Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

11 July 2013 *

(Dumping — Imports of integrated electronic compact fluorescent lamps (CFL-i) originating in China, Vietnam, Pakistan and the Philippines — Expiry of anti-dumping measures — Review — Articles 4(1), 5(4) and 9(1) of Regulation (EC) No 384/96 (now Articles 4(1), 5(4), and 9(1) of Regulation (EC) No 1225/2009) — Concept of Community industry — Determination of injury — Obligation to state the reasons)

In Case T-469/07,

Philips Lighting Poland S.A., established in Piła (Poland),

Philips Lighting BV, established in Eindhoven (Netherlands),

represented by L. Catrain González, lawyer, and E. Wright, Barrister,

applicants,

supported by

Hangzhou Duralamp Electronics Co., Ltd, established in Hangzhou (China), represented by M. Gambardella and V. Villante, lawyers,

and by

GE Hungary Ipari és Kereskedelmi Zrt (GE Hungary Zrt), established in Budapest (Hungary), represented by P. De Baere, lawyer,

interveners,

v

Council of the European Union, represented initially by J.-P. Hix, acting as Agent, and by G. Berrisch and G. Wolf, lawyers, and subsequently by J.-P. Hix and B. Driessen, acting as Agents, and by G. Berrisch,

defendant,

supported by

European Commission, represented by H. van Vliet and K. Talabér-Ritz, acting as Agents,

and by

* Language of the case: English.

Osram GmbH, established in Munich (Germany), represented by R. Bierwagen, lawyer,

interveners,

APPLICATION for the annulment of Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (OJ 2007 L 272, p. 1),

THE GENERAL COURT (Fifth Chamber),

composed of S. Papasavvas, President, K. O'Higgins (Rapporteur) and D. Gratsias, Judges,

Registrar: J. Weychert, Administrator,

having regard to the written procedure and further to the hearing on 5 September 2012,

gives the following

Judgment

Legal context

1 The basic anti-dumping regulation applicable to the facts in this case is 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) ('the basic regulation'). The basic regulation was subsequently replaced by 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, corrigendum in OJ 2010 L 7, p. 22).

2 Article 3(1) of the basic regulation (now Article 3(1) of Regulation No 1225/2009) provides:

'Pursuant to this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.'

3 Article 4(1) of the basic regulation (now Article 4(1) of Regulation No 1225/2009) provides, inter alia, as follows:

'For the purposes of this Regulation, the term "Community industry" shall be interpreted as referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5(4), of the total Community production of those products, except that:

(a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "Community industry" may be interpreted as referring to the rest of the producers …'.

4 Article 5(1), first subparagraph, of the basic regulation (now Article 5(1), first subparagraph, of Regulation No 1225/2009) states as follows:

'Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.'

5 Article 5(4) of the basic regulation (now Article 5(4) of Regulation No 1225/2009) provides as follows:

'An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Community industry.'

6 Article 9(1) of the basic regulation (now Article 9(1) of Regulation No 1225/2009) provides that, '[w]here the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest'.

7 Article 9(4) of the basic regulation (now Article 9(4) of Regulation No 1225/2009) provides, inter alia, as follows:

'Where the facts as finally established show that there is dumping and injury caused thereby, and the Community 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 …'.

8 Article 11(2) of the basic regulation (now Article 11(2) of Regulation No 1225/2009) provides, inter alia, as follows:

'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. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.'

9 Article 11(5) of the basic regulation (now Article 11(5) of Regulation No 1225/2009) provides, inter alia, as follows:

'The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time-limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4 [of this Article].'

Background to the dispute

10 The applicants are Philips Lighting Poland S.A. ('Philips Poland') and Philips Lighting B.V. ('Philips'). Philips Poland is a company incorporated according to Polish law which produces integrated electronic compact fluorescent lamps ('CFL-i') at its site at Piła (Poland), and at the material time it imported significant quantities of CFL-i from China for resale in the European Union. Philips is a company incorporated according to Netherlands law which produces component parts for CFL-i in Roosendaal (Netherlands) and carries on research and development in the area of CFL-i. Philips Poland and Philips are wholly owned by the Netherlands company Koninklijke Philips Electronics N.V.

11 On 16 July 2001, the Council of the European Union adopted Regulation (EC) No 1470/2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of [CFL-i] originating in the People's Republic of China (OJ 2000 L 195, p. 8). That regulation instituted definitive anti-dumping duties of 0 to 66.1% on those imports.

12 On 6 June 2005, the Council adopted Regulation (EC) No 866/2005 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1470/2001 on imports of [CFL-i] originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (OJ 2005 L 145, p. 1).

13 Regulations Nos 1470/2001 and 866/2005 were amended by Council Regulation (EC) No 1322/2006 of 1 September 2006 (OJ 2006 L 244, p. 1).

14 On 14 October 2005, the Commission of the European Communities published a notice of impending expiry of the anti-dumping duties (OJ 2005 C 254, p. 2).

15 On 18 April 2006, the Commission received a request for the initiation of an expiry review of those measures, lodged by the Community Federation of Lighting Industry of Compact Fluorescent Lamps Integrated ('2CFL-i'), acting on behalf of Osram GmbH, pursuant to Article 11(2) of the basic regulation.

16 On 12 June 2006, the Commission sent questionnaires to the four Community producers of CFL-i, namely GE Hungary Ipari és Kereskedelmi Zrt (GE Hungary Zrt), Osram, Philips Poland and SLI Sylvania Lighting International ('Sylvania') to enable it to establish whether the producers supporting the application for a review were sufficiently representative.

17 On 28 June 2006, the applicants submitted a joint reply to that questionnaire referred to in paragraph 16 above, in which, inter alia, they stated that they were opposed to the opening of a review procedure. However, in their reply, GE Hungary and Osram stated that they were in favour of such a procedure being initiated. Sylvania did not reply to the questionnaire.

