Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 16 July 2015 [1]

Case C-371/14

APEX GmbH Internationale Spedition
v
Hauptzollamt Hamburg-Stadt

(Request for a preliminary ruling from the Finanzgericht Hamburg (Germany))

(Reference for a preliminary ruling — Commercial policy — Anti-dumping duties — Implementing Regulation (EU) No 260/2013 — Imported goods originating in China — Imports of the same products consigned from Vietnam — Circumvention — Retroactive extension of anti-dumping duties decided on after those duties had expired — Validity)

1. Can a definitive anti-dumping duty on imports originating in a third State, if circumvented, be retroactively extended to imports from another third State by a regulation adopted after that duty has expired?

2. That is the question of principle raised by the present request for a preliminary ruling, which concerns the validity of Council Implementing Regulation (EU) No 260/2013 of 18 March 2013 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China to imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam, whether declared as originating in the Socialist Republic of Vietnam or not,[2] following a circumvention investigation within the meaning of Article 13 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.[3]

3. The request has been made in the context of a dispute between APEX GmbH Internationale Spedition[4] and the Hauptzollamt Hamburg-Stadt (Principal Customs Office of the City of Hamburg)[5] concerning anti-dumping duties retroactively claimed from APEX in connection with imports carried out during 2012.

4. In this Opinion, I shall set out the reasons why I am proposing that the Court's answer should be that an examination of the first question raised by the Finanzgericht Hamburg (Finance Court, Hamburg) (Germany) has disclosed no factor such as to affect the validity of the contested regulation.

1 — Original language: French.
2 — OJ 2013 L 82, p. 10; 'the contested regulation'.
3 — OJ 2009 L 343, p. 51, and corrigendum in OJ 2010 L 7, p. 22; 'the basic regulation'.
4 — 'APEX'.
5 — 'The Hauptzollamt'.

I – **Legal context**

A – *The basic regulation*

5. According to recital 16 of the basic regulation:

‘It is necessary to provide for retroactive collection of provisional duties if that is deemed appropriate and to define the circumstances which may trigger the retroactive application of duties to avoid the undermining of the definitive measures to be applied. …’

6. Article 10 of that regulation, entitled ‘Recovery’, provides in paragraph 1:

‘Provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Article 7(1) or 9(4), as the case may be, enters into force, subject to the exceptions set out in this Regulation’.

7. Article 11(2) of that regulation provides:

‘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 the review.

…’

8. Article 13 of the basic regulation, entitled ‘Circumvention’, provides:

‘1. Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

…

3. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which may also instruct the customs authorities to make imports subject to registration in accordance with Article 14(5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be

done by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5) or on which guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply pursuant to this Article.

…'

9. Under Article 14(5) of the basic regulation:

'The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action. Registration shall be introduced by regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months'.

B – *The anti-dumping regulations relating to gas-fuelled, non-refillable pocket flint lighters*

10. Council Regulation (EEC) No 3433/91 of 25 November 1991[6] imposed a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in, inter alia, China.

11. Following an investigation into possible circumvention of that measure, Council Regulation (EC) No 192/1999 of 25 January 1999[7] extended the definitive anti-dumping duty to imports of identical lighters consigned from or originating in Taiwan and to imports of gas-fuelled, refillable pocket flint lighters originating in China or consigned from or originating in Taiwan.

12. Council Regulation (EC) No 1824/2001 of 12 September 2001[8] and, subsequently, Council Regulation (EC) No 1458/2007 of 10 December 2007[9] maintained the definitive anti-dumping duty imposed by Regulation No 3433/91 and extended by Regulation No 192/1999.

13. No request for review having been made following the publication on 1 May 2012 of a notice of the impending expiry of certain anti-dumping measures,[10] those measures expired on 13 December 2012.

6 — Regulation imposing a definitive anti-dumping duty on imports of gas-fuelled non-refillable pocket flint lighters originating in Japan, the People's Republic of China, the Republic of Korea and Thailand and definitively collecting the provisional anti-dumping duty (OJ 1991 L 326, p. 1).

7 — Regulation extending the definitive anti-dumping duty imposed by Regulation (EEC) No 3433/91 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China to imports of certain disposable refillable pocket flint lighters originating in the People's Republic of China or consigned from or originating in Taiwan and to imports of non-refillable lighters consigned from or originating in Taiwan, and terminating the proceeding in respect of imports of non-refillable lighters consigned from Hong Kong and Macao (OJ 1999 L 22, p. 1).

