Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 March 2018*

(Reference for a preliminary ruling — Admissibility — Anti-dumping — Validity of a regulation seeking to implement a judgment of the Court declaring previous regulations invalid — Obligation to implement — Legal basis — Regulation (EC) No 1225/2009 — Article 14 — Setting of the criteria relating to the collection of anti-dumping duties by Member States — Direction suspending the repayment of anti-dumping duties by national customs authorities — Resumption of the proceeding that preceded the regulations declared invalid — Article 10 — Non-retroactivity — Community Customs Code — Article 221 — Time-bar — Article 236 — Repayment of duties not owed)

In Case C-256/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 20 April 2016, received at the Court on 9 May 2016, in the proceedings

Deichmann SE

v

Hauptzollamt Duisburg,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský (Rapporteur), M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 11 May 2017,

after considering the observations submitted on behalf of:

– Deichmann SE, by D. Ehle and C. Zimmermann, Rechtsanwälte, S. De Knop, advocaat, and A. Willems, avocat,

– the European Commission, by L. Armati, K. Blanck-Putz, L. Grønfeldt, N. Kuplewatzky and T. Maxian Rusche, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 July 2017,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Commission Implementing Regulation (EU) 2016/223 of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ 2016 L 41, p. 3) ('the regulation at issue').

2 The request has been made in proceedings between Deichmann SE and the Hauptzollamt Duisburg (Principal Customs Office, Duisburg, Germany) ('the customs office') concerning an application for the repayment of anti-dumping duties paid on imports of footwear with uppers of leather into the European Union.

Legal context

Anti-dumping legislation

3 The facts of the dispute in the main proceedings and the regulation at issue took place at a time when the adoption of anti-dumping measures within the EU had successively been governed by Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1, and corrigenda OJ 1999 L 94, p. 27, and OJ 2000 L 263, p. 34), as amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 (OJ 2005 L 340, p. 17) ('Regulation No 384/96'), and then by 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 corrigenda, OJ 2010 L 7, p. 22, and OJ 2016 L 44, p. 20), 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) ('Regulation No 1225/2009').

4 Paragraph 4 of Article 9 of Regulation No 384/96, headed 'Termination without measures; imposition of definitive duties', stated:

'Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council ...'

5 Paragraph 4 of Article 9 of Regulation No 1225/2009, also headed 'Termination without measures; imposition of definitive duties', provided:

'Where the facts as finally established show that there is dumping and injury caused thereby, and the Union interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Commission ...'

6 Paragraph 1 of both Article 10 of Regulation No 384/96 and Article 10 of Regulation No 1225/2009, each entitled 'Retroactivity', were worded in identical terms and stated that:

'... definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to … Article 9(4) … enters into force, subject to the exceptions set out in this Regulation'.

7 Paragraph 1 of Article 14 of Regulation No 1225/2009, headed ‘General provisions’, provided:

‘Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. …’

8 Under Article 23 of Regulation No 1225/2009, headed ‘Repeal’:

‘Regulation (EC) No 384/96 is hereby repealed.

However, the repeal of Regulation (EC) No 384/96 shall not prejudice the validity of proceedings initiated thereunder.

…’

9 In accordance with Article 24 thereof, headed ‘Entry into force’, Regulation No 1225/2009 entered into force on the twentieth day following its publication on 22 December 2009 in the *Official Journal of the European Union*, that is to say, on 11 January 2010. Subsequently, that regulation was repealed by Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21), which entered into force on the twentieth day following that of its publication on 30 June 2016 in the *Official Journal of the European Union*.

Customs legislation

10 The facts of the dispute in the main proceedings and the regulation at issue occurred during a period when the relevant customs provisions were those laid down in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 (OJ 2013 L 269, p. 1) (‘the Customs Code’). This code has been repealed subsequently.

11 Title VII of the Customs Code, headed ‘Customs debt’, comprised Articles 189 to 242 of that code.

12 Chapter 3 of that title, headed ‘Recovery of the amount of the customs debt’, included, inter alia, Articles 217 and 221 of that code.

13 Article 217(1) of the Customs Code provided:

‘Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called “amount of duty”, shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).’

14 Article 221(1) and (3) of the Customs Code stated:

‘1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

…

3. Communication [of the amount of duty] to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.'

15 Article 236(1) in Chapter 5 of Title VII, headed 'Repayment and remission of duty', of the Customs Code provided:

'Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed ... .

