Reports of Cases

OPINION OF ADVOCATE GENERAL
PITRUZZELLA
delivered on 9 April 2019[1]

Case C-251/18

Trace Sport
v
Inspecteur van de Belastingdienst/Douane, kantoor Eindhoven

(Request for a preliminary ruling from the Rechtbank Noord-Holland (District Court, North Holland, Netherlands))

(Reference for a preliminary ruling — Commercial policy — Anti-dumping duties — Imports of bicycles consigned from, inter alia, Sri Lanka — Extension of the definitive anti-dumping duty imposed on imports of bicycles originating in the People's Republic of China — Implementing Regulation (EU) No 501/2013 — Validity — Admissibility of the reference for a preliminary ruling — Application of the *TWD* case-law)

1. This case concerns a request for a preliminary ruling from the Rechtbank Noord-Holland (District Court, North Holland, Netherlands) relating to the validity of Implementing Regulation (EU) No 501/2013[2] (the regulation at issue'), by which the Council extended the definitive anti-dumping duty imposed on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from, inter alia, Sri Lanka.

2. That regulation was annulled by the General Court of the European Union by judgment of 19 March 2015, *City Cycle Industries* v *Council*,[3] confirmed on appeal by the Court by judgment of 26 January 2017, *Maxcom* v *City Cycle Industries*,[4] with respect to the only Sri Lankan producer which had brought an action seeking its annulment, namely City Cycle Industries ('City Cycle').

3. Before the referring court, the company Trace Sport, a French importer of bicycles, challenges two notices issued by the Netherlands tax authorities for the payment of anti-dumping duties due in respect of imports of bicycles from Sri Lanka. Before that court, Trace Sport seeks to rely on the abovementioned judgments by the EU Courts in respect of City Cycle in order to plead that the regulation at issue is invalid in so far as it concerns the Sri Lankan producers/exporters from which it imported the bicycles concerned by the disputed requests for payment, namely Kelani Cycles (PVT) Ltd ('Kelani Cycles') and Creative Cycles (PVT) Ltd ('Creative Cycles').

1 Original language: French.

2 Council implementing regulation of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ 2013 L 153, p. 1).

3 Judgment of 19 March 2015, *City Cycle Industries* v *Council* (T-413/13, not published, EU:T:2015:164).

4 Judgment of 26 January 2017, *Maxcom* v *City Cycle Industries* (C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62).

4. The interested parties which lodged written observations before the Court submit, however, that, on account of specific circumstances characterising Trace Sport, an importer which is related to the two named Sri Lankan producers, Trace Sport is not allowed to plead before the referring court that the regulation at issue is invalid, in accordance with the case-law arising from the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90). According to that case-law, an individual who, without any doubt, would have had standing to bring proceedings under the fourth paragraph of Article 263 TFEU for the annulment of an act of the European Union, is precluded from pleading the invalidity of that act before a national court in the context of a request for a preliminary ruling ('the *TWD* case-law'). [5]

5. In those circumstances, as requested by the Court, this Opinion will focus on the issue of whether the questions referred for a preliminary ruling by the national court are admissible, and specifically on whether the *TWD* case-law is applicable in the present case.

I. The regulation at issue, the dispute in the main proceedings and the questions referred for a preliminary ruling

6. In September 2012, the European Commission initiated an investigation concerning the possible circumvention of anti-dumping measures imposed on imports of bicycles originating in the People's Republic of China by imports of bicycles consigned from, inter alia, Sri Lanka. [6]

7. In the course of the investigation, Kelani Cycles submitted a request for exemption from the extension of the anti-dumping duty. [7] On 16 January 2013, the Commission conducted an inspection visit at the premises of Kelani Cycles. Subsequently, since its cooperation was considered insufficient, the Commission informed Kelani Cycles that it intended not to take into consideration the information that Kelani Cycles had submitted, to base its findings regarding Kelani Cycles on the facts available [8] and to reject its exemption request. In those circumstances, the Commission gave Kelani Cycles the opportunity to provide further explanations, [9] which it did by a letter of 7 February 2013 accompanied by 43 annexes. For a variety of reasons, the Commission did not take those further explanations into consideration and, in the end, rejected the request for exemption submitted by Kelani Cycles.

