Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

18 October 2018 *

(Dumping — Imports of certain seamless pipes and tubes of iron or steel originating in China — Modification of the TARIC additional code for a company — Action for annulment — Challengeable act — Whether directly concerned — Individual concern — Admissibility — Effect of a judgment annulling a decision — Rule of equivalence of form)

In Case T-364/16,

ArcelorMittal Tubular Products Ostrava a.s., established in Ostrava-Kunčice (Czech Republic), and the other applicants whose names are annexed,[1] represented, by G. Berrisch, lawyer, and B. Byrne, Solicitor,

applicants,

v

European Commission, represented by A. Demeneix and J.-F. Brakeland, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for the annulment of the Commission Decision of 3 June 2016 to take Hubei Xinyegang Steel Co. Ltd out of the list of companies listed under TARIC additional code A 950 and to list it under TARIC additional code C 129, with respect to all the combined nomenclature (CN) codes referred to in Article 1(1) of Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ 2015 L 322, p. 21),

THE GENERAL COURT (Seventh Chamber),

composed of V. Tomljenović, President, E. Bieliūnas and A. Marcoulli (Rapporteur), Judges,

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 18 January 2018,

gives the following

* Language of the case: English.

1 The list of other applicants is annexed only to the version notified to the parties.

Judgment

Background to the dispute

1 On 9 July 2008, following a complaint lodged by the Defence Committee of the Seamless Steel Tubes Industry of the European Union, the European Commission published a notice of initiation of an anti-dumping proceeding concerning imports of seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ 2008 C 174, p. 7).

2 On 24 September 2009 the Council of the European Union adopted Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ 2009 L 262, p. 19).

3 On 30 December 2009 Hubei Xinyegang Steel Co. Ltd, established in Huang Shi (China) ('Hubei'), brought an action for the annulment of Regulation No 926/2009, in so far as that regulation concerned it. The Commission and ArcelorMittal Tubular Products Ostrava a.s., together with 13 other European undertakings which produce seamless pipes and tubes, ('ArcelorMittal and Others'), intervened in support of the form of order sought by the Council.

4 By judgment of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), the General Court annulled Regulation No 926/2009, to the extent that it imposed anti-dumping duties on exports of goods produced by Hubei and collected provisional duties imposed on those exports.

5 On 14 and 15 April 2014, respectively, ArcelorMittal and Others and the Council brought appeals against the judgment of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35).

6 On 7 December 2015 the Commission adopted Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ 2015 L 322, p. 21).

7 By judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), the Court dismissed the appeals brought by ArcelorMittal and Others and by the Council.

8 On 7 June 2016 the applicants, ArcelorMittal Tubular Products Ostrava and the other parties to the application whose names are annexed, namely 12 other undertakings who were parties to the proceedings in the cases T-528/09, C-186/14 P and C-193/14 P, learned that the Commission had decided to take Hubei out of the list of companies listed under the TARIC (integrated tariff of the European Union) additional code A 950 and to list Hubei under the TARIC additional code C 129 ('the contested decision'). According to the information provided by the applicants, the contested decision was taken by the Commission's Directorate General (DG) Taxation and Customs Union. The Commission has confirmed, in its written observations, that the TARIC had been modified on 3 June 2016 by DG Taxation and Customs Union, by creating the additional code in question.

Procedure and forms of order sought

9 By application lodged at the General Court Registry on 7 July 2016, the applicants brought the present action.

10 By a separate document, lodged at the Court Registry on the same date, the applicants requested that the present action be determined under an expedited procedure in accordance with Article 152 of the Rules of Procedure of the Court. On 26 July 2016 the Commission lodged its observations on that request. By decision of 11 August 2016, the Court (Seventh Chamber) rejected the application for an expedited procedure.

11 As a result of changes to the composition of the chambers of the General Court, pursuant to Article 27(5) of the Rules of Procedure, the Judge-Rapporteur was assigned to the Seventh Chamber, to which this case has, consequently, been allocated.

12 On hearing the report of the Judge-Rapporteur, the Court (Seventh Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 89 of the Rules of Procedure, sent questions in writing to the parties. The parties answered those questions within the prescribed period.

13 The parties presented oral argument and answered questions put by the Court at the hearing on 18 January 2018.

14 The applicants claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

15 The Commission contends that the Court should:

– dismiss the action as being inadmissible and, in any event, as being unfounded;

– order the applicants to pay the costs.

Law

16 The action is based on a single plea in law, namely that the contested decision lacks a legal basis and that it infringes Article 1(2) of Implementing Regulation 2015/2272 and the annex to that regulation.

17 Without formally raising, by way of a separate document, an objection of inadmissibility, the Commission contends that the action is inadmissible.

