Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

21 November 2024*

(Reference for a preliminary ruling – Common commercial policy – Protection against dumping – Imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in China – Provisional Regulation (EU) No 1071/2012 – Implementing Regulation (EU) No 430/2013 – Validity – Regulation (EC) No 1225/2009 – Article 5 – Initiation of the investigation procedure – Definition of the product concerned – Threaded tube or pipe cast fittings, of spheroidal graphite cast iron)

In Case C-719/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 6 October 2022, received at the Court on 24 November 2022, in the criminal proceedings against

Profit Europe NV,

Gosselin Forwarding Services NV,

intervening parties:

Openbaar Ministerie,

Federale Overheidsdienst Financiën,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, I. Jarukaitis, President of the Fourth Chamber, and Z. Csehi (Rapporteur), Judge,

Advocate General: G. Pitruzzella,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 7 March 2024,

after considering the observations submitted on behalf of:

– Profit Europe NV, by P. Diaz Gavier, advocaat,

* Language of the case: Dutch.

– Gosselin Forwarding Services NV, by A. Poelmans, advocaat,

– the Belgian Government, by S. Baeyens, P. Cottin and C. Pochet, acting as Agents,

– the European Commission, by P.-J. Loewenthal, G. Luengo and J. Zieliński, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ 2012 L 318, p. 10; 'the Provisional Regulation'), and of Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ 2013 L 129, p. 1; 'the Definitive Regulation') (together, 'the Anti-dumping Regulations').

2 The request has been made in criminal proceedings brought against Profit Europe NV and Gosselin Forwarding Services NV (formerly Crosstainer NV; 'Gosselin'), which are accused of having committed several customs offences during the importation of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in China.

Legal context

EU legislation on tariff classification

Community Customs Code

3 Article 20 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Community Customs Code') provided, in paragraphs 1 to 3 and 6 thereof:

'1. Duties legally owed where a customs debt is incurred shall be based on the Customs Tariff of the European Communities.

2. The other measures prescribed by Community provisions governing specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods.

3. The Customs Tariff of the European Communities shall comprise:

(a) the combined nomenclature of goods;

(b) any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

…

6. The tariff classification of goods shall be the determination, according to the rules in force, of:

(a) the subheading of the combined nomenclature or the subheading of any other nomenclature referred to in paragraph 3(b); or

(b) the subheading of any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of measures other than tariff measures relating to trade in goods,

under which the aforesaid goods are to be classified.'

– *The CN*

4 As is apparent from Article 1(1) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16) ('Regulation No 2658/87'), the European Commission is to establish the combined nomenclature ('the CN') to meet, at one and the same time, the requirements of the Common Customs Tariff, of the external trade statistics of the European Union and of other EU policies concerning the importation or exportation of goods.

5 The CN, which is set out in Annex I to Regulation No 2658/87, is based on the Harmonized Commodity Description and Coding System, drawn up by the Customs Cooperation Council, now the World Customs Organization (WCO), and established by the International Convention on the Harmonized Commodity Description and Coding System concluded in Brussels on 14 June 1983. That convention, along with the Protocol of Amendment thereto of 24 June 1986, were approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). In accordance with Article 3(1) of Regulation No 2658/87, the CN is to reproduce the six-digit headings and subheadings of the Harmonized Commodity Description and Coding System, with only the seventh and eighth digits forming subdivisions specific to it.

6 The CN, both in the version resulting from Commission Regulation (EU) No 1006/2011 of 27 September 2011 (OJ 2011 L 282, p. 1) and in the version resulting from Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 (OJ 2012 L 304, p. 1), contained heading 7307, which was structured as follows:

'7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel:
	– Cast fittings:
7307 11	– – Of non-malleable cast iron:
7307 11 10	– – – Of a kind used in pressure systems
7307 11 90	– – – Other
7307 19	– – Other:
7307 19 10	– – – Of malleable cast iron
7307 19 90	– – – Other
	– Other, of stainless steel:
…	
	– Other:'

7 Under Article 9(1) of Regulation No 2658/87, the Commission is to adopt explanatory notes to the CN.

8 The explanatory notes to the CN published in the *Official Journal of the European Union* on 6 May 2011 (OJ 2011 C 137, p. 1), relating to subheadings 7307 11 10 and 7307 11 90 of the CN, stated:

'The expression "non-malleable" includes lamellar graphite cast iron.

These subheadings cover cast-iron fittings, such as elbows, bends, sleeves, ties, collars and tees. They are connected to tubes or pipes of cast iron or steel by screwing, contact or by mechanical assembly.'