8. Following the Commission's refusal to take into consideration the documents and evidence provided by Kelani Cycles and mentioned in the preceding point, Trace Sport, during the administrative procedure conducted by the Commission, requested a hearing before the Commission in order to present the same documents and evidence provided by Kelani Cycles in support of its further explanations, despite the fact that they had been rejected. The Commission, however, did not grant Trace Sport's request.

5 See, to that effect, paragraph 17 of that judgment. The Court has confirmed the principle expressed in that judgment on a number of occasions. In that regard, see, inter alia, judgments of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraphs 30 and 37); of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756, paragraph 41); of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraphs 66 and 67 and the case-law cited); and of 25 July 2018, *Georgsmarienhütte and Others* (C-135/16, EU:C:2018:582, paragraphs 14 and 15).

6 Commission Regulation (EU) No 875/2012 of 25 September 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China by imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, and making such imports subject to registration (OJ 2012 L 258, p. 21).

7 Pursuant to Article 13(4) of 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, and corrigendum OJ 2010 L 7, p. 22), as amended by Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 (OJ 2012 L 344, p. 1) ('the basic regulation').

8 In accordance with Article 18(1) of the basic regulation. See recitals 39 to 42 of the regulation at issue.

9 In accordance with Article 18(4) of the basic regulation.

9. On 29 May 2013, the Council adopted the regulation at issue by which it extended the definitive anti-dumping duty of 48.5% on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from, inter alia, Sri Lanka. In that regulation, Kelani Cycles is regarded as a company that did not cooperate,[10] whereas Creative Cycles is not expressly mentioned in the regulation.

10. In 2012 and in 2013, customs representatives acting for and on behalf of Trace Sport issued, in the Netherlands, declarations for release for free circulation of bicycles consigned from Sri Lanka by declaring that Creative Cycles and Kelani Cycles were the exporters of those bicycles.

11. Following subsequent checks as to the validity of those declarations, the Inspecteur van de Belastingdienst/Douane, kantoor Eindhoven (Inspector of the Tax and Customs Administration, Eindhoven Office) formed the view that an anti-dumping duty of 48.5% had to be paid for the bicycles declared to be released for free circulation. The Inspector therefore issued two notices for the payment of anti-dumping duties due in the amounts of EUR 229 990.88 and EUR 234 275.37 respectively. Following challenges lodged by Trace Sport against those two notices, the latter were confirmed by two decisions of 24 September 2015.

12. In the meantime, by judgment of 19 March 2015, *City Cycle Industries* v *Council*,[11] the General Court annulled Article 1(1) and (3) of the regulation at issue[12] in so far as it concerned City Cycle.

13. Trace Sport has challenged before the referring court the two decisions of 24 September 2015 confirming the notices for payment.

14. By judgment of 26 January 2017, *Maxcom* v *City Cycle Industries*,[13] the Court confirmed on appeal the judgment of the General Court in *City Cycle Industries* v *Council*.

15. In the case pending before the referring court, Trace Sport bases its arguments on the judgment of the Court in *Maxcom* v *City Cycle Industries* to call into question the validity of the regulation at issue in so far as it concerns Creative Cycles and Kelani Cycles. The referring court considers that the conclusion drawn by the Court in that judgment with regard to City Cycle is also valid in respect of Kelani Cycles and Creative Cycles and therefore questions the validity of the regulation at issue in respect of those two Sri Lankan producers/exporters.

16. In those circumstances, the Rechtbank Noord-Holland (District Court, North Holland, Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is [the regulation at issue] valid in so far as it concerns the producer/exporter Kelani Cycles?

2. Is [the regulation at issue] valid in so far as it concerns the producer/exporter Creative Cycles?'

10 See recitals 39 and 42 of the regulation at issue.

11 T-413/13, not published, EU:T:2015:164.

12 That provision extends the anti-dumping duty of 48.5% to the abovementioned imports and stipulates that it is to be collected on imports registered during the investigation period.

13 C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62.

II. Legal assessment

A. Preliminary observations

17. All of the interested parties which lodged written observations before the Court, namely the Netherlands Government, the Council and the Commission, cast doubt on the admissibility of the present reference for a preliminary ruling on the issue of validity. On the basis of the *TWD* case-law, those interested parties submit, in essence, that, in the dispute in the main proceedings, Trace Sport cannot plead the invalidity of the regulation at issue since, without any doubt, it could have brought an action for annulment against that regulation.

18. As I have already mentioned in point 5, as requested by the Court, this Opinion will focus on the issue of whether the questions referred for a preliminary ruling by the national court are admissible.