Admissibility

18 First, the Commission does not accept that there is a challengeable act. The Commission states that the annulment of an EU act operates *ex tunc*, that its effects are immediate and unconditional, and that the lack of duties on imports of the goods concerned produced by Hubei is the consequence of the judgments delivered by the Courts of the European Union. Contrary to what the applicants appear to argue, Regulation 2015/2272 did not 'resurrect' the legal basis for imposing duties on the goods produced by Hubei. That regulation, which effected a review of the measures in force, did not impose new measures but maintained the existing measures, as is shown by the recitals of that regulation. The Commission also notes that the conditions for imposing new measures or maintaining existing measures are different. Given that, following the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), the anti-dumping measures against goods produced by Hubei were annulled with retroactive effect, those measures

could not have been maintained. In any event, the introduction of a specific TARIC code does not constitute a challengeable act producing legal effects. The TARIC database has an information function and simply reflects acts that have legal effects. The national customs authorities were legally authorised to stop collecting anti-dumping duties on imports of goods produced by Hubei, irrespective of the creation of a TARIC code informing the general public.

19 Second, and in the alternative, the Commission contends that the applicants have no standing to bring proceedings under the fourth paragraph of Article 263 TFEU. The applicants are not individually concerned by the information included in the TARIC database. Nor, according to the Commission, are they directly concerned in that, if the information included in the TARIC database were to produce legal effects, those effects would be strictly limited to the customs authorities of the Member States. The possible economic impact of the removal of the measures against Hubei is not sufficient to show that there has been a change in the applicants' legal position.

20 Last, the Commission expresses the view that the true purpose of the application may, in reality, be to obtain an interpretation by the Court of the effects of its annulling judgment on the validity of Implementing Regulation 2015/2272. Such an application would, it submits, be inadmissible.

21 The applicants do not accept the Commission's arguments.

Whether there is a challengeable act

22 It must be recalled that, in accordance with settled case-law, only measures the legal effects of which are binding on, and capable of affecting the interests of, the applicant are acts or decisions which may be the subject of an action for annulment, under Article 263 TFEU. Furthermore, an act which is neither capable of producing, nor intended to produce, any legal effects cannot be the subject of an action for annulment. In order to ascertain whether or not a measure which has been challenged produces such effects it is necessary to look to its substance (see judgment of 30 September 2003, *Eurocoton and Others* v *Council*, C-76/01 P, EU:C:2003:511, paragraphs 54 and 56 and the case-law cited).

23 In this case, the contested decision is the act by which the Commission decided to withdraw Hubei from the list of companies listed under TARIC additional code A 950 and to list it under TARIC additional code C 129, which does not require the collection of any anti-dumping duty with respect to imports of the goods concerned. The Commission confirmed, in its written observations, that this additional code 'inform[ed] customs authorities that anti-dumping duties should not be calculated at the moment of the customs clearance'.

24 In the first place, it must be emphasised that the TARIC is to be established, updated, managed and published by the Commission, in accordance with Articles 2 and 6 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). Further, pursuant to Article 5(1) of Regulation No 2658/87, the TARIC is to be used by the Commission and by the Member States for the 'application' of the EU measures concerning EU imports and exports. Under Article 5(2) of that regulation, TARIC codes and the additional codes are to be 'applied' to 'all importations'. Moreover, following Article 2 of Regulation No 2658/87, the TARIC additional subdivisions, known as the 'TARIC sub-headings', are 'needed' for the implementation of the specific EU measures listed in Annex II to that regulation, including, inter alia, anti-dumping duties. Last, the 12th recital of Regulation No 2658/87 states that the tariff measures contained in TARIC are part of the Common Customs Tariff.

25 It follows from the foregoing that the Member States must, as a general rule, apply the measures represented by the TARIC codes and additional codes, in order to achieve uniform implementation of the Common Customs Tariff. It must also be emphasised that the Commission has the power not only to establish, update, manage and publish the TARIC, but also to adopt, modify or revoke anti-dumping measures.

26 In the second place, it must be observed that, by means of the contested decision, the Commission created a TARIC additional code C 129 which did not previously exist. The creation of that code served to replace, for the goods produced by Hubei, the TARIC code which was applicable for the collection of anti-dumping duties, namely TARIC additional code A 950. Moreover, as is apparent from the TARIC print-out that is annexed to the application, the TARIC additional code C 129 was created in the context of applying Implementing Regulation 2015/2272, which is formally referred to in that print-out.

27 In the third place, the creation of the TARIC additional code C 129 ensured, at the very least, that the national customs authorities were informed that the imports of the goods concerned produced by Hubei ought no longer to be subject to the collection of an anti-dumping duty, notwithstanding the existence of Implementing Regulation 2015/2272, which required such collection. The creation of that TARIC additional code therefore made it possible to ensure that, uniformly, no anti-dumping duties were collected with respect to the goods produced by Hubei throughout the customs territory of the European Union.

