Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

15 October 2020*

(Reference for a preliminary ruling – Customs union – Regulation (EEC) No 2913/92 – Article 78 – Article 236(1) – Import procedure – Revision of the customs declaration – Commercial policy – Anti-dumping – Implementing Regulation (EU) 2015/82 – Definitive anti-dumping duty – Price undertakings – Exemption – Article 2(1) – Condition to submit an undertaking invoice – Failure to mention an element listed in the Annex to Implementing Regulation 2015/82)

In Case C-543/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decision of 1 July 2019, received at the Court on 16 July 2019, in the proceedings

Jebsen & Jessen (GmbH & Co.) KG

v

Hauptzollamt Hamburg,

THE COURT (Fourth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, N. Piçarra, D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Jebsen & Jessen (GmbH & Co.) KG, by J. Sparr and S. Pohl, Rechtsanwälte,

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

– the European Commission, initially by T. Maxian Rusche and N. Kuplewatzky, and subsequently by T. Maxian Rusche, K. Blanck and A. Demeneix, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 July 2020,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) of Commission Implementing Regulation (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ 2015 L 15, p. 8).

2 The request has been made in proceedings between Jebsen & Jessen (GmbH & Co.) KG and Hauptzollamt Hamburg (Principal Customs Office, Hamburg, Germany) ('the customs office') concerning an application for total exemption from the anti-dumping duty imposed for non-presentation of undertaking invoices within the meaning of Article 2(1) of Implementing Regulation 2015/82.

Legal context

European Union law

The Customs Code

3 Article 62 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 (OJ 2013 L 269, p. 1) ('the Customs Code'), provides:

'1. Declarations in writing shall be made on a form corresponding to the official specimen prescribed for that purpose. They shall be signed and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.

2. The declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.'

4 Article 68 of that code provides:

'For the verification of declarations which they have accepted, the customs authorities may:

(a) examine the documents covering the declaration and the documents accompanying it. The customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration;

…'

5 Under Article 77 of that code:

'1. Where the customs declaration is made by means of a data-processing technique within the meaning of Article 61(b), or by an oral declaration or any other act within the meaning of Article 61(c), Articles 62 to 76 shall apply *mutatis mutandis* without prejudice to the principles set out therein.

2. Where the customs declaration is made by means of a data-processing technique, the customs authorities may allow accompanying documents referred to in Article 62(2) not to be lodged with the declaration. In this case the documents shall be kept at the customs authorities' disposal.'

6 Article 78 of that code reads as follows:

‘1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

…

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them.’

7 Article 201(1) of the Customs Code provides:

‘A customs debt on importation shall be incurred through:

(a) the release for free circulation of goods liable to import duties

…’

8 Article 236(1) of that code provides:

‘Import duties or export duties shall be repaid in so far as it is established that when they were paid, the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

…’

Anti-dumping legislation

– Implementing Regulation 2015/82

9 Implementing Regulation 2015/82 replaced Council Regulation (EC) No 1193/2008 of 1 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of citric acid originating in the People’s Republic of China (OJ 2008 L 323, p. 1).

10 Recitals 183, 184 and 186 of Implementing Regulation 2015/82 are worded as follows:

‘(183) The Commission, by [Commission Implementing Decision (EU) 2015/87 of 21 January 2015 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People’s Republic of China (OJ 2015 L 15, p. 75)], accepted these new undertaking offers replacing the undertakings in force. The new undertaking offers eliminate the injurious effects of dumping and limit to a sufficient degree the risk of circumvention.

(184) To further enable the Commission and the customs authorities to effectively monitor the compliance of the companies with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional upon:

(i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex;

…

(186) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 184 and 185 above even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.'

11 Under Article 1(2) of that implementing regulation, the rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of citric acid and trisodium citrate dihydrate manufactured by Weifang Ensign Industry Co. Ltd ('Weifang'), established in China, is to be 33.8%.

12 Article 1(4) of the implementing regulation provides:

'Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.'

13 Article 2 of that implementing regulation provides:

'1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Implementing Decision [2015/87] shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

(a) they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Union; and

(b) such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex to this Regulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

(a) whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled …'.

