Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 5 June 2025 [1]

Case C-811/23 P

European Commission
v
Zippo Manufacturing Co.,

Zippo GmbH

(Appeal – Common commercial policy – Regulation (EU) No 654/2014 – Measures adopted by the United States on imports of certain aluminium and steel products – 'Rebalancing' measures in the form of additional *ad valorem* duties on certain product categories – Right to be heard)

I. Introduction

1. 'To me, the most beautiful word in the dictionary is tariff, and it's my favourite word', said the President of the United States, Donald J. Trump, recently. [2]

2. President Trump's fascination with tariffs dates back to his first presidential term, if not earlier. In 2018, upon his instruction, the United States imposed *ad valorem* duties on several types of steel products of different origin, including from the European Union. In response, the European Union imposed rebalancing measures in the form of additional *ad valorem* duties on certain Combined Nomenclature [3] ('CN') code tariff lines.

3. One of the product categories falling within that crossfire of geopolitics was CN code 9613 80 00 ('Other lighters'), on which Implementing Regulation (EU) 2020/502 [4] ('the contested regulation') imposed an additional 20% *ad valorem* tariff.

[1] Original language: English.

[2] See Leonard, J., 'In Trump's Economic Plan, Tariff is "the Most Beautiful Word"'; https://www.bloomberg.com/news/newsletters/2024-10-15/in-trump-s-economic-plan-tariff-is-the-most-beautiful-word, 15 October 2024.

[3] 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).

[4] Commission Implementing Regulation of 6 April 2020 on certain commercial policy measures concerning certain products originating in the United States of America (OJ 2020 L 109, p. 10).

4. The 'Zippo' lighter, a quintessentially American product, is classifiable in that product category. Accordingly, Zippo Manufacturing Co., Zippo GmbH and Zippo SAS (together, 'Zippo')[5] challenged the contested regulation before the General Court. One of their arguments was that they should have been heard before the imposition of those duties.

5. In the judgment of 18 October 2023, *Zippo Manufacturing and Zippo* v *Commission* (T-402/20, 'the judgment under appeal', EU:T:2023:640), the General Court agreed with that argument.

6. The European Commission has appealed that judgment arguing, inter alia, that the right to be heard, as guaranteed by Article 41(2)(a) of the Charter of Fundamental Rights of the European Union ('the Charter'), does not apply in the present case. I agree.

II. Background to the proceedings

A. The administrative procedure

7. The background to the present dispute is laid down in paragraphs 2 to 13 of the judgment under appeal. What requires retelling is the following.

8. On 2 March 2018, President Trump tweeted, among other subjects, as follows:

'We must protect our country and our workers. Our steel industry is in bad shape. IF YOU DON'T HAVE STEEL YOU DON'T HAVE A COUNTRY!'[6]

9. On 8 March 2018, the United States adopted measures in the form of a 20% *ad valorem* tariff on imports of certain steel and aluminium products inter alia from the European Union, effective from 23 March 2018 and with an unlimited duration.[7]

10. On 16 May 2018, in response to those measures, the Commission published Implementing Regulation (EU) 2018/724[8] to apply, in stages, additional customs duties on certain products from the United States. The selected range of products covered by the CN codes falling within the scope of that regulation include sweetcorn, cranberries, tobacco, make-up, clothing, steel products, bourbon, paper, footwear, household articles, washing machines, batteries, motor vehicles, motorcycles, fishing vessels and motor boats.

5 In its response to the present appeal, Zippo indicates that Zippo SAS has ceased to exist.

6 See The American Presidency Project, Tweets of March 2, 2018, available at: https://www.presidency.ucsb.edu/documents/tweets-march-2-2018.

7 See United States Federal Register, *Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States)*, FR Doc. 2018-05478. Those tariffs were later delayed until 1 May 2018 and then until 1 June 2018; see United States Federal Register, *Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States)*, FR Doc. 2018-06425, and *Proclamation 9740 of April 30, 2018 (Adjusting Imports of Steel Into the United States)*, FR Doc. 2018-09841.

8 Commission Implementing Regulation of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America (OJ 2018 L 122, p. 14). In so far as they concerned motorcycles, those duties became the subject of proceedings culminating in the judgment of 21 November 2024, *Harley-Davidson Europe and Neovia Logistics Services International* v *Commission* (C-297/23 P, EU:C:2024:971).

