



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

18 October 2018\*

(Appeal — Dumping — Imports of certain iron or steel fasteners originating in the People's Republic of China or consigned from Malaysia — Infringement of the Anti-Dumping Agreement concluded in the World Trade Organisation (WTO) — Repeal of definitive anti-dumping duties already collected — Non-retroactive effect — Fourth paragraph of Article 263 TFEU — Person individually concerned — Regulatory act that does not entail implementing measures)

In Case C-145/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 21 March 2017,

**Internacional de Productos Metálicos SA**, established in Vitoria-Gasteiz (Spain), represented by C. Cañizares Pacheco, E. Tejedor de la Fuente and A. Monreal Lasheras, abogados,

appellant,

the other party to the proceedings being:

**European Commission**, represented by J.-F. Brakeland, M. França and G. Luengo, acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, J.-C. Bonichot, E. Regan, C.G. Fernlund and S. Rodin (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Spanish.

## Judgment

- 1 By its appeal, Internacional de Productos Metálicos SA seeks to have set aside the order of the General Court of the European Union of 25 January 2017, *Internacional de Productos Metálicos v Commission* (T-217/16, not published, ‘the order under appeal’, EU:T:2017:37), by which the General Court dismissed its action seeking the annulment of Article 2 of Commission Implementing Regulation (EU) 2016/278 of 26 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, ‘the regulation at issue’).

### Legal context

- 2 By Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round of multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), the Council of the European Union approved the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994, and also the agreements in Annexes 1 to 3 to that agreement, which include the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 11) and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103, ‘the WTO Anti-Dumping Agreement’).
- 3 On 26 January 2009, the Council adopted 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 (OJ 2009 L 29, p. 1).
- 4 On 28 July 2011, the Dispute Settlement Body of the WTO (‘the DSB’) adopted the Appellate Body report and the Panel Report as modified by the Appellate Body Report on the case ‘European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China’ (WT/DS 397). In those reports, it was found, inter alia, that the EU had acted inconsistently with certain provisions of the WTO Anti-Dumping Agreement.
- 5 Following the DSB’s decision, the Council adopted, on 4 October 2012, Implementing Regulation (EU) No 924/2012 amending Regulation No 91/2009 (OJ 2012 L 275, p. 1), by, in particular, reducing the anti-dumping duty which was laid down in the latter regulation.
- 6 By Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People’s Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ 2011 L 194, p. 6), as amended by Council Implementing Regulation (EU) No 693/2012 of 25 July 2012 (OJ 2012 L 203, p. 23), the anti-dumping measures were extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not.
- 7 Following an expiry review pursuant to Article 11(2) 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), the European Commission, by 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), maintained, for an additional period of five years, the anti-dumping duty as imposed and amended, respectively, by Regulation No 91/2009 and by Implementing Regulation No 924/2012.

- 8 By a decision of 12 February 2016, the DSB adopted new reports concluding that the measures taken by the EU through Implementing Regulation No 924/2012 did not comply with certain provisions of the WTO Anti-Dumping Agreement.

### **Background to the proceedings and the regulation at issue**

- 9 Internacional de Productos Metálicos is a company incorporated under Spanish law whose main activity consists of importing and supplying iron or steel fasteners within the national territory.
- 10 Pursuant to Regulation No 91/2009 and Implementing Regulation No 924/2012, the Spanish tax authorities ordered the appellant to pay customs duties, anti-dumping duties and value added tax (VAT), together with interest for late payment, totalling EUR 672 943,20.
- 11 Those amounts were, in part, contested by the appellant before the Spanish courts.
- 12 On 26 February 2016, the Commission adopted the regulation at issue, on the basis of Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (OJ 2015 L 83, p. 6).
- 13 In Article 1 of the regulation at issue, the anti-dumping duties imposed by Regulation No 91/2009, amended by Implementing Regulation No 924/2012, and maintained by Implementing Regulation 2015/519, are repealed.
- 14 Under Article 2 of the regulation at issue, the repeal of the anti-dumping duties referred to in Article 1 thereof takes effect from the date of the entry into force of that regulation, as provided for in Article 3 thereof, and does not serve as a basis for the repayment of the duties collected prior to that date.