8 — Regulation imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan (OJ 2001 L 248, p. 1), as amended by Council Regulation (EC) No 155/2003 of 27 January 2003 (OJ 2003 L 25, p. 27).

9 — Regulation imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan (OJ 2007 L 326, p. 1).

10 — OJ 2012 C 127, p. 3.

14. Before those measures expired, the Commission, having been approached by a European Union (EU) producer on 17 April 2012, had, by means of Regulation (EU) No 548/2012,[11] initiated an investigation into possible circumvention of the anti-dumping measures by imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam.

15. Under the first paragraph of Article 2 of that regulation, the customs authorities of the Member States were required to take the appropriate steps to register the imports identified in Article 1 of that regulation, pursuant to Articles 13(3) and 14(5) of the basic regulation.

16. Commission Regulation (EU) No 1192/2012 of 12 December 2012[12] terminated the obligation to register imports as from the expiry of the anti-dumping measures.

17. The contested regulation, which was adopted following the investigation initiated by Regulation No 548/2012, provides for the extension of the definitive anti-dumping measures imposed by Regulation No 1458/2007. Article 1 of the contested regulation provides that:

'1. The definitive anti-dumping duty imposed by Article 1(2) of Regulation No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China is hereby extended to imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not, currently falling under CN code ex 9613 10 00.

2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Vietnam from 27 June 2012 until 13 December 2012, whether declared as originating in Vietnam or not, registered in accordance with Article 2 of Regulation … No 548/2012 and Article 13(3) and 14(5) of [the basic regulation].

…'

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

18. Between August and December 2012, APEX, an international transport company, released for free circulation in the European Union 4 024 080 gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam.

19. On 26 March 2013, the Hauptzollamt issued, on the basis of the contested regulation, a duty notice requiring APEX to pay retrospective anti-dumping duties in the amount of EUR 261565.20.

20. On 15 April 2013, APEX lodged an administrative appeal against that duty notice. Following the dismissal of that appeal on 5 June 2013, APEX brought an action before the Finanzgericht Hamburg on 5 July 2013.

21. That court has doubts as to whether it is possible to extend the anti-dumping duty imposed by Regulation No 1458/2007 given that that regulation was no longer in force on the date on which the contested regulation was adopted and the anti-dumping measure had therefore expired.

11 — Regulation of 25 June 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China by imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not, and making such imports subject to registration (OJ 2012 L 165, p. 37).

12 — Regulation terminating the registration of imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not, imposed by Regulation (EU) No 548/2012 (OJ 2012 L 340, p. 37).

22. On the one hand, it is unsure whether it can be inferred from Article 13(1) of the basic regulation, which provides for the possibility of extending anti-dumping duties 'when circumvention of the measures *in force* is taking place',[13] that an anti-dumping measure may be extended only if it is in force. It notes that considerations relating to the scheme and purpose of anti-dumping measures might also militate in favour of that interpretation. Thus, the imposition of anti-dumping duties is not a penalty for earlier conduct, but a measure to defend and protect against unfair competition resulting from dumping practices and which seeks to prevent imports of dumped goods or make them economically less attractive. That objective cannot be achieved, however, if anti-dumping measures are imposed in respect of a period prior to the date on which the regulation providing for them was adopted.

23. On the other hand, the Finanzgericht Hamburg states that, in so far as any retroactive effect is permitted, the expression 'when circumvention of the measures in force is taking place' could also be understood as relating not to the date on which the regulation extending the measures was adopted, but to the period of application of that extension. The objective of ensuring that anti-dumping measures are effective pursued by anti-circumvention measures confirms that analysis, since, in the view of the Finanzgericht, the only decisive factor is the finding that the material conditions for extension are met, irrespective of the date on which the regulation imposing those measures was adopted. A regulation extending anti-dumping measures is therefore merely ancillary to the initial anti-dumping measures, which may mean that Article 13 of the basic regulation does not impose any time-limit for its adoption.

24. Unsure as to which of those two propositions is correct, the Finanzgericht Hamburg decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is [the contested regulation] invalid because the anti-dumping duty imposed by Regulation No 1458/2007, and which was to be extended, was no longer in force at the time when [the contested regulation] was adopted?