18 Having determined, following consultation with the Advisory Committee set up under Article 15 of the basic regulation (now Article 15 of Regulation No 1225/2009), that sufficient evidence existed for the initiation of a review under Article 11(2) of that regulation, the Commission published a notice of initiation of such a procedure in the *Official Journal of the European Union* of 19 July 2006 (OJ 2006 C 167, p. 13) and commenced an investigation into the period from 1 July 2005 to 30 June 2006 inclusive.

19 The Commission then sent a questionnaire to all the parties concerned, including the four Community producers of CFL-i and the Community importers of CFL-i.

20 On 8 September 2006, Philips Poland replied to the questionnaire issued to it as a Community producer and, on 18 September 2006, replied to the questionnaire issued to it as a Community importer.

21 In November 2006, the Commission conducted verification visits at the premises, in particular those of the applicants and the three other Community producers of CFL-i.

22 By letter of 26 November 2006, GE Hungary informed the Commission that it was no longer in favour of the anti-dumping measures being continued.

23 By letter of 30 November 2006, the applicants asked the Commission to clarify whether, having regard to the position thus adopted by GE Hungary, it was still possible to take the view that the request for a review investigation was supported by the Community industry as referred to in Articles 4(1) and 5(4) of the basic regulation. They noted that 2CFL-i acted on behalf only of Osram, that Osram was the only Community producer of CFL-i supporting continuation of the anti-dumping measures at issue and that the collective output of CFL-i of Philips Poland and GE Hungary accounted for over 50% of the total Community production of CFL-i.

24 By two letters dated 19 December 2006, Sylvania informed the Commission that it was of the view that it was not in the Community interest for the anti-dumping measures at issue to be maintained in force.

25 On 10 January 2007, Philips Poland submitted to the Commission written observations on the questions of injury and the Community interest. In those observations, it again stated that Osram did not represent the Community industry.

26 The following day, the applicants attended a hearing at the Commission at which they presented their strategy for supplying the Community with CFL-i. They again questioned whether Osram represented the Community industry, and advocated termination of the investigation.

27 On 6 February 2007, the applicants submitted further information to the Commission.

28 On 14 February 2007, the applicants submitted written observations on the comments provided by 2CFL-i, on 5 February 2007, in reply to a letter of the Commission of 19 January 2007. They reiterated in particular that Osram did not represent the Community industry and called again for the termination of the investigation.

29 On 20 March 2007, the Commission issued an additional questionnaire to the Community producers to which Philips Poland submitted its response on 10 April 2007.

30 On 23 April 2007, the Commission conducted a second verification visit at Philips Poland. On 27 April 2007, Phillips Poland submitted further information to the Commission in response to various issues raised during the verification visit.

31 On 10 July 2007, the Commission issued a disclosure document setting out the essential facts and considerations on the basis of which it intended to recommend termination of the review of the anti-dumping measures at issue ('the July 2007 disclosure document'). In that document, it stated, in particular, that all four Community producers should be included in the total Community production within the meaning of Article 4(1) of the basic regulation. It also stated that the requirements concerning the level of support for a request for a review laid down by Article 5(4) of that regulation had to be fulfilled both at the stage of lodging that request and also during the course of the investigation. The Commission further stated that in this case, at the time when the review was opened, the request was supported by a major proportion of the Community production but that the position had changed during the course of the investigation. It noted that the collective output of the

producers opposing the request now accounted for slightly more than 50% of the total Community production and it concluded that the anti-dumping measures at issue ought to be repealed and the review procedure terminated.

32 On 24 July 2007, Philips Poland submitted observations on the July 2007 disclosure document in which it supported the Commission's conclusion. On 25 July 2007, 2CFL-i submitted observations on the July 2007 disclosure document.

33 On 31 August 2007, the Commission issued a general disclosure document ('the general disclosure document'), in which it stated that the period of application of the anti-dumping measures at issue should be extended by one year. It stated in particular that '[b]y analogy to Art. 9(1) of the basic Regulation, which stipulates that the Community may take measures even if a complaint is withdrawn if that is in the Community interest, the Community institutions consider that it is not necessary in this case to take a decision regarding Articles 4(1) and 5(4) of the basic Regulation, since … it is in the Community interest to prolong measures for [a period of one year]'. The Commission further stated that for the purposes of assessing the injury, it had taken account of the position of the company supporting the request for a review.

34 On 11 September 2007, Philips Poland submitted observations on the general disclosure document in which it challenged the Commission's conclusion and in particular contested its use by analogy of Article 9(1) of the basic regulation.

35 On 14 September 2007, following consultation with the Advisory Committee, the Commission submitted a proposal for a Council regulation imposing anti-dumping duties on imports of [CFL-i] originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of [the basic] regulation, and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (COM(2007) 550).

36 On 15 October 2007, the Council adopted Regulation (EC) No 1205/2007 imposing anti-dumping duties on imports of [CFL-i] originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of [the basic regulation] and extending [those measures] to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (OJ 2007 L 272, p. l, 'the contested regulation'). The anti-dumping duties imposed were maintained at rates ranging from 0 to 66.1%, for a period of one year.

37 In recitals 20 to 46 in the preamble to the contested regulation, the Council examined whether the expiry of the anti-dumping measures at issue was likely to result in the continuation or the recurrence of dumping. In recital 46, it concluded that dumping was likely to continue.

38 In recitals 47 to 93 of the contested regulation, the Council analysed the likelihood of injury continuing or recurring.