28 The Commission has also confirmed, in its replies to the measures for the organisation of procedure, that anti-dumping duties had been collected between 7 April 2016, the date of delivery of the judgment *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and the creation of the TARIC additional code C 129, and that the national customs authorities had no longer made such collections after the creation of that code. The Commission also stated that the TARIC additional code C 129 had been created in order to support the automatic customs clearance of goods produced by Hubei. Last, the Commission stated, in essence, that the collection by the national customs authorities of anti-dumping duties with respect to the goods produced by Hubei, following the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), was mistaken. It follows that the effect of the creation of the TARIC additional code C 129 was, at the very least, to alter that situation, and that the Commission's intention was to ensure that anti-dumping duties with respect to the goods produced by Hubei did not continue to be collected by the national customs authorities.

29 In the fourth place, it must be emphasised that, in the cases that gave rise to the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), the legality of Implementing Regulation 2015/2272, in so far as it concerns Hubei, was not at issue, and that the creation of the TARIC additional code C 129 relates specifically to the non-application of the anti-dumping duties laid down by that regulation with respect to Hubei. It must be recalled, in that regard, that the acts of the institutions are in principle presumed to be lawful, and accordingly produce legal effects until such time as they are withdrawn, annulled in an action for annulment or declared invalid following a reference for a preliminary ruling or a plea of illegality (see, to that effect, judgments of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraph 48; of 8 July 1999, *Chemie Linz* v *Commission*, C-245/92 P, EU:C:1999:363, paragraph 93; and of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 184).

30 The creation of the TARIC additional code C 129 is the result, therefore, of a legal interpretation, made by the Commission, of the apparent link between the annulment of Regulation No 926/2009, to the extent that it concerns Hubei, and the application of Implementing Regulation 2015/2272 to the imports of goods produced by that company. The Commission also confirmed, in its defence, that in this case its interpretation related to 'the issue … whether, for the same party having brought a successful action for annulment against anti-dumping duties, the effects of the annulment by the General Court of those duties extend[ed] to the measure adopted to simply maintain those duties'.

31 However, such a legal interpretation cannot be assimilated to the automatic application, by the national customs authorities, of the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35). The present situation can be distinguished therefore from circumstances where the national customs authorities are obliged to give effect, within their legal systems, to the annulment of a regulation imposing anti-dumping duties or a declaration that such a regulation is invalid, by reimbursing, where necessary, those duties (see judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraph 34 and the case-law cited).

32 It follows that the contested decision produced legal effects, brought into being by the national customs authorities as from the date of the creation of TARIC additional code C 129, its objective being that those authorities should no longer collect anti-dumping duties with respect to goods produced by Hubei, as set by Implementing Regulation 2015/2272, although that regulation has not been annulled or declared invalid by the Courts of the European Union. It must also be stated that the effects of the contested decision have to be regarded as definitive, as the Commission itself states in its Notice concerning the judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), published on 9 September 2016 (OJ 2016 C 331, p. 4). In that notice, the Commission stated that 'anti-dumping duties collected so far [on goods produced by Hubei] must therefore be reimbursed in accordance with the applicable customs legislation'. Further, the Commission decided to reopen the investigation, the reopening being limited to the repeal of the anti-dumping duties applicable to the Chinese exporting producers named in Implementing Regulation 2015/2272 'other than Hubei'.

33 Further, taking account of the foregoing, the contested decision may also be considered to be a measure adopted to comply with the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), within the meaning of Article 266 TFEU. In that regard, although the Commission contended, in its defence, that it did not have to rely on Article 266 TFEU in order to adopt a legally binding measure, it also stated, in its observations on the request for an expedited procedure that, 'pursuant to Article 266 TFEU', it was required to adopt the necessary measures to comply with those judgments and that the creation of the TARIC additional code C 129 was 'in full conformity with that provision'. Against that background, it must be borne in mind that Article 266 TFEU imposes an obligation on the institutions to cure an identified illegality, having due regard to both the operative part and the grounds of the judgment of annulment (see, to that effect, judgments of 3 October 2000, *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraphs 80 and 81, and of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraphs 48 and 49). Judicial review of whether the institutions respect the obligation imposed by Article 266 TFEU is ensured by means of, inter alia, the legal remedy provided for in Article 263 TFEU (order of 28 March 2006, *Mediocurso* v *Commission*, T-451/04, not published, EU:T:2006:95, paragraph 23; see also, to that effect, judgment of 21 April 2005, *Holcim (Deutschland)* v *Commission*, T-28/03, EU:T:2005:139, paragraph 33 and the case-law cited).

