Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

8 September 2015*

(Appeal — Dumping — Regulation (EC) No 384/96 — Articles 4(1), 5(4) and 9(1) — Regulation (EC) No 1205/2007 — Imports of integrated electronic compact fluorescent lamps (CFL-i) originating in China, Vietnam, Pakistan and the Philippines — Injury to the Community industry — Major proportion of the total Community production of the like products)

In Case C-511/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 September 2013,

Philips Lighting Poland SA, established in Piła (Poland),

Philips Lighting BV, established in Eindhoven (Netherlands),

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

appellants,

the other parties to the proceedings being:

Council of the European Union, represented by S. Boelaert, acting as Agent, and by S. Gubel, avocat, and B. O'Connor, Solicitor,

defendant at first instance,

Hangzhou Duralamp Electronics Co., Ltd, established in Hangzhou (China),

GE Hungary Ipari és Kereskedelmi Zrt. (GE Hungary Zrt.), established in Budapest (Hungary),

Osram GmbH, established in Munich (Germany), represented by R. Bierwagen and C. Hipp, Rechtsanwälte,

European Commission, represented by L. Armati and J.-F. Brakeland, acting as Agents, with an address for service in Luxembourg,

interveners at first instance,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz and K. Jürimäe, Presidents of Chambers, A. Rosas, E. Juhász (Rapporteur), C. Toader, M. Safjan, D. Šváby, M. Berger, A. Prechal, E. Jarašiūnas and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 February 2015,

after hearing the Opinion of the Advocate General at the sitting on 26 March 2015,

gives the following

Judgment

1 By their appeal, Philips Lighting Poland SA ('Philips Poland') and Philips Lighting BV ('Philips Netherlands') seek to have set aside the judgment of the General Court of the European Union of 11 July 2013 in *Philips Lighting Poland and Philips Lighting* v *Council* (T-469/07, EU:T:2013:370; 'the judgment under appeal'), by which the General Court dismissed their action 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 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 contested regulation').

Legal context

The 1994 Anti-Dumping Agreement

2 By Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), the Council of the European Union approved the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994, as well as the agreements in Annexes 1, 2 and 3 to that agreement, which include the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 11; 'GATT 1994') and the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103; 'the 1994 Anti-Dumping Agreement').

3 Article 1 of the 1994 Anti-Dumping Agreement provides:

'An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated … and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.'

4 Article 4.1 of that agreement provides, inter alia:

‘For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products; ...’

5 Article 5 of the 1994 Anti-Dumping Agreement states:

‘5.1 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 application by or on behalf of the domestic industry.

...

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

...’

Regulation (EC) No 384/96

6 The legislation 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 repealed and 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). The latter regulation is not applicable in the present case *ratione temporis*.

7 Recitals 1 to 3 and 5 in the preamble to the basic regulation stated:

‘(1) Whereas, by [Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1)], the Council adopted common rules for protection against dumped or subsidised imports from countries which are not members of the European Community;

(2) Whereas those rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on Tariffs and Trade [of 30 October 1947] (hereinafter referred to as “GATT”), from the Agreement on Implementation of Article VI of the [General Agreement on Tariffs and Trade, approved, on behalf of the Community, by Council Decision 80/271/EEC of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations (OJ 1980 L 71,

p. 1)] (1979 Anti-Dumping Code) and from the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the [General Agreement on Tariffs and Trade, approved, on behalf of the Community, by that decision] (Code on Subsidies and Countervailing Duties);

(3) Whereas the multilateral trade negotiations concluded in 1994 have led to new Agreements on the implementation of Article VI of GATT and it is therefore appropriate to amend the Community rules in the light of these new Agreements; ...

...

(5) Whereas the new agreement on dumping, namely, [the 1994 Anti-Dumping Agreement], contains new and detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations; whereas, in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible.'

8 Article 3 of the basic regulation, entitled 'Determination of injury' provided, in paragraph 1, that '[p]ursuant 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'.

9 Article 4 of that regulation, entitled 'Definition of Community industry', provided in paragraph 1 that, '[f]or the purposes of th[at] 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'.

10 Article 5 of the basic regulation, entitled 'Initiation of proceedings', provided:

'1. 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.

...

2. A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. ...

3. The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. 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.

...'

11 Article 9 of the basic regulation determined the conditions under which an investigation procedure was terminated, with or without the imposition of anti-dumping measures. It stated:

'1. Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest.

2. Where, after consultation, protective measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceeding shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

...

4. 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. 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. ...

...'

12 Article 11(2) and (5) of the basic regulation provided as follows:

'2. 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.

