 The Council contends that neither the WTO Anti-Dumping Agreement nor the basic regulation requires the institutions to do the 'impossible'. Where the institutions are unable to trace each purchase or to compare the normal values with the corresponding export prices, as in the present case, they are not required to impose individual anti-dumping measures for each producer.

187 In determining whether a sampled producer of the dumped product had a right to have applied to it an individual anti-dumping duty, it should be observed that Article 9(5) of the basic regulation and Article 9.2 of the WTO Anti-Dumping Agreement lay down that, in principle, an anti-dumping duty is to be imposed individually on each supplier on imports of a product from all sources found to be dumped and causing injury. It is clear from the wording of those provisions that an operator that is not considered to have the status of 'supplier' has no right to the imposition of an individual anti-dumping duty.

188 In that context, it should be observed that point (a)(i) of paragraph 624 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case states that Article 9(5) of the basic regulation concerns not only the imposition of anti-dumping duties, but also the calculation of dumping margins.

189 As regards WTO law, it must be noted that, in cases where the authorities apply a sampling method, Article 6.10.2 of the WTO Anti-Dumping Agreement provides that they must determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual

examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation.

190 It follows from that provision that, except where the number of exporters or producers is very large, the investigating authority is supposed to determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation. In this connection, in paragraph 6.90 of the Report of the Panel of 28 September 2001 (WT/DS189/R) in the case entitled 'Argentina — Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy', it was observed that the general rule in the first sentence of Article 6.10 of the WTO Anti-Dumping Agreement, that individual margins of dumping be determined for each known exporter or producer of the product under investigation, is fully applicable to exporters who are selected for examination under the second sentence of Article 6.10. The second sentence of Article 6.10 allows an investigating authority to limit its examination to certain exporters or producers, but it does not provide for a derogation from the general rule that individual margins be determined for those exporters or producers that are examined. If even producers that were not included in the original sample are entitled to an individual margin calculation, then it follows, according to the report, that producers that were included in the original sample are so entitled as well.

191 Therefore, it must be held that the investigating authority is supposed to determine an individual margin of dumping for any exporter or producer included in the sample of suppliers of the dumped product.

192 It follows that, under WTO law, any exporter or producer included in the sample and who then cooperated with the investigating authority throughout the investigation satisfies the conditions for being considered to be a 'supplier' within the meaning of Article 9.2 of the WTO Anti-Dumping Agreement.

193 As regards the provisions of the basic regulation, it must be observed that, as already stated in paragraphs 183 and 184 above, Article 9(5) of that regulation in its original version, in so far as it is relevant to the present case, must be interpreted in a manner that is consistent with the provisions of the WTO Anti-Dumping Agreement. Furthermore, Article 17(1) of the basic regulation also provides that, in cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples. Article 17(3) of the basic regulation states that, where the Commission uses sampling, an individual margin of dumping is, nevertheless, to be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time. It

must be noted that it is also clear from those provisions of the basic regulation, interpreted in a manner that is consistent with WTO law, that, even if producers that were not included in the original sample are entitled to an individual margin calculation, *a fortiori*, producers that were included in the original sample are so entitled as well. In this connection, it should also be pointed out that the last sentence of Article 9(6) of the basic regulation states that individual duties are to be applied to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17 of that regulation.

194 It follows that, in accordance with the provisions of the basic regulation, any exporter or producer included in the sample of suppliers of the dumped product and who then cooperated with the institutions throughout the investigation satisfies the conditions for being considered to be a 'supplier' within the meaning of Article 9(5) of that regulation.

195 In this connection, it must be recalled that the objective of selecting a sample of exporting producers is to establish as precisely as possible, in a limited investigation, the pressure on prices to which the European Union industry is subjected. Therefore, the Commission has the power to alter, at any time, the composition of a sample according to the needs of the investigation. Indeed, no provision in the WTO Anti-Dumping Agreement or in the basic regulation requires the institutions to retain the producers initially sampled in the sample of suppliers of the dumped product if the institutions consider that those producers do not have the status of suppliers or that they do not constitute sources of the imports of the dumped product causing injury. As regards whether an operator ought to be retained in a sample, it must be noted that the Commission enjoys a broad discretion by reason of the complexity of the economic, political and legal situations which it has to examine (see, by analogy, judgment of 27 September 2007 in *Ikea Wholesale*, C-351/04, ECR, EU:C:2007:547, paragraph 40). However, to the extent that the Commission does not exclude any producer forming part of the sample of suppliers of the dumped product, it is, in principle, required to calculate an individual dumping margin and to impose an individual anti-dumping duty for each of those producers.

196 It is in the light of those considerations that the Court should examine whether the four sampled US producers had a right to have applied to them an individual anti-dumping duty under Article 9(5) of the basic regulation.

197 In the present case, it should be noted, first of all, that although the Commission excluded a producer initially sampled on the ground that the bioethanol manufactured by it had not been exported to the European Union and that, consequently, it was not a source of the dumped product, it nevertheless retained the four sampled US producers in the sample of suppliers of the dumped product until the end of the administrative proceeding.

198 As regards the existence of imports into the European Union of bioethanol from the four sampled US producers and found to be dumped and causing injury, it was stated, in paragraphs 93 to 104 above, that part of the bioethanol manufactured by them had been exported to the European Union and that the exports from that production were, from the coming into force of the contested regulation, subject to the anti-dumping duty it had imposed. Furthermore, paragraph 338 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case states that the requirements set out in Article 9.2 of the WTO Anti-Dumping Agreement, that anti-dumping duties be collected in appropriate amounts in each case and from all sources, relate to the individual exporters or producers subject to the investigation. In this connection, recital 60 of the contested regulation states that the investigation covered producers of bioethanol, on the one hand, and traders/blenders which were exporting the product concerned to the European Union market, on the other. It follows that the four sampled US producers are 'sources' of the imports of the product subject to the anti-dumping duty imposed by the contested regulation, within the meaning of Article 9(5) of the basic regulation and Article 9.2 of the WTO Anti-Dumping Agreement.

199 In addition, it must be observed that the Council does not contest the fact that the four sampled US producers cooperated with the institutions throughout the investigation and that there was therefore no reason to exclude them from the sample for non-cooperation.

200 Moreover, it must be pointed out that the institutions did not exclude the four sampled US producers from the sample because they did not have the status of supplier. On the other hand, in recital 63 of the contested regulation, the Council states that the structure of the bioethanol industry and the way the product concerned was produced and sold in the US market and exported to the European Union made it impracticable to establish individual dumping margins for US producers. According to the Council, it was unable — with regard to the sampled producers — to trace purchases individually or to compare the normal values with the relevant export prices, and it concluded that it was not possible for it to determine individual dumping margins under Article 9(5) of the basic regulation. It appears from that reasoning that the Council wished to apply the anti-dumping duty to products manufactured by the four sampled US producers without drawing a distinction between situations in which they were exported by the traders/blenders and situations in which they were exported by the four sampled US producers.

201 It follows that, by retaining the four sampled US producers as members of the sample of US producers and exporters, the Commission therefore recognised that they were 'suppliers' of the dumped product and, consequently, that the Council was, in principle, required, under Article 9(5) of the basic regulation, to calculate an individual dumping margin and to impose individual anti-dumping duties for each of them.

202 That finding is not called in question by the Council's argument that, where the institutions are unable to trace each purchase or to compare the normal values with the corresponding export prices, as in the present case, they are not required to impose individual anti-dumping measures for each producer.

