TO THE PRESIDENT AND MEMBERS
OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Brussels, 14 December 2023

APPEAL

Brought pursuant to Article 56 of the Statute of the Court of Justice and Article 167 of the Rules of Procedure of the Court of Justice by **EURANIMI – European Association of Non-Integrated Metal Importers & Distributors**, with headquarters in Rue Beckers 4D #13, B-1040 Brussels – Belgium, in person of its legal representatives, pursuant to article 14 (4) and (5) of the Statute of the Association, **Mr. Christophe Lagrange** and **Mr. Robert Greve**, represented by Mr. Davide Rovetta, Avvocato Member of Brescia Bar (Italy) and Member of French speaking Brussels Bar, Mr. Massimo Campa, Avvocato, Member of the Milan Bar (Italy), with registered office in Piazza Del Duomo no. 20 - 20122 Milano, and Mr. Vincenzo Villante, Avvocato and Member of the Brescia Bar (Italy), all domiciled for the current case at the offices of Grayston & Company law firm, 28 Boulevard St. Michel, B-1040 Brussels Belgium[1]

- Applicant at first instance and now Appellant -

against the Order of the General Court of 4 October 2023 in Case T-598/21, *EURANIMI – European Association of Non-Integrated Metal Importers & Distributors v European Commission* (**Annex AA.1**) notified to the Appellant on the same day (hereinafter also "**the Order under appeal**").

The other party of the proceedings before the General Court being the **European Commission**, represented by G. Luengo and P. Němečková, acting as Agents,

- Defendant at first instance and now Respondent -

I. Facts and Procedure

[1] In addition to primary acceptance of service via e-curia, in accordance with Article 57 of the Rules of Procedure of the General Court, the representatives of the Appellant agree that service of documents may also be effected to them by email to massimo.campa@campaavvocati.it and daviderovetta@graystoncompany.com or by fax +39 02861375.

(1) The facts of the case have been established by the General Court in paragraphs 2 - 12 of the Order under appeal, to which the Appellant hereby refers, limiting here to recalling the most important stages of the procedure and of the subsequent judgment before the General Court.

(2) By Commission Implementing Regulation (EU) 2019/159 of 31 January 2019, the European Commission imposed a definitive safeguard measure against imports of certain steel products, consisting of tariff quotas covering 26 categories of steel products. In addition, that Regulation also provided for the application of a tariff duty of 25% if the quantitative thresholds of the tariff quotas imposed were exceeded. The safeguard measure was imposed for an initial period of three years, i.e. until 30 June 2021 (see Annex A. 3 to the Application for annulment).

(3) The Commission considered that the request contained sufficient evidence to initiate an expiry/extension review investigation. Accordingly, on 26 February 2021, the European Institution published a notice of initiation in the Official Journal of the European Union, inviting interested parties to participate in the investigation by submitting their comments and evidence (Annex A. 5).

(4) EURANIMI, being an association representing the interests of several importers, traders and processors of steel products which are directly concerned by the definitive safeguard measure, became an interested party in the proceedings and submitted its observations (Annex A. 6). In particular, EURANIMI reported to the Commission the necessity to take into account, when assessing the need for a temporal extension of the safeguard measure on certain steel products, the latest economic developments in the EU steel sector and the effects of the Covid-19 pandemic on the European processing industry. EURANIMI pointed out that, while from the fourth quarter of 2020 the EU market demand for products concerned has increased significantly, European steel mills are unable to meet the EU market demand and import quotas – for the volumes allowed by European Regulation - are not sufficient to meet the supply of steel products, being regularly exhausted for imports of stainless-steel products.

(5) On the 24 June 2021, the European Commission issued the Regulation (EU) Regulation (EU) 2021/1029, amending the Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products, until 30 June 2024 (hereinafter the "**Contested Act**" or the "**Contested Regulation**").

