



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

18 April 2013 *

(Commercial policy — Regulation (EC) No 1470/2001 — Regulation (EC) No 1205/2007 — Common Customs Tariff — Tariff classification — Combined Nomenclature — Definitive anti-dumping duties on imports of fluorescent compact lamps — Applicability of definitive anti-dumping duties to products classed in the tariff subheading referred to in the anti-dumping regulation — Product concerned — Scope)

In Case C-595/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Germany), made by decision of 16 November 2011, received at the Court on 25 November 2011, in the proceedings

Steinel Vertrieb GmbH

v

Hauptzollamt Bielefeld,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, G. Arestis (Rapporteur), J.-C. Bonichot, A. Arabadjiev and J. L. da Cruz Vilaça, Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 5 December 2012,

after considering the observations submitted on behalf of:

- Steinel Vertrieb GmbH, by H.-M. Wolfgang, Steuerberater, and S. Kastner and J. Borggräffe, Rechtsanwälte,
- the Hauptzollamt Bielefeld, by K. Greven, acting as Agent,
- the European Commission, by H. van Vliet and T. Maxian Rusche, acting as Agents,

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

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China (OJ 2001 L 195, p. 8), as amended by Regulation No 1322/2006 of 1 September 2006 (OJ 2006 L 244, p. 1) and Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (OJ 2007 L 272, p. 1; together with Regulation No 1470/2001, 'the CFL-i Regulations').
- 2 The request has been made in proceedings between Steinel Vertrieb GmbH ('Steinel Vertrieb') and Hauptzollamt (main customs office) Bielefeld ('Hauptzollamt') concerning the classification, in the headings of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16) ('the CN'), of the products in dispute imported by Steinel Vertrieb with a view to their release for free circulation.

Legal context

The basic regulation

- 3 The provisions governing the application of anti-dumping measures by the European Union, applicable to the dispute in the main proceedings, are set out in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 (OJ 2005 L 340, p. 17) ('the basic regulation').
- 4 Article 1(1), (2) and (4) of the basic regulation states:

'1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the [Union] causes injury.

2. A product is to be considered as being dumped if its export price to the [Union] is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

...

4. For the purpose of this Regulation, the term "like product" shall be interpreted to mean 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 9(4), entitled ‘Termination without measures; imposition of definitive duties’, provides:

‘Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee ...’

- 6 Pursuant to Article 11(2), (3) and (4) of the basic regulation, in relation to the review procedure:

‘2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review ...’

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the [Union] producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this paragraph, the Commission may, inter alia, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under Article 3. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

4. A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the [Union] following the abovementioned investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the [Union].

...’

- 7 Article 13(1) of the basic regulation, entitled ‘Circumvention’, provides:

‘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.

...'

- 8 Pursuant to Article 14(1) of the same regulation:

'Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports ...'

The anti-dumping regulations

- 9 By Regulation (EC) No 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China (OJ 2001 L 38, p. 8), the Commission imposed a provisional anti-dumping duty on that type of product falling within CN code ex 8539 31 90. Then, Regulation No 1470/2001 imposed a definitive anti-dumping duty on those products. That regulation remained in force until 18 October 2008.

- 10 Article 1(1) of Regulation No 1470/2001 provided:

'A definitive anti-dumping duty is hereby imposed on imports of electronic compact fluorescent discharge lamps functioning on alternating current (including electronic compact fluorescent discharge lamps functioning on both alternating and direct current), with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot, or integrated in the lamp foot, falling within CN code ex 8539 31 90 (TARIC code 8539 31 90*91 until 10 September 2004 and TARIC code 8539 31 90*95 from 11 September 2004 on), and originating in the People's Republic of China.'

- 11 Following an expiry review of the measures, carried out pursuant to Article 11(2) of the basic regulation, Regulation No 1205/2007 maintained the measures put in place by Regulation No 1470/2001, including the extension to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines, granted by Council Regulation (EC) No 866/2005 of 6 June 2005 (OJ 2005 L 145, p. 1).

- 12 Article 1(1) of Regulation No 1205/2007 provided:

'A definitive anti-dumping duty is hereby imposed on imports of electronic compact fluorescent discharge lamps functioning on alternating current (including electronic compact fluorescent discharge lamps functioning on both alternating and direct current), with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot, or integrated in the lamp foot, falling within CN code ex 8539 31 90 (TARIC code 8539 31 90 95) and originating in the People's Republic of China.'

