II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/526

of 15 April 2020

re-imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-300/16

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ([1]), and in particular Articles 15 and 24(1) thereof,

Whereas:

1. **PROCEDURE**

(1) On 17 March 2016 the Commission adopted Implementing Regulation (EU) 2016/387 ([2]) imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India ('the regulation at issue').

1.1. **The Judgement of the General Court of the European Union**

(2) Jindal Saw Limited ('Jindal') and its related importer, Jindal Saw Italia SpA (together 'the applicants'), challenged the anti-subsidy regulation at issue before the General Court. On 10 April 2019 the General Court issued its judgment in case T-300/16 ([3]) regarding the Regulation at issue ('the judgment').

(3) The General Court found that the calculation of the amount of benefit for Jindal resulting from the provision of iron ore for less than adequate remuneration was in breach of Article 6(d) of the basic anti-subsidy Regulation in force at the time of the original investigation ([4]) (the basic anti-subsidy Regulation). In particular, the General Court held that the transport costs actually incurred by Jindal from the mine to its plant in India were higher than those that the Commission took into account in the calculation of the average purchase price for iron ore in India. In the General Court's view, such difference in transportation costs means that the price at which Jindal sources iron ore on the Indian market was, in fact, higher than the average purchase price used by the Commission to determine the level of

([1]) OJ L 176, 30.6.2016, p. 55.

([2]) Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ L 73, 18.3.2016, p. 1).

([3]) Judgment of the General Court (First Chamber, Extended Composition), of 10 April 2019, *Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission*, T-300/16, ECLI:EU:T:2019:235.

([4]) Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Union (OJ L 188, 18.7.2009, p. 93) (replaced by Regulation (EU) 2016/1037).

remuneration, which had an inevitable impact on the benefit that could be granted to that exporting producer ([5]). Accordingly, the General Court found that the Commission infringed Article 3(2) and Article 6(d) of the basic anti-subsidy Regulation (by wrongly selecting at random certain items in the delivery costs of Jindal for the calculation of the standard average transport costs) and the third subparagraph of Article 15(1) of the basic anti-subsidy regulation (by fixing the countervailing duty at a level higher than the countervailable subsidies).

(4) The General Court also found that the Commission had committed an error in respect of its undercutting calculations as far as the applicants were concerned. In this case, on the one hand, in respect of the Union industry the Commission took into account either the prices at an ex-works level ([6]) of the production entities when they sold directly to independent buyers, or the prices at an ex-works level of the selling entities. On the other hand, in respect of Jindal's sales in the Union market, the Commission used as a starting price to arrive at a comparable landed price in the EU the export price as constructed in the context of the determination of the dumping margin (thus, taking out SG&A costs plus profits of Jindal's related selling entities in the EU). According to the General Court, the marketing of products carried out not directly by the producer, but through related 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 ([7]). As a result, the General Court considered that by carrying out, for the price comparison made in the context of the undercutting calculation, the assimilation between the prices charged by the selling entities to independent buyers and the prices charged by producers in their direct sales to such buyers, only as regards the like product of the Union industry, the Commission took into account for that product a price which was inflated and therefore unfavourable to Jindal Saw, which performed the majority of its sales in the Union by way of selling entities ([8]). For the General Court, this was an error in calculating the price undercutting of the product concerned, as the undercutting calculation was not made by comparing prices at the same level of trade. Therefore, the General Court found an error in that the Commission deducted the selling expenses and profits of Jindal's related selling entities in the Union from the sales to the first independent buyer, while the selling expenses and profits of the Union industry's related selling entities were not deducted from the Union industry sales prices to the first independent customer. The General Court considered that the two prices were not compared symmetrically at the same level of trade.

(5) As a result, the General Court found that the Commission had also infringed Article 8(1) of the basic anti-subsidy Regulation. Since the undercutting, as calculated in the regulation at issue, was the basis for the conclusion that imports of the product concerned were at the root of the injury to the Union industry, the General Court found that the existence of a causal link between the subsidised imports and the injury to the Union industry, as a necessary condition for the imposition of an anti-subsidy duty in accordance with Article 8(5) of the basic anti-subsidy Regulation, could have been tainted as well ([9]).