### **The proceedings before the General Court and the order under appeal**

- 15 By application lodged at the Registry of the General Court on 10 May 2016, the appellant brought an action against the regulation at issue, in which it claimed, in the first place, that Article 2 of that regulation should be annulled and, in the second place, that the retroactive effects of Article 1 of that regulation should be expressly recognised.
- 16 Having first rejected, in paragraph 21 of the order under appeal, that second head of claim as being manifestly inadmissible, the General Court went on to rule on the plea of inadmissibility raised by the Commission alleging that the action was inadmissible in view of the conditions of admissibility arising under the fourth paragraph of Article 263 TFEU.
- 17 To that end, the General Court, first, in paragraphs 26 to 33 of the order under appeal, assessed whether the regulation at issue was of individual concern to the appellant, within the meaning of that provision.
- 18 Finding, *inter alia*, that that regulation affected the appellant only in its objective capacity as an importer of goods which were the subject of the anti-dumping measures concerned, without taking account of the appellant's individual situation, the General Court held that that regulation was not of individual concern to the appellant.
- 19 Second, the General Court, in paragraphs 34 to 37 of the order under appeal, considered whether the regulation at issue entailed implementing measures.

- 20 On grounds, inter alia, that the customs system established by EU law provides that the collection of anti-dumping duties is carried out the basis of measures adopted by the national authorities and that the legal remedy against those measures is available, as in the present case, at national level, the General Court found that the regulation at issue entailed implementing measures, within the meaning of the fourth paragraph of Article 263 TFEU.
- 21 Consequently, the General Court dismissed the action as being manifestly inadmissible.

### **Forms of order sought**

- 22 The appellant claims that the Court should:
- set aside the order under appeal;
  - refer the case back to the General Court so that it may rule on the temporal limitation laid down in Article 2 of the regulation at issue, and
  - order the Commission to pay the costs.
- 23 The Commission contends that the Court should:
- dismiss the appeal, and
  - order the appellant to pay the costs.

### **The appeal**

***The first ground of appeal, alleging that the General Court erred in law by finding that the regulation at issue was not of individual concern to the appellant***

#### *Arguments of the parties*

- 24 By its first ground of appeal, the appellant alleges that the General Court erred in law by finding that the regulation at issue was not of individual concern to the appellant, within the meaning of the fourth paragraph of Article 263 TFEU.
- 25 In that regard, the appellant submits that it follows from the case-law of the Court of Justice that when a regulation affects a particular group of persons, that regulation may be of individual concern to those persons because of the factual circumstances before the regulation was adopted.
- 26 According to the appellant, although the General Court found, in paragraph 30 of the order under appeal, that the regulation at issue concerned the appellant in its objective capacity as an importer of goods subject to the anti-dumping measures concerned, without taking into account its individual situation, the fact that the appellant was thus concerned necessarily implies that it was individually concerned.
- 27 The appellant submits that, in the present case, the condition of being individually concerned is met inasmuch as the anti-dumping duties in question do not affect all of the importers, but only those which import the elements expressly identified in Regulation No 91/2009 and from a specific origin, namely China or Malaysia.

- 28 Consequently, if the appellant were objectively affected by the repeal of the anti-dumping duties in question, it would be certain that it is also affected individually, in view of its inherent attributes as an importer of certain products originating in China or Malaysia.
- 29 The appellant also contests the finding of the General Court, in paragraph 31 of the order under appeal, that the contested provision of the regulation at issue did not, in itself, alter any right acquired by the appellant prior to the adoption of that regulation.
- 30 The case-law on which the General Court relied in that regard is not applicable to a case concerning the repeal of obligations. It is a question of a person individually concerned when the provision or the contested act alters a right or indeed an obligation of an applicant, which was acquired before the adoption of the regulation at issue.
- 31 The Commission contends that the first ground of appeal must be dismissed as being unfounded.

