Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber)

2 May 2022 *

(Action for annulment – Dumping – Imports of aluminium extrusions originating in China – Act imposing a definitive anti-dumping duty – Importer – Regulatory act entailing implementing measures – Act not of individual concern – Inadmissibility)

In Case T-328/21,

Airoldi Metalli SpA, established in Molteno (Italy), represented by M. Campa, M. Pirovano, D. Rovetta, G. Pandey, P. Gjørtler and V. Villante, lawyers,

applicant,

v

European Commission, represented by G. Luengo and P. Němečková, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber),

composed of S. Gervasoni (Rapporteur), President, R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure, in particular:

– the objection of inadmissibility raised by the Commission by document lodged at the Court Registry on 30 September 2021,

– the applicant's observations on the objection of inadmissibility lodged at the Court Registry on 14 November 2021,

makes the following

* Language of the case: English.

Order [1]

1 By its action under Article 263 TFEU, the applicant, Airoldi Metalli SpA, seeks annulment of Commission Implementing Regulation (EU) 2021/546 of 29 March 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of aluminium extrusions originating in the People's Republic of China (OJ 2021 L 109, p. 1; 'the contested regulation').

…

Law

…

Whether the contested regulation entails implementing measures

…

19 It is settled case-law that the existence of implementing measures for the contested regulation, under the fourth paragraph of Article 263 TFEU, must be examined in the light of the objective which that provision pursues, namely to enable natural and legal persons to bring an action against acts of general application which are not legislative acts, which are of direct concern to them and which do not entail implementing measures, thereby avoiding a situation in which such a person would have to break the law in order to have access to justice (order of 21 January 2014, *Bricmate* v *Council*, T-596/11, not published, EU:T:2014:53, paragraph 66; see, to that effect, judgment of 18 October 2018, *Internacional de Productos Metálicos* v *Commission*, C-145/17 P, EU:C:2018:839, paragraph 49).

20 It is therefore necessary to examine whether the regulatory act of the European Union is implemented by another act which may be challenged by the person to whom it is addressed either before the General Court or before the courts and tribunals of the Member States (see, to that effect, judgment of 18 October 2018, *Internacional de Productos Metálicos* v *Commission*, C-145/17 P, EU:C:2018:839, paragraphs 50 and 51, and order of 21 January 2014, *Bricmate* v *Council*, T-596/11, not published, EU:T:2014:53, paragraph 67).

…

23 It is therefore necessary to determine in the present case, in accordance with the case-law pursuant to which, first, regard must be had to the position of the person pleading the right to bring proceedings and, secondly, reference should be made exclusively to the subject matter of the action (judgment of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraphs 30 and 31, and order of 12 January 2017, *Amrita and Others* v *Commission*, C-280/16 P, not published, EU:C:2017:9, paragraphs 36 and 37), whether the contested regulation, the purpose of which is to impose anti-dumping duties to be paid by importers, entails implementing measures with regard to the applicant, which is an importer of the product concerned.

[1] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

24 It is apparent from settled case-law, arising under the provisions of the Community Customs Code dating from 1992 (Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended, 'the 1992 Customs Code') and reproduced pursuant to the provisions of the 2013 Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 establishing the Union Customs Code (OJ 2013 L 269, p. 1), as amended 'the 2013 Customs Code'), applicable to the present case, that regulations which impose definitive anti-dumping duties entail implementing measures with regard to importers liable to pay those duties consisting in the communication or notification to the importer of the customs debt to which those duties give rise (judgment of 18 October 2018, *Rotho Blaas*, C-207/17, EU:C:840, paragraphs 38 and 39; orders of 5 February 2013, *BSI* v *Council*, T-551/11, not published, EU:T:2013:60, paragraph 53; of 21 January 2014, *Bricmate* v *Council*, T-596/11, not published, EU:T:2014:53, paragraph 72; of 7 March 2014, *FESI* v *Council*, T-134/10, not published, EU:T:2014:143, paragraph 33; judgment of 19 May 2021, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, T-254/18, under appeal, EU:T:2021:278, paragraph 116; and order of 14 September 2021, *Far Polymers and Others* v *Commission*, T-722/20, not published, EU:T:2021:598, paragraph 66).

25 In particular, in order to implement Article 14(1) of the basic regulation, under which definitive anti-dumping duties are to be collected by Member States, Article 101(1) of the 2013 Customs Code provides that 'the amount of import or export duty payable shall be determined by the customs authorities responsible for the place where the customs debt is incurred', without any exception for definitive anti-dumping duties being provided for in that regard. In addition, pursuant to Article 104(1) of that code, the customs authorities referred to in Article 101 are to enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that article. Lastly, Article 102 of the Customs Code provides, in paragraph 1, that the customs debt is to be notified to the debtor by the customs authorities in the form prescribed at the place where the customs debt is incurred, and states, in paragraph 2, that where the amount of duty payable is equal to the amount entered in the customs declaration, release of the goods by the customs authorities is to be equivalent to notifying the debtor of the customs debt.