19. In that regard, I shall first go through the principles stemming from the *TWD* case-law and their application in the field of EU anti-dumping law. Then, on the basis of that analysis, I shall examine whether the questions referred for a preliminary ruling by the national court are admissible.

B. The TWD case-law and its application in the field of anti-dumping

20. First, it should be noted that, according to settled case-law, a measure adopted by the EU institutions which has not been challenged by its addressee or by any institution or person entitled to request its annulment within the time limit laid down by the sixth paragraph of Article 263 TFEU becomes definitive. Such a rule is based in particular on the consideration that the periods within which legal proceedings must be brought are intended to ensure legal certainty by preventing EU measures which produce legal effects from being called into question indefinitely. [14]

21. Secondly, the Court has recognised that, under EU law, a general principle exists under which, in proceedings before national courts, every party has the right to plead the invalidity of the provisions contained in EU acts which serve as the basis for a decision or act of national law relied upon against them and to request the national court to refer that question to the Court for a preliminary ruling. [15] While national courts may conclude that an EU act is valid, they cannot declare it to be invalid. [16]

22. However, the same requirements of legal certainty as set out in point 20 above prompted the Court to rule that that general principle which guarantees any individual the right to plead, in an action brought against a national measure which adversely affects him, that the EU act forming the basis for that measure is invalid, does not in any way preclude that act from becoming definitive as against an individual in regard to whom that act must be considered to be an individual decision and who could undoubtedly have sought its annulment under Article 263 TFEU. [17]

14 See, to that effect, judgments of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraph 29), and of 14 November 2017, *British Airways* v *Commission* (C-122/16 P, EU:C:2017:861, paragraphs 83 and 84). As regards compliance with the time limit for bringing proceedings being a public-policy requirement, see Opinion of Advocate General Mengozzi in *British Airways* v *Commission* (C-122/16 P, EU:C:2017:406, points 93 to 99).

15 That principle follows from Article 277 TFEU. See judgments of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraph 35), and of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756, paragraph 39 and the case-law cited).

16 Judgment of 22 October 1987, *Foto-Frost* (314/85, EU:C:1987:452, paragraphs 14 and 15). See also judgments of 10 January 2006, *IATA and ELFAA* (C-344/04, EU:C:2006:10, paragraphs 27 and 30), and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 95).

17 See judgment of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraph 37), in accordance with paragraphs 24 and 25 of the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90). See, also, judgments of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756, paragraph 41); of 18 September 2014, *Valimar* (C-374/12, EU:C:2014:2231, paragraphs 28 and 29); and of 16 April 2015, *TMK Europe* (C-143/14, EU:C:2015:236, paragraph 18).

23. Thus, in accordance with the *TWD* case-law, if it can be held that an individual would undoubtedly have been entitled to seek the annulment of an EU act, that individual is precluded from pleading its invalidity before the national court having jurisdiction. [18]

24. As the Court has emphasised on several occasions, to accept that an individual who, without any doubt, would have had standing to bring proceedings under the fourth paragraph of Article 263 TFEU for the annulment of an EU act could, after the expiry of the period for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU, contest the validity of that act before the national courts, would amount to enabling the individual concerned to circumvent the fact that that act is final as against him once the period for his bringing an action has expired. [19]

25. Therefore, the rationale for the exception to the general principle set out in point 21 above arising from the application of the *TWD* case-law is the requirement to ensure legal certainty by preventing EU measures which produce legal effects from being called into question indefinitely, as well as the need to ensure that the remedies made available to individuals by EU law are not abused. [20]

26. As regards the field of EU anti-dumping law specifically, the Court has held that the conclusions arising from the *TWD* case-law apply to regulations imposing anti-dumping duties by virtue of their dual nature as acts of a legislative nature — in that they apply generally to the economic operators concerned — and acts liable to be of direct and individual concern to some of those economic operators. [21]

27. Thus, if it can be held that an economic operator would undoubtedly have had standing to bring proceedings and would therefore undoubtedly have been entitled, under the fourth paragraph of Article 263 TFEU, to request the annulment of the regulation imposing an anti-dumping duty, that operator is precluded from pleading the invalidity of that regulation before the national court having jurisdiction. [22]

28. In that regard, in its case-law, the Court has identified certain categories of economic operators which may be considered to be directly and individually concerned, under the fourth paragraph of Article 263 TFEU, by a regulation imposing an anti-dumping duty and, consequently, to be entitled to request the annulment of that regulation before the EU Courts.

