Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

9 July 2020 *

(Reference for a preliminary ruling – Common commercial policy – Dumping – Anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China – Regulation (EC) No 91/2009 – Validity – Regulation (EC) No 384/96 – Article 2(10) and (11) – Rights of the defence)

In Case C-104/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 8 February 2019, received at the Court on 11 February 2019, in the proceedings

Donex Shipping and Forwarding BV

v

Staatssecretaris van Financiën,

THE COURT (Fourth Chamber),

Composed of M. Vilaras, President of the Chamber, S. Rodin, D. Šváby, K. Jürimäe (Rapporteur) and N. Piçarra, Judges,

Advocate General: G. Pitruzzella,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2019,

after considering the observations submitted on behalf of:

– Donex Shipping and Forwarding BV, by Y. Melin, avocat, and also by J. Biermasz, advocaat,

– the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,

– the Council of the European Union, by H. Marcos Fraile and B. Driessen, acting as Agents, and by N. Tuominen, avocate,

* Language of the case: Dutch.

– the European Commission, by M. França, T. Maxian Rusche, F. van Schaik and C.E.E. Zois, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1; 'the regulation at issue').

2 The request has been made in proceedings between Donex Shipping and Forwarding BV ('Donex') and the Staatssecretaris van Financiën (State Secretary for Finance, the Netherlands) concerning requests to pay anti-dumping duties on imports by Donex of iron or steel fasteners originating in China.

Legal context

The basic regulation

3 At the time of the facts giving rise to the adoption of the regulation at issue, the provisions governing the application of anti-dumping measures by the European Union were set out in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 (OJ 2005 L 340, p. 17) ('the basic regulation').

4 In the words of Article 1(2) of the basic regulation:

'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.'

5 Article 2(10) and (11) of that regulation provided:

'10. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are listed as follows:

…

(b) *Import charges and indirect taxes*

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community.

…

(k) *Other factors*

An adjustment may also be made for differences in other factors not provided for under subparagraphs (a) to (j) if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.

…

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community, or by a comparison of individual normal values and individual export prices to the Community on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.'

The regulation at issue

6 Following a complaint lodged on 26 September 2007 by the European Industrial Fasteners Institute (EIFI), the European Commission published on 9 November 2007 a notice of initiation of an anti-dumping proceeding concerning imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2007 C 267, p. 31).

7 The investigation covered the period between 1 October 2006 and 30 September 2007. It related to certain iron or steel fasteners, other than of stainless steel ('the product concerned').

8 On 4 August 2008, all the interested parties were provided with an information document detailing the preliminary findings at that stage of the investigation and inviting them to comment on those findings.

9 On 18 September 2008, an adversarial meeting was held. All interested parties that had made submissions regarding the definition of the product concerned attended that meeting.

10 At the beginning of the investigation, the classification of the product concerned was based on the product control numbers. Following the adversarial meeting, it was decided that a distinction between standard and special fasteners, which was not originally part of that classification, should be added to the product characteristics being considered for the dumping and injury

margin calculations (recital 51 of the regulation at issue). Since several importers and Chinese exporting producers claimed that the fasteners produced in the analogue country were not comparable to the fasteners exported to the Community by the Chinese producers, the investigation showed that both special and standard products were produced and sold in India and that those fasteners had the same basic physical and technical characteristics as products exported from China (recital 56 of that regulation).

11 It was concluded, in recital 57 of the regulation at issue, that the fasteners produced and sold by the Community industry in the Community, fasteners produced and sold on the domestic market in China and those produced and sold on the domestic market in India, which had served as an analogue country, and fasteners produced in China and sold to the Community were alike within the meaning of Article 1(4) of the basic regulation.

12 In the regulation at issue, normal value, in the case of Chinese exporting producers not benefiting from market economy treatment, was established on the basis of the information received from a producer in the analogue country. India served as an analogue country in view of the conditions of competition and openness of the Indian market and the fact that the cooperating Indian producer sold product types comparable to those exported by the Chinese exporting producers (recital 91 of that regulation).

13 In that context, recitals 97 and 98 of the regulation at issue state:

> ‘(97) One of the companies granted individual examination and some importers claimed that the normal value obtained from a single producer in India, which allegedly does not produce similar types of fasteners as the company in question, would not provide for the best basis for a proper comparison. Therefore it suggested that, as provided for by Article 2(7)(a) of the basic regulation, the normal value should be calculated “on any other reasonable basis”, in this case on the basis of the exporters’ own figures, adjusted for the alleged distortions in raw material costs.
>
> (98) The above claim was rejected, since it was found that the Indian producer, as mentioned in recital 91, also sold types of fasteners which were comparable to those exported by the PRC exporting producers. In addition, as explained in recital 103, appropriate adjustments affecting price comparability were made to the normal value.’