14 The Annex to Implementing Regulation 2015/82 lists the elements that must be indicated in the commercial invoice accompanying the companies' sales to the European Union of goods which are subject to the undertaking. Those elements include, in point 9 of the list, the name of the official of the company that has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by (COMPANY), and accepted by the European Commission through Implementing Decision [2015/87]. I declare that the information provided in this invoice is complete and correct.'

15 In accordance with its Article 3, Implementing Regulation 2015/82 entered into force on 23 January 2015.

– *Implementing Decision 2015/87*

16 Recital 11 of Implementing Decision 2015/87 states:

'In order to enable the Commission to monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to the undertakings is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Implementing Regulation [2015/82]. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when the other conditions provided for by the abovementioned Implementing Regulation are not met, the appropriate rate of anti-dumping duty shall instead be payable.'

17 Under Article 1 of that implementing decision, the undertaking of Weifang, the Chinese company exporting the goods in question in the main proceedings, was accepted.

18 Article 2 of that implementing decision provides that Commission Decision 2008/899/EC of 2 December 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ 2008 L 323, p. 62) is repealed.

19 In accordance with its Article 3, Implementing Decision 2015/87 entered into force on 23 January 2015.

German law

20 Paragraph 8a of the Zollverordnung (Customs Regulation), in the version applicable to the dispute in the main proceedings, entitled 'Participation in the electronic transmission of data', is worded as follows:

'The Federal Ministry of Finance shall set out, by means of a procedural instruction, the conditions … for completing the written formalities by means of a data-processing technique … The participant shall comply with the conditions and procedure set out in the procedural instruction.'

21 Point 3.1.2 of the Verfahrensanweisung zum IT-Verfahren ATLAS (procedural instruction on the ATLAS IT process), in the version applicable to the dispute in the main proceedings, entitled 'Presentation of documents in the context of the provision of data by the participant', provides:

'(1) Pursuant to Article 77(2) of the Customs Code, the participant may choose, when providing its data, not to present the documents relating to the customs declarations referred to in paragraph 2. The participant must, however, have those documents available and submit them on a case-by-case basis at the request of the customs clearance official.

(2) It is, in principle, possible to choose not to submit the following documents:

– all commercial documents (commercial or shipping invoices, etc. …) …'

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

22 By contracts dated 9, 13 and 15/16 January 2015, the applicant in the main proceedings and Weifang agreed on the supply in the European Union of 360 tonnes of citric acid at a price of EUR 884.70 per tonne.

23 By an email of 22 January 2015, Weifang's lawyers were informed by the Commission of the publication of Implementing Regulation 2015/82 and Implementing Decision 2015/87 in the *Official Journal of the European Union* of that day.

24 On 30 January 2015, Weifang shipped the 360 tonnes of citric acid.

25 By 12 customs declarations of 10 and 11 March 2015, made by means of a data-processing technique, the applicant in the main proceedings declared the importation of those goods for release into free circulation, referring to three invoices from Weifang dated 29 January 2015.

26 Before releasing the goods, the customs office requested the production of those invoices all of which contained a declaration that, although analogous to that provided for in point 9 of the list in the annex to Implementing Regulation 2015/82, referred to Regulation No 1193/2008 and Decision 2008/899, not to Implementing Decision 2015/87.

27 The export undertaking certificates presented in support of those invoices also referred to Decision 2008/899.

28 As the invoices presented did not refer to Implementing Decision 2015/87, the customs office refused to grant an exemption from the anti-dumping duty and imposed the general anti-dumping duty of 42.7% on the imports.

29 The applicant in the main proceedings contested the decisions rejecting its application for reimbursement of anti-dumping duties, presenting three corrected undertaking invoices dated 29 January 2015 which referred to Implementing Regulation 2015/82 and Implementing Decision 2015/87.

30 By decision of 7 June 2016, the customs office granted the request of the applicant in the main proceedings, by which it sought, in the alternative, to have the individual anti-dumping duty rate applied.

31 By decision of 13 June 2016, the customs office refused the request for exemption from the anti-dumping duty, on the ground that the invoices presented with the declaration for release into free circulation of the imported goods did not fulfil the formal conditions provided for in Article 2(1)(b) of Implementing Regulation 2015/82, since they referred to Decision 2008/899 instead of Implementing Decision 2015/87.

