Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 April 2025*

(Appeal – Dumping – Imports of ammonium nitrate originating in Russia – Definitive anti-dumping duties – Article 11(2) of Regulation (EU) 2016/1036 – Request for an expiry review of anti-dumping measures – Time limit laid down in that provision for making such a request – Sufficiency of the evidence – Information submitted after the expiry of that time limit)

In Joined Cases C-554/23 P and C-568/23 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 and 14 September 2023,

Fertilizers Europe, established in Brussels (Belgium), represented by J. Beck, advocaat, and L. Ruessmann, avocat,

appellant in Case C-554/23 P,

the other parties to the proceedings being:

AO Nevinnomysskiy Azot, established in Nevinnomyssk (Russia),

AO Novomoskovskaya Aktsionernaya Kompania NAK 'Azot', established in Novomoskovsk (Russia),

represented by A. de Moncuit, E. Gergondet, N. Mizulin, A. Nosowicz, avocats, and P. Vander Schueren, advocaat,

applicants at first instance,

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

defendant at first instance,

and

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

appellant in Case C-568/23 P,

the other parties to the proceedings being:

* Language of the case: English.

AO Nevinnomysskiy Azot, established in Nevinnomyssk,

AO Novomoskovskaya Aktsionernaya Kompania NAK 'Azot', established in Novomoskovsk,

represented by A. de Moncuit, E. Gergondet, N. Mizulin, A. Nosowicz, avocats, and P. Vander Schueren, advocaat,

applicants at first instance,

Fertilizers Europe, established in Brussels, represented by J. Beck, advocaat, and L. Ruessmann, avocat,

intervener at first instance,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin (Rapporteur), N. Piçarra, O. Spineanu-Matei and N. Fenger, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 28 November 2024,

gives the following

Judgment

1 By their respective appeals, Fertilizers Europe and the European Commission seek the annulment of judgment of the General Court of the European Union of 5 July 2023, *Nevinnomysskiy Azot and NAK 'Azot'* v *Commission* (T-126/21, 'the judgment under appeal', EU:T:2023:376), by which the General Court annulled Commission Implementing Regulation (EU) 2020/2100 of 15 December 2020 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2020 L 425, p. 21; 'the regulation at issue').

Legal context

The regulation at issue

2 Recital 20 of the regulation at issue states:

'The Commission initiated the expiry review based on the review request as initially submitted on 21 June 2019 [("the original review request")] and further supplemented by additional information (collectively referred to as "consolidated review request"). The consolidated review request, which constitutes the basis for the initiation of this expiry review, was placed in the open file and made available to interested parties for consultation. As stated in point 4.1 of the Notice, the Applicant provided in [the original] review request evidence of a normal value based on actual domestic prices and equally constructed the normal value in case the domestic prices would not be considered as reliable and reflecting ordinary course of trade. Whether the original [review] request was supplemented with estimated normal values on the basis of information available on actual domestic prices in the country concerned is irrelevant in so far as the Commission initiated the expiry review on the basis of the consolidated review request.'

Regulation 2016/1036

3 Article 1 of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21), as amended by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 (OJ 2018 L 143, p. 1) ('Regulation 2016/1036'), entitled 'Principles', states, in paragraph 1:

'An anti-dumping duty may be imposed on any dumped product whose release for free circulation in the [European] Union causes injury.'

4 Article 2(1) and (3) of Regulation 2016/1036 provides:

'1. The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

In order to determine whether two parties are associated, account may be taken of the definition of related parties set out in Article 127 of [Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ 2015 L 343, p. 558)].

…

3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison, the normal value of the like product shall be calculated 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, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

A particular market situation for the product concerned within the meaning of the first subparagraph may be deemed to exist, inter alia, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements.'

5 Article 5(3) and (9) of Regulation 2016/1036 provides:

'3. The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint, to determine whether there is sufficient evidence to justify the initiation of an investigation.