### *Findings of the Court*

- 32 It must be recalled at the outset that the admissibility of an action brought by natural or legal persons against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see, *inter alia*, judgments of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraphs 59 and 91, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 39).
- 33 By its first ground of appeal, the appellant challenges the analysis made by the General Court, in paragraphs 26 to 33 of the order under appeal, in the examination of the first situation, with regard to the condition of being individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU.
- 34 In that respect, it should be recalled that it is clear from settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned only if the measure in respect of which annulment is sought 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 these factors distinguishes them individually just as in the case of the person addressed (judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 72, and of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 63).
- 35 As the General Court noted in paragraph 28 of the order under appeal, it is also clear from settled case-law that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that those persons must be regarded as being individually concerned by that measure as long as it is applied by virtue of an objective legal or factual situation defined by the measure at issue (judgments of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 47, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 88).
- 36 Although it is true, as the General Court noted in paragraph 29 of the order under appeal, that where a measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons may nevertheless be individually concerned by that measure inasmuch as they form part of a limited class of economic



operators and that can be the case particularly when the decision alters rights acquired by the individual prior to its adoption (see, to that effect, judgments of 13 March 2008, *Commission v Infront WM*, C-125/06 P, EU:C:2008:159, paragraphs 71 and 72, and of 27 February 2014, *Stichting Woonpunt and Others v Commission*, C-132/12 P, EU:C:2014:100, paragraph 59): those conditions are not met in the present case.

- 37 In so far as the appellant submits, in the first place, that the anti-dumping measures repealed by the regulation at issue affect only importers of the products specifically covered by those measures, the appellant only confirms the finding, in paragraph 30 of the order under appeal, that that regulation affects it only in its objective capacity as an importer of products which were the subject of the anti-dumping measures concerned, without taking into account its individual situation.
- 38 In particular, in the light of settled case-law relating to the condition of being individually concerned, as set out in paragraphs 34 to 36 of the present judgment, it clearly cannot be argued that such a condition is met when it is an objective situation that is affected.
- 39 In so far as the appellant contests, in the second place, the General Court's finding, in paragraph 31 of the order under appeal, that the disputed provision of the regulation at issue had not, in itself, altered any right acquired by the appellant prior to its adoption, it should be noted that the appellant has not put forward any argument that would invalidate that finding.
- 40 Being subject to anti-dumping measures, such as those which were repealed by the regulation at issue, cannot validly be regarded as constituting an 'acquired right' within the meaning of the case-law referred to in paragraph 36 of the present judgment.
- 41 It follows that the General Court did not err in law by holding, in particular in paragraph 33 of the order under appeal, that the regulation at issue was not of individual concern to the appellant, within the meaning of the fourth paragraph of Article 263 TFEU.
- 42 Consequently, the first ground of appeal must be dismissed as being unfounded.

***The second ground of appeal, alleging that the General Court erred in law by finding that the regulation at issue entailed implementing measures.***

*Arguments of the parties*

- 43 By its second ground of appeal, the appellant alleges that the General Court erred in law by finding, in particular in paragraphs 36 and 37 of the order under appeal, that the regulation at issue entailed implementing measures, within the meaning of the fourth paragraph of Article 263 TFEU.
- 44 In that regard, the appellant submits that the General Court wrongly held that the collection notices which were sent to the appellant amounted to an implementing measure of the regulation at issue. Those collections were in fact carried out by the Spanish tax authorities under Regulation No 91/2009 and not under the regulation at issue, by which the anti-dumping duties imposed by the first regulation were repealed.
- 45 According to the appellant, a clear distinction should be made between those two regulations. As regards Article 2 of the regulation at issue, that provision is an autonomous rule and does not require any implementing measure for it to produce legal effects from the date of its entry into force, since that provision merely repeals the anti-dumping duties at issue. Thus, the regulation at issue simply requires the Spanish tax authorities not to take any measures relating to the collection of those anti-dumping duties.

