Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

15 July 2021 *

(Reference for a preliminary ruling – Commercial policy – Regulation (EU) No 1071/2012 – Implementing Regulation (EU) No 430/2013 – Common Customs Tariff – Tariff classification – Combined Nomenclature – Subheadings 7307 11 10, 7307 19 10 and 7307 19 90 – Scope – Tariff classification resulting from a Court judgment – Definitive anti-dumping duties on imports of threaded tube or pipe cast fittings, of malleable cast iron – Whether definitive anti-dumping duties are applicable on imports of threaded tube or pipe cast fittings, of spheroidal graphite cast iron)

In Case C-362/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 18 June 2020, received at the Court on 5 August 2020, in the proceedings

Openbaar Ministerie,

Federale Overheidsdienst Financiën

v

Profit Europe NV,

Gosselin Forwarding Services NV,

THE COURT (Tenth Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, E. Juhász and C. Lycourgos, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Profit Europe NV, by P. Diaz Gavier, advocaat,

* Language of the case: Dutch.

– Gosselin Forwarding Services NV, by A. Poelmans, advocaat,

– the Belgian Government, by S. Baeyens, J.-C. Halleux and C. Pochet, acting as Agents,

– the Spanish Government, by J. Rodríguez de la Rúa Puig, acting as Agent,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Rocchitta, avvocato dello Stato,

– the European Commission, by P.-J. Loewenthal and G. Luengo, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ 2012 L 318, p. 10) ('the Provisional Regulation') and Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ 2013 L 129, p. 1) ('the Definitive Regulation') (together 'the Anti-dumping Regulations').

2 The request has been made in proceedings between the Openbaar Ministerie (Public Prosecutor's Office, Belgium) and the Federale Overheidsdienst Financiën (Federal Public Finance Service, Belgium), on the one hand, and Profit Europe NV and Gosselin Forwarding Services NV (formerly Crosstainer NV) ('Gosselin'), on the other, concerning, in particular, the criminal liability of those companies in respect of several customs offences allegedly committed on the importation of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in China.

Legal context

EU legislation on tariff classification

The Community Customs Code

3 Article 20 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Community Customs Code') provided, in paragraphs 1 to 3 and 6 thereof:

'1. Duties legally owed where a customs debt is incurred shall be based on the Customs Tariff of the European Communities.

2. The other measures prescribed by Community provisions governing specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods.

3. The Customs Tariff of the European Communities shall comprise:

(a) the combined nomenclature of goods;

(b) any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

…

6. The tariff classification of goods shall be the determination, according to the rules in force, of:

(a) the subheading of the combined nomenclature or the subheading of any other nomenclature referred to in paragraph 3(b); or

(b) the subheading of any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of measures other than tariff measures relating to trade in goods,

under which the aforesaid goods are to be classified.'

4 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1 and corrigendum OJ 2013 L 287, p. 90), which entered into force on 30 October 2013 in accordance with Article 287 thereof, repealed the Community Customs Code. However, a large part of its provisions, in particular Article 57, which corresponds, in essence, to Article 20 of the Community Customs Code, did not become applicable, pursuant to Article 288(2) thereof, until 1 May 2016.

The CN

5 The tariff classification of goods imported into the European Union is governed by the Combined Nomenclature set out in 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 Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1) ('the CN').

6 The CN is based on the Harmonised Commodity Description and Coding System, drawn up by the Customs Cooperation Council, now the World Customs Organisation (WCO), and established by the International Convention on the Harmonised Commodity Description and Coding System concluded in Brussels on 14 June 1983. That convention, and the Protocol of Amendment thereto of 24 June 1986, were approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). In

accordance with Article 3(1) of Regulation No 2658/87, the CN reproduces the six-digit headings and subheadings of the Harmonised Commodity Description and Coding System, with only the seventh and eighth digits forming subdivisions specific to it.

7 The second part of the CN contains Section XV, under the heading 'Base metals and articles of base metal', which includes Chapters 72 to 83 of the CN. Chapter 73, under the heading 'Articles of iron or steel', concerns headings 7301 to 7326 of the CN.

