Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

26 January 2017*

(Appeal — Dumping — Implementing Regulation (EU) No 501/2013 — Imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia — Extension to such imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Regulation (EC) No 1225/2009 — Article 13 — Circumvention — Article 18 — Lack of cooperation — Evidence — Body of consistent evidence — Contradictory reasoning — Inadequate statement of reasons — Breach of procedural rights)

In Joined Cases C-248/15 P, C-254/15 P and C-260/15 P,

APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 27 May, 29 May and 1 June 2015, respectively,

Maxcom Ltd, established in Plovdiv (Bulgaria), represented by L. Ruessmann, avocat, and J. Beck, Solicitor,

appellant,

the other parties to the proceedings being:

City Cycle Industries, established in Colombo (Sri Lanka), represented by T. Müller-Ibold, Rechtsanwalt, and F.-C. Laprévote, avocat,

applicant at first instance,

Council of the European Union, represented initially by S. Boelaert, and subsequently by H. Marcos Fraile and B. Driessen, acting as Agents, and by R. Bierwagen and C. Hipp, Rechtsanwälte,

defendant at first instance,

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

intervener at first instance (C-248/15 P),

and

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

appellant,

the other parties to the proceedings being:

* Language of the case: English.

City Cycle Industries, established in Colombo, represented by T. Müller-Ibold, Rechtsanwalt, and F.-C. Laprévote, avocat,

applicant at first instance,

Council of the European Union, represented initially by S. Boelaert, and subsequently by H. Marcos Fraile and B. Driessen, acting as Agents, and by R. Bierwagen and C. Hipp, Rechtsanwälte,

defendant at first instance,

Maxcom Ltd, established in Plovdiv, represented by L. Ruessmann, avocat, and J. Beck, Solicitor,

intervener at first instance (C-254/15 P),

and

Council of the European Union, represented initially by S. Boelaert, and subsequently by H. Marcos Fraile and B. Driessen, acting as Agents, and by R. Bierwagen and C. Hipp, Rechtsanwälte,

appellant,

the other parties to the proceedings being:

City Cycle Industries, established in Colombo, represented by T. Müller-Ibold, Rechtsanwalt, and F.-C. Laprévote, avocat,

applicant at first instance,

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

intervener at first instance,

Maxcom Ltd, established in Plovdiv, represented by L. Ruessmann, avocat, and J. Beck, Solicitor,

intervener at first instance (C-260/15 P),

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: P. Mengozzi,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 2 June 2016,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2016,

gives the following

Judgment

1 By their appeals, Maxcom Ltd, the Council of the European Union and the European Commission seek to have set aside the judgment of the General Court of the European Union of 19 March 2015, *City Cycle Industries* v *Council* (T-413/13, not published, 'the judgment under appeal' EU:T:2015:164), by which that court annulled Article 1(1) and (3) of Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ 2013 L 153, p. 1) ('the regulation at issue'), in so far as that regulation concerns City Cycle Industries ('City Cycle').

Legal context

2 At the material time, the provisions governing the adoption of anti-dumping measures by the European Union were to be found in Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343 p. 51; corrigendum OJ 2010 L 7, p. 22), as amended by Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 (OJ 2012 L 344, p. 1) ('the basic regulation').

3 Article 13 of the basic regulation, entitled 'Circumvention', was 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 Community or between individual companies in the country subject to measures and the Community, 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 first subparagraph includes, inter alia, 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, the consignment of the product subject to measures via third countries, the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers, and, in the circumstances indicated in paragraph 2, the assembly of parts by an assembly operation in the Community or a third country.

2. An assembly operation in the Community or a third country shall be considered to circumvent the measures in force where:

(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, and

(b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost, and

(c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

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, after consultation of the Advisory Committee, by Commission Regulation which may also instruct the customs authorities to make imports subject to registration in accordance with Article 14(5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities, and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. 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 with regard to initiations 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 Community, 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 Community, exemptions may be granted to importers that can show that they are not related to producers subject to the measures.

These exemptions shall be granted by decision of the Commission after consultation of the Advisory Committee or decision of the Council imposing measures and shall remain valid for the period and under the conditions set down therein.

…’

4 Article 18 of the basic regulation stated as follows:

‘1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.

…

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.’

Background to the proceedings and the regulation at issue

5 The background to the dispute is set out in paragraphs 1 to 28 of the judgment under appeal. For the purposes of the appeal proceedings, it may be summarised as follows.

6 On 14 August 2012, the Commission received a request submitted by the European Bicycle Manufacturers Association (EBMA), on behalf of three bicycle manufacturers in the European Union, for it to investigate the possible circumvention, by imports of bicycles from Indonesia, Malaysia, Sri Lanka and Tunisia, of anti-dumping measures imposed by Council Implementing Regulation (EU) No 990/2011 of 3 October 2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation No 1225/2009 (OJ 2011 L 261, p. 2).

7 On 25 September 2012, the Commission adopted Regulation (EU) No 875/2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation No 990/2011 by imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, and making such imports subject to registration (OJ 2012 L 258, p. 21).

8 On 26 September 2012, the Commission informed City Cycle, a company established in Sri Lanka which exports bicycles to the European Union, that it had initiated that investigation and forwarded to it an exemption form, pursuant to Article 13(4) of the basic regulation. City Cycle was asked to reply to that form no later than 2 November 2012. It lodged its response with the Commission on 30 October 2012.

9 On 21 January 2013, the Commission made a verification visit at City Cycle's premises.

10 On 31 January 2013, the Commission informed City Cycle of its intention to apply Article 18 of the basic regulation to it.

