Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 23 April 2015 [1]

Case C-21/14 P

European Commission
v

Rusal Armenal

(Appeal — Dumping — Imports of certain aluminium foil originating in Armenia, Brazil and China — Article 2(7) of Regulation (EC) No 384/96 — Whether compatible with the Anti-Dumping Agreement — Article 277 TFEU)

I – **Introduction**

1. By this appeal, the European Commission contests the judgment of the General Court of 5 November 2013 [2] annulling an anti-dumping duty regulation ('the contested regulation') [3] in so far as that regulation concerns Rusal Armenal ZAO.

2. In so doing, the Commission, in essence, objects to the finding by the General Court to the effect that, following the Republic of Armenia's accession to the WTO in 2003, a provision of the basic regulation [4] on which the contested regulation is based is no longer compatible with the system of rules of the General Agreement on Tariffs and Trade (GATT) [5] and that the contested regulation is therefore invalid. [6]

3. This case gives the Court of Justice the opportunity to consider the question of whether, and if so under what conditions, provisions of the GATT system of rules are to be taken into account in the application of provisions of EU law.

1 — Original language: German.

2 — Judgment in *Rusal Armenal* v *Council* (T-512/09, EU:T:2013:571, 'the judgment under appeal').

3 — More specifically, Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ 2009 L 262, p. 1).

4 — More specifically, Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended (now replaced by Council Regulation [EC] No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; correction in OJ 2010 L 7, p. 22).

5 — General Agreement on Tariffs and Trade (OJ 1994 L 336, p. 11).

6 — See paragraph 59 of the judgment under appeal.

II – **Legal framework**

A – *GATT system of rules*

4. The GATT system of rules contains detailed provisions on the concept of dumping and the determination of the normal value of products.

5. Dumping is present when products of one country are introduced into the commerce of another country at less than the 'normal value' of those products.

6. In that context, a distinction is drawn, for the purposes of determining the normal value of products, depending on whether or not free price formation is possible in the national territory of the country of export in question. In principle, the value of the products is taken to be the domestic price of those products. However, where, in the country of export, all domestic prices are set by the State or where there is a monopoly in the national territory, it may be necessary to determine the normal value of the exported products by reference to other factors.

7. Article VI(1) of GATT 1994 provides in particular:

'The contracting parties recogni[s]e that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned … For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

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

8. In Annex I to GATT 1994, the second supplementary provision to Article VI(1) adds the following clarification:

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

9. Article 1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('the Anti-Dumping Agreement')[7] goes on to say in this regard:

'An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.'

10. Article 2 of that agreement contains further rules on the establishment of dumping and normal value, although it draws no express distinction in this context between countries with and countries without a market economy, but emphasises in Article 2.7 that:

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

7 — OJ 1994 L 336, p. 103.

B – *EU law*

11. The EU legislature has adopted a number of legal acts on protection against dumped imports from countries not members of the European Union.

1. Basic regulation

12. Recitals 3 and 4 in the preamble to the basic regulation set out the objectives of that regulation, stating that, in the light of new Agreements on the Implementation of Article VI of GATT, 'it is … appropriate to amend the Community rules', it being 'essential … that the Community take account of how they are interpreted by the Community's major trading partners'.

13. In recital 5 in its preamble, the basic regulation states:

'… the … Anti-Dumping Agreement … contains new and detailed rules, relating in particular to the calculation of dumping …; in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible'.

14. On the determination of normal value, recital 7 in the preamble to the basic regulation reads:

'… when determining normal value for non-market economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country that is to be used for such purpose …'.

15. Article 1(2) of the basic regulation provides:

'A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country'.

16. On the determination of normal value in anti-dumping proceedings, Article 2(7) of the basic regulation provides:

'(a) In the case of imports from non-market economy countries [8] … normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis …

…

(b) In anti-dumping investigations concerning imports from … any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, normal value shall be determined in accordance with paragraphs 1 to 6 [9], if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in subparagraph (c), that market economy

8 — These include Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan and Uzbekistan.

9 — For the purposes of determining normal value, the paragraphs in question refer to the circumstances on the domestic market of the exporting country, without regard to a comparable third country.

conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under subparagraph (a) shall apply.

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

2. The contested regulation

17. In 2009, the contested regulation, adopted on the basis of the basic regulation, imposed a definitive anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China.

18. According to recital 20 in the preamble to that regulation, 'Armenia is specifically mentioned in the footnote to Article 2(7)(a) of the basic regulation as being included among non-market economy countries. The treatment of exporting producers in non-market economy countries which are WTO members is set out in Article 2(7)(b). …'.