11. On 18 May 2018, the European Union notified the World Trade Organization (WTO) Council for Trade in Goods of the proposed suspension of concessions and other obligations, in line with Article 8(2) of the WTO Agreement on Safeguards, concerning the CN codes listed in Implementing Regulation 2018/724. [9]

12. On 24 January 2020, the United States expanded the tariffs to cover certain derivative products of steel and aluminium, which were to apply from that date, again with an unlimited duration. [10]

13. On 6 March 2020, pursuant to Article 9 of Regulation (EU) No 654/2014 ('the Enforcement Regulation'), [11] the Commission sought the views of the relevant stakeholders through a notice published on the website of the Commission's Directorate-General (DG) for Trade. [12] The information gathering sought by DG Trade already at that point in time related inter alia to CN code 9613 80 00. [13]

14. Zippo did not participate in that exercise.

15. On 7 April 2020, the Commission published the contested regulation.

16. Therein, the Commission explains that 'notwithstanding the United States' characterisation of these measures as security measures, they are in essence safeguard measures.' [14] Accordingly, and because consultations with the United States did not result in a satisfactory solution, the European Union exercised its right of suspension and rebalancing of concessions, in line with the WTO Agreement on Safeguards, on the basis of Article 4(1) of the Enforcement Regulation. [15]

17. The appropriate measures to that effect took the form of commercial policy measures consisting of the suspension of tariff concessions and the imposition of new or increased customs duties. [16]

18. For products falling within CN code 9613 80 00 ('Other lighters', and falling within the category of 'Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks'), that meant the imposition of an additional 20% *ad valorem*

[9] See WTO, Committee on Safeguards, *Immediate notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of Article 8 of the Agreement on Safeguards*, G/SG/N/12/EU/1, p. 1.

[10] See United States Federal Register, *Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States)*, FR Doc. 2020-01806.

[11] Regulation of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (OJ 2014 L 189, p. 50).

[12] See the judgment under appeal, paragraph 7.

[13] In paragraph 7 of the judgment under appeal, the General Court explains that 'among the measures considered at the end of that information gathering' the Commission indicated the possibility of applying additional *ad valorem* duties to products falling within CN code 9613 80 00. However, it appears to me from the General Court's file that the questionnaire published on the website of DG Trade already indicated the possibility of increasing customs duties for products falling within that CN code.

[14] See the contested regulation, recital 2.

[15] See the contested regulation, recitals 8 and 9.

[16] See the contested regulation, recital 9.

duty.[17] According to the contested regulation, 'in designing and selecting these measures, the Commission … applied objective criteria in accordance with Article 4(2)(c) and Article 4(3) of' the Enforcement Regulation.[18]

19. Article 4(2)(c) of that regulation empowers the Commission to adopt commercial policy measures at a level 'substantially equivalent to the level of concessions or other obligations affected by the safeguard measure, in accordance with the conditions of the WTO Agreement on Safeguards'.

20. Pursuant to Article 4(3) of the Enforcement Regulation, the commercial policy measures at issue are to be determined on the basis of the '(a) effectiveness of the measures in inducing compliance of third countries with international trade rules'; '(b) potential of the measures to provide relief to economic operators within the Union affected by [third-country] measures'; '(c) availability of alternative sources of supply for the goods or services concerned, in order to avoid or minimise any negative impact on downstream industries, contracting authorities or entities, or final consumers within the Union'; '(d) avoidance of disproportionate administrative complexity and costs in the application of the measures'; and '(e) any specific criteria that may be established in international trade agreements in connection with the cases referred to in Article 3' of the Enforcement Regulation.

21. It arises from the file before the Court that, according to a note of 26 March 2020 by DG Trade, under the information gathering procedure of Article 9 of the Enforcement Regulation, 'the assessment of the various claims by stakeholders reflected the relevant criteria in accordance with the Enforcement [R]egulation, namely [(b)] and [(c)] above. These criteria guided the Commission in the product selection in the first place. Since the envisaged measures are tariffs applied at the border, the condition under [(d)] is met. Criterion [(e)] does not apply since the WTO Agreement on Safeguards does not establish additional specific criteria beyond substantial equivalency. Criterion [(a)] is not applicable to the situation as it is relevant for other situations envisaged under the Enforcement Regulation.'[19]

22. The contested regulation entered into force on 6 April 2020.[20]

23. On 7 April 2020, the European Union notified the WTO Council for Trade in Goods of the measures imposed by the contested regulation pursuant to Article 8(2) of the WTO Agreement on Safeguards.[21]

24. After the United States announced, on 31 October 2021, the suspension of its measures for a period ending on 31 December 2023, the Commission also suspended the measures imposed by the contested regulation until 31 December 2023.[22]

[17] See Article 1(2) of the contested regulation.

[18] See the contested regulation, recital 10.

[19] That document is registered as Ares(2020)1798978 and was attached by Zippo to the reply at General Court level.

[20] See the contested regulation, Article 3.

[21] See WTO, Committee on Safeguards, *Immediate notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of Article 8 of the Agreement on Safeguards*, G/SG/N/12/EU/2, p. 1.

[22] Article 2 of Commission Implementing Regulation (EU) 2021/2083 of 26 November 2021 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulations (EU) 2018/886 and (EU) No 2020/502 (OJ 2021 L 426, p. 41).

