Reports of Cases

JUDGMENT OF THE GENERAL COURT (Tenth Chamber, Extended Composition)

4 May 2022 *

(Dumping – Subsidies – 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 China – Definitive anti-dumping duty – Definitive countervailing duty – Action for annulment – *Locus standi* – Direct concern – Individual concern – Regulatory act which does not entail implementing measures – Interest in bringing proceedings – Injury to the Union industry – Objective examination – Causal link – Calculation of the price undercutting and the injury margin – Fair comparison of prices – Constructed import prices – Prices charged to first independent buyers – Difference in the level of trade – Complex economic assessments – Intensity of judicial review – Injury indicators – Weighting of the data – Access to non-confidential investigation data – Rights of the defence)

In Cases T-30/19 and T-72/19,

China Rubber Industry Association (CRIA), established in Beijing (China),

China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC), established in Beijing,

represented by R. Antonini, B. Maniatis and E. Monard, lawyers,

applicants,

v

European Commission, represented by M. Gustafsson and G. Luengo, acting as Agents,

defendant,

supported by

Marangoni SpA, established in Rovereto (Italy), represented by C. Bouvarel, A. Coelho Dias and O. Prost, lawyers,

intervener,

APPLICATION, in Case T-30/19, based on Article 263 TFEU, seeking the partial annulment of 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

* Language of the case: English.

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 2018 L 263, p. 3) and, in Case T-72/19, based on Article 263 TFEU seeking the partial annulment of 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 Implementing Regulation 2018/1579 (OJ 2018 L 283, p. 1),

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of A. Kornezov, President, E. Buttigieg, K. Kowalik-Bańczyk (Rapporteur), G. Hesse and D. Petrlík, Judges,

Registrar: M. Zwozdziak-Carbonne, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 July 2021,

gives the following

Judgment [1]

I. Background to the dispute

1 On 11 August and 14 October 2017, following two complaints lodged by the Coalition against unfair tyre imports, the European Commission opened, respectively, an anti-dumping investigation and an anti-subsidy investigation, each of which concerned imports into the European Union of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 ('the product concerned') originating in the People's Republic of China. The investigations were opened on the basis, respectively, of Article 5 of 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 (OJ 2016 L 176, p. 21; 'the basic anti-dumping regulation') and Article 10 of 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 (OJ 2016 L 176, p. 55; 'the basic anti-subsidy regulation').

2 The investigation of dumping, subsidies and related injury covered the period from 1 July 2016 to 30 June 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

3 The interested parties – including the Chinese exporting producers to which the anti-dumping and anti-subsidy investigations relate and their representative associations – were invited to participate in those investigations. Several interested parties, including the applicants, China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals &

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

Chemicals Importers & Exporters (CCCMC), submitted written observations during the various stages of the anti-dumping and the anti-subsidy procedures. Certain interested parties, including the applicants, also participated in hearings organised by the Commission.

4 On 1 February 2018, the Commission adopted Implementing Regulation (EU) 2018/163 of 1 February 2018 making imports of new and retreaded tyres for buses or lorries originating in the People's Republic of China subject to registration (OJ 2018 L 30, p. 12), which entered into force on 3 February 2018. That regulation makes imports of the product concerned originating in China subject to registration.

5 On 4 May 2018, the Commission adopted Regulation (EU) 2018/683 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 2018/163 (OJ 2018 L 116, p. 8; 'the provisional anti-dumping regulation'). That regulation imposes a provisional anti-dumping duty on imports of the product concerned originating in China.

6 By contrast, the Commission decided not to impose provisional measures in the anti-subsidy procedure.

7 On 18 October 2018, the Commission adopted 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 2018/163 (OJ 2018 L 263, p. 3; 'the definitive anti-dumping regulation').

8 Article 1(1) of the definitive anti-dumping regulation imposes a definitive anti-dumping duty on imports of the product concerned originating in China. Under Article 1(2) of that regulation, in its original version, the amount of the anti-dumping duty was set at a level ranging, depending on the manufacturing company, from EUR 42.73 to EUR 61.76 per unit of the product concerned.

9 On 9 November 2018, the Commission adopted Implementing Regulation (EU) 2018/1690 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 the definitive anti-dumping regulation (OJ 2018 L 283, p. 1; 'the anti-subsidy regulation').

10 Article 1(1) of the anti-subsidy regulation imposes a definitive countervailing duty on imports of the product concerned. Under Article 1(2) of that regulation, the amount of the countervailing duty was set at a level ranging, depending on the manufacturing company, from EUR 3.75 to EUR 57.28 per unit of the product concerned.

11 Article 2(1) of the anti-subsidy regulation amends Article 1(2) and (3) of the definitive anti-dumping regulation. Following that amendment, the amount of the definitive anti-dumping duty was reduced to a level ranging, depending on the manufacturing company, from EUR 0 to EUR 38.98 per unit of product.

12 To summarise, in the definitive anti-dumping regulation, as amended, and in the anti-subsidy regulation (together, 'the contested regulations'), the applicable definitive anti-dumping and countervailing duties, expressed in EUR per unit of product concerned manufactured by the Chinese exporting producers, were ultimately set as follows:

Company	Definitive anti-dumping duty	Definitive countervailing duty
Xingyuan Tire Group Ltd, Co.; Guangrao Xinhongyuan Tyre Co., Ltd (together, 'the Xingyuan Group')	4.48	57.28
Giti Tire (Anhui) Company Ltd; Giti Tire (Fujian) Company Ltd; Giti Tire (Hualin) Company Ltd; Giti Tire (Yinchuan) Company, Ltd (together, 'the Giti Group')	36.89	11.07
Aeolus Tyre Co., Ltd; Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co., Ltd (together, 'the Aeolus Group')	0.37	49.07
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd (together, 'the Hankook Group')	38.98	3.75
Other companies cooperating in both the anti-subsidy and the anti-dumping investigations, listed in Annexes I to the contested regulations	21.62	27.69
Other companies cooperating in the anti-dumping investigation but not the anti-subsidy investigation, listed in Annexes II to the contested regulations	0	57.28
All other companies	4.48	57.28

II. Procedure and forms of order sought

…

23 In Case T-30/19, the applicants ultimately claim that the Court should:

– annul the definitive anti-dumping regulation 'in so far as it relates to [the applicants] and the members concerned [as listed in Annex R.2]';

– order the Commission and the intervener to pay the costs.

24 In Case T-72/19, the applicants ultimately claim that the Court should:

– annul the anti-subsidy regulation 'in so far as it relates to [the applicants] and the members concerned [listed in Annex R.2]';

– order the Commission and the intervener to pay the costs.

25 In each of the two cases, the Commission, supported, in essence, by the intervener, contends that the Court should:

– dismiss the action as inadmissible or unfounded;

– order the applicants to pay the costs.

III. Law

…

C. Admissibility

1. Admissibility of the actions

…

(b) The applicants' standing to bring proceedings

…

(2) Weifang Yuelong Rubber and Hefei Wanli Tire

52 The Commission argues, in essence, that Weifang Yuelong Rubber and Hefei Wanli Tire do not have standing to bring proceedings on the basis of the second and third limbs of the sentence in the fourth paragraph of Article 263 TFEU in so far as, first, the contested regulations are not of individual concern to them and, second, those regulations entail implementing measures with regard to those companies.