8 Heading 7307 is structured as follows:

'7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel:
	– cast fittings:
7307 11	– – of non-malleable cast iron:
7307 11 10	– – – of a kind used in pressure systems
7307 11 90	– – – other
7307 19	– – other
7307 19 10	– – – of malleable cast iron
7307 19 90	– – – other
	– other, of stainless steel:
…	
	– other:'

9 Under Article 9(1) of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16) ('Regulation No 2658/87'), the Commission is to adopt explanatory notes to the Combined Nomenclature of the European Union ('the Explanatory Notes to the CN').

10 The Explanatory Notes to the CN published in the *Official Journal of the European Union* on 6 May 2011 (OJ 2011 C 137, p. 1), relating to subheadings 7307 11 10 and 73 07 11 90 of the CN, state:

'The expression "non-malleable" includes lamellar graphite cast iron.

These subheadings cover cast-iron fittings, such as elbows, bends, sleeves, ties, collars and tees. They are connected to tubes or pipes of cast iron or steel by screwing, contact or by mechanical assembly.'

11 The Explanatory Notes relating to subheading 7307 19 10 of the CN provide:

'Malleable cast iron is an intermediate product between lamellar graphite iron (grey iron) and cast steel. It can be easily cast and becomes tough and malleable after suitable heat treatment. During the heat treatment, the carbon partly disappears or changes its make-up; it finally deposits in the form of nodules which do not impair metallic cohesion to such an extent as the graphite flakes in grey cast iron.

Where the carbon content is 2% or less by weight, the products are regarded as being of cast steel and fall in subheading 7307 19 90 (see note 1 to this chapter).

The expression malleable includes spheroidal graphite cast iron.

…’

12 By the Explanatory Notes to the CN published in the *Official Journal of the European Union* on 4 January 2019 (OJ 2019 C 2, p. 2), following the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), first, the third paragraph of the Explanatory Note relating to subheading 7307 19 10 was deleted from it. Second, the new Explanatory Note relating to subheading 7307 19 90 was added, stating that that subheading now includes fittings of spheroidal graphite cast iron.

The Integrated Tariff of the European Communities

13 Article 2 of Regulation No 2658/87 provides:

‘An Integrated Tariff of the [European Union], hereinafter referred to as the “Taric”, which meets the requirements of the Common Customs Tariff, external trade statistics, the commercial, agricultural and other [EU] policies concerning the importation or exportation of goods, shall be established by the Commission.

The tariff shall be based on the [CN] and include:

(a) the measures contained in this Regulation;

(b) the additional [EU] subdivisions, referred to as “Taric subheadings”, which are needed for the implementation of specific [EU] measures listed in Annex II;

…’

14 The EU measures provided for in Article 2 of that regulation include, in point 5 of Annex II thereto, inter alia, anti-dumping duties.

15 Taric code 7307 19 10 10 applied to threaded tube or pipe cast fittings, of malleable cast iron.

Anti-dumping legislation

The Basic Regulation

16 The provisions governing the application of anti-dumping measures by the European Union in force at the material time in the main proceedings are set out in Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51) (‘the Basic Regulation’).

17 In accordance with Article 1(1), (2) and (4) of that regulation, under the heading 'Principles':

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

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

…

4. For the purpose of this Regulation, "like product" means a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.'

18 Article 9(4) of that regulation is worded as follows:

'Where the facts as finally established show that there is dumping and injury caused thereby, and the [EU] interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. Where provisional duties are in force, a proposal for definitive action shall be submitted no later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the [EU] industry.'

19 Article 14 of the Basic Regulation, under the heading 'General provisions', provides in paragraphs 1 and 2 thereof:

'1. Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. …

2. Regulations imposing provisional or definitive anti-dumping duties, and regulations or decisions accepting undertakings or terminating investigations or proceedings, shall be published in the *Official Journal of the European Union*. Such regulations or decisions shall contain in particular and with due regard to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. …'

The Provisional Regulation

20 In Section B of the Provisional Regulation, relating to the product concerned and the like product, recital 16, which appears under the heading 'Product concerned', states:

'The product concerned as described in the Notice of Initiation is threaded tube or pipe cast fittings, of malleable cast iron …, currently falling within CN code ex 7307 19 10.'