39 For the purposes of that analysis the Council had regard to the situation of the 'supporting company', namely Osram (recital 51). In that regard, in recital 49 of the contested regulation, the Council recalled that during the investigation the four Community producers which cooperated with the investigation had been examined in the light of Articles 4(1) and 5(4) of the basic regulation, and stated that '[t]he detailed results … showed a complex picture of a sector whose structure appear[ed] to be in flux and where views [were] mixed, with the largest producer in terms of production volumes being in favour and the rest being opposed to the continuation of measures'. In recital 50 of the contested regulation, the Council stated that the largest Community producer, which is Osram, produced around 48% of Community production and 'therefore certainly constitute[d] a major proportion' of Community production. The Council stated further that the rule in Article 9(1) of the basic regulation, according to which 'the Community [could] take measures even if a complaint [were] withdrawn if that [were]

in the Community interest … *mutatis mutandis* also applie[d] in an expiry review in which there [was] no complete withdrawal of a complaint, but a major Community producer continue[d] to be in favour of the measures'. It also stated that '[p]rovided that producer [has] account[ed] for a major proportion of Community industry, which [was] the case here, its injury data constitute[d] the best available data'.

40 At the end of its analysis, the Council concluded that 'there [would be] a likelihood of continuation and recurrence of injurious dumping should [the] anti-dumping measures [at issue] be allowed to lapse' (recital 93).

41 In recitals 94 to 116 of the contested regulation, the Council, referring to Articles 9(1) and 21 of the basic regulation, considered whether the maintenance of the anti-dumping measures at issue would be in the Community interest, and, if so for what period. It considered that 'the overall balance of the relevant interests' lay in discontinuing the measures having noted, in particular, that 'the Community industry [was] itself heavily reliant on imports from [China] to meet demand, which [was] expanding rapidly, some Community producers themselves d[id] not favour a continuation of the measures, and the measures [had] been shown to have [had] a significant impact on consumer prices and hence on the choices made by consumers as to whether to buy CFL(i) or less efficient incandescent lamps' (recitals 115 and 116). None the less, weighing the interests of Osram with 'the interests at stake and in particular those of the other producers in the Community', the Council found that it was in the short-term interest of the Community to continue the anti-dumping measures at issue for a further adjustment period (recital 116). More specifically, it found that it was appropriate that the measures be maintained only for one year before they lapse, on the basis that after this 'the likely negative effects on consumers and other operators would be disproportionate to the benefits which Community manufacturers would derive from the measures' (recital 116).

42 Pursuant to Article 2 thereof, the contested regulation expired on 18 October 2008.

Procedure and forms of order sought

43 By application lodged at the General Court Registry on 21 December 2007, the applicants brought the present action.

44 By documents lodged at the Registry on 27 March and 3 April 2008 respectively, Osram and the Commission applied to intervene in the present proceedings in support of the form of order sought by the Council.

45 By documents lodged at the Registry on 27 March and 15 April 2008 respectively, Hangzhou Duralamp Electronics Co., Ltd ('Hangzhou') and GE Hungary sought leave to intervene in these proceedings in support of the form of order sought by the applicants.

46 Those applications for leave to intervene were notified to the parties, which submitted their observations within the prescribed period.

47 By letters lodged at the Registry on 27 April, 16 May and 11 June 2008 respectively, the applicants applied to the Court for confidential treatment of certain passages of certain documents annexed to the application with regard to Hangzhou, Osram and GE Hungary. To that end, the applicants produced a non-confidential version of the documents concerned.

48 By two orders of 9 June 2008, the President of the Fourth Chamber of the Court granted the applications to intervene lodged by Osram and the Commission. He decided that Osram should be sent a non-confidential version of each of the procedural documents and that it be invited to submit observations. Osram did not submit observations within the prescribed period.

49 By order of 9 October 2008, the President of the Fourth Chamber of the Court granted the applications to intervene lodged by Hangzhou and GE Hungary. He decided that they should be sent a non-confidential version of each of the procedural documents and that they should be invited to submit their observations. They did not submit observations within the prescribed period.

50 Osram, Hanghzou and GE Hungary lodged statements in intervention. The applicants, in turn, submitted their observations on Osram's statement in intervention within the prescribed period. The Council submitted its observations on Hanghzou and GE Hungary's statements in intervention within the prescribed period. The Commission has not lodged a statement in intervention.

51 Since the composition of the Chambers of the Court had changed, the Judge Rapporteur was assigned to the Fifth Chamber, to which the present case was, accordingly, allocated.

52 On hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure provided for in Article 64 of its Rules of Procedure, invited the applicants to produce certain documents and the Council to reply to certain written questions. The applicants and the Council complied with those requests within the period prescribed.

53 As a member of the Chamber was unable to sit in the present case, the President of the General Court designated another Judge to complete the Chamber pursuant to Article 32(3) of the Rules of Procedure.

54 The parties presented oral argument and replied to the Court's oral questions at the hearing on 5 September 2012.

55 The applicants claim that the Court should:

— annul the contested regulation in its entirety or in so far as it affects them;

— order the Council to pay the costs;

— order Osram to bear the costs associated with its intervention.

56 The Council contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs;

— order Hangzhou and GE Hungary to bear the costs associated with their interventions.

57 The Commission contends that the Court should dismiss the action.

58 Hangzhou and GE Hungary contend that the Court should:

— annul the contested regulation;

— order the Council to pay the costs.

59 Osram contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

60 First of all, the Court notes that, in its rejoinder, the Council expressed doubts as to the admissibility of the action, in terms of whether the applicants were individually concerned by the contested regulation, arguing that the factors on which they relied in their pleadings to that effect were not sufficient to distinguish them, in light of the contested regulation, from all other traders.

61 In that connection, it must be noted that the Courts of the European Union are entitled to assess, according to the circumstances of each case, whether the proper administration of justice justifies the dismissal of the action on the merits without first ruling on its admissibility (see, to that effect, Case C-23/00 P *Council* v *Boehringer* [2002] ECR I-1873, paragraphs 51 and 52, and Case C-233/02 *France* v *Commission* [2004] ECR I-2759, paragraph 26).

