Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 December 2015*

(Reference for a preliminary ruling — Commercial policy — Dumping — Gas-fuelled, non-refillable pocket flint lighters — Regulation (EC) No 1225/2009 — Article 11(2) — Expiry — Article 13 — Circumvention — Implementing Regulation (EU) No 260/2013 — Validity — Extension of an anti-dumping duty at a date on which the regulation which imposed it is no longer in force — Change in the pattern of trade)

In Case C-371/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decision of 17 June 2014, received at the Court on 1 August 2014, in the proceedings

APEX GmbH Internationale Spedition

v

Hauptzollamt Hamburg-Stadt,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal and K. Jürimäe (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 2 July 2015,

after considering the observations submitted on behalf of:

— APEX GmbH Internationale Spedition, by M. Hackert, Rechtsanwalt, and by R. Etehad,

— the Council of the European Union, by S. Boelaert, acting as Agent, assisted initially by D. Geradin and N. Tuominen, and subsequently by N. Tuominen, avocats,

— the European Commission, by F. Erlbacher, T. Maxian Rusche and A. Stobiecka-Kuik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 July 2015,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling 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 (OJ 2013 L 82, p. 10) ('the contested regulation').

2 The request has been made in proceedings between APEX GmbH Internationale Spedition ('APEX') and the Hauptzollamt Hamburg-Stadt (Principal Customs Office of the City of Hamburg, Germany) concerning a decision by the latter to require APEX to pay anti-dumping duties.

Legal context

Regulation (EC) No 1225/2009

3 The provisions governing the application of anti-dumping measures by the European Union, in force at the time of the dispute in the main proceedings, were set out in 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), in its original version and as amended by Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 (OJ 2012 L 237, p. 1) ('the basic regulation').

4 According to recital 22 in the preamble to the basic regulation:

'… it is necessary that Community legislation should contain provisions to deal with practices, including mere assembly of goods in the Community or a third country, which have as their main aim the circumvention of anti-dumping measures.'

5 Article 10 of that regulation, entitled 'Retroactivity', 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.'

6 The first subparagraph of 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 such review.'

7 Article 13 of the basic regulation, entitled 'Circumvention', is worded as follows:

'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.

The practice, process or work referred to in the first subparagraph includes, inter alia, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures via third countries, the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers, and, in the circumstances indicated in paragraph 2, the assembly of parts by an assembly operation in the Community or a third country.

2. An assembly operation in the Community or a third country shall be considered to circumvent the measures in force where:

(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; and

...

(c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

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.

...'

8 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.’

9 Article 18 of the basic regulation provides:

‘1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. ...

...

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.’

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

10 Following a complaint made to the European Commission in 1989 by the European Federation of Lighter Manufacturers, Council Regulation (EEC) No 3433/91 of 25 November 1991 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) was adopted.

11 Under Article 1 of that regulation, a definitive anti-dumping duty was imposed on imports of gas-fuelled, non-refillable pocket flint lighters originating in, inter alia, the People’s Republic of China (‘the PRC’).

12 Following an investigation into a possible circumvention of the anti-dumping duty, Council Regulation (EC) No 192/1999 of 25 January 1999 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) was adopted.

13 Article 1 of that regulation extended the anti-dumping duty imposed by Regulation No 3433/91 to imports of gas-fuelled, non-refillable pocket flint lighters consigned from or originating in Taiwan and to imports of certain gas-fuelled, refillable pocket flint lighters, originating in the PRC or consigned from or originating in Taiwan.

14 The anti-dumping duty imposed by Regulation No 3433/91 and extended by Regulation No 192/1999 was maintained by Council Regulation (EC) No 1824/2001 of 12 September 2001 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 (OJ 2001 L 248, p. 1) and by Council Regulation (EC) No 1458/2007 of 10 December 2007 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).

15 By a 'Notice of the impending expiry of certain anti-dumping measures', published on 1 May 2012 in the *Official Journal of the European Union* (OJ 2012 C 127, p. 3), the Commission gave notice that, unless a review was initiated in accordance with the procedure laid down in Article 11(2) of the basic regulation, the anti-dumping measures imposed, in particular, on the imports of gas-fuelled, non-refillable pocket flint lighters originating in the PRC and consigned from or originating in Taiwan would expire on 13 December 2012. As no duly substantiated request for a review was lodged following the publication of that notice, the Commission announced, by a 'Notice of the expiry of certain anti-dumping measures' published on 12 December 2012 in the *Official Journal of the European Union* (OJ 2012 C 382, p. 12), that those anti-dumping measures would effectively expire on 13 December 2012.