B. The judgment under appeal

25. Metal mechanical 'windproof' lighters manufactured by Zippo Manufacturing Co. in the United States are imported into the European Union by Zippo GmbH under CN code 9613 80 00 ('the product concerned'). That CN code is covered by the contested regulation.

26. On 30 June 2020, Zippo brought proceedings requesting the annulment of the contested regulation.

27. On 18 October 2023, the General Court handed down the judgment under appeal, by which it annulled the contested regulation in so far as it concerns products falling within CN code 9613 80 00 on the basis that the Commission failed to respect Zippo's right to be heard during the procedure leading to the adoption of that regulation.

28. In essence, that judgment is structured as follows.

29. On admissibility, the General Court only had regard to the situation of Zippo Manufacturing Co. [23]

30. First, that court explained that Zippo Manufacturing Co. was individually concerned by the contested regulation by reason of 'a set of factual and legal factors constituting a particular situation which distinguishes [it] from all other economic operators'. [24] Second, the General Court found that the contested regulation was of direct concern to Zippo Manufacturing Co. inter alia because that regulation affected that company's right of access to the EU market. [25] Third, that court considered that that company maintained an interest in bringing proceedings – despite the suspension of the contested regulation – to prevent any alleged unlawfulness from reoccurring in the future. [26]

31. On the substance of the action, the General Court immediately turned to the fifth plea in law, by which Zippo alleged a breach of the principle of good administration by the Commission. [27]

32. First, that court assessed Zippo's plea from the perspective of the requirements laid down by Article 9 of the Enforcement Regulation. It found that that provision did not require the Commission to inform relevant stakeholders of the information gathering procedure through a publication in the *Official Journal of the European Union*, but that an announcement of that process through a notice published on the website of DG Trade was sufficient. [28]

33. Second, the General Court observed that the right to good administration contains the independent right of every person to be heard before any individual measure which could affect them adversely is taken. It relied in that respect on Article 41(2)(a) of the Charter. [29] According to that court, the rebalancing measures imposed pursuant to Article 4 of the Enforcement Regulation

[23] See the judgment under appeal, paragraphs 44 and 45.

[24] The judgment under appeal, paragraphs 30 and 31.

[25] The judgment under appeal, paragraph 41.

[26] The judgment under appeal, paragraph 47.

[27] The General Court did not rule on the four other pleas in law put forward by Zippo, that is to say, first, breach of the principle of proportionality; second, breach of the principle of non-discrimination and equal treatment; third, a manifest error of assessment in law and facts through the failure to properly motivate the reasoning relating to the selection of the product concerned; and, fourth, a manifest error of assessment in law relating to the European Union's WTO obligations.

[28] See, to that effect, the judgment under appeal, paragraphs 53 to 58.

[29] See, to that effect, the judgment under appeal, paragraphs 59 to 63.

'are intended … to produce a negative economic impact on the activity of US undertakings which export to the European Union the products to which those measures apply'. [30] Accordingly, such a measure, 'even if it is not taken following an individual procedure against undertakings exporting the products concerned …, may constitute a measure likely to affect the interests of those undertakings adversely', such that 'it cannot be ruled out' that those undertakings may rely on the right to be heard. [31]

34. At the same time, the General Court considered that Article 9 of the Enforcement Regulation did not constitute an implementation of the right to be heard, in so far as it provides for the obligation for the Commission to seek information and views regarding the European Union's economic interests in specific goods or services and not information about the particular interests of undertakings adversely affected by the proposed EU measures. [32]

35. In view of those premisses, and given that the Commission was aware that Zippo was likely to be adversely affected by the measures introduced by the contested regulation, the General Court concluded that the Commission should have accorded that party the opportunity to be heard during the procedure for adopting the contested regulation. [33]

36. Finally, the General Court found that the breach of the right to be heard might have had a bearing on the outcome of the procedure. It considered that had Zippo been granted the right to be heard, 'it cannot be ruled out that the contested regulation would have differed in content'. [34]

37. In view of the above, the General Court upheld the fifth plea in law and annulled the contested regulation without examining the other pleas in law.

C. Procedure before the Court of Justice

38. By its appeal lodged on 26 December 2023, the Commission requests that the Court of Justice set aside the judgment under appeal, reject the fifth plea in law relating to the breach of the principle of good administration and order Zippo to pay the costs.

39. Zippo asks the Court of Justice to dismiss the appeal and, in the alternative, refer the case back to the General Court and order the Commission to cover the costs.

40. Both the Commission and Zippo exercised their right to reply and rejoinder. No hearing was held.

[30] See, to that effect, the judgment under appeal, paragraphs 67 to 71.

[31] See the judgment under appeal, paragraphs 72 and 73.

[32] See, to that effect, the judgment under appeal, paragraph 67.

[33] See, to that effect, the judgment under appeal, paragraphs 74 to 77.

[34] See, to that effect, the judgment under appeal, paragraphs 87 to 90.