29. Thus, the Court has held, first, that those producers and exporters of the product in question which have been charged with practising dumping on the basis of information relating to their business activities may be directly and individually concerned, under that provision, by such regulations. [23]

18 See, inter alia, judgments of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraphs 56 and 57 and the case-law cited), and of 25 July 2018, *Georgsmarienhütte and Others* (C-135/16, EU:C:2018:582, paragraphs 14, 17 and 18 and the case-law cited).

19 Judgments of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756, paragraph 41); of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraph 66 and the case-law cited); and of 25 July 2018, *Georgsmarienhütte and Others* (C-135/16, EU:C:2018:582 paragraph 15), in accordance with paragraph 18 of the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90).

20 See, in that regard, Opinion of Advocate General Campos Sánchez-Bordona in *Georgsmarienhütte and Others* (C-135/16, EU:C:2018:120, point 36). Similarly, Advocate General Jacobs described the *TWD* case-law as referring to the abuse of procedure by parties who should have challenged an EU act but did not (Opinion of Advocate General Jacobs in *Cassa di Risparmio di Firenze and Others* (C-222/04, EU:C:2005:655, point 63)). As Advocate General Campos Sánchez-Bordona observed in that Opinion, the *TWD* case-law does not prevent a national court from making a reference, at any time, of its own motion or at the request of another party (lacking manifest standing to bring an action for annulment), for a preliminary ruling on its doubts as to the validity of an EU act.

21 See judgments of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraph 37 *in fine*); of 16 April 2015, *TMK Europe* (C-143/14, EU:C:2015:236, paragraph 18); and of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraph 58). In that regard, see judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association* (C-465/16 P, EU:C:2019:155, paragraph 72).

22 Judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraphs 56 and 57 and the case-law cited).

23 Ibid., paragraph 60 and the case-law cited.

30. Secondly, that may also be so in the case of importers of that product whose resale prices were taken into account for the construction of export prices and which are consequently concerned by the findings relating to the existence of dumping. [24]

31. Thirdly, that may further be so in the case of *importers associated* with exporters of the product in question, *particularly* where the export price has been calculated on the basis of those importers' resale prices on the EU market and where the anti-dumping duty itself has been calculated on the basis of those resale prices. [25]

32. It is clear from the foregoing that the case-law has recognised that the producers, exporters and importers — whether or not they are associated with a producer/exporter — of the product concerned by the anti-dumping duty are capable of having standing under the fourth paragraph of Article 263 TFEU to bring an action for annulment against a regulation imposing an anti-dumping duty.

33. In that regard, it has been noted that the determining factor in establishing whether the operator is individually concerned, which is capable of justifying its standing to bring proceedings, is that the dumping has been found on the basis of information derived from its business activities. [26]

34. However, the Court has also repeatedly held that the recognition of the right of certain categories of economic operators to bring an action for the annulment of an anti-dumping regulation cannot exclude other operators from also being able to claim that they are directly and individually concerned by an anti-dumping regulation by reason of certain attributes which are peculiar to them and which differentiate them from all other persons. [27]

35. It follows that, irrespective of the categories of economic operators mentioned in points 29 to 31 above which the Court has recognised as having standing to bring an action for annulment, the determining factor in order to establish *locus standi*, and in particular individual concern, is the question as to whether, in accordance with the case-law arising from the judgment in *Plaumann*, [28] the anti-dumping regulation affects the economic operator in question by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons and, by virtue of those factors, distinguishes it individually just as in the case of the person addressed.

36. Thus, for example, in *Extramet*, the Court recognised that an independent importer of the product subject to the anti-dumping duty the selling price of which was not taken into consideration in the investigation, but which had established the existence of a set of factors constituting such a situation which is peculiar to it and which differentiates it, as regards the measure in question, from all other economic operators, has standing to bring proceedings. [29]

24 Ibid., paragraph 61 and the case-law cited.

25 Ibid., paragraph 62 and the case-law cited. Emphasis added. See points 40 to 42 below.

26 See Opinion of Advocate General Mischo in *Nashua Corporation and Others* v *Commission and Council* (C-133/87 and C-150/87, not published, EU:C:1989:286, point 35).