11 On 21 March 2013, the Commission sent City Cycle, and the Sri Lankan and Chinese authorities, the general disclosure document setting out its conclusions regarding transhipment and assembly operations and stated its intention to propose the extension of the anti-dumping measures on imports of bicycles from China to imports from Sri Lanka. By that document, the Commission also rejected City Cycle's request for exemption.

12 On 29 May 2013, the Council adopted the regulation at issue.

13 In recitals 35 to 42 of that regulation, the Council indicated, essentially, as regards the extent of the cooperation provided by the Sri Lankan companies, that, of the six Sri Lankan companies which had submitted a request for exemption pursuant to Article 13(4) of the basic regulation, only three were regarded as having cooperated. As regards those three companies, one of which had withdrawn its exemption request and the other two failed to cooperate satisfactorily, the conclusions were based on the facts available, in accordance with Article 18 of the basic regulation.

14 In recital 58 of that regulation, the Council concluded that there had been a change in the pattern of trade between Sri Lanka and the European Union within the meaning of Article 13(1) of the basic regulation.

15 In recitals 77 to 82 of the regulation at issue, the Council analysed the nature of the circumvention practices which had given rise to that change in the pattern of trade between that third country and the European Union.

16 With regard to transhipment practices, recitals 77 to 79 of the regulation at issue stated as follows:

> '(77) The exports of the initially cooperating Sri Lankan companies amounted to 69% of the total Sri Lankan exports to the Union in the [reference period]. For three out of the six initially cooperating companies, the investigation did not reveal any transhipment practices. For the remaining exports there was no cooperation, as explained in recitals 35 to 42.
>
> (78) Therefore, in light of the change of the pattern of trade concluded in recital 58 between Sri Lanka and the Union within the meaning of Article 13(1) of the basic Regulation and the fact that not all Sri Lankan producers/exporters came forward and/or cooperated, it can be concluded that the exports of those producers/exporters can be attributed to transhipment practices.
>
> (79) The existence of transhipment of Chinese-origin products via Sri Lanka is therefore confirmed.'

17 In recitals 81 and 82 of the regulation at issue, the Council stated that the existence of assembly operations within the meaning of Article 13(2) of the basic regulation had not been established.

18 In recitals 92, 96 and 110 of the regulation at issue, the Council found, first, that there was no due cause or economic justification other than the avoidance of the existing anti-dumping measures, second, that the remedial effects of those measures were being undermined and, third, that, when a comparison was made with the normal value previously established, this indicated the existence of dumping.

19 In those circumstances, the Council concluded, in recital 115 of the regulation at issue, that the anti-dumping duty in question had been circumvented, within the meaning of Article 13(1) of the basic regulation, by transhipment via Sri Lanka.

20 Article 1(1) of the regulation at issue extended the definitive anti-dumping duty of 48.5% imposed in Article 1(2) of Implementing Regulation No 990/2011 to imports of bicycles consigned from Sri Lanka, whether or not declared as originating in that country. Article 1(3) of that regulation provided that the extended duty was to be collected on such imports registered in accordance with Regulation No 875/2012.

The procedure before the General Court and the judgment under appeal

21 By application lodged at the Registry of the General Court on 9 August 2013, City Cycle brought an action for the annulment of Article 1(1) and (3) of the regulation at issue, in so far as those provisions concerned it.

22 By separate document lodged at the Registry of the General Court, City Cycle requested that the case be decided under the expedited procedure provided for in Article 76a of the Rules of Procedure of the General Court, in the version applicable at the time of the proceedings before that court. The application for the case to be dealt with under the expedited procedure was granted by decision of the Seventh Chamber of the General Court of 8 October 2013.

23 By document lodged at the Registry of the General Court on 17 October 2013, the Commission sought leave to intervene in support of the Council. The President of the Seventh Chamber of the General Court granted the Commission's request to intervene by order of 11 November 2013. However, in the light of the second subparagraph of Article 76a(2) of the Rules of Procedure of the General Court, in the version applicable at the time of the proceedings before that court, the Commission was not allowed to submit a statement in intervention.

24 By document lodged at the Registry of the General Court on 19 March 2014, Maxcom sought leave to intervene in support of the Council. The Seventh Chamber of the General Court granted that application by order of 16 July 2014.

25 On 25 June 2014, the Commission sought leave to submit a statement in intervention pursuant to Article 64 of the Rules of Procedure of the General Court, in the version applicable at the time of the proceedings before that court. The General Court refused that application.

26 In support of its application for annulment, City Cycle relied on five pleas in law. The first plea alleged infringement of Article 13(1) and Article 18(1) of the basic regulation. By the first part of that plea, City Cycle contested the Council's conclusion that there had been a change in the pattern of trade. By the second part of that plea, City Cycle called into question the Council's finding, in particular in recital 78 of the regulation at issue, that it had engaged in transhipment operations. The second plea alleged infringement of Article 18 of the basic regulation, the principle of proportionality and the obligation to state reasons. It was directed against the Council's conclusions concerning City Cycle's failure to cooperate. The third plea alleged breach of the principles of diligence and sound administration and infringement of Article 18(4) of the basic regulation and of City Cycle's rights of defence. It sought to demonstrate that the Council had not informed City Cycle appropriately of its intention to reject its request for exemption and had not granted it full access to the file. The fourth plea alleged breach of the principle of equal treatment. City Cycle claimed that it had been discriminated against by comparison with one of its competitors operating under the same business model. The fifth plea alleged infringement of Article 13(1) of the basic regulation and breach of the principle of equal treatment and concerned the Council's findings concerning the existence of dumping.

