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*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of re-opening of the anti-dumping and anti-subsidy investigations with regard to Commission Implementing Regulation (EU) 2018/1579 and Commission Implementing Regulation (EU) 2018/1690 imposing measures on certain pneumatic tyres from People's Republic of China following the judgment of 4 May 2022 in joined cases T-30/19 and T-72/19

(2022/C 263/06)

1. The judgments

In its judgments of 4 May 2022, in joined cases T-30/19 and T-72/19 ⁽¹⁾, China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) v Commission ('the judgment'), the General Court of the European Union ('the General Court') annulled Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 ⁽²⁾, and Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 ⁽³⁾ ('the regulations at issue').

CRIA and CCCMC raised several claims challenging the regulations at issue and the General Court ruled on two of those: (i) the Commission's failure to carry out a fair price comparison in the calculation of the price undercutting and of the injury margins, and (ii) certain complaints alleging, in essence, inconsistencies and breach of the rights of the defence regarding injury indicators and the weighting of data from the sample of Union producers.

Regarding the calculation of the undercutting margins, the General Court found that the Commission conducted an unfair comparison when it made an adjustment to the export price - the deduction of the related importer's SG&A and a notional profit - when sales were made through a related trader in the Union. The Court noted that Union producers also made some sales via related entities, and their sales prices were not adjusted. The General Court concluded that the calculation of the price undercutting carried out by the Commission in the contested regulations was vitiated by an error of law and a manifest error of assessment and that, as a result, that calculation infringed Article 3(2) and (3) of the basic anti-dumping

⁽¹⁾ ECLI:EU:T:2022:266.

⁽²⁾ OJ L 263, 22.10.2018, p. 3.

⁽³⁾ OJ L 283, 12.11.2018, p. 1.

regulation and Article 8(1) and (2) of the basic anti-subsidy regulation. Furthermore, the General Court found that the errors had an impact on the overall injury and causality findings as well as on the injury margins, and that it was not possible to determine precisely to what extent the definitive anti-dumping and countervailing duties at issue remained well founded in part. Therefore, the regulations imposing those duties upon the applicants were annulled.

In relation to the second point, the General Court found that the Commission did not carry out an objective examination (as required by Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation) because, by not revising the calculations of all microeconomic indicators, other than profitability, and not setting out the revised figures in the contested regulations, the Commission did not use all relevant data available to it. In addition, the General Court found a breach of the applicants' right of defence. In particular, the General Court disagreed that some information not disclosed to parties could be considered confidential, and it found that all the data at issue was 'linked to findings of fact in the contested regulation'. Therefore, they were 'essential facts and considerations' that should have been disclosed to parties.

In light of the above, the General Court annulled the anti-dumping regulation at issue insofar as the companies represented by CRIA and CCCMC (listed in the table below) were concerned.

COMPANY NAME	TARIC ADDITIONAL CODE
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375
Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Aeolus Tyre Co., Ltd	C877 ⁽⁴⁾
Shandong Huasheng Rubber Co., Ltd	C360
Chongqing Hankook Tire Co., Ltd	C334
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Jiangsu Hankook Tire Co., Ltd	C334
Shandong Linglong Tire Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Yuelong Rubber Co., Ltd	C875 ⁽⁵⁾
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341

⁽⁴⁾ In the regulations at issue, TARIC additional code C333 identifies the following exporting producers:
 Aeolus Tyre Co., Ltd;
 Aeolus Tyre (Taiyuan) Co., Ltd;
 Qingdao Yellow Sea Rubber Co., Ltd;
 Pirelli Tyre Co., Ltd
 A new TARIC additional code is assigned to Aeolus Tyre Co., Ltd for the registration.

⁽⁵⁾ In the regulations at issue, Weifang Yuelong Rubber Co. Ltd is linked to TARIC additional code C999.

COMPANY NAME	TARIC ADDITIONAL CODE
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ⁽⁶⁾
Hefei Wanli Tire Co., Ltd	C876
Giti Tire (Anhui) Company Ltd	C332
Giti Tire (Fujian) Company Ltd	C332
Giti Tire (Hualin) Company Ltd	C332
Giti Tire (Yinchuan) Company Ltd	C332
Qingdao GRT Rubber Co., Ltd	C350

In addition, the General Court annulled the anti-subsidy regulation at issue insofar as the companies represented by CRIA and CCCMC (listed in the table above), and Zhongce Rubber Group Co., Ltd (TARIC additional code C379), were concerned.

2. Consequences

Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Courts' judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping or anti-subsidy investigations, compliance with the General Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽⁷⁾.

According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ⁽⁸⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where for instance a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ⁽⁹⁾, except if the illegality occurred at the stage of initiation.

