Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

12 February 2014*

(Dumping — Imports of stainless steel fasteners originating in China and Taiwan — Application for a refund of duties collected — Second subparagraph of Article 11(8) of Regulation (EC) No 1225/2009 — Legal certainty)

In Case T-81/12,

Beco Metallteile-Handels GmbH, established in Spaichingen (Germany), represented by T. Pfeiffer, lawyer,

applicant,

v

European Commission, represented by H. van Vliet and T. Maxian Rusche, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision C(2011) 9112 final of 13 December 2011 concerning an application for a refund of anti-dumping duties paid on imports of stainless steel fasteners originating in the People's Republic of China and Taiwan,

THE GENERAL COURT (Second Chamber),

composed of N.J. Forwood, President, F. Dehousse and J. Schwarcz (Rapporteur), Judges,

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 5 June 2013,

gives the following

Judgment

Background to the dispute

1 Between 8 September 2000 and 5 May 2003, the applicant, Beco Metallteile-Handels GmbH, imported into Germany stainless steel fasteners which are considered by the Hauptzollamt Karlsruhe (Principal Customs Office, Karlsruhe (Germany), 'the Hauptzollamt') to originate in China and Taiwan.

* Language of the case: German.

2 Pursuant to Council Regulation (EC) No 393/98 of 16 February 1998 imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand (OJ 1998 L 50, p. 1), on 17 August 2005 the Hauptzollamt issued a tax assessment notice by which the applicant was informed that it owed an amount of EUR 815 754.32 in respect of anti-dumping duties applied to the abovementioned imports ('the tax assessment notice of 2005').

3 On 22 August 2005, the applicant lodged an appeal with the Hauptzollamt against the tax assessment notice of 2005 and requested the suspension of the execution of that notice.

4 By decision of 2 September 2005, the Hauptzollamt suspended the execution of the tax assessment notice of 2005 pending the decision on the merits.

5 By amending notice of 14 April 2010 ('the first amending tax assessment notice of 2010'), the Hauptzollamt reduced the amount of anti-dumping duties owed by the applicant to EUR 633 475.99 and ordered it to make payment by 30 April 2010 at the latest. When the present action was brought, that amending tax assessment notice was the subject of proceedings before the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany).

6 On 19 April 2010, pursuant to Article 11(8) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51, corrigendum OJ 2010 L 7, p. 22, 'the basic regulation'), the applicant made an application for a refund of the anti-dumping duties determined in the tax assessment notice of 2005, in the amount of EUR 815 754.32. In response to a question asked by the General Court, the applicant stated, without being challenged in this respect by the European Commission, the reasons why that application for a refund related to the amount indicated in the tax assessment notice of 2005 and not to the amount indicated in the first amending tax assessment notice of 2010. In so far as the first amending tax assessment notice of 2010 was not received by the applicant's lawyer until 19 April 2010, it was not taken into consideration in that application for a refund which was sent on the same date, since the applicant's lawyer was not able to take cognisance of it before sending the application.

7 In its application for a refund, the applicant claimed that the dumping margin on which the tax assessment notice of 2005 was based had been eliminated and even reduced to a value lower than the anti-dumping duty rate applied. Since it considered that such an application for a refund presupposed that the anti-dumping duties in question had already been paid, the applicant also requested, on the basis of footnote 6 of the Commission notice concerning the reimbursement of anti-dumping duties (OJ 2002 C 127, p. 10, 'the interpretative notice'), the suspension of the investigation until those duties had been definitively determined.

8 On 28 April 2010, the Hauptzollamt issued a second amending tax assessment notice ('the second amending tax assessment notice of 2010') in which it demanded from the applicant, *a posteriori*, an amount of EUR 101 356.15 in respect of turnover tax on imports on the ground that it had been incorrectly exempted.

9 On 30 April and 14 May 2010, the applicant paid, respectively, an amount of EUR 633 475.99 pursuant to the first amending tax assessment notice of 2010 and an amount of EUR 101 356.15 pursuant to the second amending tax assessment notice of 2010.

10 By letter of 15 November 2010, the Commission informed the applicant that the application for a refund at issue would be regarded as inadmissible having regard to Article 11(8) of the basic regulation and the interpretative notice.

