Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

12 September 2019*

(Appeal — Dumping — Implementing regulation (EU) 2015/776 — Import of bicycles consigned from Cambodia, Pakistan and the Philippines — Extension to those imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Regulation (EC) No 1225/2009 — Article 13 — Circumvention — Assembly operations — Provenance and origin of bicycle parts — Parts consigned from China to Sri Lanka, worked in Sri Lanka and then consigned from Sri Lanka to Pakistan for assembly)

In Case C-709/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 18 December 2017,

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

appellant,

the other parties to the proceedings being:

Kolachi Raj Industrial (Private) Ltd, established in Karachi (Pakistan), represented by P. Bentley QC,

applicant at first instance,

European Bicycle Manufacturers Association (EBMA), represented by J. Beck, Solicitor, and by L. Ruessmann, avocat,

intervener at first instance,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Jürimäe (Rapporteur), D. Šváby, S. Rodin and N. Piçarra, Judges,

Advocate General: G. Pitruzzella,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 January 2019,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2019,

gives the following

* Language of the case: English.

Judgment

1 By its appeal, the European Commission asks the Court to set aside the judgment of the General Court of the European Union of 10 October 2017, *Kolachi Raj Industrial* v *Commission* (T-435/15, 'the judgment under appeal', EU:T:2017:712), by which that court annulled Commission Implementing Regulation (EU) 2015/776 of 18 May 2015 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 502/2013 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Cambodia, Pakistan and the Philippines, whether declared as originating in Cambodia, Pakistan and the Philippines or not (OJ 2015 L 122, p. 4) ('the regulation at issue'), in so far as it concerns Kolachi Raj Industrial (Private) Ltd ('Kolachi Raj').

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 37/2014 of the European Parliament and of the Council of 15 January 2014 (OJ 2014 L 18, p. 1) ('the basic regulation').

3 Recital 19 of the basic regulation stated as follows:

'… Given the failure of the multilateral negotiations so far and pending the outcome of the referral to the World Trade Organisation (WTO) Anti-Dumping Committee, it is necessary that [EU] legislation should contain provisions to deal with practices, including mere assembly of goods in the [European Union] or a third country, which have as their main aim the circumvention of anti-dumping measures.'

4 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 [European Union] or between individual companies in the country subject to measures and the [European Union], which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

The practice, process or work referred to in the 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 [European Union] 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 [European Union] or a third country.

2. An assembly operation in the [European Union] 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 by Commission Regulation which may also instruct customs authorities to subject imports to registration in accordance with Article 14(5) or to request guarantees. The Commission shall provide information to the Member States once an interested party or a Member State has submitted a request justifying the initiation of an investigation and the Commission has completed its analysis thereof, or where the Commission has itself determined that there is a need to initiate an investigation. Investigations shall be carried out by the Commission. The Commission may be assisted by customs authorities and the investigations shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done by the Commission acting in accordance with the examination procedure referred to in Article 15(3). The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5) or on which guarantees were requested. The relevant procedural provisions of this Regulation 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 Union, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article. Where the circumventing practice, process or work takes place inside the Union, exemptions may be granted to importers that can show that they are not related to producers subject to the measures.

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

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

Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures. Any such review shall be conducted in accordance with the provisions of Article 11(5) as applicable to reviews pursuant to Article 11(3).

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

5 Article 16 of the basic regulation provided as follows:

'1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on dumping and injury. In the absence of a proper and timely reply the Commission may choose not to carry out a verification visit.

…

3. The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

…'

6 Article 18 of the basic regulation provided:

'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. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. Interested parties should be made aware of the consequences of non-cooperation.

…

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

…

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

7 The background to the dispute is set out in paragraphs 1 to 27 of the judgment under appeal. For the purposes of the present proceedings, they may be summarised as follows.

8 In 1993, the Council imposed a definitive anti-dumping duty of 30.6% on imports into the European Union of bicycles originating in China. Subsequently, that duty was maintained at the same level. In 2005, the duty was raised to 48.5%. It was maintained at that level by Council Regulation (EU)

No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ 2013 L 153, p. 17).

9 In 2013, that anti-dumping duty was extended to imports of bicycles consigned from, inter alia, Sri Lanka, whether declared as originating in Sri Lanka or not, following an anti-circumvention investigation carried out under Article 13 of the basic regulation.

10 After receiving a further complaint in 2014, the Commission initiated an investigation concerning the possible circumvention of the anti-dumping measures imposed by Regulation No 502/2013 by imports of bicycles consigned from Cambodia, Pakistan and the Philippines.

11 Kolachi Raj, a company incorporated under Pakistani law, participated in that investigation. It was apparent from the information contained in the 'Form for companies requesting an exemption from possible extended duties' completed by that company that it purchased bicycle parts from Sri Lanka and China in order to assemble them into bicycles in Pakistan. Kolachi Raj named five companies as being its suppliers, including Great Cycles Pvt Ltd ('Great Cycles') and Flying Horse Pvt Ltd ('Flying Horse'). Kolachi Raj stated that its owner and that of Great Cycles was one and the same natural person.

12 On 17 and 18 February 2015, the Commission made a verification visit at the premises of Great Cycles in Katunayake (Sri Lanka), in order to determine, in particular, whether the proportion of bicycle parts from China amounted — as claimed by Kolachi Raj — to less than 60% of the value of all the parts used in the assembly operations carried out by Kolachi Raj in Pakistan. The Commission focused its investigation on information concerning Flying Horse, from which Kolachi Raj purchased 93% of the bicycle parts used in its assembly operations. According to the information provided by Kolachi Raj, Flying Horse was unrelated to Kolachi Raj and was an intermediary which purchased parts in almost equal volumes from China and Sri Lanka — 46% and 47%, respectively, of all bicycle parts used in Kolachi Raj's assembly operations in Pakistan — and resold them to Kolachi Raj.