III. Analysis

41. The Court of Justice has requested that I focus my analysis on the first ground of appeal. Therein, the Commission claims that the General Court erred in finding that it had infringed Zippo's right to be heard, as reflected in Article 41(2)(a) of the Charter. [35]

42. The Commission's ground of appeal is divided into three branches. The first branch alleges that the General Court disregarded the fact that Article 41(2)(a) of the Charter does not apply to measures of general application. The second branch then claims that the contested regulation did not constitute an 'individual measure'. Finally, the third branch asserts that even if Zippo had a right to be heard as regards the adoption of the contested regulation, that right would have been satisfied by the information gathering procedure conducted pursuant to Article 9 of the Enforcement Regulation.

43. I will follow the Commission's structure and deal with the arguments relating to the three branches in turn (Section A). Although I shall propose to the Court of Justice to uphold all three, I will conclude that the state of the proceedings does not permit final judgment to be given and that the case should, accordingly, be referred back to the General Court (Section B).

A. The first ground of appeal

1. The first branch: Article 41(2)(a) of the Charter does not apply to measures of general application

44. According to the Commission, while the General Court correctly identified that the scope of application of Article 41(2)(a) of the Charter is limited to individual measures, [36] it failed to apply that requirement to the procedure leading to the adoption of the contested regulation, given that that act of EU law does not constitute an individual measure within the meaning of that provision. [37]

45. For its part, Zippo considers that the General Court did not disregard the requirement for an individual measure, as arising from Article 41(2)(a) of the Charter, and that the judgment under appeal does not claim otherwise.

46. While I agree with Zippo that the judgment under appeal does not expressly say so, the Commission is right in contending that the General Court appears to interpret and apply Article 41(2)(a) of the Charter as if the 'individual measure' requirement laid down therein did not exist, with the effect that that court appears to conclude that an adverse effect on a person would be sufficient to trigger the right to be heard. [38]

[35] At the outset of its first ground of appeal, the Commission appears to allege that Zippo's fifth plea in law did not actually cover the right to be heard, given that that ground of appeal criticises the Commission's information gathering procedure under Article 9 of the Enforcement Regulation from the perspective of the principle of good administration, as reflected in Article 41 of the Charter. However, the Commission does not explicitly criticise the General Court for going *ultra petita* as regards the fifth plea in law raised by Zippo. In any event, a broad reading of that plea in law does allow for an interpretation of Zippo's arguments as raising a breach of the right to be heard, given that Zippo argues that the Commission should have informed them individually by reason of the measures at issue targeting them.

[36] See the judgment under appeal, paragraph 61.

[37] In its appeal, the Commission refers to paragraphs 63, 65, 73 and 91 of the judgment under appeal to substantiate that argument.

[38] See paragraphs 63, 65, 67 and 72 to 74 of the judgment under appeal.

47. That approach is clearly wrong.

48. It already follows from the wording of Article 41(2)(a) of the Charter and the relevant case-law [39] that the right to be heard under that provision applies subject to two conditions: first, that the measure is an individual measure to be adopted in an administrative procedure conducted in relation to a person and, second, that the measure to be adopted might have adverse effect on that person.

49. It is on the basis of that logic that the Court of Justice has held that the right to be heard as reflected in Article 41(2)(a) of the Charter applies solely in a procedure in which the administration takes an individual measure in relation to a person, and not in a procedure leading to a measure of general application. [40]

50. There are important policy reasons for why that limitation is warranted: most, if not all, measures of general application are likely to have some adverse effect on at least one natural or legal person, whether identifiable in advance or not. Even though, as also contended by the Commission, the EU institutions must take into account the impact that such measures are likely to have on natural or legal persons, they are not required to take into consideration the particular circumstances of those persons.

51. Accordingly, the general affectation of a person by such a measure cannot suffice to trigger the right to be heard, as reflected in Article 41(2)(a) of the Charter.

52. As the Commission rightly posits, the opposite – that is to say, to afford the right to be heard to every person who might be affected by a measure of general application – would not be feasible in practice.

53. However, even if a means could be found to carry out such an exercise, it would be impossible to identify and inform all those persons affected by a measure of general application in order to hear them.

54. In the realm of the common commercial policy that is so because, as the Commission explained in response to questions put to the parties by the General Court, it does not even have available to it a list of importers of a particular product. Nor does it have access to individual data, which would allow for the identification of potentially affected persons.

[39] See the Explanations relating to the Charter of Fundamental Rights in relation to Article 41, which refer, inter alia, to the judgments of 21 November 1991, *Technische Universität München* (C-269/90, EU:C:1991:438, paragraph 14), and of 6 December 1994, *Lisrestal and Others* v *Commission* (T-450/93, EU:T:1994:290, paragraph 42) (upheld on appeal in the judgment of 24 October 1996, *Commission* v *Lisrestal and Others*, C-32/95 P, EU:C:1996:402, paragraph 21 et seq.).

