Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

28 January 2016*

(Reference for a preliminary ruling — Regulation (EU) No 158/2013 — Validity — Anti-dumping duty imposed on imports of certain prepared or preserved citrus fruits originating in China — Effect to be given to a judgment having found a preceding regulation to be invalid — Reopening of the initial investigation to determine the normal value — Reimposition of the anti-dumping duty on the basis of the same data — Investigation period to be taken into account)

In Joined Cases C-283/14 and C-284/14,

Requests for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) and the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), by decisions of 4 June 2014 and of 1 April 2014, respectively, received at the Court on 11 June 2014, in the proceedings

CM Eurologistik GmbH

v

Hauptzollamt Duisburg (C-283/14)

and

Grünwald Logistik Service GmbH (GLS)

v

Hauptzollamt Hamburg-Stadt (C-284/14),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský (Rapporteur), M. Safjan, A. Prechal and K. Jürimäe, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

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

after considering the observations submitted on behalf of:

— CM Eurologistik GmbH and Grünwald Logistik Service GmbH (GLS), by K. Landry, Rechtsanwalt,

* Language of the case: German.

— the Council of the European Union, by S. Boelaert, acting as Agent, assisted by B. O'Connor and S. Crosby, Solicitors, and S. Gubel, avocat,

— the European Commission, by T. Maxian Rusche and R. Sauer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 September 2015,

gives the following

Judgment

1 These requests for a preliminary ruling concern the validity of Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ 2013 L 49, p. 29).

2 The requests have been made in proceedings between CM Eurologistik GmbH ('CM Eurologistik') and Hauptzollamt Duisburg (Principal Customs Office, Duisburg, Germany), and Grünwald Logistik Service GmbH (GLS) ('GLS') and Hauptzollamt Hamburg-Stadt (Principal Customs Office of the city of Hamburg, Germany), respectively, concerning the collection, by those authorities, of an anti-dumping duty on the importation by those companies of preserved mandarins originating in China.

Legal context

3 Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 343, p. 51) ('the basic regulation'), which entered into force on 11 January 2010, repealed and replaced 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 by Council Regulation (EC) No 2117/2005 of 21 December 2005 (OJ 2005 L 340, p. 17, 'Regulation No 384/96'). The basic regulation codifies and reproduces, in terms analogous to those of Regulation No 384/96, the provisions of the latter.

4 Article 1 of the basic regulation, headed 'Principles', provides:

'1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. 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.

...'

5 According to Article 2 of the basic regulation, entitled 'Determination of dumping':

'A. Normal value

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. ...

7.

(a) In the case of imports from non-market economy countries, 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, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. ... ...'

6 Article 5(9) of the basic regulation, entitled 'Initiation of proceedings', provides:

'Where it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall do so within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Union*. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within 45 days of the date on which the complaint is lodged with the Commission.'

7 Article 6 of the basic regulation, headed 'The investigation', provides:

'1. Following the initiation of the proceeding, the Commission, acting in cooperation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of the proceeding. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

…

9. For proceedings initiated pursuant to Article 5(9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.'

8 According to Article 11 of the basic regulation, entitled 'Duration, reviews and refunds':

'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. …

…

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission …

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

…’

9 Article 23 of the basic regulation, headed ‘Repeal’, provides:

‘Regulation (EC) No 384/96 is hereby repealed.

However, the repeal of Regulation (EC) No 384/96 shall not prejudice the validity of proceedings initiated thereunder.

…’

The actions in the main proceedings and the questions referred for a preliminary ruling

The facts giving rise to the adoption of Regulation No 158/2013

10 The Commission imposed interim safeguard measures against imports of preserved mandarins by adopting Regulation (EC) No 1964/2003 of 7 November 2003 imposing provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) (OJ 2003 L 290, p. 3). That regulation entered into force on 9 November 2003 and was applicable until 10 April 2004.

11 Acting pursuant to Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ 1994 L 349, p. 53) and Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89), the Commission adopted, on 7 April 2004, Commission Regulation (EC) No 658/2004 imposing definitive safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) (OJ 2004 L 104, p. 67), which was applicable from 1 April 2004 until 8 November 2007.