14 As regards the comparison of the normal value and export prices, recitals 101 to 104 of the regulation at issue state:

> ‘(101) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
>
> (102) The price comparison between the fasteners exported from [China] and those sold on the Indian market by the Indian cooperating producer was made by distinguishing between standard and special fastener types.

(103) In addition, based on evidence collected on the spot, the quality control procedures applied by the Indian producer whose data was used for establishing the normal value were more advanced than those observed at the Chinese cooperating exporting producers who produced and exported mainly standard types of fasteners. In these cases an adjustment based on the cost of quality control found at the Indian producer was made to the Indian normal value.

(104) In addition to the above, appropriate adjustments concerning transport, insurance, handling and ancillary costs, packing, credit, and bank charges were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.'

15 For the non-cooperating companies, the countrywide dumping margin applicable to all other exporters in China was considered to amount to 115.4% of the cif Community frontier price, duty unpaid (recital 111 of the regulation at issue).

16 In recital 229 of the regulation at issue, the countrywide injury margin was evaluated as amounting to 85% of that price.

17 Article 1(1) and (2) of that regulation imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners, other than of stainless steel, originating in China. That duty came, for 'all other companies' than those named, to 85%.

18 On 28 July 2011, the Dispute Settlement Body ('the DSB') of the World Trade Organisation ('the WTO') adopted the Report of the Appellate Body established at the WTO and the Panel Report as modified by the Appellate Body Report in the dispute 'European Communities – Definitive anti-dumping measures on certain iron or steel fasteners from China' (WT/DS 397) (together, 'the 2011 reports'). In those reports, it was found that, by the regulation at issue, the European Union had infringed a number of provisions of WTO law.

Implementing Regulations (EU) No 924/2012, (EU) 2015/519 and (EU) 2016/278

19 The regulation at issue was amended by Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 (OJ 2012 L 275, p. 1), in order to correct the aspects of the former regulation found to be inconsistent by the DSB in the 2011 Reports and to bring it into conformity with the DSB recommendations and rulings.

20 Article 1 of Implementing Regulation No 924/2012 replaced the rate of the anti-dumping duty imposed by the regulation at issue for 'all other companies' by a rate of 74.1%.

21 In accordance with Article 2, that regulation entered into force on 11 October 2012.

22 The anti-dumping duty as thus amended was maintained by Commission Implementing Regulation (EU) 2015/519 of 26 March 2015 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2015 L 82, p. 78).

23 On 18 January 2016, the DSB adopted the Appellate Body Report and the Panel Report as modified by the Appellate Body Report in the dispute 'European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China – Recourse to Article 21.5 of the DSU by China' (WT/DS 397/RW) (together, 'the 2016 reports'). In those reports, it was found that, by Implementing Regulation No 924/2012, the European Union had infringed a number of provisions of WTO law.

24 Following those reports, the Commission adopted Implementing Regulation (EU) 2016/278 of February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ 2016 L 52, p. 24).

25 Article 1 of that implementing regulation repeals the anti-dumping duty imposed by the regulation at issue, as modified by Implementing Regulation No 924/2012 and maintained by Implementing Regulation 2015/519.

26 In accordance with Articles 2 and 3 of Implementing Regulation 2016/278, that repeal took effect on 28 February 2016 and does not serve as a basis for the reimbursement of the duties collected prior to that date.

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

27 In 2011, Donex filed declarations for the release into free circulation of iron or steel fasteners which it imported on behalf of a Netherlands company, which had bought them from two suppliers established in Thailand. In those declarations, Donex stated that Thailand was the country of origin of those fasteners.

28 Following an investigation by the European Anti-Fraud Office (OLAF), however, it was revealed that those fasteners actually originated in China and that they were therefore subject to the anti-dumping duty imposed by the regulation at issue.

29 Consequently, requests to pay anti-dumping duties, dated 4 June 2014, were sent to Donex. Those duties were fixed by application of the rate of 85% applicable to 'all other companies'.

30 Donex challenged those payment requests before the rechtbank Noord-Holland (District Court, North Holland, Netherlands), then on appeal before the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands). By decision of 22 December 2016, the latter court dismissed the appeal, rejecting, in particular, the arguments whereby Donex contested the validity of the regulation at issue.

31 It was against that decision that Donex appealed on a point of law to the Hoge Raad der Nederlanden (Supreme Court of the Netherlands). Before that court, Donex reiterated the arguments whereby it contested the validity of the regulation at issue.