9 According to the explanatory notes relating to subheading 7307 19 10:

'Malleable cast iron is an intermediate product between lamellar graphite iron (grey iron) and cast steel. It can be easily cast and becomes tough and malleable after suitable heat treatment. During the heat treatment, the carbon partly disappears or changes its make-up; it finally deposits in the form of nodules which do not impair metallic cohesion to such an extent as the graphite flakes in grey cast iron.

Where the carbon content is 2% or less by weight, the products are regarded as being of cast steel and fall in subheading 7307 19 90 (see note 1 to this chapter).

The expression malleable includes spheroidal graphite cast iron.

…'

10 By the explanatory notes to the CN published in the *Official Journal of the European Union* on 4 January 2019 (OJ 2019 C 2, p. 2), first, the third paragraph of the explanatory note relating to subheading 7307 19 10 was deleted from it. Secondly, the new explanatory note relating to subheading 7307 19 90 was added, stating that that subheading includes fittings of spheroidal graphite cast iron.

– *The Taric*

11 Article 2 of Regulation No 2658/87 provides:

‘An Integrated Tariff of the European Communities, hereinafter referred to as the “Taric”, which meets the requirements of the Common Customs Tariff, external trade statistics, the commercial, agricultural and other Community policies concerning the importation or exportation of goods, shall be established by the Commission.

The tariff shall be based on the [CN] and include:

(a) the measures contained in this Regulation;

(b) the additional Community subdivisions, referred to as “Taric subheadings”, which are needed for the implementation of specific Community measures listed in Annex II;

…’

12 The EU measures provided for in Article 2 of that regulation include, in point 5 of Annex II thereto, in particular, anti-dumping duties.

13 Taric code 7307 19 10 10 applied to threaded tube or pipe cast fittings, of malleable cast iron.

Anti-dumping legislation

– *The Basic Regulation*

14 Article 1(1), (2) and (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) (‘the Basic Regulation’), provided:

‘1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

…

4. For the purpose of this Regulation, “like product” means a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product,

another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.'

15 Under Article 5 of that regulation, entitled 'Initiation of proceedings':

'1. Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.

…

2. A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

(a) the identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant. Where a written complaint is made on behalf of the Community industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers;

(b) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(c) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Community;

(d) information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in Article 3(3) and (5).

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

…

9. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall do so within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Union*. …

10. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(5).

…'

16 Article 6 of the that regulation, entitled 'The investigation', provided, in paragraphs 1 and 5 thereof:

'1. Following the initiation of the proceeding, the Commission, acting in cooperation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously. …

…

5. The interested parties which have made themselves known in accordance with Article 5(10) shall be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Union*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceedings and that there are particular reasons why they should be heard.'

17 Article 7 of the Basic Regulation, entitled 'Provisional measures', provided, in paragraph 1 thereof:

'Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.'

18 Article 9 of that regulation, entitled 'Termination without measures; imposition of definitive duties', provided, in paragraph 4 thereof:

'Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. Where provisional duties are in force, a proposal for definitive action shall be submitted no later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.'

– *The Provisional Regulation*

19 The wording of recitals 1, 2, 16, 19 and 28 of the Provisional Regulation was as follows:

‘(1) On 16 February 2012, [the Commission] announced, by a notice published in the *Official Journal of the European Union* [OJ 2012 C 44, p. 33] (Notice of Initiation[; ‘the Notice of Initiation’]), the initiation of an anti-dumping proceeding with regard to imports into the Union of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People’s Republic of China …, Thailand and Indonesia (the countries concerned).

(2) The proceeding was initiated as a result of a complaint lodged on 3 January 2012 by the Defence Committee of Tube or Pipe Cast Fittings, of Malleable Cast Iron of the European Union … on behalf of producers representing more than 50%, of the total Union production of threaded tube or pipe cast fittings of malleable cast iron (“threaded malleable fittings”). The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

…

(16) The product concerned as described in the Notice of Initiation is threaded tube or pipe cast fittings, of malleable cast iron …, currently falling within CN code ex 7307 19 10.

…

(19) The product concerned and the product produced and sold on the domestic market of the [People’s Republic of China], Thailand and Indonesia, and on the domestic market of India, which served as an analogue country, as well as the product manufactured and sold in the Union by the Union industry were found to have the same basic physical and technical characteristics. They are therefore provisionally considered as alike within the meaning of Article 1(4) of the basic Regulation (the like product).

…

(28) The authorities of one of the Member States pointed out the fact that, according to the explanatory notes to the [CN], the expression “malleable” includes spheroidal graphite cast iron (identical to ductile cast iron). While no sales of threaded fittings made from ductile cast iron were reported by any interested party during [the investigation period], there is evidence that this is possible. As these fittings have the same basic physical characteristics as the threaded malleable fittings investigated, it is considered appropriate to clarify that ductile iron products are falling within the scope of the proceeding and the measures.’