203 At the outset, it must be noted that that the Court of Justice held in the judgment of 15 November 2012 in *Zhejiang Aokang Shoes* v *Council* (C-247/10 P, EU:C:2012:710, paragraph 33) that Article 2(7) of the basic regulation is one of the provisions of that regulation concerned solely with the determination of normal value, whereas Article 17 of that regulation — concerning sampling — is one of the provisions relating to, inter alia, the methods available for determining the dumping margin and that, therefore, the provisions differ in purpose and content. In this connection, it must be observed that the same principle applies, by analogy, to the relationship between Article 2(8) and (9) of the basic regulation concerning one of the relevant values for calculating the dumping margin, on the one hand, and Article 9(5) of that regulation concerning the dumping margin itself, on the other. Therefore, the provisions of the basic regulation concerning the determination of normal value or the export price differ in content and purpose from the provisions relating to the methods available for determining the dumping margin, such as those provided for in Article 9(5) and Article 17 of that regulation.

204 Furthermore, it is also apparent from paragraph 325 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case that the fact that an authority has to reconstruct normal value and/or the export price for one or more exporters or producers does not necessarily imply an exception to the general rule relating to the determination of individual dumping margins and that dumping margins based on constructed normal value and export price based on the same information for many suppliers are not the same as a country-wide margin.

205 In this connection, it should be pointed out that neither Article 9(5) of the basic regulation nor Articles 6.10 or 9.2 of the WTO Anti-Dumping Agreement provide that the institutions must be able to trace each purchase and to compare the normal values with the corresponding export prices in order to be required to calculate an individual dumping margin and to impose an individual anti-dumping duty for each supplier. Such difficulties therefore have no bearing on whether an individual anti-dumping duty has to be imposed and it should be observed that, within the framework of the basic regulation, there are other instruments for remedying such a situation.

206 However, where the institutions encounter difficulties in determining the normal value or the export price for certain producers or exporters, Article 2(3) and (9) of the basic regulation sets out the rules relating to the possibility of reconstructing those values.

207 Article 2(9) of the basic regulation provides that, in cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any reasonable basis. In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, is to be made so as to establish a reliable export price, at the European Union frontier level.

208 Furthermore, and on a different point, Article 18(1) and (3) of the basic regulation lays down the conditions under which the institutions may use the facts available where an interested party does not provide necessary information or where it provides information that is not ideal in all respects, respectively. It was stated, inter alia, in paragraphs 7.215 to 7.216 of the Report of the Panel of 22 April 2003 (WT/DS241/R) in the case entitled 'Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil', that the fact that the investigating authority receives information that is not usable or is unreliable should not prevent the calculation of an individual margin of dumping for an exporter, since the WTO Anti-Dumping Agreement expressly allows investigating authorities to complete the data with regard to a particular exporter in order to determine a dumping margin if the information provided is unreliable or necessary information is simply not provided.

209 In the present case, as regards the normal value with regard to the four sampled producers, it is clear from paragraph 45 of the provisional disclosure document that the Commission itself explained that it was able to reconstruct, pursuant to Article 2(3) of the basic regulation, the normal value with regard to those producers on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits. The Council does not contest that statement.

210 In so far as the Council states, in recital 76 of the contested regulation, that an export price and a dumping margin could not reliably be established for the sampled US producers, it must be pointed out that Article 2(9) of the basic regulation allows an export price to be reconstructed in cases where there is no export price for an operator covered by the investigation. Indeed, as stated in paragraph 207 above, that provision allows the export price to be reconstructed on the basis of the price at which the imported products are first resold to an independent buyer or on any other reasonable basis, with appropriate adjustments. In this connection, it should be recalled that it follows from the case-law cited in paragraph 203 above, that although Article 2(8) and (9) of the basic regulation exhaustively lays down the possible methods for determining the export price, a difficulty in determining the latter has no bearing on whether there is an obligation to apply an individual anti-dumping duty to certain operators.

211 The Council's argument that the institutions were not required to impose individual anti-dumping duties for each sampled producer in the present case must therefore be rejected.

212 In the light of the finding set out in paragraph 201 above, it is therefore appropriate, next, to examine whether the Council was entitled to rely on an exception to the obligation to determine an individual dumping margin for the four sampled US producers in the present case.

Whether it was impracticable to impose individual anti-dumping duties in the present case

213 The next aspect of the dispute between the parties is focused on the interpretation of the term 'impracticable' used in Article 9(5) of the basic regulation.

214 According to the applicants, the term 'impracticable' must, in essence, be interpreted in a manner that is consistent with Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement and with the terms of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case.

215 The Council submits that the second subparagraph of Article 9(5) of the basic regulation is broader in scope than those provisions of the WTO Anti-Dumping Agreement, on the ground that it does not specify the circumstances in which it is 'impracticable' to apply individual duties. It refers in this connection to the principle that the EU authorities have to interpret EU legislation, so far as possible, in a manner that is consistent with international law. Accordingly, the Council submits, in essence, that that difference on its own justifies a different interpretation of the term 'impracticable' in the context of Article 9(5) of the basic regulation.

216 In the first place, it is appropriate to examine whether Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement allow an exception to be made to the obligation to determine an individual margin of dumping for each known exporter or producer concerned that might justify the imposition of a countrywide anti-dumping duty in the present case.

217 As regards Article 6.10 of the WTO Anti-Dumping Agreement, paragraphs 316 to 318 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case state that the first sentence of Article 6.10, that the authorities 'shall ... determine' an individual margin of dumping for each known exporter or producer concerned, lays down a mandatory rule and does not connote a preference. Those paragraphs also state that that obligation is not absolute and that there is 'the possibility of exceptions'. Sampling is the only exception to the determination of individual dumping margins for each known exporter or producer concerned that is expressly provided for in Article 6.10 of that agreement. Thus, the second sentence of Article 6.10 provides for an exception in cases where the number of exporters, producers, importers or types of products involved is so large as to make such

determinations impracticable. In such cases, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples that are statistically valid, or to the largest percentage of the volume of exports from the country in question that can reasonably be investigated.

218 According to paragraph 320 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case, the objective of the term 'shall, as a rule, determine', in Article 6.10 of the WTO Anti-Dumping Agreement, is to not express an obligation that would conflict with other provisions in the same agreement permitting derogation from the rule to determine individual margins of dumping apart from the sampling exception. Such exceptions ought to be provided for in the agreements covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes ('the covered agreements') so as to avoid the circumvention of the obligation to determine individual margins of dumping. However, the Members of the WTO do not have 'an open-ended possibility to create exceptions' to Article 6.10 of the WTO Anti-Dumping Agreement.

219 In paragraph 323 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case, the Appellate Body rejected the argument that the assigning of the dumping margin of the producer to the trader that exports the product is an exception. The reference to 'exporters or producers' in Article 6.10 of the WTO Anti-Dumping Agreement allows the authorities to determine not a separate margin of dumping for the producer and the exporter of the same product, but to determine a single margin for both. That constitutes an application of the obligation to determine individual margins of dumping.

220 According to paragraph 327 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case, any exception to the general rule laid down in the first sentence of Article 6.10 of the WTO Anti-Dumping Agreement must therefore be provided for in the covered agreements.

221 Lastly, it is stated, in paragraph 328 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case, that the WTO agreements do not provide for any exception such as that referred to in Article 9(5) of the basic regulation, concerning individual exporting producers in a non-market economy country, to whom Article 2(7) of the basic regulation applies and who are subject to a countrywide anti-dumping duty, unless those exporters can demonstrate that they satisfy the conditions for individual treatment.

