



Reports of Cases

Case C-371/14

APEX GmbH Internationale Spedition
v
Hauptzollamt Hamburg-Stadt

(Request for a preliminary ruling from the Finanzgericht Hamburg)

(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(EU) No 260/2013 — Validity — Extension of an anti-dumping duty at a date on which the regulation which imposed it is no longer in force — Change in the pattern of trade)

Summary — Judgment of the Court (Fourth Chamber), 17 December 2015

1. *Questions referred for a preliminary ruling — Jurisdiction of the national court — Determination of the need for a preliminary ruling and the relevance of the questions referred — Questions concerning the validity of a EU law — No obligation for the Court to evaluate the validity of EU law on a ground relied on by one of the parties to the main proceedings which is not referred to by the referring court*

(Art. 267 TFEU)

2. *Common commercial policy — Protection against dumping — Circumvention — Extension of an antidumping duty — Validity of Regulation No 260/2013 — Adoption, after expiry of the antidumping duty, of a regulation retroactively extending that duty — Lawfulness — Conditions*

(Council Regulations No 1458/2007, No 1225/2009, Art. 13, and No 260/2013)

3. *Common commercial policy — Protection against dumping — Discretion of the institutions — Judicial review — Limits*

(Council Regulations No 1225/2009 and No 260/2013)

4. *Common commercial policy — Protection against dumping — Circumvention — Extension of the antidumping duty — Validity of Regulation No 260/2013 — Determination of whether there was a circumvention — Burden of proof on the Commission — Establishing a circumvention on the basis of a body of sufficiently consistent evidence — Lawfulness — Lack of a body of sufficiently consistent evidence — Invalidity of the agreement*

(Council Regulations No 1225/2009, Arts 13(3) and 18(1) and (6) and No 260/2013)

1. See the text of the decision.

(see paras 36-38)

2. The validity of Council Implementing Regulation No 260/2013, extending the definitive anti-dumping duty imposed by Regulation 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 not affected by the fact that Regulation No 260/2013 was adopted at a time when Regulation No 1458/2007 was no longer in force.

In order to determine the scope of a provision of EU law, in this case Article 13 of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community, the wording, context and objectives of that provision must all be taken into account.

In that respect, Article 13 of Regulation No 1225/2009 must be interpreted as not precluding 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 Regulation No 1225/2009, 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.

(see paras 42, 55, 58, 59)

3. See the text of the decision.

(see paras 61)

4. In the context of an investigation into the possible circumvention of antidumping measures imposed, it follows from Article 18 of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community 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 who does not cooperate or does not cooperate fully less favourably than if it had cooperated, the EU institutions are authorised to conclude on the basis of a body of consistent evidence that there was a circumvention for the purposes of Article 13(1) of the Regulation No 1225/2009.

On the basis of data available in accordance with Article 18 of Regulation No 1225/2009, it is stated in Council Implementing Regulation No 260/2013, extending the definitive anti-dumping duty imposed by Regulation 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, that the volume of imports of the product concerned from the People's Republic of China (PRC) to the European Union was weak during 2007 and that the volume of imports of that product from Vietnam to the European Union strongly increased with effect from the same year. It is, by contrast, apparent from Regulation No 260/2013 that the exports of lighter parts from the PRC to Vietnam increased from 1999.

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 European Union from Vietnam.

In those circumstances, it cannot be held that the EU institutions relied on a body of sufficiently consistent evidence, enabling them to find that there was a circumvention, within the meaning of Article 13(1) of Regulation No 1225/2009. Regulation No 260/2013 must be declared invalid.

(see paras 68, 75-78, operative part)