11 By letter of 15 December 2010, the applicant replied that, under point 2.1 of the interpretative notice, the time-limit for submitting an application for a refund of anti-dumping duties does not start to run when those duties have not been paid. In its view, in the light of footnote 6, which is inserted in point 2.1 of the interpretative notice, it was permitted to make its application for a refund before paying the anti-dumping duties, but was not required to do so. As it did not pay the anti-dumping duties in question until 30 April 2010, the application for a refund at issue should have been regarded as having been submitted within the prescribed six-month time-limit and thus as admissible.

12 By letter of 2 August 2011, the Commission informed the applicant of the essential facts and considerations on the basis of which the application for a refund at issue had to be rejected.

13 In its reply of 15 September 2011, the applicant maintained its interpretation of the interpretative notice as summarised in paragraph 11 above. It also claimed that, by rejecting the application for a refund at issue, the Commission had not acted in good faith and had breached the principle of legal certainty and the legitimate expectations created by the wording of the interpretative notice.

14 By its Decision C(2011) 9112 final of 13 December 2011 concerning an application for a refund of anti-dumping duties paid on imports of stainless steel fasteners originating in the People's Republic of China and Taiwan ('the contested decision'), the Commission rejected the application for a refund at issue.

15 In recital 5 of the contested decision, the Commission stated that the six-month time-limit for submitting the application for a refund at issue had started to run from the time when the amount of the anti-dumping duties had been duly determined, that is to say on 17 August 2005. It considered that that time-limit had therefore expired on 17 February 2006. Since the application for a refund had not been submitted by the applicant until 19 April 2010, it could not be examined on the merits because it was manifestly inadmissible.

16 To rebut the arguments put forward by the applicant during the administrative procedure, the Commission first stated, in recitals 8, 9 and 15 of the contested decision, that it was the second subparagraph of Article 11(8) of the basic regulation that related specifically to the time-limits within which an application for a refund had to be submitted. In its view, under that provision the time-limit for submitting an application for a refund started to run from the time when the amount of the anti-dumping duties owed had been duly determined, namely on 17 August 2005, and not the time when those duties were paid. The fact that the Hauptzollamt had suspended the execution of the tax assessment notice of 2005 did not affect that conclusion.

17 Second, in recitals 10, 11 and 15 of the contested decision, the Commission stated that the wording of point 2.1(b) of the interpretative notice had to be read in its entirety, which meant that account had to be taken of both the wording of that provision and of footnote 6 which is inserted therein. In that footnote it stated that when an importer was contesting the validity of applying an anti-dumping duty to his transaction, the importer should none the less, if he so wished, introduce an application for a refund of anti-dumping duties within the six-month time-limit together with a request that the Commission suspend the investigation until liability to the duties had been finally established. The expressions 'should' and 'if he so wishes' used in that footnote referred to the fact that an importer could decide whether or not to submit such an application within the six-month time-limit laid down in Article 11(8) of the basic regulation, but did not mean that the importer could still legitimately apply for a refund after that time-limit had expired. In paragraph 15 of the contested decision, the Commission argued that point 3.1.3 of the interpretative notice confirmed that position, as it stated that the deadline of six months must be respected even in cases where the application of the regulation imposing the duty in question is being challenged before national administrative or judicial bodies.

18 Consequently, in recital 17 of the contested decision the Commission concluded that the interpretative notice was not contrary to Article 11(8) of the basic regulation and that it cannot create legitimate expectations in the event that the duties have not been paid.

19 In recital 16 of the contested decision, the Commission also pointed out that the applicant's conduct seemed contradictory in view of the argument put forward to the effect that an application for a refund of anti-dumping duties is admissible only if those duties have already been paid. The applicant had submitted its application for a refund on 19 April 2010, even though the anti-dumping duties in question were not paid until 30 April 2010.

20 Lastly, as regards the different judgments cited by the applicant to claim that, in rejecting its application for a refund, the Commission did not act in good faith and breached the principle of legal certainty and the legitimate expectations created by the wording of the interpretative notice, the Commission took the view, in paragraphs 19 to 21 of the contested decision, that those judgments were not capable of supporting the applicant's application.

Procedure and forms of order sought

21 By application lodged at the Registry of the General Court on 15 February 2012, the applicant brought the present action.