19. In accordance with Article 1 of the contested regulation, the producers concerned included the Armenian undertaking Rusal Armenal. A claim by that company for market economy treatment was rejected, Turkey was chosen as an 'appropriate and reasonable analogue country'[10] with a market economy and its prices were used in order to determine the normal value of its products and the dumping margin on its exports.

20. Accordingly, Article 1(2) of the contested regulation imposed a definitive anti-dumping duty of 13.4% on imports of Armenian products.

III – **Proceedings at first instance and the judgment under appeal**

21. By its first plea in law at first instance, the undertaking Rusal Armenal complained that there had been an infringement of the Anti-Dumping Agreement.

22. It alleged that the EU legislature had exceeded the legal framework established by the Anti-Dumping Agreement by determining the normal value of its products on the basis of the situation in other States rather than in Armenia. As a result, it claimed, the basic regulation was inapplicable to Rusal Armenal and the contested regulation, in so far as it concerned that undertaking, should be annulled by reason of infringement of the Anti-Dumping Agreement.

23. The General Court upheld that plea and held in essence in this regard that, in adopting Article 2 of the basic regulation, the EU legislature had intended to implement particular obligations, created by Article 2 of the Anti-Dumping Agreement, relating to the determination of whether there is dumping.[11] As regards the determination of normal value, however, the basic regulation and the contested regulation derogated from the Anti-Dumping Agreement, which, in this regard, comprised 'a set of clear, precise and detailed rules laying down the procedure for calculating the normal value of the like product … and [did] not attach to those rules conditions making their application subject to the discretion of the WTO members'.[12]

10 — In the words of recital 36 in the preamble to the contested regulation.

11 — Paragraph 36 of the judgment under appeal.

12 — Paragraph 50 of the judgment under appeal.

24. By its appeal, the Commission is contesting the General Court's judgment annulling the contested regulation in so far as it concerns Rusal Armenal.

IV – **Forms of order sought and main arguments of the parties**

25. The Commission, supported by the European Parliament and the Council, claims that the Court should:

— set aside the judgment under appeal;

— dismiss the first plea of the application at first instance as unfounded in law;

— refer the case back to the General Court for reconsideration of the remaining pleas;

— reserve the costs of the proceedings at first instance and on appeal.

26. In support of its appeal, the Commission relies on three pleas in law.

27. First, it claims that the General Court has ruled *ultra petita*, since, while Rusal Armenal raised the issue of the inapplicability of the basic regulation in the light of the Anti-Dumping Agreement in the application, it did not do so in the defence. The undertaking did not therefore pursue its plea in law to that effect.

28. Secondly, the General Court misinterpreted the basic regulation and the legislature's intention, within the meaning of the case-law in *Nakajima*,[13] at the time when it adopted that provision. The General Court wrongly assumed that, in adopting the basic regulation, the EU legislature sought to comply with obligations arising from WTO law. That law cannot therefore be relied on as a criterion for examining the lawfulness of the basic regulation, particularly given that, in the case of a country such as Armenia, whose economy is in transition from a socialist planned economy to a market economy, the Anti-Dumping Agreement does not prohibit the normal value of products from being determined largely on the basis of the situation on the market of a comparable market economy country, in this case Turkey.

29. Thirdly, in annulling the contested regulation, the General Court infringed the principle of institutional balance.

30. Rusal Armenal challenges those pleas in law and contends that the Court should dismiss the appeal and order the Commission and the Council each to pay their own costs and the costs of Rusal Armenal.

V – **Legal assessment**

A – *The first ground of appeal*

31. In so far as the first ground of appeal expresses the view that, in its reply, the Armenian undertaking withdrew its complaint of unlawfulness based on Article 277 TFEU, the appellant's position cannot be endorsed.

13 — Judgment in *Nakajima* v *Council* (C-69/89, EU:C:1991:186).