34 Last, the legal effects of the contested decision, the result being that the anti-dumping duties with respect to goods produced by Hubei and set by Implementing Regulation 2015/2272 are no longer collected, are such as to affect the interests of the undertakings which prompted the anti-dumping investigation (see, to that effect, judgment of 30 September 2003, *Eurocoton and Others* v *Council*, C-76/01 P, EU:C:2003:511, paragraphs 66 and 67).

35 In the light of all the foregoing, it must be held that the contested decision is an act against which an action for annulment can be brought, under Article 263 TFEU.

Whether the applicants have standing to bring proceedings

36 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

37 Since the contested decision was not addressed to the applicants, the Court considers that it is appropriate to examine, first, whether that decision is of direct and individual concern to them.

– *Direct concern to the applicants*

38 It must be recalled that, in order to satisfy the requirement that the decision forming the subject matter of the proceedings must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 263 TFEU, two cumulative criteria must be met, namely, first, the contested measure must directly affect the legal situation of the individual and, second, it must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see order of 10 March 2016, *SolarWorld* v *Commission*, C-142/15 P, not published, EU:C:2016:163, paragraph 22 and the case-law cited).

39 As regards the first condition, whether the legal situation of the particular litigant is directly affected, it must be observed that the effect of the contested decision is that the anti-dumping duties laid down by Implementing Regulation 2015/2272, referred to in the TARIC, are no longer collected on imports of the goods concerned produced by Hubei and, therefore, on imports which compete with goods marketed within the European Union by the applicants.

40 Admittedly, as observed by the Commission, it has previously been held that the mere fact that a measure may exercise an influence on an applicant's material situation cannot be sufficient ground to consider that applicant to be directly concerned, and that only the existence of specific circumstances may enable a litigant, claiming that the measure affects his position on the market, to bring an action on the basis of the fourth paragraph of Article 263 TFEU (order of 21 September 2011, *Etimine and Etiproducts* v *ECHA*, T-343/10, EU:T:2011:509, paragraph 41).

41 However, in this case, the contested decision is of concern to the applicants not only with regard to their material situation, not least in that the goods produced by Hubei represent, according to the information submitted by the applicants, which is not disputed by the Commission, a significant proportion of Chinese imports into the European Union, but also with regard to their legal situation in the context of the procedure that led to the adoption of the anti-dumping measures on the goods concerned.

42 In particular, it must be stated that both the complaint which led to the adoption of Regulation No 926/2009 and the request for review which led to the adoption of Implementing Regulation 2015/2272 were made by the Defence Committee of the Seamless Steel Tube Industry of the European

Union, on behalf of producers who include the applicants. Those two procedures, both brought into being by the objections of the applicants, led to the imposition of anti-dumping duties, including those on goods produced by Hubei.

43 Consequently, the contested decision, by prescribing that the anti-dumping duties provided for by Implementing Regulation 2015/2272 were no longer to be collected with respect to goods produced by Hubei, although the objective of the request for review made on behalf of the applicants was, on the contrary, the imposition of such duties, is of direct concern to the applicants (see, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraphs 13 to 16; see also, by analogy, judgment of 28 January 1986, *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraph 30).

44 As regards the second condition governing direct concern, whether the persons to whom the contested decision is addressed have any discretion, it must be recalled that the Member States must, as a general rule, apply the measures represented by the TARIC codes and additional codes, in order to achieve a uniform implementation of the Common Customs Tariff. The Commission also confirmed, in its written pleadings, that the national customs authorities have no longer collected anti-dumping duties with respect to the goods produced by Hubei since the creation of the TARIC additional code C 129. It is therefore clear that the national customs authorities had no discretion in this case.

45 It follows that the contested decision is of direct concern to the applicants.

– *Individual concern to the applicants*

46 It follows from the case-law that persons other than those to whom a decision is addressed may claim to be individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the person addressed by such a decision (judgments of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 96, 107, and of 15 September 2016, *Unitec Bio* v *Council*, T-111/14, EU:T:2016:505, paragraph 29).

47 Further, it must be recalled that, where an application is lodged by a number of applicants, the action is admissible if one of them has standing to bring proceedings. In such a situation, there is no need to examine whether the other applicants have standing to bring proceedings (judgment of 26 November 2015, *Comunidad Autónoma del País Vasco and Itelazpi* v *Commission*, T-462/13, EU:T:2015:902 paragraph 34; see also, to that effect, judgment of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraphs 30 and 31).

48 In this case, it must be observed that, leaving aside the request for review lodged on behalf of the applicants, whose objections gave rise to that request, the six Union producers who were sampled and at whose premises verification visits were carried out in the course of the procedure are among the applicants (recital 21 of Implementing Regulation 2015/2272). Those sampled producers, who are specifically named by Implementing Regulation 2015/2272, represented approximately 55% of the total sales to unrelated customers within the European Union (recital 12 of Implementing Regulation 2015/2272). They all replied to the questionnaires sent to them by the Commission (recital 20 of Implementing Regulation 2015/2272). The data thus collected by the Commission enabled it to determine that a recurrence of a threat of injury was likely (recital 111 of Implementing Regulation 2015/2272). Similar considerations apply with respect to the initial procedure that led to the adoption of Regulation No 926/2009.

