



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

10 March 2021 *

(Reference for a preliminary ruling – Definitive anti-dumping duty – Aluminium foil originating in China – Slightly modified aluminium foil – Implementing Regulation (EU) 2017/271 – Admissibility – No action for annulment brought by the applicant in the main proceedings – *Locus standi* in an action for annulment)

In Case C-708/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 21 August 2019, received at the Court on 25 September 2019, in the proceedings

Von Aschenbach & Voss GmbH

v

Hauptzollamt Duisburg,

THE COURT (Eighth Chamber),

composed of N. Wahl (Rapporteur), President of the Chamber, F. Biltgen and L.S. Rossi, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Von Aschenbach & Voss GmbH, by T. Lieber, Rechtsanwalt,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Albenzio, avvocato dello Stato,
- the European Commission, initially by M. França, N. Kuplewatzky and K. Blanck, and subsequently by K. Blanck, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity of Article 1(1) of Commission Implementing Regulation (EU) 2017/271 of 16 February 2017 extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil (OJ 2017 L 40, p. 51) ('the regulation at issue').
- 2 The request has been made in proceedings between Von Aschenbach & Voss GmbH ('VA&V') and Hauptzollamt Duisburg (Principal Customs Office, Duisburg, Germany) concerning the payment of anti-dumping duties paid on the importation of certain aluminium foil from China.

Legal context

The basic regulation

- 3 The provisions governing the adoption of anti-dumping measures by the European Union that were in force at the time of the adoption of the regulation at issue are contained in 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) ('the basic regulation').
- 4 Article 1 of the basic regulation, entitled 'Principles', provides in paragraph 4:
'For the purposes of this Regulation, "like product" means a product which is identical, that is to say, alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.'
- 5 Article 13 of that regulation, entitled 'Circumvention', is worded as follows:
'1. Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place.

Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values

previously established for the like product, if necessary in accordance with the provisions of Article 2.

The practice, process or work referred to in the third subparagraph includes, inter alia:

- (a) the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics;

...

3. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made by Commission Regulation which may also instruct customs authorities to subject imports to registration in accordance with Article 14(5) or to request guarantees. The Commission shall provide information to the Member States once an interested party or a Member State has submitted a request justifying the initiation of an investigation and the Commission has completed its analysis thereof, or where the Commission has itself determined that there is a need to initiate an investigation.

Investigations shall be carried out by the Commission. The Commission may be assisted by customs authorities and the investigation shall be concluded within nine months.

Where the facts as finally ascertained justify the extension of measures, this shall be done by the Commission acting in accordance with the examination procedure referred to in Article 15(3). The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5), or on which guarantees were requested. The relevant procedural provisions of this Regulation concerning the initiation and the conduct of investigations shall apply pursuant to this Article.

4. Imports shall not be subject to registration pursuant to Article 14(5) or measures where they are traded by companies which benefit from exemptions.

Requests for exemptions duly supported by evidence shall be submitted within the time limits established in the Commission regulation initiating the investigation.

Where the circumventing practice, process or work takes place outside the Union, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article.

Where the circumventing practice, process or work takes place inside the Union, exemptions may be granted to importers that can show that they are not related to producers subject to the measures.

Those exemptions shall be granted by decision of the Commission and shall remain valid for the period and under the conditions set down therein. The Commission shall provide information to the Member States once it has concluded its analysis.

Provided that the conditions set in Article 11(4) are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures.

...

5. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.'

The anti-dumping regulations relating to imports of certain aluminium foil and the regulation at issue

- 6 Following an initial investigation, the Council of the European Union adopted, on 24 September 2009, Regulation (EC) No 925/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ 2009 L 262, p. 1) ('the original regulation'). The measures took the form of an *ad valorem* duty established, in particular on imports from China, at 30% for all companies, with the exception of four companies mentioned in Article 1(2) of the original regulation.
- 7 The measures covered aluminium foil of a thickness of not less than 0.008 mm and not more than 0.018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and currently falling within CN code ex 7607 11 19 (TARIC code 7607111910), commonly known as 'aluminium household foil'.
- 8 Following an expiry review of the measures imposed by the original regulation, the Commission decided, by Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ 2015 L 332, p. 63), to extend the anti-dumping measures applicable to imports of aluminium household foil from China ('the existing measures').
- 9 Having received a request, the Commission adopted Implementing Regulation (EU) 2016/865 of 31 May 2016 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration (OJ 2016 L 144, p. 35). The investigation concerned, more specifically, four types of aluminium foil, as set out in paragraph 16 of the present judgment, with the same essential characteristics as the aluminium household foil to which the existing measures applied. The first three types fell within the same CN code as the product concerned, unlike the fourth type, but all had different TARIC codes.
- 10 At the end of that investigation, the Commission adopted the regulation at issue on 16 February 2017, and thereby, in essence, extended the existing measures to imports of that slightly modified aluminium foil from China, with the exception of products imported for uses other than that of aluminium household foil.

