



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 September 2019*

(Reference for a preliminary ruling – Commercial policy – Anti-dumping duties – Imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia – Extension to those countries of the definitive anti-dumping duty imposed on imports of bicycles originating in China – Implementing Regulation (EU) No 501/2013 – Validity – Admissibility – No action for annulment brought by the applicant in the main proceedings – Associated importer – Standing to bring an action for annulment – Regulation (EC) No 1225/2009 – Article 13 – Circumvention – Article 18 – Non-cooperation – Proof – Body of evidence)

In Case C-251/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Noord-Holland (District Court, North Holland, Netherlands), made by decision of 6 April 2018, received at the Court on 12 April 2018, in the proceedings

Trace Sport SAS

v

Inspecteur van de Belastingdienst/Douane, kantoor Eindhoven,

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: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,
- the Council of the European Union, by H. Marcos Fraile and B. Driessen, acting as Agents, and by N. Tuominen, avocate,

* Language of the case: Dutch.

– the European Commission, by S. Noë and M. França, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 9 April 2019,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity 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 Kelani Cycles (Pvt) Ltd and Creative Cycles (Pvt) Ltd, two bicycle producers/exporters established in Sri Lanka.
- 2 The request has been made in the context of a dispute between Trace Sport SAS and the Inspecteur van de Belastingdienst/Douane, kantoor Eindhoven (Inspector of the Tax and Customs Administration, Eindhoven Office, Netherlands) ('the Inspector') concerning the legality of two requests for payment of customs duty for the importation of bicycles originating in and consigned from Sri Lanka.

Legal context

The basic regulation

- 3 At the time when the regulation at issue was adopted, the provisions governing the adoption of anti-dumping measures by the European Union were contained 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, and 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').
- 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 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.

...'

5 Article 18(1) of that regulation provided:

'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. ...'

The anti-dumping regulations on bicycles and the regulation at issue

- 6 In 1993, the Council of the European Union 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. During 2005, that duty was increased to a rate of 48.5%. It was maintained at that latter level 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 (EC) No 1225/2009 (OJ 2011 L 261, p. 2).
- 7 On 25 September 2012, the Commission, before which a request had been brought, 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 At the end of that investigation, the Council adopted the regulation at issue on 29 May 2013.
- 9 It is apparent from recital 22 of that regulation that the Commission carried out verification visits at the premises of six Sri Lankan companies, including Kelani Cycles.
- 10 In recitals 35 to 42 of that regulation, the Council indicated, in essence, as regards the degree of cooperation by the Sri Lankan companies, that, of the six Sri Lankan companies which had submitted a request for exemption in accordance with Article 13(4) of the basic regulation, only three were regarded as having cooperated. As regards those three companies, one of which withdrew its exemption request and the other two having failed to cooperate satisfactorily, the findings were based on the facts available in compliance with Article 18 of the basic regulation.
- 11 In recital 58 of the regulation at issue, 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.

- 12 In recitals 77 to 82 of the regulation at issue, the Council analysed the nature of the circumventing practices which had given rise to that change in the pattern of trade between that third country and the European Union.
- 13 With regard to transshipment practices, recitals 77 to 79 of that regulation state:
- ‘(77) The exports of the initially cooperating Sri Lankan companies amounted to 69% of the total Sri Lankan exports to the Union in the [reporting period from 1 September 2011 to 31 August 2012]. For three out of the six initially cooperating companies, the investigation did not reveal any transshipment 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 transshipment practices.
- (79) The existence of transshipment of Chinese-origin products via Sri Lanka is therefore confirmed.’
- 14 In recitals 81 and 82 of the regulation at issue the Council stated that assembly operations within the meaning of Article 13(2) of the basic regulation had not been established.
- 15 In recitals 92, 96 and 110 of the regulation at issue the Council found, first, no due cause or economic justification other than the avoidance of the existing anti-dumping measures, second, undermining of the remedial effects of those measures and, third, dumping in relation to the normal value previously established.
- 16 In those circumstances, the Council concluded, in recital 115 of the regulation at issue, that there had been circumvention by transshipment via Sri Lanka within the meaning of Article 13(1) of the basic regulation.
- 17 Under Article 1(1) of the regulation at issue the definitive anti-dumping duty of 48.5% provided for in Article 1(2) of Implementing Regulation No 990/2011 was extended to imports of bicycles consigned from Sri Lanka, whether declared as originating in that country or not. Article 1(3) of the regulation at issue requires that the extended duty be collected on those imports registered in accordance with Regulation No 875/2012.