...'

Background to the dispute and the question referred for a preliminary ruling

Background to the regulation at issue

16 On 5 October 2006, the Council adopted Regulation (EC) No 1472/2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1) ('the definitive regulation').

17 Article 1(1) of the definitive regulation imposed that definitive anti-dumping duty and listed the various categories of footwear with uppers of leather to which it was applicable. Article 1(3) of that regulation set the rate of the definitive anti-dumping duty at 16.5% for footwear with uppers of leather manufactured by companies established in China, except for Golden Step, at 9.7% for those manufactured by Golden Step and at 10% for those manufactured by companies established in Vietnam.

18 Furthermore, Article 1(4) of the definitive regulation stated that, 'unless otherwise specified, the provisions in force concerning customs duties [were] applicable'.

19 Lastly, Article 3 of the definitive regulation provided that it would enter into force on the day following its publication in the *Official Journal of the European Union*, which took place on 6 October 2006, and that it would be in force for a period of two years, that is, from 7 October 2006 until 6 October 2008.

20 On 22 December 2009, the Council adopted Implementing Regulation (EU) No 1294/2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Regulation No 384/96 (OJ 2009 L 352, p. 1) ('the prolonging regulation').

21 Article 1(1) of the prolonging regulation imposed that duty and listed the various categories of footwear with uppers of leather to which it was applicable. Article 1(3) and (4) of that regulation set the rate of that duty at 16.5% for the footwear with uppers of leather manufactured by companies established in China or consigned from Macao, at 9.7% for those manufactured by Golden Step and at 10% for those manufactured by all companies established in Vietnam.

22 Furthermore, Article 1(5) of the prolonging regulation provided that, 'unless otherwise specified, the provisions in force concerning customs duties [were] applicable'.

23 Finally, Article 2 of the prolonging regulation provided that the latter would enter into force on the day following that of its publication in the *Official Journal of the European Union*, which took place on 30 December 2009, and that it would be in force for a period of 15 months, that is, from 31 December 2009 until 30 March 2011.

24 By a judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), the Court held that the definitive regulation and the prolonging regulation were invalid, since they infringed Article 2(7)(b) and Article 9(5) of Regulation No 384/96.

The regulation at issue

25 As is apparent from the heading of the regulation at issue and from recital 13 thereof, the aim of the regulation is to take the necessary measures to implement the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74).

26 In that regard, the Commission set out, in essence, in recitals 13 to 16, 21 and 24 of the regulation at issue, that it intended to eliminate the illegalities found by the Court while resuming the proceeding at the origin of the definitive regulation and the prolonging regulation at the stage where the illegalities occurred, in order to adopt further regulations re-imposing anti-dumping duties at appropriate rates. It also stated that those anti-dumping duties would take effect on the date of the entry into force of the definitive regulation and the prolonging regulation.

27 Furthermore, the Commission considered, in recitals 18 and 22 of the regulation at issue, that it was necessary 'to oblige national customs authorities, which have to decide on an application for re-imbursement of anti-dumping duties on the basis of Article 236 of the [Customs Code], … to await the Commission's assessment of [requests for market economy treatment] and [associated individual treatment claims] and, where appropriate, the re-imposition of the anti-dumping duty at the appropriate rate, before proceeding with re-imbursement'. The Commission also noted that 'the legal basis for such an obligation is [the first sentence of paragraph 1 of] Article 14 [of Regulation No 1225/2009], which provides that the Regulation imposing duties shall specify the detailed modalities of its collection by Member States'.

28 On that basis, Article 1 of the regulation at issue provides:

'1. National customs authorities, which have received a request for re-imbursement, based on Article 236 of the … Customs Code, of anti-dumping duties imposed by [the definitive regulation] or [the prolonging regulation] and collected by national customs authorities, which is based on the fact that a non-sampled exporting producer had requested [market economy treatment] or [individual treatment], shall forward that request and any supporting documents to the Commission.

2. Within eight months of the receipt of the request and any supporting documents, the Commission shall verify whether the exporting producer had indeed lodged [a market economy treatment] and [individual treatment] claim. If so, the Commission shall assess that claim and re-impose the appropriate duty by means of a Commission Implementing Regulation, after disclosure …

3. The national customs authorities shall await the publication of the relevant Commission Implementing Regulation re-imposing the duties before deciding on the claim for repayment and remission of anti-dumping duties.'