…

9. Where it is apparent that there is sufficient evidence to justify initiating proceedings, the Commission shall do so within 45 days of the date on which the complaint was lodged and shall publish a notice in the *Official Journal of the European Union*. Where insufficient evidence has been presented, the complainant shall be so informed within 45 days of the date on which the complaint is lodged with the Commission. The Commission shall provide information to the Member States concerning its analysis of the complaint normally within 21 days of the date on which the complaint is lodged with the Commission.'

6 Under Article 11(1), (2), (5) and (6) of that regulation:

'1. An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon a request made by or on behalf of Union producers, and the measure shall remain in force pending the outcome of that review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury. Such likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping, or by evidence of continued distortions on raw materials.

In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Union producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions shall be

reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the *Official Journal of the European Union* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Union producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

…

5. The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4.

Reviews carried out pursuant to paragraphs 2 and 3 shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review. In any event, reviews pursuant to paragraphs 2 and 3 shall in all cases be concluded within 15 months of initiation.

Reviews pursuant to paragraph 4 shall in all cases be concluded within nine months of the date of initiation.

If a review carried out pursuant to paragraph 2 is initiated while a review under paragraph 3 is ongoing in the same proceeding, the review pursuant to paragraph 3 shall be concluded at the same time as the review pursuant to paragraph 2.

If the investigation is not completed within the deadlines specified in the second, third and fourth subparagraphs, the measures shall:

– expire in investigations pursuant to paragraph 2,

– expire in the case of investigations carried out pursuant to paragraphs 2 and 3 in parallel, where either the investigation pursuant to paragraph 2 was initiated while a review under paragraph 3 was ongoing in the same proceedings or where such reviews were initiated at the same time, or

– remain unchanged in investigations pursuant to paragraphs 3 and 4.

A notice announcing the actual expiry or maintenance of the measures pursuant to this paragraph shall then be published in the *Official Journal of the European Union*.

…

6. Reviews pursuant to this Article shall be initiated by the Commission. The Commission shall decide whether or not to initiate reviews pursuant to paragraph 2 of this Article in accordance with the advisory procedure referred to in Article 15(2). The Commission shall also provide information to the Member States once an operator or a Member State has submitted a request justifying the initiation of a review pursuant to paragraphs 3 and 4 of this Article and the

Commission has completed its analysis thereof, or once the Commission has itself determined that the need for the continued imposition of measures should be reviewed.

Where warranted by reviews, measures shall, in accordance with the examination procedure referred to in Article 15(3), be repealed or maintained pursuant to paragraph 2 of this Article, or repealed, maintained or amended pursuant to paragraphs 3 and 4 of this Article.

Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceedings and may, automatically, be reinvestigated in any subsequent review carried out for that country pursuant to this Article.'

Background to the dispute

7 The background to the dispute is set out in paragraphs 2 to 13 of the judgment under appeal and, for the purposes of the present joined cases, can be summarised as follows.

8 AO Nevinnomysskiy Azot and AO Novomoskovskaya Aktsionernaya Kompania NAK 'Azot' (together, 'the "Azot" companies') are producers and exporters of ammonium nitrate established in Russia. They are, as such, subject to Council Regulation (EC) No 2022/95 of 16 August 1995 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 1995 L 198, p. 1).

9 Following a first expiry review of the measures concerned and a first interim review, a definitive anti-dumping duty was maintained on imports of ammonium nitrate from Russia by Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 2002 L 102, p. 1). Following a second expiry review and a second partial interim review, those measures were maintained in force by Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ 2008 L 185, p. 1). Following a third expiry review, the Commission maintained those measures in force by way of Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ 2014 L 280, p. 19). Following an interim review and in accordance with Article 11(3) of Regulation 2016/1036, the Commission adopted Commission Implementing Regulation (EU) 2018/1722 of 14 November 2018 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2018 L 287, p. 3).