[40] See judgment of 17 March 2011, *AJD Tuna* (C-221/09, EU:C:2011:153, paragraph 49) (denying the application of the right to be heard under Article 41 of the Charter in relation to measures of general application in the realm of the common fisheries policy). See also judgment of 22 June 2023, *Arysta LifeScience Great Britain* v *Commission* (C-259/22 P, not published, EU:C:2023:513, paragraphs 49 and 50), and, by analogy, as regards legislative measures, judgment of 14 October 1999, *Atlanta* v *European Community* (C-104/97 P, EU:C:1999:498, paragraphs 35 to 38).

55. It follows that for both legal and practical reasons, the 'individual' right to be heard, as reflected in Article 41(2)(a) of the Charter, can arise only in relation to individual measures. [41]

56. The first branch of the first ground of appeal should therefore be upheld.

2. The second branch: the contested regulation does not constitute an 'individual measure'

57. The Commission further contends that the General Court erred in law when it found that the contested regulation constitutes, in respect of Zippo, an individual measure within the meaning of Article 41(2)(a) of the Charter.

58. I agree with the Commission.

59. First, the contested measure is a regulation, an act which, by virtue of the second paragraph of Article 288 TFEU, is of general application to each and every subject of EU law.

60. Nevertheless, Zippo is right to assert, in essence, that that form alone is not dispositive of the possibility that the contested regulation may contain individual decisions vis-à-vis specific persons, such that the right to be heard, as reflected in Article 41(2)(a) of the Charter, could apply to it. [42]

61. That is the case, for example, in the areas of anti-dumping and restrictive measures, where the Commission and the Council of the European Union adopt regulations to impose certain measures on natural or legal persons *ad nominen*. Such measures, even if generally adopted in the form of a regulation, have for some natural and legal persons the characteristics of a decision, given that they reflect the EU institutions' final position following an administrative procedure in relation to their particular situation. [43]

[41] That, however, does not prevent the EU legislature, or even the Commission when exercising delegated powers, from choosing to grant persons affected by a measure of general application the right to be heard; see, in that respect, judgment of 22 June 2023, *Arysta LifeScience Great Britain* v *Commission* (C-259/22 P, not published, EU:C:2023:513, paragraph 51). For examples in the area of the common commercial policy, see Article 5(10), Article 6(5) and Article 21(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016, L 176, p. 21) and Articles 4 and 15 of Commission Delegated Regulation (EU) No 1083/2013 of 28 August 2013 establishing rules related to the procedure for temporary withdrawal of tariff preferences and adoption of general safeguard measures under Regulation (EU) No 978/2012 of the European Parliament and [of] the Council applying a scheme of generalised tariff preferences (OJ 2013 L 293, p. 16).

[42] See, by analogy, judgment of 17 July 2008, *Athinaïki Techniki* v *Commission* (C-521/06 P, EU:C:2008:422, paragraphs 42 to 44) (explaining that it is, in principle, irrelevant for the classification of an act whether or not it satisfies certain formal requirements, but that regard must be had to the substance of the contested measure and the intention of its author).

[43] See, notably, in the area of anti-dumping, judgment of 29 March 1979, *NTN Toyo Bearing and Others* v *Council* (113/77, EU:C:1979:91, paragraph 8) (explaining that an anti-dumping regulation is individualised for those exporting producers of the product concerned whose data were used in the course of the investigation). See also judgment of 21 February 1984, *Allied Corporation and Others* v *Commission* (239/82 and 275/82, EU:C:1984:68, paragraphs 11 and 12) (explaining, in paragraph 12 thereof, that 'measures imposing anti-dumping duties are liable to be of direct and individual concern to those producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations'). In the area of restrictive measures, see, notably, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 241 to 244), and of 23 April 2013, *Gbagbo and Others* v *Council* (C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 56) (the latter explaining that 'at the same time resemble both measures of general application in that they impose on a category of addressees determined in a general and abstract manner a prohibition on, inter alia, making available funds and economic resources to persons and entities named in the lists contained in their annexes and also a bundle of individual decisions affecting those persons and entities').

62. For that reason, those natural and legal persons may claim the right to be heard as if that regulation were addressed to them, even where relevant EU secondary law does not provide for that possibility. [44]

63. The contested regulation, however, is different.

64. It objectively determines situations and produces legal effects with respect to categories of persons envisaged in general and in the abstract. [45]

65. In the present case, it applies to all imports from the United States that fall within the CN code 9613 80 00.

66. For that purpose, the contested regulation does not use the information relating to the business activities of any of the natural and legal persons that it affects.

67. Nor is it directed against the conduct of one particular undertaking, [46] or addressed to Zippo. [47]

68. Instead, as the General Court itself explained, the contested regulation seeks generally to place pressure on the United States to change its practices. [48]

69. As such, Zippo cannot claim that the contested regulation is an individual measure that is addressed to it and that it should therefore have been given the right to be heard before its adoption.

