

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1175**of 7 July 2022****making 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 subject to registration following the re-opening of the investigation in order to implement the judgments of 4 May 2022 in joined cases T-30/19 and T-72/19, with regard to Implementing Regulation (EU) 2018/1579 and Implementing Regulation (EU) 2018/1690**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾ ('the basic anti-dumping Regulation'), and in particular Article 14 thereof,Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽²⁾ ('the basic anti-subsidy Regulation'), and in particular Article 24 thereof,

Whereas:

1. PROCEDURE**1.1. Adoption of measures**

- (1) On 4 May 2018, the Commission ('the Commission') adopted Regulation (EU) 2018/683 ⁽³⁾ imposing a provisional anti-dumping duty 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 ('the provisional Regulation').
- (2) On 18 October 2018, the Commission adopted Implementing Regulation (EU) 2018/1579 ⁽⁴⁾ 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.
- (3) On 9 November 2018, the Commission adopted Implementing Regulation (EU) 2018/1690 ⁽⁵⁾ 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 Implementing Regulation (EU) 2018/1579.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty 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 amending Implementing Regulation (EU) 2018/163 (OJ L 116, 7.5.2018, p. 8).

⁽⁴⁾ Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive antidumping 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 (OJ L 263, 22.10.2018, p. 3).

⁽⁵⁾ 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 antidumping 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 (OJ L 283, 12.11.2018, p. 1).

1.2. The Judgments of the General Court of the European Union

- (4) China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC') brought annulment actions before the General Court challenging the legality of the regulations at issue.
- (5) 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.
- (6) On 4 May 2022, the General Court issued its judgment in cases T-30/19 and T-72/19, annulling both Implementing Regulation (EU) 2018/1579 (anti-dumping) and Implementing Regulation (EU) 2018/1690 (anti-subsidy).
- (7) 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 margins 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 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.
- (8) 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 regulation, 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.
- (9) 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 Annex I) were concerned.
- (10) In addition, the General Court annulled the anti-subsidy regulation at issue insofar as the companies represented by CRIA and CCCMC (listed in Annex II) were concerned.

2. GROUND FOR REGISTRATION

- (11) The Commission analysed whether it is appropriate to make the imports of the product concerned subject to registration. In that context, the Commission took the following considerations into account.
- (12) 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 judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽⁶⁾.

⁽⁶⁾ 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 Case T-440/20 Jindal Saw v European Commission, EU:T:2022:318.

- (13) 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 ⁽⁷⁾. 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 ⁽⁸⁾, except if the illegality occurred at the stage of initiation.
- (14) As explained in the re-opening Notice, and since the illegality did not occur at the stage of initiation but at the stage of the investigation, the Commission decided to re-open the anti-dumping and anti-subsidy investigations in so far as they concern the companies listed in Section 1.2 above, and resumed them at the point at which the irregularity occurred.
- (15) According to the case-law of the Court of Justice, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be seen as contrary to the rule of non-retroactivity ⁽⁹⁾. The re-opening Notice informed interested parties, including importers, that any future liability, if warranted, would emanate from the findings of the re-examination.
- (16) Based on its new findings and the outcome of the re-opened investigations, which is unknown at this stage, the Commission may adopt regulations revising, where warranted, the applicable duty rates. Those revised rates, if any, will take effect as from the date on which the regulations at issue entered into force.
- (17) For this purpose, the Commission requested national customs authorities to await the outcome of the re-examination before deciding on any repayment claim concerning the anti-dumping and/or countervailing duties annulled by the General Court. Customs authorities are thus directed to put on hold any claims for reimbursements of the annulled duties until the outcome of the re-examination is published in the *Official Journal of the European Union*.
- (18) Furthermore, should the re-opening investigations lead to the re-imposition of measures, duties should also be collected for the period during which the re-opening investigations are carried out.
- (19) In this respect, the Commission notes that registration is a tool provided in Articles 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation so that measures may subsequently be applied against imports from the date of the registration ⁽¹⁰⁾. In the present case, the Commission deems it appropriate to register imports concerning the companies listed in Section 1.2 above with a view to facilitating the collection of anti-dumping and countervailing duties once their levels are revised in line with the General Court ruling ⁽¹¹⁾.
- (20) In line with the jurisprudence of the Court of Justice ⁽¹²⁾, contrary to registration taking place during the period before the adoption of provisional measures, the conditions of Article 10(4) of the basic anti-dumping Regulation and Article 16(4) of the basic anti-subsidy Regulation are not applicable to the case at hand. Indeed, the purpose of registration in the context of Court implementation is not to allow the possible retroactive collection of trade

⁽⁷⁾ 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.