10 During the entire period during which those review procedures took place, the 'Azot' companies were subject to an anti-dumping duty applicable to the entire Russian territory.

11 On 21 June 2019, pursuant to Article 11(2) of Regulation 2016/1036, Fertilizers Europe, a European association of fertiliser manufacturers, submitted to the Commission the original review request concerning the expiry of the anti-dumping measures concerned. By that request,

Fertilizers Europe claimed that there was evidence of a likelihood of a continuation of dumping if the measures were allowed to expire. It relied, in that regard, on a comparison between export prices and a constructed normal value.

12 In response to that request, the Commission asked Fertilizers Europe to provide additional information in order to supplement and clarify the original review request ('additional information'). On 20 August 2019, Fertilizers Europe lodged that additional information, which was included in the consolidated review request and which was underpinned by a normal value based on actual prices on the Russian domestic market.

13 On 23 September 2019, the Commission published a notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (OJ 2019 C 318, p. 6), taking the view that there was sufficient evidence to initiate such a review and to carry out an investigation.

14 Following that investigation, the Commission concluded that there was a likelihood of recurrence of dumping and injury if those anti-dumping measures were allowed to expire. By adopting the regulation at issue, it therefore extended those measures for a period of five years.

The action before the General Court and the judgment under appeal

15 By their action before the General Court, the 'Azot' companies sought the annulment of the regulation at issue. In support of their action, those companies put forward a single plea in law alleging, in essence, infringement of Article 11(2) and (5) and Article 5(3) of Regulation 2016/1036, in that the Commission erred in initiating an expiry review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia, despite the lack of sufficient evidence to do so.

16 As regards the legal criteria applicable to the content of a request for a review, the General Court found, inter alia, in the first place, in paragraphs 65 to 67 of the judgment under appeal, that 'it follows from a literal reading of Article 11(2) of [Regulation 2016/1036] that a request for a review which must be made by or on behalf of Union producers, no later than three months before the end of the five-year period after which the anti-dumping measures expire [("the legal time limit")], must already contain sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury', since the fourth subparagraph of that provision, which lays down that legal time limit within which that request must be made, expressly refers to the second subparagraph of Article 11(2), which sets out the conditions relating to the content of that request under which a review may be carried out.

17 In the second place, the General Court held, in paragraphs 69 and 70 of the judgment under appeal, that that interpretation was necessary in order to achieve the objective of ensuring that the evidence submitted to the Commission within the legal time limit is sufficient to establish a likelihood of a continuation or recurrence of dumping and injury if the anti-dumping measures concerned were allowed to expire. It thus held that the introduction of that time limit contributes to ensuring legal certainty, by enabling market operators to know, in good time, whether those measures are likely to be maintained and by enabling the Commission to have an appropriate period of time to assess the evidence contained in a request for a review and to ensure that it is sufficient and relevant, so as to prevent an anti-dumping measure being unduly maintained beyond the prescribed period.

18 In the third place, in paragraphs 71 to 74 of the judgment under appeal, the General Court held that, after the legal time limit and within the three-month period preceding the expiry of the anti-dumping measures concerned, EU producers may submit additional information on the basis of Article 11(2) of Regulation 2016/1036 and that the Commission may, during those three months, receive or request additional clarifications supplementing or corroborating the sufficient evidence submitted before the expiry of that legal time limit, resulting in a consolidated version of the request for a review; such additional information cannot, however, constitute new arguments, replace the request for a review lodged within that legal time limit or remedy the insufficiency of the evidence contained therein.

19 In the fourth place, in paragraphs 78 to 101 of the judgment under appeal, the General Court examined and rejected the Commission's argument that, under Article 11(5) of Regulation 2016/1036, it is entitled to apply Article 5(3) and (9) of that regulation, which governs the initial investigation procedure.

20 On the basis of those considerations, the General Court concluded, in paragraph 104 of that judgment, that the Commission erred in law when it stated, in recital 20 of the regulation at issue, that it was irrelevant whether the original review request had been supplemented with additional information and that the initiation of the review could be warranted on the basis of the consolidated review request.

