Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

12 December 2014*

(Dumping — Imports of hand pallet trucks and their essential parts originating in China — Review — Article 11(2) of Regulation (EC) No 1225/2009 — Rights of defence — Error of fact — Manifest error of assessment — Obligation to state reasons)

In Case T-643/11,

Crown Equipment (Suzhou) Co. Ltd, established in Suzhou (China),

Crown Gabelstapler GmbH & Co. KG, established in Roding (Germany),

represented by K. Neuhaus, H.-J. Freund and B. Ecker, lawyers,

applicants,

v

Council of the European Union, represented by J. P. Hix, acting as Agent, and initially by G. Berrisch and A. Polcyn, and subsequently by A. Polcyn and D. Gerardin, lawyers,

defendant,

supported by

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

intervener,

ACTION for the annulment of Council Implementing Regulation (EU) No 1008/2011 of 10 October 2011 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China as extended to imports of hand pallet trucks and their essential parts consigned from Thailand, whether declared as originating in Thailand or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ 2011 L 268, p. 1), in so far as that regulation concerns the applicants,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka and V. Kreuschitz (Rapporteur), Judges,

Registrar: N. Rosner, Administrator,

* Language of the case: English.

having regard to the written procedure and further to the hearing on 12 February 2014,

gives the following

Judgment[1]

Background to the dispute …

Procedure and forms of order sought …

Law

1. *Admissibility* …

2. *Substance*

35 In the present case, the applicants put forward three pleas in law. In their first plea, they submit that their right to a fair hearing, their rights of defence and their right to be heard have been infringed. In their second plea, they submit that the Council committed errors of fact in recitals 58 and 60 of the contested regulation. Lastly, in their third plea, the applicants submit that the considerations leading to the finding of injury as well as a causal link between the imports allegedly dumped and the likelihood of the continuation of injury should the anti-dumping measures be repealed are based on several manifest errors of assessment.

The first plea in law, alleging that the applicants' procedural rights have been infringed

36 The applicants submit, in essence, that their right to a fair hearing, their rights of defence and their right to be heard have been infringed on the ground that the Council arbitrarily disregarded their injury assessment for the period between 2007 and 2009 which they submitted in their letter of 25 July 2011. Such disregard is shown by the fact that, in recital 60 of the contested regulation, it is stated — wrongly in the applicants' view — that they examined the development of injury for the period between 2009 and the review investigation period (or 'the RIP'). The applicants consider that the right to make their views known cannot be restricted to a mere right to be given the opportunity to file submissions, but required the Council to take full account of the submissions put forward in their letter of 25 July 2011. Consequently, the Council's failure to consider that letter infringes not only their right to a fair hearing, but also the third subparagraph of Article 11(2) of the basic regulation.

37 The Council denies that it has infringed the applicants' procedural rights and the third subparagraph of Article 11(2) of the basic regulation.

38 In so far as the applicants argue that their rights of defence and their right to be heard have been infringed, it must be borne in mind that respect for the rights of the defence is a fundamental principle of EU law, of which the right to be heard is inherent (see, to that effect, judgments of 12 February 1992 in *Netherlands and Others* v *Commission*, C-48/90 and C-66/90, ECR, EU:C:1992:63, paragraph 44; of 29 June 1994 in *Fiskano* v *Commission*, C-135/92, ECR, EU:C:1994:267 paragraph 39; of 24 October 1996 in *Commission* v *Lisrestal and Others*, C-32/95 P, ECR,

1 — Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

EU:C:1996:402, paragraph 21; of 22 November 2012 in *M.*, C-277/11, ECR, EU:C:2012:744, paragraph 82; and of 18 July 2013 in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, ECR, EU:C:2013:518, paragraph 98) which applies to any person (see, to that effect, judgment of 18 December 2008 in *Sopropé*, C-349/07, ECR, EU:C:2008:746, paragraph 36).

39 The right to be heard — which is fundamental to the observance of the rights of defence during a procedure preceding the adoption of an act adversely affecting a person — is moreover expressly affirmed in the Charter of Fundamental Rights of the European Union which, pursuant to Article 6(1) TEU, has the same legal value as the Treaties. In particular, Article 41(2)(a) of that charter states that the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time by the EU institutions includes, inter alia, the right of every person to be heard before any individual measure which would affect him or her adversely is taken.

40 In addition, in the context of anti-dumping investigations, it has been held that respect for the rights of the defence and the right to be heard in those investigations was of crucial importance (see, to that effect, judgment of 16 February 2012 in *Council* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, ECR, EU:C:2012:78, paragraph 77 and the case-law cited).

41 The respect for those rights presupposes that the undertakings concerned should have been placed in a position during the administrative procedure in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (judgments of 27 June 1991 in *Al-Jubail Fertilizer* v *Council*, C-49/88, ECR, EU:C:1991:276 paragraph 17, and of 11 July 2013 in *Hangzhou Duralamp Electronics* v *Council*, T-459/07, EU:T:2013:369, paragraph 110).

42 In the present case, the applicants have not, however, shown that they were not placed in a position in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the EU institutions in support of their conclusion that anti-dumping measures should be maintained. Moreover, the applicants have not put forward any evidence which they were not able to use and which they did not have the opportunity to submit to the EU institutions.

43 The applicants complain that the EU institutions failed to take their comments into account. However, that alleged failure to take into account their comments does not constitute a breach of their rights of defence or their right to be heard. Although for those rights to be observed, the EU institutions must enable the applicants to effectively make known their views, those institutions cannot be required to adhere to them. In order for the applicants' submission of views to be effective it is necessary only that they have been submitted in good time so that the EU institutions may take cognisance of them and assess, with all the requisite attention, their relevance for the content of the measure being adopted (see, to that effect, judgment of 1 October 2009 in *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, ECR, EU:C:2009:598, paragraphs 97, 98 and 102, and *Sopropé*, cited in paragraph 38 above, EU:C:2008:746, paragraphs 49 and 50).

44 The applicants are therefore incorrect to claim that their rights of defence or their right to be heard have been infringed.

45 In so far as the applicants submit that their right to a fair hearing has been infringed, it must be borne in mind that, although the Commission or the Council cannot be described as a 'court or tribunal' within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (see, to that effect, judgments of 29 October 1980 in *van Landewyck and Others* v *Commission*, 209/78 to 215/78 and 218/78, EU:C:1980:248, paragraph 81, and of 7 June 1983 in *Musique diffusion française and Others* v *Commission*, 100/80 to 103/80, ECR, EU:C:1983:158, paragraph 7), the Commission and the Council

are nevertheless required during the administrative procedure to respect the fundamental rights of the European Union, which include the right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights. In particular, it is Article 41, not Article 47 of that Charter, which governs the administrative procedure before the Commission and the Council in the matter of defence against dumped imports from non-EU countries (see, by analogy, judgment of 11 July 2013 in *Ziegler* v *Commission*, C-439/11 P, ECR, EU:C:2013:513, paragraph 154 and the case-law cited).

46 The applicants' complaint must therefore be understood as meaning that the right to sound administration has been infringed because of a failure to take sufficient account of their comments in their letter of 25 July 2011. That right presupposes a duty of diligence which requires the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, judgments of 21 November 1991 in *Technische Universität München*, C-269/90, ECR, EU:C:1991:438, paragraph 14; of 6 November 2008 in *Netherlands* v *Commission*, C-405/07 P, ECR, EU:C:2008:613, paragraph 56; and of 16 September 2013 in *ATC and Others* v *Commission*, T-333/10, ECR, EU:T:2013:451, paragraph 84).

47 In the present case, the Council stated as follows in recital 60 of the contested regulation:

'In its comments to the disclosure one Chinese exporting producer claimed that certain indicators including production, sales volumes, profitability, capacity utilisation, employment show in fact no negative development for the Union industry. However, the company had only looked at the development between 2009 and the RIP while for the assessment of injury the overall development of the Union industry during the period considered, i.e. between 2007 and the RIP needs to be assessed. As explained above (see recitals 43 to 49), all the injury indicators mentioned by the Chinese exporter developed in a negative direction during the period considered.'

48 From reading the applicants' letter of 25 July 2011, it is true that it was only in relation to the period between 2009 and the RIP that they claimed that the production, profitability, capacity utilisation and employment of the Union industry developed in a positive rather than a negative direction.

49 However, the second sentence of recital 60 of the contested regulation ('However, the company had only looked at the development between 2009 and the RIP while for the assessment of injury the overall development of the Union industry during the period considered, i.e. between 2007 and the RIP needs to be assessed') must be read and understood in the light of the first sentence of that recital. Even though, in their letter of 25 July 2011, the applicants did indeed refer also to the period considered, the assessment that certain factors did not develop in a negative direction relates only to the development between 2009 and the RIP.

50 Consequently, the applicants are wrong to claim, in essence, that the institutions failed to comply with the duty of diligence in the light of the assessment in recital 60 of the contested regulation.

51 Lastly, in so far as the applicants argue, in essence, that the duty of diligence and the third subparagraph of Article 11(2) of the basic regulation were infringed by the alleged failure to take into account the other considerations in the comments in the letter of 25 July 2011, it must be borne in mind that, under that provision, the EU institutions must reach their conclusions after taking due account of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

52 For the above reasons, the institutions did not fail to take into account in the contested regulation the absence of the negative development — alleged by the applicants in their letter of 25 July 2011 — of the production, profitability, capacity utilisation and employment of the Union industry. In addition, it is apparent from recital 59 of the contested regulation that the institutions took into consideration the development of the profitability, production, sales volumes, capacity utilisation rate, level of

employment and productivity in the European Union between 2007 and the RIP. Thus, the institutions took into account those factors during the period considered. In so far as the applicants submit that the institutions assessed those factors incorrectly in view of the applicants' comments in their letter of 25 July 2011, that objection relates to the merits of the assessment in the contested regulation, which is the subject of the third plea in law. It does not therefore fall within the scope of the assessment of the formal legality of that regulation. The Court must therefore reject the applicants' complaint that the institutions did not comply with their duty of diligence and infringed the third subparagraph of Article 11(2) of the basic regulation on the ground that they did not take due account of their observations in the letter of 25 July 2011.

53 For all the above reasons, the applicants' first plea in law, alleging an infringement of their procedural rights, must be rejected.

The second plea in law, alleging errors of fact

Introduction …

The first part of the second plea in law …

The second part of the second plea in law …

The third part of the second plea in law …

Conclusion …

The third plea in law, alleging manifest errors of assessment

Introduction …

The first part of the third plea in law

– The manifest errors of assessment and the infringements of Article 11(2) and Article 3(2), (6) and (7) of the basic regulation …

– Failures to state reasons …

– Conclusion …

The second part of the third plea in law

– Introduction …

– The assessments in recitals 58 and 59 of the contested regulation …

– The assessments in recital 61 of the contested regulation …

– The assessments in recital 62 of the contested regulation …

– The assessments in recital 64 of the contested regulation …

– Conclusion …

Costs …

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Crown Equipment (Suzhou) Co. Ltd and Crown Gabelstapler GmbH & Co. KG to bear their own costs and to pay four fifths of those incurred by the Council of the European Union;

3. Orders the Council to bear one fifth of its own costs;

4. Orders the European Commission to bear its own costs.

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 12 December 2014.

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