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

29 By a notice of 10 May 2010, subsequently communicated to the applicant in the main proceedings, the customs office fixed at EUR 11 181.92 the amount of anti-dumping duties to be paid by it pursuant to the definitive regulation and the prolonging regulation in respect of the release for free circulation in the Union of certain footwear with uppers of leather originating in China and Vietnam. That footwear was manufactured by a Chinese company and a Vietnamese company, both of which had requested, in the context of the proceeding at the origin of the definitive regulation and the prolonging regulation, to be granted market economy treatment or, failing that, individual treatment. However, the Commission did not adjudicate on those applications, since the companies that submitted them had not been selected for the sample of exporting producers established for the purposes of the investigation that led to the adoption of those regulations.

30 On 12 June 2012, the applicant in the main proceedings asked the customs office to repay, pursuant to Article 236 of the Customs Code, the anti-dumping duties collected by it on the basis of the definitive regulation and the prolonging regulation, arguing that those duties had to be considered as not having been lawfully owed at the time of their payment, in view of the invalidity of those regulations. That application was dismissed by a decision adopted on 15 November 2013. Subsequently, the applicant in the main proceedings lodged a complaint against that decision, which was also dismissed by the customs office, and then brought an action before the referring court.

31 In that regard, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), notes, in the first place, that the applicant in the main proceedings is justified, taking into account the situation in which it finds itself, in relying upon the partial invalidity of the definitive regulation and the prolonging regulation established by the Court in the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74) and that it should therefore normally have granted its application and ordered the customs office to repay the anti-dumping duties that it had paid in accordance with Article 236 of the Customs Code.

32 In the second place, the referring court observes that the regulation at issue, which was adopted after that action was brought, now prevents the issuing of such an order, given its direct applicability. It adds, however, that it has doubts as to the validity of that regulation for several reasons.

33 First, the referring court is uncertain as to whether the regulation at issue ought to have been based not on Regulation No 1225/2009, but on Regulation No 384/96 and whether, consequently, the power to impose anti-dumping duties should have been given not to the Commission, but to the Council, to whom that power was conferred by Article 9(4) of Regulation No 384/96.

34 Second, even assuming that, in the regulation at issue, the Commission was right to apply Regulation No 1225/2009, the referring court wishes to know whether the Commission was empowered to make the directions set out in Article 1 of the regulation at issue, in view of the wording of the first sentence of Article 14(1) of Regulation No 1225/2009, in the first place, and Article 236(1) of the Customs Code, in the second place.

35 Third, the referring court raises the question as to whether the regulation at issue was lawfully able to resume the proceeding at the origin of the definitive regulation and the prolonging regulation with the aim of reinstating the anti-dumping duties imposed by those regulations, taking into account, in the first place, the rules of non-retroactivity laid down in Article 10(1) of Regulation No 384/96 and Article 10(1) of Regulation No 1225/2009, and, in the second place, the time-bar laid down in Article 221(3) of the Customs Code.

36 Fourth, the referring court asks, in essence, whether the directions provided for by the regulation at issue can be regarded as excessive, insofar as they require the national customs authorities to forward to the Commission applications for repayment that they have received pursuant to Article 236 of the Customs Code.

37 In those circumstances, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is [the regulation at issue] valid?'

Admissibility

38 The Commission submits that the request for a preliminary ruling must be rejected as inadmissible on the ground that the applicant in the main proceedings was undoubtedly entitled to request that the Courts of the European Union annul the regulation at issue, but that it did not do so within the period provided for in the sixth paragraph of Article 263 TFEU, so that it should not be allowed to circumvent that time limit by now pleading the invalidity of that regulation before the referring court.

39 In that regard, it is settled case-law that, where a person who was undoubtedly entitled to ask the Courts of the European Union to annul an act, failed to do so within the time limit laid down by the sixth paragraph of Article 263 TFEU, it must be held that that person is not entitled to plead that such an act is invalid in an action brought before a national court against a national measure adopted on the basis of that act (judgments of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 23, and of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 56).

40 Consequently, if, in a situation such as that described in the preceding paragraph of this judgment, the relevant national court refers the matter to the Court of Justice for a preliminary ruling on validity in this regard, that claim must be rejected as inadmissible.