16 In the meantime, by Article 1 of Commission Regulation (EU) No 548/2012 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), the Commission had initiated an investigation in order to determine whether the imports, into the EU, of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam were circumventing the anti-dumping measures imposed by Regulation No 1458/2007.

17 Pursuant to 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 the regulation, in accordance with Articles 13(3) and 14(5) of the basic regulation.

18 The contested regulation was adopted following the investigation initiated by Regulation No 548/2012, the latter having covered the period from 1 April 2011 to 31 March 2012, known as 'the reference period' ('the RP').

19 Recitals 28 to 30 and 36 in the preamble to the contested regulation, which concern the degree of cooperation of Vietnamese exporting producers, are worded as follows:

> '(28) As stated in recital 18, seven companies submitted questionnaire replies. For the RP, the total volume of lighters reported as sold to the Union according to these replies represented more than 100% of the total volume of lighters reported as imported into the Union according to the Eurostat Comext database. Despite the fact that the information regarding sales volumes in the replies was considered to be unreliable as explained in recital 29 below, it is considered that this still gives an indication that cooperation was high and that the companies investigated are representative.
>
> (29) During the verification visits carried out at the premises of the seven Vietnamese exporting producers, it was found that they had each submitted information which could not be considered to be reliable for the purpose of establishing the findings relevant to the investigation. In particular, the seven companies were found to have wrongly stated their production volumes, imports of lighter parts and total sales. It was also found that part of the business relating to the product under investigation was not included in the official accounts and that certain assembly operations were carried out by unofficial subcontractors. Moreover, quantities of imports of parts from the PRC were not declared or wrongly stated, and part of the sales were not accounted for in the accounts of the companies. As a result, it has not been

possible to reliably establish, in particular, the total production and total sales volumes of the companies concerned, or to reconcile the actual sale prices of the product under investigation and the costs relating to key input materials such as gas with the data provided in the replies to the questionnaire.

(30) In view of the situation described in recital 29, the exporting producers were informed that pursuant to Article 18 of the basic Regulation it was envisaged to base the findings and conclusions of the investigation on the best facts available. ...

...

(36) Given the above, findings in respect of imports of gas-fuelled, non-refillable pocket flint lighters from Vietnam into the Union had to be made on the basis of the facts available in accordance with Article 18(1) of the basic Regulation. As a consequence, in order to ensure that the failure of the parties to provide the information does not hinder the investigation, the Commission has replaced the unverifiable data provided by the Vietnamese producers with other available data, such as the Eurostat Comext database, to determine the overall import volumes from Vietnam into the Union, and cost data provided in the request to determine the share of Chinese parts (see recital 50 below).'

20 Recital 37 in the preamble to the contested regulation, which concerns the degree of cooperation of the Chinese exporting producers, states:

'There was no cooperation from the Chinese exporting producers. Therefore, findings in respect of imports of the product concerned into the Union and exports of gas-fuelled, non-refillable pocket flint lighters from the PRC to Vietnam had to be made on the basis of the facts available in accordance with Article 18(1) of the basic Regulation. UN Comtrade statistics provided in the request were used for the determination of the overall exports from the PRC to Vietnam.'

21 Recitals 38 to 44 in the preamble to the contested regulation, concerning the change in the pattern of trade, state:

'2.4. Change in the pattern of trade

Imports of gas-fuelled, non-refillable pocket flint lighters into the Union

(38) Imports of the product concerned from the PRC dropped in 1991 when the measures were first introduced. The imports have remained small throughout the successive modifications and extensions of the measures in 1995, 1999, 2001 and 2007.

(39) Imports of lighters from the PRC between 1 January 2008 and 31 March 2012 were relatively stable in terms of volume, around 50 million pieces for 2008 and 2009, 70 million pieces in 2010 and 60 million in 2011 and the RP. However, they consisted only of refillable models and electrical piezo lighters which were not subject to the measures.