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

- 18 During the periods, respectively, from 27 September to 15 October 2012 and from 13 February to 21 May 2013 inclusive, two customs representatives, acting for and on behalf of an importer of bicycles established in France, namely Trace Sport, issued declarations in the Netherlands for the release into free circulation of bicycles consigned from Sri Lanka. In all of those declarations, Sri Lankan producers/exporters, that is to say, as the case may be, Kelani Cycles or Creative Cycles, were declared to be the exporters of those bicycles.

- 19 Following subsequent checks as to the validity of those declarations, the Inspector formed the view that an anti-dumping duty of 48.5% had to be paid for the bicycles declared for release into free circulation during the period from 27 September 2012 to 5 June 2013 inclusive.
- 20 On 27 February and 29 April 2014, the Inspector therefore issued two requests for payment amounting respectively to EUR 229 990.88 and to EUR 234 275.37.
- 21 By two decisions dated 24 September 2015, the Inspector confirmed those requests and rejected Trace Sport's challenges lodged against them.
- 22 Trace Sport challenges those two decisions before the referring court.
- 23 That court states that, contrary to what Trace Sport argues before it, the regulation at issue is applicable to the dispute in the main proceedings.
- 24 However, that court questions the validity of that regulation in the light of the arguments which Trace Sport derives before it from the judgment of 26 January 2017, *Maxcom v City Cycle Industries* (C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62). According to Trace Sport, the Council could not infer from the information at its disposal that there had been a transshipment operation at national level in Sri Lanka or that Kelani Cycles and Creative Cycles had been involved in such operations. At the hearing before that court, Trace Sport also stated that it had requested a hearing with the Commission in order to submit documents initially produced by Kelani Cycles, which the Commission had refused to take into account.
- 25 The referring court notes that, in recitals 39 and 42 of the regulation at issue, Kelani Cycles was regarded as non-cooperating, while Creative Cycles, which is not explicitly mentioned in that regulation, must be regarded as being among the Sri Lankan producers/exporters, referred to in recital 78 of that regulation, which did not come forward. The Council, that court finds, based its conclusion that those producers/exporters were involved in transshipment operations on the finding that there had been a change in the pattern of trade between Sri Lanka and the European Union and on the lack of cooperation on the part of those producers/exporters. However, it found, in the judgment of 26 January 2017, *Maxcom v City Cycle Industries* (C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62), the Court held that the Council was not entitled to infer from the information available to it that transshipment at national level in Sri Lanka had occurred. According to the referring court, the conclusion drawn by the Court in that judgment with regard to the producer/exporter City Cycle Industries also applies to Kelani Cycles and Creative Cycles.
- 26 Noting, however, that Article 1(1) and (3) of the regulation at issue was annulled only in respect of City Cycle Industries and that, according to paragraph 185 of the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), that annulment does not mean that that regulation is also void in respect of other producers/exporters, the referring court takes the view that it necessary to raise a question with the Court concerning the validity of that regulation in respect of Kelani Cycles and Creative Cycles.
- 27 In those circumstances, the Rechtbank Noord-Holland (District Court, North Holland, Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is [the regulation at issue] valid in so far as it concerns the producer/exporter Kelani Cycles?

(2) Is [the regulation at issue] valid in so far as it concerns the producer/exporter Creative Cycles?’