20 Article 1(1) of that regulation stated:

‘A provisional anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People’s Republic of China and Thailand.’

– *The Definitive Regulation*

21 The wording of recitals 12 and 13 of the Definitive Regulation was as follows:

‘(12) In view of the above, it was deemed appropriate to revise the product scope definition determined in the provisional Regulation. Therefore, the product concerned is definitively defined as threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without a lid.

(13) In the absence of any other comments concerning the product concerned and the like product, the findings in recitals 17 to 21 and 23 to 28 to the provisional Regulation are hereby confirmed.’

22 Article 1(1) of the Definitive Regulation stated:

‘A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People’s Republic of China … and Thailand.’

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

23 Profit Europe and Gosselin are both Belgian companies. The former imports tube or pipe fittings of cast iron, while the latter provides customs declaration services. Both are, inter alia, being prosecuted for having evaded, during the importation of tube or pipe fittings, of spheroidal graphite cast iron, from China during the period from 19 November 2012 to 30 June 2015, payment of anti-dumping duties in the amount of EUR 651 954.11 by declaring those fittings under an incorrect tariff heading and designation, namely subheading 7307 11 10 of the CN, corresponding to fittings of non-malleable cast iron.

24 In that context, the Centrale Administratie der Douane en Accijnzen (Central Administration of Customs and Excise, Belgium), by decisions of 30 March 2015 and 9 April 2015, took the view that those products fell within subheading 7307 19 10 of the CN and within Taric code 7307 19 10 90 (‘tube or pipe cast fittings, of malleable cast iron, unthreaded’). Those decisions referred to the explanatory notes to the CN relating to subheading 7307 19 10, stating that the term ‘malleable cast iron’ also covers spheroidal graphite cast iron, and to the conclusions of the 140th meeting of the Customs Code Committee, which took place from 30 September to 3 October 2014, confirming, in essence, the broad understanding of that term.

25 Its administrative appeals having remained unsuccessful, Profit Europe brought an action on 10 May 2016 before the Nederlandstalige Rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking), Belgium) against each of those decisions.

26 Furthermore, on 24 February 2017, criminal proceedings were brought against Profit Europe and Gosselin before the Rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen (Court of First Instance, Antwerp Division, Antwerp, Belgium), in particular for having declared goods under an incorrect tariff heading and an incorrect designation.

27 While those criminal proceedings were ongoing, the Nederlandstalige Rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking)) made, on 16 June 2017, requests for a preliminary ruling to the Court in two cases which gave rise to the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564).

28 In that judgment, the Court held that cast tube or pipe fittings, of spheroidal graphite cast iron, must be classified under the residual subheading 7307 19 90 of the CN ('other cast tube or pipe fittings, of cast iron or steel').

29 Following the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), the Belgian State withdrew its support for the position that it had defended until that point before the Nederlandstalige rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking)) and Profit Europe was granted procedural compensation.

30 By a judgment of 28 March 2019, the Rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen (Court of First Instance, Antwerp Division, Antwerp), first, acquitted Profit Europe and Gosselin of the charges relating to the declaration under an incorrect tariff heading and an incorrect designation and, secondly, dismissed the tax proceedings of the Central Administration of Customs and Excise.

31 On 16 April 2019, the Openbaar Ministerie (Public Prosecutor's Office, Belgium) and the Federale Overheidsdienst Financiën (Federal Public Service Finance) brought an appeal against that judgment before the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium).

32 By a decision of 18 June 2020, that court, pursuant to Article 267 TFEU, made a request to the Court for a preliminary ruling concerning the interpretation of the Anti-dumping Regulations.

33 In the judgment of 15 July 2021, *Profit Europe and Gosselin Forwarding Services* (C-362/20, EU:C:2021:612), the Court ruled that those regulations must be interpreted as meaning that the provisional and definitive anti-dumping duties imposed by those regulations apply to threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in China.

34 Before the hof van beroep te Antwerpen (Court of Appeal, Antwerp), which is the referring court in the present case, Profit Europe and Gosselin claim that those same regulations, in so far as they impose anti-dumping duties on threaded tube or pipe cast fittings of spheroidal graphite cast iron, even though they exclusively refer to those of 'malleable' case iron, are invalid on the ground that they infringe Articles 1, 5, 6 and 9 of the Basic Regulation.