21 Recital 28 of that regulation, which also appears in Section B, under the heading 'Like product', states:

'The authorities of one of the Member States pointed out the fact that, according to the explanatory notes to the [CN], the expression "malleable" includes spheroidal graphite cast iron (identical to ductile cast iron). While no sales of threaded fittings made from ductile cast iron were reported by any interested party during the [investigation period], there is evidence that this is possible. As these fittings have the same basic physical characteristics as the threaded malleable fittings investigated, it is considered appropriate to clarify that ductile iron products are falling within the scope of the proceeding and the measures.'

22 Article 1(1) of that regulation provides:

'A provisional anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China and Thailand.'

The Definitive Regulation

23 Recital 13 of the Definitive Regulation is worded as follows:

'In the absence of any other comments concerning the product concerned and the like product, the findings in recitals 17 to 21 and 23 to 28 to the [Provisional] Regulation are hereby confirmed.'

24 In its original version, Article 1(1) of the Definitive Regulation provided:

'A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron … currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China … and Thailand.'

Implementing Regulation (EU) 2019/262

25 Recitals 2 to 5 of Commission Implementing Regulation (EU) 2019/262 of 14 February 2019 amending Implementing Regulation No 430/2013 (OJ 2019 L 44, p. 6) state:

'(2) By judgment of 12 July 2018 in Joined Cases C-397/17 and C-398/17, Profit Europe, the Court of Justice held that the CN must be interpreted as meaning that the cast tube or pipe fittings of spheroidal graphite cast iron must be classified under the residual subheading 7307 19 90 as other cast fittings, rather than under subheading 7307 11 10 as fittings of non-malleable cast iron, or under CN subheading 7307 19 10 as fittings of malleable cast iron.

(3) Following that judgment, the Explanatory Notes to the [CN] to CN code 7307 19 10 were modified, removing fittings of spheroidal graphite cast iron from that CN code.

(4) The [Provisional] Regulation explicitly referred to the classification of threaded tube or pipe cast fittings of spheroidal graphite cast iron (also known as ductile cast iron) under CN code 7307 19 10. The [Definitive] Regulation continues to refer to that classification under CN code 7307 19 10 as fittings of malleable cast iron. The reference to the CN code is now inconsistent with the Court of Justice's case-law and with the Explanatory Notes to the [CN] to CN code 7307 19 10.

(5) Therefore, CN code ex 7307 19 90 and the corresponding TARIC code should also be included among the codes listed in [the Definitive] Regulation with regard to goods the imports of which are subject to the definitive anti-dumping duty.'

26 Article 1 of Implementing Regulation 2019/262 provides:

'[The Definitive] Regulation is amended as follows:

1. the title is replaced by the following:

"Council Implementing Regulation (EU) No 430/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia";

2. Article 1(1) is replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307191010) and ex 7307 19 90 (TARIC code 7307199010) and originating in the People's Republic of China … and Thailand.'

27 Implementing Regulation 2019/262 entered into force, in accordance with Article 2 thereof, on 16 February 2019.

28 A new code 7307 19 90 10 relating to threaded tube or pipe cast fittings of spheroidal graphite cast iron was added to heading 7307 of the TARIC. However, that code was subsequently deleted from it.

Implementing Regulation (EU) No 2019/1259

29 Recital 7 of Commission Implementing Regulation (EU) 2019/1259 of 24 July 2019 imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China and Thailand, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2019 L 197, p. 2) provides:

'On 12 July 2018, the Court of Justice of the European Union decided that fittings, made of spheroidal graphite cast iron (also known as ductile cast iron) do not correspond to the concept of "malleable cast iron", as defined within CN subheading 7307 19 10. The Court concluded that

fittings made of spheroidal graphite cast iron must be classified under the residual CN subheading 7307 19 90 (as other articles of other iron). On 14 February 2019, the Commission published [Implementing Regulation 2019/262] amending the references to TARIC codes in order to align them with the [C]ourt's conclusions. Because anti-dumping measures are imposed according to the product definition irrespective of the tariff classification, this amendment did not have any impact on the product scope of the current measures.'