62 In the present case, the Court considers it necessary, in the interests of procedural economy, to begin by examining the pleas put forward by the applicants, without first ruling on the admissibility of the present action for annulment, because that action is in any event unfounded on the grounds set out below.

63 In support of their action, the applicants rely on three pleas in law, namely (i) infringement of Articles 3(1), 9(4) and 11(2) of the basic regulation, (ii) infringement of Article 9(1) of that regulation and (iii) infringement of the obligation to state reasons.

64 The first two pleas in law must be examined together because they overlap.

First and second pleas in law, alleging, first, infringement of Articles 3(1), 9(4) and 11(2) of the basic regulation and, second, infringement of Article 9(1) of that regulation

65 In the first plea, the applicants submit that the Council infringed Articles 3(1), 9(4) and 11(2) of the basic regulation by failing to establish that the expiry of the anti-dumping duties at issue would be likely to lead to a continuation or recurrence of injury to the Community industry as defined in Article 4(1) of the basic regulation read in conjunction with Article 5(4) thereof. The applicants criticise the Council for having taken the view in recital 50 of the contested regulation that Osram's output constituted a 'major proportion' of the total Community production, when it accounted for only approximately 48% thereof. They argue that Osram could not therefore be considered to constitute the Community industry and the Council was not entitled to rely on Osram's data to assess injury to that industry.

66 In the second plea in law, the applicants submit that the Council was not entitled to rely, in the present case, on Article 9(1) of the basic regulation.

67 Firstly, the applicants dispute the contention that the rule laid down by that provision can be applied *mutatis mutandis* in a review investigation relating to the expiry of anti-dumping measures where the request for a review is not withdrawn completely but there has simply been a diminution in the level of support for it. Nothing in the wording – which is clear and unambiguous – or scheme of Article 9(1) permits the extension of that provision to cover such a situation. Were the Council's interpretation of Article 9(1) of the basic regulation to be accepted, a new and potentially far-reaching power would be conferred upon it. In addition, this would completely emasculate the requirement set out in Articles 3(1), 9(4) and 11(2) of the basic regulation that injury to the 'Community industry' as defined

in Article 4(1) of that regulation must be proven in order to impose anti-dumping duties. The Council could in fact claim power to act in what it perceives to be the Community interest without having to establish injury to that industry.

68 Secondly, the applicants challenge the view that Article 9(1) of the basic regulation confers on the Council a discretion to define the Community industry for the purposes of injury assessment. The provision merely enables the investigation to be continued following the withdrawal of the request for a review and does not render Articles 4(1) and 5(4) of the basic regulation inapplicable.

69 Hangzhou and GE Hungary essentially submit the same arguments as the applicants.

70 The Council and Osram address the first and second pleas in law taken together.

71 The Council, firstly, contends that the Commission and itself ('the institutions') correctly applied, *mutatis mutandis*, Article 9(1) of the basic regulation. Reasoning '*a maiore ad minus*' ('from the greater to the lesser'), the Council contends that if that provision allows the institutions to continue a procedure where the complaint is withdrawn in its entirety, it necessarily allows them to do so where only part of the support is withdrawn. It argues that Article 9(1) of the basic regulation does not give the institutions the power to continue to impose anti-dumping measures, but merely entitles them to continue their investigation if they deem this to be in the interest of the Community.

72 Secondly, the Council contends that if the institutions decide to apply Article 9(1) of the basic regulation, they must then determine which Community producers form part of the Community industry for the purposes of injury assessment, taking into account the particular circumstances of the case. It points out that if a request for a review is withdrawn, or support for an investigation is no longer sufficient, the institutions face a situation where, for the purposes of injury assessment, they no longer have a 'Community industry' as defined by Articles 4(1) and 5(4) of the basic regulation. The Council states that in this case the institutions, using their wide discretion, chose to retain Osram on the basis that it was the only producer who supported the request for a review, it accounted for almost 50% of the total production of the like product in the Community and it would have had standing 'save for the very event (the switch from support to opposition by GE [Hungary]) which led to the application of Article 9(1) of the Basic Regulation'.

73 The Commission and Osram dispute the applicants' arguments.

74 Firstly, the Court will examine the parties' arguments concerning the institutions' reliance, in the present case, on Article 9(1) of the basic regulation.

75 As is common ground between the parties, when the review procedure in question was initiated, the review had been requested 'by or on behalf of Community producers', as required by Article 11(2) of the basic regulation. That is to say, in accordance with Article 5(4) of that regulation, applicable to review procedures pursuant to Article 11(5) thereof, the request was expressly supported by Community producers accounting for over 25% of total production of the like product produced by the Community industry, and the collective output of those producers constituted more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to that request. The review had been requested by 2CFL-i, acting on behalf of Osram, and was expressly supported by Osram and by GE Hungary, which together accounted for over 50% of total Community CFL-i production. As regards the two other Community producers, Philips Poland and Sylvania, at that stage Philips Poland had expressed its opposition to the request for a review, whereas Sylvania had not adopted a position.

76 At that time, the Commission had all the more reason to conclude that the request for a review enjoyed sufficient support in accordance with Article 5(4) of the basic regulation because, as is apparent from the file and not in dispute between the parties, Osram alone accounted for over 25% of

Community production and its output was greater than that of the only Community producer which opposed the request for a review, Philips Poland. At that stage, it was not necessary for the Commission to determine, having regard to Article 4(1)(a) of the basic regulation, whether or not Philips Poland, which was related to two exporting producers in China and imported from that country between 70% and 80% of the volumes of CFL-i which it sold on the Community market, ought to have been excluded from the Community production. Had that been the case, this would only have strengthened the above-mentioned conclusion.