53 The applicants dispute the Commission's arguments.

54 In the present circumstances, it is appropriate to begin by examining whether the applicants have standing to bring proceedings pursuant to the third limb of the sentence in the fourth paragraph of Article 263 TFEU.

55 In that regard, it must be borne in mind that, in order for an action to be admissible pursuant to the third limb of the sentence in the fourth paragraph of Article 263 TFEU, three cumulative conditions must be fulfilled. The contested measure must (i) be of a regulatory nature, (ii) be of direct concern to the applicant and (iii) not entail implementing measures.

56 In the first place, regarding the concept of 'regulatory act' used in the third limb of the sentence in the fourth paragraph of Article 263 TFEU, it must be borne in mind that it refers, in principle, to acts of general application other than legislative acts (see, to that effect, judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P,

EU:C:2018:873, paragraphs 23 and 28 and the case-law cited). The distinction between legislative and non-legislative acts is based, according to the FEU Treaty, on the criterion of the procedure, legislative or not, which led to the adoption of the act (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 58, and order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 65).

57 In the present situation, since the contested regulations impose definitive anti-dumping and countervailing duties on imports of the products manufactured by all the companies other than those they identify by name, they are of general application. Furthermore, those regulations are not legislative acts, as they were not adopted following an ordinary or special legislative procedure. Accordingly, those regulations, in so far as they concern Weifang Yuelong Rubber and Hefei Wanli Tire, are regulatory acts within the meaning of the third limb of the sentence in the fourth paragraph of Article 263 TFEU.

58 In the second place, regarding the condition of direct concern, it must be stated that it requires that the contested measure must directly affect the legal situation of the individual and leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 42 and the case-law cited).

59 It is also apparent from case-law that measures imposing anti-dumping or countervailing duties are liable to be of direct concern to companies which are both producers and exporters of the product at issue and are alleged to be involved in dumping or subsidies, as their capacity as exporters is essential in that regard (see, to that effect, judgment of 28 February 2019, *Council* v *Growth Energy and Renewable Fuels Association*, C-465/16 P, EU:C:2019:155, paragraphs 73 and 74 and the case-law cited, and of 28 February 2019, *Council* v *Marquis Energy*, C-466/16 P, EU:C:2019:156, paragraphs 48 and 49 and the case-law cited).

60 In the present case, the contested regulations impose definitive anti-dumping and countervailing duties on imports of the products manufactured by 'all other companies' that are not identified by name in those regulations, such as Weifang Yuelong Rubber and Hefei Wanli Tire.

61 Moreover, the applicants mention that Weifang Yuelong Rubber and Hefei Wanli Tire are exporting producers. The Commission does not dispute that they are exporters. Indeed, it refers to them as exporting producers in its replies to the measures of organisation of procedure.

62 It follows that the contested regulations have a direct effect on the legal position of Weifang Yuelong Rubber and Hefei Wanli Tire by amending the trade regime applicable to imports of their products into the European Union.

63 Further, the contested regulations require the Member States' customs authorities to levy the duty imposed without leaving them any discretion (see, to that effect, judgment of 25 September 1997, *Shanghai Bicycle* v *Council*, T-170/94, EU:T:1997:134, paragraph 41 and the case-law cited).

64 In those circumstances, the contested regulations are of direct concern to Weifang Yuelong Rubber and Hefei Wanli Tire.

65 In the third place, regarding the absence of implementing measures, it must be borne in mind that the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the third limb of the sentence in the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (see judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 61 and the case-law cited).

66 In that regard, it is true that the customs system, as instituted by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; 'the Customs Code') and of which the contested regulations form part, provides that the receipt of duties fixed by the latter regulations is carried out, in all cases, on the basis of measures adopted by the national authorities (judgment of 10 December 2015, *Kyocera Mita Europe* v *Commission*, C-553/14 P, not published, EU:C:2015:805, paragraph 49). The notification of the customs debt to the debtor provided for in Article 102 of the Customs Code constitutes a measure for implementation of the contested regulations taken in regard to that debtor by the national authorities (see, to that effect, orders of 21 January 2014, *Bricmate* v *Council*, T-596/11, not published, EU:T:2014:53, paragraph 71, and of 14 September 2021, *Far Polymers and Others* v *Commission*, T-722/20, not published, EU:T:2021:598, paragraph 66 and the case-law cited).

67 However, it is common ground that anti-dumping and countervailing duties are paid by importers of the product concerned into the European Union, not by exporting producers (see, to that effect, judgment of 3 May 2018, *Distillerie Bonollo and Others* v *Council*, T-431/12, EU:T:2018:251, paragraph 62, and Opinion of Advocate General Tanchev in *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:298, point 88).

68 Therefore, since they are not debtors of the customs debt and thus not the addressees of the notification of that debt, exporting producers are not usually informed of that debt. It follows that, in contrast to importers, they cannot exercise effectively the legal remedies provided for by Article 44 of the Customs Code against decisions taken by national customs authorities. As a result, exporting producers would be denied effective judicial protection if they did not have a legal remedy before the EU judicature for the purpose of challenging the lawfulness of the contested regulations.

69 It follows that, although there are implementing measures in respect of the importers, in the form of measures adopted by the national authorities setting the amount of anti-dumping and countervailing duties for the purpose of recovering those duties (judgments of 18 October 2018, *Rotho Blaas*, C-207/17, EU:C:2018:840, paragraphs 16, 17, 38 and 39, and of 19 September 2019, *Trace Sport*, C-251/18, EU:C:2019:766, paragraphs 18 and 31), there are no implementing measures, by contrast, in respect of the exporting producers.

70 In those circumstances, it must be found that the contested regulations do not contain implementing measures in respect of Weifang Yuelong Rubber and Hefei Wanli Tire.

71 Consequently, the applicants, as representative associations, have standing to bring proceedings pursuant to the third limb of the sentence in the fourth paragraph of Article 263 TFEU against the definitive anti-dumping and countervailing duties imposed on the imports of the products manufactured by Weifang Yuelong Rubber and Hefei Wanli Tire.

…

D. Substance of the pleas

98 In each case, the applicants raise six pleas in law in support of their action.

99 The first five pleas allege, for the first ones, errors in the analysis of injury indicators; for the second ones, differences between new and retreaded tyres; for the third ones, errors in the determination of price effects and the level at which the injury to the Union industry would be eliminated; for the fourth ones, errors in the analysis of the causal link between imports of the product concerned and that injury; and, for the fifth ones, breach of the rights of the defence.

100 The sixth plea alleges, in Case T-30/19, the illegality of an adjustment for indirect taxes made in determining the dumping margin, and, in Case T-72/19, the infringement of the basic anti-dumping regulation.