(40) The imports of the product under investigation from Vietnam have increased over time. While in 1997 there were practically no imports into the Union of the product under investigation from Vietnam, since 2007 there has been a rapid increase in the import volume of the product under investigation.

(41) In [the] RP imports from Vietnam represented 84% of all imports to the Union.

Imports from Vietnam into the Union of non-refillable lighters as % of all imports

	2008	2009	2010	2011	PR
Market Share	80%	84%	83%	84%	84%

Exports of lighter parts from the PRC to Vietnam

(42) Flint lighter parts were exported from the PRC to Vietnam during the RP. Vietnam is the most important export destination of flint lighter parts from the PRC. According to the statistics provided in the request, exports of lighter parts from the PRC to Vietnam have increased significantly since 1999. In 1999, exports of lighter parts from the PRC to Vietnam were less than 3% of total exports, whereas in 2010 Vietnam became the first export destination of lighter parts with a share of 26% of imports. In volumes, this would correspond to an increase from less than 50 million to 200 million finished lighters.

Production volumes of gas-fuelled, non-refillable pocket flint lighters in Vietnam

(43) As the information provided by the Vietnamese producers had to be disregarded, no verifiable information could be obtained on the possible levels of the genuine production of gas-fuelled, non-refillable pocket flint lighters.

2.5. Conclusion on the change in the pattern of trade

(44) The overall decrease in exports from the PRC to the Union and the increase in exports from Vietnam to the Union since 2007 and the significant increase in exports of lighter parts from the PRC to Vietnam since 1999 constituted a change in the pattern of trade between the PRC and Vietnam, on the one hand, and the Union, on the other.'

22 Article 1 of the contested regulation provides:

'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 [PRC] 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 Articles 13(3) and 14(5) of [the basic regulation].

...'

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

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

24 By a duty notice of 26 March 2013, the principal customs office of the City of Hamburg sought from APEX, in respect of that release for free circulation, payment of anti-dumping duties totalling EUR 261565.20 on the basis of the contested regulation.

25 On 15 April 2013 APEX lodged an administrative appeal against that duty notice. As the principal customs office of the City of Hamburg dismissed that appeal by a decision of 5 June 2013, APEX brought the case before the Finanzgericht Hamburg (Finance Court, Hamburg) on 5 July 2013.

26 In the first place, that court has doubts as to whether it was possible for the Council to extend the anti-dumping duty imposed by Regulation No 1458/2007, since that regulation was no longer in force at the date on which the contested regulation was adopted. It found that it was clear from the terms of Article 13(1) of the basic regulation, in particular from the phrase 'when circumvention of the measures in force is taking place', that anti-dumping measures could not be extended unless they were in force and, hence, unless they had not expired. Consideration of the purpose and objectives of the anti-dumping measures, it found, also supported that interpretation. Thus, the imposition of anti-dumping duties was not a penalty for earlier conduct but a protective and preventive measure against unfair competition resulting from dumping which sought, for the future, to prevent dumped imports or to make them economically unattractive.

27 The Finanzgericht Hamburg (Finance Court, Hamburg) nevertheless accepts that the phrase 'when circumvention of the measures in force is taking place' could be understood as meaning that it relates to the period of application of the extension of the anti-dumping duty and not to the date on which the regulation extending that anti-dumping duty was adopted. That court notes, in that regard, that the sixth sentence of Article 13(3) of the basic regulation expressly provides for the retroactive extension of anti-dumping duty with effect from the date on which registration of imports was made obligatory pursuant to Article 14(5) of the basic regulation. Furthermore, the Finanzgericht Hamburg (Finance Court, Hamburg) states that, according to the aim and purpose of that regulation, the sole object of a regulation extending anti-dumping measures is to ensure the effectiveness of those measures and to prevent their circumvention. Such a regulation would therefore be merely ancillary to the initial anti-dumping measures, which might mean that Article 13 of the basic regulation does not contain a deadline for the adoption of a regulation extending an anti-dumping duty.

28 In the second place, the Finanzgericht Hamburg (Finance Court, Hamburg) considers that it is unlikely that the conditions for the existence of a circumvention, laid down in Article 13(1) and 13(2)(a) of the basic regulation, are satisfied in the present case.