(2) If the answer to Question 1 is in the negative, is [the contested regulation] invalid because there is no evidence of circumvention, within the meaning of Article 13(1) of [the basic regulation], of the measure imposed by Regulation No 1458/2007 …?'

III – **My analysis**

25. I shall confine my analysis to the first question, which alone raises an unprecedented issue of law requiring in-depth examination, whereas some of the components for answering the second question can be found in the case-law of the Court and, in particular, in the judgment in *Simon, Evers & Co*.[14]

26. In order to put the first question into context, it is important to bear in mind that, although Article 10(1) of the basic regulation establishes the principle that anti-dumping measures can be applied only to products which enter free circulation after the date on which the decision imposing a provisional or definitive duty enters into force, that regulation none the less contains a number of provisions[15] that create an express derogation from that principle of non-retroactivity by stating in particular that anti-dumping measures may be imposed on products released for free circulation prior

13 — Emphasis added.

14 — C-21/13, EU:C:2014:2154.

15 — These are Article 10(2), (4) and (5), Article 11(4), Article 12(5) and Article 13(3).

to the date on which that decision entered into force, provided that they have been registered in accordance with Article 14(5) of that regulation. So it is that, under Article 13(3) of the basic regulation, the import registration mechanism designed to allow anti-dumping duties to be collected retroactively applies where an investigation into the existence of circumvention is initiated.

27. Since the basic regulation recognises that measures extending an anti-dumping duty may be applied retroactively where that duty is being circumvented, the question that arises is thus not whether an extended anti-dumping duty may be collected retroactively, but whether a decision to extend an anti-dumping duty may be adopted even though that duty is no longer in force, for the sole purpose of enabling the extended duty to be collected retroactively for the period between the date on which the registration of imports was made compulsory and the date on which the initial duty expired.

28. I propose that that question should be answered in the affirmative.

29. I cannot find any provision in the basic regulation that prohibits such a practice.

30. I do not believe that Article 13(1) of that regulation, according to which 'anti-dumping duties … may be extended … when circumvention of the measures *in force* is taking place,[16] must be read as prohibiting the adoption of a regulation extending such measures in the case where the initial measures are no longer 'in force'. A reading of that provision, which is intended to lay down the material condition for the application of decisions to extend anti-dumping duties on account of the existence of circumvention, reveals nothing to support the assertion that the EU legislature intended to take a clear stance on when a decision to extend anti-dumping measures may be adopted. Moreover, even assuming that it can be regarded as determining the detailed rules for the temporal application of extended anti-dumping measures, to my mind Article 13(1) of the basic regulation means only that measures extending a definitive anti-dumping duty may not apply for longer than the period during which that duty is in force. In support of that contention, I would point out, on the one hand, that the only time requirement imposed by Article 13 of the basic regulation is that the investigation into the possible circumvention of anti-dumping measures must be concluded within nine months of its initiation[17] and, on the other hand, that the decision to extend the measures must be taken '[w]hen the facts as *finally* ascertained'[18] justify such an extension. If the facts are not finally ascertained until after the duty has expired, the EU institutions should therefore be able to adopt a regulation extending those measures, provided only that the nine-month time-limit is observed.

31. The possibility of deciding to extend an initial anti-dumping measure after that measure has expired, for the sole purpose of applying it retroactively, cannot therefore be ruled out on the basis of a purely textual analysis of Article 13 of the basic regulation.

32. Far from contradicting that analysis, the objectives and general scheme of the basic regulation seem to me to corroborate it and to confirm that the only requirement laid down by that regulation is that measures extending an anti-dumping duty must not continue after that duty has expired.

33. First, the fact, apparent from the scheme of the basic regulation in general and from the system established by Article 13 of that regulation in particular, that measures to prevent circumvention are ancillary in nature is not such as to support the view that the adoption of a regulation retroactively extending an anti-dumping duty after that duty has expired is prohibited.

16 — Emphasis added.

17 — Paragraph 3.

18 — Loc. cit. Emphasis added.

34. As the Court held in its judgment in *Paltrade*,[19] according to the purpose and scheme of the basic regulation, in particular recital 19 and Article 13, a measure extending a definitive anti-dumping duty is merely ancillary to the initial act establishing that duty.[20] The principle that the adoption of measures extending anti-dumping duties is ancillary actually flows from the very definition of circumvention. After all, it is clear from the third sentence of Article 13(1) of the basic regulation that the existence of an anti-dumping measure is one of the defining elements of circumvention, since the latter presupposes a change in the pattern of trade between third countries and the EU which, on the one hand, stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty and, on the other hand, undermines the remedial effects of that duty.

