Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber)

30 November 2021 *

(Dumping – Imports of aluminium extrusions originating in China – Act imposing a provisional anti-dumping duty – Act not open to challenge – Preparatory act – Inadmissibility – Definitive anti-dumping duty – No longer any legal interest in bringing proceedings – No need to adjudicate)

In Case T-744/20,

Airoldi Metalli SpA, established in Molteno (Italy), represented by M. Campa, D. Rovetta, G. Pandey and V. Villante, lawyers,

applicant,

v

European Commission, represented by G. Luengo and P. Němečková, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment of Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ 2020 L 336, p. 8),

THE GENERAL COURT (Fourth Chamber),

composed of S. Gervasoni (Rapporteur), President, R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: English.

Order

Background to the dispute and events subsequent to the bringing of the action

1 Following a complaint lodged by an association representing European producers of aluminium extrusions ('the product concerned'), the European Commission published, on 14 February 2020, a notice of initiation of an anti-dumping proceeding concerning imports into the European Union of the product concerned originating in the People's Republic of China (OJ 2020 C 51, p. 26), under Article 5 of 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 amended ('the basic regulation').

2 For the anti-dumping proceeding and investigation, the Commission decided, in accordance with Article 17 of the basic regulation, to rely on a sample of unrelated importers. The applicant, Airoldi Metalli SpA, which is an importer of the product concerned, was included in that sample.

3 The applicant submitted its observations on several occasions in the course of the proceeding, in particular in response to requests from the Commission, and was heard by that institution on 29 June 2020. It also requested that the proceeding be suspended on account of the health crisis, but the Commission did not accede to that request.

4 On 23 June 2020, the complainant association submitted a request for registration of the product concerned by the anti-dumping investigation pursuant to Article 14(5) of the basic regulation, in order that anti-dumping duties could subsequently be applied to imports of that product from the date of that registration. On 6 July 2020, the applicant informed the Commission of its opposition to that request for registration.

5 On 21 August 2020, the Commission adopted Implementing Regulation (EU) 2020/1215 making imports of aluminium extrusions in the People's Republic of China subject to registration (OJ 2020 L 275, p. 16). That regulation was challenged before the Court by the applicant (Case T-611/20) and by two Chinese companies, Guangdong Haomei New Materials Co. Ltd and Guangdong King Metal Light Alloy Technology Co. Ltd, exporting producers of the product concerned (Case T-604/20). The Court dismissed the first action by order of 28 September 2021, *Airoldi Metalli* v *Commission* (T-611/20, not published, EU:T:2021:641), on the ground that the applicant had no interest in bringing proceedings against that regulation.

6 Following further observations submitted by, inter alia, the applicant, the Commission adopted, on 12 October 2020, Implementing Regulation (EU) 2020/1428 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ 2020 L 336, p. 8; 'the contested regulation').

7 The contested regulation provides inter alia:

'Article 1

1. A provisional anti-dumping duty is imposed on imports of [the product concerned].

2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below, shall be as follows:

Company	Provisional anti-dumping duty	TARIC additional code
Guangdong Haomei New Materials Co., Ltd.	30.4%	C562
Guangdong King Metal Light Alloy Technology Co., Ltd.	30.4%	C563
Press Metal International Ltd.	38.2%	C564
Press Metal International Technology Ltd.	38.2%	C565
Other cooperating companies listed in Annex	34.9%	
All other companies	48.0%	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: "I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct." If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

…

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings shall do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2020/1215 making imports of aluminium extrusions originating in the People's Republic of China subject to registration.

2. Data collected regarding products which were imported into the EU for consumption not more than 90 days prior to the date of the entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.'

8 Subsequent to the bringing of the actions in the present case, the Commission adopted Implementing Regulation (EU) 2021/546 of 29 March 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of aluminium extrusions originating in the People's Republic of China (OJ 2021 L 109, p. 1; 'the definitive regulation').

9 Under the definitive regulation:

'Article 1

1. A definitive anti-dumping duty is imposed on imports of [the product concerned].

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and produced by the companies listed below, shall be as follows:

Company	Duty rate (%)	TARIC additional code
Guangdong Haomei New Materials Co., Ltd.	21.2	C562
Guangdong King Metal Light Alloy Technology Co., Ltd.	21.2	C563
Press Metal International Ltd.	25.0	C564
Press Metal International Technology Ltd.	25.0	C565
Other cooperating companies listed in Annex	22.1	
All other companies	32.1	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: "I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct." If no such invoice is presented, the duty applicable to all other companies shall apply.