32 That court states that the conclusions drawn in the regulation at issue must be read in the light of both the recitals of that regulation and the recitals of Implementing Regulation No 924/2012.

33 In the first place, it wonders about the validity of the regulation at issue in the light of Article 2(11) of the basic regulation, as regards the determination of the dumping margin. In its view, it follows from recitals 97 and 98 of the regulation at issue, read in conjunction with recital 109 of Implementing Regulation No 924/2012, that Chinese exports of certain types of the product concerned, for which there is no type of corresponding product manufactured and sold by the producer of the analogue country, were excluded from the calculation of the dumping margin. In the referring court's view, such an exclusion is incompatible with Article 2(11) of the basic regulation, as is apparent from the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269).

34 In that regard, the referring court wonders whether the solution reached in that judgment may be transposed to the present case and whether the illegality vitiating the regulation at issue is sufficiently serious to justify its being declared invalid.

35 In the second place, the referring court wonders about the validity of the regulation at issue in the light of Article 2(10) of the basic regulation.

36 First, it observes that the Commission refused, in the investigation that led to the adoption of Implementing Regulation No 924/2012, to make the requested adjustments, linked to the import duties, the indirect taxes on raw materials sold in the reference country and the differences in the manufacturing costs, so that it may be presumed that the regulation at issue had also failed to take such claims for adjustments into account. As the Court did not rule on that question in the case that gave rise to the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269), it is necessary to refer a question for a preliminary ruling on that point.

37 Second, the referring court wonders whether the regulation at issue is invalid on the ground that the Commission failed to provide, in a timely manner, during the investigation, the necessary information, in particular the figures of the Indian producer relating to the determination of the normal value, to the Chinese exporting producers, thus preventing them from substantiating their claims for adjustments.

38 If the Court should consider that the regulation at issue infringes Article 2(10) of the basic regulation, the question would also arise whether that infringement is sufficiently serious for that regulation to have to be declared invalid.

39 It was in those circumstances that the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is [the regulation at issue] invalid in respect of an EU importer due to the infringement of Article 2(11) of [the basic regulation] in so far as the Council [of the European Union], in determining the dumping margin for the relevant products of non-cooperating Chinese exporting producers, excluded the export transactions of certain types of the product from the comparison referred to in that article?

(2) Is [the regulation at issue] invalid in respect of an EU importer due to the infringement of Article 2(10) of [the basic regulation] in so far as, in the context of calculating the magnitude of the dumping margin for the products concerned, [the Council and the Commission] refused to take into account, when comparing the normal value of the products of an Indian

producer with the export prices of similar Chinese products, adjustments relating to import duties on raw materials and indirect taxes in the analogue country India and to differences in production (costs) and/or in so far as [the Council and the Commission], during the investigation, did not provide cooperating Chinese exporting producers (in a timely manner) with all the data of the Indian producer with regard to the determination of the normal value?'

The questions for a preliminary ruling

40 By those two questions, which should be examined together, the referring court seeks, in essence, to ascertain whether the regulation at issue is invalid on three grounds, the first alleging infringement of Article 2(11) of the basic regulation and the second and third alleging infringements of Article 2(10) of that regulation.

41 As a preliminary point, first, it should be observed that the referring court's questions concerning the validity of the regulation at issue are based, in part, on a reading of that regulation in conjunction with Implementing Regulation No 924/2012, which the Court annulled by the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269), in so far as it related to the applicants in the case that gave rise to that judgment.

42 In that regard, it is apparent from the chronology of the circumstances of the dispute in the main proceedings, as presented by the referring court, that it was in application of the regulation at issue – the only regulation applicable *ratione temporis* to those circumstances – that the anti-dumping duties, at the rate of 85%, forming the subject matter of the payment requests at issue in the main proceedings, were determined.

43 It must be borne in mind that the assessment of the validity of a measure which the Court is called upon to undertake on a reference for a preliminary ruling must normally be based on the situation which existed at the time that measure was adopted (judgments of 17 July 1997, *SAM Schiffahrt and Stapf*, C-248/95 and C-249/95, EU:C:1997:377, paragraph 46, and of 1 October 2009, *Gaz de France – Berliner Investissement*, C-247/08, EU:C:2009:600, paragraph 49).

44 It follows that both the adoption of Implementing Regulation No 924/2012 and its partial annulment by the judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council* (C-376/15 P and C-377/15 P, EU:C:2017:269), are incapable of having an impact on the validity of the regulation at issue, since both of those circumstances occurred after that regulation had been adopted.

45 Second, in so far as the parties to the main proceedings and the other interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union that submitted observations to the Court addressed the question of the impact of the 2011 and 2016 reports on the validity of the regulation at issue, it should be borne in mind that the Court has held that the validity of that regulation cannot be assessed by reference to the 2011 reports.