12 Before the expiry of the safeguard measures, the Spanish National Federation of Associations of Processed Fruit and Vegetables lodged a request for the extension of those measures, which was rejected by the Commission.

13 On 6 September 2007, that federation then lodged with the Commission a complaint alleging dumping, concerning imports of certain prepared or preserved citrus fruits originating in China.

14 Considering that the complaint contained insufficient evidence, the Commission published, on 20 October 2007, a notice of initiation of an anti-dumping proceeding concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) (OJ 2007 C 246, p. 15).

15 That notice stated that the goods concerned are prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, as defined under CN heading 2008 of the Combined Nomenclature constituting Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, (OJ 1987 L 256, p. 1) as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) (‘the CN’), originating in China, normally declared within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90. That notice specified, however, that those CN codes were merely indicative. As regards the determination of the normal value of those citrus fruits, the Commission set out in its notice that, in the absence of production of the product concerned outside the Community and China, except for those exporters/producers who provide sufficient evidence to establish that they operate under market economy conditions, and in accordance with Article 2(7)(a)

of the basic regulation, the complainant established the normal value for the People's Republic of China on an 'other reasonable basis', namely the prices actually paid or payable in the Community for the like product 'appropriately adjusted'.

16 On 4 July 2008, the Commission adopted Regulation (EC) No 642/2008 imposing a provisional anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins etc.) originating in the People's Republic of China (OJ 2008 L 178, p. 19). It is clear from recital 12 in the preamble to that regulation that the investigation to establish the existence of dumping covered the period from 1st October 2006 until 30 September 2007, whereas the examination for the purposes of the assessment of injury covered the period from 1 October 2002 until the end of the investigation period. As regards the determination of the normal value of the goods concerned, recitals 38 to 45 of the regulation indicate that, due to the lack of cooperation by the third-country producers, the normal value was determined, for all the exporting producers in the sample, on another reasonable basis, namely the prices actually paid or payable in the Community for a like product.

17 On 18 December 2008, the Council of the European Union adopted Regulation (EC) No 1355/2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain prepared or preserved citrus fruits (namely mandarins etc.) originating in the People's Republic of China (OJ 2008 L 350, p. 35), which entered into force on 31 December 2008. According to recital 17 in the preamble to the regulation, no argument was submitted that was capable of casting doubt on the methodology used for the determination of the normal value. In particular, the Commission stated that the use of data on prices from other importing countries or published information could not constitute a reasonable solution because, failing any 'analogue country' cooperation, that data could not have been verified in line with the requirements of Article 6(8) of the basic regulation. So, recital 18 of Regulation No 1355/2008 states that recitals 38 to 45 of Regulation No 642/2008 are confirmed.

18 By application lodged at the Registry of the General Court of the European Union on 23 March 2009, two undertakings concerned by the anti-dumping duty imposed by Regulation No 1355/2008 brought an action for annulment of that regulation.

19 By judgment of 17 February 2011 in *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council* (T-122/09, EU:T:2011:46), the General Court upheld the application, finding that Regulation No 1355/2008 was flawed because it infringed the rights of the defence and failed to state reasons. Consequently, the Court annulled that regulation in so far as it applied to the two applicant undertakings in that case.

20 At the same time, in the context of proceedings between GLS and the Principal Customs Office, Hamburg, concerning the collection by that authority of the anti-dumping duty imposed by Regulation No 1355/2008, the Finanzgericht Hamburg (Financial Court, Hamburg) referred to the Court of Justice of the European Union, on 11 May 2010, a question for a preliminary ruling regarding the validity of that regulation.