(6) Moreover, the General Court found that it could not 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 subsidy rate. In that case, in accordance with the third subparagraph of Article 15(1) of the basic anti-subsidy Regulation, the amount of the countervailing duty should be reduced to a rate, which would be sufficient to remove that injury ([10]).

(7) In light of the above considerations, the General Court annulled the Regulation at issue insofar as Jindal Saw Limited was concerned.

([5]) Ibid. para. 225.
([6]) Ex-works level means that transport costs have been deducted where warranted.
([7]) Case T-300/16, para. 248.
([8]) Ibid, para. 249.
([9]) Ibid. para. 253.
([10]) Ibid. para. 258.

1.2. **Implementation of the General Court's Judgment**

(8) According to Article 266 of the Treaty on the Functioning of the European Union ('TFEU'), the Union institutions are obliged to take the necessary steps to comply with the Court's judgments. In case of an annulment of an act adopted by the Union institutions in the context of an administrative procedure, such as the anti-subsidy investigation in this case, compliance with the General Court's judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the General Court is eliminated ([11]).

(9) According to the case-law of the Court of Justice, the procedure for replacing an annulled act may be resumed at the very point at which the illegality occurred ([12]). That implies, in particular, that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-subsidy procedure. For instance, where a regulation imposing definitive countervailing duties is annulled, the proceeding remains open because it is only the act concluding the proceeding that has disappeared from the Union legal order ([13]), except in cases where the illegality occurred at the stage of initiation. The resumption of the administrative procedure with the re-imposition of countervailing duties on imports that were made during the period of application of the annulled regulation cannot be considered as contrary to the rule of non-retroactivity ([14]).

(10) In the present case, the General Court annulled the regulation at issue as regards Jindal Saw Limited on the grounds that the Commission had, with respect to the provision of iron ore, wrongly calculated the subsidy amount benefitting Jindal and that it had made an error when determining the existence of significant undercutting. The latter error, potentially, could have tainted the causation analysis, as well as the injury margin.

(11) Findings in the anti-subsidy regulation at issue, which were not contested, or which were contested but rejected by the General Court or not examined by the General Court, and therefore did not lead to the annulment of the Regulation at issue, remain fully valid ([15]).

(12) Following the Court's judgments in case T-300/16 of 10 April 2019, the Commission decided by means of a Notice ('the re-opening Notice') to partially re-open the anti-subsidy investigation concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) that lead to the adoption of the regulation at issue and to resume the investigation at the point at which the irregularity occurred. The re-opening was limited in scope to the implementation of the judgment of the General Court with regard to Jindal Saw Limited.

(13) Subsequently, on 22 July 2019, the Commission decided to make imports of certain tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India and produced by Jindal Saw Limited subject to registration and requested national customs authorities to await the publication of the relevant Commission Implementing Regulation re-imposing the duties before deciding on the claim for repayment and remission of countervailing duties insofar as imports concerning Jindal Saw Limited were concerned ([16]) ('the registration Regulation').

(14) The Commission informed interested parties of the re-opening and invited them to comment.

([11]) Joined cases 97,193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28.

([12]) Case C-415/96 Spain v Commission, ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Spheriques v Council [2000] ECR I-8147, paragraphs 80 to 85; Case T-301/01 Alitalia v Commission [2008] ECR II-1753, paragraphs 99 and 142; Joined cases T-267/08 and T-279/08 Region Nord-Pas de Calais v Commission [2011] ECLI:EU:T:2011:209, paragraph 83.

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

([14]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg [2018], ECLI:EU:C:2018:187, paragraph 79; and C-612/16, C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 58.

([15]) Case T-650/17 Jinan Meide Casting Co. Ltd, ECLI:EU:T:2019:644, paras. 333 – 342.

([16]) Commission Implementing Regulation (EU) 2019/1250 of 22 July 2019 making certain imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India subject to registration following the re-opening of the investigation in order to implement the judgments of 10 April 2019 in cases T-300/16 and T-301/16, with regard to Implementing Regulations (EU) 2016/387 and (EU) No 2016/388 imposing a definitive countervailing duty and definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 195, 23.7.2019, P. 13).