32. First, the parties cannot be expected to repeat their arguments in full in every procedural document. Such an approach would not be procedurally economic. Second, it is clear from all of the Armenian undertaking's written submissions that it is relying on Article 277 TFEU and, in that context, considers Article 2(7) of the basic regulation to be incompatible with WTO law. [14]

33. The first ground of appeal must therefore be dismissed.

B – *The second ground of appeal*

34. By its second ground of appeal, the appellant complains in essence that the General Court committed an error of law in assuming that, by adopting Article 2(7) of the basic regulation, the EU legislature intended to implement the Anti-Dumping Agreement. That complaint stands and falls by the question as to whether the General Court correctly applied the case-law in *Nakajima*. [15]

1. WTO law as a criterion for the lawfulness of EU legal acts

35. It is in principle the case, in accordance with Article 3(5) TEU, that the European Union is to contribute to the strict observance and the development of international law. Consequently, when it adopts a legal act, it is bound to observe international law in its entirety. [16] By virtue of Article 216(2) TFEU, international agreements concluded by the European Union are binding upon its institutions and prevail over its own legal acts. [17]

36. The provisions of an international treaty to which the European Union is a party can be invoked in support of an action for the annulment of an act of EU secondary law or a plea that such an act is unlawful only where the nature and broad logic of the treaty in question do not preclude this and where the treaty's provisions appear, as regards their content, to be unconditional and sufficiently precise. [18]

37. Because of their specific nature, special considerations apply in the case of WTO legal acts. The Court has reiterated only recently that it is only where, by adopting one of its legal acts, the European Union intended to implement a particular obligation assumed in the context of the agreements concluded with the WTO (case-law in *Nakajima*) or where the EU act refers explicitly to specific provisions of the WTO agreements (case-law in *Fediol* [19]) that the Court should review the legality of an EU act in the light of the rules of the WTO agreements. [20]

14 — See, for example, paragraph 31 of the reply at first instance.

15 — Judgment in *Nakajima* v *Council* (C-69/89, EU:C:1991:186).

16 — Judgment in *Air Transport Association of America and Others* (C-366/10, EU:C:2011:864, paragraph 101).

17 — Judgments in *Intertanko and Others* (C-308/06, EU:C:2008:312, paragraph 42), *Air Transport Association of America and Others* (C-366/10, EU:C:2011:864, paragraph 50) and *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 52).

18 — Judgments in *FIAMM and Others* v *Council and Commission* (C-120/06 P and C-121/06 P, EU:C:2008:476, paragraphs 110 and 120), *Air Transport Association of America and Others* (C-366/10, EU:C:2011:864, paragraphs 53 to 55) and *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 54).

19 — Judgment in *Fediol* v *Commission* (70/87, EU:C:1989:254).

20 — See to this effect the judgment of the Grand Chamber of 13 January 2015 in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 56), with reference to the judgments in *Fediol* v *Commission* (EU:C:1989:254, paragraphs 19 to 23), *Nakajima* v *Council* (EU:C:1991:186, paragraphs 29 to 32), *Germany* v *Council* (C-280/93, EU:C:1994:367, paragraph 111) and *Italy* v *Council* (C-352/96, EU:C:1998:531, paragraph 19).

38. The legality of EU secondary law may be open to review in the light of WTO legal acts, where there is a clear intention on the part of the EU legislature to implement those acts, in particular in matters concerning the anti-dumping system. That system is 'extremely dense in its design and application'[21] and is therefore inherently suitable as a criterion for the legality of EU legal acts.

39. The Court of Justice has not as yet ruled exhaustively on the question of how the EU legislature's intention of implementation, which is decisive for the purposes of the case-law in *Nakajima*, must have been expressed or by reference to what criteria it is determined. In the judgments in *Nakajima* v *Council*[22] and *Petrotub and Republica*,[23] however, it cited the recitals in the preamble to an EU legal act in each case and, by reference to them, established whether, in adopting a particular provision of secondary law, the EU legislature had intended to implement 'the particular obligations'[24] of a particular provision of the Anti-Dumping Code[25] or the Anti-Dumping Agreement[26] that was related to it as regards its content. Where, however, the provisions of secondary law pursued an objective 'fundamentally different'[27] from that of the GATT Anti-Dumping regime, the latter was not a suitable criterion for reviewing the legality of the EU act.[28]

40. Two conclusions can be drawn from this.

41. First, the case-law of the Court of Justice does not state that an act of secondary law must be the subject of an abstract and unconditional review in the light of the provisions of the WTO agreements. The extent of the Court's review is, rather, strictly dictated by whether, in enacting the secondary legislation, the EU legislature pursued an intention of implementation. If no such intention exists or cannot be adequately proved, WTO law cannot be used as a criterion for reviewing secondary law.

42. Second, it is not sufficient, for the purposes of establishing that the EU legislature does pursue an intention of implementation, for the preamble to an EU act to support only a general inference that the legal act in question was to be adopted with due regard for international obligations entered into by the European Union.[29] It *is* sufficient, and also necessary from the point of view of the application of the case-law in *Nakajima*, that the context of the EU legal act in question should make it indubitably clear that the legislature's intention was to implement a particular and substantively precise WTO obligation and, also, that it should be apparent which provision of which act of secondary law that obligation was intended to implement.