22 By way of measures of organisation of procedure, the General Court (Second Chamber) requested the parties to produce certain documents and to reply to certain questions. The parties complied with that request within the prescribed period.

23 Upon hearing the report of the Judge-Rapporteur, the General Court (Second Chamber) decided to open the oral procedure.

24 The parties did not submit any observations on the report for the hearing.

25 They presented oral argument and replied to the questions put by the Court at the hearing on 5 June 2013.

26 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

27 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

28 In support of the action, the applicant essentially puts forward two pleas in law. The first alleges infringements of Article 11(8) of the basic regulation and the interpretative notice. The second alleges breaches of the principles of protection of legitimate expectations, good faith and legal certainty.

The first plea in law, alleging infringements of Article 11(8) of the basic regulation and the interpretative notice

29 The first plea in law is divided into two complaints. The first complaint alleges an infringement of Article 11(8) of the basic regulation and the second alleges an infringement of the interpretative notice.

The first complaint, alleging an infringement of Article 11(8) of the basic regulation

30 The applicant takes the view, with reference to the first subparagraph of Article 11(8) of the basic regulation, according to which 'an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force', that such an application for a refund is admissible only after the anti-dumping duties in question have been paid.

31 The Commission, on the other hand, considers that the first subparagraph of Article 11(8) of the basic regulation merely lays down substantive conditions under which anti-dumping duties paid by an importer may be refunded and that it is the second subparagraph of that paragraph that provides for special procedural rules.

32 According to the Commission, the amount of anti-dumping duty is, moreover, duly determined upon the communication of the customs debt pursuant to Article 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, 'the Community Customs Code'), as that is the time when the debtor takes cognizance of it. There is, the Commission argues, no systemic reason that makes it necessary to await the outcome of an action for annulment at national level to submit an application for a refund under Article 11(8) of the basic regulation, as the reduction or the elimination of the dumping margin on the basis of which the anti-dumping duties were calculated cannot be established in the specific case of the importer in question by the national authorities, but only by the Commission.

33 In that regard, whilst the first subparagraph of Article 11(8) of the basic regulation provides that '[n]otwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force', the expressions 'duties collected' and 'duties were paid' which appear in that provision merely specify that the object of the refund can only be sums already paid. That provision thus defines only the principle and the substantive conditions for a refund.

34 As regards the procedure to be followed, the second subparagraph of Article 11(8) of the basic regulation is the relevant provision. The wording of that provision refers to the anti-dumping duties 'to be levied'. It does not therefore contain a condition linked to the payment of those duties for an application for a refund to be admissible.

35 Accordingly, the starting point for the six-month time-limit laid down in the second subparagraph of Article 11(8) of the basic regulation is not subject to any condition relating to the prior payment of the anti-dumping duties.

36 However, following a question asked by the Court, the applicant pointed out that the third subparagraph of Article 11(8) of the basic regulation has an indirect bearing on the determination of the starting point for the time-limit laid down in the second subparagraph of that paragraph.

37 The third subparagraph of Article 11(8) of the basic regulation states that an 'application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount', that '[i]t shall also include evidence, for a representative period, of normal values and export prices to the Union for the exporter or producer to which the duty applies', that '[i]n cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be provided to the Commission', and that '[w]here such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.'

38 The applicant claims that, in so far as the first sentence of the third subparagraph of Article 11(8) of the basic regulation provides that, to be 'duly supported', the application for a refund must contain all customs documentation relating to the calculation and payment of the amount of the anti-dumping duties in question, such payment is therefore a condition for the admissibility of the application for a refund.

39 In that regard, as the Commission claims, the third subparagraph of Article 11(8) of the basic regulation only has a bearing on the determination of the starting point for the time-limit referred to the second sentence of the fourth subparagraph of Article 11(8) of that regulation. That sentence provides that '[r]efunds of [antidumping] duties shall … take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty'.

40 Furthermore, there is nothing in the wording of the second subparagraph of Article 11(8) of the basic regulation to suggest that applications for refunds must be duly supported within the meaning of the third subparagraph of that paragraph from the time they are submitted. They may be supplemented in the course of the procedure. Otherwise the legislature would have stated in the second sentence of the fourth subparagraph of Article 11(8) that that time-limit of 12, or even 18, months ran from the submission of the application for a refund and not from the time that application was 'duly supported'.