21 By its judgment in *GLS* (C-338/10, EU:C:2012:158), the Court declared Regulation No 1355/2008 to be invalid.

22 The Court held in that judgment that, in accordance with Article 2(7)(a) of the basic regulation, in the case of imports from a non-market economy country, the Commission, which is responsible for conducting the investigation and adopting interim anti-dumping measures, and the Council, which is responsible for adopting definitive anti-dumping regulations, must consider whether it is possible to determine the normal value of the product concerned 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. It is only if such a determination is impossible that the normal value may be determined by reference to another reasonable basis. Consequently, during the investigation leading to the adoption of Regulation

No 1355/2008, the Commission should have examined, with all due diligence, the information at its disposal in order to seek, amongst market economy countries, an 'analogue country'. The Court found that it was clear from Eurostat (Statistical Office of the European Union) statistics that during the years 2002/2003 to 2006/2007 there were not insignificant imports into the European Union of products falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 coming from market economy third countries, in particular from Israel, Swaziland, Turkey and Thailand. Those statistics provided the following data in respect of imports of those products (in tonnes):

Volume imp.	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007 (IP)
China	51282.60	65895.00	49590.20	61456.30	56157.20
Israel	4247.00	3536.20	4045.20	3634.90	4674.00
Swaziland	3903.10	3745.30	3785.70	3841.00	3155.50
Turkey	2794.30	3632.30	3021.40	2273.80	2233.60
Thailand	235.80	457.90	485.10	532.50	694.80

23 In those circumstances, the Council and the Commission should have examined of their own motion whether one of those market economy countries could constitute an 'analogue country' within the meaning of Article 2(7)(a) of the basic regulation. Consequently, the Court considered that the Council and the Commission had failed to take full account of the requirements under that provision in so far as they had determined the normal value of the product concerned on the basis of the prices actually paid or payable in the European Union for a like product, without taking all due care to determine that value on the basis of the prices paid for that same product in a market economy third country.

24 On that occasion, the Court stated, in paragraph 35 of the judgment in *GLS* (C-338/10, EU:C:2012:158), in response to an argument casting doubt on the relevance of the Eurostat statistics, that, first, the statistics whose production had been requested related to the product concerned and, second, a comparison between the statistics referred to in Regulation No 642/2008 relating to imports from China and the statistics communicated to the Court showed that the latter related entirely to imports of the product concerned.

25 On 19 June 2012, the Commission published in the *Official Journal of the European Union* a notice concerning the anti-dumping measures on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China and a partial reopening of the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ 2012 C 175, p. 19), in which the Commission stated that it had decided to reopen the anti-dumping investigation and that 'the reopening is limited in scope to the implementation of the finding of the ECJ [in the judgment in *GLS* (C-338/10, EU:C:2012:158)]'. The notice also informed customs authorities that, having regard to that judgment, imports into the European Union of the product concerned were no longer subject to the anti-dumping duties and that the duties collected in respect of the product in question under Regulation No 1355/2008 had to be repaid or remitted.

26 On 18 February 2013 the Council adopted Regulation No 158/2013. That regulation took effect from 23 February 2013 and expired on 31 December 2013.

27 Recitals 32, 33, 43, 47, 48, 54 and 86 in the preamble to Regulation No 158/2013 are worded as follows:

‘(32) [In the judgment in *GLS* (C-338/10, EU:C:2012:158) relating to the determination of an analogue country] the Court interpreted the statistics communicated by the Commission to the Court on 27 July 2011 as data relative solely to the product concerned. However, the Commission has re-examined the full extent of each CN code included in those statistics and it should be noted that they have a broader scope than the product under measures, since they included full CN codes 2008 30 55, 2008 30 75 and 2008 30 90. The statistical data only covering the product concerned or like product for CN codes 2008 30 55 and 2008 30 75, for the [countries referred to in the Eurostat statistics available for the investigation] during the investigation period are as follows:

Country	Volume of imports (tonnes)
[China]	49791.30
Thailand	666.10
Turkey	151.20
Israel	4.80
Swaziland	0

(33) Under CN code 2008 30 90, the statistics included products other than the product concerned. As a consequence, no conclusions can be drawn on imports of the like product with regard to this CN code. Therefore, it cannot be derived from the statistics that the like product was imported during the investigation period in significant quantities from either Israel or Swaziland.

