



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from: Council Legal Service
to: Permanent Representatives' Committee (part 2)
Subject: **Case C-21/14 P before the Court of Justice - Appeal brought by European Commission against the judgment of the General Court of 5 November 2013 in Case T-512/09; Rusal Armenal ZAO v Council of the European Union**

1. By application lodged with the Court of Justice on 16 January 2014 and notified to the Council on 20 January 2014, the Commission has lodged an appeal against the judgment of the General Court of 5 November 2013 in **Case T-512/09 Rusal Armenal ZAO v Council** by which the General Court annulled Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminum foil originating in Armenia, Brazil and the People's Republic of China in so far as it concerns Rusal Armenal ZAO.

2. In its appeal, the Commission asks the Court to set aside the contested judgment, to reject the first plea of the application at first instance as unfounded in law; to refer the remaining pleas to the General Court for reconsideration and to reserve the costs of the proceedings at first instance and on appeal.

3. The Commission invokes three grounds of appeal:
 - a) Firstly, the General Court has ruled *ultra petita*: whereas in its Application, the applicant at first instance had put forward a combination of a plea of illegality and a plea of violation of the principle of consistent interpretation, it limited the content of that plea in its Reply to the violation of the principle of consistent interpretation. By nevertheless carrying out a review of legality, the General Court ruled *ultra petita*;

 - b) Secondly, the General Court has erred in law by considering that the legislator, when including Armenia in the footnote accompanying Article 2(7)(a) of the basic Regulation, wanted to comply with the international obligations of the Community deriving from Article 2.1 and 2.2 of the Anti-Dumping Agreement and the second supplementary provision to paragraph 1 of Article VI of the GATT. As a result, the General Court erred in law when it considered, that it had the power to review the legality of the inclusion of Armenia in the footnote accompanying Article 2(7)(a) of the basic Regulation in the light of Article 2.1 and 2.2 of the Anti-Dumping Agreement and the second supplementary provision to paragraph 1 of Article VI of the GATT;

 - c) Finally, the General Court violated the general principle of Union law of institutional balance, as it could not, without encroaching on the powers reserved to the legislator, rule that Armenia could no longer be validly included in the footnote accompanying Article 2(7)(a) of the basic Regulation.

4. Under the Statute and the Rules of Procedure of the Court, the Council is another party to the appeal proceedings. Under Article 172 of the said Rules the Council may lodge a response within two months after service of the notice of the appeal.

 5. The Director General of the Legal Service of the Council has appointed Ms. Sonja BOELAERT and Mr. Jan-Peter HIX, legal advisors in the Legal Service of the Council, as the Council's agents in this case. They are assisted by Mr. Bernard O'CONNOR and Mr. Sébastien GUBEL (NCTM O'Connor Brussels).
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