27 At the hearing before the General Court, the Commission contended that the action was inadmissible in its entirety, on the ground that City Cycle was not a Sri Lankan producer/exporter, but merely a local service provider acting on behalf of a Chinese undertaking.

28 By the judgment under appeal, the General Court rejected the Commission's arguments alleging that the action was inadmissible. As to the substance, it rejected the first part of the first plea in law, as well as the second, third, fourth and fifth pleas relied on by City Cycle in support of its action.

29 However, the General Court upheld the second part of the first plea in law. In the first objection in support of that part, City Cycle alleged that recital 78 of the regulation at issue was vitiated by an error of assessment. In that regard, in the first place, the General Court analysed, in paragraphs 82 to 97 of the judgment under appeal, the evidence communicated by City Cycle during the investigation. It concluded that that evidence did not show that City Cycle was in fact a bicycle exporter of Sri Lankan origin or that it met the criteria laid down in Article 13(2) of the basic regulation.

30 In the second place, in paragraph 98 of the judgment under appeal, the General Court nonetheless held that the Council had no evidence from which it could properly conclude, in recital 78 of the regulation at issue, that City Cycle was involved in transhipment operations.

31 In the third place, in paragraph 99 of the judgment under appeal, the General Court stated that it could not be ruled out that the practices, processes or work for which there was insufficient due cause or economic justification other than the imposition of the initial anti-dumping duty, within the meaning of the second subparagraph of Article 13(1) of the basic regulation, included City Cycle's engagement in transhipment operations. Nonetheless, according to the General Court, the fact that City Cycle was unable to prove that it was in fact a Sri Lankan bicycle producer or that it satisfied the criteria laid down in Article 13(2) of the basic regulation did not entitle the Council to conclude, by default, that City Cycle was engaged in transhipment, the power to arrive at such a conclusion being found neither in the basic regulation nor the case-law.

32 The General Court therefore concluded that the second part of the first plea in law had to be upheld, without there being any need to address the other objections raised by City Cycle.

33 As a consequence, the General Court annulled Article 1(1) and (3) of the regulation at issue, in so far as it concerned City Cycle.

Forms of order sought and procedure before the Court

34 By its appeal in Case C-248/15 P, Maxcom claims that the Court should:

— set aside the judgment under appeal in so far as concerns the second part of the first plea in law;

— reject the first plea in law raised by City Cycle before the General Court in its entirety, and

— order City Cycle to pay the costs incurred by Maxcom in the appeal proceedings and in its intervention before the General Court.

35 By its appeal in Case C-254/15 P, the Commission claims that the Court should:

— set aside the judgment under appeal, dismiss the action at first instance and order City Cycle to pay the costs, and

— in the alternative, refer the case back to the General Court for reconsideration and reserve the costs of both sets of proceedings.

36 By its appeal in Case C-260/15 P, the Council claims that the Court should:

— set aside the judgment under appeal, dismiss the action at first instance and order City Cycle to pay the costs incurred by the Council in both sets of proceedings, and

— in the alternative, refer the case back to the General Court for reconsideration and reserve the costs of both sets of proceedings.

37 In its response, lodged in Joined Cases C-248/15 P, C-254/15 P and C-260/15 P, City Cycle contends that the Court should:

— dismiss in their entirety the appeals lodged against the judgment under appeal;

— in the alternative, annul in part Article 1(1) and (3) of the regulation at issue, in so far as those provisions extend the anti-dumping duty imposed on imports of bicycles from China to City Cycle and deny City Cycle's exemption request;

— order Maxcom, the Council and the Commission to pay the costs incurred by City Cycle in both sets of proceedings, and

— take any other measures that the Court deems appropriate.

38 By decision of the President of the Court of 4 August 2015, Cases C-248/15 P, C-254/15 P and C-260/15 P were joined for the purposes of the written and oral procedure and the judgment.

The appeals

39 The grounds of appeal put forward by Maxcom, the Council and the Commission overlap to a large extent and may, in essence, be placed in four groups.

40 First, in the Commission's submission, the General Court erred in law by omitting to examine whether City Cycle's action is admissible. Second, Maxcom, the Council and the Commission claim, in essence, that the General Court made a number of errors of law in its application of Article 13(1) of the basic regulation. Third, the Council and the Commission maintain that the judgment under appeal is vitiated by an inadequate statement of reasons and contradictory reasoning. The Council also argues that the General Court distorted the facts submitted to it for assessment. Fourth, the Commission submits that the General Court infringed its procedural rights.

The ground of appeal alleging an error of law in that the General Court failed to rule on the admissibility of the action

Arguments of the parties

41 The Commission takes issue with the General Court for failing to examine whether the action was admissible, in so far as, in response to arguments raised by the Commission at the hearing, the General Court merely stated: (i) in paragraph 43 of the judgment under appeal, that, as an intervener, the Commission did not have *locus standi* to raise a plea that the action was inadmissible; (ii) in paragraph 44 of that judgment, that that plea had been raised at a particularly late stage of the judicial proceedings; and (iii) in the same paragraph, that the Commission merely gave voice to conjecture, without adducing any evidence.

42 First of all, according to the Commission, the General Court's decision not to examine whether the action was admissible is at variance with the case-law of the Court of Justice to the effect that inadmissibility must be raised *ex officio* by the EU judicature. Second, the fact that the Commission was able to raise a plea of inadmissibility only at the hearing is the result of the General Court's decision not to allow it to submit a statement in intervention. Third, the Commission maintains that the General Court should have known from the evidence in the case file that City Cycle had failed to show that it was a producer or exporter of bicycles.