13 It was revealed that Flying Horse purchased a significant volume of frames, forks, alloy rims and plastic wheels from Great Cycles, a bicycle parts manufacturer established in Sri Lanka and related to Kolachi Raj. Tyres and rim strips, on the other hand, were purchased from Vechenson Limited, a bicycle parts manufacturer also established in Sri Lanka and unrelated to Kolachi Raj. Having identified a number of discrepancies, the Commission raised doubts about the relationship between Kolachi Raj and Flying Horse.

14 The Commission found that the bicycle parts purchased, via Flying Horse, from Vechenson, were of Sri Lankan origin. However, it did not accept the 'Form A' certificates of origin issued by the Department of Commerce in the Democratic Socialist Republic of Sri Lanka and produced by Kolachi Raj in relation to the bicycle parts purchased, via Flying Horse, from Great Cycles ('the certificates of origin').

15 In those circumstances, on the basis of the evidence provided by Kolachi Raj in relation to the manufacturing costs of the parts worked by Great Cycles in Sri Lanka during the reporting period, the Commission calculated that over 65% of the total raw materials used for the manufacture of those bicycle parts in Sri Lanka came from China, while 31% of that total came from Sri Lanka, and that the value added to those raw materials during the manufacturing process of the parts in Sri Lanka was less than 25%. It concluded that Kolachi Raj was participating in operations circumventing anti-dumping measures and notified Kolachi Raj of its findings on 13 March 2015.

16 In its written observations of 27 March 2015 on the Commission's findings, Kolachi Raj claimed that there was no basis in law for the Commission's questioning of the Sri Lankan origin of the parts supplied to it by Great Cycles.

17 On 18 May 2015 the Commission adopted the regulation at issue.

18 In recital 22 of that regulation, the Commission states, inter alia, that Kolachi Raj was considered to be cooperating with the investigation.

19 In Section 2.5.3 of the grounds of that regulation, headed 'Pakistan', recitals 94 to 106 of that regulation are given over to the Commission's investigation of Kolachi Raj. As a preliminary point, the Commission, in recital 94 of the contested regulation, draws attention to the links between Kolachi Raj and 'a company in Sri Lanka that was subject to the previous anti-circumvention investigation and is subject to the extended measures', adding that the shareholders in that company had set up a company in Cambodia which was also involved in the export of bicycles to the European Union and which 'did not cooperate in the current investigation, although it exported the product under investigation to the Union market in 2013'. The Commission adds, in that recital, that the Cambodian company ceased its operations in Cambodia during the reporting period and moved its activities to the related company in Pakistan.

20 In recital 96 of the regulation at issue, the Commission states that the investigation did not reveal any transhipment practices of Chinese-origin products via Pakistan, and in recitals 98 and 99 of that regulation it outlines the discrepancies which it unearthed in the course of that investigation. In recitals 100 and 101 of the regulation at issue, it deals with the issue of the evidentiary value of the 'Form A' certificates of origin and the proportion of raw materials from China used for the manufacture of bicycle parts in Sri Lanka. After setting out, in recital 100 of that regulation, the arguments put forward by Kolachi Raj, recital 101 of that regulation is worded as follows:

'As explained in recital 98, the … certificates of origin were not considered sufficient evidence to demonstrate the origin of the bicycle parts purchased from Sri Lanka because they were not issued on the basis of actual manufacturing costs but on a projection of manufacturing costs for the future which does not provide any guarantees that the bicycle parts were indeed manufactured in compliance with the projected costs. Moreover, it should be made clear that the Commission is not disputing in general the methodology for the issuance of the ["Form A"] certificates of origin in Sri Lanka, which is beyond the scope of this investigation, but only assessing whether the conditions of Article 13(2) of the basic regulation are met in the present case. In these circumstances, while noting that Article 13(2)(b) of the basic regulation is indeed not as such a rule of origin, the Commission was justified in considering that as these parts were manufactured for more than 60% with raw materials from China and the value added was less than 25% of the manufacturing costs, it could conclude that these parts themselves come from China. Therefore, all the above claims were rejected.'

21 The Commission expressed the view, in recital 104 of the regulation at issue, that the investigation had not revealed 'any due cause or economic justification for the assembly operations other than the avoidance of the existing measures on the product concerned.'

22 The Commission also noted, in recital 147 of the regulation at issue, 'significant dumping' in the case of Pakistan and rejected, in recital 163 of the regulation, the possibility of exempting Kolachi Raj from any extended measures.

23 Under Article 1(1) of the regulation at issue, the definitive anti-dumping duty of 48.5% applicable to imports of bicycles originating in China was extended to imports of bicycles consigned from Pakistan, whether declared as originating in Pakistan or not.

The procedure before the General Court and the judgment under appeal

24 By application lodged at the Registry of the General Courton 29 July 2015, Kolachi Raj brought an action for annulment of the regulation at issue in so far as that regulation concerns it.

25 By document lodged at the Court Registry on 16 November 2015, the European Bicycle Manufacturers Association (EBMA) applied for leave to intervene in support of the form of order sought by the Commission. The President of the Seventh Chamber of the General Court granted that application by order of 9 March 2016.

26 In support of its action, Kolachi Raj raised a single plea in law, alleging infringement of Article 13(2)(b) of the basic regulation. By that plea, Kolachi Raj claimed, inter alia, that the Commission had incorrectly applied that provision, as a rule of origin, to the manufacture of bicycle parts in Sri Lanka, whereas the subject matter of the investigation was an alleged circumvention of anti-dumping measures in Pakistan, and that the Commission had neither demonstrated that the certificates of origin constituted insufficient proof nor taken any steps to apply the rules of origin prescribed by EU customs legislation.