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

- 13 Steinel Vertrieb developed a light detector equipped with adapted control software. On the basis of that detector, it produced and patented a device ('the twilight switch') to be fitted in lamps, enabling them to turn on and off automatically on the basis of natural light, without being influenced by the light produced by the lamp itself.
- 14 In 2007 and 2008, Steinel Vertrieb imported energy-saving lamps of the Sensor Light Plus brand with a power of 11, 15 and 18 watts from the People's Republic of China and declared them for release for free circulation under subheading 8539 39 00 of the CN code, without customs duty being charged. It is apparent from the order for reference that the products of the Sensor Light Plus brand are fluorescent lamps operating on alternating current, comprising a spiral hot-cathode fluorescent tube in a protective glass housing with a lamp foot which contains a ballast and the twilight switch developed and patented by Steinel Vertrieb.
- 15 Following an on-site inspection, the Hauptzollamt took the view that the energy-saving lamps imported by Steinel Vertrieb were classifiable within subheading 8539 31 90 of the CN code and that, accordingly, the importation of those lamps was subject to the anti-dumping duty laid down in the CFL-i Regulations. Consequently, by decisions of 31 March, 17 May, 13 July and 30 August 2010, the Hauptzollamt sought to recover anti-dumping duty totalling EUR 485 240.07 from Steinel Vertrieb.
- 16 The national court states that Steinel Vertrieb has submitted, without being contradicted in that regard by the Hauptzollamt, that, at the time when the provisional anti-dumping duty was imposed by Regulation No 255/2001, Steinel Vertrieb and Osram were the only manufacturers of fluorescent lamps with a twilight switch in the European Union. In China, at that time, only fluorescent lamps without such switches were manufactured.
- 17 The Hauptzollamt submits that the compact fluorescent lamps imported by Steinel Vertrieb are classifiable within subheading 8539 31 90 of the CN code. Since compact fluorescent lamps functioning on alternating current are at issue, which fall within subheading 8539 31 90 of the CN code, the national court asks whether the anti-dumping duty laid down in the CFL-i Regulations has to be levied on those products on that basis.
- 18 In those circumstances the national court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are [the CFL-i Regulations] to be interpreted as meaning that they also cover the compact fluorescent lamps with a twilight switch imported by [Steinel Vertrieb] and described in greater detail in the order?'

Consideration of the question referred

- 19 The national court asks, in essence, whether fluorescent lamps with a twilight switch imported by Steinel Vertrieb, falling within CN code ex 8539 31 90, are subject to the anti-dumping duties laid down in the CFL-i Regulations.

Arguments of the parties

- 20 Steinel Vertrieb submits, in essence, that the products in dispute were not manufactured in China when the anti-dumping duty was imposed in 2001. Globally, only Steinel Vertrieb and Osram had filed patents relating to the manufacture of lighting equipment with a twilight switch. It points out the fact that it is clear from both the spirit and objective of the CFL-i Regulations that those regulations

apply only to simple energy-saving lamps. On the contrary, the lamps at issue in the main proceedings are high quality and exclusive products and would not harm European producers, given that Osram is the only company which manufactures comparable products. Moreover, the detection system and twilight switch which characterise those products are patented and there are no identical products in China or the European Union. Consequently, intervention in the interests of the Union is not necessary.