- 11 Under the heading ‘Investigation’, recitals 10, 15, 16, 18 and 20 of the regulation at issue state:
- ‘(10) The Commission duly informed the authorities of the [People’s Republic of China], the exporting producers and traders in the [People’s Republic of China], the importers in the Union known to be concerned and the Union industry of the initiation of the investigation.
- ...
- (15) The following exporting producers submitted complete replies to the questionnaires and verification visits were subsequently carried out at their premises:
- Dingsheng Aluminium Group
 - ...
- (16) The following five Union unrelated importers submitted complete replies to the questionnaires:
- ...
 - [VA&V],
 - ...
- ...
- (18) Verification visits were carried out at the premises of the following unrelated importers:
- ...
 - [VA&V].
- ...
- (20) Hearings took place between the Commission and the applicant, and between the Commission and the following companies: ... and [VA&V].’
- 12 Under the heading ‘Existence of circumvention practices’, recitals 44 to 47 of the regulation at issue are worded as follows:
- ‘(44) The activities of the cooperating exporting producers were analysed. This analysis confirmed the existence of the four circumvention practices.
- (45) For the four circumvention practices, evidence took form of emails from the Chinese exporting producers advising customers on how the current measures could be circumvented. The different pieces of evidence also contained information that such practices have been actually put in place by some of the Union importers/users.
- (46) The Commission also found supporting evidence when verifying one of the cooperating Chinese producers, namely Dingsheng Aluminium Group. ...

- (47) Furthermore, in the same period, Dingsheng Aluminium Group sold to the Union [aluminium household foil] in rolls wider than 650 mm. These rolls were subsequently slit in the Union into smaller rolls. When verifying one of the cooperating importers, the Commission found that this importer, namely the company [VA&V], slits in the Union wider rolls into consumer rolls.'
- 13 Under the heading 'Conclusion', recitals 57 to 59 of the regulation at issue state:
- '(57) Based on the findings above the Commission concluded that duties on imports of the product concerned as defined in the original investigation [(aluminium foil of a thickness of not less than 0.008 mm and not more than 0.018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg)] were circumvented by imports of slightly modified product concerned originating in [China].
- (58) The investigation also showed that there was a change in the pattern of trade between the [People's Republic of China] and the Union, and that there was insufficient due cause or economic justification for this change other than the imposition of the duty.
- (59) The Commission also found that these imports cause injury and that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product. Evidence of dumping in relation to the normal values previously established for the like product was also found.'
- 14 Under the heading 'Request for exemption by unrelated importers', recitals 81 to 86 of the regulation at issue state:
- '(81) When the circumvention practice takes place within the Union, Article 13(4) of the basic Regulation allows importers to be exempted from the extended duties, if they can show that they are not related to producers subject to measures.
- (82) On these grounds, five exemption requests by unrelated importers were received and examined. One of the companies, ..., subsequently ceased cooperation.
- (83) The Commission found that, although in some cases the final completion (slitting of the foil into smaller rolls) takes place in the Union, the slight modification of the product concerned as such takes place outside the Union, namely in [China]. On these grounds the Commission considered that exemptions might not be granted to the unrelated importers.
- (84) For three of the four cooperating companies it was found that they were genuine importers reselling the product under investigation without processing it. Therefore these companies cannot be exempted from the extended duties under Article 13(4) of the basic Regulation. Only one of the companies, the company [VA&V], imports from [China] the product under investigation in the form of aluminium household foil in rolls exceeding 650 mm and further processes it. The foil is slit before it is sold to the company's customers (rewinders).