21 As regards the sufficiency of the evidence contained in the original review request and the nature of the additional information, the General Court held, in paragraphs 105 and 140 of that judgment, first, that the information obtained in the present case by the Commission after the expiry of the legal time limit had to be regarded as being not merely clarification of that evidence, but new evidence, and, secondly, that it was apparent from the regulation at issue that the Commission had considered that the evidence in the original review request was insufficient to carry out a review of the anti-dumping measures concerned.

22 Consequently, in paragraph 142 of that judgment, the General Court concluded that the regulation at issue had to be annulled, without it being necessary to examine the other complaints put forward by the 'Azot' companies.

Forms of order sought by the parties to the appeal and the procedure before the Court of Justice

23 By its appeal in Case C-554/23 P, Fertilizers Europe claims that the Court of Justice should:

– declare the appeal admissible and well founded;

– set aside the judgment under appeal and dismiss the remainder of the claims at first instance; and

– order the 'Azot' companies to pay the costs incurred by it in the present appeal proceedings and in those before the General Court.

24 By its appeal in Case C-568/23 P, the Commission claims that the Court should:

– set aside the judgment under appeal and dismiss the remainder of the claims at first instance, and

– order the 'Azot' companies to pay the costs relating to the proceedings at first instance and on appeal.

25 By a decision of the President of the Court of Justice of 9 October 2023, Cases C-554/23 P and C-568/23 P were joined for the purposes of the written and oral parts of the procedure and of the judgment.

26 The 'Azot' companies contend that the Court of Justice should:

– dismiss the appeals in their entirety and confirm the judgment under appeal;

– in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice; and

– order the Commission and Fertilizers Europe to pay the costs incurred by those companies in the present appeal proceedings and in those before the General Court.

The appeals

27 In support of their appeals, Fertilizers Europe and the Commission raise four and two grounds of appeal respectively.

28 Fertilizers Europe's first and second grounds of appeal and the Commission's first ground of appeal allege that the General Court erred in law in its interpretation of Article 11 of Regulation 2016/1036, whereas Fertilizers Europe's third and fourth grounds of appeal and the Commission's second ground of appeal, raised in the alternative, allege that the General Court erred in law in applying Article 11 and distorted the facts and evidence.

The first and second grounds of appeal in Case C-554/23 P and the first ground of appeal in Case C-568/23 P

Arguments of the parties

29 Fertilizers Europe, by its first and second grounds of appeal and the Commission, by its first ground of appeal, claim, in essence, that, in paragraphs 65 to 67 and 71 to 104 of the judgment under appeal, the General Court erred in law in interpreting Article 11(2) of Regulation 2016/1036, read in conjunction with Article 5(3) and (9) thereof, as meaning that the Commission cannot rely, when examining whether there is sufficient evidence to carry out a review of anti-dumping measures that are about to expire, only on a request for a review submitted by EU producers within the legal time limit laid down in the fourth subparagraph of Article 11(2) of Regulation 2016/1036, at most supplemented by information which merely corroborates the evidence contained in that request.

30 In the first place, as regards the textual interpretation of Article 11(2) of Regulation 2016/1036, Fertilizers Europe submits that, contrary to what the General Court held in paragraphs 65 to 67 of the judgment under appeal, it is not necessarily apparent from the wording of the second and fourth subparagraphs of Article 11(2) that a request for a review, submitted within the legal time limit, must already contain sufficient evidence to justify an expiry review of the anti-dumping measures concerned.