41 Accordingly, the argument concerning the third subparagraph of Article 11(8) of the basic regulation cannot invalidate the conclusions reached in paragraphs 34 and 35 above.

42 In the reply, the applicant also claims that, in order to be able to regard the anti-dumping duties as duly determined, their amount must have been correctly calculated. In so far as the first amending tax assessment notice of 2010 substantially reduced the amount of the anti-dumping duties to be paid, the view cannot be taken that the amount of the definitive anti-dumping duties to be levied had been 'duly' determined by the tax assessment notice of 2005. Its application for a refund cannot therefore be regarded as out of time.

43 In this instance, it is sufficient to state, as the Commission has rightly pointed out, that the argument in question is based on the adoption by the national authorities of the first amending tax assessment notice of 2010, of whose existence the Commission was unaware when the contested decision was adopted.

44 According to settled case-law, the legality of a contested measure falls to be assessed on the basis of the elements of fact and of law existing at the time when the measure was adopted (Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 7; Case 114/83 *Société d'initiatives et de coopération agricoles and Société interprofessionnelle des producteurs et expéditeurs de fruits, légumes, bulbes et fleurs d'Ille-et-Vilaine* v *Commission* [1984] ECR 2589, paragraph 22; Joined Cases

T-79/95 and T-80/95 *SNCF and British Railways* v *Commission* [1996] ECR II-1491, paragraph 48; and Case T-46/09 *Greece* v *Commission* [2013] ECR, paragraph 149). In particular, the assessments made by the Commission must be examined solely on the basis of the information available to the Commission at the time when those assessments were made (Joined Cases T-111/01 and T-133/01 *Saxonia Edelmetalle and ZEMAG* v *Commission* [2005] ECR II-1579, paragraph 67).

45 However, the applicant essentially argues that the failure to produce or mention the first amending tax assessment notice during the administrative procedure is entirely due to a lack of diligence on the part of the Commission. It claims that, contrary to the provision made in point 3.2.1(b) of the interpretative notice, the Commission did not request other information from it, in particular regarding the basis for calculation and the precise amount of the anti-dumping duties levied.

46 Whilst it is true that point 3.2.1 of the interpretative notice provides that the Commission will notify the applicant of the information to be submitted specifying a reasonable period of time within which the requested evidence must be submitted and that this will include customs documents identifying the import transactions for which a refund is sought showing, specifically, the basis for determining the amount of the duties to be levied as well as the precise amount of the anti-dumping duties levied, the Commission rightly maintains that it is not obliged to examine of its own motion and by way of guesswork what matters might have been brought before it. That provision cannot be understood as requiring the Commission to communicate to the applicant the types or categories of information or documents to be provided to it in order to be able to examine an application for a refund.

47 Consequently, the applicant's argument that the amount of the definitive anti-dumping duties to be levied was not 'duly' determined by the tax assessment notice of 2005 cannot be accepted.

48 The complaint alleging an infringement of Article 11(8) of the basic regulation must therefore be rejected.

The second complaint, alleging an infringement of the interpretative notice

49 The applicant claims that the contested decision infringes point 1, point 2.1(b), as well as footnote 6 inserted therein, and point 2.2(a) of the interpretative notice.

50 It is sufficient to note in this regard that, according to settled case-law, an interpretative note like the interpretative notice which, according to its preamble, sets out the guidelines regarding the application of Article 11(8) of the basic regulation cannot have the effect of modifying the mandatory rules contained in a regulation (Case C-266/90 *Soba* [1992] ECR I-287, paragraph 19, and Case T-9/92 *Peugeot* v *Commission* [1993] ECR II-493, paragraph 44).

51 According to established case-law, the Commission is bound by the guidelines and notices that it issues, but only to the extent that they do not depart from higher-ranking rules (see, to this effect, Case C-464/09 P *Holland Malt* v *Commission* [2010] ECR I-12443, paragraph 47, and the cited case-law).

52 Thus, in the event of any overlap and incompatibility with such a rule, the interpretative note must yield (see, to this effect, Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraph 33).