(6) In this context, EURANIMI challenged the Contested Regulation and, on 20 September 2021, submitted an Application for the annulment of the said Act pursuant to Article 263 TFEU and in conformity with Article 76 and following of the Rules of Procedure of the General Court. The application was registered by the General Court as Case T-598/21.

(7) In support of its action, the Appellant relied on two pleas in law. In the first plea in law, the Appellant alleged a breach of Article 19 of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports and a consequent manifest error of assessment in the evaluation of the legal conditions laid down for the prolongation of the safeguard measures. In the second plea in law, the Appellant alleged a manifest error of assessment of the notion of "interest of Union" and an erroneous assessment and determination of the relevant evidence. In this context, the Appellant also alleged an infringement of the duty to take into account the post investigating period (IP) year 2021 situation.

(8) On 16 December 2021 the European Commission lodged its Defence, which was served to the Appellant on 21 December 2021. EURANIMI was then assigned a deadline to submit its Reply as of 3 March 2022.

(9) In compliance with the due deadline, the Appellant submitted its Reply pursuant to Article 83 of the Rules of Procedure of the General Court.

(10) On 15 April 2022, the European Commission lodge its Rejoinder pursuant to Article 83 of the Rules of Procedure of the General Court.

(11) In light of the reasoned request submitted by the Appellant, on 16 December 2022 the Registrar of the General Court informed the Parties that the Court has decided to open the oral part of the procedure. The date of the hearing has been set as 7 March 2023.

(12) On 4 October 2023, the General Court delivered the Order under appeal, which was notified to the Appellant on the same day. The General Court dismissed the action and ordered EURANIMI to pay the costs.

II. Subject matter of the present appeal.

(13) For the purpose of the present appeal, the Appellant will concentrate on the Order of the General Court to dismiss the application for annulment lodge by EURANIMI.

III. First ground of appeal: Error in law in interpreting the Article 19(2)(a) and (b) of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports and in particular the requisite of "*serious injury*" and "*adjustment*" - Wrong qualification of facts and distortion of evidence – Failure to state reasons and to respond to several crucial arguments, supported by evidence, raised by the Appellant.

(14) By the first ground of appeal, the Appellant claims that the General Court infringed Article 19(2) of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (hereinafter "**Basic Safeguard Regulation**") and committed several errors of law and distortions of facts and evidence in deciding that the European Commission did not commit any manifest error as assessment in finding that the legal conditions for the prolongation of the safeguard measures were met by the Contested Act.

i. As regards to the legal condition laid down in Article 19(2)(a) of the Basic Safeguard Regulation – Wrong qualification of the notion of "serious injury", distortion of facts and evidence – Wrong assessment on the necessity of the prolongation of the safeguard measure or remedy serious injury.

(15) The General Court erred in law and distorted the facts and evidence in paragraphs 72 to 94 of the Order under appeal in concluding that the European Commission "*did not commit a manifest error of assessment in the analysis which led it to take the view that the prolongation of the safeguard measures was necessary to prevent or remedy serious damage*".

(16) As we shall see in greater detail below, the General Court has failed to address at all various arguments raised by the Appellant or to assess the significance of the evidence provided by EURANIMI in order to demonstrate that the European Commission did not provide at all any evidence of "serious injury" or – at least – of the likelihood that EU industry and the EU market may suffer serious injury, within the meaning of Article 19(2)(a) of the Basic Safeguard Regulation.

(17) As a preliminary point, it should be recalled in this regard that, according to Article 4 of Basic Safeguard Regulation, "*a) serious injury' means a significant overall impairment in the position of Union producers*"; while "*(b) 'threat of serious injury' means serious injury that is clearly imminent*".