…

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2020/1428 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2020/1215 shall no longer be kept.

…'

Procedure and forms of order sought

10 By application lodged at the Court Registry on 21 December 2020, the applicant brought the present action.

11 By document lodged at the Court Registry on 11 March 2021, the European Parliament applied to intervene in support of the Commission.

12 By separate document lodged at the Court Registry on 12 March 2021, the Commission raised an objection of inadmissibility under Article 130 of the Rules of Procedure of the General Court. By document lodged at the Court Registry on 8 April 2021, the Commission announced the adoption, on 29 March 2021, of the definitive regulation as well as its publication. The applicant lodged its observations on the objection of inadmissibility on 28 April 2021. It also brought an action against the definitive regulation on 9 June 2021 (Case T-328/21).

13 The applicant claims that the Court should:

– annul the contested regulation;

– order the Commission to pay the costs.

14 The applicant also requests the Court, as an ancillary point, to request the Commission, by way of measures of organisation of procedure, to produce all of its internal documents relating to the preparatory work for the contested regulation and the relevant registration of imports.

15 The Commission contends that the Court should:

– dismiss the action as inadmissible;

– order the applicant to pay the costs.

Law

16 Under Article 130(1) and (7) of the Rules of Procedure, on the application of the defendant, the Court may decide on inadmissibility or lack of competence without going to the substance of the case. In the present case, since the Commission has requested the Court to give a ruling on

inadmissibility, and the Court considers that it has sufficient information available to it from the material in the file, the Court has decided to give a ruling on that request without taking further steps in the proceedings.

17 The Commission pleads that the present action is inadmissible on the grounds, first, that the contested regulation is not a reviewable act; second, that the applicant has no interest, or no longer has an interest, in challenging it, and, third, that the applicant does not have standing to bring proceedings against the contested regulation, either.

18 As regards the objection of inadmissibility based on the non-reviewability of the contested regulation, the Commission submits that it is a provisional act adopted pending the outcome of the investigation, the only consequence being the provision of a guarantee to allow, if necessary, the subsequent application of the provisional duties imposed without any duty being levied at that stage. It is thus a preparatory act followed, according to the basic regulation, either by an act that terminates the anti-dumping proceeding without adopting measures or by a regulation that imposes definitive anti-dumping duties. The Commission adds that the fact that the applicant cannot challenge the contested regulation directly does not deprive it of legal protection, since any illegality vitiating it could be raised in an action brought against the act imposing definitive duties, of which it constitutes a preparatory measure. In addition, according to the Commission, were the action to be declared admissible, the Court would have to decide upon questions on which the Commission will state its position at a later stage when fixing definitive anti-dumping duties, which would be incompatible with the requirements of the sound administration of justice and the proper course of the administrative procedure before the Commission.

19 The applicant considers, on the contrary, that the contested regulation is a reviewable act. That regulation, after all, produces immediate, binding, autonomous and definitive negative effects on its factual and legal situation, which could not be influenced by the adoption of the definitive regulation. The applicant refers, in that regard, to the penalties liable to be imposed on it if it did not comply with its obligation to provide the guarantees imposed by the contested regulation. It also points to the damage linked to the costs of that provision of guarantees for the amounts ultimately released by the final regulation and the problems of availability of the product concerned following the entry into force of the contested regulation.

20 According to Article 263 TFEU, an action for annulment may be brought against acts, other than recommendations and opinions, intended to produce legal effects vis-à-vis third parties.

21 In order to determine whether an act may be the subject of such an action, importance must be given to the substance of that act, the form in which an act or decision is adopted being in principle irrelevant to the right to challenge such acts. In that regard, only measures the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his or her legal position may be the subject of an action for annulment (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9; of 19 January 2017, *Commission* v *Total and Elf Aquitaine*, C-351/15 P, EU:C:2017:27, paragraphs 35 and 36; and order of 15 March 2019, *Silgan Closures and Silgan Holdings* v *Commission*, T-410/18, EU:T:2019:166, paragraphs 12 and 13).

22 In the case of acts or decisions adopted by a procedure involving several stages, a measure will be open to review in principle only if it is a measure definitively laying down the position of the institution upon conclusion of that procedure, and not a provisional measure intended to pave

the way for that final decision (judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 10, and order of 10 December 1996, *Söktas* v *Commission*, T-75/96, EU:T:1996:183, paragraph 27).

