COMMISSION IMPLEMENTING DECISION (EU) 2018/928

of 28 June 2018

terminating the re-opening of the investigation concerning the judgments in joined cases C-186/14 P and C-193/14 P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 266 thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] ('the basic Regulation'),

Whereas:

A. MEASURES IN FORCE AND COURT PROCEEDINGS

1. Definitive measures

(1) On 6 October 2009, following an anti-dumping investigation in accordance with Article 5 of the basic Regulation ('the original investigation'), the Council imposed a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron and steel ('SPT') originating in the People's Republic of China ('China' or 'the PRC'), by Council Regulation (EC) No 926/2009 [2] (the 'original measures' or 'original Regulation'). The measures took the form of the following ad valorem duty rates: 17,7 % (Shandong Luxing Steel Pipe Co. Ltd), 27,2 % (for other cooperating companies), and 39,2 % (all other companies).

(2) On 8 December 2015, following an expiry review investigation in accordance with Article 11(2) of the basic Regulation, by Commission Implementing Regulation (EU) 2015/2272 [3] ('the expiry review Regulation'), the Commission imposed definitive anti-dumping measures for a further five years on the basis of the existence of a likelihood of a recurrence of a threat of injury.

2. Judgments of the General Court and the Court of Justice

(3) The original measures were based on a finding of a threat of injury and were annulled by a judgment of the General Court of 29 January 2014 in case T-528/09 [4], insofar as it concerned the exporting producer Hubei Xinyegang Steel Co. Ltd ('Hubei').

(4) By judgment of 7 April 2016 in joined cases C-186/14 P and C-193/14 P [5], the Court of Justice ('ECJ') upheld the findings of the General Court, insofar as they concerned Hubei (together with the judgment of the General Court hereafter collectively referred to as 'the Hubei judgments').

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[1] OJ L 176, 30.6.2016, p. 21.

[2] Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron and steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

[3] Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 322, 8.12.2015, p. 21).

[4] Judgment of 29 January 2014, *Hubei Xinyegang Steel* v *Council*, T-528/09, ECLI:EU:T:2014:35.

[5] Judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others* v *Hubei*, joined cases C-186/14P and C-193/14P, ECLI:EU:C:2016:209.

(5) As a direct consequence of the Hubei judgments, imports into the Union of SPT originating in the PRC, as produced by Hubei, were deemed to have never been subject to anti-dumping measures. Hence, the anti-dumping duties collected on these imports had to be reimbursed in accordance with the applicable customs legislation.

(6) In June 2016, the Commission removed Hubei from the list of companies listed under the TARIC Additional Code A950 and listed it under a new TARIC Additional Code C129.

(7) On 9 September 2016, the Commission published a notice concerning the judgments in joined cases C-186/14 P and C-193/14 P (the 'Notice') ([1]), reopening the review investigation under Article 11(2) of the basic Regulation that lead to the adoption of the expiry review Regulation. The re-opening was limited in scope to determining whether, in light of the Hubei judgments, it would be appropriate to repeal the expiry review Regulation for Chinese exporting producers other than Hubei.

B. **PROCEDURE**

(8) The Commission officially informed the Union industry represented by the Defence Committee of the Seamless Steel Tube Industry of the European Union ('the Defence Committee'), the other known Union producers, the exporting producers in the PRC, importers/users which were known to be concerned, as well as the authorities of the PRC of the re-opening of the investigation.

(9) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the Notice.

(10) After the reopening of the investigation, the Chinese Iron and Steel Association ('CISA') and four Chinese exporting producers submitted comments. The Commission also received comments from the Defence Committee, representing the Union industry, within the time-limits specified in the Notice.

(11) Two hearings were held with the Defence Committee in the presence of the Hearing Officer in trade proceedings. The other parties did not request to be heard.

C. **COMMENTS OF INTERESTED PARTIES**

(12) As mentioned in recital 10, two groups of interested parties, namely the Defence Committee, on one side, and CISA and four Chinese exporting producers, on the other side, provided comments.