(18) According to the above-mentioned Article, any extensions of a safeguard measure shall be adopted in accordance with the terms of Chapter III of the Basic Safeguard Regulation and using the same procedures as to impose the initial safeguard measures. In this regards, it should also be noted that Article 4 of the Basic Safeguard Regulation provides that any Union investigation procedure oriented in prolonging safeguards measures shall make use, as a basis, the economic factors referred to in Article 9 of the Basic Safeguards Regulation, which reads as follows:

"1. Examination of the trend in imports, of the conditions in which they take place and of serious injury or threat of serious injury to Union producers resulting from such imports shall cover in particular the following factors:

(a) ***the volume of imports****, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Union;*

(b) the price of imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Union;

(c) the consequent impact on Union producers as indicated by ***trends in certain economic factors*** *such as: —* ***production****, — capacity utilisation, — stocks, — sales, —* ***market share****, — prices (i.e. depression of prices or prevention of price increases which would normally have occurred), —* ***profits****, —* ***return on capital employed****, — cash flow, — employment;*

(d) factors other than trends in imports which are causing or may have caused injury to the Union producers concerned" (emphasis added).

(19) The General Court, after considering the analysis of the above mentioned economic factors provided by the Parties, concluded in paragraph 81 of the Order under appeal that the Appellant's assessment are wrong as "*are fragmentary and isolated*", while noting – in paragraph 80 of the Order under appeal – that "*it is apparent from the findings expressly set out in paragraph 3.1 of the contested regulation that the conclusion reached by the Commission in recital 17 of that regulation, namely the fragile and vulnerable nature of the situation of the EU industry, is based on numerous other injury indicators, almost all of which showed strong negative trends*".

(20) As we shall see in greater detail below, the assessment of each economic factor provided by the European Commission and endorsed by the General Court should be retraced in so far as it entails a distortion of facts and a failure to take into considerations the evidence provided by the Appellant.

(21) Diving into the assessment provided by the General Court, as regards to the factor relating to the "production volume of the product concerned" the General Court held in paragraph 76 of the Order under appeal that "*it is clear from the analysis in recital 12 of the contested regulation, which compares the development of production volume, production capacity and the use of that capacity, that the use of production capacity fell by 13 percentage points*".

(22) Then, as regards to the economic factor relating to the "market share", the General Court noted that the market share of the EU steel industry increased from year to year and that this positive trend can be regarded as an objective and undisputed fact, since it is "*also apparent from the Commission's additional analysis by product family or category*" (see paragraph 77 of the Order under appeal). The General Court, anyway, dismissed the significance of this positive trend since it "*did not lead to an improvement in profitability*", thus recalling "*recital 15 of the contested regulation, which states that the EU industry became loss-making between 2018 and 2019 and that profitability continued to decrease between 2019 and 2020*". In light of the above, the General Court also held that the Appellant's assessment concerning the decrease in imports during the investigation period lacked relevance, in so far as it were not contextualized.

(23) The General Court also erroneously held that no relevance could be given to the Appellant's evidence about the increase in profits of the main players in the EU steel industry, in so far as that financial statements for 2021 were temporally irrelevant data, as they were after the period of investigation (2018-2020) (see paragraph 87 of the Order under appeal).

(24) Further to this, the General Court also rejected the Appellant's considerations regarding negative import trends in European steel market - especially noting the absence of pressure on the EU industry from the imports originating in the People's Republic of China – considering that "*the Commission took account of the state of overproduction and of overcapacity worldwide*".

(25) The method underlying the analysis of the General Court in assessing the correctness of the Commission's forward-looking examination of the presence of serious injury is flawed and contradictory.

(26) **Firstly**, in rejecting the analysis carried out by the Appellant, thus confirming the Commission's assessment, the General Court pointed out that the positive market trends highlighted by the Appellant are *de facto* irrelevant because, in the framework of a

contextualized assessment of them, the European industry is nevertheless shown to be vulnerable and fragile. Thus, the economic factors about the decreasing imports in the European market (undisputed circumstance), the increasing market share of the European industry (undisputed circumstance), and the increasing profits of the main EU players of the steel industry (circumstance expressly not evaluated by the General Court due to the alleged temporal irrelevance of the data provided by the Appellant) lose relevance.