29 First, it finds, the change in the pattern of trade between the third countries concerned, namely the PRC and Vietnam, and the EU, referred to in the third sentence of Article 13(1) of the basic regulation, has not been established. The figures given for imports of the product concerned from the PRC are insufficiently precise or, in the case of the figures given in recital 39 in the preamble to the contested regulation, irrelevant. Furthermore, the figures for the imports from Vietnam, set out in recital 40 in the preamble to that regulation, cover neither 2007 nor earlier years and can only partially be related to the matters set out in recital 42 in the preamble to that regulation concerning exports of lighter parts from the PRC to Vietnam.

30 Moreover, there is a gap in time between the fall in imports of the product concerned from the PRC during 1991, the increase in exports of lighter parts from the PRC to Vietnam, beginning in 1999, and the increase in imports to the EU of the product concerned from Vietnam during 2007. The Finanzgericht Hamburg (Finance Court, Hamburg) states that it is aware that Article 13(1) of the basic regulation does not contain any time-related requirements concerning the change in the pattern of trade. Nevertheless, it considers that a specific explanation is necessary when the pattern of trade between the third countries and the EU did not change until several years after the anti-dumping measures had been imposed.

31 Furthermore, the contested regulation does not, in the view of the referring court, indicate why the increase in imports of the product concerned from Vietnam was not immediately preceded by an increase in exports of lighter parts from the PRC to Vietnam, or whether the increase in imports of lighters from Vietnam since 2007 corresponds to a commensurate fall in imports of lighters from the PRC.

32 Second, the referring court doubts whether the conditions laid down in Article 13(2)(a) of the basic regulation have been satisfied. First, the assembly operations at issue in the main proceedings cannot have 'started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation'. Second, it finds, it is unlikely that those operations lacked sufficient economic reasons or justification other than to avoid the anti-dumping measures imposed by Regulation No 1458/2007. Those operations could in particular, in its view, have been justified by considerations of low labour costs.

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

'(1) 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?'

The questions referred for a preliminary ruling

34 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether the contested regulation is invalid because, first, it was adopted at a time when Regulation No 1458/2007 was no longer in force and, second, the Council has not established to the requisite legal standard that there was a circumvention within the meaning of Article 13(1) of the basic regulation.

Preliminary observations

35 It must be observed that, in the written observations which it submitted to the Court, APEX raised a ground of invalidity of the contested regulation which was not raised by the referring court in its request for a preliminary ruling. APEX submitted that, since autumn 2012, it was clear that the measures imposed by Regulation No 1458/2007 would not be extended because the imports of the product concerned from the PRC no longer presented any risk of dumping. In that context, according to APEX, the remedial effects of the anti-dumping duty concerned could not be considered to have been undermined within the meaning of Article 13(1) of the basic regulation.

36 According to the Court's settled case-law, the procedure laid down in Article 267 TFEU is based on a clear separation of functions between the national courts and the Court of Justice, with the result that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 26).

37 It also follows from well-established case-law that Article 267 TFEU does not make available a means of redress to the parties to a case pending before a national court, with the result that the Court cannot be compelled to evaluate the validity of EU law on the sole ground that that question has been put before it by one of the parties in its written observations (see the judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 27 and the case-law cited).

38 In those circumstances, it is not appropriate to extend the examination of the validity of the contested regulation to include grounds not raised by the referring court.

The argument that the contested regulation is invalid because it was adopted at a time when Regulation No 1458/2007 was no longer in force

39 The referring court invokes, in the first place, the invalidity of the contested regulation, which extended the anti-dumping measures imposed by Regulation No 1458/2007 following an investigation into a possible circumvention under Article 13 of the basic regulation, on the ground that it was adopted at a time when Regulation No 1458/2007 was no longer in force and gave rise to an exclusively retroactive collection of extended anti-dumping duty in respect of the period between the date on which registration of the imports became obligatory and the date on which those measures expired.

40 In that regard, it must be recalled that Article 13 of the basic regulation lays down the option for the EU institutions, when they find that anti-dumping measures are being circumvented, to extend those measures to imports of like products, whether slightly modified or not, coming from third countries other than the country which is subject to those measures.

41 For the purposes of examining the first ground of invalidity invoked by the referring court, it is necessary to determine whether Article 13 of the basic regulation allows a decision extending anti-dumping measures to be adopted although those measures have expired.