27 In the judgment under appeal, the General Court upheld Kolachi Raj's single plea in so far as it alleged that the Commission wrongly applied Article 13(2)(b) of the basic regulation 'by analogy' and rejected it as regards the evidentiary value of the certificates of origin.

28 Thus, the General Court annulled the regulation at issue in so far as it concerned Kolachi Raj.

Forms of order sought by the parties to the appeal

29 By its appeal, the Commission claims that the Court should:

– set aside the judgment under appeal, dismiss the action at first instance and order Kolachi Raj to pay the costs; or

– in the alternative, refer the case back to the General Court for reconsideration and reserve the costs relating to the proceedings at first instance and on appeal.

30 Kolachi Raj claims that the Court should:

– dismiss the appeal in its entirety;

– in the alternative, correct the judgment under appeal and confirm the operative part of that judgment;

– order the Commission to bear its own costs relating to the appeal and to pay the costs incurred by Kolachi Raj; and

– order EBMA to bear its own costs relating to the appeal proceedings.

31 EBMA claims that the Court should:

– set aside the judgment under appeal, dismiss the action brought at first instance and order Kolachi Raj to pay the costs relating to the proceedings at first instance and on appeal; or

– in the alternative, refer the case back to the General Court for reconsideration, reserve the costs relating to the proceedings at first instance and order Kolachi Raj to pay the costs relating to the appeal proceedings.

The appeal

Arguments of the parties

32 The Commission raises a single ground in support of its appeal, alleging errors of law on the part of the General Court in the interpretation and application of Article 13 of the basic regulation. That ground of appeal, which is directed against paragraphs 83 to 93 and 107 to 119 of the judgment under appeal, is divided into two parts.

The first part of the single ground of appeal

33 By the first part of its single ground of appeal, the Commission claims that the General Court erred in law by relying on the rules of origin to interpret and apply Article 13(2)(b) of the basic regulation.

34 In the first place, the Commission submits that the interpretation, first, that the concept underlying the term 'from' is based on the rules of origin and, secondly, that where the parts used in the assembly are from may be determined only by application of those rules, finds no support in the wording of Article 13 of the basic regulation.

35 That provision makes no reference to the rules of origin and reflects the choice made by the EU legislature to exclude the application of those rules for the purpose of assessing an assembly operation under Article 13(2)(b) of the basic regulation. That choice is apparent from the successive amendments to the provisions of the basic legislation governing circumvention. In that regard, it claims that since the rules of origin proved to be increasingly inadequate for the purpose of dealing even with cases of blatant circumvention, the scope of anti-circumvention rules, which was initially restricted to the assembly of parts 'originating in the country of exportation of the product subject to the anti-dumping duty', was extended to the assembly of parts originating from the country subject to that duty by Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ 1994 L 349, p. 1).

36 Thus, Article 13(2)(b) of the basic regulation has introduced a legal regime which is distinct and independent from the rules of origin. Customs law is relevant only where the basic regulation expressly makes reference to it.

37 In the second place, the Commission claims that the interpretation adopted by the General Court unduly limits the effectiveness of the anti-circumvention instrument. By contrast, the application, by analogy, of Article 13(2)(b) of the basic regulation to the parts used in the assembly operations in question maintains the effectiveness of that instrument.

38 First, while Article 13 of the basic regulation makes it possible to adopt a global approach for all transactions concerning the parts in question carried out during the relevant reporting year, the criteria set by the rules of origin must be verified for each individual part. Yet such verification is impossible in an anti-circumvention investigation in view of the constraints inherent in such an investigation.

39 Secondly, the rules of origin do not contain any provision analogous to Article 18 of the basic regulation, which would allow the Commission to act on the basis of a body of consistent evidence in order to demonstrate, in the event of non-cooperation by the interested parties, that the conditions required to impose anti-circumvention measures are fulfilled.

40 Thirdly, the interpretation of the General Court modifies the legal rules applicable to parts used in assembly as an additional layer of circumvention is inserted in between the country subject to the measures and the country in which the parts are assembled. Such an interpretation effectively replaces the rules laid down in Article 13 of the basic regulation with the rules of origin deriving from customs law and thus renders the anti-circumvention instrument inapplicable in such a case.

41 Fourthly, the judgment under appeal provides no indication as to whether, in order to determine the origin of the parts purchased, in the present instance, in Sri Lanka, it is necessary to refer, by analogy, to the EU rules of origin or to the rules of origin of the country to which those parts are exported, namely those of the Islamic Republic of Pakistan.

42 Fifthly, the interpretation of the General Court leads, in the present case, to the creation of a legal vacuum since, under that interpretation, the parts in question did not originate in either Sri Lanka or China, whereas the application by analogy of Article 13(2)(b) of the basic regulation would make it possible to avoid such a vacuum.

43 Sixthly, that application by analogy was part of the investigative steps taken to determine whether the bicycles assembled by Kolachi Raj did in fact meet the criteria laid down in Article 13(2)(b) of the basic regulation.

44 EBMA, which supports the arguments put forward by the Commission, considers that the first part of the single ground of appeal is well founded. In its view, the General Court erred in law in holding, in paragraphs 84 to 86 of the judgment under appeal, that the words ‘are from’, as used in Article 13(2)(a) of the basic regulation, must be understood as referring to the immediate export country.

45 In the first place, since Article 13 of the basic regulation does not implement the provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 103), the words ‘are from’ in paragraph 2(a) cannot be interpreted in the light of the provisions of the basic regulation which, like Article 3(4) and Article 9(5) and (6) of that regulation, to which the General Court made reference, implement the provisions of that agreement. That is all the more true given that, while the provisions based on the rules laid down in that agreement and Article 13(1) of the basic regulation concern imports of the final product into the European Union, Article 13(2)(a) of that regulation concerns imports of parts for the assembly of the final product.