- 21 According to Steinel Vertrieb, an interim review of the measure, in accordance with Article 11(3) of the basic regulation, was not requested since the products at issue in the main proceedings were classed in subheading 8539 39 00 for years without any opposition from the national authorities.
- 22 In the Commission's view, the Court must take account of the factual context as defined by the national court. That court decided that the fluorescent lamps imported by Steinel Vertrieb must be classed in subheading 8539 31 90 of the CN code and, consequently, that they fall within the scope of the CFL-i Regulations.
- 23 The Commission considers that the wording of the CFL-i Regulations is clear and, consequently, leaves room for only one interpretation. The Commission rejects a teleological interpretation of the legislation in question, which, in its view, is not appropriate to determine the scope of an anti-dumping regulation. If customs authorities were required to determine, on a case by case basis, whether it is in line with the purpose and *raison d'être* of an anti-dumping regulation for a given product to fall within the scope of that regulation, national customs authorities would no longer be able to carry out their duties. Such an obligation would be incompatible with the practical requirements of customs administration.
- 24 Moreover, the Commission considers that the finding of fact of the national court, to the effect that the fluorescent lamps at issue were not manufactured in China but only in the EU at the time the provisional anti-dumping duty was introduced, is of no relevance when determining whether the anti-dumping duty introduced by the CFL-i Regulations is applicable to the fluorescent lamps at issue in the main proceedings.
- 25 In that regard, the Commission considers that it is not unusual, in particular in the case of rapidly-evolving consumer goods, that the definition of the scope of an anti-dumping regulation is so general that it also covers products which, at the time of adoption of that regulation, did not yet exist or which had not yet been manufactured in the country practising the dumping. In those circumstances, the scope of the CFL-i Regulations is not limited, in the context of the case in the main proceedings, to fluorescent lamps which were already manufactured in China at the time those regulations came into force.
- 26 The Commission adds that an anti-dumping regulation must define its scope in an abstract and general manner, setting out the products which it covers by listing the relevant CN code or other characteristics if that method is not precise enough.

Findings of the Court

- 27 It is apparent from the order for reference that the products in dispute must be classed in subheading 8539 31 90 of the CN code and that those products also bear the other essential characteristics set out in Article 1(1) of the CFL-i Regulations.
- 28 The Court of Justice notes, at the outset, that, according to settled case-law, the procedure established in Article 267 TFEU is based on a clear separation of functions between the national courts and the Court of Justice, with the result that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to

determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see Case C-373/08 *Hoesch Metals and Alloys* [2010] ECR I-951, paragraph 59).

- 29 In those circumstances, it is not appropriate to extend the examination of the question referred to determine whether the products in dispute imported by Steinel Vertrieb fall within the scope of the CFL-i Regulations on the basis of grounds not referred to by the national court, namely the assessment made by the national authorities of the subheadings of the CN code in which the product at issue in the main proceedings are to be classed (see, by analogy, *Hoesch Metals and Alloys*, paragraph 60). Consequently, it must be inferred from the order for reference that the national court refrained from asking the Court to rule on that issue (see, to that effect, Case C-30/93 *AC-ATEL Electronics Vetriebs* [1994] ECR I-2305, paragraph 19).
- 30 The Court of Justice notes that, under Article 14(1) of the basic regulation, anti-dumping duties are to be imposed by regulation and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the regulation imposing such duties.
- 31 With a view to identifying the products to which the anti-dumping duty is to apply, the operative parts of anti-dumping regulations describe those products, inter alia, on the basis of the subheading of the CN code to which those products belong. However, such a reference is not always sufficient to enable the products covered by an anti-dumping regulation to be identified, in so far as the wording of those subheadings may be imprecise. That is why the wording of the operative part of an anti-dumping regulation describes the products subject to the duty by using additional criteria to distinguish them. It is only where a product is classed in the subheading of the CN code covered by an anti-dumping regulation and also presents all the characteristics of the product concerned – which is a matter for the national court to assess – that the duty becomes chargeable on that product.
- 32 In so far as concerns the case in the main proceedings, in accordance with the CFL-i Regulations, a definitive anti-dumping duty is imposed on imports of electronic compact fluorescent discharge lamps functioning on alternating current (including electronic compact fluorescent discharge lamps functioning on both alternating and direct current), with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot, or integrated in the lamp foot, falling within CN code ex 8539 31 90 and originating in the People's Republic of China, and on imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines.
- 33 In that regard, it should be pointed out that the actual wording of Article 1(1) of each of the CFL-i Regulations, and in particular, the words 'falling within CN code ex 8539 31 90', allows it to be concluded that the possible classification of a product under that heading does not automatically result in the imposition on that product of an anti-dumping duty under that provision (see Case C-90/92 *Dr. Tretter* [1993] ECR I-1-3569, paragraph 13, and Case C-99/94 *Birkenbeul* [1996] ECR I-1791, paragraph 15).
- 34 That interpretation cannot be set aside on grounds of the need for a uniform application, within the European Union, of the customs rules which would result from a literal interpretation of the provision in question. Such a uniform application must be ensured by a clear, exact and complete formulation of the European Union rules in question (see Case C-136/91 *Findling Wälzlager* [1993] ECR I-1793, paragraph 14).
- 35 Nor can that interpretation be set aside on the ground that the interested parties may obtain a review of the regulations imposing anti-dumping duties under Article 11 of the basic regulation. Such a review may be justified only in certain conditions (see, to that effect, *Findling Wälzlager*, paragraph 15).