23 It would be otherwise only if acts or decisions adopted in the course of the preparatory proceedings not only bore all the legal characteristics referred to above but in addition were themselves the culmination of a special procedure distinct from that intended to permit the institution to take a decision on the substance of the case (judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 11, and order of 2 June 2004, *Pfizer* v *Commission*, T-123/03, EU:T:2004:167, paragraph 23) and thus produced independent, immediate and irreversible legal effects justifying that those acts or decisions may be the subject of an action for annulment, since the illegality attaching to them could not be remedied in an action brought against the final decision for which they represent a preparatory step (see, to that effect, judgment of 6 October 2021, *Tognoli and Others* v *Parliament*, C-431/20 P, EU:C:2021:807, paragraphs 42, 44 and 51 and the case-law cited). In that regard, it has already been held that the Commission's decision to initiate an anti-dumping proceeding was a preparatory act not open to challenge, in that it did not immediately and irreversibly affect the legal position of the undertakings concerned, and that an action for annulment therefore could not justifiably be held to be admissible before the administrative procedure was completed (see, to that effect, orders of 14 March 1996, *Dysan Magnetics and Review Magnetics* v *Commission*, T-134/95, EU:T:1996:38, paragraphs 21 to 23 and the case-law cited, and of 25 May 1998, *Broome & Wellington* v *Commission*, T-267/97, EU:T:1998:108, paragraphs 26 to 29).

24 In the case at hand, it is therefore appropriate to assess the effects and the legal nature of the contested regulation, adopted in accordance with Article 7 of the basic regulation, in the light of its function in the anti-dumping proceeding and in the light of the act terminating that proceeding pursuant to Article 9 of the basic regulation (see, to that effect, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 13, and order of 15 March 2019, *Silgan Closures and Silgan Holdings* v *Commission*, T-410/18, EU:T:2019:166, paragraph 16).

25 As is apparent from the basic regulation's provisions, the regulation imposing provisional anti-dumping duties constitutes an intermediate stage between the notice of initiation governed by Article 5 of the basic regulation, which marks the initiation of the anti-dumping proceeding, and the termination of that proceeding, which results either in the fixing of definitive duties or in the non-fixing of duties pursuant to Article 9 of the basic regulation. Such a regulation imposing provisional duties, according to the terms used since the first regulations on protection against dumping, aims to ensure 'appropriate protection' of the European Union once a preliminary examination shows that dumping exists and to 'prevent injury being caused during the proceeding' by provisionally imposing anti-dumping duties which can then be collected retroactively at the time of the termination of the proceeding (see the thirteenth recital of Regulation (EEC) No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community (OJ, English special edition: Series I Volume 1968(I) p. 80), and Article 11 of Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1979 L 339, p. 1)). In so doing, it forms part of the continuum of the anti-dumping proceeding and seeks to ensure its effectiveness.

26 In the same sense of forming part of that continuum, the regulation imposing provisional anti-dumping duties is to inform interested parties, and in particular importers, of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed and give them the opportunity to comment on them with a view to the determination of the definitive measures to be adopted (Article 2 of the contested regulation; see also Articles 19a and 20 of the basic regulation). Such a continuum is all the more pronounced given that, since the entry into force in 2016 of the basic regulation, the Commission has adopted the entirety of the acts forming the anti-dumping proceeding, from the notice of initiation to the imposition of definitive duties, when, previously, definitive duties were imposed by the Council of the European Union (see inter alia Article 9 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)). It is also noteworthy, in that regard, that recital 32 of the basic regulation refers to the 'sequential logic [of provisional measures] in relation to the adoption of definitive measures'. In so doing, the rules applicable to the present case differ from those in force in the case which gave rise to the judgment of 21 February 1984, *Allied Corporation and Others* v *Commission* (239/82 and 275/82, EU:C:1984:68), which is moreover not cited by the applicant in support of its arguments in favour of the reviewability of the contested regulation, in which the Court of Justice ruled on the validity of the two contested provisional regulations, without, however, expressly ruling on whether those regulations were reviewable, which had not been followed by the adoption of a definitive regulation.