222 As regards Article 9.2 of the WTO Anti-Dumping Agreement, it is explained in paragraph 344 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case that there is significant parallelism between Article 9.2 and Article 6.10 of the WTO Anti-Dumping Agreement, inasmuch as the latter requires the determination of individual margins of dumping, the consequence of which is that the authorities in question are required to impose anti-dumping duties on an individual basis as is provided for in Article 9.2 of that agreement.

Furthermore, the Appellate Body noted that the term 'impracticable' is used in both of those provisions to describe when the exception applies, thereby indicating that both exceptions refer to a situation in which an authority determines dumping margins based on sampling. However, the WTO Appellate Body also observed that the question before it did not concern the scope of the exception provided for in Article 9.2 of the WTO Anti-Dumping Agreement, nor did it concern whether that exception and the exception provided for in Article 6.10 of that agreement overlapped exactly.

223 However, in paragraph 354 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case, it is concluded that Article 9.2 of the WTO Anti-Dumping Agreement requires the authorities to specify the duties imposed on each supplier, except where this is impracticable, when several suppliers are involved.

224 Lastly, paragraph 376 of the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case states that Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement do not preclude the investigating authority from determining a single dumping margin and a single dumping duty for a number of exporters if it establishes that they constitute a single entity for the purposes of applying those provisions.

225 Therefore, it is clear from examining the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case that, where the authority uses sampling — as in the present case — the anti-dumping agreement establishes the obligation to determine individual dumping margins and to impose individual anti-dumping duties for each supplier cooperating in the investigation and that there are, in principle, exceptions to that obligation, first, in the case of producers or exporters not included in the sample, apart from those referred to in Article 6.10.2 of the WTO Anti-Dumping Agreement, and, second, in the case of operators constituting a single entity. However, it does not follow from the WTO Anti-Dumping Agreement that there is an exception to the obligation to impose an individual anti-dumping duty on a sampled producer which cooperated in the investigation where the institutions consider that they are unable to establish an individual export price for that producer.

226 In the second place, it is necessary to examine whether the findings in the Report of the Appellate Body of 15 July 2011 in the 'fasteners' case concerning the interpretation of Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement apply also where the Council applies Article 9(5) of the basic regulation.

227 As regards the Council's argument that the obligation to interpret the basic regulation in the light of the WTO Anti-Dumping Agreement is limited on the ground that the wording of the provisions in question differs, first, it must be recalled that Article 9(5) of the basic regulation and Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement all use the term 'impracticable'. In addition, it should be observed that there is nothing in the wording of Article 9(5) of the basic

regulation that precludes an interpretation of the term 'impracticable' consistent with Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement. Furthermore, the mere fact that Article 9(5) of the basic regulation provides no details with regard to the term 'impracticable' does not lead to the conclusion that Article 9(5) thus provides for an exception that is broader in scope than that provided for in the provisions of the WTO Anti-Dumping Agreement, as the Council contends.

228 Second, it must be recalled that it is clear from the wording of Article 9(5) of the basic regulation that the determination of a countrywide dumping margin and the imposition of a countrywide anti-dumping duty is an exception to the general rule. A 'broader' interpretation of the term 'impracticable' such as proposed by the Council would allow it an extremely broad discretion as regards the possibility of not imposing individual anti-dumping duties. Such an interpretation would run counter to the legislature's objective of implementing the recommendations and rulings of the DSB in the 'fasteners' case in a manner that complies with its WTO obligations (see paragraph 179 above).

229 It is clear from the preamble to Regulation No 765/2012 that the legislature of the European Union intended to implement the decision of the WTO Appellate Body in that case in full. Specifically, by Article 1 of Regulation No 765/2012, the legislature of the European Union deleted, in the first subparagraph of Article 9(5) of the basic regulation, the reference to Article 2(7)(a) of that regulation, as well as the second subparagraph, which specified the conditions under which individual exporting producers in non-market economy countries could demonstrate that they satisfied the conditions for individual treatment. In addition, it is apparent from recital 2 of Regulation No 765/2012 that the legislature of the European Union inserted a new second subparagraph into Article 9(5) of the basic regulation in order to include the clarifications made by the WTO Appellate Body as to the circumstances in which the authorities may determine a single dumping margin and a single dumping duty for several exporters constituting a single entity.

230 Moreover, as stated in paragraph 182 above, the amendments made to Article 9(5) of the basic regulation do not relate, in essence, to the part that is relevant to the present case and according to which the regulation imposing the duty is to specify the duty for each supplier or, if that is impracticable, the supplying country concerned.

231 It follows that the Council is wrong in contending that the wording of Article 9(5) of the basic regulation and Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement, to the extent that it is relevant to the present case, is substantially different. Therefore, the Council's argument that the term 'impracticable', used in Article 9(5) of the basic regulation, is broad in scope must be rejected.

232 It follows from the foregoing that the term 'impracticable' used in Article 9(5) of the basic regulation must be interpreted in a manner that is consistent with the

analogous term used in Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement. Consequently, where the authority uses sampling, the term 'impracticable' used in Article 9(5) of the basic regulation allows, in principle, for two exceptions to the determination of individual dumping margins and the imposition of individual anti-dumping duties for operators which have cooperated in the investigation, namely, first, in the case of producers or exporters not included in the sample, apart from those in respect of whom Article 17(3) of the basic regulation provides for an individual margin of dumping, and, second, in the case of operators constituting a single entity. In other words, where the institutions use sampling, as in the present case, in principle, an exception to the determination of individual dumping margins and the imposition of individual anti-dumping duties is possible only in respect of undertakings which do not form part of a sample and which do not otherwise have a right to have their own individual anti-dumping duty. In particular, Article 9(5) of the basic regulation does not allow for any exception to the obligation to impose an individual anti-dumping duty on a sampled producer which cooperated in the investigation where the institutions consider that they are not in a position to establish an individual export price for that producer.

233 Therefore, it follows from Article 9(5) of the basic regulation that, where producers and/or exporters form part of a sample, the institutions are required to specify the anti-dumping duties payable by each supplier.

234 In the third place, it is in the light of those considerations that the Court should examine whether, in the present case, the Council was entitled to rely on an exception to the obligation to determine an individual margin of dumping for each known exporter or producer concerned that might justify the imposition of a countrywide anti-dumping duty.

235 In the present case, it is clear from recitals 6 to 10 of the contested regulation that, because of the large number of exporting producers in the United States, the Commission decided to use sampling pursuant to Article 17 of the basic regulation.

236 Recital 64 of the contested regulation states that a countrywide dumping margin was established for the United States. Consequently, the contested regulation imposes a countrywide anti-dumping duty at a rate of EUR 62.30 per tonne net, applicable in proportion, by weight, of the total content of bioethanol.

237 In recital 63 of the contested regulation, the Council justifies the determination of a countrywide dumping margin in the present case by stating that the structure of the bioethanol industry and the way the product in question was produced and sold in the US market and exported to the European Union made it impracticable to establish individual dumping margins for US producers. According to the Council, the producers in the US sample did not export the product concerned to the European Union and the investigated traders/blenders sourced bioethanol from

various producers, blended it and sold it, in particular for export to the European Union. Therefore, the Council states that it was not possible to trace all purchases individually and compare the normal values with the relevant export prices, nor was it possible to identify the producer at the moment of the export to the European Union.

238 In essence, the Council submits therefore that it could not determine individual dumping margins under Article 9(5) of the basic regulation on the ground that it was not possible reliably to establish an export price and a dumping margin for the four sampled US producers given that they had not made any exports of the product concerned to the European Union during the investigation period, that it was therefore unable to trace their products exported to the European Union and that they generally had no idea of the timing of the export nor the price paid or payable by European Union importers (see recital 76 of the contested regulation).