27 See judgments of 16 May 1991, *Extramet Industrie* v *Council* (C-358/89, EU:C:1991:214, paragraph 16); of 18 September 2014, *Valimar* (C-374/12, EU:C:2014:2231, paragraph 33); and of 16 April 2015, *TMK Europe* (C-143/14, EU:C:2015:236, paragraph 22).

28 Judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17).

29 Judgment of 16 May 1991, *Extramet Industrie* v *Council* (C-358/89, EU:C:1991:214, paragraphs 11 and 17). Those factors were the result of being the largest importer of the product forming the subject matter of the anti-dumping measure and, at the same time, the end-user of the product, as well as the fact that its business activities depended to a very large extent on those imports and were seriously affected by the regulation in question.

37. As regards, specifically, the importers of the product concerned by the anti-dumping measure, as is clear from points 30 and 31 above respectively, the case-law recognises that both independent importers and importers associated with a producer/exporter of the product concerned have standing to bring an action for annulment in the field of anti-dumping.

38. As regards the condition of association, it has been noted that the mere association of an importer with a producer/exporter which is concerned is not, in itself, sufficient to support the conclusion that the importer may be regarded as being individually concerned in accordance with the fourth paragraph of Article 263 TFEU. [30]

39. However, it is apparent from the case-law referred to in point 31 above, first, that the existence of an association between an importer and an exporter of the product in question is certainly relevant for the purposes of recognising that the importer has standing to request the annulment of a regulation imposing an anti-dumping duty; secondly, that, to that end, however, the importer and the producer/exporter must be *sufficiently* linked; [31] and, thirdly, that the standing of an associated importer to bring proceedings is recognised where there are other factors capable of differentiating it from all other economic operators, such as, for example, where its commercial data have been taken into account in the investigation.

40. Thus, in *Neotype*, [32] the Court regarded as being directly and individually concerned in accordance with Article 263 TFEU an associated importer whose resale price had been used to calculate the anti-dumping duty.

41. In *Nachi*, [33] the Court recognised the standing to bring an action for annulment and thus applied the *TWD* case-law to an associated importer (which was a subsidiary of the producer of the product in question) whose resale prices had been used to construct the export price applied in order to establish the dumping margins in respect of the exporter in question.

42. By contrast, in *TMK*, [34] the Court declined to accept that an associated importer, in respect of which it had not been established that it was sufficiently linked to the exporting undertakings in question or that it came within a particular situation differentiating it from all other economic operators, had standing to bring proceedings and, therefore, it did not apply the *TWD* case-law.

C. Admissibility of the questions referred for a preliminary ruling

43. Therefore, taking account of all of the case-law principles set out in the preceding section, it is necessary to assess whether, in the present case, in accordance with the *TWD* case-law, Trace Sport must be regarded as being precluded from pleading the invalidity of the regulation at issue as regards Kelani Cycles and Creative Cycles in the case pending before the referring court.

44. In this regard, two opening remarks are necessary.

45. In the first place, I note that the present case differs from all of the other cases mentioned in the preceding section since it does not concern the validity of a regulation imposing an anti-dumping duty but that of a regulation extending an anti-dumping duty which has been adopted following an anti-circumvention investigation carried out on the basis of Article 13 of the basic regulation.

30 See Opinion of Advocate General Mischo in the joined cases *Nashua Corporation and Others* v *Commission and Council* (C-133/87 and C-150/87, not published, EU:C:1989:286, points 36 and 37).

31 See judgment of 16 April 2015, *TMK Europe* (C-143/14, EU:C:2015:236, paragraph 26).

32 Judgment of 11 July 1990, *Neotype Techmashexport* v *Commission and Council* (C-305/86 and C-160/87, EU:C:1990:295, paragraphs 20 and 21).

33 Judgment of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraph 39). In that regard, see judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraphs 64 and 65).

34 Judgment of 16 April 2015, *TMK Europe* (C-143/14, EU:C:2015:236, paragraph 26).

46. In this regard, it should be noted that the EU rules on anti-circumvention, contained in Article 13 of the basic regulation, constitute a regulatory framework which, although framed by the EU anti-dumping rules, have their own specific characteristics. [35]

47. In that context, first, I take the view that the considerations which, as is clear from point 26 above, led the Court to apply the principles of the *TWD* case-law to regulations imposing anti-dumping duties are also perfectly valid in respect of regulations extending anti-dumping duties, such as the regulation here at issue.