77 However, the situation changed several months later when, in the course of the review investigation, GE Hungary and then Sylvania informed the Commission that they now opposed the continuation of the anti-dumping measures at issue. This meant that the level of support for the request for a review, although still well above the 25% threshold referred to in Article 5(4) of the basic regulation, was, nevertheless, slightly below the 50% threshold in that provision. The only Community producer which continued to support the request, Osram, accounted for 48% of the total Community production of CFL-i, with the three other producers which opposed that request together accounting for the remaining 52%.

78 At the time, the institutions took the view that, in such a situation, where, in the course of the review investigation, the level of support for the review fell below one of the two thresholds referred to in Article 5(4) of the basic regulation, the review procedure had to be terminated, unless Article 9(1) of that regulation were applied by analogy. They considered that the requirements concerning the level of support for the original complaint or for a request for a review laid down by Article 5(4) of that regulation had to be fulfilled both at the stage of lodging the complaint or request as well as during the course of the investigation.

79 Consequently, given the very slight difference between the percentage of Community production supporting the request for a review and that opposing it, the Commission took the view that it was necessary to examine in more detail the application of Article 4(1)(a) of the basic regulation to the present case. In the Commission's contention, the issue as to whether Osram, as the only Community producer continuing to support the request for a review, had standing under Article 5(4) of the basic regulation depended on whether any of the four Community producers had to be excluded from the Community production pursuant to Article 4(1)(a) of that regulation. That last issue was particularly acute for Philips Poland on account, in particular, of the very high level of its imports of CFL-i from China.

80 Thus, first of all, in the July 2007 disclosure document, following such an examination, the Commission took the view that the four Community producers had to be included in the Community production. In accordance with its practice set out in paragraph 78 above, it therefore concluded that it was appropriate to terminate the review procedure and repeal the anti-dumping measures at issue.

81 Subsequently, following, in particular, 2CFL-i's observations on the 2007 July disclosure document, in which 2CFL-i set out in detail the reasons why, in its view, Philips Poland and GE Hungary ought to have been excluded from the Community production pursuant to Article 4(1)(a) of the basic regulation, the Commission continued its examination of that issue and reconsidered its position. As stated in point 49 of the general disclosure document, the Commission found that the results of its examination 'showed a complex picture of a sector whose structure appear[ed] to be in flux'. That finding, which is not called in question by the parties in the present dispute, is borne out by the information in the annex to the general disclosure document. It is apparent from that annex, in particular, that, whereas Philips Poland imported from China a very significant proportion of the CFL-i (between 70% and 80% in terms of volume) which it sold on the Community market, the same was true of Sylvania (between 50% and 60% in terms of volume) and, to a lesser extent, GE Hungary (between 30% and 40% in terms of volume) and Osram (between 20% and 30% in terms of volume). It is also stated in that annex that Osram and GE Hungary were both related to one exporting producer in China, and that Philips Poland was related to two exporting producers in that country. In addition,

the annex also makes clear that Philips Poland, GE Hungary and Sylvania sourced from outside the Community over half the components used in the manufacture of CFL-i in the Community. It is also apparent from that annex that the four Community producers formed part of multinational groups and either had their headquarters in the Community or were subsidiaries of a group having its headquarters in a third country, although they were competent to take all business decisions on production, imports and sales strategy concerning CFL-i for the Community market. Lastly, the annex shows that each of the four Community producers had significant centres of research and development based in the Community.

82 In the light of those factors, it was difficult for the Commission to determine with certainty which Community producer, if any, should be excluded from the Community production pursuant to Article 4(1)(a) of the basic regulation. Thus, in particular, although the very high percentage of imports of CFL-i from China by Philips Poland cast serious doubt on whether that company could be included in the Community production, the same doubts could also have applied to Sylvania, whose percentage of imports was also very high. Accordingly, as is apparent from point 50 of the general disclosure document, the Commission decided to leave open the question of whether the four Community producers all formed part of the Community production within the meaning of Article 4(1) of the basic regulation and, therefore, whether the request for a review still enjoyed the degree of support required by Article 5(4) of that regulation. The Commission took the view that, following GE Hungary's withdrawal of its support for the request for a review and the opposition to that request expressed by Sylvania, the situation in question was analogous to that of the withdrawal of the complaint referred to in Article 9(1) of the basic regulation and, applying that provision by analogy, that it was in the Community interest to continue with the review procedure.

83 The Commission's analysis set out in paragraphs 81 and 82 above was endorsed by the Council in the contested regulation, as is apparent from Articles 50 and 94 thereof and in annex.

84 The Court has held that Article 5(4) of the basic regulation does not place any obligation on the Commission to terminate an anti-dumping proceeding in progress where the level of support for the complaint falls below a minimum threshold of 25% of Community production. That article concerns only the degree of support for the complaint necessary for the Commission to be able to initiate a proceeding (Case T-249/06 *Interpipe Niko Tube and Interpipe NTRP* v *Council* [2009] ECR II-383, paragraph 139).

85 In support of its assessment in *Interpipe Niko Tube and Interpipe NTRP* v *Council* (paragraph 84 above), the Court expressly relied on the wording of Article 9(1) of the basic regulation, even though in the case giving rise to that judgment the complaint in question had not been withdrawn, as contemplated by that provision, but it was alleged that the level of support for that complaint had fallen in the course of the procedure. That approach is entirely logical since, if, under Article 9(1) of the basic regulation, the Commission is not under an obligation to terminate a procedure when a complaint is withdrawn, that must apply *a fortiori* when the degree of support for a complaint merely falls.