(13) First, the Defence Committee argued that the Commission should not have annulled the anti-dumping duty in place for Hubei since the Hubei judgments entailed only the annulment of the original measures and not those imposed by the expiry review Regulation. The Defence Committee further asserted that the scope of the Hubei judgments could not be extended to legal acts that were not challenged before the Union courts even if these acts are vitiated by the same legal errors.

(14) According to the jurisprudence of the European courts, the invalidity of an original regulation affects the validity of subsequent regulations alike ([2]). In this case, the invalidity of the original measure *vis-à-vis* Hubei also affected the validity of the expiry review Regulation, insofar as it concerned Hubei. As a result of the judgment, Hubei is deemed not to have ever been subject to the original measures, and, consequently, neither should it have been subject to the expiry review Regulation. Therefore, the Defence Committee's claim that Hubei should still be subject to anti-dumping duties as imposed by the expiry review Regulation was rejected.

([1]) Notice concerning the judgments in Joined cases C-186/14P and C-193/14P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, (OJ C 331, 9.9.2016, p. 4).

([2]) Judgment of the Court of Justice of 4 February 2016, *C & J Clark International Ltd and Puma SE*, Joined cases C-659/13 and C-34/14, ECLI:EU:C:2016:74, paragraph 79.

(15) Second, the Defence Committee claimed that the Commission had no legal basis to re-open the expiry review investigation or to repeal the measures imposed by the expiry review Regulation for all exporting producers in China. It also claimed that the Hubei judgments did not render the expiry review Regulation invalid since the Commission did not base its findings on the same grounds (declared illegal) in the original investigation.

(16) The Commission also rejected those arguments. It follows from case-law that, while a legal consequence of a finding that an act of the European Union is invalid is that the institution that adopted the act must take the necessary measures to remedy the illegality established — the obligation set out in Article 266 TFEU in the event of annulment being applicable by analogy — that institution does nevertheless have a wide discretion in its choice of measures, it being understood that such measures must be compatible with the operative part of the judgment in question and the grounds that constitute its essential basis ([1]). In this particular case, and by reference to the operative part and the grounds of the Hubei judgments, the Commission considered it appropriate to re-open the investigation in order to assess, after receiving comments from interested parties, whether duties in place on Chinese exporting producers other than Hubei should also be repealed.

(17) In any case, the Commission considers that it has the power to re-open investigations, even where it is not legally bound to do so.

(18) Third, the Defence Committee argued that by repealing the expiry review Regulation the Commission would infringe the principle of legal certainty since the expiry review Regulation became definitive due to the fact it had not been challenged before the Court.

(19) However, as already stated, the invalidity of an original regulation may affect the validity of subsequent regulations to the same extent. Thus, even if a subsequent regulation is not challenged before the European courts, it may nonetheless be deemed to be affected by the illegality found in the original regulation – on the basis of which it was enacted – such that it would be necessary to repeal the former to that extent. In this case, the Commission decided to assess the effects of the Hubei judgments cited in recitals 3 and 4 on the expiry review Regulation. In doing so, and in order to respect the rights of defence of interested parties, it requested comments on the effects of those judgments on the expiry review Regulation. Consequently, it is incorrect to argue, without further qualification, that the principle of legal certainty is violated whenever the Commission considers repealing measures which were found partially invalid by the European courts altogether, in particular if it appropriately respected the rights of defence of interested parties.

(20) Finally, the Defence Committee argued that the repeal of the measures would have a significant negative impact on the Union industry, as concluded in the expiry review investigation in terms of likelihood of recurrence of threat of injury, which should be taken into consideration.

(21) The Union industry's comments regarding the impact of the repeal of the measures on their situation are addressed in recitals 58 to 66.

(22) By contrast, CISA and the four Chinese companies claimed that the findings regarding the threat of injury affect Hubei and all other Chinese exporting producers equally. Therefore, according to them, repealing the measures only for Hubei and not for the rest of Chinese exporting producers would be in breach of the principle of non-discrimination.