239 In this connection, first, it must be pointed out that the Council has therefore based the application of the exception to the rule of determining individual dumping margins and of imposing individual anti-dumping duties on reasons other than the exception concerning producers or exporters not included in the sample when the authority uses sampling or the exception concerning operators constituting a single entity (see paragraphs 225 and 232 above).

240 Second, it must be noted that the Council has not contended that the exception it applied was based on another exception arising under the covered agreements, to which reference is made in paragraphs 218 and 220 above.

241 Therefore, the Council was wrong in concluding that the imposition of individual anti-dumping duties for the members of the sample of US exporters was 'impracticable' within the meaning of Article 9(5) of the basic regulation.

242 As regards the possibility of calculating individual dumping margins, it has been explained in paragraphs 202 to 211 above that, where the institutions encounter difficulties in determining the normal value or the export price for certain producers or exporters, Article 2(3) and (9) of the basic regulation sets out the rules to enable those values to be reconstructed.

243 Furthermore, as regards the considerations that it was not possible to trace the products of the sampled producers that had been exported to the European Union and that the sampled producers generally had no idea of the timing of the export nor the price paid or payable by European Union importers, suffice it to state that the Commission, exercising its broad discretion, could have excluded the four sampled US producers from the sample of producers and exporters on the ground that they were not suppliers involved in the export of bioethanol to the European Union, given that — according to the Commission and the Council — they were not identifiable at the moment of the export of the bioethanol to the European

Union. Yet the Commission retained them in the sample throughout the investigation.

244 Therefore, the fact that the institutions considered that there were difficulties in tracing individual purchases or in comparing the normal values with the corresponding export prices for the sampled producers did not permit the inference that, in the present case, the imposition of individual anti-dumping duties for the members of the sample of US exporters was 'impracticable' within the meaning of Article 9(5) of the basic regulation.

245 It must be concluded that the contested regulation infringes Article 9(5) of the basic regulation on the ground that it imposes a countrywide anti-dumping duty so far as the four sampled US producers are concerned.

246 It follows from the foregoing that the second part of the first plea in law must be upheld and, therefore, the first plea in law must be upheld in its entirety, and it is not necessary to examine the other parts of that plea in law or the arguments raised in the second part, by which the applicants rely, in a generic manner, on breaches of the principles of legal certainty and legitimate expectations and of the obligation to state reasons.

The tenth plea in law, alleging an infringement of Article 6(7), Article 19(1) and (2) and Article 20(2), (4) and (5) of the basic regulation, infringement of the rights of the defence, breach of the principles of non-discrimination and sound administration and a failure to provide adequate reasons

247 Since the present action is admissible on the ground that it was brought by the applicants in their own right, it is appropriate also to examine the merits of the tenth plea in law.

248 In the tenth plea in law, the applicants claim, in essence, that there were several procedural irregularities on the part of the institutions which resulted in infringements of procedural rights.

249 The tenth plea in law is divided into four parts, respectively alleging, first, infringement of Article 20(2) and (4) of the basic regulation and an inadequate statement of reasons; second, infringement of Article 20(5) of the basic regulation; third, infringement of Article 6(7) and Article 19(1) and (2) of that regulation and of the rights of the defence; and, fourth, infringement of Article 20(5) of the basic regulation and of the rights of the defence.

Preliminary observations

250 According to settled case-law, respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of EU law which must be guaranteed even in the absence of any rules governing the proceedings in

question. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views (see judgment of 1 October 2009 in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, ECR, EU:C:2009:598, paragraph 83 and the case-law cited).

251 Respect for the rights of the defence is of crucial importance in procedures such as that followed in the present case (see judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 250 above, EU:C:2009:598, paragraph 93 and the case-law cited).

252 The rights of the defence are infringed where there is a possibility that, as a result of an irregularity on the part of the Commission, the outcome of the administrative procedure conducted by the Commission might have been different. An applicant establishes that there has been such an infringement where it demonstrates to the requisite legal standard, not that the contested decision would have been different in content, but rather that it would have been better able to ensure its defence had there been no irregularity, for example because it would have been able to use for its defence documents to which it was denied access during the administrative procedure (see, to that effect, judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 250 above, EU:C:2009:598, paragraph 94 and the case-law cited).

253 In addition, provided that a regulation imposing definitive anti-dumping duties falls within the general scheme of a series of measures, it cannot be required that its statement of reasons specify the often very numerous and complex matters of fact and law dealt with in the regulation or that the institutions adopt a position on all the arguments relied on by the parties concerned. On the contrary, it is sufficient for the institution that adopted the measure to set out the facts and the legal considerations having decisive importance in the scheme of the contested regulation (see, to that effect, judgment of 13 September 2010 in *Whirlpool Europe* v *Council*, T-314/06, ECR, EU:T:2010:390, paragraph 114).

254 However, it must be noted that, under Article 44(1)(c) of the Rules of Procedure of 2 May 1991, an application is required to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. According to settled case-law, those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (see, to that effect, order of 11 January 2013 in *Charron Inox and Almet* v *Council and Commission*, T-445/11 and T-88/12, EU:T:2013:4, paragraph 57).

255 It is in the light of those considerations that the applicants' arguments under the four parts of the tenth plea in law should be examined.

The first part of the tenth plea in law, alleging that the definitive disclosure document was incomplete, infringement of Article 20(2) and (4) of the basic regulation and errors of reasoning in the contested regulation

256 The applicants claim that the definitive disclosure document did not contain sufficient information on various elements concerning the dumping margin and injury calculations, certain adjustments, the European Union industry and the amendment of the period of validity of the measures imposed to five years. According to the applicants, it follows that there was an infringement of Article 20(2) and (4) of the basic regulation and that the contested regulation is therefore inadequately reasoned. In this connection, the applicants raise seven separate complaints.

257 The Council contests those arguments.

258 At the outset, it should be observed that, according to the heading of the tenth plea in law in the application, the applicants claim 'multiple violations of the rights of defence of the applicants and their members'. However, as regards the first part of the present plea in law, it is clear from paragraph 152 of the application that it concerns 'the definitive disclosure [document received by the applicants]'. Furthermore, the applicants do not in any way state in the application that the present part concerns the disclosure of the definitive disclosure document to another party to the administrative proceeding. It follows that the present part must be interpreted as relating to alleged infringements of the procedural rights of the applicants as interested parties during the anti-dumping proceeding.

259 It must be noted that Article 20(2) of the basic regulation provides, inter alia, that complainants, importers and exporters and their representative associations, and representatives of the exporting country may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures. Under Article 20(4) of that regulation, final disclosure is to be given in writing and, due regard being had to the protection of confidential information, as soon as possible and, normally, no later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action. It also provides that, where the Commission is not in a position to disclose certain facts or considerations at that time, these are to be disclosed as soon as possible thereafter.

260 By the first complaint, the applicants submit that the definitive disclosure document provided no information regarding the countrywide dumping and injury margin calculations other than some general statements. That made it impossible for the applicants 'and their members' to provide any comments whatsoever on whether the calculations were free from clerical errors, whether the methodology

used was free from methodological errors, whether domestic sale prices had been brought back to the ex-factory level and whether the necessary adjustments had been made.

261 First, it should be stated, as regards the injury margin, that the first complaint is inconsistent with the second complaint (see paragraphs 268 to 270 below), according to which 'an explanatory note and excel sheets were provided [by the Commission] in support of the injury margin calculations'. Therefore, the first complaint must be rejected in so far as it concerns information relating to the injury margin.