⁽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.

⁽⁹⁾ Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, Judgment of the Court of 15 March 2018, paragraph 79 and Case-612/16 C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 5.

⁽¹⁰⁾ Case T-440/20 Jindal Saw v European Commission, EU:T:2022:318 paragraphs 154 – 159.

⁽¹¹⁾ Please note that, in relation to the exporting producer Zhongce Rubber Group Co., Ltd, this applies only to the countervailing duty liability at issue. The General Court did not annul the anti-dumping regulation vis-à-vis this company and, therefore, anti-dumping duties are still to be collected in relation to Zhongce Rubber Group Co.

⁽¹²⁾ Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 79 and Case C-612/16, C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 58.

defence measures as envisaged in those provisions. The purpose is rather to safeguard the effectiveness of the measures in place, without undue interruption from the date of entry into force of the regulations at issue until the re-imposition of the corrected duties, by ensuring that the collection of measures in the correct amount is possible in the future.

- (21) In light of the above considerations, the Commission considered that there were grounds for registration pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation.

3. REGISTRATION

- (22) On the basis of the above, imports of the product concerned produced by the companies listed in Section 1.2 above must be made subject to registration ⁽¹³⁾.
- (23) As indicated in the re-opening Notice, the final liability for payment of anti-dumping and countervailing duties, if any, from the date of entry into force of the anti-dumping and anti-subsidy Regulations at issue will emanate from the findings of the re-examination.
- (24) No duties higher than the duties established in the Regulations at issue may be collected for the period between the publication of the notice of re-opening and the date of entry into force of the results of the re-opening investigations,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities shall, pursuant to Article 14(5) of Regulation (EU) 2016/1036 take the appropriate steps to register the 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 Annex I to this Regulation.
2. The Customs authorities shall, pursuant to Article 24(5) of Regulation (EU) 2016/1037, take the appropriate steps to register the 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 Annex II to this Regulation.
3. Registration shall expire nine months after the date of entry into force of this Regulation.
4. The rates of the anti-dumping and countervailing duties that can be collected on certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling within CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10) and produced by the companies listed in Annex I and Annex II to this Regulation between the re-opening of the investigations and the date of entry into force of the results of the re-opening investigations shall not exceed those imposed by Implementing Regulations (EU) 2018/1579 and (EU) 2018/1690.
5. 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 and/or countervailing duties insofar as imports of the companies listed in Annex I and Annex II to this Regulation are concerned.

⁽¹³⁾ Please note that, in relation to the exporting producer Zhongce Rubber Group Co., Ltd, this applies only to the countervailing duty liability at issue. The General Court did not annul the anti-dumping regulation vis-à-vis this company and, therefore, anti-dumping duties are still to be collected in relation to Zhongce Rubber Group Co.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

List of companies affected by the annulment of Implementing Regulation (EU) 2018/1579 (anti-dumping):

Company name	Additional TARIC 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 ⁽¹⁾
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 ⁽²⁾
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ⁽³⁾
Hefei Wanli Tire Co., Ltd	C876 ⁽⁴⁾
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

⁽¹⁾ 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.

⁽²⁾ In the regulations at issue, Weifang Yuelong Rubber Co., Ltd is linked to TARIC additional code C999.

⁽³⁾ 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.

⁽⁴⁾ In the regulations at issue, Hefei Wanli Tire Co. Ltd is linked to TARIC additional code C999.

ANNEX II

List of companies affected by the annulment of Implementing Regulation (EU) 2018/1690 (anti-subsidy):

Company name	Additional TARIC 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 ⁽¹⁾
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 Jinyu Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Yuelong Rubber Co., Ltd	C875 ⁽²⁾
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ⁽³⁾
Hefei Wanli Tire Co., Ltd	C876 ⁽⁴⁾
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
Zhongce Rubber Group Co., Ltd	C379

⁽¹⁾ 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.

(²) In the regulations at issue, Weifang Yuelong Rubber Co., Ltd is linked to TARIC additional code C999.

(³) 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.

(⁴) In the regulations at issue, Hefei Wanli Tire Co., Ltd is linked to TARIC additional code C999.