…

1. The second complaint of the second part of the third pleas, alleging failure to carry out a fair price comparison in the calculation of the price undercutting

104 By the third pleas, the applicants submit that, in assessing the price effects of the dumped or subsidised imports and determining the injury elimination level, the Commission infringed, in Case T-30/19, Article 3(2)(a), Article 3(3) and Article 9(4) of the basic anti-dumping regulation, and, in Case T-72/19, Article 8(1)(a), Article 8(2) and Article 15(1) of the basic anti-subsidy regulation.

105 More specifically, in the context of the second part of the third pleas, the applicants submit, in essence, that the Commission relied incorrectly on constructed import prices in order to calculate the price undercutting.

106 By their first complaint, the applicants submit that, for the purpose of calculating the price undercutting, the use of constructed import prices, that is to say, constructed export prices pursuant to Article 2(9) of the basic anti-dumping regulation is, in principle, prohibited, since it is based on theoretical prices, not on actual prices 'seen and perceived' by customers within the European Union.

107 By their second complaint, the applicants observe that, in the present situation, the use of constructed export prices did not allow the Commission to carry out a fair comparison, that is, at the same level of trade, between the import price of the product concerned and the price of a like Union industry product.

108 According to the applicants, regarding the sales made by Union producers within the European Union through related selling entities, the Commission took into consideration the prices charged by those entities to the first independent buyers, including selling, general and administrative expenses ('SG&A expenses'), and the profits incurred by those entities. By contrast, regarding the sales made by Chinese exporting producers within the European Union through related selling entities, the applicants submit that the Commission refused to take into consideration the prices charged by those entities to the first independent buyers and relied on

constructed import prices by deducting, and thereby excluding, the SG&A expenses and profits of those entities. As a result, in the case of the same sales model, the Commission calculated differently the import price of the product concerned and the price of a like Union industry product and therefore did not carry out a fair comparison of those prices. In so doing, the Commission unduly increased the injury margin and vitiated the injury analysis and assessment of the causal link.

109 The Commission disputes the applicants' arguments. The intervener, for its part, does not make any observation regarding those arguments.

110 It is appropriate to begin by examining the second complaint of the second part of the third pleas.

(a) Preliminary observations

111 It should be borne in mind that, in accordance with Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation, the determination of the existence of injury to the Union industry is to be based on positive evidence and is to involve an objective examination (i) of the volume of the dumped or subsidised imports and the effect of those imports on prices in the Union market for like products and (ii) of the impact of those imports on that industry.

112 With regard more specifically to the price effect of the dumped or subsidised imports, Article 3(3) of the basic anti-dumping regulation and Article 8(2) of the basic anti-subsidy regulation provide for the obligation to give consideration to whether there has been, for those imports, significant price undercutting as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree.

113 The basic anti-dumping regulation and the basic anti-subsidy regulation do not contain any definition of the concept of price undercutting and do not lay down any method for the calculation of that concept (judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 175, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 238).

114 The calculation of the price undercutting of the imports in question is carried out, in accordance with Article 3(2) and (3) of the basic anti-dumping regulation and Article 8(1) and (2) of the basic anti-subsidy regulation, for the purposes of determining the existence of injury suffered by the Union industry by reason of those imports. It is used, more broadly, to assess that injury and to determine the injury margin, that is to say, the injury elimination level. The obligation to carry out an objective examination of the impact of the dumped or subsidised imports, as set out in Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation, requires a fair comparison to be made between the price of the product concerned and the price of the like product of the Union industry when sold in the territory of the European Union. In order to guarantee the fairness of that comparison, prices must be compared at the same level of trade. A comparison of prices obtained at different levels of trade, that is to say, one which does not include all the costs relating to the level of trade which must be taken into account, would necessarily be misleading in its results and would not allow a correct assessment to be made of the injury to the Union industry. Such a fair comparison is a prerequisite of the lawfulness of the calculation of the injury to that industry (judgments of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraphs 79

and 85; of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 176; and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 239).

115 Moreover, it must be borne in mind that the determination of the existence and amount of injury caused to the Union industry and the existence of a causal link requires an appraisal of complex economic situations in connection with which the EU institutions enjoy a broad discretion (see, to that effect, judgment of 10 September 2015, *Bricmate*, C-569/13, EU:C:2015:572, paragraph 46 and the case-law cited), so that, in accordance with the case-law recalled in paragraphs 102 and 103 above, the judicial review of such an appraisal must be limited. That broad discretion and that limited judicial review extend, in principle, also to the choice of the method for the calculation of the undercutting margin (see, to that effect and by analogy, judgment of 16 December 2011, *Dashiqiao Sanqiang Refractory Materials* v *Council*, T-423/09, EU:T:2011:764, paragraph 41).

(b) The method used by the Commission for the calculation of the price undercutting

116 In recital 149 of the provisional anti-dumping regulation and recital 658 of the anti-subsidy regulation, the Commission stated that it determined the price undercutting during the investigation period by comparing:

– the 'weighted average sales prices per product type and segment of the sampled Union producers charged to [independent buyers] on the Union market, adjusted to an ex-works level'; and

– the 'corresponding weighted average prices per product type and segment of the imports from the sampled Chinese exporting producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs'.

117 Regarding the first point of comparison, namely the prices charged by Union producers, the Commission set out, in recital 178 of the definitive anti-dumping regulation and recital 685 of the anti-subsidy regulation, the items deducted from the price to the first independent buyers in order to adjust them to an ex-works level. It explained that the costs deducted were: 'transport, insurance costs, handling, loading and ancillary, packing, credit, discounts and commissions'. It also stated that it did not, however, deduct 'indirect sales expenses, R & D, finance, marketing nor profit'.

118 Furthermore, in its written reply to the measures of organisation of procedure, the Commission confirmed that, in the case of marketing of the like product via selling entities related to Union producers, it had taken into consideration the resale prices charged to the first independent buyers by those related selling entities and had not deducted the SG&A expenses or the profits of those entities.

119 Regarding the second point of comparison, namely the prices charged by Chinese exporting producers, the Commission justified, in recitals 166 to 171 of the definitive anti-dumping regulation and recitals 673 to 678 of the anti-subsidy regulation, the use of constructed import prices where the Chinese exporting producer and the importer are related. It therefore constructed the import prices by using as a starting point the resale prices charged to the first independent buyers by the related importers.

120 More specifically, in recital 171 of the definitive anti-dumping regulation and recital 678 of the anti-subsidy regulation, the Commission explained that 'in order to allow for a fair comparison, a deduction of [SG&A expenses] and profit from the resale price to [independent buyers] made by the related importer [was] warranted in order to arrive [at] a reliable [Union frontier level] price'.

121 In summary, it is apparent from all the factors recalled in paragraphs 116 to 120 above that, first, regarding the prices charged by Union producers, the Commission based its calculation on the sale or resale prices charged to first independent buyers either directly by Union producers or through their related selling entities. In the latter situation, the like product prices taken into account in calculating the undercutting include SG&A expenses and the profits of the selling entities related to Union producers.

122 Second, regarding the prices of Chinese exporting producers, the Commission based its calculation on actual or constructed import prices at the Union frontier level. Those prices may be either real prices charged by Chinese exporting producers to first independent buyers, or theoretical sales prices charged to related importers that are constructed by the Commission. In the latter situation, the prices of the product concerned taken into consideration in the calculation of the undercutting do not include SG&A expenses or the profits of the selling entities related to Chinese exporting producers.