262 Second, as regards the dumping margin, it must be observed that the applicants have not identified in their written pleadings the 'general statements' relating to the dumping margin calculation in the definitive disclosure document to which they refer. The applicants have not explained the reasons why they consider those statements to be inadequate and they have not identified the information which — in their view — they needed. In the absence of such information, in accordance with the case-law cited in paragraph 252 above and that cited in paragraph 254 above, the first complaint must be rejected as inadmissible.

263 In any event, as regards the dumping margin, it should be pointed out that, according to the considerations concerning dumping in recitals 60 to 74 of the definitive disclosure document, which correspond, in essence, to recitals 60 to 62, 64 to 68, 72, 74 and 75 and to parts of recitals 70, 73 and 76 of the contested regulation, the dumping margin was determined in the present case on the basis of data provided by unrelated traders/blenders, namely their domestic sales prices for the normal value and their prices to customers in the European Union for the export price. Consequently, that information constituted generally, as the Council correctly observes, confidential data of the traders/blenders that could not be disclosed, in the absence of special circumstances, to interested parties such as the applicants who represented the interests of their suppliers.

264 Similarly, it must be observed that the applicants have not established how they would have been better able to ensure their defence in the absence of that irregularity, as referred to in the case-law cited in paragraph 252 above. They have not put forward any argument as to an error of fact or in law on the part of the institutions, but state merely that it was impossible for them to provide comments on hypothetical situations, such as whether the calculations were free from clerical errors, whether the methodology used was free from methodological errors and whether the necessary adjustments had been made. Furthermore, it should be noted that the applicants have in no way explained how they would have been in a position to provide relevant comments on the non-confidential information relating to the prices of the traders/blenders in question, nor have they explained the adjustments that — in their view — might have been necessary.

265 As regards the claim that it was impossible for them to provide comments on 'whether domestic sale prices ha[d] been brought back to the ex-factory level', the applicants have not specified the calculation to which they refer. Consequently, that argument has not been raised in a coherent and intelligible manner as referred to in the case-law cited in paragraph 254 above and must be rejected as inadmissible. In any event, it should be noted that recital 94 of the definitive disclosure document and recital 97 of the contested regulation state that the weighted average sales prices per product type of the sampled European Union producers charged to unrelated customers on the European Union market were indeed adjusted to an 'ex-works' level.

266 Third, in so far as the applicants claim that 'their members' were prevented from providing certain comments, suffice it to observe that the applicants have not explained in their written pleadings which of their members are concerned by their argument. Consequently, the applicants' written pleadings do not indicate in an intelligible manner, as referred to in the case-law cited in paragraph 254 above, to which of the members they are referring and the first complaint should therefore be rejected as inadmissible in so far as it concerns an infringement of the procedural rights of the applicants' members during the anti-dumping proceeding.

267 It follows that the first complaint must be rejected in its entirety.

268 By the second complaint, the applicants submit that, as regards the two traders/blenders that cooperated in the investigation, the Commission did not provide an explanatory note on the method used to calculate the dumping margin, nor did it provide an electronic version of the 'excel' sheets supporting the dumping margin calculation, which 'render[ed] the understanding of the end-result even more difficult'.

269 It should be noted that the applicants have not explained in what way, in the absence of the alleged irregularity, the outcome of the anti-dumping proceeding might have been different, contrary to what is required by the case-law cited in paragraph 252 above.

270 In any event and in any case, first, it must be noted that the Council contends that the two traders/blenders that cooperated in the investigation did indeed receive the dumping margin calculation and an additional disclosure document following their comments on the definitive disclosure document. The Council maintains that it could not add those documents to the non-confidential file because they contained information that could not be disclosed to the applicants for reasons of confidentiality. The applicants do not contest that argument. Second, as regards the alleged absence of an explanation concerning the method used to calculate the dumping margin, the applicants have not indicated in what respect they consider the explanations given in recitals 72 and 73 of the definitive disclosure document, as reproduced in recitals 74 and 75 of the contested regulation, to be inadequate. Third, as regards the absence of 'excel' sheets, it should be stated that the

institutions are in no way required to provide interested parties with an 'electronic version of the "excel" sheets supporting the dumping margin calculation'.

271 It follows that the second complaint must be rejected.

272 By the third complaint, the applicants submit that the Commission failed to address, in the definitive disclosure document, the arguments put forward by the applicants and their members in their comments on the provisional disclosure document, in particular, 'on specific reasons, based on which the Commission found the sampled companies not to have an export price, despite the evidence provided by a number of the applicants' members'.

273 In the first place, as regards the applicants' arguments in their observations provided in response to the provisional disclosure document concerning the sampled companies not having an export price, it must be pointed out, first, that final disclosure, within the meaning of Article 20(2) of the basic regulation, concerns the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures. It follows that no obligation arises under that provision on the Commission to address, in the definitive disclosure document, the arguments put forward by an interested party in its observations on the provisional disclosure document, if the Commission does not consider that those arguments concern the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures.

274 Second, in the present case, it must be noted that the Commission observed, in recitals 62 and 68 of the definitive disclosure document, which correspond in essence to recitals 63 and 69 of the contested regulation, that the sampled US producers had not exported the product concerned to the European Union, that it was not possible to trace all purchases individually and compare the normal values with the relevant export prices, that it was not possible to identify the producer at the moment of the export to the European Union and that those producers were not aware of the level of the export price to the European Union. On that basis, it rejected the argument of some US producers that the sales price charged by the US producers to unrelated traders/blenders in that country could be used as the export price. The applicants have not explained in what respect those findings are inadequate.

275 In the second place, as regards the arguments that the Commission failed to address — in the definitive disclosure document — the arguments put forward by the applicants and their members in their observations on the provisional disclosure document, and that it did not take into account the 'evidence provided by a number of the applicants' members', it should be noted that the applicants have not identified the arguments that it is claimed the Commission failed to address in the definitive disclosure document, nor by whom, from amongst their members, those arguments were provided, nor what evidence it is claimed the Commission failed to take into account. Therefore, those arguments do not satisfy

the conditions laid down in Article 44(1)(d) of the Rules of Procedure of 2 May 1991, which requires that the basic legal and factual particulars relied on in the action be indicated coherently and intelligibly in the application itself (see paragraph 254 above) and those arguments must, consequently, be rejected as inadmissible.

276 Accordingly, the third complaint must be rejected in its entirety.

277 By the fourth complaint, the applicants submit that the definitive disclosure document provided no explanation for not adjusting the volume of US imports by a fuel ratio, whereas that adjustment had been made for imports from all other countries.

278 In this connection, it should be pointed out that the applicants have not explained, in the present complaint, how, in the absence of the alleged irregularity, the outcome of the anti-dumping proceeding might have been different, contrary to what is required by the case-law cited in paragraph 252 above. In any event, it is clear from the third plea in law that the explanation given in the definitive disclosure document in this connection enabled the applicants to challenge the failure to make an analogous adjustment in the case of imports from the United States. It follows that the fourth complaint must also be rejected as unfounded.

279 By the fifth complaint, the applicants submit that the definitive disclosure document provided no details on why the '*ab initio*' exclusion of producers of E85 blends and similar blends from the European Union industry had not had an impact on the material injury determination. They claim that there is nothing in the file to support the Commission's statement, in its response to the applicants' comments on the definitive disclosure document, that the production of such blends '[was] very limited'.