2. COMMENTS FROM INTERESTED PARTIES

(15) The Commission received comments from the Union industry and two exporting producers.

(16) With regard to the subsidy calculation the complainant (SG PAM) recalled that the General Court only found that the Commission had overestimated the benefit granted to Jindal in respect of the purchase of iron ore for less than adequate remuneration due to an improper assessment of the transportation costs while the General Court otherwise upheld the reasoning of the Commission and rejected all other challenges. Therefore, the implementation of the judgment only required the Commission to re-assess the transportation costs for its re-calculation of the benefit at stake.

(17) Jindal claimed that the Commission could not instruct the national customs authorities not to repay and/or remit anti-dumping duties that had been collected pursuant to the regulation at issue. It claimed that the situation in the present case is different from the one in the Deichmann judgment ([17]). Jindal also claimed that the duties cannot be re-imposed retroactively. According to Jindal, the regulation at issue was annulled in its entirety, which means that it had been removed from the legal order of the Union with retroactive effect, whereas in the Deichmann judgment there were no factors 'capable of affecting the validity of the definitive regulation'. In addition, Jindal claimed that the illegality found with respect to the price undercutting analysis has the result of 'invalidating the Commission's entire analysis of causation'. This, in Jindal's view, means that the duties in its entirety should neither have been imposed, nor re-imposed, since the entire injury and causation analysis was flawed. Following disclosure, Jindal repeated these claims without providing further arguments.

(18) The Commission recalled that it is settled case-law that, when the Court declares that a regulation imposing duties is invalid, such duties are to be considered as never having been lawfully owed within the meaning of Article 236 of the Customs Code and, in principle, are required to be repaid by the national customs authorities under the conditions set out to that effect ([18]). However, the Court has also held that the exact scope of a declaration of invalidity by the Court in a judgment and, consequently, of the obligations that flow from it must be determined in each specific case by taking into account not only the operative part of that judgment, but also the grounds that constitute its essential basis ([19]).

(19) In the case at hand, the General Court found an error when calculating the amount of benefit as regard the provision of iron ore for less than adequate remuneration. This error only affected one of the subsidies countervailed in the original investigation (amounting to 3,91 % out of 8,7 % of total *ad valorem* subsidisation). Thus, the error could not bring the level of the duties below the *de minimis* thresholds.

(20) Moreover, the General Court put into question the method of calculating undercutting with respect to Jindal and its impact on causality as well as its possible impact on Jindal's injury margin in paragraphs 255-259 of the judgment. However, those elements did not call into question the validity of all other findings made in the regulation at issue and which can support the validity of the Commission's ultimate injury findings, as further elaborated in recital (30). In any case, even if the findings of the re-opened investigation were that no countervailing duties should be re-imposed, customs authorities would have the possibility to repay the entire amount of duties, which have been collected since the regulation at issue was adopted.

(21) Furthermore, the Court of Justice has consistently held that Article 10(1) of the basic anti-dumping Regulation ([20]) does not preclude acts from re-imposing anti-dumping duties on imports that were made during the period of application of the regulations declared to be invalid ([21]). The Commission considers that those findings apply equally to countervailing duties since also Article 16 of the basic anti-subsidy regulation currently in force ([22]) does not preclude acts from re-imposing countervailing duties on imports that were made during the period of application of the regulations declared to be invalid. Consequently, as explained in recital (15) of the registration

([17]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg [2018], ECLI:EU:C:2018:187

([18]) See, to that effect, Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, and the judgments quoted in paragraph 62 thereof, namely, C-351/04 *Ikea Wholesale*, of 27 September 2007, EU:C:2007:547, paragraphs 66 to 69, and, C-365/15, *Wortmann*, of 18 January 2017 EU:C:2017:19, paragraph 34.

([19]) C-256/16 Deichmann SE v Hauptzollamt Duisburg, para 63 and the case-law cited therein.

([20]) 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 L 176, 30.6.2016, p. 21).

([21]) C-256/16 *Deichmann*, EU:C:2018:187, paragraphs 77 and 78; and C-612/16, C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 57.

([22]) Regulation (EU) 2016/1037.