48. Such regulations merely have the result of extending the scope of the original regulation which imposed the anti-dumping duty to imports of similar products or parts of those products. A regulation extending an anti-dumping duty therefore has the same legal effects on undertakings subject to the duty thus extended as does a regulation establishing a definitive duty on undertakings subject to such a duty [36] and is also characterised by the dual nature referred to in point 26 above.

49. Secondly, I note, however, that, although the criteria developed in the case-law mentioned in point 28 et seq. above in respect of the admissibility of actions seeking the annulment of regulations imposing an anti-dumping duty may be transposed for the purposes of determining the admissibility of actions seeking the annulment of regulations extending an anti-dumping duty, it is, nevertheless, necessary to take into account the specific characteristics of anti-circumvention investigations, pursuant to Article 13 of the basic regulation.

50. Although anti-circumvention investigations undoubtedly share similarities with investigations aimed at imposing an anti-dumping duty, they are characterised, however, by the need to prove the four elements which, in accordance with the definition contained in the third sentence of Article 13(1) of the basic regulation, constitute circumvention. [37]

51. In the second place, again as a preliminary point, I note that there is no doubt that Kelani Cycles would have had standing, under the fourth paragraph of Article 263 TFEU, to bring an action before the General Court seeking annulment of the regulation at issue.

52. First, as regards it being directly concerned, it should be noted that the Member States' customs authorities, having no discretion in the matter, are obliged to levy the anti-dumping duty extended by the regulation at issue to imports of bicycles exported by Kelani Cycles from Sri Lanka to the European Union. [38]

35 This finding is based on the fact that those rules do not have as their basis the 1994 Anti-dumping Code (Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103) set out in Annex 1A to the Agreement establishing the World Trade Organisation, approved 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), but have been adopted unilaterally by the European Union. In this regard, see recital 19 of the basic regulation and Opinion of Advocate General Mengozzi in *Maxcom and Others* v *Chin Haur Indonesia* (C-247/15 P, C-253/15 P and C-259/15 P, EU:C:2016:712, point 5).

36 See, to same effect, judgment of 26 September 2000, *Büchel* v *Council and Commission* (T-74/97 and T-75/97, EU:T:2000:215, paragraph 52).

37 It is apparent from the definition contained in the third sentence of Article 13(1) of the basic regulation that, in order for the existence of circumvention to be established, four conditions must be satisfied: first, there must be a change in the pattern of trade between the third country in question and the European Union; secondly, that change must be the result of a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty; thirdly, there must be evidence of injury; and, fourthly, there must be evidence of dumping.

38 See, to the same effect, judgment of 26 September 2000, *Büchel* v *Council and Commission* (T-74/97 and T-75/97, EU:T:2000:215, paragraph 50).

53. Secondly, as regards it being individually concerned, Kelani Cycles actively participated in the anti-circumvention investigation during which it submitted a request for exemption. Moreover, Kelani Cycles is expressly identified in recitals 39 to 42 of the regulation at issue and, in that regulation, was subject to findings being made on the basis of the facts available, on account of its insufficient cooperation. [39]

54. In the light of those two preliminary observations, I note that the Netherlands Government, the Council and the Commission base their objection that the questions referred for a preliminary ruling are inadmissible essentially on two factors which, in their view, are capable of differentiating Trace Sport, and, accordingly, distinguishing it from all other economic operators. [40]

55. That distinction is based, first, on the existence of close links between Trace Sport and the two Sri Lankan producers/exporters, Kelani Cycles and Creative Cycles and, secondly on the fact that Trace Sport endeavoured to intervene in support of Kelani Cycles during the administrative procedure conducted by the Commission.

56. It is therefore necessary to examine whether those two factors are capable of justifying, in the present case, the conclusion that Trace Sport would undoubtedly have been entitled to bring an action for annulment against the regulation at issue and therefore, in accordance with the *TWD* case-law, it is precluded from relying on the invalidity of that regulation before the national court.

57. As regards, in the first place, the existence of close links between Trace Sport, on the one hand, and Kelani Cycles and Creative Cycles, on the other, it is clear from point 39 above that the existence of an association between an exporter and an importer which are concerned is relevant for the purposes of determining whether an importer is entitled to seek the annulment of an anti-dumping regulation.