43 City Cycle disputes the Commission's arguments.

Findings of the Court

44 It should be noted that the General Court stated, first of all, in paragraphs 42 and 43 of the judgment under appeal, that as the Commission had intervened in the proceedings in support of the Council and the latter had not pleaded that the action was inadmissible, the Commission did not have *locus standi* to raise a plea that the action was inadmissible and the General Court was not required to examine such a plea. Next, in paragraph 44 of the judgment under appeal, the General Court stated that the Commission merely gave voice to conjecture in that regard. Lastly, in the same paragraph, that court observed that that conjecture had been raised at a particularly late stage of the proceedings.

45 Accordingly, contrary to the Commission's contentions, the General Court did not omit to rule on the admissibility of the action. It examined the Commission's arguments that City Cycle was neither a Sri Lankan exporter nor a Sri Lankan producer but merely a local service provider acting on behalf of a Chinese undertaking. At the conclusion of that examination, the General Court found that those

arguments, which had been raised at the hearing, were not based on any new evidence concerning the relationship between City Cycle and the Chinese undertaking in question and were therefore in the nature of mere conjecture. It therefore rejected the Commission's plea of inadmissibility.

46 Therefore, the Court finds that the General Court did not err in law by omitting to consider whether the action for annulment was inadmissible. It follows that the present ground of appeal must be rejected as unfounded.

The grounds of appeal alleging errors of law in the application of Article 13(1) of the basic regulation

Arguments of the parties

47 The second group of grounds of appeal concerns paragraphs 98 and 99 of the judgment under appeal. Maxcom, the Council and the Commission maintain, in essence, that those paragraphs are vitiated by errors of law in that the General Court did not apply Article 13(1) of the basic regulation correctly.

48 In the first place, Maxcom and the Commission take issue with the General Court for finding that the Council was not entitled to conclude that City Cycle engaged in transhipment on the basis of the finding that the latter was not a genuine Sri Lankan producer of bicycles and was not involved in assembly operations exceeding the thresholds laid down in Article 13(2) of the basic regulation. First, according to Maxcom, in circumstances such as those of the present case, where City Cycle imported parts of Chinese origin and exported bicycles to the European Union without proving that it is a producer or that its assembly operations exceed the thresholds laid down in Article 13(2) of that regulation, it may be concluded that it was engaged in transhipment. Second, Maxcom maintains that the General Court 'rewarded' City Cycle for providing incomplete, contradictory and unverifiable information. Third, Maxcom states that the General Court's assessment is not in line with the purpose of the basic regulation or the settled case-law of the Court of Justice to the effect that the EU institutions responsible for conducting anti-dumping investigations and adopting anti-dumping measures ('the EU institutions') have wide discretion in such investigations.

49 In the second place, the Council and the Commission submit that the General Court was incorrect to require the EU institutions to establish the every producer-exporter in the country concerned by the investigation was engaged in transhipment practices and thus reversed the burden of proof. First, Article 13(1) of the basic regulation requires the EU institutions to carry out an analysis at country level, not at the level of the individual exporter, the latter analysis being the responsibility of the producer-exporters. Second, such an interpretation would render Article 13(4) of the basic regulation devoid of purpose. Third, the General Court confused the concept of a 'circumvention practice' with one of its manifestations, namely transhipment. Fourth, the requirement for a finding of individual transhipment disregards the Court's case-law that the EU institutions enjoy broad discretion in establishing circumvention. Fifth, the General Court applied, in its assessment of the various grounds for annulment invoked, clearly contradictory interpretations of the concept of 'circumvention practice'.

50 In the third place, Maxcom, the Council and the Commission maintain that even if the Council's conclusions concerning the existence of transhipment were incorrect, the annulment of the regulation at issue would in any event not be justified. According to Maxcom, it is the Court's established case-law that an error of law may justify the annulment of the measure concerned only if, but for that error, the outcome of the overall assessment would have been different. Moreover, the Council and the Commission observe that the judgment under appeal calls into question recital 78 of that regulation, by which the Council found that, as not all Sri Lankan producer-exporters of bicycles came forward and/or cooperated, the exports of those producer-exporters could be attributed to transhipment practices. It is therefore apparent from that recital that the finding of transhipment via Sri Lanka is not based solely on the finding that City Cycle had engaged in such practices. Accordingly, the

Commission submits that even if the Council erred in law in asserting that City Cycle was involved in transhipment operations, it was entitled to conclude, on the basis of evidence concerning other Sri Lankan producer-exporters and the change in the pattern of trade, that transhipment was taking place in Sri Lanka.

51 City Cycle contends that those arguments are inadmissible, in so far as they call into question the General Court's conclusion that there was not sufficient evidence that City Cycle was engaged in transhipment operations and therefore relate to the assessment of the facts. City Cycle also disputes those arguments with regard to the substance.

Findings of the Court

– Admissibility

52 It is settled case-law that the Court of Justice has no jurisdiction to find the facts or, as a rule, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced to it. That appraisal does not therefore constitute, save where the clear sense of the evidence has been distorted, a point of law which is subject as such to review by the Court of Justice.

53 However, an alleged failure to have regard to the rules of evidence is a question of law, which is admissible in an appeal (judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 44).

54 By the objections raised in support of the present group of grounds of appeal, Maxcom, the Council and the Commission take issue with the General Court essentially for disregarding the rules of evidence and the standard of proof necessary to demonstrate circumvention for the purpose of Article 13(1) of the basic regulation. Accordingly, City Cycle's argument that the present group of grounds of appeal is inadmissible cannot be accepted.

– Substance

i) Preliminary observations

55 The objections raised by Maxcom, the Council and the Commission in the present group of grounds of appeal all concern the burden of proof and the standard of proof required to show circumvention in circumstances in which some of the producer-exporters concerned have not cooperated with the investigation or have not done so sufficiently.