26 Contrary to what the applicant claims, it cannot therefore be inferred from the amendment of the customs legislation that, under the 2013 Customs Code, which is applicable in the present case, regulations imposing definitive anti-dumping duties no longer entail implementing measures with regard to importers. That is all the more so since the provisions of the 2013 Customs Code, referred to in paragraph 25 above, differ very little from those previously in force. The determination of the amount of duty by the national customs authorities, the communication of that amount to the debtor by those authorities and the fact that release of the goods is equivalent to communicating the customs debt to the debtor where the amount of that debt is equal to the amount declared by the importer were already provided for by Articles 217 and 221 of the 1992 Customs Code.

27 Those considerations are not called into question by the applicant's argument that that analysis fails to take account of the introduction by Title IX of the 2013 Customs Code of 'electronic systems' for the purposes of implementing that code.

28 Admittedly, it is clear from the provisions of Title IX of the 2013 Customs Code and from the provisions adopted by the Commission pursuant to Title IX that 'exchanges of information, such as declarations, applications or decisions, between customs authorities and between economic operators and customs authorities … as required under the customs legislation, shall be made using electronic data-processing techniques' (Article 6(1) of the 2013 Customs Code).

29 Nevertheless, as is clear from the very wording of that provision and as is also apparent from the provisions of the 2013 Customs Code referred to in paragraph 25 above, that computerisation concerns exchanges between economic operators and customs authorities and does not as such mean, in any case, that imports of products and the payment of anti-dumping duties henceforth involve only economic operators without any subsequent involvement by national customs authorities.

30 The documents provided in that regard by the applicant serve only to support that interpretation. First, it is clear from the description by a customs broker of the process for making a customs declaration and determining the duty payable, which was provided by the applicant as an annex to its observations on the objection of inadmissibility, that, following the entry into the electronic customs system – which, it is not disputed, is the responsibility of the national customs authorities – of the customs declaration including, inter alia, the importer's calculation of the amount of duty, that system generates an acceptance of the declaration by allocating a release code which allows the goods concerned to be released for free circulation. Secondly, it should be pointed out that the customs declarations produced as an annex to the applicant's observations on the objection of inadmissibility are accompanied by documents drawn up by the Italian customs authorities (Agenzia Dogane Monopoli) containing, inter alia, a number of codes.

31 It follows that the contested regulation can have effect only after the importer makes a customs declaration (see, *a contrario*, judgment of 14 January 2016, *Doux* v *Commission*, T-434/13, not published, EU:T:2016:7, paragraphs 60 to 64), which is itself necessarily followed by a measure adopted by the national customs authorities. It is true that, in most cases and where there is no control, this is limited to the electronic communication referred to above and that the involvement of those authorities in the form of a control, followed in that event by communication of the results of the control and any rectified amount of the duty payable, is more infrequent. However, even where the national authorities' involvement is limited to that electronic communication, the fact remains that a measure is thus adopted by those authorities. The absence of control of the applicant's goods, relied on by the applicant in the present case, is therefore irrelevant.

32 The applicant's claim that the national customs authorities are left with no discretion in their implementation of the contested regulation where they opt not to carry out a control is also irrelevant. Apart from the fact that that claim could be considered to reflect recognition of the need for implementation by the national authorities, it should be borne in mind that, in accordance with settled case-law, lack of discretion is a factor to be examined for the purpose of determining whether the condition that an applicant is directly concerned has been satisfied, which, in accordance with the wording of the fourth paragraph of Article 263 TFEU, constitutes a condition that is distinct from the requirement for an act which does not entail implementing measures (see, to that effect, judgment of 18 October 2018, *Internacional de Productos Metálicos* v *Commission*, C-145/17 P, EU:C:2018:839, paragraph 54 and the case-law cited, and order of 21 January 2014, *Bricmate* v *Council*, T-596/11, not published, EU:T:2014:53, paragraph 74 and the case-law cited).

33 In addition, to infer from the automation introduced by the 2013 Customs Code that the contested regulation does not entail implementing measures would amount to making assessment of the legal criterion of there being no implementing measures for an act subject to purely technical circumstances. Such a simplification of a substantive nature, which, moreover, is justified by the national authorities' lack of discretion, cannot have such consequences (see, to that effect, order of 5 February 2013, *BSI* v *Council*, T-551/11, not published, EU:T:2013:60, paragraph 49).

34 It should be noted, moreover, that it is clear from Article 44 of the 2013 Customs Code, as from the provisions previously in force (Articles 243 to 245 of the 1992 Customs Code), that decisions taken by the customs authorities relating to the application of the customs legislation may be appealed, in accordance with the procedure laid down for that purpose by the Member State in question pursuant to that provision, with, where relevant, the illegality of the regulation imposing anti-dumping duties being pleaded before the national courts, which may, before giving judgment, have recourse to the provisions of Article 267 TFEU (see, to that effect, order of 14 September 2021, *Far Polymers and Others* v *Commission*, T-722/20, not published, EU:T:2021:598, paragraphs 67 and 68 and the case-law cited).

35 It follows from all of the foregoing that the contested regulation entails implementing measures with regard to the applicant, with the result that, in order for its action to be declared admissible, the applicant must show that that regulation is of individual concern to it.

…

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

1. The action is dismissed as inadmissible.

2. Airoldi Metalli SpA shall pay the costs.

Luxembourg, 2 May 2022.

E. Coulon
Registrar

S. Gervasoni
President