(27) In the first place, the General Court erred in finding that the Appellant provided an analysis of the economic situation of the European steel industry that lacked context by allegedly considering market factors in isolation.

(28) Contrary to what was held by the Order under appeal, the Appellant provided an overall assessment of various economic factors, in accordance with Art. 9 of the Basic Safeguard Regulation: further to *(i)* the increase in the market share of the EU steel industry during the IP - a circumstance confirmed by the European Commission itself - and *(ii)* the decrease in the European market share of imports (see paragraph 13 above and paragraph 80 of the Application for annulment), the Appellant also took into consideration the factor relating to *iii)* the exponential increase in the prices of raw materials and, consequently, of the finished product (see paragraphs 22-26 of the Reply and Annex A. 17 to the Application for annulment) and to *iv)* the serious effect on the European steel market and on the relevant supply chain due to the Covid-19 pandemic, resulting in exceptional shortage of raw material and exponential increase in costs and delivery time of the goods (see paragraphs 27-30 of the Appellant's Reply and Annex A. 19 and Annex A. 20 to the Application for annulment).

(29) And indeed, it is precisely considering the overall extraordinary market condition occurred during the IP - and which further criticized in the post-IP market - that the Appellant pointed out that an overall analysis of the European industry could easily have led the European Commission to conclude that domestic capacity was not even sufficient to meet domestic demand (see paragraphs 31-54 of the Appellant's Reply and Annex A. 18 to the Application for annulment). Hence, the conclusion that the European industry was not in a position to suffer possible injury from imports but needed them to make up for its inability to meet the demand for material. Therefore, contrary to what was held by the General Court, the Appellant clearly provided a comprehensive and coordinated analysis of the various economic factors.

(30) In the second place, in light of this contextualized perspective of analysis and evidence, the Appellant has repeatedly pointed out how and why the Commission failed to carry out an appropriate non-attribution analysis concerning the exceptional market circumstances in 2020 caused by the Covid-19 pandemic. In this regards, the Order under appeal limit itself to highlight that the Appellant allegedly "*failed to identify specifically the inadequacies of the considerations set out in the contested regulation in that regard*". Contrary to the General Courts' findings, the Appellant specifically underlined the inadequacies of the consideration set out by the European Commission in the contested regulation in that regard. One among the others: the Appellant expressly referred that, similar to what happens in EU anti-dumping investigations under Article 14(4) of the Basic Anti-dumping Regulation[2], in light of the exceptional circumstances caused by Covid-19 pandemic, as described in paragraphs 105 to 133 of the Application for annulment and in the Reply, the Commission was under a duty to also evaluate the post IP exceptional market circumstances in order to assess whether or not the safeguard measure at issue was to be prolonged. In light of this, the Appellant submitted several evidence concerning the increase in profits of the main players in the EU industry concerned during the first and third quarter of year 2021, in order to further demonstrate the absence of injury and the fact that the Commission's forward-looking examination concerning the presence of "serious injury" was flawed (see Annexes A. 8, A. 9, A. 10, A. 11 to the Application for annulment and Annexes C. 3, C. 4, C. 5, C. 6 to the Reply). The General Court, in paragraph 87 of the Order under appeal, wrongly dismissed these evidence as irrelevant, as their "*temporal scope extends beyond the period considered by the Commission*", thus rejecting them as ineffective. The evaluation of such, data, therefore, is not only compelled from the perspective of an analogical application of Article 14(4) of the Basic Anti-dumping Regulation, the evaluation of such data also grasps from a perspective of logical-legal consistency of reasoning. In fact, it is quite evident that such positive and clear profit data found during Q1 of the year 2021 only testifies to the fact that, even during the period of investigation, European producers were not loss-making, as erroneously concluded by the Commission.

[2] 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 (codification), OJ L 176, 30.6.2016, p. 21–54.