46 In the second place, the restrictive interpretation of the words ‘are from’ adopted by the General Court is at odds with the objective pursued by Article 13 of the basic regulation, namely to ensure the effectiveness of EU anti-dumping measures and prevent their circumvention. In addition, that interpretation calls into question the Commission’s discretion in anti-circumvention investigations and disregards current economic developments in global supply chains.

47 It would be sufficient for operators to add a form of part processing, even basic processing, in an additional third country, in order to evade the anti-circumvention measures. Thus, in the present case, the General Court’s interpretation would allow operators to ‘whitewash’ parts assembled in Sri Lanka, which have been found to be circumventing the anti-dumping measures, by shipping them from that country to Pakistan, for further assembly, instead of exporting them directly to the European Union.

48 To address that situation, the Commission should be allowed, when assessing the conditions laid down in Article 13(2) of the basic regulation, to include parts from the country subject to the initial measures which are transported, via a third country, to the third country subject to the anti-circumvention investigation, in particular where the working or processing of those parts does not meet those conditions.

49 Kolachi Raj contends that the first part of the single ground of appeal is unfounded.

50 In the first place, Kolachi Raj submits that the Commission's claim that the EU legislature intentionally excluded the application of the rules of origin in the application of Article 13(2)(b) of the basic regulation is incorrect.

51 The legislature did not explain the reasons why the notion of 'origin' was used and then subsequently dropped in the anti-circumvention rules. In the absence of a definition of the term 'from' in the basic regulation, it cannot be regarded as an autonomous concept, but must be interpreted in accordance with its natural meaning and in the light of similar concepts in EU legislation, including, inter alia, the customs notion of 'origin'. In addition, it follows from Article 13(5) of the basic regulation that Article 13 does not preclude the normal application of EU customs rules relating to non-preferential origin.

52 In the second place, Kolachi Raj disputes the Commission's reading of the judgment under appeal. According to that company, the General Court did not say that it had to be demonstrated where parts are from, nor did it hold that the term 'from' is based on the rules of origin. That court simply stated that the Commission may 'verify' the origin of the parts. The Commission verifies the documents provided by the party concerned, in accordance with Article 16 of the basic regulation. The General Court therefore neither restricted the means available to the Commission in that regard nor expressly excluded any other means of proving that, in the present case, the parts are 'from' China.

53 That being the case, Kolachi Raj claims that origin is the only relevant and appropriate criterion for determining that a part is not, in fact, from the country of dispatch and that the rules of origin, as laid down in customs legislation, determine, in actual fact, the initial origin of a part. Such an interpretation is supported by the European Union's obligations under the WTO, in particular by the most-favoured nation clause.

54 In substance, Kolachi Raj states, first, that the thresholds laid down in Article 13(2)(b) of the basic regulation are intended to be used to determine whether an assembly operation amounts to circumvention of anti-dumping measures and not to determine where parts are from or their origin.

55 Secondly, it has not been established that the interpretation adopted by the General Court lessens the effectiveness of the anti-circumvention instrument or renders it inapplicable. The mere fact that it may be easier, for investigators, to apply the criteria laid down in Article 13(2)(b) of the basic regulation rather than the rules of origin cannot be taken into account in interpreting the words 'from the country subject to measures'.

56 Thirdly, it is common ground that the Commission may apply Article 18 of the basic regulation in the event of non-cooperation, including in investigations under Article 13 of that regulation. In the present case, the Commission did not conclude, however, that the certificates of origin in question were false or misleading.

57 Fourthly, the application of the EU rules of origin is consistent with EU law. That is evidenced by the approach adopted by the Commission in Decision 2001/725/EC of 28 September 2001 terminating the anti-dumping proceeding concerning imports of colour television receivers originating in Turkey (OJ 2001 L 272, p. 37).

58 Fifthly, as regards the alleged existence of a legal vacuum, Kolachi Raj states, first, that it does not follow from the judgment under appeal that the parts in question did not originate in China and, secondly, that the General Court merely concluded that the Commission had rightly considered that the certificates of origin in question did not constitute sufficient evidence to demonstrate the origin of those parts. The question whether, in those circumstances, the Commission was entitled to reject those certificates and make use of the facts available in accordance with Article 18 of the basic regulation, and which facts available could have been used had it invoked that article was neither raised before nor ruled upon by the General Court.

59 Sixthly, Kolachi Raj observes that, since the subject matter of the investigation was an alleged circumvention of anti-dumping measures by assembly operations carried out in Pakistan, and not in Sri Lanka, the criteria laid down in Article 13(2)(b) of the basic regulation could be applied only to assembly operations carried out in Pakistan, after it had been determined where the parts in question came from. However, the Commission incorrectly applied those criteria in order to demonstrate that those parts came from China.

The second part of the single ground of appeal

60 By the second part of its single ground of appeal, the Commission claims that the General Court erred in law by restricting the type of evidence that the Commission may use to demonstrate that the parts in question are 'from' the country subject to measures, within the meaning of Article 13(2) of the basic regulation, by preventing it from providing that evidence by any other means than the rules of origin.

61 In the first place, the wording of Article 13 of that regulation does not in any way limit the evidence that may be used. By using the words 'are from', the EU legislature made it possible to apply the autonomous rules laid down in that article not only to the finished product subject to the anti-circumvention investigation, but also to the parts used to assemble that product.

62 In the second place, the Commission submits that the General Court misinterpreted the judgment of 26 September 2000, *Starway* v *Council* (T-80/97, EU:T:2000:216), and infringed the principle of proportionality.

63 The circumstances of that case were very exceptional. It follows from the judgment in that case that the EU institutions must be free to choose the evidence to demonstrate fulfilment of the conditions laid down in Article 13(2) of the basic regulation and that they are not required to prove that the parts originate in the country subject to the anti-dumping measures.