…

(43) […] it should be underlined that the Commission decided to reopen the initial investigation in a limited manner, restricted to the possible identification of an analogue country. It did not define a new investigation period, contrary to the approach followed in the case that led to the judgment in *Industrie des poudres sphériques* v *Council* [(C-458/98 P, EU:C:2000:531)]. This was based on the consideration that given that antidumping duties had been in place, any data collected during a new investigation period would have been distorted by the existence of these antidumping duties, in particular with regards to the establishment of injury. The Commission considers that the points raised by the parties on the alleged absence of dumping at the present point in time can be more appropriately discussed in the framework of an interim review pursuant to Article 11(3) of the basic regulation. Whereas in the initial investigation, the analysis on the existence of injury is carried out ex post for the investigation period, the analysis of injury during an interim review is done in a prospective manner, as the injury observed during the investigation period of the review is likely to be influenced by the fact that an antidumping duty is in place.

…

(47) In the judgement [*GLS*, C-338/10, EU:C:2012:158], the Court specifically referred to four countries from which, according to Eurostat data, there would have been significant imports into the Union under the CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90. These countries are Israel, Swaziland, Thailand and Turkey. In view of this, the Commission contacted the authorities of these countries via their Missions to the European Union. They were all contacted before the partial reopening of the investigation and again at the time of reopening. The Missions

concerned, as well the Delegations of the European Union to those four countries, were requested to identify possible domestic producers of the like product and, if any, to assist in obtaining their cooperation.

(48) Although [they were] contacted twice, no replies were received from the Missions of Swaziland and Thailand to the European Union. Replies were received from the Missions of Israel and Turkey. The Turkish Mission provided addresses of six alleged producers, while the Israeli Mission informed to the Commission services that there had been no production of the like product in Israel during the [investigation period] (and that there is currently no such production).

…

(54) Account taken of the comments made by the parties, the analysis thereof and, in spite of significant efforts by the Commission services, the lack of cooperation from potential third country producers, it was concluded that a normal value on the basis of the price or constructed value in a market economy third country as prescribed by Article 2(7)(a) of the basic regulation could not be determined.

…

(86) With regards to the claim that the injury analysis should be based on more recent data ..., it is observed that any more recent data will be influenced by the fact that an antidumping duty has been in place. Therefore, the appropriate instrument to analyse more recent data is an interim review as prescribed in Article 11(3) of the basic regulation, and not a new investigation …'

The factual background in Case C-283/14

28 CM Eurologistik provides warehousing and distribution services. On 20 March 2013, CM Eurologistik placed in a duly authorised customs warehouse 48 000 cases, each containing 24 cans of preserved mandarin oranges not containing added spirit and containing added sugar (13.95%), of 312 grams (g) each, within in TARIC (Integrated Tariff of the European Communities) subheading 2008 30 75 90 and originating in China. CM Eurologistik made a fresh placement of the same quantity of goods in that warehouse on 25 March 2013.

29 In April 2013, CM Eurologistik removed, on three occasions, the equivalent in the abovementioned cans of approximately 19 296 kilograms (kg) of preserved mandarins from the customs warehouse and subsequently submitted a declaration for release for free circulation of those goods.

30 By notice of 7 May 2013, the Principal Customs Office of Duisburg established the amount of anti-dumping duty payable by CM Eurologistik at EUR 9657.99.

31 CM Eurologistik lodged an objection to that notice on the grounds of the invalidity of Regulation No 158/2013.

32 By decision of 9 September 2013, that office, considering that it was bound by Regulation No 158/2013 and that it had not erred in the application of that regulation, dismissed that objection.

33 CM Eurologistik brought an action against that decision before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf), relying on the same ground as that raised in the objection.

34 The Finanzgericht Düsseldorf (Finance Court, Düsseldorf) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Regulation No 158/2013 valid?'

The factual background in Case C-284/14

35 GLS imports into the European Union preserved mandarins originating in China.

36 By notice of 3 April 2013, the Principal Customs Office of Hamburg imposed import duties on GLS, including anti-dumping duties of EUR 62983.52, on the basis of Regulation No 158/2013.