Admissibility of the request for a preliminary ruling

- 28 In their observations submitted to the Court, the Netherlands Government, the Council and the Commission express doubts as to the admissibility of this request for a preliminary ruling in the light of the case-law resulting from the judgments of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90, paragraphs 13, 14 and 16), of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101, paragraphs 30 and 37), and of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraph 56), on the ground that Trace Sport could undoubtedly have brought an action before the EU judicature for annulment of the regulation at issue under the fourth paragraph of Article 263 TFEU.
- 29 In that regard, it is settled case-law that the general principle which guarantees any litigant the right to plead, in an action brought against a national measure which adversely affects him, that the EU act forming the basis for that measure is invalid does not preclude such a right from being subject to the condition that the person concerned did not have the right to request the EU judicature directly to annul it, under Article 263 TFEU. However, it is only if it can be held that a person would undoubtedly have been entitled to request the annulment of the act in question that he is prevented from pleading invalidity of that act before the national court having jurisdiction (judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 56 and the case-law cited).
- 30 It is therefore only if the view could be taken that Trace Sport would undoubtedly have had standing to bring an action for annulment of the regulation at issue under the fourth paragraph of Article 263 TFEU that it would be prevented from pleading before the national court that that regulation is invalid.
- 31 From the outset, it must be stated that it is by virtue of acts adopted by the competent national authorities that the payment of the anti-dumping duties extended by the regulation at issue is imposed on the operators concerned, such as Trace Sport. It follows that it cannot be held that that regulation manifestly does not entail implementing measures for the purposes of the final limb of the fourth paragraph of Article 263 TFEU (see, by analogy, judgment of 18 October 2018, *Rotho Blaas*, C-207/17, EU:C:2018:840, paragraphs 38 and 39).
- 32 It is therefore only if it could be held that an importer such as Trace Sport is undoubtedly directly and individually concerned by the regulation at issue, within the meaning of the fourth paragraph of Article 263 TFEU, that it would be prevented from pleading before the national courts that that regulation is invalid.
- 33 In this respect, it should be noted that regulations which impose an anti-dumping duty are of a legislative character inasmuch as they apply generally to the traders concerned (judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 58 and the case-law cited).

- 34 The same applies, for the same reasons, to a regulation, such as the regulation at issue, extending an anti-dumping duty on the grounds of circumventing practices. The purpose of such a regulation is to extend the scope of an anti-dumping duty imposed by a regulation such as that referred to in the previous paragraph.
- 35 However, it is clear from the Court's case-law that an operator may be directly and individually concerned by a regulation imposing an anti-dumping duty. Thus, in its case-law, the Court has identified certain categories of traders that may be individually concerned by a regulation imposing an anti-dumping duty, without prejudice to the possibility that other traders may be individually concerned by reason of certain attributes which are peculiar to them and which differentiate them from all other persons (judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 59; see also, to that effect, judgment of 16 May 1991, *Extramet Industrie v Council*, C-358/89, EU:C:1991:214, paragraph 16).
- 36 According to the case-law of the Court, the following may be individually concerned by a regulation imposing an anti-dumping duty: first, those of the producers and exporters of the product in question which have been charged with practising dumping on the basis of information relating to their business activities; second, importers of that product whose resale prices were taken into account for the construction of export prices and which are consequently concerned by the findings relating to the existence of dumping; and, third, importers associated with exporters of the product in question, particularly where the export price has been calculated on the basis of those importers' resale prices on the EU market and where the anti-dumping duty itself has been calculated on the basis of those resale prices (judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraphs 60 to 62 and the case-law cited).
- 37 It follows from that case-law that the status of importer, even if associated with exporters of the product in question, cannot, on its own, be sufficient to support the view that an importer is individually concerned by a regulation imposing an anti-dumping duty. On the contrary, an importer's individual distinction, even if associated with those exporters, requires proof that information relating to its commercial activity has been taken into account for the purpose of establishing dumping or, failing that, proof of other attributes which are peculiar to it and which differentiate it from all other persons.
- 38 In the light of that case-law, it cannot be ruled out that an importer of the product in question may, by demonstrating the existence of certain attributes which are peculiar to it and which differentiate it from all other persons, be regarded as individually concerned by a regulation extending an anti-dumping duty on account of circumventing practices, such as the regulation at issue.
- 39 In their observations submitted to the Court, the Netherlands Government, the Council and the Commission have argued that that is true of Trace Sport. In this respect, they state that, first, Trace Sport is a company established in France whose owner, a natural person, also holds 50% of the capital shares of both Kelani Cycles and Creative Cycles through offshore companies. Those latter companies, which are producers/exporters, would undoubtedly have been entitled to bring an action for annulment of the regulation at issue. In addition, Kelani Cycles was set up to take over the activities of Creative Cycles. Second, Trace Sport was aware of the investigation into Kelani Cycles, as is clear from its unsuccessful attempt to produce certain evidence before the Commission that Kelani Cycles had previously produced before that institution.