The dispute in the main proceedings and the question referred for a preliminary ruling

30 Profit Europe, a Belgian importer of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, and Gosselin, a Belgian company providing customs declaration services, are accused of having committed several customs offences on the importation of such tube and pipe fittings from China.

31 In particular, they are accused of having evaded, on certain imports from China made between 19 November 2012 and 30 June 2015, payment of anti-dumping duties in the amount of EUR 651 954.11 by declaring the tube and pipe fittings at issue under an incorrect tariff code and an incorrect designation.

32 As regards Profit Europe's import declarations, the referring court notes that, first, until 19 November 2012, all the tube or pipe fittings of spheroidal graphite cast iron at issue were always declared as having been made of malleable cast iron (subheading 7307 19 10 of the CN). Next, during the period from 19 December 2012 to 27 October 2014, such fittings were declared 71 times under subheading 7307 19 10 of the CN relating to malleable cast iron fittings and eight times under subheading 7307 11 10 relating to non-malleable cast iron fittings in respect of tubes and pipes of a kind used in pressure systems. Lastly, from 28 October 2014, Profit Europe and Gosselin always declared the tube and pipe fittings at issue as falling exclusively within subheading 7307 11 10.

33 In the Definitive Regulation, those products were described as 'currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10)' and were subject to an anti-dumping duty of 57.8% *ad valorem* in respect of those originating in China and an anti-dumping duty of 15.5% *ad valorem* in respect of those originating in Thailand.

34 In addition, the referring court states that, during the period of application of the anti-dumping duties, all the couplings and fittings were declared as unthreaded, whereas six types of imported articles were in fact threaded and, therefore, subject to anti-dumping duties.

35 In March 2014, Profit Europe submitted to the Centrale Administratie der Douane en Accijnzen (Central Administration of Customs and Excise, Belgium) ('the Customs Authorities') several requests for Binding Tariff Information concerning the tariff classification of the tube or pipe fittings of spheroidal graphite cast iron at issue in the main proceedings.

36 On 14 March 2014, the Customs Authorities issued six Binding Tariff Informations referring to tariff code 7307 11 11 00 (threaded tube or pipe cast fittings, of non-malleable cast iron).

37 By decision of 30 March 2015, the Customs Authorities issued 20 Binding Tariff Informations referring to tariff code 7307 19 10 00 (tube or pipe cast fittings, of malleable cast iron) or tariff code 7307 19 10 90 (tube or pipe cast fittings, of malleable cast iron, unthreaded).

38 By decision of 9 April 2015, the Customs Authorities withdrew the Binding Tariff Informations issued on 14 March 2014 and classified the products concerned by those Binding Tariff Informations under subheading 7307 19 10 of the CN, referring to tariff code 7307 19 10 and TARIC code 7307 19 10 90 as the correct tariff code ('tube or pipe cast fittings, of malleable cast iron, unthreaded').

39 Those two decisions referred to the Explanatory Note to the CN relating to heading 7307 19 10, stating that the term 'malleable cast iron' also covers spheroidal graphite cast iron, and to the conclusions of the 140th meeting of the Customs Code Committee, which took place from 30 September to 3 October 2014, confirming, in essence, the broad understanding of that term.

40 Since its administrative appeals against those decisions were unsuccessful, Profit Europe brought an action on 10 May 2016 before the Nederlandstalige Rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking), Belgium) against each of those decisions.

41 Furthermore, on 24 February 2017, criminal proceedings were brought against Profit Europe and Gosselin before the Rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen (Court of First Instance, Antwerp Division, Antwerp, Belgium), in particular in respect of the declaration under an incorrect tariff code and an incorrect designation.