123 On the basis of the calculation method described in paragraphs 116 to 122 above, and as is apparent from recitals 160 and 162 of the definitive anti-dumping regulation and recitals 659 and 667 of the anti-subsidy regulation, the Commission found that the overall level of price undercutting was approximately 21%. It also found that the weighted average undercutting margin was between 18 and 24% in the three tiers of tyres defined by the contested regulations according to their quality (18 to 20% for tier 1 and 22 to 24% for tiers 2 and 3).

124 Moreover, regarding the sampled Chinese exporting producers, the Commission specified for the first time before the Court that the undercutting margins were, respectively, 30.0% for the products manufactured by the Xingyuan Group, 19.3% for those manufactured by the Giti Group, 22.2% for those manufactured by the Aeolus Group and 17.6% for those manufactured by the Hankook Group.

(c) The existence of an infringement of the obligation to carry out a fair price comparison

125 In the present case, having regard to the observations in paragraphs 116 to 122 above, it is clear that, when calculating the price undercutting, the Commission systematically took into consideration the sale prices charged to the first independent buyers irrespective of the distribution channels used, in relation to the Union industry but not in relation to the Chinese exporting producers.

126 Where Union producers or Chinese exporting producers sell their products via related selling entities, the Commission based its calculation on prices charged by selling entities related to Union producers and, by contrast, disregarded the prices charged by selling entities related to Chinese exporting producers in favour of import prices constructed at Union frontier level.

127 Therefore, as the applicants submit, in the case of the same sales model characterised by the use of related selling entities, the Commission treated differently the sales of Union producers and those of Chinese exporting producers by taking into consideration, for the former, prices of resale to first independent buyers and, for the latter, constructed import prices at Union frontier level.

128 In the case of such a distribution model, the Court has previously held that when the Commission used the prices of sales to first independent buyers for the like product of the Union industry, the requirement to compare the prices at the same level of trade required it also to compare them with the prices of sales to the first independent buyers (see, to that effect, judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 183, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 247).

129 It should be noted that the marketing of products carried out not directly by the producer, but through selling entities, implies the existence of costs and a profit margin specific to those entities, so that the prices charged by them to independent buyers are generally higher than the prices charged by producers in their direct sales to such buyers and thus cannot be assimilated to those latter prices (judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 184, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 248).

130 In the present case, the Commission included in the price of the like product the SG&A expenses and the profits of the selling entities related to Union producers, while excluding from the price of the product concerned the corresponding expenses and profits of the selling entities related to Chinese exporting producers. It follows that the Commission took into consideration for the like product a price which was inflated in comparison to that of the product concerned and therefore unfavourable to Chinese exporting producers, which carried out all or part of their sales in the European Union through selling entities (see, by analogy, judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 185, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 249).

131 In those circumstances, it must be found that, where sales are made through related selling entities, the calculation of price undercutting was manifestly not made by carrying out a fair comparison of prices at the same level of trade (see, by analogy, judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 188, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 252).

132 That finding is not called into question by the Commission's objections.

133 In the first place, the Commission contends, in essence, that the way in which exporting producers organise the sale of their products within the European Union, namely either directly to independent buyers or through related selling entities, and the type of customers to which they sell their products, namely either importers or end users, are irrelevant to the way in which price competition takes place on the market. It explains that, irrespective of the distribution channel used by exporting producers and the type of customers, the product concerned is in competition with the like product in the Union industry as soon as the border is crossed. Accordingly, the import prices at Union frontier level are still relevant and potentially comparable to the prices of Union industry sales made, at the same level of trade, either directly ('ex-works' prices) or through related selling entities ('ex-subsidiary' prices). According to the Commission, this approach allows direct sales (to independent buyers) and indirect sales (to related selling entities), by the same exporting producers or various exporting producers which have organised their distribution channels differently, to be treated identically.

134 In that regard, it must, as a preliminary matter, be recalled that the present complaint relates solely to whether, in the present situation, the Commission carried out a fair comparison between prices at the same level of trade. In order to examine that complaint, it must not necessarily be determined at what level of trade the price comparison could or had to be carried out, nor must a general assessment necessarily be made of the relevance of import prices at Union frontier level and of the lawfulness, in absolute terms, of the construction of some prices for the purpose of calculating the price undercutting. First, those questions relate to a separate complaint, namely the first complaint of the second part of the third pleas (see paragraph 106 above). Second, irrespective of the lawfulness and relevance of the level of trade chosen by the Commission as relates to exporting producers or as relates to Union producers, the comparison of the prices carried out by that institution must always be fair and, for that purpose, relate to prices which are all at the same level of trade.

135 That being said, the Commission contends, in essence, that, regarding the prices of Chinese exporting producers, import prices at Union frontier level are always relevant, whether they are actual prices charged to independent buyers or constructed prices deemed to be charged to related selling entities.

136 In that regard, the approach taken and defended by the Commission implies that the prices charged by Chinese exporting producers to independent buyers, on the one hand, and the prices charged by the same Chinese exporting producers to their related selling entities, on the other hand, are at the same level of trade. In addition and more generally, the implicit but necessary consequence of that approach is that the sales prices charged by those exporting producers to independent buyers, on the one hand, and the resale prices charged to such buyers by selling entities related to those exporting producers, on the other hand, are not at the same level of trade.

137 Should that approach be deemed appropriate, it would, admittedly, justify the use of constructed import prices where those exporting producers market all or part of their products through related selling entities.

138 However, the approach in question does not, in principle, justify the import prices charged by Chinese exporting producers, either actual prices in the event of sales to independent buyers or constructed prices in the event of sales to selling entities related to those exporting producers (which exclude the SG&A expenses and profits of those entities), being, as in the present situation, compared with resale prices charged to independent buyers by selling entities related to Union producers (which include the SG&A expenses and profits of those entities), in particular. The latter prices are usually situated at a later level of trade than the one common to the other prices taken into consideration, both as relates to exporting producers and as relates to Union producers.

139 Ultimately, the approach in question should logically have led the Commission also to take into consideration, as the sole level of trade as relates to Union producers, that of the sales of Union producers to all of their customers, whether they are independent buyers or selling entities related to those producers. This would have involved the Commission constructing the sale prices of Union producers where those producers sell their products to related selling entities and, accordingly, deducting and therefore excluding the SG&A expenses and profits of the selling entities related to Union producers.

140 The position could be different only if it were established that the selling entities related, respectively, to Chinese exporting producers and to Union producers played different economic roles.

141 However, in the present situation, the Commission merely suggests that the sale prices charged directly to the first independent buyers by Union producers ('ex-works' prices), on the one hand, and the resale prices charged to those buyers by the selling entities related to those producers ('ex-subsidiary' prices), on the other, are at the same level of trade. It does not explain how this could be the case when, at the same time, it considers, implicitly but necessarily, that the sales prices charged directly to the first independent buyers by Chinese exporting producers, on the one hand, and the resale prices charged to such buyers by selling entities related to those exporting producers, on the other hand, are not at the same level of trade (see paragraph 136 above).