280 In this connection, the Council has explained in the defence that those allegations are incorrect because the Commission did not exclude E85 blends '*ab initio*'. It states that, according to the information available, there were only a few producers of E85 blends in the European Union and their production appeared to be very limited; the non-confidential questionnaires of two European Union producers indicated that they produced E85 in minor quantities and those minor quantities found were therefore used in the calculations.

281 First, it should be noted that the applicants have not substantiated the expression 'similar blends'. Consequently, the argument concerning the 'similar blends' has thus not been raised in a coherent and intelligible manner as referred to in the case-law cited in paragraph 254 above and must be rejected as inadmissible.

282 Second, the applicants have not contested the veracity of the considerations set out by the Council in the defence. Therefore, it follows from the Council's explanations that the E85 blends were not excluded from the investigation '*ab initio*' and that there was material in the administrative file to support the fact that

the production of the blends in question in the European Union was 'very limited'. Accordingly, the remainder of the fifth complaint must be rejected as unfounded.

283 By the sixth complaint, the applicants submit that, despite the request made by them to the Hearing Officer at the hearing before the Commission, the Council did not provide data relating to the raw material costs of European Union industry producers. They claim that having such data would have allowed them to demonstrate 'with a larger degree of certainty' that the alleged material injury was caused by increased raw material costs of the European Union industry.

284 In this connection, first of all, it should be noted that, at the hearing on 11 September 2012, the applicants requested that they be provided with 'data on trends in the cost of production and raw materials'. According to the minutes of that hearing, the Hearing Officer invited the Commission's investigation team to provide explanations in writing by 18 September 2012 at the latest. It must be pointed out that the applicants have in no way claimed in their written pleadings that the Hearing Officer's request was not appropriately followed up. The applicants have likewise not established that they reiterated their request in the context of final disclosure under Article 20(2) of the basic regulation.

285 Next, it must be noted that the applicants have not provided any evidence indicating that they asked the Council to provide the data in question.

286 Lastly, the Council has explained that the material stating that most European Union industry producers hedged the risk of fluctuation in the prices of raw materials is confidential in nature and that it was therefore not possible to add it to the non-confidential file, a point that is not called in question by the applicants.

287 It follows that the applicants have not established that the institutions failed satisfactorily to respond, within the framework of the obligations arising under Article 20(2) and (4) of the basic regulation, to their requests for access to additional information concerning the raw material costs of the European Union industry. Therefore, the argument underpinning the sixth complaint cannot be accepted.

288 By the seventh complaint, the applicants submit that the additional disclosure document, in which the Commission proposed to amend the period of validity of the definitive anti-dumping measure proposed from three years to five years, was insufficiently reasoned, on the ground that it 'simply stated the negative for 2 of the 3 reasons on the basis of which the Council initially proposed a 3-year period of validity' and 'did not deal with the third reason'.

289 It must be pointed out, as the Council correctly observes — without being contradicted by the applicants in that regard — that, under Article 11(2) of the basic regulation, the normal period of validity of anti-dumping measures is five years. Thus, the additional disclosure document envisaged reverting to the normal period. In this connection, it must be stated that the obligation to state reasons for

anti-dumping measures does not require the institutions to explain why a position which they envisaged at a certain stage of the anti-dumping proceeding turned out to be unfounded (see, to that effect, judgment in *Whirlpool Europe* v *Council*, cited in paragraph 253 above, EU:T:2010:390, paragraph 116).

290 Moreover, the applicants have not explained the impact of the failure to examine, in the definitive disclosure document, the 'third reason' initially relied on by the Commission to justify a period of validity of only three years.

291 Therefore, the seventh complaint must be rejected as unfounded.

292 Given that the seven complaints raised by the applicants cannot be accepted, the applicants' argument that the contested regulation is not 'adequately reasoned' because the definitive disclosure document was incomplete must also be rejected. Consequently, the first part of the tenth plea in law must be rejected as in part inadmissible and in part unfounded.

The second part of the tenth plea in law, alleging that the additional disclosure document was communicated, in the first place, to the Member States and to the complainant and then to the applicants, in breach of the principles of sound administration and non-discrimination, of the rights of the defence and of Article 20(5) of the basic regulation

293 The applicants claim, in essence, that the Commission submitted the proposal to amend the period of validity of the measures from three years to five years to the representatives of the Member States in the Advisory Committee and to the complainant before that information was communicated to the applicants, in breach of the principles of non-discrimination and sound administration, and of the rights of the defence of the applicants and of 'their members'. In addition, they submit that the fact that the Advisory Committee approved the amendment of the period of validity of the measures at a meeting that was held two days before the definitive disclosure document was communicated to the interested parties, and therefore before the applicants' comments, infringed the obligation to take into consideration representations on the definitive disclosure document, laid down in Article 20(5) of the basic regulation.

294 The Council contests the applicants' arguments.

295 It must be recalled that, under Article 20(5) of the basic regulation, '[r]epresentations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter'.

296 In the first place, as regards the alleged infringement of the rights of the defence, suffice it to state that the applicants have not explained how they or their members would have been better able to ensure their defence in the absence of the alleged

irregularity. Therefore, that argument must be rejected in the light of the case-law cited in paragraph 252 above.

297 In the second place, as regards the argument that the complainant was informed of the amendment of the period of validity of the measures before that information was communicated to the other interested parties, the applicants rely on a press release issued on ePure's website on 20 December 2012, in which ePure announced that the European Union had 'gone a step ahead towards' the imposition of anti-dumping measures for a period of five years in the present case as such a 'decision' had been 'endorsed' by a majority of Member States.

298 The Council denies that assertion and maintains in the defence that the Commission informed all interested parties, including the complainant, of the proposal to amend the period of validity of the measures at the same time, namely on 21 December 2012. It adds that it is not required to explain or defend the content of a press release issued by a third party.

299 In this connection, it should be observed that that press release is merely an indication, but it does not prove that the Council or the Commission actually informed the complainant before the applicants of the amendment of the duration of the measures, and that the applicants have not adduced any other evidence in support of their allegation. Consequently, that argument must be rejected on the ground that the applicants have not substantiated it.

300 In the third place, it is appropriate to examine the argument that the proposal to amend the period of validity of the measures was disclosed in advance to the representatives of the Member States in the Advisory Committee.

301 According to the applicants, ePure's press release of 20 December 2012 refers to the vote in the Advisory Committee at a meeting held on 19 December 2012 and shows that the Commission submitted the proposal to increase the period of validity of the measures from three years to five years to the representative of the Member States in the Advisory Committee and to the complainant before that information was communicated to the applicants. The Council contests that argument and states in the defence that the Commission informed the Member States and the interested parties of the proposal to amend the period of validity of the measures at the same time, namely on 21 December 2012.

302 As regards, first, the alleged breach of the principle of non-discrimination by the EU institutions, it should be observed that for the EU institutions to be in breach of that principle, they must be shown to have treated like cases differently, thereby placing some operators at a disadvantage by comparison with others, without such differentiation being justified by the existence of substantial objective differences (judgment of 23 October 2003 in *Changzhou Hailong Electronics & Light Fixtures and Zhejiang Yankon* v *Council*, T-255/01, ECR, EU:T:2003:282, paragraph 60).

303 In this connection, suffice it to point out that, unlike the applicants, the representatives of the Member States in the Advisory Committee are not interested parties in the anti-dumping proceeding. It follows that the applicants and the Member States did not find themselves in comparable situations as referred to in the case-law. Therefore, the disclosure of information to the Member States is not governed by Article 20 of the basic regulation, but is made under Article 15(2) thereof in its original version, which is applicable in the present case, according to which the Commission is to provide the Member States, prior to the meeting of the Advisory Committee, with 'all relevant information'.