Regulation, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be considered as contrary to the rule of non-retroactivity ([23]). In fact, the re-opening Notice already informed interested parties, including importers, that any future liability, if warranted, would emanate from the findings of the re-examination. Accordingly, Jindal's claim that the duties cannot be re-imposed pursuant to the re-opening of the original investigation was rejected.

(22) Jindal also claimed that in order to comply with the General Court's judgment the Commission must use Jindal's actual prices to its first independent customers. It emphasised that the Commission must not construct the prices of the Union industry's sales subsidiaries. It claimed that this would be contrary to paragraph 251 of the judgment in which the Court ruled: '*…that prices used in the undercutting calculation should be prices negotiated with independent buyers, namely prices, which could have been taken into account by them in order to decide whether they purchased the Union industry's product or the product of the exporting producers in question, and not the prices at an intermediate stage*'. In this respect, the Commission considered that in *Kazchrome* ([24]), i.e. the source quoted by the General Court in *Jindal*, the General Court did not go as far as making the categorical conclusion now drawn by Jindal (namely, that in all cases when conducting undercutting calculations what matters is the actual prices charged by the exporting producer's related selling entities in the EU). In fact, the General Court in *Kazchrome* was cautious when stating that 'the conclusion resulting from the foregoing examination concerns only the present case' ([25]). The Commission is of the view that the CIF landed prices at the ports of customs clearance may be used in the context of examining price effects of subsidised imports through specific undercutting calculations. It is at that level that imports normally compete with the Union industry's prices, because it is at that level that traders make their choice whether to source the product form the Union Industry or the exporting producers. Trying to estimate what those CIF landed prices are in the context where the exporting producer sells through related entities in the Union for the purpose of the undercutting calculations is no different from a situation where the Commission directly uses for the comparison the CIF landed prices of exporting producers when selling directly into the Union. Thus, the reference to 'negotiated prices' both in *Kazchrome* and then later on in *Jindal* should be understood in their proper context.

(23) Jindal also claimed that the Commission should correct other flaws and calculation errors, which emerged after the regulation at issue was adopted. As explained in the re-opening Notice, findings reached in the regulation at issue which were not contested, or which were contested but rejected by the judgment of the General Court or not examined by it, and therefore did not lead to the annulment of the regulation at issue, remain fully valid ([26]). Therefore, the Commission is not required to look into allegations on issues beyond what the General Court found illegal.

(24) The other exporting producer, Electrosteel Castings Ltd. ('ECL'), claimed that in case the Commission determines that the imports from Jindal were not the cause of injury to the Union industry, it should reassess whether the measures should be maintained against imports from ECL. It also claimed that in case the Commission corrects the margins of Jindal, ECL's margins should also be corrected. Upon disclosure ECL, supported by the Government of India, reiterated these claims and argued that the recalculation of its margins is a necessary consequence of the re-opening of this procedure. The Commission should therefore carry out this exercise ex officio.

(25) Regarding the first of ECL's claims, the Commission observed that, as noted in recital (30), the Commission did not need to recalculate ECL's undercutting margin in this case. In any event, even after the undercutting re-calculation for Jindal, following the approach described in Section 4.2 below, the Commission determined that there was still a causal link between the subsidised imports and the Union industry's injury as set out in Section 4.4. This claim did therefore become moot. The Commission also rejected the second claim as any re-calculation of ECL margins falls outside of the scope of the present procedure. Even assuming that ECL's claim that its undercutting margin was in the range of the margin established for Jindal following the approach described in Section 4.2, the Commission

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

([24]) Judgment of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council and Commission*, T-107/08, ECLI:EU:T:2011:704.

([25]) Judgment of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing v Council and Commission*, T-107/08, ECLI:EU:T:2011:704, para. 68.

([26]) Case T-650/17 Jinan Meide Casting Co. Ltd, ECLI:EU:T:2019:644, paras. 333 – 342.

noted that there would be still undercutting, albeit lower, for all Indian imports. Such a level of undercutting, in view of the specific market circumstances of the product concerned, would be significant to find that the subject Indian imports were a genuine and substantial cause for the injury found. The Commission further addressed this issue in Section 4.4.