142 In reply to a question put to it at the hearing, the Commission stated that Union producers and their related selling entities could be regarded as single economic entities, as those related selling entities carry out tasks usually attached to an internal trade department.

143 However, it must be observed that, in recital 105 of the definitive anti-dumping regulation and in its written observations, the Commission also stated, first, that the Chinese exporting producers and their related selling entities, in the case of the Hankook Group in particular, were single economic entities and, second, that the existence of such single economic entities did not prevent it from constructing import prices.

144 In those circumstances, the Commission does not establish or even claim that the selling entities related, respectively, to Union producers and to Chinese exporting producers play different economic roles, so that the SG&A expenses and profits of those related selling companies should be included in the price of the like product, but not in the price of the product concerned.

145 It follows that, even if it were to be deemed appropriate, the Commission's approach consisting in taking into consideration solely import prices, actual or constructed, at Union frontier level does not prove, in the present situation, that the comparison of those prices with the resale prices charged to first independent buyers by selling entities related to Union producers is fair.

146 In the second place, in order to justify use of constructed import prices at Union frontier level, the Commission relies on, first, Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ 2013 L 69, p. 11) (recitals 51 to 59 of that implementing regulation) and, second, the report of a special panel of the World Trade Organisation (WTO) on the dispute 'China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States' adopted on 25 September 2013 (WT/DS 427/R) (points 7.485 to 7.489 of the report).

147 In that regard, it is sufficient to note that, in both the implementing regulation and in the report referred to in paragraph 146 above, the constructed import prices at Union frontier level had been compared with sales prices charged by Union producers, not with resale prices charged by selling entities related to those producers. Thus, the examples cited by the Commission are irrelevant to the outcome of the present disputes.

148 In the third place, the Commission contends that the circumstances of the cases which resulted in the judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission* (T-301/16, EU:T:2019:234), and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission* (T-300/16, EU:T:2019:235), were highly specific, in so far as only two exporting producers had cooperated in the investigation and the 'vast majority' of the sales of the exporting producer in question were made through related selling entities. Accordingly, that approach is not automatically transposable to the present cases, in which the percentage of sales made through selling entities related to Chinese exporting producers is much lower.

149 In that regard, it must be noted, first, that there is an obligation to compare prices at the same level of trade irrespective of the number of cooperating exporting producers and, second, that it does not apply only where exporting producers make the 'vast majority' of their sales through related selling entities. It follows that the principles set out in the judgments cited in paragraphs 114 and 148 above remain fully applicable here.

150 Moreover, it must be observed that, according to the Commission's data, the percentage of sales of the sampled Chinese exporting producers through related selling entities is 0% for the Xingyuan Group, 34% for the Giti Group, 19% for the Aeolus Group and 98.6% for the Hankook Group. In addition, in its reply to a measure of organisation of procedure, the Commission specified that the percentage of sales made through related sales entities is 46.9% of the sample of Chinese exporting producers as a whole and 87% of the sample of Union producers as a whole. It follows that the proportion of sales made through related selling entities is high to very high as regards each of the two samples as a whole.

151 That situation does not appear to be fundamentally different to that of the cases referred to in paragraph 148 above. In those cases, the Court noted that, first, the exporting producer in question performed 'a majority' of its sales in the European Union through related selling entities and, second, that 'most' of the sales in the European Union by the Union industry had been carried out by selling entities related to the two Union producers which cooperated in the investigation (judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraphs 184 and 185, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 249).

152 In those circumstances, the Commission's objection summarised in paragraph 148 above must be rejected.

153 Accordingly, it is appropriate to endorse the claim that the Commission manifestly failed to carry out a fair comparison between prices at the same level of trade, at the very least where the product concerned and the like product are both sold through related selling entities (see paragraph 131 above).

154 Therefore, it must be considered that the calculation of the price undercutting of the product concerned carried out by the Commission in the contested regulations is vitiated by an error of law and a manifest error of assessment and that, as a result, that calculation infringes Article 3(2) and (3) of the basic anti-dumping regulation and Article 8(1) and (2) of the basic anti-subsidy regulation.

(d) The impact of the infringement of the obligation to carry out a fair price comparison

155 For the contested regulations to be annulled it is not sufficient that the Commission committed an error in the method for the calculation of the price undercutting margin. That error must also have had an impact on the determination of whether there is injury, the amount of that injury, or on the analysis of the causal link and thus on the content of the contested regulations themselves (see, to that effect and by analogy, judgments of 28 October 2004, *Shanghai Teraoka Electronic* v *Council*, T-35/01, EU:T:2004:317, paragraph 167, and of 25 October 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, T-192/08, EU:T:2011:619, paragraph 119).

156 Accordingly, it is necessary to examine, in the present situation, whether the error committed by the Commission had an impact on the content of the contested regulations. For the purposes of this examination, it is appropriate to distinguish the potential impact of that error on (i) the level of price undercutting and on the analysis of the injury and of the causal link and (ii) the injury margin and the amount of the definitive anti-dumping and countervailing duties at issue.

(1) The impact on the level of price undercutting and on the analysis of the injury and of the causal link

(i) The level of price undercutting

157 In its written submissions and at the hearing, the Commission contended that, assuming it to be established, the error for which it has been criticised did not have a material impact on the level of price undercutting. That undercutting remains significant for a vast majority of the imports.

158 In the first place, in its rejoinder, the Commission produced alternative calculations of the price undercutting for each of the four groups of sampled Chinese exporting producers. In those alternative calculations, it added the SG&A expenses and profits of the selling entities related to those exporting producers. It went on to compare each transaction with a more detailed product control number (PCN) code, now differentiating between four types of customers, namely (i) wholesalers, distributors, or traders; (ii) retailers; (iii) users and (iv) others (such as original equipment manufacturers, public transportation entities or the army). According to the Commission's alternative calculations, the price undercutting is in fact slightly higher than that found in the contested regulations for each of the four groups of Chinese exporting producers sampled. The price undercutting rises from 30.0 to 32.4% for the Xingyuan Group, from 19.3 to 23.1% for the Giti Group, from 22.2 to 22.4% for the Aeolus Group and from 17.6 to 19.2% for the Hankook Group.

159 In that connection, it must be stated that, in its alternative calculations, the Commission did not merely add the SG&A expenses and profits of the selling entities related to Chinese exporting producers. It also modified another parameter by using a more detailed PCN code which now also includes the type of customers. It follows that the Commission has modified the method for the calculation of price undercutting on which the contested regulations are based. Accordingly, if the Court were to take into consideration the Commission's alternative calculations, it would be substituting grounds.

160 It is appropriate to recall that, according to settled case-law, the Court cannot, in the context of an action for annulment, substitute its own reasoning for that of the author of the contested act (see judgment of 26 October 2016, *PT Musim Mas* v *Council*, C-468/15 P, EU:C:2016:803,

paragraph 64 and the case-law cited). It follows that the Commission cannot properly rely, in support of the contested regulations, on reasons which were not contained in those regulations and which it raised only after the action was brought (see, to that effect, judgment of 21 March 1996, *Farrugia* v *Commission*, T-230/94, EU:T:1996:40, paragraph 36 and the case-law cited).