(31) And further to this, the General Court, in an entirely contradictory manner, took into consideration the factors of over-production and over-capacity, on which the very shortage and supply difficulties highlighted by EURANIMI depend - for the sole purpose of rejecting the arguments put forward by the Appellant about the absence of pressure, on the European industry, from foreign steel imports: in paragraph 88 of the Order under appeal the General Court held that "*the Appellant complains that the Commission did not take into consideration the absence of pressure on the European industry by imports from the People's Republic of China. However, it appears from recitals 39 and 43 of* ***the contested regulation that the prospective examination carried out by the Commission took into account the situation of overproduction and overcapacity worldwide****. Accordingly, this complaint must also be rejected*" (emphasis added).

(32) Notwithstanding the above, it should be borne in mind that, even if an overall and contextualized interpretation of the economic factors set out in Article 9 of the Basic Safeguards Regulation is necessary in order to assess the presence of a "serious injury", the Commission, within its discretion, is called upon to place more value on some factors over others. This is strictly required by Article 2 of the WTO Safeguard Agreement, which recalls the paramount importance of the presence of "*increased imports*" in that, according to such provision, what is central in order to impose or prolong a safeguard measure is the presence of: a) increased imports which b) have caused or are threatening to cause serious injury to domestic industry. This has been further affirmed by the WTO Panel in Argentina – Footwear (EC). In paragraph 8.152 of its Report, the Panel ruled that: "*[t]he Agreement is clear that it is the data on import quantities … in absolute terms and relative to (the quantity of) domestic production that are relevant in this context, in that the Agreement refers to imports 'in such increased quantities*[3]*'*".

(33) This approach is fully consistent with the fact that the last step in the serious injury investigation involves an enquiry into causality. It is clear from the wording of Article 15 and 16 of the Basic Safeguard Regulation that the adoption of safeguard measures is warranted

[3] The European Commission correctly often referred to the WTO Agreement on Safeguards in the challenged Regulation and in the Basic Safeguards Regulation. Therefore, also the Applicant is, where appropriate, referring to such agreement and the connected WTO case law as a means to interpret the Basic Safeguard Regulation without however any pretention of wanting to invoke a "direct effect" of such Agreement in the EU legal order.

only insofar as the serious injury sustained by Union producers or threat of serious injury is cause by the greatly increased quantities of imports and/or their terms or conditions.

(34) In the instant case, it is apparent from the Contested Act itself that the evolution trend of imports during the investigation period has been negative, as confirmed by Table 9 of the Contested Regulation and which, for the sake's of the Court's convenience, is reproduced below:

Table 9

Evolution of imports in tonnes

	2018	2019	2020
Volume of imports	34 180 000	29 672 000	25 019 000
index 2018 = 100	*100*	*87*	*73*
Source: EUROSTAT			

(35) Further to this, according to WTO Law, the factual circumstances surrounding the increase imports and the subsequent injury or threat of injury must be "unexpected", a condition that the Appellant's challenged in the present case (see paragraph 64 in the Application for annulment). The Order under appeal completely failed to pronounce on any aspect concerning WTO Law.

(36) In light of the above, the General Court committed several errors of law and distortion of evidence and facts. Further to this, the Order under appeal is, inevitably and for the same reason, also vitiated by a failure to state reasons and it should thus be set aside.

ii. As regards to the legal condition laid down in Article 19(2)(b) of the Basic Safeguard Regulation – Wrong qualification of the notion of "adjustment", distortion of facts and evidence – Wrong assessment on the necessity of the prolongation of the safeguard measure or remedy serious injury.

(37) The General Court erred in law and distorted the facts and evidence in paragraphs 95 to 104 of the Order under appeal in concluding that the European Commission did not commit a manifest error of assessment in the analysis which led it to take the view that there is evidence that Union producers were adjusting.