(26) The Union industry claimed that in its injury analysis the Commission should take into account the depressing price effect of the imports on the Union industry. Conversely, upon disclosure ECL claimed that such analysis goes beyond the scope of this re-opened procedure and should not be carried out. The Commission found that price depression analysis is an integral part of the causation analysis, which the General Court explicitly found could be tainted by the error at issue. Therefore, the Commission further analysed the price depression as set out in Section 4.5 below.

3. SUBSIDY CALCULATION

(27) The General Court found in respect of the provision of iron ore for less than adequate remuneration that the Commission had wrongly calculated the amount of benefit for Jindal. More particularly, it found that the Commission had wrongly adjusted Jindal's purchase price of iron ore with an average transport costs to establish a purchase price at ex-mine level. Instead, the Commission should have adjusted the purchase price with the transport costs actually incurred by Jindal.

(28) The Commission re-calculated the benefit accruing from the provision of iron ore to Jindal for less than adequate remuneration by adjusting its purchase price of iron ore with the transport related costs actually incurred. As a consequence, the re-calculated subsidy amount for iron ore was revised downwards from 3,91 % to 1,23 %.

(29) The judgment of the General Court in case T-300/16 did not affect any other findings in the regulation at issue that are relevant for the determination of the subsidy amounts granted to Jindal, which therefore remain valid. Accordingly, the re-calculated amount of countervailable subsidies, expressed as a percentage, is established at 6,0 % (as opposed to 8,7 %).

4. RE-EXAMINATION OF UNDERCUTTING/PRICE DEPRESSION BY THE SUBJECT IMPORTS AND THE INJURY MARGIN AS REGARDS JINDAL SAW LIMITED

4.1. The impact of Jindal's sales on the injury determination

(30) The Commission recalled that the imports by Jindal accounted for around 20 % of total imports from India during the investigation period. All other imports are not affected by the General Court's ruling. In other words, even taking out Jindal's imports from the assessment of price effects, the findings of significant undercutting ([27]) with respect to a very significant part of the subject imports would remain unaffected. In this respect, the Commission recalled that both the consideration of price effects as well as a determination that the subject imports caused injury to the domestic industry are made with respect to the imports from the country or countries concerned as a whole (as opposed to on the basis of each exporting producer). ([28]) Therefore, the Commission considered that revising Jindal's undercutting calculations did not taint the conclusion that, overall, there was significant undercutting by Indian imports. Thus, the error found by the General Court did not have a material impact on the overall findings of undercutting made in the original investigation. In this sense, all the injury findings made in the original regulation are hereby incorporated and confirmed.

([27]) See recitals (301) and (340) of Implementing Regulation (EU) 2016/387 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India ('the Regulation at issue').

([28]) See, in this sense, judgment of the General Court (Second Chamber) of 8 May 2019, in Case T-749/16, *Stemcor London*, ECLI:EU:T:2019:310, para. 84 ('[T]he Court has held that the injury caused to an established Union industry by dumped imports must be assessed as a whole, and it is not necessary (or, indeed, possible) to define separately the share in such injury attributable to each of the companies responsible').

4.2. **Determination of undercutting with respect to Jindal**

(31) Even if, as found in recital (30), the Commission considered that the impact of the error found by the General Court would not taint the Commission's undercutting and injury findings, the Commission examined in more detail whether there would still be undercutting with respect to Jindal also considering the specific market conditions in this case.

(32) The General Court stated that the obligation to carry out an objective examination of the impact of subject imports, as required by 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 Union. In order to ensure the fairness of such comparison, the prices must be compared at the same level of trade (see para. 239 of case T-300/16).

(33) In the case at hand, there are a number of significant specific market characteristics relating to the product concerned, which are described below.

4.2.1. *The product and the companies concerned*

(34) The product concerned is tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes'), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), originating in India, currently falling under CN codes ex 7303 00 10 and ex 7303 00 90 (TARIC codes 7303 00 10 10 and 7303 00 90 10).