35. The only corollary of the principle that such measures are ancillary is therefore that the principal measure and the anti-circumvention measure must coexist in time, inasmuch as the latter may not continue in being beyond the expiry of the former. None the less, that necessary link between the principal measure and the anti-circumvention measure does not in any way mean that the decision ordering the latter measure must be adopted while the former is still in force, since the basic regulation, in providing for the possibility of making anti-circumvention measures retroactive to the date on which the registration of imports was made compulsory, allows that measure to be applied during the period of application of the initial measure, even if that decision is adopted and published after that period has expired.

36. Secondly, the objective of ensuring that measures to counter circumvention are effective would be undermined if the view were to be taken that a regulation extending an anti-dumping duty cannot be adopted after that duty has expired.

37. As the Council and the Commission rightly observe, an anti-dumping duty could be deliberately circumvented during the last months of its application in any circumstances where, because of the late initiation of an investigation into possible circumvention, a regulation extending that duty would be unlikely to be adopted before that duty expired.

38. It should be recalled in this regard that, in its judgment in *Paltrade*,[21] the Court, after stating that the sole purpose of a regulation extending an anti-dumping duty is to ensure the effectiveness of that duty and to prevent its circumvention,[22] held that the obligation to register the imports concerned, in the specific context of circumvention, is also aimed at ensuring the effectiveness of the extended definitive measures by making possible the retroactive application of duties and thereby avoiding a situation in which the definitive measures to be applied are deprived of their effectiveness.[23]

39. Whatever the date on which the regulation extending the anti-dumping duty is adopted, the provisional measure consisting of the obligation to register imports always has as its objective, in the event of circumvention, to keep open the possibility of extending the initial anti-dumping duties retroactively in order to ensure that the remedial effects of those duties are not undermined by the products imported, in particular while the investigation into circumvention is ongoing. It is important to point out here that an anti-dumping duty is not a duty the level of which varies over time. Far from gradually abating over the period of its application, it remains in force until it expires. Consequently, APEX's assertion that a purely retroactive extension of anti-dumping measures does not have as its objective to protect the remedial effect of the later anti-circumvention measure during the period of investigation, but is merely a levy on importers' profits, is unfounded in my opinion. Even where it is

19 — C-667/11, EU:C:2013:368.
20 — Paragraph 28.
21 — C-667/11, EU:C:2013:368.
22 — Paragraph 28.
23 — Paragraph 29.

exclusively retrospective, a decision to extend an anti-dumping duty serves to ensure that that duty is not neutralised by operations designed to circumvent it. To prevent such extensions would be tantamount to offering unscrupulous operators a convenient recipe for circumvention free from the risk that an anti-dumping duty might be imposed during the last months of application of that duty.

40. I should say that, to my mind, it is not possible to infer from the form of words used in the judgment in *Paltrade*,[24] to the effect that the obligation to register imports is aimed at ensuring the effectiveness of the definitive measures 'to be applied',[25] that, at the date on which the extension regulation is adopted, the measures must be applicable prospectively and that a purely retroactive extension of anti-dumping duties is therefore prohibited. To my mind, the Court was referring to the situation prevailing at the date on which the Commission decides to instruct the customs authorities to register imports. At that time, the anti-dumping duty the scope of which may be extended by regulation is already in force, whereas the measure extending that duty has not yet been decided upon and is therefore 'to be applied' subsequently. Moreover, that wording is directly reflected in the terms of Article 14(5) of the basic regulation, according to which the Commission may require imports to be registered 'so that measures may *subsequently be applied* against those imports from the date of such registration'.[26] In short, that wording simply states the obvious. If protective measures prove to be unnecessary and the anti-dumping procedure is closed without such measures having been adopted, no anti-dumping duty may be collected on the imports subject to registration.