27 It follows that the contested regulation, in so far as it imposes provisional anti-dumping duties, cannot be regarded as being the culmination of a procedure distinct from that which will be terminated by the fixing of definitive duties or by the non-fixing of such duties. As with the notice of initiation of the anti-dumping proceeding categorised by the case-law, as has been recalled in paragraph 23 above, as a preparatory act, the contested regulation is preparatory for those acts terminating the anti-dumping proceeding and themselves open to challenge (see, to that effect, judgment of 30 September 2003, *Eurocoton and Others* v *Council*, C-76/01 P, EU:C:2003:511, paragraph 72 and the case-law cited; see also, by analogy, order of 25 May 1998, *Broome & Wellington* v *Commission*, T-267/97, EU:T:1998:108, paragraph 33, and judgment of 17 December 2010, *EWRIA and Others* v *Commission*, T-369/08, EU:T:2010:549, paragraph 37 and the case-law cited).

28 Furthermore, the contested regulation does not immediately and irreversibly affect the applicant's legal situation.

29 Article 2 of the contested regulation does not imply any obligation to cooperate in the investigation and provides for a mere possibility for interested parties – including importers – to submit comments or to be heard. Even though that provision uses the present indicative, it must be read in the light of Articles 19a and 20 of the basic regulation (see paragraph 26 above) and thus be interpreted as merely creating, in favour of interested parties, procedural guarantees and as producing only the actual effects of a procedural act, without affecting, beyond its procedural situation, the legal situation of the applicant (see, by analogy, orders of 14 March 1996, *Dysan Magnetics and Review Magnetics* v *Commission*, T-134/95, EU:T:1996:38, paragraph 27, and of 15 March 2019, *Silgan Closures and Silgan Holdings* v *Commission*, T-410/18, EU:T:2019:166, paragraphs 17 and 19 and the case-law cited).

30 Similarly, the contested regulation requires neither importers, such as the applicant, nor the other economic operators concerned to alter or reconsider their commercial practices (see, by analogy, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 19, and

order of 10 December 1996, *Söktas* v *Commission*, T-75/96, EU:T:1996:183, paragraph 41). In particular, the increase in prices and the problems of availability of the product concerned as well as the corresponding delays in supplying it, raised by the applicant, even if established, are merely factual and economic consequences of the contested regulation which cannot be regarded as producing binding effects altering its legal position.

31 Furthermore, while it must be acknowledged that Article 1 of the contested regulation does impose anti-dumping duties, those are, by definition, provisional and must not, at that stage, be paid by importers. Any decision to collect them will be taken only subsequently, at the time of the termination of the anti-dumping proceeding, in accordance with Article 10(2) of the basic regulation. Thus, the harmful effects attributed by the applicant to the contested regulation, set out in paragraph 30 above, result, in any event, only from conduct, by economic operators, anticipating the economic effects that the actual imposition of anti-dumping duties is liable to produce, should they be due by virtue of the definitive regulation, adopted at the end of the anti-dumping proceeding. Thus, such effects, even if they had occurred, would not result immediately and irreversibly from the contested regulation.

32 The contested regulation therefore does not impose any obligation producing immediate and irreversible effects.

33 The fact that Article 1 of the contested regulation also provides, in paragraph 4 thereof, that the import of the product concerned into the European Union is to be subject to the provision of a security deposit equivalent to the amount of the provisional duty does not allow the reviewability of the contested regulation to be inferred, either. That obligation to provide a guarantee to import the product concerned during the period of validity of the contested regulation – even if it is accompanied by penalties, as the applicant claims – is intended to ensure that duties are paid in the event that their collection is ultimately decided and is therefore dependent on that payment obligation, which will be decided and imposed only subsequently. It has thus been consistently held that, where the amounts secured by way of provisional anti-dumping duty are collected in their entirety pursuant to a definitive regulation, no independent legal effect resulting from the provisional regulation can be relied on, the definitive regulation retroactively substituting the provisional regulation in that case (orders of 30 June 1998, *BSC Footwear Supplies and Others* v *Commission*, T-73/97, EU:T:1998:147, paragraph 13; of 11 January 2013, *Charron Inox and Almet* v *Commission and Council*, T-445/11 and T-88/12, not published, EU:T:2013:4, paragraph 30; and of 10 November 2014, *DelSolar (Wujiang)* v *Commission*, T-320/13, not published, EU:T:2014:969, paragraph 56).