56 It should be observed, in that respect, first, that, according to the Court's case-law, in the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, the EU institutions enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine. The judicial review of such an appraisal must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 63 and the case-law cited).

57 Next, with regard to the burden of proving circumvention, Article 13(1) of the basic regulation provides that circumvention of anti-dumping measures is established when four conditions are met. First, there must be a change in the pattern of trade between a third country and the European Union or between individual companies in the country subject to measures and the European Union. Second, that change must stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. Third, there must be evidence of injury to EU industry or that the remedial effects of the anti-dumping duty are being undermined. Fourth, there must be evidence of dumping.

58 According to Article 13(3) of the basic regulation, it is for the Commission to initiate an investigation on the basis of evidence which *prima facie* suggests circumvention practices. It is the Court's settled case-law that that provision establishes the principle that the burden of proving circumvention falls to the EU institutions (see, to that effect, judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 35).

59 Moreover, it is apparent from the wording and overall scheme of Article 13 of the basic regulation that, in order to establish circumvention, those institutions must carry out an overall assessment of the third country that is the subject of the investigation in relation to the circumvention as a whole. On the other hand, they are not required, for the purpose of proving circumvention, to carry out an analysis of the situation of every individual producer-exporter, as that analysis is to be conducted by the individual producer-exporters themselves in the context of the requests made pursuant to Article 13(4) of the regulation.

60 Article 13(1) of the basic regulation provides that where circumvention of anti-dumping measures is established, those measures may be extended, inter alia, to imports from third countries of the like product. Moreover, Article 13(4) of the regulation makes it possible for producer-exporters established in such a third country to obtain an exemption if they so request, provided they are not related to a producer-exporter subject to such measures and can demonstrate that they have not engaged in circumvention practices. That provision states that requests for exemption must be duly supported by evidence.

61 Accordingly, as the Council and the Commission have observed, under Article 13(1) of the basic regulation, it is the task of the EU institutions to establish that anti-dumping measures are being circumvented in respect of the third country in question as a whole, whereas it is for each individual producer-exporter to show that its particular situation justifies an exemption pursuant to Article 13(4) of the regulation.

62 Lastly, with regard to the standard of proof required to demonstrate circumvention where there is insufficient or indeed no cooperation on the part of producer-exporters, it should be noted that there is no provision in the basic regulation which confers on the Commission, in an investigation to establish whether there has been circumvention, the power to compel producers or exporters which are the subject of a complaint to participate in the investigation or to provide information. The Commission is therefore reliant on the voluntary cooperation of the interested parties to provide it with the necessary information (judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 32).

63 It is for that reason that the EU legislature provided in Article 18(1) of the basic regulation that, in cases where an interested party refuses access to, or otherwise does not provide, necessary information, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available (judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 33).

64 Furthermore, Article 18(6) of the basic regulation provides that if an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than it might have been if it had cooperated.

65 In circumstances in which no cooperation whatsoever has been forthcoming from the producer-exporters, the Court has held that even though the basic regulation, and particularly Article 13(3) thereof, establishes the principle that the burden of proving circumvention is imposed on the EU institutions, Article 18(1) and (6) of the regulation are clearly intended to lessen that burden by providing that those institutions may base the findings of an investigation to ascertain whether there has been circumvention on the facts available and that the result may be less favourable to the parties which have not cooperated with it than it might have been if they had cooperated (see, to that effect, judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 35).

66 The Court has stated in that regard that it follows from Article 18 of the basic regulation that it was not the intention of the EU legislature to establish a legal presumption whereby it is possible to infer the existence of circumvention directly from the non-cooperation of the parties interested or concerned, thus exempting the EU institutions from any requirement to adduce proof. However, given that it is possible to make findings, even definitive findings, on the basis of the facts available and to treat a party which does not cooperate, or does not cooperate fully, less favourably than if it had cooperated, it is equally evident that the EU institutions are authorised to act on the basis of a body of consistent evidence showing the existence of circumvention for the purposes of Article 13(1) of the basic regulation (judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 36).

67 Any other approach would risk undermining the efficiency of EU trade defence measures each time the EU institutions are faced with non-cooperation in an investigation to establish whether there has been circumvention (judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 37).

68 In the present case, only some of the producer-exporters failed to cooperate. First, there is nothing in the wording of Article 13(1) of the basic regulation to prevent the EU institutions establishing circumvention of anti-dumping measures on the basis of a body of consistent evidence where producer-exporters accounting for a significant part of the imports of the product concerned into the European Union have not cooperated or have failed to cooperate sufficiently with the investigation. Second, the need to guarantee the effectiveness of trade defence measures also justifies, in circumstances such as those of the present case, those institutions being authorised to act on the basis of such a body of consistent evidence showing the existence of circumvention within the meaning of that provision.

69 While the EU institutions are entitled to rely on such a body of evidence, the fact nonetheless remains that, in accordance with Article 13(1) and (3) of the basic regulation, that evidence must show that the four conditions outlined in paragraph 57 above are met. Thus, as regards the second of those conditions, the EU institutions must have acquired evidence which tends to establish that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty.

ii) The errors of law in the application of Article 13(1) of the basic regulation

70 It is in the light of the foregoing considerations that it is necessary to determine whether, as Maxcom, the Council and the Commission claim, the General Court's reasoning is vitiated by errors of law in the application of Article 13(1) of the basic regulation, in so far as it found, in paragraph 99 of the

judgment under appeal, that the Council was not entitled to conclude that City Cycle was engaged in transhipment, and, as a consequence, upheld the action and annulled Article 1(1) and (3) of the regulation at issue in so far as it concerned that company.