304 As regards, second, the alleged breach of the principle of sound administration, it should be recalled that the Commission and the Council are required to respect the fundamental rights of the European Union during the administrative procedure, which include the right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, which groups together a series of specific rights. However, the principle of sound administration does not, in itself, confer rights on individuals, except where it constitutes the expression of specific rights for the purposes of Article 41 of the Charter of Fundamental Rights (judgment of 4 October 2006 in *Tillack* v *Commission*, T-193/04, ECR, EU:T:2006:292, paragraph 127). Yet the applicants have not in any way relied on such a specific right.

305 In any event, even if the applicants' argument is construed as alleging that the duty of diligence has been infringed, it should be recalled that that duty requires the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, judgment of 12 December 2014 in *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, ECR (Extracts), EU:T:2014:1076, paragraph 46 and the case-law cited). In the present case, given that the applicants have not adduced any evidence that might show, to the requisite standard, that the Commission or the Council infringed that obligation, the argument relating to the breach of the principle of sound administration must be rejected as unfounded.

306 Therefore, the applicants' argument concerning a breach of the principles of non-discrimination and sound administration must be rejected.

307 In the fourth place, the applicants' argument that Article 20(5) of the basic regulation was infringed because the proposal to amend the period of validity of the measures was submitted to the Advisory Committee and 'ratified' by it before the interested parties had filed observations must be rejected also. Even if that provision creates, as the applicants claim, an obligation 'on the institutions' to take into consideration 'comments on the definitive disclosure [document]', suffice it to point out that the applicants have not explained in what way, in the absence of the alleged irregularity, the outcome of the anti-dumping proceeding might have been different, contrary to what is required by the case-law cited in paragraph 252 above. In any event, it must be recalled that, under Article 9(4) of

the basic regulation in its original version, which is applicable in the present case, the Advisory Committee, which moreover is not an institution, is to be consulted before the Council imposes a definitive anti-dumping duty. Admittedly, Article 15(2) of the basic regulation in its original version states that the Commission is to provide the Member States with 'all relevant information' in advance. However, first, the applicants have not claimed that the Council failed to take their comments submitted on 2 January 2013 on the duration of the measures into consideration when adopting the contested regulation. Second, the applicants have likewise not claimed that their comments submitted on 2 January 2013 contained relevant information that the Commission ought to have communicated to the Member States, in accordance with the same paragraph.

308 The second part of the tenth plea in law must therefore be rejected.

The third part of the tenth plea in law, alleging that access to the non-confidential file of the investigation was incomplete, in breach of the rights of the defence, Article 6(7) and Article 19(1) and (2) of the basic regulation

309 The applicants claim that the Commission refused to grant them access to certain information, certain evidence and certain documents despite several requests made by them in the course of the investigation. They claim that this was contrary to Article 6(7) and Article 19(1) and (2) of the basic regulation and infringed their rights of the defence. The applicants raise five complaints by which they submit that the Commission did not grant full access to the non-confidential file of the investigation.

310 The Council contests the applicants' arguments.

311 Article 6(7) of the basic regulation provides as follows:

'The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with Article 5(10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the [European Union] or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and [which] is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.'

312 Under Article 19(1) of the basic regulation, '[a]ny information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties

to an investigation, shall, if good cause is shown, be treated as such by the authorities'.

313 Article 19(5) of the basic regulation provides as follows:

'The Council, the Commission and Member States, or the officials of any of these, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission and Member States, or any information relating to consultations made pursuant to Article 15, or any internal documents prepared by the authorities of the [European Union] or its Member States, shall not be divulged except as specifically provided for in this Regulation.'

314 Infringement of the right of access to the investigation file can result in the annulment of the contested regulation only if there is a chance, albeit slight, that disclosure of the documents in question might have caused the administrative procedure to have a different result if the undertaking concerned had been able to rely on them during that procedure (see, to that effect, judgment of 16 February 2012 in *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, ECR, EU:C:2012:78, paragraph 174).

315 As regards the first complaint, the applicants submit that the Commission refused to grant access to or provide a non-confidential summary of the Eurostat (Statistical Office of the European Union) database and other national customs databases used to establish the volume and value of various imports.

316 It should be noted that, by the first complaint, the applicants have not explained in what way, in the absence of the alleged irregularity, the outcome of the anti-dumping proceeding might have been different, contrary to what is required by the case-law cited in paragraphs 252 and 314 above. The first complaint must therefore be rejected as unfounded.

317 By the second complaint, the applicants submit that the Commission refused to disclose an internal document containing the opinion of its Directorate General (DG) 'Taxation and Customs Union' relating to the definition of the product concerned.

318 First, it must be noted that, by the present complaint, the applicants have not explained in what way, in the absence of the alleged irregularity, the outcome of the anti-dumping proceeding might have been different, contrary to what is required by the case-law cited in paragraphs 252 and 314 above. Second, it is clear that, under Article 19(5) of the basic regulation, internal documents are not to be divulged, except if this is specifically provided for in that regulation. Consequently, the second complaint must be rejected as unfounded.

319 By the third complaint, the applicants submit that, with regard to the determination of the share of production of ethanol from sugar beet, the Commission relied on an email from the complainant that mentioned a figure of 12%, but did not provide any details on the source of the data used and the methodology applied in order to arrive at that estimate. The applicants submit that that made it impossible for them to demonstrate to the Commission that their 'higher figures' for sugar beet ethanol production were the 'correct figures'.

320 It should be pointed out that, by that argument, the applicants have not explained in what way the outcome of the anti-dumping proceeding might have been different had the source and the method used for the calculation been disclosed, contrary to what is required by the case-law cited in paragraphs 252 and 314 above.

321 In any event, the Commission has explained that it was not permitted to disclose the information in question on the ground that it comprised confidential business information provided by the complainant. In this connection, first, the applicants have not explained in what respect the statement, in the part of the email in question quoted by them at page 434 of Annex A.10 to the application, that the percentage figure of 12% was provided by a commodity analyst, was not sufficient for the purpose of identifying the source of the data in question. Second, it is in no way clear from that quotation that that email contained a description of the method used for calculating the share of the market in question.

322 The third complaint must therefore be rejected as unfounded.

323 By the fourth complaint, the applicants submit that nothing in the non-confidential file supports the statement made in recital 141 of the contested regulation that most European Union industry producers hedged the risk of fluctuation in the prices of raw materials.

324 First, it should be noted that, by the fourth complaint, the applicants have not claimed any infringement of their right of access to the non-confidential file. Consequently, the present complaint is ineffective and must be rejected.

325 Second, and in any event, the Council has explained that, during the on-the-spot verifications, the European Union producers provided detailed explanations concerning the hedging of risks and that the information in question is confidential in nature and that it was therefore not possible to add it to the non-confidential file. Furthermore, the applicants have not contested the Council's assertion that the practice of hedging the risk of price fluctuations is common in the sector in question and that it would be easy to verify this through publicly available information in the annual reports of European Union producers. Consequently, the fourth complaint must also be rejected as unfounded.

326 By the fifth complaint, the applicants submit that ePure's observations relating to the amendment of the period of validity of the measures from three years to five

years were not added to the non-confidential file in sufficient time for them to prepare their submissions in respect of that amendment by 2 January 2013. ePure's observations were added to the non-confidential file only on 4 February 2013.

327 In this connection, it should be noted that the applicants have not explained in what way, in the absence of the alleged irregularity, the outcome of the anti-dumping proceeding might have been different, as is required by the case-law cited in paragraphs 252 and 314 above.