34 It has indeed been held that, in the event – as in this instance (see Article 1(2) of the contested regulation, reproduced in paragraph 7 above, and Article 1(2) of the definitive regulation, reproduced in paragraph 9 above) – that a part of the amounts secured by way of the regulation imposing the provisional duty is released because the definitive rate of duty fixed is lower than the rate of the provisional duty, any autonomous or independent effects could be established, liable to be attributed only to the regulation imposing the provisional anti-dumping duty following the entry into force of the regulation imposing a definitive anti-dumping duty, and thus not reproduced by that latter regulation (judgment of 11 July 1990, *Neotype Techmashexport* v *Commission and Council*, C-305/86 and C-160/87, EU:C:1990:295, paragraph 15; orders of 30 June 1998, *BSC Footwear Supplies and Others* v *Commission*, T-73/97, EU:T:1998:147, paragraph 15, and of 11 January 2013, *Charron Inox and Almet* v *Commission and Council*, T-445/11 and T-88/12, not published, EU:T:2013:4, paragraph 30). However, the EU Courts have ruled to that effect by taking into consideration the subsequent adoption of a definitive regulation,

in so far as it ruled not on the condition of admissibility at issue in the case at hand, which is judged at the time of the lodging of the action (see judgment of 22 June 2016, *Whirlpool Europe* v *Commission*, T-118/13, EU:T:2016:365, paragraph 49 and the case-law cited), but on the separate condition of the interest in bringing proceedings which must continue beyond the lodging of the action and the retention of which is assessed when the court gives its ruling (see judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 61 and the case-law cited). That case-law thus demonstrates, in addition to the considerations set out in paragraph 33 above, that the obligation to provide security to cover provisional duties does not produce independent and irreversible legal effects at the time of assessment of the admissibility of the action, as such production depends on the intervention and the content of the definitive regulation subsequently adopted.

35 It follows that, at the time of the lodging of the present action, at which the anti-dumping proceeding had not yet been completed and which is also the time at which the admissibility of the action must be assessed (see paragraph 34 above), it cannot be considered that the obligation to provide security to cover provisional duties produced independent and irreversible legal effects.

36 The obligation to provide a guarantee is thus distinct from the suspension obligation which attaches to decisions to initiate the formal investigation procedure in matters of State aid, which are considered by settled case-law to be capable of constituting acts open to review (judgments of 30 June 1992, *Spain* v *Commission*, C-312/90, EU:C:1992:282, paragraphs 21 to 24; of 24 October 2013, *Deutsche Post* v *Commission*, C-77/12 P, not published, EU:C:2013:695, paragraphs 51 to 55; and of 9 September 2009, *Diputación Foral de Álava and Others* v *Commission*, T-30/01 to T-32/01 and T-86/02 to T-88/02, EU:T:2009:314, paragraph 350). That suspension obligation applies from the entry into force of that decision and prevents the implementation of the aid measure at issue until the adoption of the decision terminating the formal investigation procedure, whatever the meaning of that decision and without its being able to revisit that suspension period.

37 Furthermore, to hold that a provisional regulation constitutes a reviewable act would undermine the sound administration of justice and the institutional balance. Conceding that the present action is admissible would lead the Court to rule on pleas which are more often than not similar to those raised in support of the action brought against the definitive regulation, as is indeed the case here, whereas the Commission has in the meantime adopted a definitive position on the issues raised by those pleas, taking into consideration the additional information gathered during the procedure following the adoption of the provisional regulation. In addition to the confusion thus created between the administrative and judicial stages, rightly highlighted by the Commission, as well as the difficulties for the Court in taking a position on the findings relating to the existence of dumping and the provisional fixing of an anti-dumping duty rate when those findings and that rate will, depending on the case, have been subsequently amended in the context of the Commission's definitive assessment, it is important to highlight also the deficiencies of a proceeding as to the merits of the provisional regulation in terms of legal protection. In so far as the definitive assessment is carried out on the basis of data which differ in part from those taken into account in the provisional assessment, any annulment of the provisional regulation would not necessarily imply an obligation on the part of the Commission to draw the consequences of the annulment judgment for its definitive regulation under Article 266 TFEU, such that a party which considers itself to have been adversely affected by the provisional regulation might, in any event, also have to bring an action against the definitive regulation in order to ensure that its situation is effectively and fully rectified (see, to that effect

and by analogy, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 20, and order of 14 April 2015, *SolarWorld and Solsonica* v *Commission*, T-393/13, not published, EU:T:2015:211, paragraphs 66 to 69).

38 It should be specifically emphasised that the inadmissibility of the present action does not amount to depriving the applicant of the legal protection to which it is entitled. It remains open to the applicant, if it considers itself justified in doing so, to bring an action for damages under Article 268 TFEU, claiming the illegality of the provisional regulation on which it has relied in support of the present action and seeking compensation for the damage allegedly suffered, consisting of costs associated with the provision of the guarantee corresponding to the amounts ultimately released by the definitive regulation (see, to that effect, judgment of 24 October 2000, *Fresh Marine* v *Commission*, T-178/98, EU:T:2000:240, paragraphs 45 to 52, and order of 14 April 2015, *SolarWorld and Solsonica* v *Commission*, T-393/13, not published, EU:T:2015:211, paragraphs 51 and 52 and the case-law cited).