70. None of the case-law relied on by the General Court provides a basis for the opposite conclusion. [49]

[44] See, for example, judgment of 27 June 1991, *Al-Jubail Fertilizer* v *Council* (C-49/88, EU:C:1991:276, paragraph 17) (recognising there to be a need for a right to be heard even in a situation where the applicable EU legislation at issue did not provide for that possibility).

[45] See, by analogy, judgment of 6 October 1982, *Alusuisse Italia* v *Council and Commission* (307/81, EU:C:1982:337, paragraph 9) (explaining that an anti-dumping regulation generally applies to imports of all products from a certain country, subject to certain exceptions as regards all persons that are not expressly named therein as having a specific duty imposed on them).

[46] See the judgment under appeal, paragraphs 69 (explaining that the rebalancing measures at issue are not directed against Zippo) and 72 (finding that those measures are 'not taken following an individual procedure against undertakings exporting the products concerned by that procedure').

[47] See, *ex multis*, judgment of 1 October 2009, *Foshan Shunde Yongjian Housewares & Hardware* v *Council* (C-141/08 P, EU:C:2009:598, paragraph 83 and the case-law cited) (explaining that the right to be heard requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they effectively make known their views).

[48] See the judgment under appeal, paragraph 29.

[49] As the Commission correctly highlights, all of the cases that the General Court cited, in paragraphs 61 to 65 of the judgment under appeal, concerned circumstances in which individual procedures were at issue. Accordingly, none of those judgments endorses the view that the mere existence of adverse effects is sufficient to trigger the right to be heard. Thus, the judgment of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336), concerned an individual procedure for the return of an illegally staying third-country national; the judgment of 4 June 2020, *EEAS* v *De Loecker* (C-187/19 P, EU:C:2020:444), concerned an individual decision relating to the transfer in the interest of the service of a member of the European External Action Service's temporary staff; the judgment of 21 December 2021, *Algebris (UK) and Anchorage Capital Group* v *SRB* (C-934/19 P, EU:C:2021:1042), concerned a decision relating to the resolution of Banco Popular, and thus was arguably addressed to that legal person, which was challenged by a third party which thus did not hold the right to be heard; and, finally, the judgment of 18 June 2014, *Spain* v *Commission* (T-260/11, EU:T:2014:555), concerned a decision that was addressed to the Kingdom of Spain.

71. The fact that the conduct of the procedure for the adoption of the contested regulation led the Commission to identify a person whose interests are likely to be adversely affected,[50] or that that institution was aware that the product concerned fell within the product categories covered by that act[51] – which it moreover identified of its own initiative[52] – does not mean that the contested regulation was adopted in a procedure against or in relation to Zippo.

72. Those facts alone do not render the contested regulation an individual measure in the sense required for the application of Article 41(2)(a) of the Charter.

73. Indeed, it would be worrying if the Commission were not aware of the situation and the main US market participants in the field in which that institution decided to impose rebalancing measures, for the simple reason that such measures are, as per the Enforcement Regulation, inter alia to be selected and designed to induce compliance of third countries with the applicable rules of international trade.[53]

74. It follows that the Commission is right to claim that the General Court erred when it considered that the contested regulation constitutes, for Zippo, an 'individual measure', within the meaning of Article 41(2)(a) of the Charter.

75. That conclusion is unaffected by Zippo's argument that it would be contradictory to accept the admissibility of the action at issue, on the one hand, but contest the applicability of the right to be heard, on the other.

76. In that regard, it suffices to observe that the Court of Justice has already had occasion to explain that the fact that a party is directly and individually concerned by a measure of general application does not mean that that party must have been given the opportunity to be heard in the procedure underlying its adoption.[54]

77. As the Commission rightly contended, in order to be afforded the right to be heard under Article 41(2)(a) of the Charter, it is insufficient that a person is individually concerned by a measure. The procedure at issue must also lead to an 'individual measure'.

78. That may be explained by the different purposes of the conditions for standing under the fourth paragraph of Article 263 TFEU and the conditions for being granted the (individual) right to be heard under Article 41(2)(a) of the Charter. On the one hand, the recognition that a natural or legal person holds standing before the EU Courts serves the purpose of enabling the person

50 The judgment under appeal, paragraph 74.

51 The judgment under appeal, paragraph 75.

52 The judgment under appeal, paragraph 76.

53 See the Enforcement Regulation, recital 8.

54 See judgment of 14 October 1999, *Atlanta* v *European Community* (C-104/97 P, EU:C:1999:498, paragraphs 34 and 35). See also Opinion of Advocate General Mischo in *Atlanta* v *European Community* (C-104/97 P, EU:C:1999:234, points 57 to 70) (explaining that the situation of an individual being directly and individually concerned by a measure is different from the one giving rise to rights of the defence, since, in the latter case, the connection to the measure is a specific one relating solely to the individual situation of the person at issue), and judgments of 11 September 2002, *Pfizer Animal Health* v *Council* (T-13/99, EU:T:2002:209, paragraph 487), and of 13 September 2023, *Venezuela* v *Council* (T-65/18 RENV, EU:T:2023:529, paragraph 43 and the case-law cited).

adversely affected by a measure to challenge its legal validity. On the other hand, the right to be heard serves the purpose of enabling a person to prevent the adoption of a decision in relation to it, where that decision would have an adverse effect on that person's personal situation. [55]

79. Therefore, in order to be granted access to the EU Courts, it suffices that a measure individualises the person concerned, even if that measure was not adopted with that person in mind.