46 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 in the light of the WTO agreements or a decision of the DSB establishing non-compliance with those agreements. 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 18 October 2018, *Rotho Blaas*, C-207/17, EU:C:2018:840, paragraphs 47 and 48 and the case-law cited).

47 It should be observed that the regulation at issue does not refer expressly to provisions of WTO law or disclose that, in adopting that regulation, the Council intended to implement a particular obligation assumed in that context. In addition, the 2011 reports postdate that regulation and cannot therefore constitute its legal basis (judgment of 18 October 2018, *Rotho Blaas*, C-207/17, EU:C:2018:840, paragraph 51).

48 Nor, for the same reasons, can the validity of the regulation at issue be assessed by reference to the 2016 reports.

49 Those preliminary points having been made, it is appropriate to examine in turn the three grounds of invalidity put forward by the referring court.

50 In the first place, the referring court wonders whether the regulation at issue infringes Article 2(11) of the basic regulation since, in order to determine the dumping margin for the non-cooperating Chinese producers, the Council excluded from the comparison referred to in that provision the export transactions of certain types of the product concerned.

51 It should be borne in mind that Article 2(11) of the basic regulation lays down two methods for comparing the normal value and the export price for the purposes of calculating the dumping margin. According to the Court's case-law, whatever the method of comparison chosen, the Council and the Commission ('the EU institutions') are required to take into account, for the purposes of that calculation, all export transactions to the European Union relating to the product covered by the investigation, as defined at the time the investigation is initiated, and cannot therefore exclude export transactions to the European Union relating to certain types of that product (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraphs 53, 60, 61 and 68).

52 In this instance, contrary to the premiss on which the first ground of invalidity is based, it is not apparent from any recital of the regulation at issue or from any of the material in the file before the Court that, for the purposes of adopting that regulation and, more specifically, when comparing the normal price and the export price in order to calculate the dumping margin, the EU institutions excluded export transactions relating to certain types of the product under consideration.

53 On the contrary, first, both recitals 56 and 57 and recital 102 of the regulation at issue suggest that the EU institutions took into account all export transactions relating to the product concerned for the purpose of comparing the normal value and the export price. In fact, according to recitals 56 and 57 of that regulation, the investigation that led to the adoption of that regulation showed that both special fasteners and standard fasteners were produced and sold in India and that the fasteners produced and sold by the Chinese exporting producers and those produced and sold on the domestic market in India had the same basic physical and technical characteristics and that they were alike. As for recital 102 of that regulation, it mentions a distinction between standard and special fastener types.

54 No other conclusion can be drawn from recitals 97 and 98 of the regulation at issue, which the referring court mentions specifically in the grounds for its request for a preliminary ruling. Those recitals merely state, in answer to an argument raised during the investigation, that the Indian producer sold types of fasteners which were comparable to those exported by the Chinese exporting producers and that, in order to ensure the comparability of the prices, appropriate adjustments were made to the normal value.

55 In that context, although, as the referring court observes, the EU institutions made adjustments to the normal value in order to ensure that the prices were comparable, that does not in any way mean that they excluded the transactions relating to certain types of the product concerned when comparing the normal value and the export price. Indeed, price comparability is taken into account not in the context of the application of Article 2(11) of the basic regulation, but in the context of the application of Article 2(10) of that regulation (see, to that effect, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 68).

56 Second, it should be added that, in answer to a request from the Court, the Commission provided it with details of the calculation of the dumping margin for the non-cooperating Chinese exporting producers, together with explanations concerning that calculation. It is apparent from an analysis of that material that the EU institutions systematically took all the export transactions of the product concerned into account for the purposes of that calculation.

57 The EU institutions cannot therefore be criticised for having excluded, for the purposes of the calculation, in the regulation at issue, of the dumping margin for the non-cooperating Chinese exporting producers, transactions linked to certain types of the product concerned, when making the comparison referred to in Article 2(11) of the basic regulation.

58 In the second place, the referring court asks whether the regulation at issue infringes Article 2(10) of the basic regulation on the ground that, when determining the size of the dumping margin for the products under consideration, the EU institutions refused to take account, when comparing the normal value of the products of the Indian producer and the export prices of the like Chinese products, of adjustments linked to the import duties and indirect taxes in India and to differences in manufacturing and in manufacturing costs.

59 In that regard, it should be borne in mind that Article 2(10) of the basic regulation provides that, where a fair comparison cannot be made between the normal value and the export price, due allowance, in the form of adjustments, is to be made for differences in factors which are claimed and demonstrated to affect prices.