49 Further, it must be observed that, according to the estimates of the applicants in their request for an expedited procedure, which have not been challenged by the Commission, Hubei's exports represented in 2015 approximately one third of the total Chinese exports of the goods concerned to the European Union and Hubei's spare production capacity represented 20 to 50% of the total consumption of the goods concerned within the Union. To put those figures into perspective, they can be compared with the applicants' position on the Union market, which represented, at least for the six Union producers who were sampled in the review procedure, 55% of the total sales to unrelated customers in the European Union.

50 It follows that the contested decision, the effect of which was that the anti-dumping duties laid down by Implementing Regulation 2015/2272 were no longer collected on goods produced by Hubei, is of individual concern to, at least, the six Union producers, who are also applicants in this case, who were sampled and at whose premises verification visits were carried out within the review procedure, that procedure having been initiated on their behalf and in the light of the objections they had put forward, culminating in their specific situation being taken into account (see, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraphs 13 to 16).

51 Further, it must be recalled that the applicants were interveners before the General Court and principal parties to the appeal before the Court of Justice in the cases that gave rise to the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35). Since the contested decision can also be considered to constitute a measure to achieve compliance with those judgments (see paragraph 33 above), that fact also is such as to distinguish the applicants individually.

52 It follows that the contested decision is of individual concern to the applicants and, consequently, that they have standing to bring proceedings, there being no need to determine whether that decision constitutes a regulatory act which does not entail implementing measures with respect to them.

53 In the light of all the foregoing, the action must be held to be admissible.

Substance

54 The applicants claim, in their single plea in law, that the contested decision has no legal basis and infringes Article 1(2) of Implementing Regulation 2015/2272 and the annex thereto, in that the Commission wrongly extended the scope of the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35). That regulation, which came into force on 9 December 2015, replaced Regulation No 926/2009. It is the legal basis for imposing anti-dumping duties on the goods at issue originating in China. The applicants submit, furthermore, that Article 1(2) of Implementing Regulation 2015/2272, and the annex thereto, provided that Hubei was to be included in the list of undertakings covered by TARIC Additional Code A 950. By means of the contested decision, the Commission removed Hubei from that list. The Commission, they contend, could, however, have adopted the contested decision only if the Hubei judgments had also annulled Implementing Regulation 2015/2272, in so far as it concerns Hubei. However, that was not the case. The operative parts of those judgments referred only to Regulation No 926/2009. Extending the effect of those judgments beyond the annulment of Regulation No 926/2009 is contrary to the case-law. The applicants refer in particular to the judgment of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101). The applicants conclude that the contested decision could not be based on the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Other*s v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei*

Xinyegang Steel v *Council* (T-528/09, EU:T:2014:35), since those judgments did not effect an annulment of Implementing Regulation 2015/2272. The contested decision therefore has no legal basis. That decision also infringes Article 1(2) of Regulation 2015/2272 as well as the annex thereto.

55 Further, even if the obligation incumbent on the Commission under the first paragraph of Article 266 TFEU to give effect to the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), includes an obligation to repeal the anti-dumping duties with respect to Hubei imposed by Implementing Regulation 2015/2272 — which the applicants do not accept — the Commission ought to have adopted a regulation amending or repealing that regulation. That follows from the legal principle that a legal act can only be repealed by an act of the same nature. If the Commission had decided to repeal Implementing Regulation 2015/2272, it would have had to respect the applicants' rights of defence, consult the Member States and provide sufficiently detailed reasons by way of explanation. Further, such a decision would fall within the competence of the College of Commissioners and not that of DG Taxation and Customs Union.

56 The applicants add that the Commission's argument, in its defence, that it replaced Article 1(2) of Regulation 2015/2272 is unfounded. That provision can be replaced only by the adoption of a regulation amending Regulation 2015/2272. In any event, if the Commission were able to amend Regulation 2015/2272 by a change to the TARIC code, the contested decision would then be unlawful because of the breach, in particular, of the applicants' rights of defence and of the obligation to state reasons. Further, contrary to what is contended by the Commission, Regulation No 2658/87 does not provide the necessary legal basis for the adoption of the contested decision, which is contrary to the anti-dumping legislation that is in force, legislation that has neither expired, nor been annulled by the Courts of the European Union, nor repealed.