- (85) Before imposition of the existing measures, the company [VA&V] imported into the Union the product concerned, and a clear change of pattern was found. The Commission's findings do not support the company's view on an existence of a due cause or economic justification, other than imposition of the duties. Therefore even if the Commission were to accept that this justified that the circumvention practice was completed within the Union, an exemption to this company could not be granted.
- (86) Therefore, it was concluded that none of the unrelated importers may be exempted under Article 13(4) of the basic Regulation.'
- 15 In those circumstances, the Commission concluded, in recital 89 of the regulation at issue, that 'the existing anti-dumping measures on imports of the product concerned originating in [China] should be extended to imports of the product under investigation originating in the [People's Republic of China]'
- 16 Article 1(1) and (4) of the regulation at issue provides:
- '1. The definitive anti-dumping duty applicable to "all other companies" imposed by Article 1(2) of Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in [China] is hereby extended to imports into the Union of:
- aluminium foil of a thickness of not less than 0.007 mm and less than 0.008 mm, regardless of the width of the rolls, whether or not annealed, currently falling within CN code ex 7607 11 19 (TARIC code 7607111930) or
 - aluminium foil of a thickness of not less than 0.008 mm and not more than 0.018 mm and in rolls of a width exceeding 650 mm, whether or not annealed, currently falling within CN code ex 7607 11 19 (TARIC code 7607111940), or
 - aluminium foil of a thickness of more than 0.018 mm and less than 0.021 mm, regardless of the width of the rolls, whether or not annealed, currently falling within CN code ex 7607 11 19 (TARIC code 7607111950), or
 - aluminium foil of a thickness of not less than 0.021 mm and not more than 0.045 mm, when presented with at least two layers, regardless of the width of the rolls, whether or not annealed, currently falling within CN code ex 7607 11 90 (TARIC codes 7607119045 and 7607119080).
- ...
4. The product described in paragraph 1 shall be exempted from definitive anti-dumping duty if it is imported for other uses than the use of household foil. An exemption shall be subject to the conditions laid down in the relevant customs provisions of the Union on the end-use procedure, in particular Article 254 of the Union Customs Code.'

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

- 17 VA&V is an independent company, established in Germany, which, at the material time, was importing aluminium foil from China.

- 18 In the period from 21 July to 15 September 2016, VA&V declared six consignments of aluminium foil originating in China to the Zollamt Ruhrort (Ruhrort customs office, Germany) for release for free circulation. The imports were registered at the Ruhrort customs office as ‘rolls of aluminium foil, not further worked than rolled, of a thickness of not less than 0.008 mm and not more than 0.018 mm, in rolls of a width exceeding 650 mm’.
- 19 The Ruhrort customs office accepted those customs declarations and imposed only customs duty and import turnover tax by means of import duty assessment notices.
- 20 It is, however, apparent from the file submitted to the Court that, after importing those consignments into the European Union, VA&V had the rolls slit into the widths used for aluminium household foil, that is to say, of a width not exceeding 650 mm, before selling them to its customers, ‘rewinders’.
- 21 In addition, by import duty assessment notice of 5 May 2017 (‘the notice of 5 May 2017’), the Principal Customs Office, Duisburg, imposed on VA&V an anti-dumping duty of EUR 413 471 for those six consignments, pursuant to the regulation at issue.
- 22 VA&V lodged an objection to that notice, which was dismissed by decision of 2 February 2018.
- 23 As a result, VA&V brought an action before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) for annulment of the notice of 5 May 2017 and, in the alternative, for leave to appeal on a point of law (*Revision*).
- 24 In support of that action, VA&V pleads the invalidity of the regulation at issue on the basis of which that notice was adopted, claiming that that regulation infringes the basic regulation.
- 25 The Principal Customs Office, Duisburg, contends that the action should be dismissed, referring in that respect to the grounds set out in the decision of 2 February 2018.
- 26 The referring court queries the scope of Article 1(1) of the regulation at issue and any conflict with Article 13(1) of the basic regulation, in so far as it extends to aluminium converter foil the anti-dumping duty imposed in respect of aluminium household foil by Implementing Regulation 2015/2384 and provides that aluminium converter foil is exempt from anti-dumping only under the conditions set out in Article 1(4) of the regulation at issue. On that basis, it notes, in particular, that the detailed rules concerning the actual implementation of Article 1(4) of the regulation at issue would be detrimental for an importer of aluminium converter foil.
- 27 In addition, the referring court queries how the Commission came to the conclusion – without, in its view, adequate reasons being given – that 80% of the products under investigation were slightly modified products. It states that if that rate was determined incorrectly, the Commission may have committed a manifest error of assessment when it assessed the undermining of the coercive effects of the anti-dumping duty. Article 1(1) of the regulation at issue is, consequently, invalid. In that regard, it notes that the Commission based its conclusion on Article 18(1) of the basic regulation, deducting from the total volume of exports from China to the European Union the volume of aluminium converter foil that originated from the cooperating undertakings. The referring court states that, having found that 20% of exports from China consisted in any event of aluminium converter foil, the Commission assumed that the remaining quantity comprised a slightly modified product.