(23) That argument could also not be accepted. The principle of non-discrimination prohibits, first, treating similar situations differently and, secondly, treating different situations in the same way unless there are objective reasons for such treatment ([2]). However, since other Chinese exporting producers did not challenge the original and/or the expiry review Regulation before the General Court, they find themselves in a different position than Hubei. This fact justifies a different treatment *vis-à-vis* the application of the expiry review Regulation. Therefore, a difference in treatment alone cannot be considered discriminatory as long as the parties complaining against this differential position are not in the same position as Hubei. In fact, in this particular case, the Commission is under no legal obligation to repeal the measures *vis-à-vis* the remaining exporting producers as only Hubei chose to contest the findings of that regulation before the European courts.

([1]) Judgment of the Court of Justice of 15 March 2018, *Deichmann*, Case C-256/16, ECLI:EU:C:2018:187, paragraph 87.
([2]) Judgment of the Court of Justice of 27 January 2005, *Europe Chemi-Con (Deutschland)* v *Council*, Case C-422/02 P, ECLI:EU:C:2005:56, paragraph 33.

(24) CISA and the four Chinese companies also submitted that the illegality found by the Court of Justice meant that the investigation leading to the original measures should have never been initiated since the premise for its initiation was the alleged threat of injury which the Court found to never have existed. Accordingly, CISA and the four Chinese companies claimed that the nature of the illegality found by the Court affected the legality of the entire anti-dumping measure and thus raised an issue of public interest which should prevail over the principle of legal certainty.

(25) CISA did not explain how maintaining the measures for the remaining exporting producers could be against the overall Union interest, in particular considering the findings during the expiry review investigation that concluded, inter alia, that they were no compelling reasons of Union interest against the maintenance of the anti-dumping measures on imports from China ([1]). Therefore, this claim was rejected. As regards the claim that the Court's findings vitiated the original Regulation to such an extent that the expiry review Regulation cannot remain in force, it is noted that the findings of the Court were limited to Hubei alone. Interested parties which did not exercise their right to challenge the original Regulation before the European courts could, therefore, not claim that a judgment of the European courts should apply to them in like measure.

(26) Finally, CISA and the four Chinese companies claimed that, if the expiry review Regulation was not repealed with *erga omnes* effects, this would be in breach of the principles of sound administration and good administrative behaviour.

(27) The annulment of an anti-dumping regulation affects only the parties that challenged it before the Court. This is also reflected in the common practice of the Commission when implementing judgments. In view of the errors found by the European Courts, and in line with its duty as an independent investigating authority, the Commission decided nonetheless to re-open the investigation in order to determine whether the measures resulting from the expiry review Regulation should be repealed *erga omnes*.

(28) For the reasons set out in recitals 65 and 66, this examination revealed that any such repeal would, in fact, not be appropriate. In any case, the Chinese companies concerned were not able to explain in what way the non-repeal vis-à-vis all Chinese exporting producers would bring about a violation of the principle of sound administration. Therefore, this claim, too, was rejected.

D. **APPROPRIATENESS OF THE REPEAL OF THE MEASURES IN LIGHT OF THE JUDGMENTS OF THE COURT OF JUSTICE AND THE GENERAL COURT**

(29) The Commission examined whether it would be appropriate to repeal the extended anti-dumping duties on imports of SPT from China pursuant to the expiry review Regulation, in so far as those duties were imposed on the Chinese exporting producers other than Hubei.

(30) First, the Commission examined, in light of the Hubei judgments, the effects of the Hubei judgments on the expiry review Regulation. Second, the Commission re-examined the development of the main injury indicators of the Union industry after the investigation period of the original investigation on the basis of the information collected at that time. Third, the Commission assessed whether the findings of the expiry review would still hold true without considering Hubei's exports. Fourth, the Commission considered the evidence collected during the expiry review investigation and the findings made on this basis, and determined the effect of a repeal of measures for the Union industry.

1. **The effects of the Hubei judgments on the expiry review Regulation**

(31) The General Court annulled the original Regulation imposing anti-dumping duties on imports of SPT from China 'to the extent that it imposes anti-dumping duties on exports of products produced by Hubei Xinyegang Steel Co. Ltd and collects provisional duties imposed on those exports' ([2]).