35 The referring court notes that the reference in the Provisional Regulation, under the title 'Like product', to 'ductile cast iron' products, a phrase which also describes spheroidal graphite cast iron, comes neither from the complaint lodged on 3 January 2012 by the Defence Committee of Tube or Pipe Cast Fittings, of Malleable Cast Iron of the European Union nor from the Notice of Initiation, but from a comment made by a Member State at the end of the Commission's investigation.

36 That court infers that fittings, of ductile cast iron – which, as the Court found in its judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), differs from malleable cast iron in terms of its composition and method of production – have not been subject to an anti-dumping investigation. Accordingly, it reasons, the Commission did not have any data allowing it to ascertain whether the imports of tube or pipe fittings, of ductile cast iron, were

dumped in the European Union, whether that dumping caused injury and whether it was in the interest of the European Union to subject those imports to anti-dumping measures. In particular, it is not apparent from the Provisional Regulation that the Commission had the data necessary to ascertain the normal value and the export price, or to calculate the dumping margins.

37 That court harbours doubts as to whether, in the absence of those data, the Commission could simply extend to tube or pipe fittings of ductile cast iron the findings of the anti-dumping investigation carried out exclusively on the basis of tube or pipe fittings of malleable cast iron.

38 In those circumstances, the hof van beroep te Antwerpen (Court of Appeal, Antwerp) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Do [the Provisional and Definitive Regulations] violate Articles 1, 5, 6 and 9 of [the Basic Regulation], in so far as they subject imports of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in [China] to anti-dumping duties upon import, [even though] neither the complaint for the initiation of an anti-dumping proceeding nor the notice of initiation of the anti-dumping [proceeding] identified such goods as the product concerned, no evidence of dumping, injury and a causal link was produced and the European Commission did not in any way investigate their normal value, export price, possible margin of dumping, possible injury, the extent of the injury, the impact of other known factors on the injury, the causal link between dumping and injury and the need to subject those goods (threaded tube or pipe cast fittings) to anti-dumping duties in the interest of the [European] Union?'

Consideration of the question referred

39 By its question, the referring court asks, in essence, whether the Provisional Regulation and the Definitive Regulation are invalid in the light of Articles 1, 5, 6 and 9 of the Basic Regulation in so far as they subject imports of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in China to anti-dumping duties, even though the complaint, the Notice of Initiation and the subsequent investigation concerned only threaded tube or pipe cast fittings of malleable cast iron.

40 Under Article 1(1) of the Basic Regulation, an anti-dumping duty may be applied to a dumped product of which the release for free circulation in the European Union causes injury. Paragraph 2 of that article states that a product is to be considered as being dumped if its export price to the European Union is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

41 Article 5 of the Basic Regulation sets out the conditions for initiating an investigation to determine the existence, degree and effect of potential dumping. When the investigation is initiated as a result of a complaint, Article 5(2) of that regulation provides that the complaint must include, inter alia, a complete description of the allegedly dumped product and evidence of dumping of that product and of resultant injury to EU industry. In accordance with Article 5(10) of the same regulation, the notice of initiation of the proceedings, which announces the initiation of an investigation, indicates, inter alia, the product concerned and gives a summary of the information received.

42 Article 6 of the Basic Regulation defines the rules and procedures applicable during the investigation.

43 Under Article 9(4) of that regulation, where the facts as finally established show that there is dumping and injury caused thereby, and the European Union interest calls for intervention in accordance with Article 21 thereof, a definitive anti-dumping duty is to be imposed.

44 It is thus apparent from Article 1 and Article 9(4) of the Basic Regulation that anti-dumping measures may be imposed only on products which have been subject to an anti-dumping investigation and which have been found to be exported to the European Union at a price which is lower than that of like products in the exporting country (see, to that effect, judgment of 15 July 2021, *Profit Europe and Gosselin Forwarding Services*, C-362/20, EU:C:2021:612, paragraph 53 and the case-law cited).

45 In order to answer the question referred, it is therefore necessary to ascertain whether threaded tube or pipe cast fittings, of spheroidal graphite cast iron, fell, as is required by the Basic Regulation, within the definition of the product concerned by the investigation, as was set out in point 2 of the Notice of Initiation.

46 In that regard, it should be recalled that, following the complaint relating to threaded tube or pipe cast fittings, of malleable cast iron, the Commission, on 16 February 2012, published the Notice of Initiation of which point 2 defines the product subject to the investigation as 'threaded tube or pipe cast fittings, of malleable cast iron'. Point 3 of that notice specified that the product allegedly being dumped fell within subheading 7307 19 10 of the CN, while stating that that subheading was being given 'for information only'.