39 It follows from all the foregoing that the contested regulation is a preparatory measure adopted in the course of the anti-dumping proceeding and cannot, therefore, be the subject of an action for annulment.

40 It may also be added, for the sake of completeness, that, even if the contested regulation were a reviewable act, the applicant would have to be deemed in the present case to have lost its interest in seeking its annulment following the adoption of the definitive regulation.

41 It is settled case-law that an applicant's interest in bringing proceedings must, in view of the purpose of the action, exist at the stage of lodging the action and continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be likely, if successful, to procure an advantage for the party bringing it (see judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 61 and the case-law cited). In particular, in the event that a definitive regulation is adopted during the proceeding to decide on the annulment of a provisional regulation – which is at issue in the present case (see paragraphs 8, 9 and 12 above) – the General Court, like the Court of Justice, has held that applicants in principle no longer had an interest in challenging the provisional regulation (judgment of 5 October 1988, *Brother Industries* v *Commission*, 56/85, EU:C:1988:463, paragraph 6; orders of 10 March 2016, *SolarWorld* v *Commission*, C-312/15 P, not published, EU:C:2016:162, paragraph 25, and of 11 January 2013, *Charron Inox and Almet* v *Commission and Council*, T-445/11 and T-88/12, not published, EU:T:2013:4, paragraph 30).

42 It is true that it has been accepted that an applicant could justify, in addition to an interest in bringing an action for damages, an interest in seeking the annulment of a regulation imposing provisional duties in spite of the adoption of a regulation fixing definitive duties, but solely as regards the amounts secured in application of the regulation imposing the provisional duty which were discharged because the rate of the definitive duty was lower than the rate of provisional duty, as is the situation in the present case (see paragraph 34 above), and provided that evidence is adduced of damage in connection with the amounts secured (see, to that effect, judgment of 11 July 1990, *Neotype Techmashexport* v *Commission and Council*, C-305/86 and C-160/87, EU:C:1990:295, paragraph 15, and order of 11 January 2013, *Charron Inox and Almet* v *Commission and Council*, T-445/11 and T-88/12, not published, EU:T:2013:4, paragraph 30). Without going so far as to require a precise quantification of the damage at issue in the same way as that required for the purposes of an action for damages, it is nevertheless necessary to ensure that that damage has actually occurred, having regard to the abovementioned

difficulties, in terms of the sound administration of justice in particular, caused by the examination of an action against a provisional regulation when an action has also been brought against the definitive regulation (see paragraph 37 above).

43 In the present dispute, however, the applicant does not provide any indication – let alone prove – that it actually carried out imports and provided the securities pertaining to the period of application of the provisional regulation, from 14 October 2020 to 31 March 2021. It merely refers, in essence, in a general and imprecise manner to the costs associated with a guarantee, the hypothetical nature of which is evidenced by the absence of details of the guarantors concerned – a bank or an insurance company is mentioned in general terms – and by the absence of any figures. A fortiori, no details are given as to the costs associated with the part of the guarantee intended specifically to cover the amounts of the duties released by the definitive regulation.

44 Consequently, the applicant cannot be regarded as having established its interest in pursuing the present action in spite of the adoption of the definitive regulation.

45 It follows from all the foregoing that the present action must be dismissed and that there is, in any event, no longer any need to adjudicate on it.

46 In those circumstances, there is no longer any need to adjudicate on the Parliament's application to intervene or on the applicant's ancillary request for the production of documents (see paragraph 14 above).

Costs

47 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 applicant has been unsuccessful, it must be ordered to pay, in addition to its own costs, the costs incurred by the Commission, in accordance with the form of order sought by the Commission.

48 Furthermore, pursuant to Article 144(10) of the Rules of Procedure, the Parliament, the applicant and the Commission are each to bear their own costs relating to the applications to intervene.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**

2. **Airoldi Metalli SpA shall bear its own costs and pay those incurred by the European Commission.**

3. **The European Parliament, Airoldi Metalli and the Commission shall each bear their own costs relating to the applications to intervene.**

Luxembourg, 30 November 2021.

E. Coulon
Registrar

S. Gervasoni
President