42 While those proceedings were pending, the Nederlandstalige Rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking)) made, by two decisions delivered on 16 June 2017, a request for a preliminary ruling to the Court in two cases which gave rise to the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564).

43 In that judgment, the Court held that cast tube or pipe fittings, of spheroidal graphite cast iron, must be classified under the residual subheading 7307 19 90 of the CN ('other cast tube or pipe fittings, of cast iron or steel'), which would mean, in essence, that both the classification proposed by Profit Europe and that applied by the Belgian State were incorrect.

44 Following the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), joint claims were lodged in both cases before the Rechtbank van eerste aanleg Brussel (Court of First Instance, Brussels), according to which the Belgian State no longer supported its position in those proceedings and procedural compensation was granted, in both cases, to Profit Europe.

45 On the other hand, by judgment of 28 March 2019, the Rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen (Court of First Instance, Antwerp Division, Antwerp), first, acquitted Profit Europe and Gosselin of offending conduct relating to the declaration under an incorrect tariff code and an incorrect designation and, second, declared the tax proceedings of the Customs Authorities to be admissible but unfounded.

46 On 16 April 2019, the Public Prosecutor's Office and the Federal Public Finance Service brought an appeal against that judgment before the Hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium).

47 That court states, first, that, following the Court's judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), the Explanatory Note to the CN relating to subheading 7307 19 10 has been amended and the fittings of spheroidal graphite cast iron were deleted from it. In addition, the Explanatory Note relating to subheading 7307 19 90 provides that that subheading now also includes fittings of spheroidal graphite cast iron.

48 Second, it notes that Article 1(1) of the Definitive Regulation was amended by Implementing Regulation 2019/262 to the effect that the imports referred to now cover 'threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron … currently falling within CN code ex 7307 19 10 (TARIC code 7307191010) and ex 7307 19 90 (TARIC code 7307199010)'.

49 Consequently, the referring court is uncertain as to the relationship between the conclusions to be drawn from that judgment, in relation to customs duties, and the interpretation of the Provisional and Definitive Regulations in relation to anti-dumping duties, as applicable before the Definitive Regulation was amended in 2019. Since the Court held that spheroidal graphite cast iron does not fall within subheading 7307 19 10 of the CN, the question arises whether the regulations concerned, which expressly refer to that subheading, may nevertheless be applied to imports of threaded tube or pipe cast fittings, of spheroidal graphite cast iron.

50 In those circumstances, the Hof van beroep te Antwerpen (Court of Appeal, Antwerp) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Are threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in China, subject to anti-dumping duties under the [Provisional] Regulation and the [Definitive] Regulation, given the ruling of the Court of Justice, in its judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564) that tube or pipe cast fittings of spheroidal graphite cast iron are not tube or pipe cast fittings of malleable cast iron and that tube or pipe cast fittings of spheroidal graphite cast iron fall under a different subheading than tube or pipe cast fittings of malleable cast iron?'

Consideration of the question referred

51 By its question, the referring court asks, in essence, whether the Provisional Regulation and the Definitive Regulation, in the version prior to the amendments made to the latter by Implementing Regulation 2019/262, must be interpreted as meaning that the provisional and definitive anti-dumping duties imposed by those regulations apply to threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in China.

52 As a preliminary point, it should be borne in mind that, under Article 14(1) of the Basic Regulation, anti-dumping duties are to be imposed by regulation and collected by the Member States in the form, at the rate specified and according to the other criteria laid down in the regulation imposing them, independently of the customs duties, taxes and other charges normally imposed on imports.

53 Furthermore, it is apparent, in particular, from Articles 1 and 9(4) of the Basic Regulation that only products which have been the subject of an anti-dumping investigation may have anti-dumping measures imposed on them, where it has been found that the products in question are exported to the European Union at a price which is lower than that of like products which form part of the anti-dumping investigation (judgment of 18 April 2013, *Steinel Vertrieb*, C-595/11, EU:C:2013:251, paragraph 38).

54 In accordance with Article 14(2) of the Basic Regulation, regulations imposing provisional or definitive anti-dumping duties must include, inter alia, a description of the product.

