Reports of Cases

Case C-207/17

Rotho Blaas Srl
v
Agenzia delle Dogane e dei Monopoli

(Request for a preliminary ruling from the Commissione tributaria di primo grado di Bolzano)

Reference for a preliminary ruling — Common commercial policy — Definitive anti-dumping duty on imports of certain goods originating in the People's Republic of China — Anti-dumping duty held to be incompatible with the General Agreement on Tariffs and Trade by the Dispute Settlement Body of the World Trade Organisation (WTO))

Summary — Judgment of the Court (First Chamber), 18 October 2018

1. *Questions referred for a preliminary ruling — Assessment of validity — Question on the validity of a regulation which was not challenged on the basis of Article 263 TFEU — Dispute in the main proceedings brought by a company whose standing to bring an annulment action is questionable — Admissibility*

   (Art. 263, fourth para., TFEU and 267(b) TFEU)

2. *International agreements — Agreement establishing the World Trade Organisation — GATT 1994 — Not possible to invoke WTO agreements to challenge the legality of an EU measure — Exceptions — EU measure intended to ensure its implementation or referring thereto expressly and precisely — None*

   (General Agreement on Tariffs and Trade 1994, Article VI; Council Regulation No 91/2009; Council Implementing Regulation No 924/2012; Commission Implementing Regulation 2015/519)

1. See the text of the decision.

(see paras 28-41)

2. As regards the WTO agreements, it is clear from settled case-law that, taking account of their nature and structure, they are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the EU institutions (see, in particular, judgments of 23 November 1999, *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraph 47; of 1 March 2005, *Van Parys*, C-377/02, EU:C:2005:121, paragraph 39; and of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74. paragraph 85).

It is only in two exceptional situations, which are the result of the EU legislature's own intention to limit its discretion in the application of the WTO rules, that the Court has accepted that it is for the Courts of the European Union, if necessary, to review the legality of an EU measure and of the

measures adopted for its application in the light of the WTO agreements or a decision of the DSB establishing non-compliance with those agreements (see, to that effect, judgment of 16 July 2015, *Commission* v *Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraph 40).

The first such situation is where the European Union intends to implement a particular obligation assumed in the context of those WTO agreements and the second is where the EU act at issue refers explicitly to specific provisions of those agreements (judgment of 16 July 2015, *Commission* v *Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraph 41 and the case-law cited).

Therefore, it is in the light of those criteria that it must be determined in the present case whether the validity of the contested regulations may be examined having regard to Article VI of the GATT 1994 and the DSB decision of 28 July 2011.

First of all, as regards Regulation No 91/2009, at issue in the main proceedings, it must be observed that that act does not expressly refer to the specific provisions of Article VI of the GATT 1994, and there is no evidence that, by adopting that regulation, the Council intended to implement a specific obligation assumed under that agreement or, more generally, the WTO agreements.

Finally, as regards Implementing Regulations No 924/2012 and 2015/519, although those regulations reflect, to some extent, the intention of the EU to act on the DSB's decision of 28 July 2011, having regard to the exceptional nature of the situations which allow a review of legality in the light of the WTO rules, as set out in paragraph 47 of the present judgment, it is not sufficient to hold that, by adopting those regulations, the EU intended to implement a specific obligation assumed within the framework of the WTO, which may justify an exception to the principle that WTO rules cannot be relied upon before the courts of the European Union and enabling those courts to review the legality of the EU provisions at issue having regard to those rules (see, to that effect, judgments of 1 March 2005, *Van Parys*, C-377/02, EU:C:2005:121, paragraphs 42 to 48, and of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraphs 93 to 98).

In those circumstances, it cannot be held that the legality of the contested regulations may be determined in the light of Article VI of the GATT 1994 or in the light of the DSB decision of 28 July 2011.

(see paras 44, 47, 50, 52, 56)