53 It follows that any failure by the contested decision to comply with certain provisions of the interpretative notice cannot affect the correctness of the application by the Commission of Article 11(8) of the basic regulation, which is the legal basis for the contested decision. In so far as, in its arguments, the applicant claims a breach of the principle of legal certainty, those arguments are being confused with the arguments put forward in connection with the second plea in law and they will therefore be analysed in paragraph 55 et seq. below.

54 Accordingly, the second complaint and therefore the first plea in law in its entirety must be rejected.

The second plea in law, alleging breaches of the principles of protection of legitimate expectations, good faith and legal certainty

55 The Court considers that the complaint alleging a breach of the principle of legal certainty should be assessed first.

56 The applicant argues that the principle of legal certainty requires that rules must be clear and precise, so that the persons concerned may be able to ascertain unequivocally what their rights and obligations are. In essence, where point 1, point 2.1(b) and point 2.2(a) of the interpretative notice refer respectively to 'anti-dumping duties which have already been paid', to 'transactions for which anti-dumping duties have been fully paid' and to '[a]ny importer who can demonstrate that he has paid anti-dumping duties ... for a specific importation', that principle prohibits the rejection of the application for a refund made by the applicant on the ground that it should have submitted its application even before the payment of the anti-dumping duties.

57 Similarly, the model refund application which is annexed to the interpretative notice requires, among the 'mandatory minimum contents' to be provided, a declaration that the anti-dumping duties for which the refund is claimed have been fully paid.

58 Furthermore, footnote 6 of the interpretative notice, which is inserted in point 2.1(b) of that notice, states that '[w]hen an importer is contesting the validity of applying anti-dumping duty to his transaction(s) (whether or not this action suspends the payment of the duties), or when the national authority has taken a guarantee against potential liability to anti-dumping duty, the importer should none the less (if he so wishes) introduce an application for a refund of anti-dumping duties within the six-month time-limit together with a request that the Commission suspend the investigation until liability to the duties has been finally established'. The expressions 'should' and 'if he so wishes' used in that footnote indicate that, if the amount of the anti-dumping duties to be paid is contested, the six-month time-limit does not start to run.

59 It follows from footnote 6 of the interpretative notice that, when the anti-dumping duties in question have not been paid, the importer concerned may submit an application for a refund, but is not required to do so. Contrary to the claims made by the Commission, that footnote does not apply only in cases where a security has been taken.

60 The applicant claims that it complied with the relevant provisions by submitting, on 19 April 2010, its application for a refund of the anti-dumping duties determined in the tax assessment notice of 2005, together with a request to suspend the investigation, in so far as those duties had not yet been paid.

61 For that reason, the applicant contends that the time-limit laid down in the second subparagraph of Article 11(8) of the basic regulation cannot expire before it has been lawfully able to submit an application for a refund.

62 The Commission considers that the interpretative notice clearly provided that the time-limit for submitting the application for a refund is six months from the time when the amount of the anti-dumping duty to be paid was duly determined.

63 The wording of point 2.1(b) of the interpretative notice should be read in its entirety, that is to say with footnote 6 of that notice which is inserted therein. Accordingly, when an importer is contesting the validity of applying anti-dumping duty to his transaction, he should none the less introduce an

application for a refund of anti-dumping duties within the six-month time-limit together with a request that the Commission suspend the investigation until liability to the duties has been finally established.

64 Point 2.1(b) of the interpretative notice essentially concerns the situation where the amount of the anti-dumping duty has not yet been duly determined and where the importer lodges a security until that amount has been determined. Footnote 6 of that notice refers to a situation in which the Community Customs Code itself prescribes the lodging of a security.

65 That is the situation where the importer has exercised the right to appeal to the national authorities under Article 243 of the Community Customs Code against the valid determination of anti-dumping duty. Article 244 of the Community Customs Code provides that if the national authorities exceptionally suspend implementation, this is subject to the lodging of a security. Footnote 6 of the interpretative notice states that it is possible, in this second situation, to introduce an application for a refund. This stems from the fact that, unlike the first case, which is regulated in point 2.1(b) of that notice, the anti-dumping duty has already been duly determined. The Commission claims that, by using the expressions 'should' and 'if he so wishes', it intended to emphasise that, first, the submission of an application for a refund was not a precondition for appealing to the national authorities and, second, it was for the importer to decide whether to submit such an application. It cannot be inferred from those expressions that the importer may still validly apply for a refund after the time-limit has expired.