- 28 Last, the referring court queries whether Article 1(1) of the regulation at issue is invalid in that the Commission made a manifest error of assessment when adopting that regulation as it did not check the end use of the imported aluminium foil in the European Union. According to that court, the circumstances of the case in the main proceedings were such that the Commission did not have sufficient time to be able to make such checks.
- 29 The referring court considers, moreover, that VA&V is directly affected by the regulation at issue.
- 30 In those circumstances the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Article 1(1) of [the regulation at issue] invalid because it infringes Article 13(1) of [the basic regulation], in that it extended to aluminium converter foil the definitive anti-dumping duty imposed in respect of aluminium household foil pursuant to [Implementing Regulation 2015/2384] and provides for exemption for aluminium converter foil from anti-dumping duty only under the conditions of Article 1(4) of [the regulation at issue]?
- (2) Is Article 1(1) of [the regulation at issue] invalid because the Commission made a manifest error of assessment when adopting that regulation as adequate reasons are not stated for its assumption that 80% of the products under investigation were slightly modified products?
- (3) Is Article 1(1) of [the regulation at issue] invalid because the Commission made a manifest error of assessment when adopting that regulation as it did not check the end use of the imported aluminium foil in the European Union?’

Admissibility of the request for a preliminary ruling

- 31 The Commission claims, on the basis of the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), that the present request for a preliminary ruling is inadmissible on the ground that VA&V did not bring an action for annulment, pursuant to the fourth paragraph of Article 263 TFEU, before the Courts of the European Union against the regulation at issue.
- 32 As a preliminary point, it must be recalled that it is settled case-law that the general principle which guarantees any litigant the right to plead, in an action brought against a national measure which adversely affects him, that the EU act forming the basis for that measure is invalid does not preclude such a right from being subject to the condition that the person concerned did not have the right to request the EU judicature directly to annul it, under Article 263 TFEU. However, it is only if it can be held that a person would undoubtedly have been entitled to request, within the two-month period prescribed in the sixth paragraph of that article, the annulment of the act in question that that person is prevented from pleading invalidity of that act before the national court having jurisdiction (see, in particular, judgments of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 56 and the case-law cited, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 29).

- 33 It is therefore only if the view could be taken that VA&V would undoubtedly have had standing to bring an action for annulment of the regulation at issue under the fourth paragraph of Article 263 TFEU that it would be prevented from pleading before the referring court that that regulation is invalid.
- 34 As regards the question whether VA&V could clearly have brought an action under the final limb of the fourth paragraph of Article 263 TFEU against the regulation at issue in so far as it constituted a regulatory act which directly concerned VA&V and which did not entail implementing measures within the meaning of that provision, it is sufficient to note that it is by virtue of the notice of 5 May 2017 that the payment of the anti-dumping duties extended by the regulation at issue was imposed on VA&V. It follows that it cannot be held that that regulation manifestly does not entail implementing measures for the purposes of that provision (see, in particular, judgments of 18 October 2018, *Rotho Blaas*, C-207/17, EU:C:2018:840, paragraphs 38 and 39, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 31).
- 35 Therefore, it is only if it could be held that an importer such as VA&V is undoubtedly directly and individually concerned by the regulation at issue, within the meaning of the fourth paragraph of Article 263 TFEU, that it would be prevented from pleading before the national courts that that regulation is invalid.
- 36 According to the case-law of the Court, regulations which impose an anti-dumping duty are of a legislative character inasmuch as they apply generally to the traders concerned (judgments of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 58 and the case-law cited, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 33). The same applies, for the same reasons, to a regulation, such as the regulation at issue, extending an anti-dumping duty on the grounds of circumventing practices. The purpose of such a regulation is to extend the scope of an anti-dumping duty imposed by an initial regulation such as the original regulation (judgment of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 34).
- 37 However, it is apparent from the case-law of the Court that a trader may be directly and individually concerned by a regulation imposing an anti-dumping duty (judgments of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 59 and the case-law cited, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 35).
- 38 As regards, in the first place, the question whether VA&V was directly concerned by the regulation at issue, it is sufficient to note that that regulation directly affected its legal situation, in that it constituted the legal basis of the anti-dumping duty imposed on it.
- 39 It follows that VA&V was directly concerned by the regulation at issue.
- 40 As regards, in the second place, the question whether VA&V was individually concerned by the regulation at issue, it should be pointed out that the Court has identified certain categories of traders that may be individually concerned by a regulation imposing an anti-dumping duty, without prejudice to the possibility that other traders may be individually concerned by reason of certain attributes which are peculiar to them and which differentiate them from all other persons (judgments of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 59 and the case-law cited, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 35).