41 However, in the present case, it is not necessary to determine whether the applicant in the main proceedings would undoubtedly have been entitled to seek the annulment of the regulation at issue before the Courts of the European Union, since the applicant does not find itself in the situation referred to in the case-law mentioned in paragraph 39 of this judgment. That regulation was adopted after the action was brought before the referring court, in which it is, according to that court, relied upon against the applicant in the main proceedings. The applicant therefore seeks to defend itself, and not to circumvent the time limit within which it could have challenged the regulation before the General Court of the European Union.

42 The request for a preliminary ruling is therefore admissible.

Consideration of the question referred

43 Although the wording of the question referred does not state the causes of invalidity on which the referring court seeks guidance, it must be found, taking into account the statements contained in the order for reference, that, by that question, the referring court asks, in essence, whether the regulation at issue is invalid on several grounds, namely that it applies Regulation No 1225/2009 and not Regulation No 384/96, that its legal basis is the first sentence of Article 14(1) of Regulation No 1225/2009, that it fails to comply with the relevant rules on non-retroactivity and time-barring, and that the directions that it lays down are potentially excessive in nature.

44 Each of those various grounds of invalidity must be assessed in turn.

45 In the first place, the referring court is uncertain as to whether, in view of the wording of the second paragraph of Article 23 of Regulation No 1225/2009 and the respective dates when the proceeding at the origin of the definitive regulation and the prolonging regulation were initiated, the regulation at issue should have been based not on Regulation No 1225/2009, but on Regulation No 384/96. In addition, it notes that, if that had been the case, the regulation at issue would also be invalid, consequently, on the ground that it is wrong to empower the Commission, rather than the Council, to impose anti-dumping duties, when Article 9(4) of Regulation No 384/96 grants that power to the Council.

46 In that respect, it must be noted that the relationship between Regulation No 384/96 and Regulation No 1225/2009 is governed by Article 23 of Regulation No 1225/2009.

47 That article is headed 'Repeal'. The first paragraph provides that 'Regulation [No 384/96] is repealed'. The second paragraph notes the effects of that repeal on proceedings initiated thereunder.

48 It is clear that there is a mismatch between the language versions of that second paragraph. Indeed, while some of them, in particular the German language version, state that Regulation No 384/96 is to continue to apply to proceedings initiated in accordance with that regulation, all others merely state that the repeal of that regulation does not affect the validity of those proceedings.

49 It is settled case-law that the need for a uniform interpretation of EU law prevents, in the case of doubt, the text of a provision of EU law from being considered in isolation and requires, on the contrary, that it be interpreted on the basis of the real intention of its author and the aim which the latter seeks to achieve in the light of, in particular, all language versions (judgments of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), paragraph 122, and of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 47).

50 In the present case, it follows from recital 1 of Regulation No 1225/2009 that that regulation seeks essentially to codify Regulation No 384/96, without altering its substance.

51 In addition, it is apparent from the heading and the wording of Article 23 of Regulation No 1225/2009 that, in adopting that provision, the EU legislature sought to repeal Regulation No 384/96, while explicitly ensuring that the proceedings brought under that regulation remain valid, in order to allow the competent institutions to continue those proceedings. However, the EU legislature did not stipulate, in most of the language versions of Regulation No 1225/2009, that the provisions of Regulation No 384/96 would continue to apply to those proceedings.

52 Finally, it follows from case-law that acts of the European Union must, in principle, be adopted in accordance with the procedural rules in force at the time of their adoption (see, to that effect, judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraph 40). It follows that, precisely due to the repeal of Regulation No 384/96 and having regard to the purpose of Regulation No 1225/2009, proceedings initiated on the basis of Regulation No 384/96 could, as from its repeal, be pursued only on the basis of Regulation No 1225/2009.

53 In the present case, the regulation at issue was adopted on 17 February 2016, that is, on a date after the repeal of Regulation No 384/96 by Regulation No 1225/2009, which took place on 11 January 2010.

54 Therefore, the Commission was correct in basing the regulation at issue on Regulation No 1225/2009.

55 Furthermore, it must be found that the regulation at issue rightly confers the power to impose anti-dumping duties on the Commission, instead of on the Council, as this power is entrusted to the Commission by Article 9(4) of Regulation No 1225/2009, as amended by Regulation No 37/2014.