32 The customs office stated that, on the date on which the customs declaration was accepted, Implementing Regulation 2015/82 was in force and, in order for the exemption from the anti-dumping duty to be obtained, the correct legal basis had to be mentioned in the invoices.

33 On 18 July 2016, the applicant in the main proceedings brought an action before the referring court, the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), in order to obtain reimbursement, in accordance with Article 236 of the Customs Code, of the anti-dumping duty imposed on it.

34 To that end, it claims, relying on the judgment of 12 October 2017, *Tigers* (C-156/16, EU:C:2017:754), that it was possible to inspect the customs declaration in accordance with Article 78 of that code. It submits that that article authorises the post-clearance presentation of documents and that it is irrelevant that a customs declaration contains incorrect elements if it is possible to determine the factual circumstances in the context of an inspection of that declaration carried out in accordance with that article. It points out that the customs office itself acknowledges that documents are inspected only after the declaration is accepted.

35 The applicant in the main proceedings submits that, in order to determine whether the conditions for exemption from the anti-dumping duty are fulfilled, reference should be made to the time when the contract for purchase of the goods was concluded, which, in the present case, took place in January 2015 on the basis of the minimum import prices communicated by the Commission in December 2014.

36 The customs office maintains, by contrast, that the case in the main proceedings is distinguishable from that which resulted in the judgment of 12 October 2017, *Tigers* (C-156/16, EU:C:2017:754), which concerned an anti-dumping duty specific to the company in question in that case. It emphasises that Article 2(2) of Implementing Regulation 2015/82 expressly requires the undertaking invoice to be presented on the date of acceptance of the customs declaration. It observes that even though, pursuant to Article 77(2) of the Customs Code, the documents relevant to such a declaration do not have to be presented with it, they must however be kept available to the customs authorities, as set out in the procedural instruction on the ATLAS IT process. It infers that the inspection of the exemption from the anti-dumping duty must be carried out on the basis of the invoice referred to in the customs declaration.

37 The referring court observes that the new undertaking given by Weifang, given concrete expression in Implementing Decision 2015/87, was valid when the goods in question in the main proceedings were imported.

38 The referring court is uncertain whether the invoices submitted in the context of the inspection of the customs declaration fulfil the conditions of Article 2(1)(b) of Implementing Regulation 2015/82 in order to be regarded as undertaking invoices, even though the formal conditions in point 9 of the list in the annex to that implementing regulation are clearly not fulfilled.

39 It nevertheless raises the question of the effect of the principle of proportionality, in the light of which a rule on anti-dumping duty should be interpreted having regard to its context and the objectives of the legislation of which it forms part, as an exception should be interpreted strictly only to the extent necessary to attain its objectives.

40 Thus, in the present case, it would be disproportionate to refuse the exemption from the anti-dumping duty.

41 Moreover, it considers that Article 2(1) of Implementing Regulation 2015/82 does not expressly state a deadline by which the undertaking invoices must be presented.

42 It takes the view that the submission of a customs declaration by means of data-processing techniques means that the time of acceptance of that declaration cannot be the latest time to present those documents, as the provisions in force relating to those procedures provide only that the documents must be kept available to the customs authorities.

43 The referring court therefore considers that Article 2(2) of Implementing Regulation 2015/82 can be understood as setting only the time when the customs debt is incurred.

44 It specifies that it could be inferred from the principle of proportionality that certain elements of an undertaking invoice, such as those in the main proceedings, can be added or corrected post-clearance, in so far as the objective pursued by the anti-dumping legislation can still be attained.

45 It draws an analogy with the interpretation of Article 78 of the Customs Code given by the Court in the judgment of 12 October 2017, *Tigers* (C-156/16, EU:C:2017:754), according to which the specific logic of that article is to bring the customs procedure into line with the actual situation.

46 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Under the conditions of the dispute in the main proceedings, is the exemption from the anti-dumping duty introduced by Article 1 of [Implementing Regulation] 2015/82 pursuant to Article 2(1) of that regulation precluded if an undertaking invoice pursuant to Article 2(1)(b) of that regulation does not specify Implementing Decision … 2015/87 referred to in point 9 of the annex to that regulation, but specifies rather Decision 2008/899 … ?