66 Like the first subparagraph of Article 11(8) of the basic regulation, point 1, point 2.1(b) and point 2.2(a) of the interpretative notice, on which the applicant relies, merely set out substantive conditions for a refund. It is normal that a sum has to be paid before it can be refunded. In contrast, the procedural rules are laid down in point 2.6(a) and in the second subparagraph of point 3.1.3(a) of the interpretative notice, entitled respectively 'What are the deadlines' and 'Six-month time-limit'. In so far as they provide that '[a]pplications pursuant to Article 11(8) of the basic regulation must be submitted … within six months of the date of determination of the anti-dumping duties due on those goods' and that '[i]n meeting the six-month time-limit for the submission of an application in question, it should be borne in mind that even in cases where a regulation imposing the duty in question is being challenged before the [General] Court … or the application of the regulation is being challenged before national administrative or judicial bodies, the deadline of six months must be respected', they confirm the legally binding force of the six-month time-limit from the time when the amount of the definitive anti-dumping duties was duly determined.

67 According 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 forms part (Case 292/82 *Merck* [1983] ECR 3781, paragraph 12). Consequently, point 1, point 2.1(b) and point 2.2(a) of the interpretative notice should not be considered in isolation, but in the context of the other provisions of that notice and of Article 11(8) of the basic regulation.

68 In this regard, according to case-law, the principle of legal certainty is a fundamental principle of Union law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly. However, where a degree of uncertainty regarding the meaning and scope of a rule of law is inherent in the rule, it is necessary to examine whether the rule of law at issue displays such ambiguity as to prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of that rule (Case T-216/05 *Mebrom* v *Commission* [2007] ECR II-1507, paragraph 108).

69 It should be noted, as a preliminary point, that, as was concluded in connection with the analysis of the first complaint in the first plea in law, the interpretation of Article 11(8) of the basic regulation put forward by the applicant must be rejected. However, it should also be noted that that provision, which is the legal basis for the contested decision, involves a degree of uncertainty regarding the meaning and

scope of the rule of law at issue. That degree of uncertainty stems from the simultaneous use, in the same provision, of the expressions 'duties paid' or 'duties collected' in contrast with the expressions 'definitive duties to be levied' the amount of which 'was duly determined'.

70 It should be borne in mind that guidelines contained in the communications or in the interpretative notices of the Commission are adopted with a view to ensuring that the action brought by the Commission is transparent, foreseeable and consistent with legal certainty (Case C-270/11 *Commission* v *Sweden* [2013] ECR, paragraph 41).

71 It is also clear from *Mebrom* v *Commission*, paragraph 68 supra (paragraph 109), that an interpretative notice may, in some circumstances, prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of the interpreted rule.

72 In the present case, according to the preamble to the interpretative notice, the purpose of that notice is to set out the guidelines regarding the application of Article 11(8) of the basic regulation and thus to clarify for the different parties involved in a refund procedure inter alia the conditions to be fulfilled by an application. Consequently, it was adopted in order to increase the legal certainty of Article 11(8) of the basic regulation for those parties.

73 In so far as the interpretative notice is intended for economic operators who are not required to have systematic recourse to legal assistance for their day-to-day operations, it is crucial that its interpretation of Article 11(8) of the basic regulation is as clear and unambiguous as possible. According to the objective and nature of that notice, reading its provisions must allow a well-informed and diligent economic operator to ascertain unequivocally what his rights and obligations are or even to resolve any doubts as to the scope or meaning of those rules.

74 Those conditions are not satisfied by the interpretative notice, which sends out contradictory signals regarding the requirements for submitting an application for a refund of anti-dumping duties.

75 In this instance, point 2.6(a) of the interpretative notice essentially provides that applications pursuant to Article 11(8) of the basic regulation must be submitted within six months of the date on which the amount of the anti-dumping duties was duly determined.

76 Point 1 of the interpretative notice, like the first subparagraph of Article 11(8) of the basic regulation, merely indicates that the object of the refund can only be sums which have already been paid (see paragraph 33 above). That provision thus only defines the principle and the substantive conditions for a refund.