(38) Firstly, it should be held in mind that the term "*adjusting*" must be read together with the WTO Agreement on Safeguards. Its preamble "*recogniz[es] the importance of structural adjustment and the need to enhance rather than limit competition in international markets*". Article 5 provides that safeguard measures can be applied "*only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment*". Article 7 adds that safeguard measures may be applied "*only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment*". Thus, the purpose of safeguard measures is to permit the EU industry to adjust, in order to be able to compete **with fairly traded imports**. If the EU industry is not adjusting, then the safeguard measures should not – and cannot – be extended.

(39) In this regards, the burden of proof about is called upon the European Commission, which was obliged to prove the existence of adjustment plan in the relevant European industry.

(40) The General Court, in paragraph 97 of the Order under appeal, noted that "*the Commission took into account a number of factors revealing adjustment measures adopted by the EU industry*" which were contained both in **confidential information** shared by EU producers during the investigation and in the allegedly detailed information set out in recitals 69 and 70 of the Contested Regulation, with respect to which "*the applicant dispensed with any analysis of that information and merely stated that none of the references to adjustment activities reported by the Commission were supported by any evidence*".

(41) As regards to the confidential evidence, it is crystal clear that the Appellant was never granted – nor could it be granted - the occasion to respond and challenge this evidentiary set, with serious violation of the right to cross-examination and the right of defence. No rebuttal or argument could therefore be made by EURANIMI on documents to which it did not and could not have access.

(42) Coming to the allegedly "*detailed information*" contained in recitals 69 and 70 of the Contested Regulation, it is first deemed appropriate to recall that these recitals state as follows:

"69. On the one hand, the Union steel industry has reported performance-enhancing measures to save costs and optimize value chain, such as job cuts, closing of less efficient or underutilised facilities, coupled with investments in new machinery and production processes ([43]). On the other hand, the Union steel industry has also documented more forward-looking adjustments to reinforce competitiveness in the longer run, such as investments in new sustainable technologies (including environmental tech), production processes, and product innovation. Among others, some steel producers, such as Aperam ([44]), Thyssenkrupp ([45]) or

ArcelorMittal ([46]), have adopted the latest technological innovations and increased automation and digitalization in their processes. Others, such as Voestalpine ([47]) or Salzgitter ([48]), have pursued the differentiation of their products by investing on premium end-use sectors (such as automotive, energy) and collaborating closely with customers on new steel grades and solutions. All these adjustment help the Union steel industry adapt to a more competitive market with higher import pressure.

70. It is to be noted that these adjustment efforts did not cease with the onset of the economic crisis caused by the COVID-19 pandemic, though the ensuing shocks and adverse economic effects of the crisis have increased the complexity and the burden for the Union industry to pursue its adaptation process".

(43) Contrary to what was held by the General Court, the Appellant precisely replied to the information provided herein, highlighting that all references on adjustment activities reported by the Commission in the challenged act concern cost reduction (so less employed people, for choice), innovation and environmental transformation (see paragraph 103 of the Application for annulment). However, further to general information relating to potential innovation, there is any evidence in the recalled recitals of concrete adjustment plan setting out how European producers of the relevant goods intend to adjust to increased imports and, if contained in the confidential set of evidence recalled by the General Court, the Appellant was never granted the occasion to evaluate if it contained sufficient information.

(44) Therefore, it is unclear how the General Court can consider that the Commission has provided positive evidence that the Union industry was adjusting within the meaning of Article 19(2)(b) of the Basic Safeguard Regulation.

IV. Second ground of appeal: Infringement and misinterpretation of the concept of "interest of the Union" under the Basic Safeguard Regulation – Wrong qualification of facts and distortion of evidence – Failure to state reasons and to respond to several crucial arguments, supported by evidence, raised by the Appellant.

(45) By the second ground of appeal, the Appellant claims that the General Court erred in law and distorted the facts and evidence in paragraphs 105 to 121 of the Order under appeal in concluding that "*the applicant has failed to demonstrate the existence of a manifest error of assessment on the part of the Commission as regards the interest of the European Union in prolonging the safeguard measures*" (see paragraph 119 of the Order under appeal).