31 According to the Commission, the fourth subparagraph of Article 11(2) of Regulation 2016/1036 is neutral as to the question whether the Commission must limit its assessment to evidence submitted within the legal time limit. Contrary to what the General Court held in the judgment under appeal, it cannot, in particular, be inferred from the words 'in accordance with the second subparagraph' in that provision that the Commission is required to examine whether or not the evidence justifying the initiation of a review is sufficient, solely on the basis of a request lodged within the legal time limit. Moreover, the second subparagraph of Article 11(2) of Regulation 2016/1036 lays down only the legal standard required for the Commission to be able to carry out an expiry review of the anti-dumping measures concerned, without restricting, either explicitly or by necessary implication, the general powers available to the Commission in carrying out its assessment as to whether such a review is warranted.

32 In the second place, as regards the context of the fourth subparagraph of Article 11(2) of Regulation 2016/1036, Fertilizers Europe submits that no provision of that regulation affects the Commission's broad discretion in common commercial policy matters.

33 The Commission submits that it is apparent from the anti-dumping regulations prior to Regulation 2016/1036 that its obligation to determine whether a complaint or a request contains sufficient evidence to justify, respectively, the initiation of an initial investigation or a review procedure is not subject to compliance with a time limit and that the latter regulation did not introduce any change in that regard.

34 Furthermore, the appellants submit that, under the first subparagraph of Article 11(2) of Regulation 2016/1036, the Commission has the power to carry out an expiry review of anti-dumping measures on its own initiative.

35 The appellants also submit that Article 5(3) and (9) of Regulation 2016/1036, read in conjunction with Article 11(5) thereof, establishes, for requests for review made pursuant to Article 11(2) of that regulation, a deficiency procedure allowing the submission of additional and new evidence after the expiry of the legal time limit.

36 In the third place, Fertilizers Europe submits that the General Court's interpretation of Article 11(2) of Regulation 2016/1036 jeopardises the livelihood of EU industries and, therefore, is contrary to the objective pursued by that regulation, namely to protect the EU industry from unfair imports from third countries. That interpretation also leads to an infringement of the procedural rights of EU producers, namely the principle of legal certainty and respect for the rights of the defence in the assessment of a request for a review lodged by those producers, since the level of detail of the evidence required varies from case to case and depends on factual circumstances.

37 Furthermore, the expiry review procedure for definitive anti-dumping measures that are about to expire provided for by Regulation 2016/1036 is intended to ensure that the maintenance of the anti-dumping measures concerned is duly justified on the basis of the information gathered

during their review and not solely on the basis of the request for a review. Consequently, Article 11(2) of that regulation would be consistent and in line with the principle of sound administration if the sufficiency of the evidence were assessed when that review is initiated, without it being necessary to submit that evidence within a specific time limit.

38 The Commission takes the view that the General Court correctly found that the purpose of the legal time limit was to direct EU producers as to the timing when a review request must be filed, with a view to orderly organising either the termination of the anti-dumping measures concerned or the initiation of an expiry review of those measures, and inform interested parties accordingly. However, in view of the fact that that regulation provides for longer periods for the Commission to make a determination about the sufficiency of the evidence in an expiry review request compared to a complaint seeking the initiation of an initial investigation, the General Court should have inferred from this that, in order to assess whether the evidence in that request is sufficient, the Commission should have at least the same powers as those available to it to assess the sufficiency of the evidence contained in such a complaint.

39 According to the Commission, contrary to what the General Court found, that objective cannot be to ensure legal certainty for market operators in the EU, since no interested party is notified of the request for a review submitted by EU producers, nor is it informed of the fact that such a request has been made until the Commission publishes the notice of initiation of the expiry review investigation of the anti-dumping measures concerned.

40 The 'Azot' companies reply that the General Court correctly held that it follows from a literal reading and the context of the second and fourth subparagraphs of Article 11(2) of Regulation 2016/1036 that a request for an expiry review of anti-dumping measures must contain sufficient evidence, at the latest on the date of expiry of the legal time limit, to justify the initiation of such a review.