57 The Commission contends that, inasmuch as the General Court annulled retroactively the anti-dumping duties, imposed by Regulation No 926/2009, on the imports of the goods concerned produced by Hubei, the annulment necessarily extends to the duties imposed by Implementing Regulation 2015/2272. An anti-dumping duty that is deemed never to have existed cannot be maintained by a regulation reviewing measures which are reaching their expiry date. The newly created TARIC code informs customs authorities and economic operators of that conclusion. The case-law cited by the applicants is not relevant because it concerns a different legal situation.

58 According to the Commission, the alleged infringement of Article 1(2) of Implementing Regulation 2015/2272 is in contradiction with the reasoning adopted in the application that the Commission illegally exempted the imports of Hubei's goods from the anti-dumping duties imposed by Regulation 2015/2272. Such an exemption necessarily means that Article 1(2) of Regulation 2015/2272 has been replaced by a provision of another act. The two provisions cannot therefore contradict each other. Only the infringement of a norm of superior rank is a possibility, but the applicants do not refer to any such situation.

59 As regards the obligation to rely on a legal basis, the Commission states that, pursuant to Regulation No 2658/87, it is under an obligation to establish, manage, update and publish the TARIC database. Regulation No 2658/87 therefore provides the legal basis for the publication of the TARIC code at issue in the present case. The Commission did not have to rely on Article 266 TFEU as a basis for adopting a binding legal act, given that the legal effects with respect to the imports of the goods produced by Hubei stemmed from the judgment of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35). A review relating to the expiry of the anti-dumping measures could not have maintained, and even less 'resurrected', anti-dumping duties deemed never to have existed.

60 The Commission adds that, contrary to what the applicants appear to suggest, the anti-dumping duties on imports of the goods concerned produced by Hubei were removed from the legal order by the Courts of the European Union. The claim that Article 1(2) of Implementing Regulation 2015/2272 can be replaced only by the adoption of another regulation is therefore unfounded. In any event, the applicants do not claim that there has been any infringement 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; corrigendum OJ 2010 L 7, p. 22) (replaced by Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21)). As regards infringement of the procedural requirements alleged by the applicants, they fail to demonstrate that the administrative procedure could have led to a different outcome.

61 First, it must be recalled that by virtue of the retroactive effect of judgments by which measures are annulled, the finding of illegality takes effect from the date on which the annulled measure entered into force (judgment of 26 April 1988, *Asteris and Others* v *Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 30; see also, to that effect, judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 61). In this case, Regulation No 926/2009 was annulled, in so far as it concerns Hubei, with effect *ex tunc*, which implies that that regulation is deemed never to have had effects with respect to that company (see, to that effect, judgment of 19 July 2012, *Council* v *Zhejiang Xinan Chemical Industrial Group*, C-337/09 P, EU:C:2012:471, paragraph 48).

62 Second, as regards Implementing Regulation 2015/2272, that regulation was adopted following a review procedure based on Article 11(2) of Regulation No 1225/2009 (now Article 11(2) of Regulation 2016/1036). According to that provision, a definitive anti-dumping measure is to expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, 'unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury'. In that context, the Commission may either maintain measures that are in force or allow them to expire (see, to that effect, judgment of 8 May 2012, *Dow Chemical* v *Council*, T-158/10, EU:T:2012:218, paragraph 43). The subject of that provision is therefore not the imposition, for the first time, of anti-dumping measures, but the maintenance, if appropriate, of anti-dumping measures that are in force and that are coming normally to the point of expiry (see, to that effect, judgments of 11 February 2010, *Hoesch Metals and Alloys*, C-373/08, EU:C:2010:68, paragraphs 65 to 67, and of 24 September 2008, *Reliance Industries* v *Council and Commission*, T-45/06, EU:T:2008:398, paragraph 94). It is therefore stated, in recital 122 of Implementing Regulation 2015/2272, that 'the anti-dumping measures applicable to imports of certain seamless pipes and tubes originating in [China] imposed by Regulation … No 926/2009 should be maintained'.

63 Third, while it is admittedly correct that Implementing Regulation 2015/2272 does no more than maintain the measures initially imposed by Regulation No 926/2009, it is Implementing Regulation 2015/2272 that serves as the legal basis for the collection of anti-dumping duties and, more specifically, the operative part of that regulation and the annex thereto, which provide for the imposition of an anti-dumping duty, including that on imports of goods produced by Hubei. The TARIC print-outs annexed to the application expressly refer to Implementing Regulation 2015/2272 as the basis for the collection of anti-dumping duties on the goods concerned. The same is true in the Notice concerning the judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), published by the Commission on 9 September 2016 (see paragraph 32 above).

64 Since Implementing Regulation 2015/2272 was not annulled by the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v *Council* (T-528/09, EU:T:2014:35), it must, in principle, be presumed to be lawful (see the case-law cited in paragraph 29

above). Moreover, it must be recalled that the *erga omnes* authority of an annulling judgment cannot entail annulment of an act that has not been challenged before the Courts of the European Union, even if the latter is vitiated by the same illegality (see, to that effect, judgments of 14 September 1999, *Commission* v *AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 54, and of 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraph 26).