([1]) See Implementing Regulation (EU) 2015/2272, recitals 112 to 121.
([2]) Judgment of the General Court of 29 January 2014, Case T-528/09 *Hubei Xinyegang Steel* v *Council*, ECLI:EU:T:2014:35, paragraph 93.

(32) Thus, it is clear from the operative part of the judgment, which was explicitly confined to the duty imposed on Hubei, that the annulment was limited to the anti-dumping duties imposed on Hubei alone.

(33) As set out in recital 6, the Commission implemented the Hubei judgments in June 2016 by removing Hubei from the list of companies listed under the TARIC Additional Code A950, and listing it under a new TARIC Additional Code C129.

(34) However, contrary to the claims of certain interested parties, the annulment of the original Regulation did not affect the validity of that regulation vis-à-vis Chinese exporting producers other than Hubei.

(35) This arises from the fact that anti-dumping regulations contain both measures of general application in that they impose an anti-dumping duty on the imports of the products concerned with a particular provenance on a category of addressees determined in a general and abstract manner, and bundles of individual decisions affecting those addressed by the regulation ([1]). The case-law, accordingly, recognises the possibility of a partial annulment of those regulations. In such situations, annulment in favour of only those addressees concerned by a judgment leaves in place the contested regulation for all parties which did not, in fact, challenge it.

(36) It is for those reasons that the Notice specifically spells out that the re-opening would be 'limited in scope to the repeal of the extended anti-dumping duties … insofar as those duties are imposed on the Chinese exporting producers named in [the expiry review Regulation].' ([2])

(37) Accordingly, the purpose of the re-opening was, not to examine the validity of the original Regulation for Chinese exporting producers other than Hubei, but rather to assess the impact of the Hubei judgments on the expiry review Regulation and the measures still in place on those other exporting producers.

(38) Those effects are limited as the other Chinese exporting producers did not challenge the original Regulation. It follows that, in this case, the expiry review Regulation remains valid in so far as it applies to Chinese exporting producers other than Hubei.

2. **Development of the main injury indicators after the investigation period of the original investigation**

(39) The Hubei judgments annulled the definitive duties insofar as Hubei was concerned on the basis that two factors laid down in Article 3(9) of the basic Regulation to determine a threat of injury (i.e. Chinese import volume and import prices) showed inconsistencies and that one factor (Chinese capacity and risk of re-direction of exports to the Union) was incomplete with respect of the relevant evidence to be taken into account. Regarding the fourth factor laid down in Article 3(9) of the basic Regulation (inventories of the Union industry), the General Court stated that this factor was considered irrelevant by the Commission.

(40) The Commission considered it appropriate to look into more detail into the development of other main injury indicators in the period after the investigation period of the original investigation. The investigation period of the original investigation covered the period from 1 July 2007 to 30 June 2008 ('IP'). After the imposition of provisional measures in the original investigation, additional information was collected for the period covering 1 July 2008 to March 2009 ('Post IP').

(41) The analysis was done with the purpose of determining whether the Union industry's situation showed a deterioration which could point to an injurious situation after the investigation period. In this regard, and for comparison purposes, the Commission also took into consideration the trends during the period relevant for the assessment of injury during the original investigation, i.e. the period from 2005 up to the end of the investigation period of that investigation (the 'period considered').

([1]) See judgment of the Court of Justice of 16 April 2015, Case C-143/14 *TMK Europe* EU:C:2015:236, paragraph 19; Opinion of Advocate General Sharpston of 21 May 2015, Case C-687/13 *Fliesen-Zentrum Deutschland*, EU:C:2015:349, paragraph 40; and Opinion of Advocate General Warner of 14 February 1979, Case 113/77 *NTN* v *Council* (EU:C:1979:39), p. 1212, at p. 1243 by analogy, Case C-200/13 P *Council* v *Bank Saderat Iran and Commission* EU:C:2016:284, at paragraph 119 and the case-law cited.

([2]) Notice, page 4.

(42) The indicators in question were Union consumption, production, production capacity, and capacity utilisation, sales volume and market share of the Union industry as well as sales prices of the Union industry and its profitability.