47 In the first place, as the Court has held, in paragraphs 73 and 74 of the judgment of 15 July 2021, *Profit Europe and Gosselin Forwarding Services* (C-362/20, EU:C:2021:612), it follows from Article 20(2) of the Community Customs Code that the measures prescribed by specific EU provisions in the context of trade in goods, other than duties legally owed where a customs debt is incurred – anti-dumping duties in particular – are only, 'where appropriate', to be applied according to the tariff classification of those goods. Accordingly, a judgment of the Court which, as is the case in the judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), relates solely to the tariff classification of a product, which is moreover covered by the Anti-dumping Regulations, cannot, as such, have an impact on the scope of those regulations. The latter judgment cannot therefore support the finding that threaded tube or pipe cast fittings, of spheroidal graphite cast iron, were not covered by the anti-dumping investigation concerned.

48 In the second place, it must be recalled that, for the length of the period from the lodging of the complaint to the adoption of the Definitive Regulation, the explanatory notes to the CN relating to subheading 7307 19 10, into which fall cast fittings of malleable cast iron, stated that the term 'malleable cast iron', within the meaning of that subheading, also covered spheroidal graphite cast iron.

49 It is also apparent from those explanatory notes that the concept of 'malleable cast iron', within the meaning of those notes, had to be understood as contrasting with non-malleable cast iron.

50 It should be borne in mind that malleability refers, in material science, to a material's ability to deform under compressive stress and that spheroidal graphite cast iron is, to a certain degree, deformable under such stress (see, to that effect, judgment of 12 July 2018, *Profit Europe*, C-397/17 and C-398/17, EU:C:2018:564, paragraphs 40 and 43). Spheroidal graphite cast iron may therefore be classified as 'malleable'.

51 It follows from the considerations set out in paragraphs 48 to 50 above that the concept of 'malleable cast iron', within the meaning of point 2 of the Notice of Initiation, included spheroidal graphite cast iron, with the result that threaded tube or pipe cast fittings, of spheroidal graphite cast iron, were simply a variant of the 'product' concerned, within the meaning of Article 5(2)(b) and (10) of the Basic Regulation.

52 In that regard, it must be emphasised that the concept of 'product … considered as being dumped', within the meaning of Article 1(2) of the Basic Regulation, does not necessarily refer to a product envisaged as a homogeneous whole. By contrast, for the purpose of determining the meaning of that concept in a specific case, it is relevant that the product considered relate to a set of products which share the same essential physical and technical characteristics (see, to that effect, judgment of 17 March 2016, *Portmeirion Group*, C-232/14, EU:C:2016:180, paragraphs 38 to 42 and 48).

53 Threaded tube or pipe cast fittings, whether they are made of 'malleable cast iron' or 'spheroidal graphite cast iron', have the same essential physical characteristics (see, to that effect, judgment of 15 July 2021, *Profit Europe and Gosselin Forwarding Services*, C-362/20, EU:C:2021:612, paragraph 63), with the result that, as the Commission maintained at the hearing, they are fundamentally intended for the same uses and are interchangeable.

54 Accordingly, threaded tube or pipe cast fittings, of spheroidal graphite cast iron, fall within the definition of the product alleged in the complaint to have been dumped and within that of the product subject to the investigation. It follows that the data collected in the course of that investigation, and the findings concerning dumping, injury, causal link and the interest of the European Union to which the original investigation led in respect of threaded tube or pipe cast fittings of malleable cast iron, also concerned threaded tube or pipe cast fittings of spheroidal graphite cast iron.

55 It should also be noted that, according to recital 28 of the Provisional Regulation, threaded fittings made from 'ductile cast iron' fell within the scope of the proceeding and the measures, since fittings made from ductile cast iron have the same essential physical characteristics as threaded fittings made from malleable cast iron. First, it was also specified, in most language versions of that recital 28, that spheroidal graphite cast iron is identical to ductile cast iron. Secondly, it is apparent from recital 13 of the Definitive Regulation that no comment concerning the product concerned had been made, with the result that the findings contained in, inter alia, the said recital 28 were confirmed.

56 It follows from those findings that the premiss on which the question referred is based, namely that threaded tube or pipe cast fittings, of spheroidal graphite cast iron, were not subject to the anti-dumping proceeding concerned, is incorrect, with the result that the referring court's doubts as to the validity of the Anti-dumping Regulations in the light of Articles 1, 5, 6 and 9 of the Basic Regulation are unfounded.

57 Having regard to all the foregoing considerations, the answer to the question referred is that consideration of that question has disclosed no factor of such a kind as to affect the validity of the Anti-dumping Regulations in the light of Articles 1, 5, 6 and 9 of the Basic Regulation.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Consideration of the question referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand, or Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia, in the light of Articles 1, 5, 6 and 9 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

[Signatures]