42 According to the Court's settled case-law, in determining the scope of a provision of EU law, in this case Article 13 of the basic regulation, its wording, context and objectives must all be taken into account (judgment in *Angerer*, C-477/13, EU:C:2015:239, paragraph 26 and the case-law cited).

43 With regard to the text of Article 13 of the basic regulation, it must be noted that, apart from the obligation, laid down in paragraph 3 thereof, to conclude the investigation within nine months from the date on which it was initiated, that article does not include any indication as to the moment at which a possible decision to extend anti-dumping measures should be adopted.

44 It is true that, in accordance with the wording of the first sentence of Article 13(1) of the basic regulation, anti-dumping duties may be extended 'when circumvention of the measures in force is taking place'. However, the purpose of that phrase is to limit the circumstances in which a decision to extend anti-dumping duties may be adopted. It cannot therefore be held that, by referring to 'measures in force', the legislature intended to define its position as to the moment at which such a decision to extend must be adopted and, thus, to prohibit its adoption when anti-dumping measures which are the object of circumvention have expired.

45 On the other hand, the reference to 'measures in force', in Article 13(1) of the basic regulation, implies that the period of application of the extended anti-dumping measures cannot exceed the period during which the anti-dumping measures which they extend are in force.

46 It follows, as the Advocate General observed in point 31 of his Opinion, that a textual analysis of Article 13 of the basic regulation does not make it possible to rule out the possibility of adoption of a regulation to extend anti-dumping measures that have expired.

47 An analysis of the context of Article 13 of the basic regulation and of the objectives of that article and, more generally, of that regulation confirms that a regulation extending anti-dumping measures may be adopted after those measures have expired, on the understanding, however, that the measures may be extended only for the period prior to that expiry, with the result that the extended measures have exclusively retroactive effect.

48 First, it must be observed, in this regard, that, whilst Article 10(1) of the basic regulation affirms the principle of non-retroactivity of anti-dumping measures, since such measures cannot as a rule be applied to any goods other than those released into free circulation after the date on which the regulation imposing them entered into force, several provisions of the basic regulation derogate from that principle. Those provisions permit the application of anti-dumping measures to goods released into free circulation before the entry into force of the regulation imposing them, on condition that the imports in question have been registered in accordance with Article 14(5) of the basic regulation.

49 In particular, as regards the rules concerning circumvention, the second sentence of Article 13(3) of the basic regulation provides that the investigation is to be initiated by a Commission regulation, which may also instruct customs authorities to make imports subject to registration in accordance with Article 14(5) of that regulation or to request guarantees. The sixth sentence of Article 13(3) of the basic regulation provides that the extension of anti-dumping measures is to take effect from the date on which registration of the imports, in accordance with Article 14(5) of that regulation, was made obligatory. Thus, the retroactive collection of anti-dumping duties extended by a regulation for their extension adopted on the basis of Article 13 of the basic regulation is permitted by the latter.

50 Second, according to the Court's case-law, it is apparent from, in particular, recital 19 and Article 13 of the basic regulation 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. Furthermore, the obligation to register the imports concerned, in the specific context of a 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 (judgment in *Paltrade*, C-667/11, EU:C:2013:368, paragraphs 28 and 29).

51 As the Advocate General observed in point 36 of his Opinion, 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 anti-dumping measures could not be adopted after those measures had expired. Without the power to adopt such a regulation after that expiry, the protection of the remedial effect of anti-dumping measures, by means of the procedure laid down in Article 13 of the basic regulation, could be compromised by the imports made during the period of the investigation into the circumvention. In practice, this would make it impossible to ensure the effectiveness of the anti-dumping measures up until the end of their period of application, which, under Article 11(2) of the basic regulation, is, in principle, five years.

52 Moreover, as the Advocate General notes in point 55 of his Opinion, to hold that a regulation extending anti-dumping measures pursuant to Article 13(3) of the basic regulation cannot be adopted after those measures have expired would, where necessary, oblige the Commission to conclude its investigation within a shorter period than the nine-month period laid down in that provision. Similarly, the consequence of such a finding would be to permit the adoption of such a regulation immediately before the expiry of the measures which it extends but to prohibit it immediately after that expiry, without any legal or logical justification.