(i) *Consumption*

(43) While Union consumption increased during the period considered by 24 %, it decreased sharply afterwards from 3 172 866 tons in the investigation period (IP) to 1 720 968 tons in the period thereafter. As explained in recital 51 of the original Regulation, the Union consumption contracted by almost 30 % in the post IP period ([1]).

Table 1

Union consumption

	2005	2006	2007	IP	Post-IP
Union consumption (tons)	2 565 285	2 706 560	3 150 729	3 172 866	1 720 968

Source: the original Regulation.

(ii) *Production, production capacity and capacity utilisation*

(44) As shown in Table 2, production volume of the Union industry also showed a significant decrease in the post-IP, reflecting the contraction in consumption. Likewise, capacity decreased after the investigation period. However, despite this decrease in capacity, due to the more significant decrease of production volume, the capacity utilisation dropped to a level of 77 % (as compared to 90 % during the IP). In recital 53 of the original Regulation, it is noted that the capacity utilisation was only 60 % in March 2009.

Table 2

Production, production capacity and capacity utilisation

	2005	2006	2007	IP	Post-IP
Production (tons)	2 022 596	2 197 964	2 213 956	2 158 096	1 477 198
Capacity (tons)	2 451 187	2 469 365	2 446 462	2 398 283	1 889 180
Capacity utilisation	83 %	89 %	90 %	90 %	78 %
Index (2005 = 100)	*100*	*108*	*110*	*109*	*88*

Source: the original Regulation.

(iii) *Sales volume and market share*

(45) As shown in table 3, in line with the decrease in consumption sales volume of the Union industry on the Union market also dropped substantially, so that market share remained stable.

([1]) As also mentioned in the original Regulation in footnote 7, the comparison was carried out between monthly average volumes.

(46) To be noted, as shown in recital 52 of the original Regulation, Chinese exports managed to increase their import volume and keep stable market share in the Union during the same period and in a situation of a strongly declining market.

Table 3

Sales volume and market share

	2005	2006	2007	IP	Post-IP
Sales volume (tons)	1 766 197	1 907 126	2 061 033	2 017 525	1 093 175
Market share	68,8 %	70,5 %	65,4 %	63,6 %	63,5 %

Source: the original Regulation.

(iv) *Sales price and profitability*

(47) Although sales prices increased during the period considered and continued to increase after that, the profitability dropped significantly. Profitability already slightly decreased in the IP and reached very low levels thereafter. During the original investigation it was established that profitability even reached negative levels in the first quarter of 2009 (– 0,8 %) ([1]).

(48) This deterioration of profitability can at least partly be attributed to the significant loss of production and sales volume that had an impact on the capacity utilisation which decreased as well, and which had a negative impact on the average cost of production.

Table 4

Sales price, profitability

	2005	2006	2007	IP	Post-IP
Sales price (Euro/ton)	983	1 047	1 188	1 192	1 415
Profitability	12,1 %	17,5 %	17,9 %	15,4 %	3,5 %

Source: the original Regulation.

(49) In summary, all main injury indicators showed a significant downturn after the investigation period. Production and sales volume dropped significantly with a negative impact on capacity utilisation. Market share remained stable, but which was due to the parallel contraction of the Union market. The financial situation of the Union industry also deteriorated with a dramatic drop in profitability after the investigation period, resulting even in losses at the end of the first quarter in 2009. The increase in sales prices could not alter this downward development.

(50) Therefore, it can be concluded that the Union injury was suffering injury in the period after the IP of the original investigation.

3. **The findings of the expiry review in the absence of Hubei's exports**

(51) The Commission also assessed whether the findings of the expiry review would still hold true without Hubei's exports to the Union in the assessment of the likelihood of a recurrence of a threat of injury.

([1]) Recital 54 of the original Regulation.

(52) In this regard, it is recalled that, because Hubei did not cooperate during the expiry review investigation, the Commission did not receive any data concerning its imports during that period. Specific import data for Hubei's imports was also not available in the Article 14(6) database. Imports from Hubei were made under the TARIC additional code A950, which applied to all companies that cooperated during the original investigation but did not receive an individual duty rate. Thus, only the aggregated import data for 16 Chinese exporting producers (including Hubei), all of which were attributed the TARIC additional code A950, was available to the Commission.