64 EBMA, which endorses the Commission's arguments, adds that, by suggesting, in paragraphs 87, 92, 108 and 114 of the judgment under appeal, that the Commission is under an obligation to verify the origin of the parts, the General Court misconstrued the judgment of 26 September 2000, *Starway* v *Council* (T-80/97, EU:T:2000:216), from which it is clear that the EU institutions are not required to prove the origin of the parts by applying Article 13(2)(b) of the basic regulation and that the burden of proving origin lies with the exporting producer concerned.

65 In the present case, it is known and undisputed that the parts assembled in Sri Lanka were of Chinese origin and that it was, therefore, for Kolachi Raj to demonstrate that those parts had acquired Sri Lankan origin. Since Kolachi Raj did not adduce such evidence, the Commission was not required to carry out a further assessment in order to conclude that those parts came from China, irrespective of the fact that it applied, by analogy, Article 13(2)(b) of the basic regulation.

66 Kolachi Raj contends that the second part of the single ground of appeal is unfounded.

67 In the first place, while noting that the General Court did not limit the types of evidence that may be used to demonstrate where a part is from and that the rules of origin constitute the only relevant criterion in that respect, Kolachi Raj maintains that, in the absence of a specific provision precluding or authorising use of the criteria set out in Article 13(2)(b) of the basic regulation in order to determine where parts are from or their origin, such use must be regarded as being unauthorised. Since that provision constitutes an exception to the general regime on the imposition of anti-dumping duties, it must be interpreted strictly.

68 Kolachi Raj draws an additional argument from the structure of Article 13(2) of the basic regulation, to the effect that, as a first step, it is necessary to determine which parts are from the country subject to measures in accordance with Article 13(2)(a), before applying, as a second step, the criteria laid down in Article 13(2)(b).

69 In addition, Kolachi Raj states that the Commission must use probative evidence, that is to say, factual evidence with a logical link to the legal conclusions drawn from it. Yet no such link can be established between the criteria contained in Article 13(2)(b) of the basic regulation and the determination of where the parts in question are from.

70 In the second place, Kolachi Raj contests the Commission's arguments based on the judgment of 26 September 2000, *Starway* v *Council* (T-80/97, EU:T:2000:216), which was delivered in circumstances that are different from those in the present case. It submits that, in the judgment under appeal, the General Court did not in any way contradict that judgment and merely held that the Commission could not use Article 13(2)(b) of the basic regulation in order to verify the origin of the parts produced in Sri Lanka.

71 In addition, at the hearing, Kolachi Raj argued that the EBMA's argument concerning the burden of proof in relation to the origin of the parts is inadmissible as it does not form part of the Commission's arguments, which relate to the application by analogy of Article 13(2)(b) of the basic regulation.

72 In the alternative, if the Court were to conclude that the judgment under appeal is vitiated by an error of law, Kolachi Raj requests that the Court substitute the grounds by replacing, in the judgment under appeal, the references to the origin of parts with a reference to where they are from.

Findings of the Court

Preliminary observations

73 The two parts of the single ground of appeal, which are intrinsically linked and must therefore be examined together, relate to errors of law which the General Court allegedly committed in the interpretation and application of Article 13(2) of the basic regulation. In essence, the Commission, with support from EBMA, submits, first, that the General Court wrongly equated the concept of 'from' with that of 'origin'. EBMA adds that the General Court erroneously equated the concept of 'from' with the immediate exporting country. Secondly, the Commission, supported by EBMA, submits that the General Court unduly limited the means of adducing evidence to prove that parts are from the country subject to the measures at issue by requiring the Commission to demonstrate the origin of the parts, within the meaning of customs law.

74 Under Article 13(1) of the basic regulation, anti-dumping duties imposed pursuant to that regulation may be extended to imports from third countries of like products, slightly modified or not, when circumvention of the measures in force is taking place.

75 The burden of proving circumvention of anti-dumping measures in a third country lies, in the light of Article 13(3) of that regulation, on the institutions of the European Union (see, to that effect, judgments of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 35, and of 26 January 2017, *Maxcom* v *Chin Haur Indonesia*, C-247/15 P, C-253/15 P and C-259/15 P, EU:C:2017:61, paragraph 56), 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 (judgment of 26 January 2017, *Maxcom* v *Chin Haur Indonesia*, C-247/15 P, C-253/15 P and C-259/15 P, EU:C:2017:61, paragraph 59).

76 In accordance with Article 13(2) of the basic regulation, an assembly operation in a third country is to be regarded as circumventing the measures in force where it satisfies the requirements laid down in that provision. Those include the condition, resulting from a combined reading of Article 13(2)(a) and (b), that parts constituting 60% or more of the total value of the parts of the assembled product 'are from the country subject to measures'.

77 In paragraphs 79 to 85 of the judgment under appeal, the General Court interpreted that provision as meaning that it is sufficient, in principle, for the EU institutions to demonstrate that the parts constituting 60% or more of the total value of the parts of the assembled product are 'from' the country subject to anti-dumping measures, without those institutions being required to prove that those parts also originate in that country. The General Court considered, however, that it might be necessary, in case of doubt, to verify whether parts from one country in actual fact originate in another country. Against that background, the General Court interpreted the words 'are from' as referring to the imports concerned and, thus, to the country that exported the parts in question.

78 In the light of that interpretation, the General Court considered, in paragraph 86 of the judgment under appeal, that the parts purchased by Kolachi Raj in Sri Lanka had been imported from Sri Lanka after having been worked in that country and that they could therefore be regarded as being 'from' that country. The General Court added, in paragraphs 87 and 91 of that judgment, that the Commission could nevertheless verify whether or not those parts in actual fact originated in China and, to that end, ask Kolachi Raj to provide evidence that those parts did indeed originate in Sri Lanka.