56 In the second place, the referring court asks whether the first sentence of Article 14(1) of Regulation No 1225/2009 constitutes a legal basis for the adoption of the directions set out in Article 1 of the regulation at issue. It submits, in that regard, that it is not possible to infer from the first sentence of Article 14(1) that it empowers the Commission, first, to take preparatory measures for the re-imposition of anti-dumping duties and, second, to adopt directions that may be contrary to Article 236(1) of the Customs Code, in so far as they prevent the national customs authorities from repaying anti-dumping duties collected pursuant to the definitive regulation and the prolonging regulation.

57 As regards the first aspect of those queries from the referring court, it should be noted that, under the first sentence of Article 14(1) of Regulation No 1225/2009, anti-dumping duties are to be imposed by regulation and to be collected by Member States in the form, at the rate specified and according to the other criteria laid down in the regulation imposing such duties.

58 It follows from the wording of that provision that the legislature of the European Union did not intend to set out an exhaustive list of criteria relating to the collection of anti-dumping duties that may be set by the Commission.

59 The directions set out in Article 1 of the regulation at issue aim to safeguard the collection of anti-dumping duties imposed by the definitive regulation and the prolonging regulation by obliging national customs authorities to wait until the Commission has determined the rates at which such duties should have been fixed, in compliance with the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), before deciding on applications for repayment submitted by operators who have paid such duties.

60 Accordingly, as those directions relate to the collection of the relevant anti-dumping duties by Member States, the first sentence of Article 14(1) of Regulation No 1225/2009 empowers the Commission to adopt them.

61 With regard to the second aspect mentioned in paragraph 56 of this judgment, it must be recalled that the regulation at issue seeks to take the measures necessary to implement the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), in which the Court stated that the definitive regulation and the prolonging regulation were invalid, as set out in paragraph 24 of this judgment.

62 Indeed, it is settled case-law that, when the Court declares that a regulation imposing anti-dumping duties, such as the definitive regulation or the prolonging regulation, is invalid, such duties are to be considered as never having been lawfully owed within the meaning of Article 236 of the Customs Code and, in principle, are required to be repaid by the national customs authorities under the conditions set out to that effect (see, to that effect, judgments of 27 September 2007, *Ikea Wholesale*, C-351/04, EU:C:2007:547, paragraphs 66 to 69, and of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraph 34).

63 However, the exact scope of a declaration of invalidity by the Court in a judgment and, consequently, of the obligations that flow from it must be determined in each specific case by taking into account not only the operative part of that judgment, but also the grounds that constitute its essential basis (see, to that effect, judgment of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraph 49 and the case-law cited).

64 In those circumstances, it is necessary to determine, in the present case, the exact scope of the declaration of invalidity contained in the operative part of the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), in the light of the grounds of that judgment that constitute its essential basis.

65 It follows, first of all, from paragraphs 79, 112, 135 and 177 of that judgment that the Court found that the definitive regulation and the prolonging regulation were invalid as a result of two distinct, but interlinked illegalities. First, the Council and the Commission adopted those regulations without assessing beforehand the market economy treatment claims lodged by certain exporting producers that were the subject of the investigation at the origin of those regulations, in breach of Article 2(7)(b) of Regulation No 384/96. Second, the Council and the Commission omitted, in breach of Article 9(5) of Regulation No 384/96, to assess the individual treatment claims from those same exporting producers.

66 Next, it is apparent from paragraphs 39, 108, 120 and 131 of that judgment that the objective of all those claims was to allow the exporting producers who had lodged them to benefit from individual treatment in the context of the various operations in anticipation of the imposition of anti-dumping duties, which could have led the Council and the Commission to set, for those exporting producers, anti-dumping duty rates lower than those imposed by the definitive regulation and the prolonging regulation.

67 Finally, it follows from paragraphs 174 and 177 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 the assessment carried out by the Court in that judgment had not revealed any factor capable of affecting the validity of the definitive regulation or the prolonging regulation.

68 In view of those grounds, it must be held that, in order to comply with the obligation to implement the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), the Commission was entitled to take the view that the onus was on it to carry out an assessment of the claims submitted by the exporting producers concerned with a view to determining whether the anti-dumping duties that applied to them under the definitive regulation and the prolonging regulation should have been set at rates below those laid down by those two regulations.