53 Third, it should be observed that the Court has ruled that a measure extending a definitive anti-dumping duty is merely ancillary to the initial act establishing that duty (judgment in *Paltrade*, C-667/11, EU:C:2013:368, paragraph 28).

54 While it follows from that finding that the extended measures cannot apply beyond the expiry of the measures which they extend, it cannot be deduced from the link between them that the decision to impose the former must be taken before the latter have expired.

55 Having regard to the foregoing analysis, it must be held that Article 13 of the basic regulation does not preclude the adoption of a regulation extending anti-dumping measures at a time when those measures are no longer in force, on condition, first, that the extension concerns exclusively the period before those measures expired and, second, that registration of the imports concerned was ordered, in accordance with Articles 13(3) and 14(5) of the basic regulation, or, as the case may be, that guarantees were required at the time when the investigation into the circumvention was initiated, in order to allow the retroactive application of the extended measures with effect from the date of that registration.

56 In the main proceedings, it is true that the anti-dumping measures imposed by Regulation No 1458/2007 expired on 13 December 2012, whereas the contested regulation, by which those measures were extended to imports consigned from Vietnam, was not adopted until 18 March 2013. However, it is common ground that, since 25 June 2012, the Commission had initiated, by Regulation No 548/2012, an investigation in order to determine whether those latter imports circumvented those measures and had required the customs authorities to take the appropriate steps to register those imports.

57 Furthermore, Article 1(2) of the contested regulation limited the collection of the duty thus extended to those imports alone which had been consigned from Vietnam between 27 June 2012, the date on which Regulation No 548/2012 entered into force, and 13 December 2012, the date on which the anti-dumping measures imposed by Regulation No 1458/2007 expired.

58 In those circumstances, it must be held, in the light of the considerations set out in paragraph 55 of the present judgment, that, in adopting the contested regulation on a date at which the anti-dumping measures imposed by Regulation No 1458/2007 had expired, the Council did not fail to comply with the requirements laid down in Article 13 of the basic regulation because, first, the extension of those anti-dumping measures related exclusively to the period prior to their expiry and, second, at the date on which the investigation into circumvention was initiated, registration of the imports concerned had been ordered, in accordance with Articles 13(3) and 14(5) of the basic regulation, in order to permit the retroactive application of the extended measures.

59 Therefore, the fact that the contested regulation was adopted at a time when Regulation No 1458/2007 was no longer in force is not capable of rendering it invalid.

The ground of invalidity based on the assertion that the existence of circumvention was not proved to the requisite legal standard

60 The referring court invokes, in the second place, the invalidity of the contested regulation in so far as the Council has not proved to the requisite legal standard that there was circumvention within the meaning of Article 13(1) of the basic regulation, as it failed to establish, first, a change in the pattern of trade and, second, the existence of assembly operations having started or significantly increased since, or immediately before, the start of the anti-dumping investigation and lacking any economic justification other than to avoid the anti-dumping measures imposed by Regulation No 1458/2007.

61 It must be recalled that the Court has held that, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine. The judicial review of such an appraisal must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is

based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see the judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 29 and the case-law cited).

62 With more specific regard to the circumvention of the anti-dumping measures, Article 13(1) of the basic regulation provides that such a circumvention consists of a change in the pattern of trade between third countries and the EU 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.

63 According to Article 13(3) of that regulation, it is for the Commission to initiate an investigation on the basis of evidence which prima facie suggests circumvention practices. If the facts ascertained during that investigation make it possible to conclude that such a circumvention exists, the Commission is to submit a proposal on the extension of anti-dumping measures to the Council (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 31).

64 However, there is no provision in the basic regulation which grants the Commission, in the context of a circumvention investigation, the power to require producers or exporters referred to in a complaint to participate in the investigation or to provide information. The Commission is therefore reliant on the voluntary cooperation of the interested parties to provide it with the necessary information (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 32).

65 It is for that reason that the EU legislature provided in Article 18(1) of the basic regulation that, in cases in which any interested party refuses access to, or otherwise does not provide, necessary information, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 33).

66 Furthermore, Article 18(6) of the basic regulation states that if an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 34).