58. In that regard, the Court has already held that, where the Commission challenges the admissibility of the plea of illegality in respect of such a regulation raised before the national court by an associated importer, it must provide evidence making it possible to establish that the importer is *sufficiently* linked to the exporting undertakings in question. [41]

59. In the present case, the Commission has provided as evidence extracts from a final report by the European Anti-Fraud Office (OLAF) concerning an investigation into the circumvention of customs duties and anti-dumping duties imposed on imports of bicycles originating in China into the European Union, following information that Chinese bicycles had falsely been declared as originating in Sri Lanka.

60. That report refers to documents seized by the French customs authorities at the premises of Trace Sport and, specifically, to a list of offshore companies which indicate that the owner of Trace Sport owned 50% of a company (the remaining capital was held by two Chinese investors) of which Creative Cycles was a subsidiary. It is also clear from those documents that the same owner of Trace Sport was a 50% co-owner, with one of those Chinese investors, of another company, of which Kelani Cycles was a subsidiary. Furthermore, it is clear from that OLAF report that Kelani Cycles had, in fact, been created in order to take over all of Creative Cycles' activities.

61. The OLAF report also indicates that all of those companies, and others within the same group, were involved in false invoicing operations relating to imports into the European Union of bicycles originating in China which had given rise to the evasion of customs duties and anti-dumping duties.

39 Under Article 18 of the basic regulation.

40 Whether Trace Sport is directly concerned is a matter beyond dispute since it is directly affected by the regulation at issue for the same reasons as those set out in point 52 above.

41 Judgment of 16 April 2015, *TMK Europe* (C-143/14, EU:C:2015:236, paragraph 26).

62. The existence of those close links between Trace Sport, on the one hand, and Kelani Cycles and Creative Cycles, on the other, is also confirmed by a number of documents forming part of the documents known as the Panama Papers [42] for which the Commission provided evidence.

63. The existence of all such links and the conclusions of OLAF's final report have not been disputed at all by Trace Sport, which did not consider it necessary to submit observations to the Court.

64. In those circumstances I take the view that, in the present case, the Commission must be regarded as having adduced evidence making it possible to establish the existence of *sufficient* links, in accordance with the case-law, between the importer in question, Trace Sport, and the Sri Lankan producers/exporters, Kelani Cycles and Creative Cycles.

65. As regards, in the second place, the other factor on which the Netherlands Government, the Council and the Commission base their objection of inadmissibility, it is clear from the order for reference that, during the administrative procedure — in which Kelani Cycles participated after having submitted a request for exemption which was ultimately rejected by the Commission on account of its insufficient cooperation — Trace Sport asked the Commission to intervene in support of Kelani Cycles.

66. It is clear from the order for reference that Trace Sport itself stated that it had requested a hearing by the Commission to allow it to present exactly the same documents and evidence which had already been submitted previously by Kelani Cycles as additional observations following the communication from the Commission stating that it intended to reject its exemption request. The Commission had rejected those documents and evidence for the reasons set out in recital 40 of the regulation at issue.

67. That intervention by Trace Sport in support of Kelani Cycles in the anti-circumvention investigation conducted by the Commission, even though it was ultimately unsuccessful on account of the Commission's refusal to reconsider its analysis of the arguments and documents in question, demonstrates a number of factors which are relevant to the analysis.

68. First, it demonstrates the existence of links between Trace Sport and Kelani Cycles which were so close that the former was aware of the investigation concerning the latter. That information was not in the public domain.

69. Secondly, it demonstrates the existence of common interests between the exporter concerned and the associated importer which led the latter to seek to intervene in the investigation concerning the associated producer in order to attempt to overcome the Commission's refusal to take into consideration the arguments and evidence that the former had tried to present. The existence of such common interests, ultimately, resulted in the two operators acting in the same way as a single entity in the investigation.

70. Thirdly, it is reasonable to take the view that the information and documents in question concerned, at least in part, Trace Sport itself. On the one hand, it is clear from recital 40 of the regulation at issue that one of the issues between the Commission and Kelani Cycles concerned clarifications regarding related companies, such as Trace Sport. On the other hand, although the information and documents that Trace Sport had intended to submit to the Commission did not concern it, it does not explain the grounds on which Trace Sport could have justified its own intervention before the Commission in order to be able to submit that information and those documents.

42 The term 'Panama Papers' relates to a very large number of confidential documents held by the Panamanian law firm Mossack Fonseca which were leaked to the international press in 2015. Those documents have been examined within the framework of an international journalistic investigation project and, subsequently, also by the tax and judicial authorities of a number of different countries. Following the disclosure of the Panama Papers, the European Parliament established an investigative committee responsible for examining allegations of contraventions and maladministration in the application of EU law in relation to money laundering, tax avoidance and tax evasion.