2. If Question 1 is answered in the affirmative: May an undertaking invoice that meets the requirements of the annex to Implementing Regulation … 2015/82 be submitted in the context of a procedure for establishing whether anti-dumping duties are reimbursable in order to obtain exemption from the anti-dumping duty imposed in Article 1 of that regulation pursuant to Article 2(1) thereof?’

Procedure before the Court

47 Due to the Covid-19 pandemic, the hearing before the Court, scheduled for 6 May 2020, was cancelled.

48 Consequently, by decision of 20 April 2020, the questions sent to the parties for oral response at the hearing were converted into questions for written response.

49 The applicant in the main proceedings, the Italian Government and the Commission were therefore given the opportunity to express their views on all the issues raised by the reference for a preliminary ruling.

Consideration of the questions referred

The first question

50 By its first question, the referring court asks, in essence, whether Article 2(1) of Implementing Regulation 2015/82 must be interpreted as meaning that imports of goods can be exempted from the anti-dumping duty imposed by Article 1 of that implementing regulation when the undertaking invoice necessary for obtaining such exemption refers, in the declaration set out in point 9 of the list in the annex to that implementing regulation, not to Implementing Decision 2015/87, but to Decision 2008/899.

51 It follows from the Court's case-law that exemptions from anti-dumping and countervailing duties may be made only under certain conditions, in cases specifically provided for, and thus constitute exceptions to the normal regime for anti-dumping and countervailing duties. The provisions which provide for such exemptions are, therefore, to be interpreted strictly (judgment of 22 May 2019, *Krohn & Schröder*, C-226/18, EU:C:2019:440, paragraph 46 and the case-law cited).

52 It must also be borne in mind that the reference to the implementing decision by which an undertaking has been accepted by the Commission is of particular importance in the context of an implementing regulation permitting an exemption from the anti-dumping duty on account of such undertaking, inasmuch as it permits the customs authorities to verify, at the material time, that all the requirements regarding the exemption from anti-dumping and countervailing duties at issue have been satisfied (judgment of 22 May 2019, *Krohn & Schröder*, C-226/18, EU:C:2019:440, paragraph 55).

53 Article 2(1)(b) of Implementing Regulation 2015/82 provides that imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Implementing Decision 2015/87 are to be exempt from the anti-dumping duty imposed in Article 1 of the implementing regulation, on condition that they are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the annex to that regulation.

54 In that regard, point 9 of the list in the annex to Implementing Regulation 2015/82 states that that commercial invoice, issued by the company that has entered into such undertakings, must contain a declaration signed by that company's official, according to which 'the sale for direct export to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by (COMPANY), and accepted by the … Commission through Implementing Decision (EU) 2015/87'.

55 It is thus apparent from the wording of those provisions that the exemption from the anti-dumping duty applicable to imports invoiced by companies whose undertakings have been accepted by the Commission is, inter alia, subject to the formal condition that the declaration that must be included in the commercial invoice accompanying the goods declared for release into free circulation refers to the fact that that invoice fulfils the terms of the undertaking offered by the exporting company as accepted by Implementing Decision 2015/87.

56 Regarding its context, Article 2(1)(b) of Implementing Regulation 2015/82 lays down one of the conditions under which the exemption from anti-dumping duty introduced by Article 1 of that implementing regulation is to be granted when the imports come from one of the companies whose undertakings concerning minimum import prices have been accepted by the Commission.

57 Article 2(2)(a) of that implementing regulation sets out the consequences of the failure to fulfil one of the conditions listed in Article 2(1) of that implementing regulation, specifying that a customs debt is to be incurred at the time of acceptance of the declaration for release into free circulation whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled.

58 Regarding its purpose, the exemption regime laid down in Article 2(1) of Implementing Regulation 2015/82 and the conditions it sets out are intended, as is apparent from recitals 183 and 184 thereof, and as observed by the Advocate General in point 36 of his Opinion, (i) to eliminate the injurious effects of dumping by exempting from the anti-dumping duty provided for by that implementing regulation certain exporting companies where they have undertaken to sell the product, ordinarily subject to that anti-dumping duty, at a minimum price within the European Union, and (ii) to limit the risk of circumvention of that implementing regulation by imposing a number of obligations on those companies, so that both the importer of that product and the customs authorities of the Member States are able to determine that a given import is indeed related to an undertaking of one of those companies, identified in Implementing Decision 2015/87.