69 It is only, at most, the part of the anti-dumping duties collected pursuant to those regulations corresponding to the difference, if any, between the rate at which they had set those anti-dumping duties, on the one hand, and the rate at which they should have been set if the illegalities found by the Court in its judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74) had not been committed, on the other hand, that had been wrongly imposed and, as such, had to be repaid to the parties concerned. In that context, Article 236 of the Customs Code cannot be interpreted as prohibiting the Commission from directing that a ruling be made on the applications for repayment of those anti-dumping duties following a procedure with the specific aim of allowing it to calculate such a difference.

70 In those circumstances, in the light of the case-law cited in paragraphs 62 and 63 of this judgment, the full and immediate repayment of the relevant anti-dumping duties was not necessary.

71 Consequently, as the directions set out in Article 1 of the regulation at issue are not contrary to Article 236(1) of the Customs Code, the Commission was empowered to adopt them on the basis of the first sentence of Article 14(1) of Regulation No 1225/2009.

72 In the third place, the referring court asks whether the regulation at issue was lawfully able to resume the proceeding at the origin of the definitive regulation and the prolonging regulation with the aim of re-imposing the anti-dumping duties imposed by those regulations during their initial period of application. It is unsure whether, taking into account the fact that those anti-dumping duties had expired on the date of adoption of the regulation at issue, such a resumption is not contrary, first, to the rules of non-retroactivity laid down in Article 10(1) of Regulation No 384/96 and Article 10(1) of Regulation No 1225/2009 and, second, to the time-bar laid down in Article 221(3) of the Customs Code.

73 In that regard, first, in respect of the possibility of resuming the proceeding at the origin of the definitive regulation and the prolonging regulation with the aim of re-imposing the anti-dumping duties imposed by those regulations during their initial application period, it must be held that where a judgment of the Court annuls a regulation imposing anti-dumping duties or declares such a regulation to be invalid, the institution called upon to take such measures for the purpose of implementing that judgment does have the option of resuming the proceeding at the origin of that regulation, even if that option is not expressly set out in the applicable legislation (see, to that effect, judgment of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraphs 51 and 52).

74 In addition, it follows from settled case-law that, except where the irregularity found has vitiated the entire proceeding with illegality, the institution concerned has the option, in order to adopt an act intended to replace the act that has been annulled or declared invalid, to resume that proceeding only at the stage when the irregularity was committed (judgment of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraph 51).

75 It follows from the foregoing that the regulation at issue could legitimately resume the proceeding at the origin of the definitive regulation and the prolonging regulation.

76 Second, as regards the question of whether such a resumption of the proceeding is authorised in a case in which the anti-dumping rights at issue have expired, in view of the rules that apply in respect of non-retroactivity, it follows from the case-law of the Court that, when an institution of the European Union chooses to use its option to resume the proceeding referred to in paragraphs 73 and 74 of this judgment, it must, in accordance with the principles governing the temporal application of the law, comply with the substantive rules in force at the time of the facts referred to in the regulation that was annulled or declared invalid (see, to that effect, judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraph 40).

77 Thus, in accordance with Article 10(1) of Regulation No 384/96, the resumption of the proceeding effected in the present case by the regulation at issue cannot result in the reimposition by the regulation adopted at the end of that proceeding, as a replacement for the definitive regulation and the prolonging regulation, of the anti-dumping duties that would be applied to goods released for free circulation prior to the date on which those regulations entered into force.

78 However, the wording of Article 10(1) of Regulation No 384/96 does not preclude such a resumption of the proceeding in a case in which the anti-dumping duties concerned have expired since that date, provided that such duties are re-imposed during their initial application period, and therefore, in the present case, with regard to goods put into free circulation after the entry into force of the definitive regulation and the prolonging regulation.

79 Accordingly, the resumption of the proceeding in the present case cannot be regarded as contrary to the rule of non-retroactivity laid down in Article 10(1) of Regulation No 384/96, on the ground that the anti-dumping duties imposed by the definitive regulation and the prolonging regulation had expired on the date of adoption of the regulation at issue.