86 Since Articles 5(4) and 9(1) of the basic regulation are applicable to review procedures, pursuant to Article 11(5) of that regulation, as the parties accept, the principles set out in paragraphs 84 and 85 above also apply to the present case. It follows that the institutions were perfectly entitled to continue the review procedure notwithstanding the fact that it was possible that the 50% threshold referred to in Article 5(4) of the basic regulation was no longer met.

87 Strictly speaking, it was not necessary for the institutions to argue that the continuation of the review procedure was in the Community interest, which they did in the present case, as is apparent from point 50 of the general disclosure document and from recitals 50 and 94 of the contested regulation. Article 9(1) of the basic regulation expressly obliges the institutions to take account of the Community interest only if they envisage terminating the procedure further to the withdrawal of the

complaint. Therefore, it is apparent from that provision that, where a complaint is withdrawn, the institutions have the option – but not the obligation – to terminate the procedure, although they may not do so if it would be contrary to the Community interest.

88 It must be added that, contrary to the applicants' contentions, the Council has not assumed any new power in its interpretation of Article 9(1) of the basic regulation in the present case. It has merely taken the view, as it was fully entitled to, as has been established in paragraphs 84 to 87 above, that that provision enabled the institutions to continue the review procedure notwithstanding the fact that the degree of support for the request for a review might have fallen below the 50% threshold. As to the remainder, it is clear from the contested regulation that it was only after determining, as required, that there was still dumping, that the expiry of the anti-dumping measures would be likely to result in the continuation of that dumping and of injury and that the continuation of the anti-dumping measures was in the Community interest, that the Council decided to maintain the anti-dumping measures at issue for a further period of one year. Nor did the Council's interpretation render ineffective the requirement that injury to the 'Community industry' as defined in Article 4(1) of the basic regulation must be proven in order to impose anti-dumping duties. As will be established in paragraphs 90 to 96 below, in the present case the Council correctly defined the Community industry for the purposes of determining injury.

89 It follows that no infringement of Article 9(1) of the basic regulation can be established in the present case.

90 Secondly, the parties' arguments concerning the definition of the Community industry for the purposes of determining injury must be examined.

91 Under Article 11(2) of the basic regulation, an anti-dumping measure may continue to be imposed beyond the five-year period referred to in that provision only if its expiry would be likely to lead to a continuation or recurrence of dumping and injury, the term 'injury' being taken to mean, pursuant to Article 3(1) of that regulation, material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry.

92 In Article 4(1) of the basic regulation, the term 'Community industry' is defined as either 'the Community producers as a whole of the like products' or as 'those of them whose collective output of the products constitutes a major proportion, as defined in Article 5(4) [of that regulation], of the total Community production of those [like] products'. However, in both cases, producers coming within the situations provided for in Article 4(1)(a) of the basic regulation may be excluded from the Community production. The institutions have a broad discretion when choosing between the two options.

93 The Community industry used for the purposes of determining injury does not necessarily have to comprise the same Community producers as those making up the Community industry taken into account in order to ascertain whether the original complaint or the request for a review enjoyed sufficient support in accordance with Article 5(4) of the basic regulation. Firstly, in the latter case, the Community industry may, in the light of the wording of Article 5(4), comprise only the Community producers supporting the complaint or request for a review, whereas, in the former case, the definition may include all Community producers, regardless of whether they have expressed such support. Secondly, the definition of the Community industry for the purposes of determining injury is carried out by the institutions after the procedure has been initiated. It is for example possible that, during the course of the procedure, a Community producer which at the outset supported the complaint or request for review may withdraw that support or refrain from cooperating with the Commission. Such a producer will not be included in the Community industry for the purposes of determining injury if the institutions decide to define that industry by using the second option provided for in Article 4(1) of the basic regulation, even though it was included in the Community industry for the purposes of assessing the degree of support for the original complaint or the request for a review.

94 In addition, the possible situations covered, expressly or by implication, in Article 9(1) of the basic regulation, presuppose, by definition, that the 50% threshold laid down in Article 5(4) of that regulation is no longer met. Accordingly, as the Council was correct in maintaining, in reply to a written question from the Court, and also at the hearing, that when, in the exercise of their broad discretion, the institutions choose to define the Community industry using the second option in Article 4(1) of the basic regulation, the reference in that provision to Article 5(4) of the basic regulation in general as regards the expression 'a major proportion … of the total Community production' may only be construed as referring to the minimum threshold of 25%, and not to the 50% threshold. Such an approach is all the more necessary because the requirement that the Community industry must constitute a major proportion of the total Community production aims at ensuring that the collective output of the producers included in that industry is sufficiently representative. Whether that is the case depends more on those producers' output as a proportion of total Community production than on the position adopted, with regard to the complaint or the request for a review, by the producers not included in the Community industry pursuant to Article 5(4) of the basic regulation. Consequently, in the present case, as the Council correctly stated at the hearing, the neutrality or opposition of Sylvania to the continuation of the anti-dumping measures is immaterial to the question whether Osram's output is sufficiently representative of the Community production. In the first case, unlike the second, Sylvania's output would not have been taken into account for the purposes of ascertaining whether the 50% threshold laid down by Article 5(4) of the basic regulation had been met, and Osram's output alone would have satisfied the requirement. That would also have been true in respect of GE Hungary if it had decided to become neutral rather than oppose the request for a review.

95 In addition, even if not raised by the applicants in their pleadings, it must be pointed out that the institutions cannot be required, in the situation referred to in paragraph 94 above, to define the Community industry solely by means of the first option in Article 4(1) of the basic regulation, that is by including in it the Community producers as a whole. As already pointed out in paragraph 92 above, the institutions have a broad discretion when choosing between the two options set out by that provision. They could, for example, prefer the second option on the grounds that they had already selected it in the procedure that resulted in the original imposition of the anti-dumping duties in question, or that they were unable to obtain the cooperation of certain Community producers or that they are finding it difficult to ascertain with certainty whether the Community producers as a whole must be included in the Community production, or whether some of those producers must be excluded pursuant to Article 4(1)(a) of the basic regulation.