77 However, as point 2.1(b) and point 2.2(a) of the interpretative notice provide, first, that applications may only be submitted in respect of transactions for which anti-dumping duties have been fully paid and, second, that an application for a refund of anti-dumping duties may be made by an importer who has demonstrated that he has paid them, those provisions run counter to point 2.6(a) of the interpretative notice.

78 The applicant's position is also supported by the annex to the interpretative notice, which contains a model and an aide-mémoire for refund applications, in so far as it provides, under the heading 'mandatory minimum contents', that the applicant for the refund must declare that the duties for which he claims a refund have been fully paid.

79 As regards footnote 6 of the interpretative notice, on which the applicant has specifically based its claims, and which provides that the importer 'should' none the less, if he so wishes, and not 'must', introduce an application for a refund of anti-dumping duties within the six-month time-limit together with a request that the Commission suspend the investigation until liability to the duties has been finally established when he is contesting the validity of applying anti-dumping duty to his

transaction(s), whether or not this action suspends the payment of the duties, it cannot be understood, per se, as requiring an importer in that situation to introduce an application within the six-month time-limit as soon as the amount of the anti-dumping duties is duly determined. It therefore runs counter, as such, to point 2.6(a) of the interpretative notice.

80 Nevertheless, since it follows from the first sentence under the heading of point 2 of the interpretative notice that that entire point provides a quick guide through the refund procedure detailed under point 3 of that notice, footnote 6 of that notice must be interpreted in the light of the second subparagraph of point 3.1.3(a) thereof, which also provides for a situation where the amount of the anti-dumping duties to be paid is being challenged before the national authorities. That provision states that the six-month time-limit laid down in the second subparagraph of Article 11(8) of the basic regulation must be respected even in such a situation.

81 However, under the third and last subparagraph of point 3.1.3(a) of the interpretative notice, any application must meet all of the requirements set out in point 3.1.1 of that notice within that six-month time-limit from the time when the amount of the anti-dumping duties was duly determined. In so far as point 3.1.1(i) and (ii) state that the applicant for a refund must provide in his application a declaration stating that the anti-dumping duties for which a refund is sought have been fully paid, the admissibility of such an application is in fact conditional on the payment of the anti-dumping duties in question within the time-limit laid down in the second subparagraph of Article 11(8) of the basic regulation. Such an obligation is not consistent with the latter provision or with point 2.6(a) of the interpretative notice and, moreover, may be impossible for an importer wishing to benefit from the suspension of the implementation of the amending tax assessment notice granted to him by the national authorities pursuant to the Community Customs Code to satisfy. In order to safeguard the effectiveness of the Community Customs Code, the time-limit for submitting an application for a refund of anti-dumping duties cannot therefore start to run when the person concerned is not required to pay the anti-dumping duties in question.

82 Accordingly, footnote 6 in conjunction with the third subparagraph of point 3.1.3(a) of the interpretative notice runs counter to point 2.6(a) of that notice.

83 Consequently, the interpretative notice, which is nevertheless intended to give clarification to economic operators about the procedure for refunds of anti-dumping duties, and to increase their legal certainty, achieves the opposite result (see, to this effect, Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663, paragraphs 556 and 557). Thus, economic operators like the applicant who refer to it in performing their day-to-day operations may, on reading it, have legitimate doubts as to the correct interpretation to be given to Article 11(8) of the basic regulation.

84 Moreover, the conclusion set out in paragraph 83 above is corroborated by the Commission's replies to questions asked by the Court at the hearing regarding the inconsistency of certain provisions of the interpretative notice, in which it essentially acknowledged that the drafting of the notice could have been better.

85 The complaint alleging a breach of the principle of legal certainty is therefore well-founded.

86 Without it being necessary to examine the other complaints, the second plea in law must be upheld and, therefore, the contested decision must be annulled.

Costs

87 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Annuls Commission Decision C(2011) 9112 final of 13 December 2011 concerning an application for a refund of anti-dumping duties paid on imports of stainless steel fasteners originating in the People's Republic of China and Taiwan;**

2. **Orders the European Commission to pay the costs.**

Forwood Dehousse Schwarcz

Delivered in open court in Luxembourg on 12 February 2014.

[Signatures]