...

5. 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. ...

...'

Regulations (EC) No 1470/2001 and (EC) No 866/2005

13 Following an investigation initiated after the filing, on 4 April 2000, of a complaint by the European Lighting Companies Federation, the Council adopted Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China (OJ 2001 L 195, p. 8).

14 After an investigation had been initiated into a possible circumvention of those duties, the Council also adopted Regulation (EC) No 866/2005 of 6 June 2005 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1470/2001 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).

15 Regulation No 1470/2001 was subsequently amended by Council Regulation (EC) No 1322/2006 of 1 September 2006 (OJ 2006 L 244, p. 1).

The background to the dispute and the judgment under appeal

16 Following the publication of a notice of expiry of the measures adopted by Regulation No 1470/2001 (OJ 2005 C 254, p. 2), the Commission received a request for a review from the Community Federation of Lighting Industry of Compact Fluorescent Lamps Integrated, which was acting on behalf of Osram GmbH ('Osram').

17 On 12 June 2006, the Commission sent a questionnaire to the four Community producers of integrated electronic compact fluorescent lamps ('CFL-i'), namely GE Hungary Ipari és Kereskedelmi Zrt. (GE Hungary Zrt.) ('GE Hungary'), Osram, Philips Poland and SLI Sylvania Lighting International ('Sylvania').

18 GE Hungary and Osram stated that they were in favour of the initiation of a review procedure, whereas Philips Poland and Philips Netherlands indicated their opposition to such a procedure. Sylvania did not reply to the questionnaire.

19 The Commission found that there was sufficient evidence to justify initiation of a review procedure. It therefore initiated such a procedure and launched an investigation covering the period between 1 July 2005 and 30 June 2006.

20 On 26 November 2006, GE Hungary informed the Commission that it was no longer in favour of the continued imposition of the anti-dumping measures at issue, while Sylvania informed the Commission on 19 December 2006 that, in its view, it was not in the Community's interest for the anti-dumping measures to be maintained.

21 On 10 July 2007, the Commission produced a disclosure document announcing its intention to propose that the review procedure be terminated. Among other things, the Commission explained in that document that, although the request had been supported by a major proportion of Community production at the time when the review was initiated, the collective production of producers opposing the request accounted, at the time of writing, for just over 50% of total Community production. The Commission accordingly concluded that the anti-dumping measures should be repealed and the procedure terminated.

22 On 24 and 25 July 2007 respectively, Philips Poland and the Community Federation of Lighting Industry of Compact Fluorescent Lamps Integrated submitted observations on that document.

23 By a new, general disclosure document of 31 August 2007, the Commission stated that it had ultimately concluded that the period of application of the anti-dumping measures at issue should, in the interests of the Community, be extended by one year.

24 On 15 October 2007, the Council adopted the contested regulation.

25 By application lodged at the Registry of the General Court on 21 December 2007, the appellants sought annulment of the contested regulation.

26 In support of their action, they raised three pleas in law, the first two of which alleged infringement of Articles 3(1), 9(1) and (4) and 11(2) of the basic regulation.

27 In particular, the appellants submitted that the EU institutions could not continue the anti-dumping procedure in the event of a fall in the level of support for the complaint and that the Council could not rely on the information supplied by Osram alone in order to assess the injury to the Community industry inasmuch as that company's production, which accounted for only 48% or so of total Community production, could not be regarded as constituting a 'major proportion' of that production.

28 With a view to rejecting those pleas alleging infringement of Articles 3(1), 9(1) and (4) and 11(2) of the basic regulation, the General Court examined, in the first place, whether the EU institutions could continue the review procedure notwithstanding the fact that, in regard to the support given by the CFL-i producers for the complaint at issue, the 50% threshold referred to in Article 5(4) of the basic regulation was no longer met.

29 First of all, the General Court recalled, in paragraphs 75 to 78 of the judgment under appeal, that the request for the review procedure to be launched had initially been supported by GE Hungary and Osram, which together accounted for more than 50% of the total Community production of CFL-i, whereas Philips Poland had expressed its opposition to the request for a review and Sylvania had not adopted a position. However, the situation had changed some months after the review procedure at issue had been initiated when, in the course of the investigation carried out by the Commission, GE Hungary and Sylvania informed it that they now opposed the continuation of the anti-dumping measures at issue. This meant that the proportion of the collective output of the Community producers supporting the request for a review, although still well above the 25% threshold referred to in Article 5(4) of the basic regulation, fell slightly below the 50% threshold in that provision. The only Community producer which continued to support that request — Osram — accounted for 48% of the total Community production, with the other three producers which opposed that request together accounting for the remaining 52%.