96 In the present case, as is apparent from recitals 50 and 51 of the contested regulation, it was only after finding that Osram was the only company which continued to support the request for a review, that the request had been only partially withdrawn, that Osram's output accounted for around 48% of total Community production and therefore 'certainly [constituted] a major proportion of Community production', and that its injury data constituted the best available data, that the Council decided to include Osram alone in the definition of the Community industry for the purposes of injury. In the light of the findings in paragraphs 92 to 95 above, the Council did not err in law in using that definition. Consequently, no infringement of Articles 3(1), 9(4) or 11(2) of the basic regulation can be established in the present case.

97 If, pursuant to Article 4(1)(a) of the basic regulation, the institutions had excluded Philips Poland from the Community production, this would not have affected their analysis of the likelihood of a continuation or recurrence of injury. In such a situation, Osram's output alone would have accounted for over 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. Consequently, in defining the Community industry by means of the second option in Article 4(1) of the basic regulation, the institutions would again have included only Osram.

98 Lastly, it must be found that, in the part of the contested regulation concerned with examining the Community interest, the Council took due account of the effect of the continuation of the anti-dumping measures at issue on the interests of the other Community producers.

99 In the light of all the foregoing considerations, the first and second pleas in law must be rejected as unfounded.

The third plea in law, alleging infringement of the obligation to state reasons

100 The applicants submit that the contested regulation is inadequately reasoned on two points.

101 Firstly, they submit that the Council failed to provide adequate justification for its assessment of the support from the Community producers for a continuation of the anti-dumping measures at issue. They criticise it for not having provided any explanation as to the reasons why in the contested regulation it reached a conclusion directly opposite to that set out by the Commission in the July 2007 disclosure document, despite the fact that no new element of fact or evidence was introduced. The applicants also submit that the Council did not explain why it concluded that Osram's output constituted a major proportion of the Community production and that therefore the 50% threshold laid down by Article 5(4) of the basic regulation continued to be met, even though Osram accounted in actual fact for only 48% of Community production.

102 Secondly, the applicants submit that the Council's conclusion that it would be in the Community interest to continue the anti-dumping measures for one further year is insufficiently reasoned. More specifically, they criticise the Council for not having provided clear and unequivocal reasoning as to Osram's interest in maintaining those measures. In that connection, the applicants submit that the contested regulation does not explain how a continuation of anti-dumping duties for a further one-year period would benefit Osram, in terms of its loss-making situation and employment in its manufacturing plants, or in any other way.

103 GE Hungary and Hangzhou essentially submit the same arguments as the applicants or support the latter's arguments.

104 The Council, supported by the Commission and Osram, contends that the third plea in law should be rejected.

105 It is apparent from the case-law that the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the European Union authority which adopted the contested measure, so as to inform the persons concerned of the justification for the measure adopted and thus to enable them to defend their rights and the Courts of the European Union to exercise their powers of review (Case C-76/01 P *Eurocoton and Others* v *Council* [2003] ECR I-10091, paragraph 88, and Case T-48/96 *Acme* v *Council* [1999] ECR II-3089, paragraph 141).

106 The statement of reasons need not give details of all relevant factual or legal aspects, and the question whether it fulfils the applicable requirements must be assessed with reference not only to the wording of the measure but also to its context, and to the whole body of legal rules governing the matter in question (Case T-164/94 *Ferchimex* v *Commission* [1995] ECR II-2681, paragraph 118). It is sufficient if the Council sets out the facts and legal considerations which have decisive importance in the context of the regulation (see, to that effect, Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraphs 103 and 104).

107 Firstly, the applicants cannot successfully claim that the issue of the support from the Community producers for a continuation of the anti-dumping measures at issue is not sufficiently reasoned. It is clear from a reading of the contested regulation in conjunction with the July 2007 disclosure document and the general disclosure document, all of which are capable of clarifying the context in which the regulation was adopted, that:

— when the request for a review was lodged, Philips Poland was the only Community producer to object to the review, with Osram and GE Hungary expressly supporting it and Sylvania not adopting a position;

— consequently, there was no doubt that the level of support for the request for a review was above both the 25% and 50% thresholds referred to in Article 5(4) of the basic regulation, as is evident, in particular, from point 71 of the July 2007 disclosure document;

— in the course of the investigation, GE Hungary and Sylvania informed the Commission that they were now opposed to the request for a review, which meant that this was now only supported by Osram, whose output was very slightly below 50% of the total Community production, as is evident, in particular, from points 71 and 72 of the July 2007 disclosure document;

— given the slight difference between the percentage of Community production supporting the request for a review and that opposing it, and taking the view that the two thresholds had to be met both at the stage of lodging the request for a review as well as during the course of the investigation, the Commission examined in more detail whether certain Community producers, and in particular Philips Poland, had to be excluded from the Community production pursuant to Article 4(1)(a) of the basic regulation, as is apparent, in particular, from points 28 to 68 and point 70 of the July 2007 disclosure document;

— initially, after carrying out that examination, the Commission took the view that the four Community producers had to be included in the Community production and, therefore, concluded that it was appropriate to terminate the review procedure and repeal the anti-dumping measures at issue, as is apparent, in particular, from points 69 to 73 of the July 2007 disclosure document;

— subsequently, having continued its analysis and found that it was difficult for it to determine with certainty which, if any, of the Community producers had to be excluded from the Community production pursuant to Article 4(1)(a) of the basic regulation, the Commission decided to leave that question open and, thus, also the question as to whether the request for a review still enjoyed the degree of support required by Article 5(4) of the basic regulation, as is apparent from points 49 and 50 of the general disclosure document and recitals 49 and 50 of the contested regulation;

— the Commission took the view, following the opposition to the request for a review expressed by GE Hungary and Sylvania during the course of the procedure, that the situation in question was analogous to that referred to in Article 9(1) of the basic regulation and, applying that provision by analogy, that it was in the Community interest to continue with the review procedure, as is apparent from point 50 of the general disclosure document and recitals 50 and 94 of the contested regulation;

— the Commission's position was endorsed by the Council in the contested regulation.