79 Specifically, the General Court held, in paragraphs 105 and 114 of the judgment under appeal, respectively, that, although the Commission was entitled, without erring in law, not to accept the probative value of the certificates of origin produced by Kolachi Raj, that institution had, on the other hand, erred in law by applying Article 13(2)(b) of the basic regulation 'by analogy' in order to determine the 'origin' of the parts purchased by Kolachi Raj in Sri Lanka.

80 It follows from that account of the judgment under appeal that, in essence, the General Court adopted a restrictive interpretation of the concept of 'from' the country subject to the anti-dumping measures, within the meaning of Article 13(2) of the basic regulation, by equating it to the direct importation of the parts in question from that country and requiring, in the absence of such direct importation, that the Commission furnish proof that those parts in fact originated in that country.

81 In those circumstances, in order to rule on the alleged errors of law, it is necessary, primarily, to provide an interpretation of Article 13(2)(a) and (b) of the basic regulation and, more specifically, to determine the scope of the concept of where the parts are 'from', as reflected in the words 'are from' in Article 13(2)(a) of the basic regulation, and the requirements regarding proof of that provenance.

The interpretation of Article 13(2) of the basic regulation and the errors of law allegedly committed by the General Court

82 Pursuant to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 12 October 2017, *Tigers*, C-156/16, EU:C:2017:754, paragraph 21 and the case-law cited).

83 As recalled in paragraph 76 above, it follows from Article 13(2)(a) and (b) of the basic regulation that, subject to fulfilment of the other conditions set out in Article 13(2), an assembly operation is regarded as circumventing the anti-dumping measures in force where parts constituting 60% or more of the total value of the parts of the assembled product 'are from the country subject to measures'. In the light of the considerations set out in paragraph 75 above, it is for the EU institutions to demonstrate that the parts in question are 'from' that country.

84 The basic regulation contains no definition of the words 'are from', as used in Article 13(2)(a), or, moreover, of the term 'from'. According to their usual meaning, the words 'are from' mean 'come from' or 'originate in', as the Advocate General observed in point 64 of his Opinion.

85 The parties to the appeal disagree on whether that concept of 'from' must, as advocated by the Commission and EBMA, be interpreted broadly as going beyond the notions of customs 'origin' and 'direct import' or, as Kolachi Raj suggests, be interpreted restrictively in the sense that 'from' refers, solely, to the customs origin of the parts.

86 As regards, in the first place, whether the concept of 'from' is to be understood to mean the customs origin of the parts in question, it must be pointed out, as observed by the Advocate General in point 66 of his Opinion, that an examination of the different language versions of Article 13(2) of the basic regulation reveals differences.

87 While the versions of Article 13(2)(a) of the basic regulation in Spanish ('procedan del'), Danish ('fra det'), Greek ('προέρχονται από'), English ('are from'), French ('proviennent du'), Croatian ('iz'), Latvian ('nāk no), Lithuanian ('ira iš), Dutch ('afkomstig … uit'), Portuguese ('provenientes do'), Romanian ('provin din'), Finnish ('tulevat maasta') and Swedish ('från det') refer to the notion of where the parts are 'from', the German ('Ursprung') and Italian ('originari') versions refer to their 'origin'. Lastly, the Czech ('pochzeji'), Estonian ('pärinevad riigist'), Polish ('pochodzą z') and Slovak ('pochádzajú z') versions use terms that may refer to both where the parts are 'from' and their 'origin'.

88 For the purposes of ensuring a uniform application and interpretation of the same text, the version of which in one EU language diverges from those in other languages, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment of 26 April 2012, *DR and TV2 Danmark*, C-510/10, EU:C:2012:244, paragraph 45 and the case-law cited).

89 In that respect, it is important to note that the wording of Article 13(2)(a) of the basic regulation corresponds to that of Article 13(2)(i) of Regulation No 3283/94. Prior to the adoption of the latter regulation, the corresponding provisions of the applicable anti-dumping legislation, that is to say, Article 13(10)(a) of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1984 L 201, p. 1), as amended by Council Regulation (EEC) No 1761/87 of 22 June 1987 (OJ 1987 L 167, p.9) and subsequently Article 13(10)(a) of Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1), made the extension of an anti-dumping duty in force on the basis of assembly operations subject to the condition that the value of the parts used in those

operations 'originating in the country of exportation of the product subject to [that] duty' exceeded the value of all the other parts used by at least 50%. The adjective 'originating' therefore referred to the concept of 'origin' under customs law.

90 As the Advocate General noted, in essence, in point 81 of his Opinion, the amendment made by Regulation No 3283/94, which uses, at least in a number of language versions of the provisions at issue, a term referring to the concept of 'from' rather than that of 'origin', implies that the EU legislature has deliberately chosen to distance itself from rules of origin under customs law and that, therefore, the concept of 'from', for the purposes of the application of Article 13(2) of the basic regulation possesses an autonomous and distinct meaning from that of the concept of 'origin' under customs law.

91 It follows that, while it is for the EU institutions to demonstrate that parts used in assembly operations are from the country subject to anti-dumping measures, they are not required to demonstrate that those parts also originate in that country, within the meaning of customs law.

92 That conclusion is, however, without prejudice to the possibility, for any individual exporting producer, to demonstrate that, even though the parts in question are from the country subject to measures, they in fact originated in a country other than that subject to measures, in order to be exempted from the extended anti-dumping duty, in accordance with Article 13(4) of the basic regulation. In such a case, assembly operations cannot be regarded as circumventing, within the meaning of Article 13 of the basic regulation, the anti-dumping measures in force.

93 In the second place, it is necessary to examine whether the concept of 'from' in Article 13(2)(a) of the basic regulation should be understood as a reference to the import of the parts and, therefore, as referring to the immediate exporting country.