60 It should be further borne in mind that, in accordance with the Court's settled case-law, if a party claims adjustments under Article 2(10) of the basic regulation in order to make the normal value and the export price comparable for the purpose of determining the dumping margin, that party must prove that its claim is justified (see, to that effect, judgments of 7 May 1987, *Nachi Fujikoshi* v *Council*, 255/84, EU:C:1987:203, paragraph 33, and of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 58).

61 In this instance, it follows from recitals 101 to 104 of the regulation at issue that the EU institutions made certain adjustments for purpose of making a fair comparison between the normal value and the export prices.

62 On the other hand, it does not appear that the EU institutions received any claims for adjustments linked to the import duties and indirect taxes in India or to differences in manufacturing and in manufacturing costs.

63 That latter circumstance is confirmed by the analysis of all the observations which the Commission received from the interested parties during the investigation, after the information document was sent to all of those parties. Those observations, which the Commission produced, at the Court's request, in the present case, do not mention any claim for adjustments such as those referred to in the preceding paragraph of the present judgment.

64 Therefore, in the absence of any claim for adjustments, such as those referred to in paragraph 62 of this judgment, and in the absence of any evidence that might establish the need for such adjustments, the EU institutions cannot be criticised for having failed to make such adjustments in the regulation at issue. In those circumstances, there is no need to determine, on the basis of the discussion which took place before the Court, whether and, if appropriate, in which circumstances an importer, such as Donex, may plead, before a national court, an alleged omission by those institutions to make those adjustments.

65 In the third place, the referring court wonders whether the regulation at issue infringes Article 2(10) of the basic regulation on the ground that, in the investigation that led to its adoption, the EU institutions did not provide the cooperating Chinese exporting producers, or did not provide them in a timely manner, with all the figures of the Indian producer relating to the determination of the normal value.

66 In that regard, it is apparent from the grounds of the request for a preliminary ruling that the referring count considers that, having failed to communicate, at least in a timely manner, those figures to the Chinese exporting producers, the EU institutions prevented them from substantiating their claims for adjustments. Similarly, Donex claims, in the written observations which it lodged at the Court, that the belated communication of those figures prevented those Chinese exporting producers from duly exercising their right to claim adjustments and to substantiate their claims.

67 Without prejudice to whether Article 2(10) of the basic regulation requires the EU institutions to provide the interested parties with information relating to the determination of the normal value on the basis of the prices of the producer in the analogous country, it appears, as the EU institutions correctly observe and as the Advocate General observed in point 64 of his Opinion, that the third ground of invalidity amounts, in essence, to taking issue with the EU institutions for having breached the rights of defence of the Chinese exporting producers that exercised their procedural rights during the investigation leading to the adoption of the regulation at issue.

68 It follows from the Court's case-law that a company that did not participate in a dumping investigation and is not linked to any exporting producer in the country covered by the investigation cannot claim any rights of defence in a procedure in which it did not participate (see, to that effect, judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 73).

69 As the Advocate General observed, in essence, in point 60 of his Opinion, the same must apply, a fortiori, when such a company seeks to rely on a breach of the rights of defence of the exporting producers of the country covered by the investigation with which it is not in any way connected.

70 As the Advocate General observed in point 57 of his Opinion, in the system governing anti-dumping proceedings, the basic regulation confers procedural rights and guarantees on certain interested parties, but the exercise of those rights and guarantees depends on the active participation by those parties in the proceedings in question, which must take the form, at the very least, of the submission of a written request within a stated deadline.

71 In this instance, it is apparent from the documents in the file before the Court, first, that neither Donex nor its suppliers participated in the investigation proceedings that led to the adoption of the regulation at issue and, second, that Donex does not appear to be linked to Chinese exporting producers that participated in that investigation. Therefore, as the Advocate General observed in point 65 of his Opinion, Donex cannot claim a potential breach of the rights of defence of those producers.

72 That conclusion cannot be called into question by the fact that the third ground of invalidity formally alleges infringement of Article 2(10) of the basic regulation owing to an error vitiating the fair comparison of the normal value and the export price. Any error vitiating that comparison would in fact be the potential consequence of the alleged omission to communicate, at least in a timely manner, certain information to the Chinese exporting producers. As already held in paragraph 67 of the present judgment, however, the latter omission would, if established, constitute a breach of those exporting producers' rights of defence.

73 Having regard to all of the foregoing considerations, the answer to the questions raised must be that consideration thereof has disclosed no factor of such a kind as to affect the validity of the regulation at issue.

Costs

74 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 Chamber) hereby rules:

Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Council Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China.

[Signatures]