71 In essence, Maxcom, the Council and the Commission argue, first, that, contrary to what was stated by the General Court, the Council was fully entitled to conclude, in recital 78 of the regulation at issue, from the finding that City Cycle was not a genuine Sri Lankan producer of bicycles and was not involved in assembly operations exceeding the thresholds laid down in Article 13(2) of the basic regulation, that such transhipment operations were being conducted. Second, they take issue with the General Court for requiring the EU institutions to establish that every producer-exporter in the country concerned by the investigation was engaged in transhipment practices, thus reversing the burden of proof. Third, they maintain that even if the Council's conclusions concerning the existence of transhipment were incorrect, the annulment of the regulation at issue would in any event not be justified.

72 By those arguments, Maxcom, the Council and the Commission call into question paragraphs 98 and 99 of the judgment under appeal, in which the General Court found, first, that the Council had no evidence from which it could conclude, in recital 78 of the regulation at issue, that City Cycle was involved in transhipment operations. Second, that court stated that the fact that City Cycle was unable to show that it was in fact a Sri Lankan producer of bicycles or that it met the criteria laid down in Article 13(2) of the basic regulation did not enable the Council to conclude, by default, that City Cycle was engaged in transhipment.

73 Contrary to what is claimed in both the arguments of Maxcom, the Council and the Commission and in the judgment under appeal, recital 78 of the regulation at issue does not contain any individual analysis of circumvention practices in which City Cycle may have been engaged.

74 Thus, that recital forms part of a section of the regulation at issue headed 'Transhipment', which addresses the second of the four conditions set out in paragraph 57 above. In that section, the Council stated, first of all, in recital 77 of the regulation at issue, that for three out of the six initially cooperating companies, the investigation did not reveal any transhipment practices. For the remaining exports to the European Union, the Council stated that no cooperation had been forthcoming. Next, in recital 78 of the regulation, the Council stated, first, that it had been established in recital 58 that there had been a change in the pattern of trade between Sri Lanka and the European Union and, second, that not all Sri Lankan producer-exporters came forward and cooperated. It concluded that exports of those producer-exporters to the European Union could be 'attributed' to transhipment practices. Lastly, in recital 79 of the regulation at issue, the Council found that the existence of transhipment of Chinese-origin products via Sri Lanka was confirmed.

75 The conclusion as to the existence of transhipment operations therefore relates to all the producer-exporters who refused to cooperate and is based on two findings, that is, first, that there had been a change in the pattern of trade and, second, that some of the producer-exporters had failed to cooperate.

76 As is apparent from the principles set out in paragraphs 65 to 69 above, it is not possible to conclude on the basis of those two findings either that City Cycle was involved in transhipment operations as an individual producer-exporter or that such practices existed at national level in Sri Lanka.

77 First, while the EU institutions are authorised, in the case of insufficient cooperation, to rely on a body of consistent evidence in concluding that anti-dumping measures have been circumvented, there is nevertheless no legal presumption whereby it is possible to infer directly from an interested party's failure to cooperate that such circumvention exists. Furthermore, those institutions must have evidence to show that each of the four conditions for demonstrating circumvention set out in

paragraph 57 above is met, including the condition that the change in the pattern of trade must stem from circumvention practices. It follows that the Council was not entitled to infer from the simple fact that some of the producer-exporters failed to cooperate that transhipment had occurred.

78 Second, as a change in the pattern of trade is the first of the four conditions to be met in order for circumvention to be properly established, the Council was not entitled to rely on the finding that there had been such a change as evidence of the fact that the second of the four conditions, which requires that such a change should stem from circumvention practices, was established.

79 Therefore, as the Council was not entitled to conclude, on the basis of those two findings in recital 78 of the regulation at issue, either that City Cycle was involved in transhipment operations as an individual producer-exporter or that such practices existed at national level in Sri Lanka, the General Court did not err in law in finding, in paragraph 99 of the judgment under appeal, that there was no justification for the Council's conclusion that City Cycle had engaged in transhipment or, as a consequence, in upholding the action and annulling Article 1(1) and (3) of the regulation at issue, in so far as it concerned that company.

80 Moreover, contrary to the argument put forward by the Council and the Commission, there is nothing in the judgment under appeal to justify the claim that the General Court intended to require the EU institutions to establish that every producer-exporter was engaged in transhipment operations. Indeed, in finding that it was not possible for the Council to conclude that City Cycle was engaged in transhipment and in annulling the regulation at issue in part, the General Court simply drew the appropriate conclusions from the fact that the information available to the Council, as described in recital 78 of the regulation at issue, did not justify its conclusion that transhipment operations were being engaged in at national level and did not constitute a factual basis for suggesting that City Cycle was involved in such operations.

81 In the light of the foregoing considerations, the second group of grounds of appeal must be rejected as unfounded.

The grounds of appeal alleging an inadequate statement of reasons, contradictory reasoning and distortion of the facts

Arguments of the parties

82 In the third group of grounds of appeal, Maxcom, the Council and the Commission submit that the General Court failed to have regard to its duty to state reasons. The Council also alleges that the General Court distorted the facts submitted for its assessment.

83 In the first place, the Council and the Commission maintain that the findings in the judgment under appeal are not supported by sufficient reasons as the General Court did not explain why it considered that the Council had infringed Article 13(1) of the basic regulation. First, paragraphs 98 and 99 of that judgment do not explain whether the error which it is claimed the Council made is a simple error of assessment or a manifest error of assessment. Second, the General Court does not explain why the evidence submitted for its assessment, including the facts available, did not lead it to the conclusion that City Cycle was involved in transhipment.