(46) It should be recalled that, in addition to injury and evidence of adjustment, the other substantive prerequisite for the imposition (or prolongation) of safeguard measures under Chapter V of the Basic Safeguard Regulation is a finding that the interests of the union call for intervention. Even if the concept of the "*interest of the Union*" is not defined in the Basic Safeguard Regulation, Recitals 11 herein states that "*[i]t falls to the Commission to adopt the safeguard measures required by the interests of the Union. Those interests should be considered as a whole and should in particular encompass the interests of* ***Union producers, users and consumers****"* (emphasis added).

(47) It is therefore clear that, where the legal conditions laid down by the Basic Safeguard Regulation for the imposition or extension of a safeguard measure exist, such a measure must respond to the interest of the Union, taking into consideration the positions all the market players involved: from producers to end consumers, *via* local distributors.

(48) In paragraphs 106 to 121 of the Order under appeal, the General Court analyses whether the prolongation of the safeguard measures disposed by the Contested Regulation was required by the Union interest, in order to evaluate the correctness of the assessment provided by the European Commission.

(49) Firstly, the General Court took into account the Appellant's argument that the operation of the tariff quota mechanism, as provided for by the Contested Act, was not respondent to the interest of the Union, in view of the fact that the systematic and immediate exhaustion of the quotas of the main non-EU steel suppliers, together with the absence of a concrete viable import alternative from other countries, made it difficult for European users and importers to supply steel. In this view, according to the Appellant, the Commission would have imposed a safeguard measure responsive only to the interest of European producers, and not to the entire market, thus infringing the legal requirement provided by Basic Safeguard Regulation.

(50) The General Court, in paragraph 107 of the Order under appeal, held that "*the applicant's argument is based on an approach which does not take into account the mechanism of safeguard measures, which leads the importer to diversify its sources of supply by turning, where appropriate, to producers located in third countries for which the tariff quota has not been exhausted*". Simply for that and considering that some free-of-duty quotas remained unused, the General Court confirmed the assessment of the European Commission.

(51) The Appellant is of the view that, by adopting this view and perspective, the General Court has incurred in various distortion of facts and significant evidence provided by EURANIMI.

(52) In the first place, the consideration that importers could have easily diversified their source of supply, by importing from non-EU Countries whose tariff quota has not been exhausted, is inconsistent with the actual functioning of the market, thus being completely apodictic and not based on any proper consideration of the relevant steel market.

(53) In doing so, the General Court failed to take into account several crucial arguments and evidence provided by the Appellant in its Reply.

(54) First, the General Court failed to address various crucial arguments raised by the Appellant in the first instance case and aimed at showing that the Contested Act prolonged a safeguard measures contrary to the interest of the European industry, comprehensively considered, and to the very purpose of the safeguard measures themselves, which are designed to maintain historical imports flows with a modest annual increase. In particular, in paragraph 37 to 54 of the Reply and in Annex 6 and Annex 14 to the Application for annulment, the Appellant raised the following factual circumstances and evidence in order to demonstrate the manifest error of assessment committed by the European Commission in evaluating the interest of the Union to prolong the safeguards measures:

i. Taking into consideration stainless steel product group in greatest peril, i.e. the one related to Stainless-Steel Cold Rolled products ("**SSCR**"), fell within product Group 9 of those measures, the annual quotas were set for Republic of Korea, Taiwan, India, United States, Turkey, Vietnam, Malaysia, and other Countries. A duty of 25% was imposed on imports outside these quotas for an initial period of three years, i.e. until 30 June 2021.