In the present case, the General Court annulled the anti-dumping and anti-subsidy Regulations at issue for common reasons. First, the Commission failed to make a fair comparison in the price undercutting analysis at the same level of trade when determining the existence of significant undercutting). This error also tainted the causation analysis. Second, the Commission failed to carry out an objective examination, in breach of Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation. Finally, the General Court found that some 'essential facts and considerations' were not properly disclosed to parties, breaching their rights of defence.

The remaining findings and conclusions in the regulations at issue which were not contested, or which were contested but not examined by the General Court remain valid and are not affected by this re-opening.

⁽⁶⁾ In the regulations at issue, TARIC additional code C371 identifies the following exporting producers:
Shanghai Huayi Group Corp. Ltd
Double Coin Group (Jiang Su) Tyre Co., Ltd
A new TARIC additional code is assigned to Double Coin Group (Jiang Su) Tyre Co. Ltd for the registration.

⁽⁷⁾ Joined cases 97, 193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28; and T-440/20, *Jindal Saw v Commission*, ECLI:EU:T:2022:318.

⁽⁸⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* [2011] II-0000, paragraph 83.

⁽⁹⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.

3. Re-opening procedure

In view of the above, the Commission decided to re-open the anti-dumping and anti-subsidy investigations on imports of certain pneumatic tyres from People's Republic of China that led to the adoption of the regulations at issue, insofar as they concern the companies listed in the judgement. The re-opening of the original investigations resumes them at the point at which the irregularity occurred.

The purpose of the re-opening of the original investigations is to fully address the errors identified by the General Court and to assess whether the application of the rules as clarified by the General Court warrants the re-imposition of the measures at the original or, if any, a revised level as from the date on which the regulations at issue originally entered into force.

Interested parties are hereby informed that future liability may emanate from the findings of this re-examination.

4. Written submissions

All interested parties, and in particular the ones listed in the judgment, are invited to make their views known, submit information and provide supporting evidence on issues pertaining to the re-opening of the investigation. Unless otherwise specified, this information and supporting evidence must reach the Commission within 20 days from the date of publication of this Notice in the *Official Journal of the European Union*.

5. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the re-opening of the investigation, the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with interested parties.

6. Instructions for making written submissions and sending correspondence

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing the Commission a) to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.

All written submissions, including the information requested in this Notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Sensitive' ⁽¹⁰⁾. Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment. Parties providing 'Sensitive' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. Those summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

Interested parties are invited to make all submissions and requests via TRON.tdi (<https://tron.trade.ec.europa.eu/tron/TDI>) including requests to be registered as interested parties, scanned powers of attorney and certification sheets. By using TRON.tdi or e-mail, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of DG Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided

⁽¹⁰⁾ A 'Sensitive' document is a document which is considered confidential pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by TRON.tdi or e-mail only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions via TRON.tdi and by e-mail, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate G
Office: CHAR 04/039
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: TRADE-AD640-AS641-REOPENING@ec.europa.eu

7. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the anti-dumping basic Regulation and Article 28 of the basic anti-subsidy Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation and/or Article 28 of the basic anti-subsidy Regulation, the result may be less favourable to that party than if it had cooperated.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. In this case the interested party should immediately contact the Commission.

8. Hearing Officer

Interested parties may request the intervention of the Hearing Officer for trade proceedings. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of interested parties and third parties as may arise during the proceeding.

The Hearing Officer may organise hearings and mediate between the interested party or parties and the Commission services to ensure that the interested parties' rights of defence are being fully exercised. A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in due course.

Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. The Hearing Officer will examine the reasons for requests for interventions, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's Internet: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾.

A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's Internet: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence>

10. Information to customs authorities

As from date of publication of this Notice in the *Official Journal of the European Union*, and pending the outcome of this re-examination, the final anti-dumping and countervailing duty liability on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling under CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10), originating in the People's Republic of China and produced by the companies listed in section 1 above is suspended ⁽²⁾.

Since the amount of final liability resulting from the re-examination is uncertain at this stage, the Commission requests national customs authorities to await the outcome of this investigation before deciding on any repayment claim concerning the anti-dumping and/or countervailing duties annulled by the General Court with respect to the those companies.

Consequently, the anti-dumping and countervailing duties paid respectively under Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 and Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163, currently falling under CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10), originating in the People's Republic of China and produced by the companies listed in section 1 above should not be repaid or remitted until the outcome of this investigation.

11. Disclosure

All interested parties which have been registered as such during the investigations leading to adoption of the regulations at issue will be informed of the essential facts and considerations on the basis of which the Commission intends to implement the abovementioned judgments in due time and will be given an opportunity to submit their views before a final decision is taken.

⁽¹⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽²⁾ Please note that, in relation to the exporting producer Zhongce Rubber Group Co., Ltd, this applies only to the countervailing duty liability at issue.