84 In the second place, Maxcom and the Commission maintain that the reasoning in the judgment under appeal is contradictory. First, Maxcom argues that the findings in paragraphs 98 and 99 of that judgment are contradicted by the General Court's findings in relation to the second plea in law, in particular the considerations set out in paragraphs 131 and 135 of the judgment, in which that court, on the one hand, stated that the information provided by City Cycle was flawed and, on the other, rejected the claim that the Council had infringed Article 18 of the basic regulation, the principle of

proportionality and the obligation to state reasons in so far as concerns the finding of non-cooperation on the part of City Cycle. Second, the Commission contends that it follows from paragraph 97 of the judgment under appeal that the evidence provided by City Cycle did not prove that it was in fact a Sri Lankan exporter or that it met the criteria laid down in Article 13(2) of the basic regulation. The Commission wonders, in that regard, how that evidence, if it shows that City Cycle engaged in circumvention activities by means of assembly, could not show that it is also engaged in transhipment. Third, the Commission takes issue with the General Court for stating, on the one hand, that the Council had no evidence to justify the conclusion that City Cycle was involved in such transhipment operations and, on the other, in paragraph 131 of the judgment under appeal, that the vast body of data available made it possible to conclude that there had been circumvention by City Cycle.

85 In the third place, the Council claims that the General Court distorted the facts submitted for its assessment. First, given that transhipment was duly demonstrated at country level and that City Cycle was not entitled to an exemption, the only conclusion which that court could have drawn was that City Cycle was involved in transhipment. Second, such distortion is also apparent from paragraphs 83, 94, 97, 109, 112 and 121 of the judgment under appeal, concerning City Cycle's exemption request, which preclude the possibility that the latter satisfied the requirements to be met in order for assembly in the country affected by the investigation to be deemed to render the products concerned products of local origin.

86 City Cycle disputes those arguments.

Findings of the Court

87 In the first place, with regard to the argument alleging an inadequate statement of reasons, according to the Court's case-law, the statement of the reasons on which a judgment is based must clearly and unequivocally disclose the reasoning of the General Court, so that the persons concerned can ascertain the reasons for the decision taken and the Court of Justice can exercise its power of review (judgment of 10 April 2014, *Areva and Others* v *Commissio*n, C-247/11 P and C-253/11 P, EU:C:2014:257, paragraph 54).

88 In that regard, first, the fact that paragraphs 98 and 99 of the judgment under appeal do not indicate whether the error made by the Council is a simple error of assessment or a manifest error of assessment cannot, in any event, have the effect of setting that judgment aside.

89 The Court has also held that the General Court's review of the evidence on which the EU institutions based their findings does not constitute a new assessment of the facts replacing that made by the institutions. That review does not encroach on the broad discretion of the institutions in the field of commercial policy, but is restricted to showing whether that evidence was able to support the conclusions reached by the institutions. The General Court must therefore not only establish whether the evidence put forward is factually accurate, reliable and consistent but also ascertain whether that evidence contained all the relevant information which had to be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions reached (see, to that effect, judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei Xinyegang Steel* and *Council* v *Hubei Xinyegang Steel*, C-186/14 P and C-193/14 P, EU:C:2016:209, paragraphs 35 and 36 and the case-law cited).

90 In the present case, as is apparent from paragraph 79 above, the General Court found, without erring in law, that the evidence on which the Council relied to support its conclusion that transhipment practices were being engaged in at country level in Sri Lanka was not capable of substantiating that conclusion. In the light of the case-law cited in the preceding paragraph, it follows implicitly but necessarily from paragraph 98 of the judgment under appeal that the General Court found in that paragraph that the Council had made a manifest error of assessment.

91 Furthermore, with regard to the claim that the General Court did not set out the reasons why the evidence before it did not justify the conclusion that City Cycle had engaged in transhipment activities, it is sufficient to note that there is no factual basis for that argument, as the General Court gave its reasons. Thus, that court stated, in paragraphs 98 and 99 of the judgment under appeal, first, that the Council had no evidence from which it could reach that conclusion and, second, that such a conclusion could not be inferred from the fact that that company had failed to show that it was in fact a Sri Lankan exporter or that it met the criteria laid down in Article 13(2) of the basic regulation.

92 It follows that the argument alleging that the judgment under appeal does not provide an adequate statement of reasons must be rejected.

93 In the second place, with regard to claim that the judgment under appeal contains contradictions, it should be noted, first, that the findings in paragraphs 98 and 99 of that judgment are not in any way contradicted by the findings relating to the second plea in law, by which the General Court indicated that the information provided by City Cycle was flawed and rejected the claim alleging that the Council had infringed Article 18 of the basic regulation, the principle of proportionality and the obligation to state reasons in so far as concerns the finding that City Cycle had not cooperated. As is apparent from paragraph 66 above, although the EU institutions are entitled, in the event of insufficient cooperation, to rely on a body of consistent evidence in concluding that there has been circumvention, there is nonetheless no legal presumption whereby it is possible to infer the existence of circumvention directly from the non-cooperation of an interested party.

94 Second, with regard to the argument relating to paragraph 97 of the judgment under appeal and the claim that the evidence indicated that City Cycle was circumventing anti-dumping measures by means of assembly operations, it is sufficient to note that the judgment under appeal does not contain any finding as to the involvement of that company in assembly operations, so that there is no factual basis for that argument.