67 While it is true that the basic regulation, and particularly Article 13(3) thereof, establishes the principle that the burden of proving circumvention is imposed on the EU institutions, the fact remains that, by providing, in a situation in which the interested parties fail to cooperate, that those institutions may base the findings of an investigation into the existence of circumvention on the data available and that the result may be less favourable to the parties who have not cooperated with it, Article 18(1) and (6) of the basic regulation is clearly intended to lessen that burden (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 35).

68 It is true that it follows from Article 18 of the basic regulation that it was not the intention of the EU legislature to establish a legal presumption making it possible to infer the existence of circumvention directly from the non-cooperation of the parties interested or concerned, and thereby exempting the EU institutions from any requirement to adduce proof. However, given that it is possible to make findings, even definitive findings, on the basis of the facts available and to treat a party which does not cooperate or does not cooperate fully less favourably than if it had cooperated, it is equally evident that the EU institutions are authorised to act on the basis of a body of consistent evidence showing the existence of circumvention for the purposes of Article 13(1) of the basic regulation (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 36).

69 Any other approach would risk undermining the efficiency of the EU trade-defence measures each time the EU institutions are faced with non-cooperation in the context of an investigation seeking to establish whether there has been circumvention (judgment in *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 37).

70 It is in the light of those considerations that the second ground for invalidity raised by the referring court must be examined.

71 In that regard, it is apparent from recitals 28 to 36 in the preamble to the contested regulation that seven Vietnamese exporting producers cooperated in the investigation into the circumvention at issue in the main proceedings. However, the Commission found, during verification visits carried out on the premises of those exporting producers, that the information which they had provided could not be considered to be reliable. Furthermore, according to recital 37 in the preamble to that regulation, the Chinese exporting producers did not cooperate.

72 Consequently, the conclusions on imports, into the EU, of gas-fuelled, non-refillable pocket flint lighters from Vietnam and the PRC, and those on exports of lighter parts from the PRC to Vietnam, had to be established in accordance with Article 18(1) of the basic regulation. In that regard, the Commission relied in particular on the Eurostat Comext data, on the UN Comtrade statistics featuring in the request that led to the initiation of the investigation into the circumvention, and on other data contained in that request.

73 That information allowed the Commission, which led the investigation on the basis of which the contested regulation was adopted, and the Council, which adopted that regulation, to establish, first, as is apparent from recital 38 in the preamble to the contested regulation, that imports of the product concerned from the PRC had fallen during 1991, when anti-dumping measures had been introduced for the first time, and that they had remained weak afterwards. Second, in recitals 40 and 41 in the preamble to that regulation, it is stated that the volume of imports of the product concerned from Vietnam to the EU had increased rapidly since 2007 and that those imports, which represented 80% of all imports of that product into the EU during 2008, had reached 84% of all such imports during the RP. Third, it was stated, in recital 42 in the preamble to that regulation, that the exports of lighter parts from the PRC to Vietnam had increased significantly since 1999 and that they represented, for 2010, 26% of all exports of lighter parts from the PRC.

74 On that basis it was concluded, in recital 44 in the preamble to the contested regulation, that the overall decrease in exports from the PRC to the EU, the increase in exports from Vietnam to the EU since 2007 and the significant increase in exports of lighter parts from the PRC to Vietnam since 1999 had constituted a change in the pattern of trade between the PRC and Vietnam, on the one hand, and the EU, on the other.

75 While the contested regulation states that the volume of imports of the product concerned from the PRC to the EU was weak during 2007 and that the volume of imports of that product from Vietnam to the EU strongly increased with effect from the same year, it is, by contrast, apparent from that regulation that the exports of lighter parts from the PRC to Vietnam increased from 1999.

76 It follows that it cannot validly be concluded that there was a link between, on the one hand, the increase in exports of lighter parts from the PRC to Vietnam and, on the other hand, the increase of imports of the product concerned to the EU from Vietnam.

77 In those circumstances, it cannot be held that the Council and the Commission relied on a body of sufficiently consistent evidence, within the meaning of the case-law cited in paragraph 68 of the present judgment, to enable them to find that there was circumvention within the meaning of Article 13(1) of the basic regulation.

78 Having regard to the foregoing considerations, the answer to the questions referred is that the contested regulation is invalid.

Costs

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

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

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, is invalid.

[Signatures]