(53) The Commission could, therefore, not make use of this aggregated import data to distil therefrom Hubei's exports alone. Accordingly, due to the non-cooperation and in the absence of statistics on Hubei's imports, the Commission estimated Hubei's import volume during the review investigation period on the basis of its import volume during the original investigation. This information was reported by Hubei in its reply to the questionnaire in the original investigation and was verified by the Commission during the on-spot verification visit that occurred at Hubei's premises in October 2008.

(54) To recall, during the original investigation period, imports from Hubei accounted for around [8-13 %] of all Chinese imports. The Commission, accordingly, assumed that this percentage of the total of Chinese imports remained unchanged in the absence of cooperation from Hubei during the expiry review investigation.

(55) According to the expiry review Regulation, total imports from China into the Union during the review investigation period were 67 977 tonnes. On this basis, and transposing that same percentage of Hubei in the total imports from the PRC (that is to say [8-13 %] of total imports) also to the findings in the expiry review Regulation, Hubei's imports were calculated to be [6 000 to 7 500] tonnes out of the 67 977 tonnes recorded in the expiry review Regulation.

(56) Given that around [87-92 %] of imports were calculated to be from Chinese exporting producers other than Hubei, and given that Article 3(9) of the basic Regulation requires a global assessment of these indicators, the Commission concluded that the exclusion of Hubei's imports from the total Chinese imports during the review investigation period would not call into question the qualitative assessment of the Commission contained in the expiry review Regulation.

(57) The findings set out in recitals 105 to 109 of the expiry review Regulation were, therefore, confirmed and can be retained without changes thereto, even in the absence of imports deriving from Hubei.

4. **Impact of a repeal of measures on the Union industry**

(58) The Commission, subsequently, assessed the impact of the repeal of the measures against China *erga omnes* on the situation of the Union industry.

(59) Here, it is recalled that the relevant economic data were collected during the expiry review investigation referred to in recital 2. These findings were based on facts and evidence collected during a more recent period (July 2013 to June 2014), while the findings in the original investigation were based on evidence collected for the period July 2007 to June 2008.

(60) The expiry review investigation clearly indicated the following: should measures be repealed, the industry would be faced with a significant increase of imports from China made at dumped prices. It was established that import volumes, given the low prices, could reach a similar level to the one found during the original investigation. In parallel, the investigation found a decrease of Union consumption of 19 % during the period considered. Indeed, it was established that the expected price level of Chinese imports without anti-dumping duty would be likely to undercut the Union industry prices by around 40 %. The Union industry would not be able to cope with an increase of such low-priced imports. Customers would indeed be able to switch their short-term orders easily from the Union producers to the Chinese exporting producers. This would lead to a significant increase in market share of Chinese imports from 6,3 % during the review investigation period expiry review investigation up to 30 %. Given the substantial increase of Chinese production capacity since the original investigation (60 %), Chinese imports would imminently flood the Union market and gain substantial market share at the expense of the Union industry.

(61) Moreover, the expiry review investigation revealed significant spare capacity in China (more than the entire Union consumption) that would be likely oriented to the Union market which remained very attractive for Chinese exports despite the measures in force. Indeed, spare capacity was estimated at 2 million tonnes during the review investigation period which exceeded the total Union consumption during the same period. Therefore, China would be able to increase significantly its export volumes to the Union. This conclusion is supported by the fact that a number of other important export markets of China (such as Canada, USA, Colombia, Mexico and Brazil) had trade defence measures in please against Chinese imports of the product concerned and in a number of other countries trade defence investigations were on-going. It was also established that, due to the downturn of the Chinese economy in combination with the high overcapacity, a strong pressure was exerted on the Chinese producers to produce at high capacity utilisation rates.

(62) Regarding the likely price evolution of the Chinese imports, Chinese import prices were already substantially below the Union industry sales prices during the review investigation period, despite the dumping measures in force. Without anti-dumping duties, Chinese import prices were expected to decrease even further and undercutting margins from around 40 % would be expected. This price pressure would likely be accentuated by the likely imminent surge of Chinese import volumes.

(63) The expiry review investigation confirmed that the level of inventories was not of any particular significance for the analysis because the Union producers mainly produced on the basis of short-term orders from customers and the inventories therefore only represented an insignificant percentage of the Union producers' production.

(64) The expiry review also showed that the negative effect on the Union industry would manifest in a shift of customers in the Union to the low-priced Chinese imports. As Union capacity was not expected to increase, this would also lead to a significant gain in market share of Chinese imports to the detriment of the Union industry. This would result in a lower capacity utilisation rate for the Union industry, thus higher unit costs. At the same time, the low-priced imports would exert a price pressure on the Union market which would not allow Union producers to raise prices, thus leading to a decrease in profitability.

(65) Thus, the expiry review concluded that the repeal of the measures would likely to lead to a recurrence of threat of injury. That conclusion was not called into question by any of the interested parties, nor was the Commission able to retrieve evidence that would call those findings into question.

(66) Therefore, and considering that even when disregarding import volumes from Hubei, the findings of the expiry review would not have been different, the Commission concluded that, should the measures be repealed, the economic impact on the Union industry would be severe.

E. **CONCLUSION AND DISCLOSURE**

(67) Consequently, on balance and with particular consideration for the significant negative effects for the Union industry should measures be repealed, the Commission considered that it would be inappropriate to repeal the measures in force against other Chinese exporting producers other than Hubei.

(68) On 28 July 2017 the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it decided not to repeal the anti-dumping measures in force for Chinese exporting producers other than Hubei and invited them to comment on these conclusions within a specific time limit.

F. **COMMENTS OF INTERESTED PARTIES AFTER DISCLOSURE**

(69) Following disclosure, the Commission received substantive comments on behalf of the CISA and four exporting producers of SPT.

(70) Those parties submitted that the question to be considered was more whether the repeal of the anti-dumping measures in force would be lawful and consistent with the principle of good administration rather than whether the repeal was appropriate.

(71) To support that claim the parties argued that, in the Hubei judgments, the Court of Justice and the General Court found that anti-dumping measures were adopted without a proper finding of injury within the meaning of Article 3 of the basic Regulation (and Article 3 of the WTO Anti-dumping Agreement) and that therefore the original measures were legally flawed in their entirety. By referring to the judgment of the Court of Justice in *Clark and Puma* ([1]), the parties argued that an illegality found in an original regulation is deemed to affect the legality of the subsequent prolonging regulation, so that it should be concluded that the entirety of the original Regulation on SPT was vitiated by the same error. It follows that by not repealing the measures vis-à-vis Chinese exporting producers other than Hubei, the Commission would act inconsistently with Articles 1, 3(1) and 3(9) of the basic Regulation and with Article VI GATT 1994, as well as Articles 1 and 18.1 of the WTO Anti-dumping Agreement.

(72) The same parties further argued that it would also not be in line with the principle of good administration to maintain the anti-dumping measures.

(73) Those parties moreover clarified that they did not request to repeal the measures with *erga omnes* effect by extension of the effects of the Hubei judgments. Rather, they argued that their request to repeal the measures was based on Articles 1, 3(1) and 3(9) of the basic Regulation and with Article VI GATT 1994, and Articles 1 and 18.1 of the WTO Anti-dumping Agreement as mentioned in recital 71. Such repeal would have an *ex post* effect, which would be legally distinct from the extension of the effects of the Hubei judgments which would have a retroactive effect.

(74) Finally, those parties noted that any negative effects of the repeal of the measures on the situation of the Union industry should be addressed in a new anti-dumping investigation to be initiated in accordance with Article 5 of the basic Regulation.