30 Next, the General Court stated, in paragraph 84 of the judgment under appeal, that it had already held, in its judgment in *Interpipe Niko Tube and Interpipe NTRP* v *Council* (T-249/06, EU:T:2009:62), that Article 5(4) of the basic regulation did not place any obligation on the Commission to terminate an anti-dumping proceeding in progress where the level of support for the complaint had fallen below the minimum threshold of 25% of Community production, as '[t]hat article concerns only the degree of support for the complaint necessary for the Commission to be able to initiate a proceeding'. The General Court clarified, in paragraph 85 of the judgment under appeal, that the judgment in *Interpipe Niko Tube and Interpipe NTRP* v *Council* (T-249/06, EU:T:2009:62) concerned Article 9(1) of that regulation, even though that judgment had been given in a case in which the complaint had not been withdrawn, but in which it was alleged that the level of support for that complaint had fallen in the course of the procedure. In paragraph 85 of the judgment under appeal, the General Court stated that '[t]hat 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'.

31 Finding, in paragraph 86 of the judgment under appeal, that Articles 5(4) and 9(1) of the basic regulation were applicable to review procedures pursuant to Article 11(5) of that regulation, the General Court inferred from this that the EU institutions were 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.

32 Lastly, the General Court found, in paragraph 88 of the judgment under appeal, that the Council had not assumed any new power in its interpretation of Article 9(1) of the basic regulation, since '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'.

33 Consequently, the General Court concluded from this that no infringement of Article 9(1) of the basic regulation could be established in the present case.

34 In the second place, the General Court examined the question of the definition of the Community industry for the purposes of determining injury.

35 The General Court noted first, in paragraph 91 of the judgment under appeal, that 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.

36 The General Court then stated, in paragraph 92 of the judgment under appeal, that 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', and that the EU institutions have a broad discretion when choosing between the two options.

37 In paragraph 94 of the judgment under appeal, the General Court found that 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, from which it deduced that 'the reference in [Article 4(1) of the basic regulation] to Article 5(4) of [that] 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'. For the General Court, '[s]uch 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'.

38 The General Court concluded from this, in paragraph 96 of the judgment under appeal, that the Council had not erred in law in deciding to include Osram alone in the definition of the Community industry for the purposes of determining injury.

Forms of orders sought

39 The appellants claim that the Court should set aside the judgment under appeal and order the Council to pay the appellants' costs both before the General Court and in connection with the present appeal.

40 The Council contends that the appeal should be dismissed and the appellants ordered to pay the costs.

41 The Commission requests the Court, principally, to dismiss the appeal. In the alternative, it requests the Court to rule on the case at first instance and dismiss the action as inadmissible or unfounded. It contended that the appellants should, in any event, be ordered to pay the costs of the proceedings.

42 Osram contends that the appeal should be dismissed and the appellants ordered to pay the costs.

The appeal

43 In support of their appeal, the appellants rely on two grounds, alleging, first, infringement of Article 9(1) of the basic regulation, relating to the termination of the proceeding in the event of withdrawal of the complaint and, secondly, infringement of Article 4(1) of that regulation, in conjunction with Article 5(4) thereof, relating to the definition of the concept of 'Community industry'.

The first ground of appeal

Arguments of the parties

44 By their first ground, the appellants complain that the General Court misinterpreted Article 9(1) of the basic regulation in finding that, if that provision allowed the Commission to continue an investigation despite the withdrawal of the initial complaint, the same had to apply *a fortiori* when the support of the Community producers for that complaint falls.

45 In that regard, the appellants submit that the General Court erred, in order to support that extensive interpretation, in referring, in paragraph 84 of the judgment under appeal, to its judgment in *Interpipe Niko Tube and Interpipe NTRP* v *Council* (T-249/06, EU:T:2009:62), given the factual differences between that case and the present case. The appellants add that the wording of Article 9(1) of the basic regulation states clearly that its application is limited solely to cases where a complaint is withdrawn, which has, moreover, been confirmed by the practice of the EU institutions.

46 The Council, supported by Osram and the Commission, contends that, according to the basic regulation, unlike the procedural stage concerning the initiation of the investigation, the investigation itself is not subject to any specific provision requiring the Commission to terminate it if the support for a complaint falls. The Council states that that difference is attributable to the need to establish the complainants' standing when the procedure is initiated, a need which no longer exists when the investigation is under way, since the purpose of the investigation is to obtain the information necessary to ascertain whether injury has been caused to the Community industry by the dumping.