71. In that regard it must also be noted that, in the present case, although, unlike the situation in the cases mentioned in points 29 to 31 above, the Commission was unable to base its findings in the anti-circumvention investigation for the purposes of determining the extension to the anti-dumping duty on the information submitted by the associated producer and importer, this was because of the insufficient cooperation by Kelani Cycles (and Trace Sport) in the investigation.

72. All of those factors lead me to consider that, in fact, Kelani Cycles and Trace Sport acted, during the course of the investigation, as though they were supporting the interests of one single economic operator. Creative Cycles, by contrast, did not participate in the investigation because, as is clear from point 60 above, it had, in essence, been replaced in its activities by Kelani Cycles.

73. It follows from all of the foregoing considerations that, in the particular circumstances of the present case, in my view, the existence of a set of factors constituting a specific situation which differentiates Trace Sport in the light of the regulation at issue from all other economic operators and which are therefore capable of distinguishing it individually just as in the case of its associated producer, Kelani Cycles, must be regarded as established.

74. It follows that, in the particular circumstances of the present case, in my view, Trace Sport would undoubtedly have been entitled to bring an action for annulment, under Article 263 TFEU, against the regulation at issue and, therefore, in accordance with the *TWD* case-law, it is precluded from relying on the possible invalidity of that regulation before the national courts.

75. In that regard I must again point out that I am aware, first, that the fourth paragraph of Article 263 TFEU lays down restrictive criteria for the admissibility of actions for annulment [43] and, secondly, that, in so far as the *TWD* case-law is, as I noted in points 21 to 25 above, an exception to a general principle, it must have a limited scope, which is specifically confined solely to cases in which there is no doubt as to the admissibility of an action for annulment brought by an individual before the General Court. [44]

76. However, in that regard, first, I consider that the recognition that Trace Sport has standing to bring proceedings against the regulation at issue is, undoubtedly, consistent with the case-law concerning the admissibility of actions for annulment in the field of anti-dumping mentioned in points 31 and 34 to 42 above.

77. Secondly, in the very specific circumstances of the present case, I take the view that to allow an associated importer such as Trace Sport — in respect of which it has been demonstrated, first, that it is sufficiently linked to the exporter which participated in the anti-circumvention investigation and which was clearly entitled to bring an action for annulment against the measure in question and, secondly, that it was involved, albeit unsuccessfully, in the anti-circumvention investigation concerning that related producer, acting in that investigation as though it were representing the interests of a single economic operator — to plead the invalidity of the regulation in question before the national court goes against the rationale of the *TWD* case-law, as stated in point 25 above, namely to ensure legal certainty and to prevent the abuse of remedies made available to individuals by EU law.

43 In that regard, see judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraphs 68 and 69).

44 See, in that regard, the considerations in point 34 of the Opinion of Advocate General Campos Sánchez-Bordona in *Georgsmarienhütte and Others* (C-135/16, EU:C:2018:120) and in points 70 to 72 of the Opinion of Advocate General Sharpston in *A and Others* (C-158/14, EU:C:2016:734).

III. Conclusion

78. In the light of all of the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Rechtbank Noord-Holland (District Court, North Holland, Netherlands) as follows:

(1) Neither the judgment of the General Court of 19 March 2015, *City Cycle Industries* v *Council* (T-413/13, not published, EU:T:2015:164), nor that of the Court of 26 January 2017, *Maxcom* v *City Cycle Industries* (Joined Cases C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62), have affected the validity of Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, in so far as that regulation concerns the companies Kelani Cycles (PVT) Ltd and Creative Cycles (PVT) Ltd.

(2) An importer of those bicycles, such as Trace Sport, in respect of which it has been demonstrated, first, that it is sufficiently linked to those producers/exporters and, secondly, that it was involved, albeit unsuccessfully, in the anti-circumvention investigation concerning those related producers, acting in that investigation as though they were representing the interests of a single economic operator, with the result that it undoubtedly had a right of action before the General Court to seek the annulment of the anti-dumping duty imposed on those goods, but which did not exercise that right, cannot subsequently plead the invalidity of that anti-dumping duty before a national court. In such a case, the national court is bound by the definitive nature of the anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China and, under Article 1 of Implementing Regulation (EU) No 501/2013, extended to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia.