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Advocate General's Opinion in Case C-811/23 P | Commission v Zippo Manufacturing e.a.

2020 EU-US Tariff Dispute: Advocate General Ćapeta – the Commission did not violate Zippo's right to be heard

The right to be heard as reflected in Article 41(2)(a) of the Charter does not apply to a procedure leading to a measure of general application

During Donald Trump's first term as President, the United States of America imposed duties on several types of steel products of different origin, including from the European Union. The European Union responded by imposing rebalancing measures on certain product categories imported from the United States. ¹ One of these product categories was that of 'Other lighters,' which was subjected to an additional 20% import duty.

The manufacturers and importers of the 'Zippo' lighter, ² a quintessentially American product, challenged the imposition of those duties. They claimed that, in line with Article 41(2)(a) of the Charter, ³ they had a right to be heard by the Commission before those duties were imposed. The General Court agreed with Zippo's argument and annulled the regulation imposing retaliatory measures on all products falling within the category of 'Other Lighters.' ⁴ The Commission appealed that judgment to the Court of Justice.

In her Opinion, **Advocate General Tamara Ćapeta proposes that the Court find that the right to be heard, as reflected in Article 41(2)(a) of the Charter, does not apply in the present case.** The Court should thus **set aside the General Court's judgment**, dismiss Zippo's argument on the right to be heard, and refer the case back to the General Court to resolve the remaining pleas in law.

Advocate General Ćapeta observes that **the right to be heard, as reflected in the Charter, applies only in a procedure in which the administration takes an individual measure** in relation to a person. Accordingly, that right **does not apply** in a procedure that leads **to a measure of general application. The fact that a person is individually concerned by a measure of general application is irrelevant in that regard.**

Finally, the Advocate General considers that **even if a "general" right to be heard exists outside the scope of the Charter, that right was satisfied** by virtue of the information gathering procedure carried out by the Commission, in line with the Enforcement Regulation. ⁵ The Advocate General notes that, **in a participatory democracy, those persons potentially affected by a measure of general application adopted by the administration must have an opportunity to express their interests and concerns.** That right to be heard may be ensured **through a prior information-gathering procedure, such as the one provided for by the Enforcement Regulation.** In the present case, the information gathering procedure carried out by the Commission was open and transparent. The fact that Zippo did not participate therein, despite having been informed of its existence, by means of a publication on the website of DG Trade, does not mean that it was deprived of the possibility to express its position.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case; otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [Commission Implementing Regulation \(EU\) 2020/502](#) of 6 April 2020 on certain commercial policy measures concerning certain products originating in the United States of America.

² Zippo Manufacturing Co., Zippo GmbH and Zippo SAS ('Zippo').

³ Charter of Fundamental Rights of the European Union.

⁴ Judgment of the General Court of 18 October 2023, *Zippo Manufacturing and Others v Commission*, [T-402/20](#) (see also Press Release [No. 157/23](#)).

⁵ [Regulation \(EU\) No 654/2014](#) of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (the 'Enforcement Regulation').