41. Thirdly, the principle that the adoption of anti-dumping duties is not a penalty relating to earlier conduct, but a protective and preventive measure against unfair competition resulting from dumping practices, does not mean that the collection of anti-dumping duties extended to imports subject to registration is conditional upon the adoption of prospective anti-dumping measures. From that principle, set out in the judgment in *Industrie de poudres sphériques* v *Council*,[27] the Court inferred only that it was necessary to carry out the investigation on the basis of as recent information as possible in order to be able to determine the anti-dumping duties appropriate for protecting the Community industry against dumping.[28] Although it therefore has a bearing on the period selected for investigating the possible circumvention of an anti-dumping duty, that principle does not for that matter shorten the maximum nine-month period given to the EU institutions for completing the investigation and, if appropriate, extending the definitive anti-dumping duties.

42. Fourthly, the interpretation to the effect that a regulation extending an anti-dumping duty cannot be adopted after that duty has expired does not follow from the schematic connection between the review procedure provided for in Article 11(2) and (4) of the basic regulation and the procedure relating to possible circumvention set out in Article 13 of that regulation.

24 — C-667/11, EU:C:2013:368.

25 — Paragraph 29.

26 — Emphasis added.

27 — C-458/98 P, EU:C:2000:531, paragraph 91. See also the judgments of the General Court in *Brosmann Footwear (HK) and Others* v *Council* (T-401/06, EU:T:2010:67, paragraph 198); *Zhejiang Aokang Shoes* v *Council* (T-407/06 and T-408/06, EU:T:2010:68, paragraph 155); *Sun San Kong Yuen Shoes Factory* v *Council* (T-409/06, EU:T:2010:69, paragraph 157); as well as *Foshan City Nanhai Golden Step Industrial* v *Council* (T-410/06, EU:T:2010:70, paragraph 133).

28 — Judgment in *Industrie des poudres sphériques* v *Council* (C-458/98 P, EU:C:2000:531, paragraph 92).

43. It is true to say, generally, that the initial measures and the anti-circumvention measures may impact each other in many ways. Where a principal measure and an anti-circumvention measure are in force, any consideration of the foreseeable consequences of the removal, modification or expiry of the principal measure requires that account also be taken of the foreseeable consequences of the retention or removal of the anti-circumvention measure.[29] That, moreover, is the practice customarily followed by the EU institutions.[30]

44. However, the foregoing scenario is not the same as that in which the investigation into possible circumvention is in progress at a time when the expiry of the anti-dumping measure is impending.

45. Although, in a situation in which the expiry of a definitive anti-dumping duty is imminent, a procedure for reviewing that measure may be initiated either on the Commission's initiative or at the request of EU producers, it being understood that, in that event, the measure imposing that duty is to remain in force pending the results of the review, in accordance with Article 11(2) of the basic regulation, the fact that the Commission does not exercise its right of review cannot deprive the EU institutions of the power to extend, even on an exclusively retroactive basis, an anti-dumping duty that is still in force.

46. In actual fact, the assessments carried out by the EU institutions when conducting a review of an anti-dumping measure that is about to expire are different from those which they must carry out when initiating an investigation into the possible circumvention of that measure.

47. In accordance with the first subparagraph of Article 11(2) of the basic regulation, an anti-dumping measure may be maintained beyond the point in time at which it would normally expire only where it has been established during a review that there is a link between the expiry of the anti-dumping measure, on the one hand, and the continuation or recurrence of dumping and injury, on the other.

48. The assessment carried out by the Commission during the review procedure is based not only on a retrospective analysis of the development of the situation under consideration, as from the imposition of the original definitive measure, but also on 'a prospective analysis of the probable development of the situation, as from the adoption of the review measure, in order to assess the likely effect of removing or amending that measure'.[31] The retention of an anti-dumping measure therefore depends on the result of an assessment of the consequences of its expiry.

49. The investigation into a possible circumvention of an anti-dumping duty, by contrast, does not necessary entail a prospective dimension, since the purpose of such an investigation is to determine, not whether dumping and injury are likely to continue or recur on expiry of the circumvented anti-dumping measure, but whether that measure is in fact currently being circumvented, inter alia by assembly operations.

29 — See to that effect Müller, W., Khan, N., and Scharf, T., *EC and WTO Anti-Dumping Law*, 2nd edition, Oxford University Press, 2009, No 13.70, p. 597.