41 In the first place, those companies claim, in essence, that the General Court correctly interpreted Article 11(2) of Regulation 2016/1036, in the light of its wording and its context. More specifically, the right of EU producers to submit a request for a review is governed by the fourth subparagraph of Article 11(2), which refers to the second subparagraph thereof. Those companies take the view that a request for a review, which must be made before the expiry of the legal time limit, must, first, contain sufficient evidence and, secondly, be capable of indicating a likelihood of injurious dumping. That time limit is sufficient to enable those producers to gather the relevant evidence and the Commission to carry out a thorough assessment of that evidence, while preventing anti-dumping measures from being unduly maintained for too long a period. In their view, if the EU legislature had intended to restrict the obligations of those producers, it would have done so explicitly.

42 In the second place, the 'Azot' companies submit that, even though the second subparagraph of Article 11(2) of Regulation 2016/1036 is silent as to when EU producers must provide sufficient evidence in their request for a review, that provision cannot be read in isolation from the fourth subparagraph of Article 11(2), which specifically sets a time limit for that purpose.

43 In the third place, the 'Azot' companies submit that the General Court's interpretation of Article 11(2) of Regulation 2016/1036 respects the rights of all interested parties and does not have the effect of restricting the obligations and powers of the Commission, which, subject to compliance with the procedural time limits, has the power to assess the sufficiency of the evidence contained in a request for a review. In that context, the Commission cannot, however,

rely on rules governing other types of reviews or investigations or on powers enabling it to act on its own initiative and that institution must comply with both the relevant procedural rules and the general principles of EU law, with the result that it should not seek to remedy the insufficiency of the evidence submitted by the EU producers in a request for a review.

Findings of the Court

44 Fertilizers Europe's first and second grounds of appeal and the Commission's first ground of appeal are directed against paragraphs 65 to 104 of the judgment under appeal. In those paragraphs, the General Court interpreted Article 11(2) of Regulation 2016/1036 as not allowing the Commission to rule on a request for a review of dumping measures on the basis of new evidence provided, at its request, by EU producers less than three months before the expiry of those measures, with the exception of additional information submitted by those producers that merely supplements or corroborates the evidence contained in that request for a review. As recalled in paragraph 20 above, the General Court inferred from that interpretation that the Commission should have attached relevance to the fact that the original request for a review was supplemented by additional information and that the initiation of the review of the anti-dumping measures concerned could not be justified on the basis of the consolidated review request.

45 In order to determine whether the interpretation of Article 11(2) of that regulation thus adopted by the General Court is vitiated, as the appellants submit, by an error of law, it should be recalled that, according to the settled case-law of the Court of Justice, the provisions of an EU act must be interpreted by taking into account not only their wording but also the context in which they occur and the objectives pursued by the rules of which they form part (judgment of 28 November 2024, *Hengshi Egypt Fiberglass Fabrics and Jushi Egypt for Fiberglass Industry* v *Commission*, C-269/23 P and C-272/23 P, EU:C:2024:984, paragraph 69 and the case-law cited).

46 As regards, in the first place, the wording of the provisions at issue, it should be noted that, under the first sentence of the second subparagraph of Article 11(2) of Regulation 2016/1036, 'an expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury'.

47 In addition, the second sentence of the fourth subparagraph of Article 11(2) of Regulation 2016/1036 provides that EU producers are to be entitled to lodge a request for a review 'in accordance with the second subparagraph' of Article 11(2), no later than three months before the date of expiry of the anti-dumping measures concerned.

48 It follows from a combined reading of the provisions referred to in paragraphs 46 and 47 above that the Commission is required to carry out a review of anti-dumping measures where a request for a review, first, contains sufficient evidence that the expiry of the anti-dumping measures concerned would likely result in a continuation or recurrence of dumping and injury, in accordance with the first sentence of the second subparagraph of Article 11(2) of Regulation 2016/1036 and, secondly, is introduced no later than three months before the date of expiry of those measures.

49 By contrast, the combination of those provisions does not give rise to any requirement restricting the Commission's powers to carry out such a review.