65 It follows that the annulment of Regulation No 926/2009, to the extent that it concerns Hubei, cannot automatically entail the elimination from the EU legal order of the provisions of Implementing Regulation 2015/2272 which were not annulled by the Courts of the European Union.

66 Fourth, it must be recalled that, under Article 266 TFEU, it is the duty of the institution concerned to ensure, in particular, that any act intended to replace the annulled act is not vitiated by the same irregularities as those identified in the annulling judgment (judgments of 14 September 1999, *Commission* v *AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 56, and of 29 April 2004, *IPK-München and Commission*, C-199/01 P and C-200/01 P, EU:C:2004:249, paragraph 83). The Court of Justice has also identified an obligation that might, in some cases, require the institutions to repeal acts adopted after the act that is annulled (judgment of 26 April 1988, *Asteris and Others* v *Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 30). To the same effect, the General Court has recognised that it is necessary to annul acts based on acts that have previously been annulled and therefore erased from the EU legal order (judgment of 18 September 2015, *HTTS and Bateni* v *Council*, T-45/14, not published, EU:T:2015:650, paragraphs 46 to 48). Moreover, in the case that gave rise to the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraphs 175 to 177), the Court of Justice held that a review regulation was invalid 'to the same extent' as the regulation that imposed the initial anti-dumping duties, when the two regulations were before it for an assessment of validity.

67 In the light of the foregoing, and in particular the fact that, on the one hand, the purpose of Implementing Regulation 2015/2272 was to impose measures similar to those imposed by Regulation No 926/2009 so that the effect of the latter should be maintained, and that, on the other, the measures imposed by Regulation No 926/2009 were, subsequently, annulled by the judgments of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), and of 29 January 2014, *Hubei Xinyegang Steel* v Council (T-528/09, EU:T:2014:35), the Commission was correct to take the view that compliance with those judgments, in accordance with Article 266 TFEU, implied that the anti-dumping duties laid down by Implementing Regulation 2015/2272 were no longer to be collected on the goods produced by Hubei.

68 Nonetheless, as claimed by the applicants in the alternative, and since Implementing Regulation 2015/2272 must, in principle, be presumed to be lawful, the Commission ought to have amended or repealed it by means of a regulation.

69 It must be borne in mind that, in accordance with the rule of equivalence of form, which constitutes a general principle of law, the form used to bring a measure to the notice of a third party must also be used for all subsequent amendments of that measure (see, to that effect, judgments of 29 April 2004, *Parliament* v *Ripa di Meana and Others*, C-470/00 P, EU:C:2004:241, paragraph 67; of 21 July 1998, *Mellett* v *Court of Justice*, T-66/96 and T-221/97, EU:T:1998:187, paragraph 136; of 17 May 2006, *Kallianos* v *Commission*, T-93/04, EU:T:2006:130, paragraph 56; and of 14 December 2006, *Gagliardi* v *OHIM — Norma Lebensmittelfilialbetrieb (MANŪ MANU MANU)*, T-392/04, not published, EU:T:2006:400, paragraph 53).

70 In this case, it must in particular be observed that, under Article 14(1) of Regulation No 1225/2009 (now Article 14(1) of Regulation 2016/1036), under the heading of 'General provisions', the anti-dumping duties 'shall be imposed by Regulation and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such

duties'. That applied to the anti-dumping duties laid down by Implementing Regulation 2015/2272 on goods produced by Hubei. It must also be recalled that the Commission has the power to adopt, amend or repeal anti-dumping measures.

71 It follows that the non-collection with respect to one company of anti-dumping duties laid down by a regulation which has not been annulled or declared invalid by the Courts of the European Union must normally be brought about by means of a regulation. In this case, however, the Commission definitively prescribed the non-collection of anti-dumping duties on the goods produced by Hubei, to be collected under Implementing Regulation 2015/2272, by creating a TARIC additional code, and thereby infringed the rule of equivalence of form.

72 It must also be observed that, as correctly pointed out by the applicants in their written pleadings, compliance with the rule of equivalence of form ought to have led not only to the matter being referred to the Commission's College of Commissioners, but also to the consultation of the committee established by Article 15(1) of Regulation No 1225/2009 (now Article 15(1) of Regulation 2016/1036), as occurred in the adoption of Implementing Regulation 2015/2272. It must be noted, in that regard, that, under Article 11(6) of Regulation No 1225/2009 (now Article 11(6) of Regulation 2016/1036), anti-dumping measures are to be repealed or maintained pursuant to Article 11(2), 'in accordance with the examination procedure referred to in Article 15(3)' of that regulation. Likewise, Article 9(4) of Regulation No 1225/2009 (now Article 9(4) of Regulation 2016/1036) provides that definitive anti-dumping duties are to be imposed by the Commission acting in accordance with the examination procedure. That committee and that examination procedure are those provided for by Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13). The procedures for such control by the Member States must be, inter alia, clear and reflective of the institutional requirements of the FEU Treaty (recital 5 of Regulation No 182/2011). Consultation of the committee established by Article 15(1) of Regulation No 1225/2009 is therefore important not only from a procedural perspective, but also from the perspective of the institutional requirements of the FEU Treaty.