30 — See, inter alia, Council Regulation (EC) No 654/2008 of 29 April 2008 imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China, as extended to imports of coumarin consigned from India, Thailand, Indonesia and Malaysia, whether declared as originating in India, Thailand, Indonesia and Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 (OJ 2008 L 183, p. 1), Council Implementing Regulation (EU) No 102/2012 of 27 January 2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China and Ukraine, as extended to imports of steel ropes and cables consigned from Morocco, Moldova and the Republic of Korea, whether declared as originating in those countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of steel ropes and cables originating in South Africa pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2012 L 36, p. 1) and Commission Implementing Regulation (EU) No 2015/519 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2015 L 82, p. 78). The latter implementing regulation, like Regulation No 654/2008, treats a finding as to the existence of circumvention practices as an indicator that the dumping of imports from China is likely to recur (see recital 54 in the preamble to Implementing Regulation No 2015/519).

31 — See the judgment in *Valimar* (C-374/12, EU:C:2014:2231, paragraph 55).

50. Since the need to retain the initial anti-dumping measures and the need to extend them in consequence of their circumvention are the subjects of separate assessments covering different periods of time, the Commission may legitimately take the view, without contradicting itself, that it does not have sufficient evidence to show that the expiry of the anti-dumping measure in force would encourage the continuation or recurrence of dumping and injury, but that it does, by contrast, have sufficient evidence to show that that measure is being circumvented.

51. Fifthly, to my mind, prohibiting the adoption of a regulation extending an anti-dumping duty after that duty has expired, even though it has been established that the existing measures are being circumvented, is not consistent with the principle of good administration. After all, the grant of procedural rights to a complainant who, having reported the existence of circumvention, asks the Commission to initiate an investigation would scarcely make sense if, following that investigation, duly conducted within the period laid down by the basic regulation, the EU institutions, despite having established the existence of circumvention practices showing that the complaint was well founded, could not take any action to counter that circumvention.

52. In the case in the main proceedings, Regulation No 1458/2007 imposed a definitive anti-dumping duty, applicable up to 13 December 2012, on imports of the products in question originating in China. On 25 June 2012, that is to say, before that measure expired, Regulation No 548/2012 initiated an investigation into the possible circumvention of that duty and imposed an obligation to register the products in question consigned from Vietnam.

53. Following the finding that circumvention was taking place, the contested regulation, adopted on 18 March 2013, extended the definitive anti-dumping duty imposed by Regulation No 1458/2007 to imports of the products in question consigned from Vietnam, whether they had been declared as originating in that country or not.

54. The investigation into circumvention was initiated following a request from an EU producer that was lodged on 17 April 2012, that is to say, before the publication on 1 May 2012 of the notice as to the imminent expiry of certain anti-dumping measures. It covered the period from 1 January 2008 to 31 March 2012.

55. If the contested regulation had had to be adopted before the initial measure expired, that is to say, before 13 December 2012, the Commission would necessarily have had to complete its investigation within a period of less than the nine months laid down in Article 13(3) of the basic regulation. What is more, to my mind, the view that that regulation could have been lawfully adopted up until midnight on 13 December 2012, but not at a later date, even if this had fallen within the aforementioned nine-month period, is scarcely logical or consistent. How would the mere fact of the measure still being applicable, albeit for a notional period of time, render lawful the adoption of an extension regulation which would none the less become unlawful as from 00:00 hours on 14 December 2012? Would there be a need to take the more radical step of requiring the Council to adopt the measure retroactively extending the anti-dumping duties within a minimum period prior to the expiry of those duties? Would there be a need to be more radical still and, notwithstanding that the practice being combated involves circumvention found to have taken place in the past, to make the retroactive extension of the anti-dumping measures subject to its being maintained in the future, following a review? The judicial introduction of such a time-limit or of such a requirement to maintain the initial measure would have the effect of adding to the basic regulation conditions which it manifestly does not contain. Nor does that regulation require the EU institutions, in this particular situation, in which a practice satisfying the definition of circumvention has developed before the end of the period of application of an anti-dumping duty, to deal with that practice by initiating a new anti-dumping procedure rather than by continuing with the procedure specifically provided for that purpose in Article 13 of that regulation.

56. Those are the reasons for my view that the first question raised by the referring court has disclosed no factor of such a kind as to affect the validity of the contested regulation.

IV – **Conclusion**

57. In the light of the foregoing considerations, I propose that the Court's answer to the first question raised by the Finanzgericht Hamburg should be that the examination of that question has disclosed no factor of such a kind as to affect the validity of Council Implementing Regulation (EU) No 260/2013 of 18 March 2013 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China to imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam, whether declared as originating in the Socialist Republic of Vietnam or not.