- 46 It follows, in the appellant's submission, that bringing an action for annulment before the General Court was the only way to contest Article 2 of the regulation at issue.
- 47 The appellant concludes that, since it is also directly affected by the temporal limitation of the effects of that provision and since the latter does not require any implementing measure for it to take effect, the General Court should have held its action to be admissible.
- 48 The Commission disputes the appellant's arguments and contends that the second ground of appeal should be dismissed.

### *Findings of the Court*

- 49 In order to examine the question of whether, as the appellant submits by its second ground of appeal, the General Court erred in law by finding, in paragraphs 34 to 38 of the order under appeal, that the regulation at issue entails implementing measures, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, it should be recalled that, as the General Court correctly emphasised in paragraph 34 of that order, the expression 'which ... does not entail implementing measures' in that provision, should be interpreted in the light of the objective of that provision which, as is clear from its origin, consists in preventing an individual from being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a legal remedy before the European Union judicature for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 29, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 42).
- 50 By contrast, where a regulatory act entails implementing measures, judicial review of compliance with the European Union legal order is ensured irrespective of whether those measures were adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the European Union judicature are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 30, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 43).
- 51 Where responsibility for the implementation of such acts lies with the institutions, bodies, offices or agencies of the European Union, natural or legal persons are entitled to bring a direct action before the European Union judicature against the implementing acts under the conditions stated in the fourth paragraph of Article 263 TFEU, and to plead in support of that action, pursuant to Article 277 TFEU, the illegality of the basic act at issue. Where that implementation is a matter for the Member States, those persons may plead the invalidity of the basic act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU (judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 31, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 44).
- 52 As the Court has already held, whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the final limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in

question entails implementing measures with regard to other persons (judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 32, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 45).

- 53 Furthermore, in the context of that assessment, it is necessary to refer exclusively to the subject matter of the action and, where an applicant seeks only the partial annulment of an act, it is solely any implementing measures which that part of the act may entail that must, as the case may be, be taken into consideration (judgments of 10 December 2015, *Kyocera Mita Europe v Commission*, C-553/14 P, not published, EU:C:2015:805 paragraph 45, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 46).
- 54 Moreover, it is irrelevant, in that regard, whether those measures are mechanical in nature (judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraphs 41 and 42, and of 10 December 2015, *Kyocera Mita Europe v Commission*, C-553/14 P, not published, EU:C:2015:805, paragraph 46).
- 55 In the present case, it should be noted that the action for annulment of Article 2 of the regulation at issue, in so far as that provision states that the repeal of the anti-dumping duties referred to in Article 1 of that regulation — namely those imposed by Regulation No 91/2009, amended by Implementing Regulation No 924/2012 and maintained by Implementing Regulation 2015/519 — takes effect only from the date of entry into force of the regulation at issue and that repeal does not serve as a basis for the repayment of the duties collected prior to that date.
- 56 In so far as the appellant submits that that provision does not require any implementing measure for it to produce legal effects because it merely repeals the anti-dumping duties in question, it should be noted that the fact that a regulatory act of the European Union entails implementing measures, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, so that certain legal effects of the act only materialise through those measures, does not exclude the possibility of that act producing, on the legal situation of a natural or legal person, other legal effects, which do not depend on the adoption of implementing measures (judgment of 13 March 2018, *European Union Copper Task Force v Commission*, C-384/16 P, EU:C:2018:176, paragraph 45).
- 57 Thus, in the present case, although it is true, as the appellant submits, that the repeal of the anti-dumping duties by the regulation at issue does not depend, as such, on the adoption of implementing measures for those duties to expire, the fact remains that Article 2 of that regulation, in particular in so far as it provides for the expiry of those duties from the date of its entry into force and excludes any retroactive effect, can materialise, as regards the appellant, only through measures taken by the national authorities for the purpose of collecting the anti-dumping duties in question before that date.
- 58 It is only because the national authorities imposed the anti-dumping duties under the regulations establishing those duties, in particular Regulation No 91/2009, that the appellant's legal situation can be regarded as being affected by the effects of Article 2 of the regulation at issue as regards the date of repeal of those duties and, in particular, by the allegedly unlawful lack of retroactive effect of that repeal.
- 59 As regards the appellant's argument in that context that the measures taken by the national authorities for the purpose of collecting the anti-dumping duties in question — such as, in the present case, the collection notices which were sent to the appellant by the Spanish tax authorities — were adopted under the regulations imposing those anti-dumping duties and not under the regulation at issue, it should be recalled that the final limb of the fourth paragraph of Article 263 TFEU does not require, for a measure to be classified as an implementing measure of a regulatory act, that that act is the legal base of that measure. The same measure may be an implementing measure both of the act the