59 Therefore, the purpose of the exemption regime and its conditions is not to protect the interests of a given importer, but to ensure that the interests of EU businesses are protected against the injurious effects of dumped imports, in order to combat the resulting unfair competition.

60 Thus, it follows from a literal, contextual and teleological interpretation of Implementing Regulation 2015/82 that the failure to refer to Implementing Decision 2015/87 in the invoice to which Article 2(1)(b) of that implementing regulation relates prohibits the importer of the product covered by that implementing regulation from benefiting from the exemption from the anti-dumping duty laid down in Article 2(1) of that implementing regulation, as such invoice is not an 'undertaking' invoice for the purposes of the first of those provisions.

61 In the present case, it is apparent from the documents in the case file available to the Court that the invoices presented when the customs declarations for the release into free circulation of the goods in question in the main proceedings were lodged, that is, 10 and 11 March 2015, did not refer to Implementing Decision 2015/87 accepting the undertakings offered by certain Chinese producer-exporters including that which exported those goods, which had entered into force pursuant to its Article 3 on 23 January 2015. Having regard to the foregoing, such invoices are not 'undertaking' invoices within the meaning of Article 2(1)(b) of Implementing Regulation 2015/82.

62 Further, the fact that Implementing Regulation 2015/82 and Implementing Decision 2015/87 came into force one or two weeks after the sale contracts were signed, but one week before the product concerned was shipped from a third country to the European Union, cannot affect the finding in the previous paragraph. From the date of entry into force of those legal instruments, the exporting companies are required to comply with the conditions set by the new rules in order to benefit from the exemption regime on account of the undertakings accepted by the Commission, all the more so when the Commission has informed the exporting company in question of the adoption of those new rules before they have even entered into force.

63 Consequently, the answer to the first question is that Article 2(1) of Implementing Regulation 2015/82 must be interpreted as meaning that imports of goods cannot be exempted from the anti-dumping duty imposed by Article 1 of that implementing regulation when the invoice necessary for obtaining such exemption refers, in the declaration set out in point 9 of the list in the annex to that implementing regulation, not to Implementing Decision 2015/87, but to Decision 2008/899.

The second question

64 By its second question, the referring court asks, in essence, whether an undertaking invoice, containing all the elements listed in the annex to Implementing Regulation 2015/82, may be submitted for the purposes of obtaining the exemption provided for in Article 2(1) of that implementing regulation, in the context of the procedure established by Article 236 of the Customs Code, instituted with a view to the reimbursement of anti-dumping duties.

65 In that regard, it must be noted that, pursuant to Article 236(1) of the Customs Code, import duties or export duties are to be repaid in so far as it is established that, when they were paid, the amount of such duties was not legally owed.

66 Further, Article 78 of that code establishes a procedure enabling customs authorities, on their own initiative or at the request of the declarant, to amend the customs declaration after release of the goods covered by that declaration, that is to say, after that declaration has been made.

67 Nevertheless, it is apparent from the Court's case-law that customs legislation as a whole, as given specific expression in the Customs Code in particular, applies to anti-dumping or to countervailing duties only if the regulations establishing such duties provide for that (judgment of 22 May 2019, *Krohn & Schröder*, C-226/18, EU:C:2019:440, paragraph 33).

68 It must therefore be established whether the provisions of Implementing Regulation 2015/82 provide for a derogation from customs rules or whether, conversely, under those provisions, it is possible for an importer to submit, after the customs declaration of imported products and their release for free circulation, a commercial undertaking invoice which makes it possible to benefit from an exemption from the anti-dumping duty on account of undertakings given by the company exporting those products and accepted by the Commission.

69 Article 2(1)(b) of Implementing Regulation 2015/82 provides that 'imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Implementing Decision [2015/87] shall be exempt from the anti-dumping duty imposed by Article 1, on condition that … such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex to this Regulation'.