161 Therefore, the alternative calculations related to price undercutting produced by the Commission in the rejoinder cannot be taken into consideration by the Court in order to assess the impact on price undercutting of the error committed.

162 In the second place, following a measure of organisation of procedure, the Commission produced new alternative calculations related to price undercutting, merely adding the SG&A expenses and profits of the selling entities related to Chinese exporting producers and not changing the PCN code used in the contested regulations. According to the Commission, after carrying out the new alternative calculations, the price undercutting remains stable at 30.0% for the Xingyuan Group, and decreases from 19.3 to 18.5% for the Giti Group, from 22.2 to 16.8% for the Aeolus Group and from 17.6 to 7.3% for the Hankook Group.

163 Should these calculations be accurate (which it is for the Commission to verify in the event that the actions are upheld), the new alternative calculations in question make it possible to assess the established price undercutting levels resulting from the method recommended by the applicants, consisting in the integration of the SG&A expenses and profits of the selling entities related to Chinese exporting producers and to Union producers. Such a method would have allowed a fair comparison of the prices where the product concerned and the like product are both sold through related selling entities.

164 It is clear from the new alternative calculations in question that, had the Commission followed the method recommended by the applicants, the price undercutting would have been lower in respect of three of the four groups of sampled Chinese exporting producers, namely the Giti, Aeolus and Hankook Groups. According to the data provided by the Commission regarding the relative weight of each of the groups of sampled Chinese exporting producers in the total export sales made by those groups (17% for the Xingyuan Group, 30% for the Giti Group, 17% for the Aeolus Group and 36% for the Hankook Group), the Giti, Aeolus and Hankook Groups represent together 83% of the total export sales of the sample. Furthermore, the difference is significant for at least two of those groups, namely the Aeolus Group and the Hankook Group which, together, represent 53% of those sales.

165 In those circumstances, taking into consideration the relative weight of the various groups of sampled Chinese exporting producers in particular, it is apparent that the overall level of price undercutting having regard to the sample as a whole would also have been significantly lower if the Commission had followed the method recommended by the applicants. Accordingly, the weighted average undercutting margin would have been markedly lower than the 21% stated in the contested regulations (paragraph 123 above).

166 The new alternative calculations in question therefore show that the error committed by the Commission was liable to have an impact on the price undercutting level and, in the present situation, did lead to a significant overestimation of the said price undercutting.

167 Admittedly, it is apparent that, as observed by the Commission, even after the new alternative calculations in question, the price undercutting margin remains unchanged for the Xingyuan Group and remains significant for the four groups of Chinese exporting producers.

168 However, it must be observed that the Commission found that there was serious injury to the Union industry and that there was a causal link, basing its finding on the overall undercutting level of 21% alone, not on the individual undercutting levels of the four sampled Chinese exporting producers (see paragraph 123 above). That overall undercutting level would have been significantly lower if the Commission had not committed the error for which it is criticised (see paragraph 165 above).

169 In the third place, the Commission relies on import statistics, namely Eurostat (Statistical Office of the European Union) statistics and Chinese statistics, as well as on Union production statistics, namely data provided by the sampled Union producers. It is apparent from those statistics that the differences between import prices and Union industry prices are very significant since, during the period considered, the average unit price of the Chinese imports was only between 59.08 and 64.13% of Union product prices.

170 Nonetheless, it is clear that, regarding imports originating in China, the Commission now relies on macroeconomic data, not statistics from the sampled Chinese exporting producers. Moreover, it relies, both in respect of imports and in respect of Union production, on raw, overall and non-weighted statistics, and does not take into account the types of products or the segmentation of the product concerned into three tiers. Accordingly, the various statistics relied on by the Commission cannot justify the amount of the undercutting margin, calculated from average sales prices weighted by segment and product type according to the method described in paragraphs 116 to 122 above.

171 It follows from the foregoing that the Commission's infringement of its obligation to carry out a fair price comparison had an impact, which is, moreover, significant, on the determination of the price undercutting level.

(ii) The analysis of the injury and of the causal link

172 The Commission contends that it is not established that the finding relating to the existence of injurious dumping or injurious subsidies would have been different if the error in the calculation of the price undercutting alleged by the applicants had not been committed.

173 In that regard, it is apparent from recitals 150, 217, 219 and 230 of the provisional anti-dumping regulation and recitals 258 and 265 of the definitive anti-dumping regulation, on the one hand, and from recitals 659, 830, 837, 839, 842 and 868 of the anti-subsidy regulation, on the other hand, that, in order to establish the existence of injury to the Union industry and of a causal link between the dumped or subsidised imports and that injury, the Commission based its reasoning on, inter alia, the price undercutting. It observed several times that that undercutting was 'significant' or 'substantial'. More specifically, in recital 219 of the provisional anti-dumping regulation and recital 839 of the anti-subsidy regulation, it stated that that substantial price undercutting was, together with the steep increase in imports, one of the two chief factors to be considered in assessing the effects of the dumped or subsidised imports.

174 It follows that the Commission gave decisive importance to the price undercutting as calculated in the contested regulations and that that undercutting resulted in the finding that the imports of the product concerned gave rise to the injury to the Union industry. That finding is not called into question by the Commission's claim that it also considered other factors.

175 It must be added that, in the context of the judicial review provided for in Article 263 TFEU, it is not for the Court to assess whether the Commission would also have found that there was injurious dumping or injurious subsidies on the basis of a level of price undercutting lower than the – markedly overestimated – level adopted in the contested regulations.

176 In those circumstances, it must be found that the error committed by the Commission in calculating the price undercutting had an impact on the Commission's finding that there was injury and a causal link.

(2) The impact on the injury margins and on the amount of the definitive anti-dumping and countervailing duties at issue

(i) The injury margins

177 In its written submissions and at the hearing, the Commission argued, in essence, that it was not established that the injury margins would have been lower if the import prices had included the SG&A expenses and the profits of the related selling entities.

178 In the first place, the Commission stresses the difference between price undercutting and underselling (the undercutting of the indicative prices or injury margin), which it claims was not addressed in the judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission* (T-301/16, EU:T:2019:234), and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission* (T-300/16, EU:T:2019:235).

179 In that connection, it must be noted that the choice of the level of trade and whether or not to include the SG&A expenses and profits of the selling entities related to Chinese exporting producers and to Union producers affect the level of import prices and the level of Union industry prices. As is clear from recitals 254 to 256 of the provisional anti-dumping regulation, the calculation of the injury margin consists in comparing the import prices used in the calculation of the price undercutting, on the one hand, with the non-injurious prices of the like product including a target profit reflecting normal market conditions, on the other hand. Accordingly, an error relating to the level of trade at which the price comparison is carried out is liable to have an impact on both the calculation of the price undercutting and the calculation of the injury margin.