43. On that basis, it must now be determined whether the judgment under appeal was right to rely on the case-law in *Nakajima*, to find that, in adopting the contested provision of the basic regulation, the EU legislature did pursue an intention of implementation and, finally, to declare that provision not to be applicable to the Armenian undertaking.

21 — Judgment in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 59).

22 — Judgment in *Nakajima* v *Council* (EU:C:1991:186, paragraph 30).

23 — Judgment in *Petrotub and Republica* (C-76/00 P, EU:C:2003:4, paragraph 55).

24 — Judgment in *Petrotub and Republica* (C-76/00 P, EU:C:2003:4, paragraph 56).

25 — As in the judgment in *Nakajima* v *Council*.

26 — As in the judgment in *Petrotub and Republica*.

27 — Judgment in *Nakajima* v *Council* (EU:C:1991:186, paragraph 40).

28 — See also in this regard the Opinion of Advocate General Geelhoed in *Franz Egenberger* (C-313/04, EU:C:2005:733, point 76) and the Opinion of Advocate General Saggio in *Portugal* v *Council* (C-149/96, EU:C:1999:92, point 17).

29 — See to the same effect my Opinion in *Inuit Tapiriit Kanatami and Others* v *Commission and Others* (C-398/13 P, EU:C:2015:190, point 91).

2. Whether the EU legislature pursued an intention of implementation when it adopted the basic regulation

44. In adopting the basic regulation, the EU legislature had every intention of being guided by provisions from the Anti-Dumping Agreement, as it indicated in the preamble to that regulation.[30] Thus, in recital 5 in the preamble, the basic regulation states, with reference to the Anti-Dumping Agreement, that 'the language of the … agreements should be brought into Community legislation *as far as possible*'.[31]

45. This in itself, however, does not mean that, from the point of view of the EU legislature, the basic regulation may not derogate in any way from the scheme of rules laid down in the Agreement or, in particular, that the legislature set itself the task, when determining the normal value of a product, to be unreservedly guided by the prescriptive framework of the Anti-Dumping Agreement.

46. After all, recital 5 in the preamble must not be considered in isolation or in absolute terms. On the contrary, since the very wording of that recital states that the language of the Agreement is to be brought into the basic regulation only 'as far as possible', it is clear not least from the recital itself that, when adopting its legal act, the EU legislature took into account the possibility that full transposition of the Agreement into EU law might come into conflict with opposing EU considerations.

47. Recital 5 in the preamble to the basic regulation does not therefore support the inference that it is the unconditional intention of the legislature that the content of the basic regulation must be fully consistent with the Anti-Dumping Agreement and that any provision of the basic regulation that derogates from the Anti-Dumping Agreement therefore ceases to be driven by the legislature's intention of implementing that agreement.

48. That understanding of the meaning and scope of recital 5 is compatible with the case-law in *Nakajima*. It cannot be inferred from the judgment in *Nakajima* v *Council* that any substantive derogation from the Anti-Dumping Agreement must have the automatic effect of rendering the basic regulation irrelevant. The reason for this is that that judgment concerned other legal provisions, that is to say Regulation No 2423/88 and the 1979 Anti-Dumping Code. The judgment in *Petrotub and Republica*,[32] which was itself concerned with the basic regulation and the Anti-Dumping Agreement, also does not readily support such a far-reaching conclusion. It is true that that judgment makes it clear that that purpose of the basic regulation 'is, inter alia, to transpose into Community law *as far as possible* [[33]] the new and detailed rules contained in the 1994 Anti-Dumping Code, which include, in particular, those relating to the calculation of the dumping margin' and concludes in the following paragraph that '[i]t is therefore established that the Community adopted the basic regulation in order to satisfy its obligations arising from the 1994 Anti-Dumping Code'.[34] However, that judgment concerns a special provision for calculating the dumping margin by reference to asymmetrical or symmetrical methods[35] which is not at issue in the present case.

49. Moreover, recital 7 in the preamble to the basic regulation militates against the assumption of an unrestricted intention of implementation on the part of the EU legislature.

30 — See not least to this effect the judgment in *Petrotub and Republica* (C-76/00 P, EU:C:2003:4, paragraphs 22 and 55), concerning the so-called asymmetrical method of calculating the dumping margin.

31 — Emphasis added.

32 — Judgment in *Petrotub and Republica* (C-76/00 P, EU:C:2003:4).

33 — Emphasis added.

34 — Judgment in *Petrotub and Republica* (C-76/00 P, EU:C:2003:4, paragraphs 55 and 56).