47 According to the Council, the reasoning of the General Court is not inconsistent with the basic regulation and is apparent, moreover, already from the General Court's previous case-law, devolving both from the judgment in *Interpipe Niko Tube and Interpipe NTRP* v *Council* (T-249/06, EU:T:2009:62) and from the judgment in *Gem-Year and Jinn-Well Auto-Parts (Zhejiang)* v *Council* (T-172/09, EU:T:2012:532), according to which the requirements laid down in Article 5(4) of the basic regulation in relation to standing to bring proceedings have to be satisfied only at the time when an investigation is initiated, but not during that investigation.

48 The Council adds that, assuming it to be established that it has been the past practice of the EU institutions, which enjoy a broad discretion in deciding whether a procedure should be closed following the withdrawal of a complaint, more frequently to terminate an investigation after such a withdrawal, it cannot be concluded from this that they should also have terminated the investigation that led to the adoption of the contested regulation on the ground that the Community industry's support for that investigation had decreased.

Findings of the Court

49 It must be noted, first of all, that Article 5 of the basic regulation governs precisely the conditions under which a complaint 'by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry' results in the opening of an anti-dumping investigation. In this respect, Article 5(4) provides that, in order to be considered to have been made by the Community industry, a complaint must satisfy cumulatively two conditions relating to the size of the support for it. First, the complaint must be 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'. Secondly, the complaint must be supported by Community producers accounting for at least 25% of total production of the like product produced by the Community industry.

50 It must be noted that, once the investigation has been initiated, Article 9(1) of that regulation expressly provides that the Commission may terminate that investigation where the complaint is withdrawn, 'unless such termination would not be in the Community interest'.

51 There is no provision in the basic regulation as regards the measures to be taken by the Commission, during the course of the investigation, if the support of the producers for the complaint or request for a review falls.

52 However, since, in the case where a complaint or request for a review is withdrawn, the EU institutions concerned may, by virtue of Articles 9(1) and 11(5) of the basic regulation, continue with the investigation, that must apply *a fortiori*, as the General Court held in paragraph 85 of the judgment under appeal, when the degree of support for a complaint or request for a review merely falls.

53 It must therefore be found that a fall in the Community producers' support for a complaint or a request for a review is not such as to lead necessarily to the termination of the investigation, even if such a fall implies that that support corresponds to a level of production which is below one of the two thresholds laid down in Article 5(4) of that regulation.

54 Such an interpretation is all the more appropriate since, as the Advocate General observed in point 118 of his Opinion, during the investigation the positions of the representatives of the Community industry may change in opposite directions. Such variations cannot impede the proper conduct of the investigation at issue.

55 It follows that the General Court did not err in law, in paragraphs 85 and 86 of the judgment under appeal, when, in interpreting Article 9(1) of the basic regulation, it held that it followed *a fortiori* from that provision that the EU institutions were 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.

56 In the light of the foregoing considerations, the first ground of appeal must be rejected as unfounded.

The second ground of appeal

Arguments of the parties

57 By their second ground, the appellants submit that the General Court misinterpreted Article 4(1) of the basic regulation, read in conjunction with Article 5(4) thereof.

58 In this regard, the appellants submit that, in order to define the concept of 'Community industry' pursuant to Article 4(1) of the basic regulation and, consequently, to determine whether or not that industry has sustained injury, the General Court failed correctly to apply one of the cumulative criteria relating to the support given to a complaint, laid down in Article 5(4) of that regulation, namely the criterion that the complaint must be 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. The appellants conclude from this that, in so doing, the General Court disregarded a provision of the basic regulation the interpretation of which should not be subject to any uncertainty, and that it thereby compromised the principle of legal certainty.

59 The Council, Osram and the Commission contend that the appellants are confusing two distinct concepts. The first is standing to bring proceedings, which must be verified when a complaint is lodged and before any investigation is initiated. The purpose of that verification is to ensure that that complaint is supported by a sufficiently representative portion of the EU industry, and therefore concerns the cumulative compliance with the two production thresholds laid down in Article 5(4) of the basic regulation. The second concept, namely that of the injury caused to the Community industry, must be assessed during the course of the investigation irrespective of the initial complaint, which implies that account is to be taken solely of the 25% threshold of total production of the like product produced by the Community industry in order to determine whether or not a major proportion of the Community industry is affected by the practice of dumping. The Council, Osram and the Commission infer from this that the General Court did not therefore err in law in finding, in paragraphs 93 and 94 of the judgment under appeal, that the concept of 'Community industry' had to be understood differently before an investigation was opened and during the course of the investigation, in order to conclude that the reference in Article 4(1) of the basic regulation to Article 5(4) thereof 'may only be construed as referring to the minimum threshold of 25%, and not to the 50% threshold'.