80. Conversely, in order to be granted the right to be heard in an administrative procedure, that procedure must be conducted with a view to responding to the individual situation of the person concerned and ending with an act that might adversely affect that person.

81. The Commission was, therefore, right to claim that finding that a natural or legal person is individually concerned by a measure of general application does not necessarily mean that the measure at issue constitutes an 'individual measure' within the meaning of Article 41(2)(a) of the Charter.

82. The second branch of the first ground of appeal should, accordingly, also be upheld.

3. The third branch: the right to be heard was satisfied by the procedure carried out under Article 9 of the Enforcement Regulation

83. By the third branch, the Commission argues, in essence, that even if the right to be heard under Article 41(2)(a) of the Charter were to apply to the present situation, that right should have been satisfied through the information gathering procedure carried out under Article 9 of the Enforcement Regulation.

(a) Admissibility

84. In its response, Zippo objected to the admissibility of that argument by the Commission. It considers that the Commission's appeal on this point did not sufficiently identify the relevant paragraphs of the judgment under appeal. The Commission's appeal on this part thus falls short of the requirements arising from Article 169(2) of the Rules of Procedure of the Court of Justice. That provision mandates that 'the pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested.'

85. I disagree.

86. As the Commission explains, that procedural requirement should not be understood overly formalistically such that it would require, in all instances, reference to be made to the precise paragraphs of the judgment under appeal.

[55] See, to that effect, judgment of 4 June 2020, *EEAS* v *De Loecker* (C-187/19 P, EU:C:2020:444, paragraph 69 and the case-law cited) (explaining that 'its purpose is to enable the competent authority to correct an error or to enable the person concerned to submit such information relating to his personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content').

87. The rationale of Article 169(2) of the Rules of Procedure is to enable the Court of Justice to carry out its review of legality of an act of EU law. [56]

88. As such, that provision constitutes an expression of Article 256(2) TFEU and Article 58 of the Statute of the Court of Justice of the European Union, which require that, in the exercise of its mandate on appeal, the Court of Justice is capable of understanding the subject matter of the dispute.

89. That requirement is satisfied where an appeal lays down, through the pleas and argument it presents, which elements of the judgment under appeal the appellant seeks to have set aside. [57]

90. As the Court has recognised, that may be done either by expressly identifying the grounds in the judgment under appeal which are contested, 'or by citing or reproducing the elements set out therein, which thus makes it possible to identify them'. [58]

91. In the present case, by means of the third branch of the first ground of appeal, the Commission not only explains that it takes issue, in essence, with the General Court's conclusion that Article 9 of the Enforcement Regulation would not implement the right to be heard, as reflected in Article 41(2)(a) of the Charter, but it also highlights which precise points of the judgment under appeal it seeks to have set aside. [59]

92. It follows that the appeal satisfies Article 169(2) of the Rules of Procedure and Zippo's inadmissibility argument should thus be rejected.

(b) Substance

93. In paragraph 67 of the judgment under appeal, the General Court concluded that 'where an undertaking, whose interests might be adversely affected by the measures provided for in an implementing act adopted by the Commission under Article 4(1) of [the Enforcement Regulation], has not participated in such information gathering, it cannot be considered that its right to be heard, as guaranteed by Article 41(2)(a) of the Charter, was not violated on the sole ground that the Commission has fulfilled its obligation to organise that information gathering in accordance with Article 9(1) of that regulation'. [60]

94. The Commission contests that reading of Article 9 of the Enforcement Regulation, considering that the General Court's interpretation of that provision may encourage stakeholders not to participate in information gathering procedures of the type carried out in the present case, only to later challenge the validity of the resulting act of EU law on the basis of a breach of the rights of the defence.

[56] See, *ex multis*, judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)* (C-48/22 P, EU:C:2024:726, paragraph 63).

[57] See, to that effect, judgment of 4 July 2000, *Bergaderm and Goupil* v *Commission* (C-352/98 P, EU:C:2000:361, paragraph 34 and the case-law cited).

[58] See judgment of 21 December 2021, *Aeris Invest* v *SRB* (C-874/19 P, EU:C:2021:1040, paragraph 51).

[59] See points 73 and 74 of the appeal, taking issue with paragraphs 67, 85 and 86 of the judgment under appeal. See also p. 3 of the reply, which considers that direct challenges to paragraphs 91 and 92 of the judgment under appeal are also implied within the Commission's appeal.