37 On 30 April 2013, GLS lodged before the Principal Customs Office of Hamburg an objection to that notice on the basis of the invalidity of Regulation No 158/2013.

38 By decision of 24 May 2013 that Office rejected the objection as being unfounded. On that occasion, it stated that it did not have jurisdiction to assess the validity of regulations adopted by the European institutions.

39 On 26 June 2013, GLS brought an action against that decision before the Finanzgericht Hamburg (Finance Court, Hambourg).

40 The Finanzgericht Hamburg (Finance Court, Hambourg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Regulation No 158/2013 valid, even though it was based not on an independent anti-dumping investigation carried out shortly before its adoption but on the continuation of an anti-dumping investigation which had at that time already been carried out in respect of the period from 1 October 2006 to 30 September 2007, the conduct of which, however, the Court, in its judgment in *GLS* (C-338/10, EU:C:2012:158) held to have infringed the requirements of Regulation No 384/96 with the consequence that the Court, in that judgment, declared Regulation No 1355/2008, which had been adopted on the basis of that investigation, to be invalid?'

41 By decision of the President of the Court of 16 July 2014, Cases C-283/14 and C-284/14 were joined for the purposes of the written and oral procedure and of the judgment.

The questions referred for a preliminary ruling

Preliminary observations

42 It is clear from the reasoning set out in the requests for a preliminary ruling that the doubts expressed by the referring courts in relation to the validity of Regulation No 158/2013 are, in part, the same. Having regard to the nature of those doubts, it must be considered that, by their respective questions, which should, in part, be considered together, the referring courts ask, in essence, whether Regulation No 158/2013 is invalid on the grounds of:

— the absence of provisions in Regulation No 384/96 or in the basic regulation which succeeded it, expressly providing for the possibility of reopening the procedure after an anti-dumping regulation has been declared invalid;

— infringement of Article 6(9) of the basic regulation;

— infringement of Article 6(1) of the basic regulation;

— irregularity on the ground set out in Regulation No 158/2013 to justify the decision of the Council and the Commission to maintain the initial reference period; and,

— infringement of Article 266 TFEU.

43 In their observations, the applicants in the main proceedings claim that there are two other grounds for invalidity of Regulation No 158/2013, alleging, in essence, the misinterpretation of the temporal scope of the basic regulation and breach of Article 2(7)(a) of that regulation.

44 According to settled case-law, however, the procedure laid down in Article 267 TFEU is based on a clear separation of functions between the national courts and the Court of Justice, with the result that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 26).

45 It is also apparent from settled case-law that Article 267 TFEU does not make available a means of redress to the parties to a case pending before a national court, so that the Court cannot be compelled to evaluate the validity of EU law on the sole ground that that question has been put before it by one of the parties in its written observations (see, to that effect, the judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 27 and the case-law cited).

46 Accordingly, it is not necessary to extend the inquiry into the validity of Regulation No 158/2013 to possible grounds of invalidity not mentioned by the referring courts.

The absence of provisions in Regulation No 384/96 or in the basic regulation which succeeded it expressly providing for the possibility of reopening the procedure after an anti-dumping regulation has been declared invalid

47 By its question, the referring court in case C-284/14 asks, in essence, whether Regulation No 158/2013 is invalid because of the decision of the Council and of the Commission to reopen the procedure, even though neither Regulation No 384/96 nor the basic regulation which succeeded it made provision for such an option.

48 In that regard, it must be recalled that, where the Court rules, in proceedings under Article 267 EC, that an act of the European Union is invalid, its decision has the legal effect of requiring the institutions concerned to take the necessary measures to remedy that illegality, as the obligation laid down in Article 266 TFEU in the case of a judgment annulling a measure applies in such a situation by analogy to judgments of the Court declaring an act of the European Union to be invalid (see, to that effect, judgment in *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 124 and the case-law cited).