Findings of the Court

60 According to the settled case-law of the Court, EU legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the European Union (see judgment in *SCF*, C-135/10, EU:C:2012:140, paragraph 51 and the case-law cited).

61 It follows from recitals 1 to 3 and 5 in the preamble to the basic regulation that the concept of 'Community industry' has to be interpreted in a manner consistent with the 1994 Anti-Dumping Agreement.

62 Article 4(1) of the basic regulation defines the concept of 'Community industry' as referring either 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'.

63 The 1994 Anti-Dumping Agreement has recourse, essentially, to the same two options for the purpose of defining the concept of 'domestic industry'. As regards the second option, the decisive factor in both the 1994 Anti-Dumping Agreement and the basic regulation is the concept of 'major proportion' of the total domestic or Community production.

64 As regards that second option, the interpretation of which alone is the subject of the second ground of appeal, it must be noted that, unlike Article 4.1 of the 1994 Anti-Dumping Agreement, Article 4(1) of the basic regulation, concerning the definition of the Community industry, clarifies the concept of 'major proportion' of the total Community production of like products by a reference to Article 5(4) of that regulation.

65 That reference constitutes an additional factor in relation to the definition in Article 4.1 of the 1994 Anti-Dumping Agreement.

66 It must be noted that the 50% threshold and the 25% threshold in Article 5(4) of the basic regulation refer to different groups of Community producers.

67 First of all, the 50% threshold relates solely to the relative weight of the Community producers supporting the complaint within the group of Community producers supporting or opposing it.

68 By contrast, the 25% threshold refers to 'total production of the like product produced by the Community industry' and relates to the percentage of Community producers out of that total production which support the complaint. That 25% threshold alone is therefore relevant to determining whether those producers represent a 'major proportion' of the total production of the like product produced by the Community industry within the meaning of Article 4(1) of the basic regulation.

69 In those circumstances, it must be found that Articles 4(1) and 5(4) of the basic regulation, read in the light of Article 4.1 of the Anti-Dumping Agreement, can be construed as referring solely to the minimum 25% threshold. By the reference to that threshold, Article 4(1) of the basic regulation thus simply makes clear that a combined output of the Community producers supporting the complaint and not reaching 25% of the total Community production of the like product cannot, in any event, be regarded as sufficiently representative of the Community production.

70 Where the combined output of those Community producers exceeds that threshold, anti-dumping duties may be imposed or maintained if the EU institutions concerned are able to establish, taking into account all the relevant facts of the case, that the injury stemming from the imports of the dumped product affects a major proportion of the total Community production of the like products.

71 In the contested regulation, the Council took as a basis the data of a single producer, Osram, representing approximately 48% of the total Community production of the like product, for the purposes of assessing the injury to the Community industry.

72 In that regard, it must be stated that a portion of Community production very close to 50% of the total production of the like product produced by the Community industry — such as a 48% portion — can be considered to constitute clearly a major proportion of that production. Article 4(1) of the basic regulation refers, indeed, to the concept of a 'major proportion' of the Community production, and not to the 'majority of the Community production'.

73 It follows from all of those factors that the General Court did not err in law in holding, first, in paragraph 94 of the judgment under appeal, that the reference in Article 4(1) of the basic regulation to Article 5(4) thereof could be construed as referring solely to the 25% threshold, and not to the 50%

threshold, and, secondly, in paragraph 96 of that judgment, that the Council had been entitled to find that the output of Osram, which accounted for around 48% of total Community production, 'certainly [constituted] a major proportion of Community production'.

74 Consequently, the second ground of appeal also cannot be upheld.

75 In the light of all the foregoing considerations, the appeal must be dismissed as unfounded.

Costs

76 Under Article 138(1) of the Rules of Procedure of the Court, which applies to appeal proceedings pursuant to Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

77 Since the Council and Osram have applied for costs to be awarded against Philips Poland and Philips Netherlands, and since the latter have been unsuccessful, Philips Poland and Philips Netherlands must be ordered to pay the costs.

78 Under Article 140(1) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 184(1) thereof, the Member States and EU institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission, as an intervener at first instance, must bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Philips Lighting Poland SA and Philips Lighting BV to bear their own costs and to pay the costs of the Council of the European Union and of Osram GmbH;**

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

[Signatures]