328 In any event, the Council has stated that, in the additional disclosure document of 21 December 2012, the Commission summarised ePure's arguments concerning the period of validity and explained the reasons for reverting to the normal period of five years. As regards the complainant's observations, it should be observed that the additional disclosure document contains, in essence, the same information as that in recital 173 of the contested regulation and therefore reproduced the basic legal and factual particulars on which the institutions wished to rely in the present case. By contrast, in the reply, the applicants merely deny the Council's assertion, without specifying which of ePure's observations were not adequately summarised in the additional disclosure document.

329 In the reply, the applicants submit moreover that the additional disclosure document was simply a negation of the arguments in support of the period of validity initially proposed by the Commission, without any real explanation. It must be held, pursuant to Article 44(1)(c) and Article 48(2) of the Rules of Procedure of 2 May 1991, that that new complaint is made out of time since it was raised in the reply, and it must be rejected as inadmissible (see, to that effect, order of 24 September 2009 in *Alcon* v *OHIM*, C-481/08 P, EU:C:2009:579, paragraph 17, and judgment of 30 April 2015 in *VTZ and Others* v *Council*, T-432/12, EU:T:2015:248, paragraph 158). Even if that new complaint had not been raised out of time, suffice it to state that, by that argument, the applicants have not claimed any infringement of their right of access to the non-confidential file of the investigation. It would therefore also be appropriate to reject it as ineffective.

330 It must therefore be concluded that the applicants were in a position to prepare their comments in respect of the amendment of the period of validity of the anti-dumping measures in sufficient time. Consequently, the fifth complaint and the new complaint referred to in the preceding paragraph must be rejected.

331 It follows that the third part of the tenth plea in law must be rejected.

The fourth part of the tenth plea in law, alleging that the applicants were not granted sufficient time to submit their comments on the definitive disclosure document, in breach of Article 20(5) of the basic regulation and of the rights of the defence

332 The applicants submit that the Council did not grant them the legal minimum period of 10 days, laid down in Article 20(5) of the basic regulation, to submit their comments on the definitive disclosure document. In any event, the legal minimum period of 10 days was not a sufficient period — in their view — for submitting comments on a disclosure document as complex as that provided in the present case.

333 The Council contests the applicants' arguments.

334 At the outset, it should be observed that, according to the heading of the fourth part of the tenth plea in law in the application, the Council did not provide sufficient time for 'the applicants' to submit their comments on the definitive disclosure document. However, in the application, the applicants claim that they 'and their members' were not given sufficient time to submit their comments.

335 In this connection, it must be noted that the applicants have not explained in their written pleadings which of their members received the definitive disclosure document. In so far as the applicants therefore wish, by the present part, to rely on an infringement of the procedural rights of 'their members', it must be pointed out that such an imprecise claim does not satisfy the conditions laid down in Article 44(1)(c) of the Rules of Procedure of 2 May 1991, which requires that the basic legal and factual particulars relied on in the action be indicated coherently and intelligibly in the application itself (see paragraph 254 above). Consequently, in so far as the applicants claim that their members were not granted sufficient time to submit their comments on the definitive disclosure document, the present part must be rejected as inadmissible.

336 As regards the argument that the Council did not grant the applicants sufficient time to submit their comments on the definitive disclosure document, it must be recalled that Article 20(5) of the basic regulation provides, in essence, that the institutions are required to take into consideration representations made by interested parties only if they are received within the period set by the Commission, which period may not be less than 10 days.

337 In the present case, the Commission sent the definitive disclosure document to the applicants on 6 December 2012, requesting their comments 'within 10 days ..., i.e. by 17 December 2012 at noon'. The period of 10 days for submitting comments on that document provided for in Article 20(5) of the basic regulation ended on Sunday 16 December 2012. Under Article 3(4) of Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ English Special Edition 1971 (II), p. 354), since

the last day of the period was a Sunday, the period ended with the expiry of the last hour of the following working day, namely with the expiry of the last hour of 17 December 2012. However, the Commission called on interested parties to submit their comments on that document by midday on 17 December 2012, and not by midnight. Nevertheless, the parties submitted their comments within the period set by the Commission. By letter of 21 December 2012, the Commission sent the additional disclosure document relating to the amendment of the duration of the proposed measures. However, in that letter, the Commission requested that the parties provide their comments on the amendment proposed and on the definitive disclosure document of 6 December 2012 no later than 2 January 2013, close of business.

338 First, it must be noted that the applicants have not explained in their written pleadings how — in their view — as a result of the alleged irregularity the outcome of the administrative proceeding might have been different. In this connection, the Court of Justice has held that failure to comply with the 10-day period prescribed in Article 20(5) of the basic regulation can result in annulment of the contested regulation only where there is a possibility that, as a result of that irregularity, the outcome of the administrative procedure might have been different and thus in fact adversely affected the applicant's rights of defence (see, to that effect, judgment in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, cited in paragraph 250 above, EU:C:2009:598, paragraph 81 and the case-law cited).

339 Second, as the Council correctly contends, the Commission granted the applicants, by its letter of 21 December 2012, an additional period within which to provide comments on the definitive disclosure document of 6 December 2012. It follows that the institutions did not infringe Article 20(5) of the basic regulation in any way.

340 As regards the argument that the period of 10 days was not sufficient for submitting comments on such a complex disclosure document and in view of the absence of a regulation imposing provisional duties containing a provisional calculation of the dumping margin, suffice it to recall, as stated in paragraph 337 above, that the applicants were given not only the legal minimum period, but the Commission subsequently granted them, on 21 December 2012, an additional period of 12 calendar days to provide comments on that document. The applicants have not claimed that that extended period was insufficient.

341 In addition, in the reply, the applicants claim that, as regards the additional disclosure document of 21 December 2012, there was another procedural irregularity on the part of the institutions on the ground that the anti-dumping Advisory Committee had already been consulted at the meeting of 19 December 2012 without being aware of an essential element, namely the views of the applicants and the US producers on the amended validity of the proposed measures. It must be held, pursuant to Article 44(1)(c) and Article 48(2) of the

Rules of Procedure of 2 May 1991, that that new complaint is made out of time, since it was raised in the reply, and it must be rejected as inadmissible (see case-law cited in paragraph 329 above).

342 It follows that the fourth part of the tenth plea in law must also be rejected.

343 It follows from the foregoing that the tenth plea in law must be rejected in its entirety.

344 Therefore, since the second part of the first plea in law has been upheld, and that plea in law has been upheld in consequence, the contested regulation must be annulled in so far as it concerns Patriot Renewable Fuels, Plymouth Energy Company, POET and Platinum Ethanol, which are members of the applicants. The remainder of the present action must be dismissed as in part inadmissible and in part unfounded.

Costs

345 Under Article 134(1) and (3) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

346 In the present case, since the applicants and the Council have each been partially unsuccessful, they are each to bear their own costs.

347 In accordance with Article 138(1) and (3) of the Rules of Procedure, the Commission and ePure are each to bear their own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber),

hereby:

1. **Annuls 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 in so far as it concerns Patriot Renewable Fuels LLC, Plymouth Energy Company LLC, POET LLC and Platinum Ethanol LLC;**

2. **Dismisses the action as to the remainder;**

3. **Orders Growth Energy and Renewable Fuels Association, the Council of the European Union, the European Commission and ePure, de**

Europese Producenten Unie van Hernieuwbare Ethanol to bear their own costs.

Dittrich Schwarcz Tomljenović

Delivered in open court in Luxembourg on 9 June 2016.

[Signatures]

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