73 Moreover, attention must be drawn to the situation of legal uncertainty that results from the contested decision, as also pointed out by the applicants in their written pleadings. On the one hand, economic operators, including the applicants, who examine EU legislation, are required to take account of Implementing Regulation 2015/2272, which has not been either annulled or declared invalid by the Courts of the European Union nor repealed by another regulation, and, therefore, of the anti-dumping duties imposed by that regulation. On the other hand, the TARIC additional code C 129 requires the view to be taken that the anti-dumping duties laid down by Implementing Regulation 2015/2272 are not applicable to the goods produced by Hubei. The consequence is an apparent contradiction that places economic operators, including the applicants, in a situation of legal uncertainty.

74 Further, while the legal interpretation adopted by the Commission in this case may be inferred from the fact that the footnote to TARIC additional code C 129 refers to the judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* (C-186/14 P and C-193/14 P, EU:C:2016:209), compliance with the rule of equivalence of form would have ensured a more explicit statement of the Commission's reasons in that regard.

75 In addition, it must be observed that the EU institutions have previously decided, in other procedures, to amend or to repeal a review regulation that maintained anti-dumping measures in force, following the annulment of the regulation which preceded that review regulation. That was the case, in particular, for Council Regulation (EC) No 989/2009 of 19 October 2009 amending Regulation (EC) No 661/2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 2009 L 278, p. 1), referred to by the Commission at the hearing. The adoption of that regulation followed the judgment of 10 September 2008, *JSC Kirovo-Chepetsky Khimichesky Kombinat* v *Council* (T-348/05, not published, EU:T:2008:327). In that judgment, the General Court had annulled

the regulation that preceded the review regulation, namely Council Regulation (EC) No 945/2005 of 21 June 2005 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, inter alia, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ 2005 L 160, p. 1), which had extended the range of products affected by the anti-dumping measures. In the aftermath of that judgment, the Council decided, acting on a proposal from the Commission, after consultation of the Advisory Committee, to adopt Regulation No 989/2009, repealing with retroactive effect Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ 2008 L 185, p. 1), with respect to the undertaking that had been the applicant before the General Court, as regards the goods affected by the annulment. The Council also created, in that context, a specific TARIC additional code for the undertaking that had been the applicant before the General Court. In the explanatory memorandum that accompanied the proposal for a Council Regulation (COM(2009) 493 final)), the Commission stated that that proposal was made 'in the context of the implementation of a judgment of the [General Court]'.

76 In the light of the foregoing, it must be held that the infringement by the Commission of the rule of equivalence of form constitutes an irregularity that requires the annulment of the contested decision.

77 That conclusion is not undermined by any of the Commission's other arguments. In particular, the case-law relied on by the Commission in its written pleadings, which concerns specifically the consequences of an infringement of a company's rights of defence in the course of a procedure, is ineffective. As has just been stated, the scope of the infringement of the rule of equivalence of form is wider than that of compliance with the applicants' rights of defence. Further, the Court must reject the Commission's arguments in support of the claim, in essence, that the applicants have no interest in obtaining the annulment of the contested decision on the basis of infringement of the rule of equivalence of form. As the applicants stated at the hearing, their interest is to be found, at least initially, in the relevant provisions of Implementing Regulation 2015/2272 being applied to the goods produced by Hubei. Nothing of any detail has been adduced by the Commission to permit that finding to be challenged.

78 In the light of the foregoing, the contested decision must be annulled.

Costs

79 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, and the applicants have applied for costs, the Commission must be ordered to bear its own costs and to pay those of the applicants.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Annuls the Commission Decision of 3 June 2016 to take Hubei Xinyegang Steel Co. Ltd out of the list of companies listed under TARIC additional code A 950 and to list it under TARIC additional code C 129, with respect to all the combined nomenclature (CN) codes referred to in Article 1(1) of Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015**

imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009.

2. **Orders the Commission to bear its own costs and to pay those incurred by ArcelorMittal Tubular Products Ostrava a.s. and the other applicants whose names are annexed.**

Tomljenović Bieliūnas Marcoulli

Delivered in open court in Luxembourg on 18 October 2018.

E. Coulon
Registrar

D. Gratsias
President