94 In that regard, first, it should be noted that, where it is established that the parts used in assembly operations are imported directly from the country subject to measures into another third country or into the European Union in order to be assembled, the EU institutions may consider that those parts are 'from' the first of those countries, within the meaning of that provision.

95 That interpretation is consistent with the usual meaning of the words 'are from', as indicated in paragraph 84 above.

96 In addition, it is borne out by the purpose and general scheme of the basic regulation. In that light, and in particular having regard to recital 19 and Article 13 of that regulation, the sole purpose of a regulation extending an anti-dumping duty is to ensure that the duty is effective and to prevent its circumvention. Consequently, a measure extending a definitive anti-dumping duty is merely ancillary to the initial act establishing that duty, which protects the effective application of the definitive measures (judgments of 6 June 2013, *Paltrade*, C-667/11, EU:C:2013:368, paragraph 28, and of 17 December 2015, *APEX*, C-371/14, EU:C:2015:828, paragraphs 50 and 53).

97 By allowing the EU institutions to apply Article 13(2) of the basic regulation to parts imported directly into the country where they are assembled from the country subject to anti-dumping measures, that provision allows the application of a simple criterion, which is such as to ensure that anti-dumping duty is effective. Thus, rather than being required to establish the customs origin of the parts in question, the institutions may, in principle, confine themselves to establishing that those parts have indeed been imported into the country of assembly from the country subject to measures, without prejudice to the possibility for the exporting producer concerned to establish that those parts in fact originated in another country.

98 Secondly, it should be added that, contrary to what the General Court held, in essence, in paragraphs 84, 87 and 91 of the judgment under appeal, the concept of 'from' the country subject to measures cannot be limited to cases where the parts in question are imported directly from that country.

99 First of all, it should be noted that, in the light of its wording, Article 13(2) of the basic regulation does not contain any indication to that effect.

100 Next, as regards the context of that provision, it is true that, as the General Court stated in paragraph 84 of the judgment under appeal, a number of other provisions in the basic regulation use both the concept of 'from' and that of 'imports'.

101 However, the fact that, unlike those other provisions, Article 13(2)(a) of the basic regulation uses the words 'are from' without any reference to importation suggests that the EU legislature did not intend to restrict the concept of 'from', within the meaning of that provision, solely to cases in which the parts are imported directly from the country subject to measures.

102 Lastly, such an interpretation also holds in the light of the purpose and general scheme of the basic regulation and the objectives pursued by a regulation extending an anti-dumping duty, as referred to in paragraphs 96 and 97 above.

103 Where parts are imported, from the country subject to measures, into a first third country for initial assembly, even basic assembly, before being imported into a second third country for a second assembly of the final product intended for export to the European Union, fully equating the notions of 'from' and 'imports' would lead to the conclusion that those parts must be regarded as being from the country where the first assembly took place, with the result that any finding of circumvention would be precluded from the outset. That interpretation would thus enable operators to easily avoid the extension of the definitive duty in force, by carrying out multiple successive assembly operations in third countries.

104 Such an interpretation would risk undermining the effectiveness of the EU's anti-circumvention measures in all cases where the EU's institutions are faced with a complex assembly procedure consisting of several successive assembly operations in different third countries (see, by analogy, judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU: C: 2014: 2154, paragraph 37).

105 That risk cannot be ruled out by the possibility, noted, in essence, by the General Court in paragraphs 87 and 91 of the judgment under appeal, that the EU institutions might verify or determine, in cases where successive assembly operations are carried out in two different third countries, that the parts consigned from the country where the first intermediary assembly operations took place did in fact originate in the country subject to anti-dumping measures.

106 Such a possibility would amount, in effect, to requiring the EU institutions, contrary to the approach chosen by the legislature as set out in paragraphs 90 and 91 above, to adduce evidence regarding not where the parts are from but rather the customs origin of the parts and would, therefore, make the burden of proof those institutions must discharge more onerous, at odds with the purpose and general scheme of the basic regulation, as set out in paragraphs 96 and 97 above.

107 It follows that Article 13(2)(a) of the basic regulation must be interpreted broadly to the effect that parts 'are from the country subject to measures' not only in cases involving direct importation, as referred to in paragraph 93 above, but also in cases where it can be demonstrated, on the basis of an analysis of all the relevant circumstances of the case, that parts initially manufactured in the country subject to anti-dumping measures were imported into the country of assembly from an intermediate third country through which they were transshipped or in which a small amount of work was done on them.

108 Evidence that parts are from the country subject to measures, which must be adduced by the EU institutions, may therefore be based on a body of consistent evidence, subject to review by the Courts of the European Union. Nevertheless, as is apparent from paragraph 92 above, the operators concerned may adduce evidence to show that the parts in question in fact originated in a country other than the country subject to measures.

109 That the concept of 'from', within the meaning of Article 13(2)(a) of the basic regulation, should be interpreted broadly is also borne out by the fact that, as is apparent from the Court's case-law, the legislature intended to give the EU institutions a broad margin of discretion in relation to the definition of 'circumvention' (see, by analogy, judgment of 4 September 2014, *Simon, Evers & Co.*, C-21/13, EU:C:2014:2154, paragraph 48).

110 It follows from the foregoing considerations that, by limiting the concept of 'from', within the meaning of Article 13(2)(a) of the basic regulation, solely to cases in which the parts in question are directly imported and by imposing on the EU institutions the burden, in circumstances such as those of the present case, of demonstrating the origin of the parts in question, the General Court erred in law.

111 Contrary to the claims of Kolachi Raj, that error of law cannot be remedied by merely substituting the grounds of the judgment under appeal, by replacing all references by the General Court to the concept of 'origin' with a reference to that of 'from'. The General Court drew a strict distinction between those two concepts, resulting in the Commission being precluded, from the outset, from demonstrating, on the basis of a body of consistent evidence, where the parts in question are from in a situation such as that at issue in the main proceedings.