180 Moreover, contrary to the Commission's claim, the Court did in fact address the question of injury margins in the judgments cited in paragraph 178 above, stating that it cannot be excluded that, if the price undercutting had been calculated correctly, the injury margin of the Union industry would have been established at a level below that of the dumping margin (judgments of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-301/16, EU:T:2019:234, paragraph 194, and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 258).

181 In the second place, in the rejoinder, the Commission recalculated the injury margins using the same methods as that used to recalculate the price undercutting (paragraph 158 above). According to those alternative calculations, the injury margins are in fact even higher than those used in the contested regulations for each of the four groups of Chinese exporting producers sampled. Following those alternative calculations, the injury margins rise from 55.1 to 60.8% for the Xingyuan Group, from 29.6 to 36.8% for the Giti Group, from 37.3 to 40.2% for the Aeolus Group and from 23.4 to 29.6% for the Hankook Group.

182 In that connection, it is sufficient to note that, for the same reasons as those set out in paragraphs 159 to 161 above in respect of the alternative calculations relating to the price undercutting, the alternative calculations relating to the injury margin produced by the Commission in the rejoinder cannot be taken into consideration without a substitution of grounds being made.

183 In the third place, following a measure of organisation of procedure, the Commission carried out new alternative calculations relating to the injury margin using the same method as that used for the new alternative calculations relating to the price undercutting, that is to say, without changing the PCN code used in the contested regulations (paragraph 162 above). Following those new alternative calculations, the injury margin remains stable at 55.1% for the Xingyuan Group and decreases from 29.6 to 28.5% for the Giti Group, from 37.3 to 29.8% for the Aeolus Group and from 23.4 to 10.3% for the Hankook Group.

184 Should these calculations be accurate (which it is for the Commission to verify in the event that the actions are upheld), the new alternative calculations in question make it possible to assess the injury margins which would have been found by the Commission if it had followed the method recommended by the applicants and had taken into account the SG&A expenses and profits of the selling entities related to Chinese exporting producers.

185 Here, it may be helpful to distinguish between three situations.

186 First, the injury margin would have been lower for three of the four groups of sampled Chinese exporting producers, namely the Giti, Aeolus and Hankook Groups. Furthermore, the difference found would have been significant for at least two of those groups, namely the Aeolus Group and the Hankook Group.

187 Second, taking into consideration the relative weight of the various groups of sampled Chinese exporting producers in particular, it seems that the injury margin in respect of the sample as a whole would also have been significantly lower if the Commission had followed the method recommended by the applicants. Accordingly, the weighted average injury margin would have been markedly lower than that of 32.39% used in the contested regulations. However, as is apparent from Table 11 of the definitive anti-dumping regulation and from the table in recital 933 of the anti-subsidy regulation, it was the latter injury margin which was used for the Chinese exporting producers listed in Annexes I and II to the contested regulations which had cooperated, as the case may be, in the anti-dumping investigation or the anti-subsidy investigation.

188 In those circumstances, the new alternative calculations in question show that the error committed by the Commission led it to overestimate the injury margins used for all of the exporting producers listed in paragraph 28 above which either belong to the Giti, Aeolus and Hankook Groups or are listed in Annexes I and II to the contested regulations. That finding is

not called into question by the fact, pointed out by the Commission, that, even after those new alternative calculations, the injury margin remains significant in respect of each of the groups of Chinese exporting producers.

189 Third, following the new alternative calculations in question, the injury margin remains unchanged at 55.1% for the Xingyuan Group. As is apparent from Table 11 of the definitive anti-dumping regulation and from the table in recital 933 of the anti-subsidy regulation, it was that injury margin – the highest found for the Chinese exporting producers sampled – which was applied in respect of the Chinese exporting producers which had not cooperated, as the case may be, in the anti-dumping investigation or the anti-subsidy investigation. In practice, that residual injury margin of 55.07% exactly is applicable to 'all other companies' that are not identified by name in the contested regulations, Weifang Yuelong Rubber and Hefei Wanli Tire in particular. It is also applicable to Zhongce Rubber Group in the anti-subsidy procedure alone, as that company is referred to in Annex II to the anti-subsidy regulation.

190 However, it must be observed that the new alternative calculations in question make it possible merely to offset the effects of the error consisting in the comparison of the import sales prices constructed at Union frontier level, on the one hand, with resale prices charged by selling entities related to Union producers, on the other hand. By contrast, they do not make it possible to offset the potential effects of the error consisting in the comparison of actual sales prices charged directly to Union customers by Chinese exporting producers, on the one hand, and the resale prices charged by selling entities related to Union producers, on the other hand. The latter comparison is also one of the constituent elements of the absence of a fair comparison of prices at the same level of trade (see paragraphs 138 and 145 above).

191 In those circumstances, it cannot be ruled out entirely that, if the Commission had carried out a fair comparison of prices at the same level of trade, it would have used, for the Xingyuan Group and, accordingly, for the three companies referred to in paragraph 189 above, an injury margin below that of 55.07% used in the contested regulations.

192 Therefore, it must be considered that the Commission's infringement of its obligation to carry out a fair price comparison had, or was liable to have, an impact on the determination of the injury margins for all of the Chinese exporting producers, whether or not they were identified in the contested regulations.

(ii) The amount of the definitive anti-dumping and countervailing duties at issue

193 In its written submissions, the Commission refers to the 'lesser-duty rule'. More specifically, in Case T-72/19, it contends that the applicants' reasoning is completely ineffective in so far as, under that rule, the level of the definitive countervailing duties was established by reference to the amount of the subsidies determined, not by reference to the injury margin.

194 In that connection, it should be borne in mind that, under the second paragraph of Article 9(4) of the basic anti-dumping regulation, the amount of a definitive anti-dumping duty must not exceed the margin of dumping established but it should be less than that margin if such lesser duty would be adequate to remove the injury to the Union industry. Similarly, the third paragraph of Article 15(1) of the basic anti-subsidy regulation states that the amount of a definitive countervailing duty must not exceed the total amount of countervailable subsidies established but it should be less than that amount of countervailable subsidies if such lesser duty would be adequate to remove the injury to the Union industry.

195 It follows that, when the Commission imposes both an anti-dumping duty and a countervailing duty, those duties cannot, alternatively or cumulatively, exceed the level of the injury margin (see, to that effect, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 217).

196 In the present case, it is apparent from Table 11 of the definitive anti-dumping regulation and the table in recital 933 of the anti-subsidy regulation that, for all the Chinese exporting producers, the injury margin (which ranges from 23.41 to 55.07%) was established at a level below the dumping margin (which varies between 56.8 and 106.7%) but above the subsidy margin (which varies between 2.06 and 51.08%). In those circumstances, and as follows from recital 929 of the anti-subsidy regulation, the Commission decided to impose (i) a definitive countervailing duty set at the level of the definitive amounts of the countervailable subsidies and (ii) a definitive anti-dumping duty making it possible to reach the level at which the injury is removed without exceeding that level. Nevertheless, no definitive anti-dumping duty was established in relation to the exporting producers listed in Annexes II to the contested regulations, such as Zhongce Rubber Group (paragraph 78 above), in respect of which the injury margin used is lower in the anti-dumping procedure (32.39%) than in the anti-subsidy procedure (55.07%).