55 Furthermore, with a view to identifying the products to which the anti-dumping duty is to apply, the operative parts of anti-dumping regulations describe those products, inter alia, on the basis of the subheading of the CN to which those products belong. However, such a reference is not always sufficient to enable the products covered by an anti-dumping regulation to be identified, in so far as the wording of those subheadings may be imprecise. That is why the wording of the operative part of an anti-dumping regulation describes the products subject to the duty by using additional criteria to distinguish them. It is only where a product is classed in the subheading of the CN code covered by an anti-dumping regulation and also presents all the characteristics of the product concerned – which is a matter for the national court to assess – that the duty becomes chargeable on that product (judgment of 18 April 2013, *Steinel Vertrieb*, C-595/11, EU:C:2013:251, paragraph 31).

56 However, the possible classification of a product under a given tariff heading does not automatically result in the imposition on that product of an anti-dumping duty (see, to that effect, judgment of 18 April 2013, *Steinel Vertrieb*, C-595/11, EU:C:2013:251, paragraph 33 and the case-law cited).

57 Thus, as regards new types of products, it also needs to be assessed whether they share the same technical and physical characteristics, have the same basic end-uses and the same price-quality ratio as those referred to by the Anti-dumping Regulations at issue. In that regard, the interchangeability of, and competition between, those products should also be assessed (see, to that effect, judgment of 18 April 2013, *Steinel Vertrieb*, C-595/11, EU:C:2013:251, paragraph 44).

58 An interpretation of the Anti-dumping Regulations which would result in extending the application of the anti-dumping measures to new types of products which, although bearing the same essential characteristics as those covered by those regulations and which also fall within the same subheading of the CN, are different products on the ground that they bear additional characteristics which are not referred to in those regulations, is incompatible with the objective and general scheme of the Basic Regulation (see, by analogy, judgments of 18 April 2013, *Steinel Vertrieb*, C-595/11, EU:C:2013:251, paragraph 43, and of 15 October 2020, *Linas Agro*, C-117/19, EU:C:2020:833, paragraph 46).

59 Furthermore, in order to determine the scope of the Provisional and Definitive Regulations at issue in the main proceedings with regard to the products covered by those regulations, it must be borne in mind that, in interpreting a provision of EU law it is necessary to consider not only the wording of that provision but also its context and the objectives pursued by the rules of which it forms part (judgments of 20 June 2019, *ExxonMobil Production Deutschland*, C-682/17, EU:C:2019:518, paragraph 71 and the case-law cited, and of 12 September 2019, *Commission* v *Kolachi Raj Industrial*, C-709/17 P, EU:C:2019:717, paragraph 82 and the case-law cited).

60 As regards the wording of the Provisional and Definitive Regulations in their version applicable to the facts of the main proceedings, it is apparent, first, from both their titles and Article 1(1) thereof, that they covered imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in China and Thailand. Those regulations further stated that the products concerned fell, at the time, within subheading 7307 19 10 of the CN and, more specifically, TARIC code 7307 19 10 10, which merely supplemented that subheading by adding a subdivision, in accordance with Article 20(6)(b) of the Community Customs Code and Article 2(a) of Regulation No 2658/87.

61 Second, in recital 28 of the Provisional Regulation, it was expressly stated that threaded fittings of spheroidal graphite cast iron fall within the scope of the procedure and the measures laid down under that regulation, in so far as they have the same basic physical characteristics as the threaded malleable fittings investigated.

62 Accordingly, recital 28 designated threaded fittings of spheroidal graphite cast iron as a 'like product'. That concept is defined in Article 1(4) of the Basic Regulation as a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

63 In that regard, unlike subheadings 7307 11 10, 7307 19 10 and 7307 19 90 of the CN, the Provisional Regulation laid down an additional distinguishing criterion, within the meaning of the case-law referred to in paragraph 55 of this judgment, namely the existence of threads on the fittings at issue in the main proceedings, by virtue of which fittings produced from those two types of cast iron had, as is apparent from recital 28 of the Provisional Regulation, the same basic physical characteristics.