95 Third, with regard to the alleged contradiction between the findings that, on the one hand, the Council had no evidence to justify its conclusion that City Cycle was involved in transhipment operations and, on the other, a vast body of data was available from which that conclusion could be reached, it is clear that that argument is based on a misreading of the judgment under appeal. Indeed, in paragraph 131 of the judgment under appeal, the General Court rejected City Cycle's complaint that the Council had infringed the obligation to state reasons, in so far as the latter had failed, inter alia, to explain the nature of the facts available, within the meaning of Article 18(1) of the basic regulation, which it took into account. Accordingly, the General Court did not find in that paragraph, contrary to the Commission's assertion, that it was possible to conclude from the facts available that City Cycle had been engaged in circumvention. There is therefore no contradiction between paragraphs 131 and 135 of the judgment under appeal.

96 The argument that the reasoning in the judgment under appeal is contradictory must therefore be rejected as unfounded.

97 In the third place, with regard to the distortion of the facts alleged by the Council, it should be noted, first, that, contrary to the argument put forward by that institution, it follows from paragraph 79 above that it cannot be held that the existence of transhipment operations was duly established at national level. Second, although the Council maintains that such distortion is also apparent from the conclusions set out in the judgment under appeal concerning City Cycle's exemption request, which ruled out the possibility that the latter satisfied the conditions to be met in order for assembly in the country affected by the investigation to be deemed to render the products concerned products of local origin, it does not specify how, by those conclusions, the General Court distorted the facts submitted to it for assessment. The Council's argument must therefore be rejected as unfounded.

98 Accordingly, the argument alleging distortion of the facts and the third group of grounds of appeal in its entirety must be rejected as unfounded.

The Commission's ground of appeal alleging infringement of its procedural rights

Arguments of the parties

99 The Commission claims that the General Court infringed its procedural rights, in so far as that court prevented it submitting a statement in intervention. In that regard, first, that institution observes that the General Court granted the request for the case to be dealt with under the expedited procedure, which, under the second subparagraph of Article 76a(2) of the Rules of Procedure of the General Court, in the version applicable at the time of the proceedings before that court, precludes any written intervention on the part of the Commission. No reasons were given for the General Court's decision to allow that procedure. The General Court took 19.3 months to deliver its judgment, whereas the average duration of proceedings before that court was 23.4 months in 2014.

100 Next, the Commission maintains that, when it became clear that the case was much more complex than the General Court had anticipated, it sought leave to submit a statement in intervention by way of measure of organisation of procedure. That application was refused on 9 July 2014, without any reasons being given. Moreover, bearing in mind the actual length of the proceedings before the General Court, its persistent refusal to allow the Commission to submit written observations could not be justified by the need to accelerate the handling of the case.

101 Lastly, the Commission submits that the General Court's findings which constitute, in its view, errors of law relate to its investigative activities. Those findings would have been different if it had been allowed to express its position before the hearing.

102 City Cycle disputes those arguments.

Findings of the Court

103 In the first place, with regard to the argument as to the appropriateness of the General Court's decision to allow the expedited procedure pursuant to the second subparagraph of Article 76a(2) of the Rules of Procedure of the General Court, in the version applicable at the time of the proceedings before that court, it should be noted that, under Article 116(3) of those rules, the intervener must accept the case as he finds it at the time of his intervention.

104 In the present case, the Commission lodged its application for leave to intervene with the Registry of the General Court on 17 October 2013, while City Cycle's application for the case to be dealt with under the expedited procedure was granted by decision of 8 October 2013.

105 The Commission was therefore obliged to accept the case as it found it at the time of its intervention and has no valid grounds for challenging the decision to adjudicate under an expedited procedure.

106 In the second place, as regards the refusal by the General Court to grant the request for measures of organisation of procedure submitted by the Commission, it should be borne in mind that, according to the Court's settled case-law, the General Court is the sole judge, in principle, of any need to supplement the information available to it in respect of the cases before it (see judgment of 9 June 2016, *PROAS* v *Commission*, C-616/13 P, EU:C:2016:415, paragraph 66 and the case-law cited). Whether or not the evidence before it is sufficient is a matter to be appraised by it alone and is not subject to review by the Court of Justice on appeal, except where that evidence has been distorted or

the inaccuracy of the findings of the General Court is apparent from the documents in the case file (see, to that effect, judgment of 28 January 2016, *Heli-Flight* v *EASA*, C-61/15 P, not published, EU:C:2016:59, paragraph 94 and the case-law cited).

107 In the present case, the Commission does not claim that the evidence before the General Court was distorted or that its findings were inaccurate. It follows that there are no valid grounds on which the Commission can challenge the General Court's refusal to grant its application for measures of organisation of procedure.

108 In the third place, while the Commission contends that the General Court's findings would have been different if it had been allowed to express its position before the hearing, it nonetheless fails to identify the findings of the General Court which it intended to address or the reason why those findings would have been different.

109 The present ground of appeal must therefore be rejected as unfounded.

110 In the light of the foregoing considerations, the present appeals must be dismissed.

Costs

111 Under Article 184(1) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

112 As Maxcom, the Council and the Commission have been unsuccessful and City Cycle has applied for costs, the former must be ordered to pay the costs of both the proceedings at first instance in Case T-413/13 and the appeal proceedings.

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

1. **Dismisses the appeals in Cases C-248/15 P, C-254/15 P and C-260/15 P;**

2. **Orders Maxcom Ltd, the Council of the European Union and the European Commission to bear their own costs and to pay the costs incurred by City Cycle Industries in relation to both the proceedings at first instance in Case T-413/13 and the appeal proceedings.**

von Danwitz Juhász Vajda

Jürimäe Lycourgos

Delivered in open court in Luxembourg on 26 January 2017.

A. Calot Escobar
Registrar

T. von Danwitz
President of the Fourth Chamber