- 40 Moreover, the Commission suggests that Trace Sport, Kelani Cycles and Creative Cycles are involved in the evasion of customs duties and anti-dumping duties.
- 41 Those facts, even if they were taken to be established, cannot suffice for a finding that Trace Sport was undoubtedly individually concerned by the regulation at issue, within the meaning of the fourth paragraph of Article 263 TFEU.
- 42 Although Trace Sport is an importer of the products concerned in the main proceedings, it did not, however, participate in the investigation and is not mentioned anywhere in the regulation at issue. The mere fact that it was aware of the investigation into Kelani Cycles and that it probably shared certain information with Kelani Cycles cannot suffice for a finding that Trace Sport has attributes which are peculiar to it and which differentiate it from all other persons.
- 43 The status of Trace Sport as the importer of the products in question in the main proceedings and its possible membership of the same group as a producer/exporter which participated in the investigation cannot lead to any different conclusion, account being taken of the findings set out in paragraphs 37 and 38 of this judgment.
- 44 In the light of the foregoing considerations, it must be concluded that the evidence before the Court does not make it possible to hold that Trace Sport would undoubtedly have had standing to bring an action for annulment of the regulation at issue under the fourth paragraph of Article 263 TFEU.
- 45 It follows that the request for a preliminary ruling is admissible.

Consideration of the questions referred

- 46 By its questions, which it is appropriate to examine together, the national court seeks, in substance, to determine whether the regulation at issue is invalid in so far as it applies to imports of bicycles consigned from Sri Lanka, whether declared as originating in that country or not.
- 47 As a preliminary point, it should be observed, first of all, 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 institutions of the European Union enjoy a broad discretion by reason of the complexity of the economic and political 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 (judgments 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, and of 26 January 2017, *Maxcom v City Cycle Industries*, C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62, paragraph 56).
- 48 Next, with regard to the burden of proving circumvention, as set out in Article 13(1) of the basic regulation, 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 an EU industry or evidence that the remedial effects of the anti-dumping duty are being undermined. Fourth, there must be evidence of dumping.

- 49 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* points to 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 (judgment of 26 January 2017, *Maxcom v City Cycle Industries*, C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62, paragraph 58 and the case-law cited).
- 50 Finally, having regard to Article 18 of the basic regulation and the case-law of the Court, it should be recalled that, in the event of insufficient or no cooperation on the part of some or all of the producers/exporters, the EU institutions are authorised to act on the basis of a body of consistent evidence showing the existence of circumvention, and it is clear that that evidence must show that the four conditions set out in Article 13(1) of that regulation, as outlined in paragraph 48 of this judgment, are met. By contrast, there is no legal presumption under which it is possible to infer directly from an interested party's failure to cooperate that such circumvention exists (see, to that effect, judgment of 26 January 2017, *Maxcom v City Cycle Industries*, C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62, paragraphs 65, 66, 68 and 69 and the case-law cited).
- 51 In the present case, as regards circumvention of anti-dumping measures by transshipment via Sri Lanka, the Council examined the second of the four conditions referred to in paragraph 48 of this judgment in recitals 77 to 79 of the regulation at issue. In recital 77 of that regulation, the Council indicated, first of all, that, for three out of the six companies initially cooperating with the investigation, that investigation did not reveal any transshipment practices. For the remaining exports to the European Union, the Council stated that there had been no cooperation. Next, in recital 78 of that regulation, the Council observed, first, that a change of the pattern of trade between Sri Lanka and the European Union had been established in recital 58 of the same regulation and, second, that not all Sri Lankan producers/exporters had come forward and cooperated. It concluded from this that exports of those producers/exporters to the European Union could be 'attributed' to transshipment practices. Lastly, in recital 79 of the regulation at issue, the Council found that the existence of transshipment of Chinese-origin products via Sri Lanka had been confirmed.
- 52 The conclusion as to the existence of transshipment practices therefore relates to all of the producers/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 producers/exporters had failed to cooperate.
- 53 It is, however, not possible to conclude on the basis of those two findings that transshipment practices existed at national level in Sri Lanka. First, the Council was not entitled to infer from the mere fact that some of the producers/exporters had failed to cooperate that transshipment had occurred. 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 that the second of the four conditions, which requires that such a change should stem from circumvention practices, had been established (see, to that effect, judgment of 26 January 2017, *Maxcom v City Cycle Industries*, C-248/15 P, C-254/15 P and C-260/15 P, EU:C:2017:62, paragraphs 76 to 78).

- 54 Therefore, the answer to the questions referred is that the regulation at issue is invalid in so far as it applies to imports of bicycles consigned from Sri Lanka, whether declared as originating in that country or not.

Costs

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

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, is invalid in so far as it applies to imports of bicycles consigned from Sri Lanka, whether declared as originating in that country or not.

[Signatures]