112 Consequently, without it being necessary to examine the other arguments raised by the Commission and EBMA, the single ground of appeal must be upheld and, accordingly, the judgment under appeal must be set aside.

The action before the General Court

113 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits. That is so in the present case.

114 By its single plea in law raised before the General Court alleging infringement of Article 13(2)(b) of the basic regulation, Kolachi Raj claimed, first, that the parts in question could not be regarded as being from China since they had been worked in Sri Lanka and consigned from that country to Pakistan, secondly, that the certificates of origin, which the Commission wrongly rejected, established that those parts were of Sri Lankan origin and, thirdly, that the Commission made errors in applying Article 13(2)(b) of the basic regulation to the manufacture of bicycle parts in Sri Lanka, whereas the subject matter of the investigation was an alleged circumvention of anti-dumping measures in Pakistan and that provision is not a rule of origin and could not therefore be taken into account in order to conclude that the parts worked in Sri Lanka were from China. According to Kolachi Raj, the Commission should have instead applied the rules of origin prescribed by EU customs legislation.

115 In that regard, it must be recalled that, as is apparent from paragraphs 91, 92, 107 and 108 above, it was for the Commission to establish that the parts in question were from China, without prejudice to the possibility for Kolachi Raj to establish that those parts in fact originated in Sri Lanka.

116 In the present case, first, it is apparent, in essence, from recitals 98 to 101 of the regulation at issue that the Commission considered that the parts purchased by Kolachi Raj in Sri Lanka were from China. It observed, in particular, that those parts were essentially manufactured using Chinese raw

materials, as confirmed, moreover, by Kolachi Raj at the hearing held before the Court. In addition, the Commission noted that the Sri Lankan producer was a company related to Kolachi Raj and took issue with the relationship between Kolachi Raj and its allegedly independent supplier. Lastly, while stating, in recital 101 of the regulation at issue, that Article 13(2)(b) of the basic regulation was not a rule of origin, the Commission noted that since the parts had been manufactured using raw materials which were over 60% from China and the value added was less than 25% of the manufacturing costs, those parts were themselves from China.

117 Furthermore, and with a view to establishing the context of the present case, it is apparent from recital 94 of the regulation at issue that the Sri Lankan producer related to Kolachi Raj had been the subject of an earlier anti-circumvention investigation relating to Sri Lanka and that Kolachi Raj was also related to a Cambodian company that had ceased exporting bicycles to the European Union during the reference period from 1 September 2013 to 31 August 2014 and had transferred its business to Kolachi Raj in Pakistan.

118 All those elements, taken together, constitute a body of consistent evidence on which the Commission was entitled, as stated in paragraph 108 above, to base its conclusion that the parts in question were 'from' China.

119 In that regard, it should be stated that, admittedly, the facts set out in paragraph 117 above and, likewise, the fact, as noted by the Commission, that Kolachi Raj is part of a group of companies that are owned by the same natural person and are involved in activities intended to circumvent anti-dumping measures in a number of third countries, cannot in themselves justify the conclusion that the parts in question are from China, as the Commission expressly acknowledged in its rejoinder before the General Court. Nevertheless, those facts constitute relevant evidence that is capable of strengthening the conclusion that the parts manufactured in Sri Lanka using, for the most part, Chinese raw materials may, contrary to the claims of Kolachi Raj, be regarded as being from China, within the meaning of Article 13(2)(a) of the basic regulation.

120 Kolachi Raj has not put forward specific arguments to call into question the body of evidence relied upon by the Commission.

121 Since, the Commission applied 'by analogy' Article 13(2)(b) of the basic regulation, it is appropriate to note that, as the parties indeed agree, that provision does not constitute a rule of origin. Nevertheless, in the present case, the application of that provision by analogy constituted only one of a number of factors that made up the body of evidence relied upon by the Commission in order to demonstrate where the parts in question were from. The fact that the parts worked in Sri Lanka were essentially manufactured using Chinese raw materials and only a small amount of work was done on them in Sri Lanka is a relevant factor in the body of consistent evidence indicating that those parts are from the country subject to measures.

122 Lastly, Kolachi Raj has not succeeded in demonstrating that the parts in question originated in Sri Lanka. In recitals 98 to 101 of the regulation at issue, the Commission did not accept that the certificates of origin produced by that company had probative value. For the reasons set out in paragraphs 95 to 105 of the judgment under appeal, the arguments put forward by Kolachi Raj for the purpose of challenging recitals 98 to 101 of the regulation at issue must be rejected.

123 In the light of all those considerations, the single plea in law put forward by Kolachi Raj must be rejected and, accordingly, the action at first instance must be dismissed in its entirety.

Costs

124 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(1) of those rules, which apply to the procedure on appeal pursuant to Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

125 Since the Commission and EBMA have applied for costs against Kolachi Raj and the latter has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission and EBMA in relation to both the proceedings at first instance and the appeal proceedings.

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

1. **Sets aside the judgment of the General Court of the European Union of 10 October 2017, *Kolachi Raj Industrial* v *Commission* (T-435/15, EU:T:2017:712);**

2. **Dismisses the action for annulment brought by Kolachi Raj Industrial (Private) Ltd;**

3. **Orders Kolachi Raj Industrial (Private) Ltd to bear its own costs and to pay the costs incurred by the European Commission and the European Bicycle Manufacturers Association (EBMA) in relation to both the proceedings at first instance and the appeal proceedings.**

Vilaras Jürimäe Šváby

Rodin Piçarra

Delivered in open court in Luxembourg on 12 September 2019.

A. Calot Escobar
Registrar

M. Vilaras
President of the Fourth Chamber