[60] The judgment under appeal, paragraph 67.

95. As I have already explained in point 49 of this Opinion, the right to be heard in a procedure leading to the adoption of measures of general application, such as in the case of the contested regulation, cannot be based on Article 41(2)(a) of the Charter.

96. That being said, in a system based on the principle of participatory democracy,[61] where subjects who may be affected by measures of general application adopted by the administration must be given the opportunity to express their interests and explain their concerns,[62] that opportunity may be given by means of some sort of information gathering procedure before the adoption of such measures, such as the one envisaged in Article 9 of the Enforcement Regulation.

97. In the judgment under appeal, the General Court did not find any issue relating to the transparency and openness of that procedure, in so far as it was organised in relation to the adoption of the contested regulation.[63]

98. Nor has Zippo challenged that finding by means of a cross-appeal.

99. It may thus be concluded that, in the present case, the right to be heard in procedures leading to the adoption of measures of general application, to the extent that such a right may be deemed to exist under EU law independently from Article 41(2)(a) of the Charter, was satisfied.

100. The fact that Zippo did not participate in that information gathering procedure, despite having been informed of its existence by means of a notice published on the website of DG Trade, does not affect that conclusion.

101. Had Zippo participated in that procedure, it could have put forward the arguments that it claims might have had a bearing on the content of the contested regulation, namely that 'at the time of the adoption of the contested regulation, the rebalancing measures envisaged with regard to their products constituted the harshest form of the envisaged rebalancing measures, in terms of both scale and comparative size compared to those applied to other industries in the United States', that 'the particularly severe nature of a measure which targets a single undertaking and imposes on it the entire burden of the rebalancing measures at issue, and the fact that their products have no connection with those covered by the safeguard measures adopted by the United States of America, with the result that the measures taken by the Commission are therefore not likely to redress the effects of those safeguard measures', and that 'by targeting them specifically, the Commission adopted a discriminatory measure, when it had the possibility of choosing other products which would have concerned several undertakings and of distributing the rebalancing measures at issue more fairly'.[64]

[61] See Article 11(1) TEU, which lays down that 'the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.'

[62] See, in that regard, Commission Staff Working Document, Better Regulation Guidelines (SWD(2021) 305 final, point 1 of Chapter 2), in which the Commission explains that, under Article 11 TEU, 'the Commission has a duty to carry out broad consultations with interested parties in order to ensure that EU action is coherent and transparent. Consulting stakeholders is an important means of collecting evidence to support policymaking'. See also Communication from the Commission – Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission (COM(2002) 704 final, pp. 15 and 16), which lays down minimum standards for consultation where 'the Commission wishes to trigger input from outside interested parties for the shaping of policy prior to a decision by the Commission'.

[63] See the judgment under appeal, paragraphs 53 to 58.

[64] The judgment under appeal, paragraph 88.

102. Therefore, even if it were true that Zippo enjoyed a sort of 'general' right to be heard before the adoption of an act of general application by the Commission – outside the scope of Article 41(2)(a) of the Charter – that right would not have been infringed by the Commission in the circumstances of the present case.

103. It follows that I propose that the Court also accept the third branch and with it the entirety of the first ground of appeal.

B. Consequences

104. Under Article 61 of the Statute of the Court of Justice of the European Union, the Court may, where the state of the proceedings so permits, give itself final judgment in the matter.

105. In the present case, that condition is not satisfied.

106. In the judgment under appeal, the General Court examined only Zippo's fifth plea in law.

107. For the reasons set out above, I consider that plea in law to be unfounded. It is necessary, therefore, to reject it.

108. However, since the General Court did not examine the first to fourth pleas in law relied on by Zippo in support of its action, which concern the merits of the contested regulation and, in part, an examination involving a complex assessment of fact, [65] the Court of Justice does not have all the necessary elements to give final judgment. [66]

109. Consequently, the case should be referred back to the General Court to adjudicate on the remaining pleas and arguments before it, and the costs should be reserved.

IV. Conclusion

110. On the basis of the aforementioned, I propose that the Court of Justice:

– set aside the judgment of 18 October 2023, *Zippo Manufacturing and Zippo* v *Commission* (T-402/20, EU:T:2023:640);

– dismiss the fifth plea in law as unfounded;

– refer the case back to the General Court for it to adjudicate on the remaining pleas and arguments raised before it; and

– reserve the costs.

[65] See, for example, the first plea in law, which relates to the breach of the principle of proportionality in selecting the product concerned. That plea requires an assessment of whether the measures were suitable, necessary and did not go beyond what is necessary to attain the objective pursued by them.

[66] See, by analogy, judgment of 25 January 2022, *Commission* v *European Food and Others* (C-638/19 P, EU:C:2022:50, paragraph 154 and the case-law cited).