49 In order to fulfil that obligation, the institutions concerned are required to have regard not only to the operative part of the judgment of annulment or invalidity, but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the act annulled or declared invalid (see, to that effect, judgments in

Asteris and Others v *Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 27, *Spain* v *Commission*, C-415/96, EU:C:1998:533, paragraph 31, and *Italy* v *Commission*, C-417/06 P, EU:C:2007:733, paragraph 50).

50 Nevertheless, it should be recalled that, first, Article 266 TFEU requires the institutions which adopted the act annulled to take the necessary measures to comply with the judgment annulling or declaring invalid its measure (judgment in *Commission* v *AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 50) and, second, that the annulment of a Union act does not necessarily affect the preparatory acts thereof (judgment in *Limburgse Vinyl Maatschappij* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 73).

51 Consequently, except where the irregularity found rendered the entire procedure null and void, those institutions may, in order to adopt an act intended to replace a preceding act annulled or declared invalid, reopen the procedure at the stage at which that irregularity was committed (see, to that effect, judgment in *Italy* v *Commission*, C-417/06 P, EU:C:2007:733, paragraph 52 and the case-law cited).

52 Having regard to the foregoing, it is not necessary that the option of reopening the procedure should be expressly provided for by the applicable legislation in order that the institutions which adopted an act annulled or declared invalid may avail themselves of it. The Court has, furthermore, already been able to find, without referring to a specific legal basis, that such an option was available to them following a judgment annulling a regulation imposing anti-dumping duties (see, to that effect, the judgment in *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraphs 84 and 94).

53 In the cases in the main proceedings, the irregularity found by the Court in the judgment in *GLS* (C-338/10, EU:C:2012:158) rested on the fact that the Commission had not examined of its own motion whether one of the countries listed in the Eurostat statistics available during the investigation could constitute an analogue country within the meaning of Article 2(7)(a) of the basic regulation and that, hence, the Council and the Commission had not shown the due diligence required in order to determine that value on the basis of the prices paid for the like product in a market economy third country.

54 Given that such an irregularity did not affect the procedure in its entirety, but only in relation to the determination of that normal value, the Council and the Commission were entitled to decide, in order to give effect to the judgment in *GLS* (C-338/10, EU:C:2012:158), to reopen the procedure only from the stage of the investigation relating to the determination of the normal value, and that is so even if such an option is not expressly provided for in either Regulation No 384/96 or in the basic regulation that succeeded it.

55 It follows that the fact that neither Regulation No 384/96 nor the basic regulation that succeeded it provided for the option, for the Council and the Commission, of reopening the procedure after an anti-dumping regulation has been declared invalid is not capable of resulting in a declaration that Regulation No 158/2013 is invalid.

Alleged infringement of Article 6(9) of the basic regulation

56 The referring courts ask, in essence, whether Regulation No 158/2013 is invalid on the ground that the investigation was closed more than 15 months after it was initiated, such a circumstance being, according to those courts, an infringement of Article 6(9) of the basic regulation.

57 In that regard, as was mentioned in paragraph 54 of this judgment, where an irregularity has been committed, as in the cases in the main proceedings, in the course of the investigation, the institutions in question must be able to reopen the procedure at the stage of the investigation at which the irregularity was committed.

58 It is true that it is clear from Article 6(9) that, when an anti-dumping investigation is opened, the investigation that follows must, in any event, be closed within 15 months following its initiation.

59 However, it must be held that Article 6(9), inasmuch as it refers expressly to procedures opened under Article 5(9) of the basic regulation, covers only the initial procedures and not those procedures that have been reopened following a judgment of annulment or invalidity.

60 Moreover, whilst the time-limit of 15 months laid down in that provision is intended to ensure the rapid completion of the procedures laid down in the basic regulation, the interpretation of Article 6(9) of that regulation contemplated by the referring courts would lead, in practice, to the undue prolongation of the procedures laid down in that regulation by requiring the institutions to recommence entirely those procedures following such a judgment and thus delay their termination.

61 It follows from the foregoing that, the procedure at issue having been reopened, the period of 15 months laid down for initial procedures cannot be applicable to it, so that there are no grounds for declaring Regulation No 158/2013 invalid for the reason raised by the referring courts.