(75) The Commission rejected those arguments. Regarding the claim that maintaining the measures in force with regard to the Chinese exporting producers of SPT other than Hubei would be inconsistent with Articles 1, 3(1) and 3(9) of the basic Regulation and with Article VI GATT 1994, as well as Articles 1 and 18.1 of the WTO Anti-dumping Agreement, and as mentioned in recital 23 the Commission recalled that the Hubei judgments limited the annulment of the original regulation to the anti-dumping duties imposed on Hubei alone. As also explained in recital 25, the expiry review investigation concerning the SPT measures against China remained valid to the same extent as the original Regulation, that is, in so far as it applies to the Chinese exporting producers other than Hubei.

(76) Moreover, under the principle of legal certainty, the definitive nature of measures adopted by the Union institutions precludes them from being called in question once the time-limit laid down in Article 263 TFEU for bringing an action against those measures has expired ([2]). So, wherever a party has a clear right to seek the annulment of a measure in a direct action before the European courts – as all other Chinese exporting producers other than Hubei did – that party must either exercise that right or forever hold its peace ([3]).

(77) It follows that there is no legal obligation stemming from the basic Regulation or GATT 1994 and the WTO Anti-dumping Agreement to repeal the measures in force with regard to Chinese exporting producers other than Hubei. The claims in this regard were rejected.

(78) Regarding the claim that the Commission did not act in line with the principle of good administration, it is noted, first, that, according to the case-law, the principle of good administration does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights ([4]). Since no interested party was able to raise a violation of a specific right in this regard, the Commission believes the invocation of arguments in that regard is unfounded. Second, and in any case, the Commission believes that it acted namely in line with this principle by re-opening the investigation and performing an assessment of the appropriateness of the measures in force in light of the Hubei judgments. The fact that the parties do not agree with the outcome of the assessment does not make it unlawful or against the principle of the good administration. In addition, reference is made to recital 27.

([1]) Judgment of the Court of Justice of 4 February 2016 in joined cases C-659/13 and C-34/14, C&J Clark International Ltd and Puma SE.
([2]) Judgment of 1 July 2008, *Compagnie maritime belge* v *Commission*, Case T-276/04, EU:T:2008:237, paragraph 59 and the case-law cited.
([3]) Opinion of Advocate General Jacobs of 16 November 2000, *Nachi Europe*, Case C-239/99, EU:C:2000:639, paragraph 58.
([4]) Judgments of the General Court of 2 October 2003, Case T-196/99 *Area Cova* v *Council and Commission*, EU:T:2001:281 paragraph 43; of 4 October 2006, Case T- 193/04 *Tillack* v *Commission*, EU:T:2006:292, paragraph 127; and of 13 November 2008, Case T-128/05 *SPM* v *Council and Commission*, EU:T:2008:494, paragraph 127.

(79) Finally, regarding the possibility of the Union industry to lodge an anti-dumping complaint within the meaning of Article 5 of the basic Regulation, it is noted that the availability of any redress does not invalidate the assessment about the inappropriateness of the possible repeal of measures as performed in recitals 27-51.

(80) Therefore, the claims made by CISA and the four exporting producers in question were rejected. Therefore, and as concluded in recital 67, on balance and taking into consideration the significant negative effects for the Union industry should measures be repealed, the Commission considered that it would not be appropriate to repeal the measures in force against China in light of the Hubei judgments.

G. **CONCLUSION**

(81) Considering the above, following the disclosure sent on 28 July 2017 none of the comments provided by the interested parties could call into question the Commission's findings and the overall conclusions as set out in recital 67 are hereby confirmed.

H. **DISCLOSURE**

(82) Given the additional considerations outlined above, in particular in recitals 31 to 38 and 39 to 50, the Commission considered it appropriate to re-disclose to all interested parties those additional facts and considerations on the basis of which it decided not to repeal the anti-dumping measures in force for Chinese exporting producers other than Hubei and invited them to comment on these conclusions within a specific time limit. No comments were received from the interested parties after the additional disclosure.

(83) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS DECISION:

Article 1

The investigation concerning the judgments in joined cases C-186/14 P and C-193/14 P in relation to Regulation (EC) No 926/2009 and Implementing Regulation (EU) 2015/2272 is hereby terminated.

Article 2

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

Done at Brussels, 28 June 2018.

For the Commission
The President
Jean-Claude JUNCKER