70 However, the specific logic of Article 2(1)(b) means that the exemption from the anti-dumping duty provided for therein can be granted, as it expressly states, only when the imports declared for release into free circulation are accompanied by such an undertaking invoice. As stated by the Commission in its written observations, it must be inferred that, in accordance with the meaning of that provision, that invoice must be presented when the goods are declared to the customs authorities for release into free circulation.

71 In that regard, recital 184 of Implementing Regulation 2015/82 specifies that 'to further enable the Commission and the customs authorities to effectively monitor the compliance of the companies with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional upon …the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex'.

72 Further, recital 11 of Implementing Decision 2015/87 states that, in order to enable the Commission to monitor effectively the exporting companies' compliance with the undertakings, when the request for release for free circulation pursuant to the undertakings is presented to the relevant customs authority, exemption from the anti-dumping duty is conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Implementing Regulation 2015/82.

That recital adds, in particular, that this level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents.

73 Therefore, Article 2(1)(b) of Implementing Regulation 2015/82 requires the commercial undertaking invoice to which it refers to be presented when the goods it concerns are declared to the customs authorities, not afterwards.

74 Moreover, as is apparent from paragraph 57 above, Article 2(2) of that implementing regulation expressly draws the appropriate conclusions from the failure to fulfil one of the conditions listed in Article 2(1) of that implementing regulation, specifying that a customs debt is to be incurred at the time of acceptance of the declaration for release into free circulation whenever it is established, in respect of imports described in paragraph 1 of that article, that one or more of those conditions are not fulfilled.

75 On that point, recital 186 of that implementing regulation states that importers may incur a customs debt in such circumstances 'even if an undertaking offered by the manufacturer from whom [those importers] were buying, directly or indirectly, had been accepted by the Commission'.

76 Regarding the purpose of the condition established by Article 2(1)(b) of Implementing Regulation 2015/82, it is apparent from paragraph 72 above that it is intended, in essence, to enable the Commission and the customs authorities of the Member States, first, to monitor the exporting companies' compliance with the undertakings at the time when the request for release into free circulation is made and, second, to ascertain with sufficient precision that the shipment corresponds to the commercial documents.

77 It must therefore be held that the anti-dumping legislation at issue in the main proceedings has a different scope from that examined in the judgment of 12 October 2017, *Tigers* (C-156/16, EU:C:2017:754), in which the Court held that Article 1(3) of Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ 2013 L 131, p. 1) had to be interpreted as not having precluded the importers concerned from presenting a commercial invoice after the customs declaration was made.

78 Article 1(3) of Implementing Regulation No 412/2013 did not establish when the commercial invoice had to be presented to the customs authorities, merely providing that 'the application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II'.

79 It follows from all the foregoing that Implementing Regulation 2015/82 contains a provision, namely Article 2(1) of that implementing regulation, which, pursuant to Article 1(4) thereof, expressly derogates from the provisions in force concerning customs duties, including, in particular, Articles 78 and 236 of the Customs Code.

80 Consequently, the answer to the second question is that an undertaking invoice, containing all the elements listed in the annex to Implementing Regulation 2015/82, may not be submitted for the purposes of obtaining the exemption provided for in Article 2(1) of that implementing regulation, in the context of the procedure established by Article 236 of the Customs Code, instituted with a view to the reimbursement of anti-dumping duties.

Costs

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

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

1. **Article 2(1) of Commission Implementing Regulation (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009 must be interpreted as meaning that imports of goods cannot be exempted from the anti-dumping duty imposed by Article 1 of that implementing regulation when the invoice necessary for obtaining such exemption refers, in the declaration set out in point 9 of the list in the annex to that implementing regulation, not to Commission Implementing Decision (EU) 2015/87 of 21 January 2015 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China, but to Commission Decision 2008/899/EC of 2 December 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China.**

2. **An undertaking invoice, containing all the elements listed in the annex to Implementing Regulation 2015/82, may not be submitted for the purposes of obtaining the exemption provided for in Article 2(1) of that implementing regulation, in the context of the procedure established by Article 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013, instituted with a view to the reimbursement of anti-dumping duties.**

[Signatures]