50 In particular, such a limitation cannot be directly inferred from the clarification, in the fourth subparagraph of Article 11(2) of Regulation 2016/1036, that EU producers are entitled to submit a request for a review 'in accordance with the second subparagraph', since the wording of the second subparagraph of Article 11(2) merely establishes an obligation on the Commission to carry out a review in certain situations and provides examples of evidence that may be relevant in that respect.

51 Furthermore, as the Advocate General observed in point 40 of her Opinion, given that the standard of the sufficiency of the evidence set out in the second subparagraph of Article 11(2) is binding only on the Commission at the time when a decision to initiate a review is taken, the reference to that provision in the fourth subparagraph of Article 11(2) of that regulation cannot be understood as meaning that EU producers are required to provide such evidence within the legal time limit.

52 It follows that, contrary to what the General Court held in paragraphs 65 to 67 of the judgment under appeal, the wording of Article 11(2) of Regulation 2016/1036 cannot be read as unequivocally demonstrating the merits of the narrow interpretation of the Commission's powers that it adopted in that judgment.

53 As regards, in the second place, the context of the first sentence of the second subparagraph of Article 11(2) and of the second sentence of the fourth subparagraph of Article 11(2) of Regulation 2016/1036, as the Advocate General observed, in essence, in points 44 to 50 of her Opinion, Article 11(1) and the entirety of paragraph 2 of that article must be taken into account.

54 According to Article 11(1) of Regulation 2016/1036, an anti-dumping measure is to remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury. In addition, it follows from the third subparagraph of Article 11(2) that the conclusions of a review investigation carried out by the Commission must take due account of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of the anti-dumping measures concerned would be likely to lead to the continuation or recurrence of the dumping and the injury in question.

55 It is apparent from a combined reading of those two provisions that the Commission is required, during the review procedure, to take into account all the evidence referred to in the preceding paragraph of the present judgment, without the period within which that evidence was made available to it being decisive. The EU legislature thus established a rule of general application intended to ensure that the outcome of the review procedure will comply with the principle laid down in Article 11(1) of Regulation 2016/1036. As the Advocate General observed in point 49 of her Opinion, the scope of that choice made by the EU legislature would be significantly reduced if it were to be found that, at a preliminary stage of the review procedure, the Commission is, by contrast, obliged to disregard, on the basis of a purely temporal criterion, evidence that is made available.

56 In accordance with the second sentence of the first subparagraph of Article 11(2) of that regulation, 'an expiry review shall be initiated on the initiative of the Commission, or upon a request made by or on behalf of Union producers, and the measure shall remain in force pending the outcome of that review'. The Commission thus has the power to carry out a review of anti-dumping measures irrespective of whether a request for a review has been made by EU producers, on any date before the expiry of those measures. Consequently, to consider that the Commission is bound, when deciding on a request for a review, by the evidence contained in that

request submitted no later than three months before the date of expiry of those measures could oblige it, where it has more recent evidence, to reject that request, even though it may still decide to carry out a review procedure of its own motion. Such a result would be liable to impair the effectiveness of the procedures conducted without, however, altering their outcome.

57 As regards, in the third place, the objective of Regulation 2016/1036, it should be noted that Article 1, entitled 'Principles', states in paragraph 1 thereof that 'an anti-dumping duty may be applied to any dumped product whose release for free circulation in the Union causes injury'. The Commission's ability to ensure that that objective is fully achieved would, however, be impaired if, as the General Court held in the judgment under appeal, in order to decide whether to carry out a review of anti-dumping measures, that institution could not, before the date of expiry of those measures, take account of all the evidence relating to whether or not the expiry of those measures would be likely to lead to the continuation or recurrence of the dumping and the injury in question.