Alleged infringement of Article 6(1) of the basic regulation

62 The referring courts ask, in essence, whether Regulation No 158/2013 is invalid on the ground that, in order to establish the existence of dumping, the Council and the Commission decided not to carry out a new investigation based on an updated reference period, which amounted, in those courts' view, to an infringement of Article 6(1) of the basic regulation.

63 In that regard, it must be recalled that Article 6(1) provides that the reference period used for the investigation must normally cover a period of no less than six months immediately before the initiation of the procedure.

64 In order to give effect to the judgment in *GLS* (C-338/10, EU:C:2012:158), the Council and the Commission decided to reopen the procedure at the stage of the investigation intended to establish the existence of dumping, while maintaining the initial reference period.

65 However, the Court has already had occasion to rule, in relation to Article 7(1)(c) of Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1), the provisions of which are analogous to Article 6(1) of the basic regulation, that the rules for determining the reference period to be taken into account for anti-dumping investigations set out in that provision were a guide and not mandatory (judgment in *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraph 88).

66 It is true, as the referring courts observe, that paragraph 92 of the judgment in *Industrie des poudres sphériques* v *Council* (C-458/98 P, EU:C:2000:531) makes it clear that the investigation must be carried out on the basis of as recent information as possible in order to be able to determine the anti-dumping duties appropriate for protecting the Community industry against dumping.

67 It is clear, however, from Article 11(2) of the basic regulation that, on the basis of data relating to a single reference period, the institutions in question may maintain, for five years, anti-dumping duties appropriate for protecting the Community industry against dumping.

68 However, in the present case, if the institutions relied, in order to adopt Regulation No 158/2013, on data relating to the reference period having served as the basis for adopting Regulation No 1355/2008, it must be held that Regulation No 158/2013 was limited to reinstating the anti-dumping duties for the period during which Regulation No 1355/2008, declared invalid by the judgment in *GLS* (C-338/10, EU:C:2012:158), should have produced effects.

69 In those circumstances, having regard to the specific context of the present cases in which the institutions were required to act on the consequences of a ruling of invalidity by remedying an irregularity that had affected only one part of the procedure undertaken, data collected during the investigation was information that remained sufficiently recent, within the meaning of the case-law referred to in paragraph 66 of this judgment, in order to justify the imposition of anti-dumping duties until the date of expiry of Regulation No 158/2013.

70 It follows that, after the reopening of the procedure, the Council and the Commission could, without infringing Article 6(1) of the basic regulation, refrain from relying on an updated reference period for the purposes of determining the normal value of the product concerned. Consequently, Regulation No 158/2013 is not to be declared invalid on the ground that there was no new investigation.

The alleged irregularity of the ground set out in Regulation No 158/2013 in order to justify the decision of the Council and the Commission to retain the initial reference period

71 The referring court in Case C-283/14 asks, in essence, whether Regulation No 158/2013 is invalid in so far as, in recitals 43 and 86 of Regulation No 158/2013, it gives, in order to justify the choice made by the Council and the Commission to retain the initial reference period, a reason that is, according to that court, improper, namely, that any investigation covering a more recent period would necessarily have been distorted because of the anti-dumping duties imposed by Regulation No 642/2008, then by Regulation 1355/2008 and that, consequently, the most appropriate instrument for analysing the most recent data was an interim review within the meaning of Article 11(3) of the basic regulation.

72 That court observes, first, that during the initial investigation period, from 1 October 2006 and 30 September 2007, safeguard measures were also applied under Regulation No 1964/2003 and Regulation No 658/2004. However, that did not prevent those institutions from using it as the reference period. Second, in so far as Article 11(3) of the basic regulation allows an interim review to be carried out taking as the reference period a period during which an anti-dumping duty existed, it should be the same in the event of the reopening of the anti-dumping procedure.