35 — Judgment in *Petrotub and Republica* (C-76/00 P, EU:C:2003:4, paragraph 22).

50. In that recital, the EU legislature invokes as a basis for determining normal value for non-market economy countries considerations of prudence which are not referred to as such in the Anti-Dumping Agreement. This suggests that, so far as those countries are concerned, the EU legislature did not intend to transpose any provisions from the Anti-Dumping Agreement and, to that extent, exercised its regulatory competence on its own initiative.

51. It is immaterial whether, as the Council argued at the hearing, the Anti-Dumping Agreement does exhibit, with respect to the determination of normal value for the countries concerned, a regulatory loophole which, from the point of view of WTO law, the EU legislature was able to fill at its own discretion.[36] The decisive factor is rather that — as, indeed, is also apparent from the drafting history of the provision at issue, which the appellant sets out in its appeal[37] — the EU legislature deliberately opted to take its own, very particular, approach to the regulation of non-market economy countries and that, to this extent, the legislative act which it adopted was clearly not driven by an intention of implementation within the meaning of the case-law in *Nakajima*.

52. Consequently, in the absence of any such intention of implementation, the lawfulness of the relevant provisions of the basic regulation could not be reviewed in the light of the Anti-Dumping Agreement itself. The judgment under appeal is therefore erroneous in law in this regard.

53. The second ground of appeal is therefore well founded and the judgment under appeal must for that reason alone be set aside.

54. Finally, for the sake of completeness, we must now, with due brevity, look at the third ground of appeal.

C – *The third ground of appeal*

55. The third ground of appeal complains that there has been an infringement of the principle of institutional balance. The appellant argues that it is for the EU legislature alone to decide which States are to be regarded as non-market economy countries for the purposes of anti-dumping law and how they are to be treated.

56. This ground of appeal is closely connected with the second ground of appeal,[38] since it is effectively a complaint to the effect that, by its decision, which was based on the case-law in *Nakajima*, the General Court wrongly disregarded the declared intention of the EU legislature.

57. If the Court of Justice endorses the view expressed here and upholds the second ground of appeal, the complaint advanced by way of the third ground of appeal is superfluous.

58. If, however, the Court takes the view that the General Court did not commit an error of law in applying the case-law in *Nakajima*, a ruling would have to be given on the third ground of appeal. It is sufficient to point out in this regard that, where the application of the case-law in *Nakajima* has the effect of establishing the unlawfulness of an act of secondary law, it does take account of the declared intention of the EU legislature. There is therefore no support for the view that, by that case-law, the EU judicature assumed legislative powers which it was not entitled to exercise.

36 — A different view is taken in paragraph 50 of the judgment under appeal.

37 — See paragraphs 49 to 96 of the appeal. The appellant's submissions at the hearing in particular indicate that, in this regard, the EU legislature intended to be guided by its own political considerations, irrespective of the WTO rules.

38 — Order in *Commission* v *Rusal Armenal* (C-21/14 P-R, EU:C:2014:1749, paragraph 35).

D – *Summary*

59. Since the second ground of appeal is well founded, the appeal must be upheld in its entirety and the judgment under appeal must be set aside.

60. If the Court of Justice sets aside the judgment of the General Court, it may itself give final judgment in the matter where the state of the proceedings so permits (first alternative set out in the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice).

61. In the present case, the state of the proceedings permits the Court of Justice in part to give final judgment in the matter. As indicated above, the General Court committed an error in finding, on the first plea in law raised by Rusal Armenal, that there had been an infringement of the Anti-Dumping Agreement. That plea must be dismissed as unfounded.

62. As regards the other pleas in law not yet assessed by the General Court, however, the state of the proceedings does not permit the Court of Justice to give final judgment in the matter. The case must therefore, to that extent, be referred back to the General Court for judgment (second alternative set out in the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice).

VI – **Costs**

63. If the appeal is well founded and, as I have proposed in the present case, the Court of Justice refers the case back to the General Court, the costs are reserved (converse inference from Article 184(2) of the Rules of Procedure).

VII – **Conclusion**

64. In the light of the foregoing considerations, I propose that the Court should:

(1) set aside the judgment of the General Court of the European Union of 5 November 2013 in *Rusal Armenal* v *Council* (T-512/09, EU:T:2013:571;

(2) dismiss the first plea in law of the application for annulment brought by Rusal Armenal ZAO;

(3) refer the case back to the General Court for examination of the remaining pleas in law; and

(4) reserve the decision as to costs for both sets of proceedings.