- 41 The following may be individually concerned by a regulation imposing an anti-dumping duty: first, those of the producers and exporters of the product in question which have been charged with practising dumping on the basis of information relating to their business activities; second, importers of that product whose resale prices were taken into account for the construction of export prices and which are consequently concerned by the findings relating to the existence of dumping; and, third, importers associated with exporters of the product in question, particularly where the export price has been calculated on the basis of those importers' resale prices on the EU market and where the anti-dumping duty itself has been calculated on the basis of those resale prices (judgments of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraphs 60 to 62 and the case-law cited, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 36).
- 42 Therefore, it should be noted that the status of importer cannot, on its own, be sufficient to support the view that an importer is individually concerned by a regulation imposing an anti-dumping duty. Even if associated with exporters of the product in question, an importer is individually concerned only if it is able to prove that information relating to its business activities has been taken into account for the purpose of establishing dumping or, failing that, that it has other attributes which are peculiar to it and which differentiate it from all other persons (see, in particular, judgment of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 37).
- 43 Accordingly, it cannot be ruled out that an importer of the product in question may, by demonstrating the existence of certain attributes which are peculiar to it and which differentiate it from all other persons, be regarded as individually concerned by a regulation extending an anti-dumping duty on account of circumventing practices, such as the regulation at issue (judgment of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraph 38).
- 44 On that basis, it must be noted that, as is apparent in particular from recitals 16, 18 and 20 of the regulation at issue, VA&V participated in the investigation and that, as is apparent from recitals 81 to 86 of that regulation, the Commission found that none of the unrelated importers, such as VA&V, could be exempted under Article 13(4) of the basic regulation.
- 45 Thus, the Commission found, first, that VA&V was importing from China the product under investigation in the form of aluminium household foil and further processing it, and, second, that there had been a change in the pattern of trade and that VA&V had not put forward sufficient due cause or economic justification other than the imposition of duties.
- 46 In that context, and contrary to VA&V's contention, the fact that no 'decision', taken in the form of an autonomous act, had been communicated to it is not relevant for the purposes of determining whether there was a challengeable act, in so far as it follows from settled case-law that the form in which an act or a decision is adopted is, in principle, irrelevant for assessing the admissibility of an action for annulment of that act or that decision. It is necessary to look to the substance of the contested acts, as well as the intention of those who drafted them, to classify those acts. In that regard, it is in principle those measures which definitively determine the position of the Commission upon the conclusion of an administrative procedure, and which are intended to have legal effects capable of affecting the interests of the complainant, which are open to challenge and not intermediate measures whose purpose is to prepare for the final decision. It is therefore, in principle, irrelevant for the classification of the act in question whether or not it satisfies certain formal requirements, namely, that it is duly named by its author, that it is sufficiently reasoned, and that it mentions the provisions providing the legal

basis for it. It is therefore irrelevant that the act may not be described as a ‘decision’ (judgment of 17 July 2008, *Athinaïki Techniki v Commission*, C-521/06 P, EU:C:2008:422, paragraphs 42 to 44 and the case-law cited).

- 47 In the light of the foregoing, it must be held that VA&V was individually concerned by the regulation at issue and, therefore, undoubtedly entitled to seek its annulment.
- 48 In the present case, VA&V did not bring an action, within the two-month time limit prescribed in the sixth paragraph of Article 263 TFEU, against that regulation, which was published in the *Official Journal of the European Union* on 17 February 2017.
- 49 Therefore, in so far as VA&V undoubtedly had the right to bring an action for annulment, as provided for in the fourth paragraph of Article 263 TFEU, against the regulation at issue but did not exercise that right, it cannot rely on the invalidity of that regulation in support of the action for annulment brought against the notice of 5 May 2017.
- 50 It follows that the request for a preliminary ruling is inadmissible.

Costs

- 51 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 (Eighth Chamber) hereby rules:

The request for a preliminary ruling from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 21 August 2019, is inadmissible.

[Signatures]