197 First, it follows that, for Chinese exporting producers, whether or not they were identified in the contested regulations, save for those listed in Annexes II to those regulations, the cumulative rate of the definitive anti-dumping duty and the definitive countervailing duty is equal to the injury margin. As a result, under the 'lesser-duty rule' enshrined in the provisions recalled in paragraph 194 above and the case-law recalled in paragraph 195 above, any error affecting the calculation of the injury margin has an effect on the lawfulness of the total cumulative amount of the definitive anti-dumping and countervailing duties imposed on the products manufactured by those exporting producers. However, as noted in paragraph 192 above, the price comparison method used by the Commission distorted the calculation of the injury margin for all the Chinese exporting producers, whether or not they were identified in the contested regulations.

198 Second, regarding the exporting producers listed in Annexes II to the contested regulations, such as Zhongce Rubber Group, they have, admittedly, been subject to a definitive countervailing duty alone, the rate of which (51.08%) is lower than their injury margin in the anti-subsidy procedure (55.07%). However, having regard to, inter alia, the slight difference between the rate of that definitive countervailing duty and that injury margin, it cannot be ruled out that, if that injury margin had been calculated correctly, it would have been established at a lower level than that of the subsidy margin.

199 Therefore, the Court finds that the Commission's infringement of its obligation to carry out a fair price comparison had an impact on the total cumulative amount of the definitive anti-dumping and countervailing duties for all the Chinese exporting producers, whether or not they were identified in the contested regulations.

200 It follows from the foregoing that the error found in the calculation of the price undercutting had an impact on the Commission's analysis of the existence of injury and of a causal link and, moreover, on its calculations relating to the amount of the definitive anti-dumping and countervailing duties. It follows that that error is capable of affecting the lawfulness of the contested regulations.

201 Accordingly, the second complaint of the second part of the third pleas is well founded and must be upheld.

(e) The principle and scope of the annulment as a result of the infringement of the obligation to carry out a fair price comparison

202 The fact that the second complaint of the second part of the third pleas has been upheld is, in itself, such as to justify a ruling that the contested regulations must be annulled in so far as those regulations impose definitive anti-dumping and countervailing duties on the imports of the products manufactured by the exporting producers listed in paragraph 28 above, subject to the finding of inadmissibility in paragraph 82 above.

203 Nevertheless, the Commission claims that the Court should, in the event that the present complaint is upheld, annul the contested regulations only in so far as the definitive anti-dumping and countervailing duties at issue were established at a higher level than the injury margin resulting from the new alternative calculations it carried out.

204 In that regard, first, it must be noted that the error committed by the Commission in calculating the price undercutting had an impact on its analysis of the very existence of injury and of the causal link (see paragraphs 176 and 200 above), with the result that it must be penalised by the complete annulment of the definitive anti-dumping and countervailing duties at issue.

205 Second, it has not been established from the evidence in the file that the new alternative calculations carried out by the Commission are sufficient to offset completely the error committed (see paragraphs 190 and 191 above). It follows that those calculations do not make it possible to determine precisely to what extent the definitive anti-dumping and countervailing duties at issue remain well founded in part.

206 Third, the choice of the relevant level of trade to carry out a fair price comparison is a necessary preliminary step to calculate the price undercutting, the injury margin and the applicable anti-dumping duty or countervailing duty rate. It follows that the modification of the level of trade on which the Commission relied in order to carry out a fair price comparison amounts to a substitution of grounds and affects the very substance of the contested regulations. Accordingly, the definitive anti-dumping and countervailing duties at issue cannot be maintained, even in part, on the ground that they are well founded in respect of part of their amount (see, to that effect and by analogy, judgment of 15 September 2016, *Unitec Bio* v *Council*, T-111/14, EU:T:2016:505, paragraph 76).

207 Therefore, the fact that the second complaint of the second part of the third pleas has been upheld is such as to lead to the annulment of the definitive anti-dumping and countervailing duties at issue in their entirety, in so far as those duties are challenged by admissible claims (see paragraph 202 above).

…

E. Conclusion

278 It follows from all the foregoing that:

– first, the definitive anti-dumping regulation must be annulled, in so far as it imposes definitive anti-dumping duties on imports of products manufactured by the exporting producers listed in paragraph 28 above, with the exception of Zhongce Rubber Group;

– second, the anti-subsidy regulation must be annulled in so far as it imposes definitive countervailing duties on imports of products manufactured by the exporting producers listed in paragraph 28 above;

– third, the remainder of the heads of claim in the actions must be rejected.

…

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition)

hereby:

1. Joins Cases T-30/19 and T-72/19 for the purposes of judgment;

2. Annuls 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, in so far as it imposes definitive anti-dumping duties on imports of products manufactured by the following exporting producers:

– **Chaoyang Long March Tyre Co. Ltd;**

– **Triangle Tyre Co. Ltd;**

– **Shandong Wanda Boto Tyre Co. Ltd;**

– **Qingdao Doublestar Tire Industrial Co. Ltd;**

– **Ningxia Shenzhou Tire Co. Ltd;**

– **Guizhou Tyre Co. Ltd;**

– **Aeolus Tyre Co. Ltd;**

– **Shandong Huasheng Rubber Co. Ltd;**

– **Chongqing Hankook Tire Co. Ltd;**

– **Prinx Chengshan (Shandong) Tire Co. Ltd;**

– **Jiangsu Hankook Tire Co. Ltd;**

– **Shandong Linglong Tire Co. Ltd;**

– **Shandong Jinyu Tire Co., Ltd;**

– **Sailun Jinyu Group Co. Ltd;**

– **Shandong Kaixuan Rubber Co. Ltd;**

– **Weifang Yuelong Rubber Co. Ltd;**

– **Weifang Shunfuchang Rubber And Plastic Products Co. Ltd;**

– **Shandong Hengyu Science & Technology Co. Ltd;**

– **Jiangsu General Science Technology Co. Ltd;**

– **Double Coin Group (Jiang Su) Tyre Co. Ltd;**

– **Hefei Wanli Tire Co. Ltd;**

– **Giti Tire (Anhui) Company Ltd;**

– **Giti Tire (Fujian) Company Ltd;**

– **Giti Tire (Hualin) Company Ltd;**

– **Giti Tire (Yinchuan) Company Ltd;**

– **Qingdao GRT Rubber Co. Ltd;**

3. **Annuls 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 Implementing Regulation 2018/1579, in so far as it imposes definitive countervailing duties on imports of products manufactured by the exporting producers listed in paragraph 2 of the operative part of the present judgment, on the one hand, and by Zhongce Rubber Group Co., Ltd, on the other;**

4. **Rejects the remainder of the heads of claim in the actions;**

5. **Orders the European Commission to bear its own costs and to pay those incurred by China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC), with the exception of those relating to the interventions;**

6. Orders Marangoni SpA to bear its own costs and to pay those incurred by CRIA and CCCMC as a result of the interventions.

Kornezov Buttigieg Kowalik-Bańczyk

Hesse Petrlík

Delivered in open court in Luxembourg on 4 May 2022.

[Signatures]