

Case C-719/22**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

24 November 2022

Referring court:

Hof van beroep Antwerpen (Belgium)

Date of the decision to refer:

6 October 2022

Applicants:

Openbaar Ministerie

Federale Overheidsdienst Financiën

Defendants:

Profit Europe NV

Gosselin Forwarding Services NV

Subject matter of the main proceedings

The main proceedings concern a criminal case in which the defendants are alleged to have evaded anti-dumping duties on imports of certain cast iron products from the People's Republic of China by using incorrect tariff codes and designations and making erroneous consumption declarations at the time of declaration. As a result, it is unclear whether the product must be classified as malleable cast iron, which is subject to anti-dumping duties. In particular, it is important to ascertain whether malleable cast iron includes spheroidal graphite cast iron.

Subject matter and legal basis of the request

After the Court of Justice of the European Union ('the Court') ruled in the judgment in Case C-362/20, delivered in the same main proceedings, that Regulation No 1071/2012 and Implementing Regulation No 430/2013 apply also

to spheroidal graphite cast iron, this request raises the question, on the basis of Article 267 TFEU, as to whether, as a result of this applicability to spheroidal graphite cast iron, these regulations are invalid due to infringement of Articles 1, 5, 6 and 9 of Regulation No 1225/2009 (‘the basic anti-dumping regulation’).

Question referred for a preliminary ruling

Do Regulation (EU) No 1071/2012 and Regulation (EU) No 430/2013 violate Articles 1, 5, 6 and 9 of Basic Regulation 1225/2009, in so far as they subject imports of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in the People’s Republic of China to anti-dumping duties upon import, when neither the complaint for the initiation of an anti-dumping proceeding nor the notice of initiation of the anti-dumping measure identified such goods as the product concerned, no evidence of dumping, injury and a causal link was produced and the European Commission did not in any way investigate their normal value, export price, possible margin of dumping, possible injury, the extent of the injury, the impact of other known factors on the injury, the causal link between dumping and injury and the need to subject those goods (threaded tube or pipe cast fittings) to anti-dumping duties in the interest of the Union?

Provisions of European Union law relied on

Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People’s Republic of China and Thailand; in particular recitals 16 and 28 and Article 1(1)

Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People’s Republic of China and Thailand and terminating the proceeding with regard to Indonesia; in particular recital 13 and Article 1(1)

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community; in particular Articles 1, 5, 6 and 9

Article 267 TFEU

Case-law of the Court relied on

Judgment of 12 July 2018, *Profit Europe*, C-397/17 and C-398/17, EU:C:2018:564

Judgment of 15 July 2021, *Profit Europe and Gosselin Forwarding Services*, C-362/20, EU:C:2021:612

Provisions of national law relied on

Articles 11, 12, 14, 24, 31 to 37 and 41 of the Wet van 15 juni 1935 op het gebruik der talen in gerechtszaken (Law of 15 June 1935 on the use of languages in judicial proceedings)

Articles 162, 185, 190, 190b, 194, 195, 199, 200, 202, 203, 203a, 204, 210 and 211 of the Wetboek van Strafvordering (Code of Criminal Procedure)

Articles 1, 2, 3 and 7 of the Strafwetboek (Criminal Code)

Succinct presentation of the facts and procedure in the main proceedings

- 1 Proceedings have been brought against Profit Europe NV ('the first respondent' or 'Profit Europe') and Gosselin Forwarding Services NV ('the second respondent' or 'Gosselin Forwarding Services'), as importer and declarant respectively, for the declaration under an incorrect tariff code and the designation of certain tube or pipe cast fittings manufactured from malleable cast iron, originating in the People's Republic of China, which are subject to anti-dumping duties, during the period from 19 November 2012 to 30 June 2015. At issue were 97 declarations, whereby anti-dumping duties in the amount of EUR 651 954.11 were evaded (offence 1).
- 2 In addition, proceedings have been brought against both respondents for the declaration of incorrect customs values on seven of those declarations, resulting in an underpayment of EUR 10 086 in import duties (offence 2).
- 3 By judgment of 28 March 2019, the Rechtbank van eerste aanleg Antwerpen (Court of First Instance, Antwerp, Belgium) acquitted the first respondent of offences 1 and 2 and acquitted the second respondent of offence 1, but found it guilty of offence 2. The tax claim was declared unfounded.
- 4 On 16 April 2019, the Federale Overheidsdienst Financiën (administratie douane en accijnzen) (Federal Public Service Finance (General Administration of Customs and Excise); 'FOD Financiën') lodged an appeal against the aforementioned judgment with the Hof van beroep Antwerpen (Court of Appeal, Antwerp, Belgium), the referring court.
- 5 On 18 June 2020, the referring court referred a question to the Court for a preliminary ruling under Article 267 TFEU for the first time. It wished to know whether threaded tube or pipe cast fittings, of spheroidal graphite cast iron, from China, were subject to anti-dumping duties under Regulation No 1071/2012 and Implementing Regulation No 430/2013. In its judgment of 15 July 2021, *Profit Europe and Gosselin Forwarding Services* (C-362/20, EU:C:2021:612), the Court held that those regulations must be interpreted as meaning 'that the provisional and definitive anti-dumping duties imposed by those regulations apply to threaded tube or pipe cast fittings of spheroidal graphite cast iron, originating in China'.

The essential arguments of the parties in the main proceedings

- 6 Profit Europe and Gosselin Forwarding Services submit that Regulation No 1071/2012 and Implementing Regulation No 430/2013 are invalid for violation of Articles 1, 5, 6 and 9 of Basic Regulation (EC) No 1225/2009.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 7 On 16 February 2012, the European Commission initiated an anti-dumping proceeding concerning imports into the European Union of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People’s Republic of China, Thailand and Indonesia (notice of initiation in OJ 2012 C 44, p. 33). This followed a complaint lodged on 3 January 2012 by the Defence Committee of Tube or Pipe Cast Fittings, of Malleable Cast Iron of the European Union. That committee is an interest group for malleable cast iron, not spheroidal graphite cast iron.
- 8 Recital 16 of Regulation No 1071/2012 (‘the provisional regulation’) states that ‘the product concerned as described in the Notice of Initiation is threaded tube or pipe cast fittings, of malleable cast iron ..., currently falling within CN code ex 7307 19 10’. According to recital 28, the authorities of one of the Member States pointed out the fact that, according to the explanatory notes to the Combined Nomenclature, the term ‘malleable cast iron’ includes spheroidal graphite cast iron (identical to ductile cast iron). It is possible that, during the investigation period, threaded fittings made from spheroidal graphite cast iron were sold. Since those fittings have the same basic physical characteristics as the threaded fittings of malleable cast iron under investigation, they are subject to the same proceeding and measures.
- 9 On the basis *inter alia* of those recitals, Article 1(1) of Regulation No 1071/2012 provides for the imposition of an anti-dumping duty on the product concerned. Subsequently, a definitive anti-dumping duty was imposed in Article 1(1) of Implementing Regulation No 430/2013.
- 10 The referring court points out that spheroidal graphite cast iron is referred to only in the aforementioned recital 28. Only malleable cast iron was referred to in the complaint and in the notice of initiation. The addition of spheroidal graphite cast iron can be traced back only to an *ex post* observation made by a Member State when the Commission had already conducted its investigation into the alleged dumping.
- 11 The Commission therefore did not investigate the fittings of spheroidal graphite cast iron. As the Court held in its judgment of 12 July 2018, *Profit Europe* (C-397/17 and C-398/17, EU:C:2018:564), spheroidal graphite cast iron and malleable iron differ in terms of their composition and method of production. Thus, the Commission did not have numerical evidence to investigate whether tube or pipe cast fittings of spheroidal graphite cast iron were being imported into the European Union at dumped prices, whether that dumping was causing injury

and whether it was in the Union's interest to subject those imports to anti-dumping measures.

- 12 In those circumstances, the question is whether, without that information, the Commission was able to determine, on the basis of an observation by which a single Member State indicated that, according to the explanatory notes to the Combined Nomenclature then in force, the expression malleable cast iron includes spheroidal graphite cast iron, that there was dumping and injury as regards the tube or pipe cast fittings of spheroidal graphite cast iron.
- 13 It is therefore not clear whether Regulation No 1071/2012 and Implementing Regulation No 430/2013 are indeed compatible with Regulation No 1225/2009 (the basic regulation), in which detailed provisions concerning the implementation of an anti-dumping investigation and the required information are set out. That is why the referring court asks, in its second question referred for a preliminary ruling in the present case, about the validity of those anti-dumping regulations. It refers, in that regard, to Article 5(2) and Article 5(10) of Regulation No 1225/2009. The first provision sets out the information that a complaint must contain, including a full description of the allegedly dumped product. The second provision describes the information that must be included in the notice of initiation. It is possible that Articles 1, 6 and 9 of Regulation No 1225/2009 have also been violated. The referring court mentions those articles in its question, but does not provide any further explanation in that regard.

WORKING DOCUMENT