64 Furthermore, it is common ground that, at the time of the adoption of the Provisional and Definitive Regulations, the Explanatory Note relating to subheading 7307 19 10 of the CN stated that the term 'malleable cast iron' also covers spheroidal graphite cast iron. That fact was also referred to in recital 28 of the Provisional Regulation. In addition, recital 13 of the Definitive Regulation confirmed the findings set out in recital 28 of the Provisional Regulation.

65 Consequently, it must be held that the operative part of the Provisional and Definitive Regulations at issue in the main proceedings covered, from the outset, imports of threaded tube or pipe cast fittings, of malleable cast iron and those of threaded tube or pipe cast fittings, of spheroidal graphite cast iron.

66 That finding is corroborated both by the context and by the objectives pursued by the Anti-dumping Regulations.

67 As a general rule, it should be borne in mind that the imposition of anti-dumping duties is a protective and preventive measure against unfair competition resulting from dumping practices (see, to that effect, judgment of 3 October 2000, *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraph 91).

68 The functional independence of the anti-dumping measures in relation to the tariff classification laid down in the CN and the Common Customs Tariff established by TARIC is also apparent from the second sentence of Article 14(1) of the Basic Regulation, according to which anti-dumping duties are to be collected independently of the customs duties, taxes and other charges normally imposed on imports.

69 Furthermore, that independence is the corollary of the particular nature of the procedure for imposing anti-dumping duties, as a commercial policy measure directed against undertakings established outside the European Union.

70 In that regard, it should be noted that the designation, in the Anti-dumping Regulations, of the subheadings of the CN and of the relevant TARIC codes has only indicative value in order to define the product concerned by the anti-dumping measures.

71 In the present case, that was made clear in the Notice of Initiation of an anti-dumping proceeding (OJ 2012 C 44, p. 33), which stated that 'the product allegedly being dumped [was] the product under investigation, originating in the People's Republic of China, Thailand and Indonesia …, currently falling within CN code ex 7307 19 10', but that 'this CN code [was] given for information only'.

72 In that regard, it is apparent from the use, both in that notice and in the Provisional and Definitive Regulations, of the adverb 'currently' that the EU legislature already envisaged the possibility of a subsequent change in the tariff classification.

73 That is also consistent with Article 20(1) and (2) of the Community Customs Code, which is applicable to the facts of the main proceedings. It follows from that provision, first, that duties legally owed where a customs debt is incurred are to be based on the Customs Tariff of the European Union. Second, the other measures prescribed by specific EU provisions in the context of trade in goods, namely non-tariff measures such as anti-dumping duties are only, 'where appropriate', to be applied according to the tariff classification of those goods.

74 In that context, a judgment of the Court which, as is the case with the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), relates solely to the tariff classification of a product, which is moreover covered by the Anti-dumping Regulations, cannot, as such, have an impact on the scope of those regulations.

75 As regards Implementing Regulation 2019/262 amending, following the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), the Definitive Regulation, it must be held that the amendments made by that Implementing Regulation to the provisions of the Definitive Regulation served only to align the references to the CN and the TARIC codes with the correct interpretation of subheadings 7307 11 10, 7307 19 10 and 7307 19 90 of the CN, as provided by that judgment, as regards the products which were, from the outset, covered by the Anti-dumping Regulations.

76 In the light of all the foregoing considerations, the answer to the question referred is that the Provisional Regulation and the Definitive Regulation, in the version prior to the amendments made to the latter by Implementing Regulation 2019/262, must be interpreted as meaning that the provisional and definitive anti-dumping duties imposed by those regulations apply to threaded tube or pipe cast fittings of spheroidal graphite cast iron, originating in China.

Costs

77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast

fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia, in the version prior to the amendments made to the latter by Commission Implementing Regulation (EU) 2019/262, of 14 February 2019, must be interpreted as meaning that the provisional and definitive anti-dumping duties imposed by those regulations apply to threaded tube or pipe cast fittings of spheroidal graphite cast iron, originating in China.

[Signatures]