58 In addition, it should be noted that, contrary to what the General Court held in paragraph 70 of the judgment under appeal and as the Commission submits, the second sentence of the fourth subparagraph of Article 11(2) of Regulation 2016/1036 is not intended to enable market operators to know, in good time, whether the anti-dumping measures are likely to be maintained. First, as the Commission points out in its appeal, a request for a review is not communicated to any interested party before the publication of the notice of initiation of the review investigation in the *Official Journal of the European Union*. Secondly, as stated in paragraph 56 above, the Commission has the power to carry out a review of anti-dumping measures irrespective of whether a request for a review has been made by EU producers, on any date before the expiry of those measures.

59 By contrast, it is not disputed that the General Court correctly found, in paragraph 70 of the judgment under appeal, that the purpose of the legal time limit for submitting a request for a review, laid down in the second sentence of the fourth subparagraph of Article 11(2) of Regulation 2016/1036, is, inter alia, to enable the Commission to have an appropriate period of time to assess the evidence contained in that request and to ensure that it is sufficient and relevant, so as to avoid an anti-dumping measure being unduly maintained beyond the prescribed period.

60 The Commission's power to collect or request, if it considers it appropriate, additional evidence less than three months before the expiry of anti-dumping measures is not such as to undermine the attainment of the objective of the second sentence of the fourth subparagraph of Article 11(2) of Regulation 2016/1036 set out in the preceding paragraph of the present judgment, since the existence of such a power does not mean that the person requesting a review is recognised as having the right spontaneously to supplement its request after the expiry of the legal time limit or to lodge such a request after the expiry of that period. It is thus apparent that the General Court incorrectly held, in paragraph 77 of the judgment under appeal, that the Commission's interpretation of that provision in the regulation at issue would make that provision meaningless by rendering nugatory the legal obligation laid down therein.

61 It follows from the foregoing, without it being necessary to adopt a position on the powers that the Commission might derive from Article 5 of Regulation 2016/1036, that Article 11(2) of that regulation must be interpreted as meaning that the Commission is entitled to take into account evidence that was produced, at its request, by EU producers in the three-month period preceding the expiry of anti-dumping measures, in order to decide whether it is appropriate to carry out a review of those anti-dumping measures.

62 Accordingly, the General Court erred in law in holding, in paragraph 104 of the judgment under appeal, that the Commission erred in law when it stated, in recital 20 of the regulation at issue, that it was irrelevant whether the original review request had been supplemented with additional information and that the initiation of the review could be warranted on the basis of the consolidated review request.

63 In the light of all the foregoing considerations, the first and second grounds of appeal in Case C-554/23 P and the first ground of appeal in Case C-568/23 P must be upheld. Since the error of law committed by the General Court in the interpretation of Article 11(2) of Regulation 2016/1036 is sufficient to render the operative part of the judgment under appeal unfounded, that judgment must be set aside, without it being necessary to examine the third and fourth grounds of appeal in Case C-554/23 P or the second ground of appeal in Case C-568/23 P.

The action before the General Court

64 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

65 That is not the case here.

66 The General Court did not examine the complaint, put forward in the first plea in law of the action, that the Commission erred in finding, in the regulation at issue, that the consolidated review request contained sufficient evidence of a likelihood of a continuation of dumping if the anti-dumping measures concerned were to expire.

67 Since examination of that complaint involves complex factual assessments, in respect of which the Court of Justice does not have before it the necessary factual information, the state of the proceedings does not permit final judgment to be given and the case must therefore be referred back to the General Court.

Costs

68 As the case is to be referred back to the General Court, it is appropriate to reserve the costs relating to the appeal.

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

1. **Sets aside the judgment of the General Court of the European Union of 5 July 2023, *Nevinnomysskiy Azot and NAK 'Azot'* v *Commission* (T-126/21, EU:T:2023:376)**;

2. **Refers the case back to the General Court of the European Union;**

3. **Reserves the costs.**

Lycourgos Rodin Piçarra

Spineanu-Matei Fenger

Delivered in open court in Luxembourg on 30 April 2025.

A. Calot Escobar
Registrar

C. Lycourgos
President of the Chamber