80 Finally, with regard to the rule set out in Article 221(3) of the Customs Code, it must be noted that its effect is indeed not only to prevent the amount of duty from being communicated to the debtor after the expiry of the three-year period from the date on which its customs debt arose, but also to time-bar the customs debt itself upon the expiry of that time limit (see, to that effect, judgment of 23 February 2006, *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraphs 39 and 41).

81 However, as the Court has already held, that rule applies, according to the wording of Article 221(3) of the Customs Code, only to the communication of the amount of duty to the debtor, and its implementation, in that respect, is a matter for the national customs authorities alone, who are competent to make such a communication (see, to that effect, judgment of 13 March 2003, *Netherlands* v *Commission*, C-156/00, EU:C:2003:149, paragraphs 63 and 64).

82 In addition, it follows from Article 221(1) of the Customs Code that the amount of duty may be communicated to the debtor only after the entry in the accounts of such an amount, which is itself defined in Article 217(1) of the Customs Code as being the operation consisting of the competent customs authority calculating that amount as soon as it has the necessary particulars (see, to that effect, judgments of 23 February 2006, *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraph 46, and of 16 July 2009, *Snauwaert and Others*, C-124/08 and C-125/08, EU:C:2009:469, paragraphs 21 and 23).

83 As a result, the time-bar set out in Article 221(3) of the Customs Code is not capable of preventing the Commission from adopting a regulation imposing or re-imposing anti-dumping duties or, a fortiori, from opening or resuming the proceeding prior to such adoption, with each of those operations necessarily having to occur before those by which the national competent authorities calculate the amount of duty to be levied pursuant to the regulation in question and communicate such amount to the debtor.

84 Thus, in the present case, it is only once the Commission has completed the proceeding set out in the regulation at issue, by re-imposing, at the appropriate rate, the anti-dumping duties imposed by the definitive regulation and the prolonging regulation, that national customs authorities will be able to determine the corresponding duties and communicate them to debtors. It is, therefore, for those authorities, under the supervision of the competent national courts, to satisfy themselves, on a case-by-case basis, that Article 221(3) of the Customs Code has been complied with, by verifying that such a communication may still be made, taking into account the three-year time limit laid down in the first sentence of that provision and any suspension of that time limit in accordance with the second sentence of that provision.

85 As a result, resuming the proceeding is not contrary to the time-bar laid down in Article 221(3) of the Customs Code.

86 In the fourth and last place, the referring court asks whether the directions set out in the regulation at issue are excessive, stating that smaller-scale measures would have been sufficient to comply with the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74).

87 In that regard, it follows from case-law that, while a legal consequence of a finding that an act of the European Union is invalid is that the institution that adopted the act must take the necessary measures to remedy the illegality established — the obligation set out in Article 266 TFEU in the event of annulment being applicable by analogy — that institution does nevertheless have a wide discretion in its choice of measures, it being understood that such measures must be compatible with the operative part of the judgment in question and the grounds that constitute its essential basis (see, to that effect, judgment of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraphs 48 and 76 and the case-law cited).

88 Taking into account that wide discretion, only the manifestly inappropriate nature of those measures, having regard to the objective pursued, may affect their lawfulness (see, by analogy, judgments of 8 February 2000, *Emesa Sugar*, C-17/98, EU:C:2000:70, paragraph 53, and of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 207).

89 In the present case, it should be noted, first, that it follows from the considerations above that an analysis of the directions set out in Article 1 of the regulation at issue has not shown that they are inconsistent with the operative part and the grounds of the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74).

90 Second, it does not appear that the Commission committed a manifest error of assessment in opting for those measures. The obligation on the national customs authorities to forward to the Commission applications for repayment submitted to them under Article 236 of the Customs Code is capable of ensuring that that institution has all the relevant particulars to remedy the illegalities found by the Court in its judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), without involving an additional administrative burden for the operators concerned or unjustifiably delaying the handling of the applications in question. Moreover, it must be noted, first, that the handling of those applications is subject to the time limit laid down in Article 1(2) of the regulation at issue and, second, that any delay is capable of being compensated for by the payment of interest (see, to that effect, judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraph 37).

91 In the light of all the above considerations, the answer to the question referred is that consideration thereof has not revealed any factor capable of affecting the validity of the regulation at issue.

Costs

92 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 (Third Chamber) hereby rules:

Consideration of the question referred has not revealed any factor capable of affecting the validity of Commission Implementing Regulation (EU) 2016/223 of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14.

[Signatures]