- 36 Thus, where definitive anti-dumping measures are in force, Article 11(3) and (4) of the basic regulation provides for the possibility of an interim review to be carried out to assess the continued imposition of those measures upon a warranted request of an exporter, an importer or European Union producers which contains sufficient evidence substantiating that it is no longer necessary to continue to impose the measure, or where a new exporter, established in the exporting country on which the anti-dumping measures have been imposed, can show that it has not exported the products concerned during the period of investigation on which the measures were based.
- 37 Moreover, according to settled case-law, in interpreting a provision of European Union law it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it is part (see *Birkenbeul*, paragraph 12).
- 38 In that regard, it is apparent, in particular, from Articles 1 and 9(4) of the basic regulation that only products which have been the subject of an anti-dumping investigation may have anti-dumping measures imposed on them, where it has been found that the products in question are exported to the European Union at a price which is lower than that of like products which form part of the anti-dumping investigation.
- 39 Thus, where new types of product are at issue which were not manufactured at the time of adoption of the anti-dumping regulation in the country concerned by the anti-dumping investigation, as found by the national court in the case in the main proceedings, the imposition of the anti-dumping duty on those new types of product depends not only on their classification in subheading of the CN code covered by the regulation, but also on whether those products bear, as referred to in paragraph 31 above, all of the characteristics laid down in the anti-dumping regulation for their identification.
- 40 If it were to appear that the new types of product, although classifiable in the subheading covered by an anti-dumping regulation, do not bear all of the other characteristics laid down in that regulation, those products cannot have an anti-dumping duty imposed on them without it first being examined whether such products are also being dumped on the European Union market.
- 41 Article 13(1) of the basic regulation also provides that, when circumvention of the anti-dumping measures in force is taking place as a result of imports from third countries of the like product, whether slightly modified or not, and of slightly modified like products from the country subject to the measures, or parts thereof, an investigation may be initiated to examine whether it is necessary to extend the measures in force to such like products.
- 42 None the less, such new types of product may be made subject to the anti-dumping duties laid down in the CFL-i Regulations if it has been established that, in addition to their classification in the subheading of the CN code covered by those regulations, they also bear the same characteristics as the products to which those regulations initially applied.
- 43 By contrast, it is apparent from all of the foregoing considerations that the extending of the application of the anti-dumping duties imposed by the CFL-i Regulations to new types of product which, although bearing the same essential characteristics as those covered by that regulation and which also fall within CN code ex 8539 31 90, are different products on the ground that they bear additional characteristics which are not referred to in those regulations, is incompatible with the objective and general scheme of the basic regulation and, in particular, with Articles 1 and 11 thereof, relating to the review procedure, and Article 13, relating to circumvention.
- 44 To determine whether the products are in fact different, it needs to be assessed, inter alia, whether they share the same technical and physical characteristics, have the same basic end-uses and the same price-quality ratio. In that regard, the interchangeability of, and competition between, those products should also be assessed.

- 45 Consequently, the answer to the question referred is that the CFL-i Regulations cover all products bearing the same essential characteristics as those referred to in those regulations and which also fall within CN code ex 8539 31 90. It is for the national court to assess whether that is the case for the products at issue in spite of the addition of a twilight switch, or whether the products at issue constitute different products on the ground that they bear additional characteristics which are not referred to in those regulations.

Costs

- 46 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 (Second Chamber) hereby rules:

Council Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China, and Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines, cover all products bearing the same essential characteristics as those referred to in Article 1 of those regulations and which also fall within heading ex 8539 31 90 of the combined nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Council Regulation (EC) No 254/2000 of 31 January 2000. It is for the national court to assess whether that is the case for the products at issue in spite of the addition of a twilight switch, or whether the products at issue constitute different products on the ground that they bear additional characteristics which are not referred to in those regulations.

[Signatures]