73 However, it has been held in paragraphs 54 and 70 of this judgment that, in order to give effect to the judgment in *GLS* (C-338/10, EU:C:2012:158), the Council and the Commission were entitled to decide to reopen the procedure at the stage of the investigation relating to the establishment of the normal value of the product concerned and not to rely upon an updated reference period. In those circumstances, the fact, supposing it were established, that Regulation No 158/2013 rests on, in recitals 43 and 86, an irregular ground in order to justify the choice by the Council and the Commission to retain the initial reference period, is not of such a nature as to throw that finding into doubt. Consequently, Regulation No 158/2013 is not to be declared invalid on the ground set out above.

The alleged infringement of Article 266 TFEU

74 The referring courts ask whether Regulation No 158/2013 is invalid on the ground that it was adopted in breach of Article 266 TFEU, inasmuch as, in recitals 32 and 33 in the preamble to that regulation, the Council and the Commission considered, contrary to the Court in the judgment in *GLS*

(C-338/10, EU:C:2012:158), that CN code 2008 30 90 included products other than the product concerned and, therefore, found other volumes of imports of the product concerned than those referred to in that judgment.

75 In that regard, it must be recalled that, under Article 266 TFEU, when an act is annulled or declared invalid, the institutions that adopted that act is required only to take the measures necessary in order to comply with that judgment.

76 Consequently, the institutions have broad discretion to decide the measures to put into effect in order to give due effect to an annulling judgment or declaration of invalidity, it being understood, as was stated in paragraph 49 of this judgment, that the measures must be compatible with the operative part of the judgment in question and the grounds constituting its essential basis.

77 It is true that, in the present case, in order to give effect to the judgment in *GLS* (C-338/10, EU:C:2012:158), the Council and the Commission carried out an in-depth analysis of certain statistical data from Eurostat regarding the volumes of imports referred to in that judgment. After that analysis, in so far as they made a different assessment of the nature of the goods within CN code 2008 30 90, those institutions found that certain volumes of imports were different from those referred to by the Court.

78 However, for the purpose of deciding that Regulation No 1355/2008 was invalid, the Court did not consider it necessary, in the judgment in *GLS* (C-338/10, EU:C:2012:158), to carry out an in-depth analysis of the content of those data. The Court held that those data suggested that the product concerned was produced in not insignificant quantities in market economy third countries, such as Israel, Swaziland, Thailand and Turkey, and that it could be deduced that the Commission had failed to examine of its own motion whether one of the countries referred to in the Eurostat statistics available during the investigation could constitute an analogue country within the meaning of Article 2(7)(a) of the basic regulation.

79 Thus, the findings made by the Court regarding the goods falling, in the Eurostat statistics, within CN code 2008 30 90, or regarding the volumes of imports of the product concerned referred to in those statistics were binding on the institutions, inasmuch as they show that, as the Court held in paragraph 34 of the judgment in *GLS* (C-338/10, EU:C:2012:158), the Commission should have examined of its own motion whether one of the countries that those data referred to could constitute an analogue country within the meaning of Article 2(7)(a) of the basic regulation.

80 However, notwithstanding the interpretation of those statistics set out in recitals 31 to 33 of Regulation No 158/2013, it is clear in particular from recitals 47 to 48 in the preamble to the regulation that the institutions did take into account the findings made by the Court on that matter by carrying out the verifications required for each of the countries referred to in those statistics, as analysed by the Court in the judgment in *GLS* (C-338/10, EU:C:2012:158).

81 In those circumstances, by considering, contrary to the Court in its judgment in *GLS* (C-338/10, EU:C:2012:158), that the CN code 2008 30 90 included goods other than the product concerned and, next, by finding other volumes of imports of the product concerned than those set out in that judgment, the Council and the Commission did not infringe Article 266 TFEU.

82 It follows that Regulation No 158/2013 is not to be declared invalid on the ground that it infringed Article 266 TFEU.

83 Having regard to all the foregoing, it must be held that the consideration of the questions referred has not revealed any factor capable of affecting the validity of Regulation No 158/2013.

Costs

84 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The consideration of the questions referred has not revealed any factor capable of affecting the validity of the Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China.

[Signatures]