



Reports of Cases

Joined Cases T-30/19 and T-72/19

(Publication in extract form)

China Rubber Industry Association (CRIA)
and
China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters
(CCCMC)
v
European Commission

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 EU 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)

1. *Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Individual concern – Criteria – Regulations imposing anti-dumping duties and countervailing duties – Action brought by an exporter of the product on which those duties have been imposed, referred to expressly in the regulations – Admissibility (Art. 263, fourth para., TFEU; Commission Regulation 2018/1579; Commission Regulation 2018/1690)*

(see paragraphs 44, 47, 49, 50, 74)

2. *Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Action by a trade association set up to protect and represent its members – Admissibility – Conditions (Art. 263, fourth para., TFEU)*

(see paragraph 45)

3. *Action for annulment – Natural or legal persons – Concept of ‘regulatory act’ within the meaning of the fourth paragraph of Article 263 TFEU – Any measure of general application other than legislative acts – Regulations imposing anti-dumping duties and countervailing duties – Included – Regulations entailing implementing measures with regard to importers but not with regard to exporting producers – Action brought by producers and exporters – Admissibility*
(Art. 263, fourth para., TFEU)

(see paragraphs 56, 57, 65-70)

4. *Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Whether directly concerned – Criteria – Regulations imposing anti-dumping duties and countervailing duties – Direct concern of the exporting producers of the product concerned*
(Art. 263, fourth para., TFEU)

(see paragraphs 58-64)

5. *Common commercial policy – Protection against dumping – Discretion of the institutions – Judicial review – Limits*

(see paragraphs 102, 103, 115)

6. *Common commercial policy – Protection against dumping – Injury – Establishing a causal link – Obligations of the institutions – Calculation of the price undercutting of the imports at issue – Obligation to make a fair comparison between the price of the product concerned and the price of the like product of the EU industry – Comparison of prices obtained at different levels of trade – Infringement – Consequence – Annulment of the regulations imposing anti-dumping duties and countervailing duties – Conditions*
(European Parliament and Council Regulation 2016/1036, Arts 3(2) and (3); European Parliament and Council Regulation 2016/1037, Art. 8(1) and (2))

(see paragraphs 114, 116-155, 164-171, 173-176, 179, 180, 184-192, 194-200)

7. *Common commercial policy – Protection against dumping – Investigation – Observance of the rights of the defence – Duty of the institutions to keep the undertakings concerned informed, to respect the confidentiality of information, and to reconcile those obligations – Breach of the obligation to provide information – Conditions – Refusal to provide information likely to be useful for the defence of the undertaking*
(European Parliament and Council Regulation 2016/1036, Arts 6(7), 19 and 20; European Parliament and Council Regulation 2016/1037, Arts 11(7), 20 and 30)

(see paragraphs 236-271)

Résumé

After receiving several complaints, the European Commission adopted, following an investigation, two implementing regulations¹ ('the contested regulations') imposing, respectively, a definitive anti-dumping duty and a definitive countervailing duty on imports into the European Union of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 ('the product concerned'), originating in the People's Republic of China.

The associations China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC; 'the applicants'), acting on behalf of some of their members, brought two actions for partial annulment of the contested regulations.

By upholding those actions, the General Court recognises, for the first time, that exporting producers which are not identified by name in anti-dumping and anti-subsidy regulations, annulment of which is sought, have standing to bring proceedings. In addition, it applies and clarifies the case-law relating to the Commission's obligation to carry out a fair comparison, when calculating undercutting of import prices subject to anti-dumping and anti-subsidy investigations, of prices at the same level of trade with a view to assessing whether injury has been suffered by the EU industry on account of those imports.

Findings of the Court

Regarding, first of all, the admissibility of the actions, the Court holds that the applicants, as representative associations, have standing to bring proceedings under the third limb of the sentence in the fourth paragraph of Article 263 TFEU against the definitive anti-dumping and countervailing duties imposed on imports of the products manufactured by the companies Weifang Yuelong Rubber and Hefei Wanli Tire ('the companies in question'), even though those companies are not identified by name in the contested regulations.

In that regard, the Court recalls that, for an action to be admissible under that provision, 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.

Regarding the contested regulations, the Court finds, in the first place, that they are regulatory acts in so far as they are of general application and were not adopted following an ordinary or special legislative procedure.

In the second place, those regulations are of direct concern to the companies in question as exporting producers of the product concerned, as they impose definitive anti-dumping and countervailing duties on imports of the products manufactured by 'all the companies other than' those they identify by name, including the companies in question, thereby affecting their legal position.

¹ 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 (OJ 2018 L 263, p. 3) and Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Implementing Regulation 2018/1579 (OJ 2018 L 283, p. 1).

In the third and last place, the Court confirms that those regulations do not entail implementing measures with regard to the companies in question. Although there are implementing measures with regard to the importers in the form of measures adopted by national authorities setting the amount of the anti-dumping and countervailing duties for the purpose of recovering those duties, there are no implementing measures, by contrast, in respect of the exporting producers.

Regarding, next, the substance of the case, the applicants had raised several pleas alleging various infringements of the basic anti-dumping regulation² and the basic anti-subsidy regulation,³ including a plea alleging errors committed by the Commission in determining the effects on prices and the elimination level of the injury suffered by the EU industry.

In that regard, the Court recalls that the obligation to carry out an objective examination of the existence of injury suffered by the EU industry due to dumped or subsidised imports, laid down in Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation, respectively, requires a fair comparison to be made, that is, at the same level of trade, between the price of the product concerned and the price of the like product of the EU industry when sold in the territory of the European Union.

However, it is apparent from the evidence adduced that, in the case of the same sales model characterised by the use of related selling entities, the Commission treated differently the sales of EU 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 sales prices at EU frontier level. In those circumstances and given that it has not been established that the selling entities related, respectively, to Chinese exporting producers and to EU producers play different economic roles, the Court finds that Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation have been infringed in so far as the Commission had calculated the undercutting by comparing prices of the product concerned at different levels of trade.

Last, the Court observes that the error found in the calculation of the price undercutting is capable of calling into question the lawfulness of the contested regulations. That error had an impact, first, on the Commission's analysis of the existence of injury and of a causal link and, second, on the calculations of the amount of the definitive anti-dumping and countervailing duties. Therefore, the Court finds that the contested regulations must be annulled to the extent that they concern the companies in question.

² 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).

³ 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).