provisions of which constitute its legal base and of a different act, such as, in the present case, the regulation at issue, where all or part of the legal effects of the latter act will be produced, vis-à-vis the applicant, only through the intermediary of that measure (judgment of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 72).

- 60 It follows that, in view of the particular circumstances of the present case, the General Court, in order to establish that the regulation at issue entailed implementing measures, was fully entitled to refer, in paragraph 35 of the order under appeal, to the measures which national authorities adopt, according to the EU customs system, for the purpose of collecting anti-dumping duties and which may be contested before the national courts, in particular by claiming repayment of unduly collected anti-dumping duties.
- 61 Thus, in that context, where an importer believes itself to have been adversely affected by a regulation which it considers unlawful, such as, in the present case, the regulation at issue, which should, so the appellant argues, serve as a basis for the repayment of the relevant anti-dumping duties collected prior to the entry into force of that regulation, it may plead the unlawfulness of that regulation before the competent national court. That court may, and possibly must, then, under the conditions of Article 267 TFEU, refer a question to the Court of Justice concerning the validity of the regulation in question (see, to that effect, judgment of 14 June 2012, *CIVAD*, C-533/10, EU:C:2012:347, paragraph 33).
- 62 Having regard to all the foregoing considerations, the General Court therefore did not err in law by holding, in paragraph 36 of the order under appeal that the regulation at issue entails implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.
- 63 The second ground of appeal must therefore be dismissed as being unfounded.

***The third ground of appeal, alleging that the General Court was wrong to reject the second head of claim in the application as being inadmissible***

*Arguments of the parties*

- 64 By its third ground of appeal, the appellant alleges that the General Court erred in law in so far as, in paragraphs 20 and 21 of the order under appeal, it rejected as manifestly inadmissible the second head of claim in the application, which requested the General Court to expressly recognise that Article 1 of the regulation at issue has retroactive effects.
- 65 In that regard, the appellant submits that that retroactivity is the necessary consequence of the requested annulment of Article 2 of the regulation at issue, given that that article establishes a temporal limitation, the validity of which it is right to contest. In other words, that annulment implies that the retroactivity is valid, with the result that the General Court does indeed have jurisdiction to expressly rule on that retroactivity.
- 66 The Commission disputes the appellant's arguments and contends that the third ground of appeal must be dismissed as being unfounded.

*Findings of the Court*

- 67 It should be noted, as the General Court correctly stated in paragraph 20 of the order under appeal, that in an action for annulment under Article 263 TFEU, the General Court can only review the legality of acts of the EU institutions and, if necessary, annul the contested act. Thus, in the context of that review of legality, it does not have jurisdiction to make statements of law or declarations such

as that regarding recognition of the retroactive application of Article 1 of the regulation at issue, referred to in the second head of claim in the application before the General Court (see, to that effect, order of 25 November 2008, *TEA v Commission*, C-500/07 P, not published, EU:C:2008:651, paragraph 33).

- 68 It follows that the General Court did not err in law by holding, in paragraph 21 of the order under appeal, that that head of claim was manifestly inadmissible.
- 69 The third ground of appeal must therefore be dismissed as being unfounded.
- 70 Since none of the grounds of appeal relied on by the appellant has been upheld, the appeal must be dismissed in its entirety.

### **Costs**

- 71 Under Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to the costs.
- 72 Under Article 138(1) of those Rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, 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 appellant has been unsuccessful and the Commission has applied for costs to be awarded against it, the appellant must be ordered to pay the costs of the present appeal.

On those grounds, the Court (First Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Internacional de Productos Metálicos, SA to pay the costs.**

[Signatures]