108 However, it is clear from both the observations submitted by the applicants at the time of the review investigation and from the arguments which they developed in support of the first two pleas in law in the course of the present action that they understood perfectly well the sequence of events as set out in paragraph 107 above.

109 The applicants' complaint that the Council reached a conclusion directly opposite to that set out in the July 2007 disclosure document, despite the fact that no new element of fact or evidence justified this, is irrelevant to the present plea. The obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (Case C-17/99 *France* v *Commission* [2001] ECR I-2481, paragraph 35).

110 In any event, that complaint has no basis in fact. As has already been stated in paragraph 81 above, 2CFL-i submitted detailed observations on the July 2007 disclosure document in which it set out the reasons why, in its view, Philips Poland and GE Hungary had to be excluded from the Community production pursuant to Article 4(1)(a) of the basic regulation. Those observations could reasonably justify the Commission reconsidering its assessment, especially because, as the applicants well knew and as was clear from the observations which they submitted at the time of the review procedure, the issue about the exact composition of the Community production was a complex and much debated one in the present case.

111 In addition, contrary to the applicants' contentions, the fact that the Council did not explain, in the contested regulation, why it had decided to depart from the Commission's conclusion in the 2007 disclosure document cannot, in itself, amount to a failure to provide reasons, because such a document is simply an intermediate measure in which the Commission sets out merely a provisional position (see, to that effect, Case T-206/07 *Foshan Shunde Yongjian Housewares & Hardware* v *Council* [2008] ECR II-1, paragraph 52).

112 Lastly, contrary to the applicants' contentions, the Council did not seek to suggest, in recital 50 of the contested regulation, that the 50% threshold laid down in Article 5(4) of the basic regulation was met, by stating that Osram's output constituted a major proportion of Community production. In that statement, the Council was actually referring to the 25% threshold laid down in that same provision. It would make no sense to claim that the 50% threshold was still met, since, in such a case, it would not have been necessary to rely, in the same recital, on Article 9(1) of the basic regulation, which presupposed that the request for a review had been withdrawn or the level of support for it had fallen below that threshold. The finding that the Council meant to refer to the 25% threshold is further confirmed by the fact that, in points 4 and 71 of the 2007 July information document, point 4 of the general disclosure document and recital 4 of the contested regulation, at least in the English-language version, the expression 'major proportion' is expressly linked to the expression 'more than 25%, of the total Community production'.

113 Secondly, contrary to the applicants' contentions, the contested regulation contains sufficient reasons for the Council's conclusion that the Community interest required the continuation of the anti-dumping measures at issue for a further period of one year.

114 Thus, in recitals 94 to 114 of the contested regulation, the Council clearly set out its assessment of all the interests concerned, namely those of Osram, the other Community producers, the suppliers, importers/traders, retailers and consumers. In recitals 115 and 116 of that regulation, the Council weighed those different interests and concluded that 'it [was] in the short term interest of the Community to continue the measures for a further adjustment period'.

115 The applicants' complaint that the Council failed to explain sufficiently how it was in Osram's interest for the anti-dumping measures at issue to be maintained cannot succeed. In recitals 65 to 93 of the contested regulation, the Council duly ascertained and explained that the expiry of those measures would be likely to lead to a continuation or recurrence of the injury sustained by Osram. It found in particular, in recital 90 of that regulation, that such an expiry would be likely to lead to a considerable deterioration of Osram's financial situation, because it would have to reduce its sales (and hence its production), or reduce its prices, or both. Logically, continuation of the anti-dumping measures could therefore only be in Osram's interest. As to the remainder, at no point did the Council suggest that that continuation of measures would enable Osram to overcome all its difficulties, but merely that it

would assist it in making the necessary adjustments. As to the decision to limit the extension of the measures to one year, it is clear from recitals 115 and 116 of the contested regulation that this was the result of weighing the various interests present, which suggested that, after that period, the likely negative effects on consumers and other operators would be disproportionate to the benefits which Community producers would derive from the measures.

116 In the light of the foregoing, the third plea must be rejected and, consequently, the action must be dismissed in its entirety.

Costs

117 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs, to pay the Council's costs, with the exception of those incurred by it in connection with the interventions of Hangzhou and GE Hungary, and to pay Osram's costs.

118 In accordance with the first subparagraph of Article 87(4) of the Rules of Procedure, the Commission must bear its own costs.

119 In accordance with the third subparagraph of Article 87(4) of the Rules of Procedure, Hangzhou and GE Hungary must each bear their own costs.

120 In accordance with Article 87(2) of the Rules of Procedure, Hangzhou and GE Hungary must pay the costs incurred by the Council in connection with their interventions.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Philips Lighting Poland S.A. and Philips Lighting BV to bear their own costs, to pay the costs of the Council of the European Union, with the exception of those incurred by it in connection with the interventions of Hangzhou Duralamp Electronics Co., Ltd and GE Hungary Ipari és Kereskedelmi Zrt (GE Hungary Zrt), and to pay the costs of Osram GmbH;**

3. **Orders the European Commission to bear its own costs;**

4. **Orders Hangzhou Duralamp Electronics and GE Hungary to bear their own costs and to pay those incurred by the Council in connection with their interventions.**

Papasavvas O'Higgins Gratsias

Delivered in open court in Luxembourg on 11 July 2013.

[Signatures]