ii. Firstly, the Commission committed a manifest error of assessment in setting the Republic of Korea as the non-EU country with the largest volume of the tariff quota. Indeed, as provided by the Appellant (see paragraph 48 of the Reply), the government of the Republic of Korea has imposed an export AD duty on many origins during year 2020. Therefore, is completely illogic reserve the major quota to a country whose government was going to prevent exports by imposing an export duty measure. The second non-EU country for volume tariff-quota is the United States. Also in this case, the European Commission committed a manifest error of assessment, considering that imports from

this country have decreased significantly, thus imposing a safeguard measure which does not protect the historical flaws. These factual circumstances were also well proven by evidence. See, for instance, the table on paragraph 44 to the Reply or Annex A. 14 to the Application for annulment. In light of the above considerations, Republic of Korea and United States could not have been considered as third countries to useful diversify the source of imports by European importers and end consumers.

iii. On the other hand, for what concern the main exporting country of the product concerned, i.e. Taiwan and Turkey, the Contested Regulation reserved respectively the second and the fifth tariff quota in terms of volume. The Appellant provided during the first instance case several evidence demonstrating the immediate exhaustion of the relevant tariff-quotas (see paragraph 40 to 43 of the Reply). The same considerations were substantiated for what concerned the tariff-quota reserved to "Other countries" due to the imports from Indonesia and Vietnam, two non-EU strategic countries for the imports of product concerned which, nevertheless, were neither reserved a specific country tariff-quota.

iv. Therefore, the same reasoning of the Commission is flawed: European importers cannot rely on several other source of supply by turning to different country producers, considering that, *de facto*, the only other concrete alternative left is Malaysia.

(55) The General Court, in the Order under appeal, has nor addressed any of the above-mentioned crucial arguments neither has evaluated the significance of the evidence provided by the Appellant. Therefore, the General Court committed a manifest error of assessment and also failed to comply with the obligation to state reason.

(56) Further to this, the General Court also clearly distorted facts: in paragraph 116, the General Court held that "*since the tariff-rate quotas were not exhausted, the safeguard measure cannot be the cause of the alleged incapacity of the EU industry to meet demand in the EU market*". Contrary to this conclusion, the Applicant's allegation was distorted by the general Court, in so far as EURANIMI has raised a completely different argument. Indeed, the Appellant highlighted that, in view of the incapacity of the EU industry to meet the domestic demand for the product concerned, the prolongation of the safeguard measures, making it even more complex to import the product considered, was clearly not required in the name of the European industry interest.

(57) The Appellant, in addition to demonstrating the absence of the Union interest in the prolongation of the safeguard measures in light of the above-mentioned inherent criticality of the mechanism provided by the Contested Regulation, also demonstrated how the extension of the safeguard measures was inconsistent with the exceptional market condition occurred during the investigation period due to Covid-19 pandemic, which further exacerbated during the year 2021.

(58) In respect to these arguments, the General Court noted, on the one hand and in paragraph 112 of the Order under appeal, that "*the applicant's submission as to the casual link between the safeguard measure and the price increase are not convincing*" and, on the other hand and in paragraph 117 of the Order under appeal, that "*since the applicant has failed to show that there is insufficient supply in the EU market, its arguments relating to delivery times and logic costs are irrelevant*". Once again, the General Court did not take into account crucial arguments raised by the Appellant in its Reply, thus failing to comply also with the obligation to state reason.

(59) In light of the above, the Appellant is of the view that the interpretation of the "Union interest" set out in the Order under appeal has the effect of rendering the prolongation of the safeguards measures unlawful, insofar as it does not comply with the legal conditions laid down in the Basic Safeguard Regulation. Consequently, the Order under appeal shall be set aside together with the Contested Regulation.

V. <u>Conclusion and form of order sought.</u>

(60) In light of all the above, the Appellant respectfully asks the Court of Justice:

- To set aside the Order of the General Court of 4 October 2023, in Case T-598/21, *European Association of Non-Integrated Metal Importers & distributors (EURANIMI) v European Commission*;

- To annul the Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021, amending the Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products, as published in the Official Journal of the European Union on 25 June 2021;

- To Order the European Commission to bear the legal cost of the present appeal and of the procedure at first instance.

Brussels, 14 December 2023

MASSIMO CAMPA
Avvocato

DAVIDE ROVETTA
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