(35) The Commission recalled that two (out of three) groups of companies making the product concerned cooperated as the Union Industry (representing around 96 % of total production). The first group of Union producers, SG PAM Group ('SG PAM'), was selling to independent customers in the Union via its three production companies located in France, Germany and Spain as well as via many sales subsidiaries located in different Member States ([29]). The second group of Union producers, Duktus Rohrsysteme GmbH, was selling from its German production company and via one sales subsidiary ([30]). Jindal, on the other hand, sold the product concerned in the Union via three sales subsidiaries located in Italy, Spain and the UK ([31]).

4.2.2. *Specificities of the ductile iron pipes market in the Union*

4.2.2.1. Sales channels/types of customers

(36) The main use of ductile pipes is transport of water and sewage. Hence, water supply and water treatment companies, ultimately, account for most of the demand for the product concerned. These companies use ductile pipes in large infrastructure projects, and their purchases are subject, directly or indirectly, to public procurement through public tenders. As set out in the complaint ([32]), ductile pipes are sold either directly to contractors or water companies (i.e. sales to users) or indirectly via merchants (i.e. sales to distributors). Even if a large proportion of ductile pipes is first sold to construction companies, these companies participate in the tenders of water supply and treatment companies, so the tender price pressure is almost always present in the end. Thus, most of the sales of ductile pipes in the Union market are linked directly or indirectly to tenders in the various Member States.

(37) SG PAM sold around 75 % of its output to users and the remaining 25 % to unrelated distributors. Ductus had a different sales structure as it was selling mainly to unrelated distributors (almost 90 % of sales). However, given that Duktus' sales accounted for only a small proportion of the Union industry's sales, the Commission confirmed that no less than 65 % of Union industry's sales went directly to users.

(38) Jindal had a similar type of customers' sales structure to the Union industry: it sold more than 70 % to users and around 30 % to unrelated distributors.

([29]) To streamline the investigation the Commission sampled the six largest of SG PAM's sales subsidiaries.
([30]) Duktus also sold via a sales subsidiary in Czech Republic, but given the small size of it, its data was not verified.
([31]) All three Jindal's subsidiaries were verified. Jindal also had less than 3 % of the Union sales directly from India to the remote islands of Reunion and Mayotte, which are considered the EU customs territory.
([32]) Consolidated version of the complaint lodged on 10 November 2014, for inspection by interested parties, p. 6.

(39) Therefore, the Commission concluded that Jindal and the Union industry sold the product concerned to similar types of customers in similar proportions.

4.2.2.2. Direct sales from the producers versus sales via sales subsidiaries

(40) SG PAM had a territorial sales structure in which its entities focused on the local markets where they were present. This applied to both SG PAM's producers and its sales subsidiaries. For instance, SG PAM France was the only SG PAM's entity selling directly to final users in France. Even if a certain product type was manufactured by SG PAM Germany or Spain, such a product type was first re-sold internally to SG PAM France and only then sold to the final user by SG PAM France. Likewise, SG PAM Belgium was the only selling entity in Belgium [and Luxembourg]; SG PAM UK in the UK [and Ireland]; SG PAM Italy only in Italy etc. In other words, the three producing entities were not selling directly to users in the markets where other producing entity or a sales subsidiary were present. This structure reflects the fact that the market is driven by tenders organised by municipalities/public utilities companies in the Member States and, accordingly, the appropriate sales representation is needed in each market.

(41) Duktus also had a localised sales structure as it sold more than 50 % of its output in its home market, Germany. Duktus had only one sales subsidiary Duktus Czech Republic ('Duktus CZ'), which was selling only in the Czech Republic and Slovakia. The sales of Duktus CZ were relatively small (around 10 % of all Duktus sales). Jindal had only minimal sales (less than 1 %) in these two markets.

(42) The Commission carried out a detailed price analysis for SG PAM to determine the price patterns of direct sales from the factory and indirect sales through its sales subsidiaries. SG PAM is by far the largest Union producer and accounting for 80 % of the cooperating Union producers sales in the Union and 90 % of production ([33]). The Commission compared the sales prices of the 10 most sold product types ([34]) for three SG PAM's production companies and its two largest sales subsidiaries selling similar volumes. The comparison rendered considerable variances of prices within a single product type. In particular, sales subsidiaries often had lower prices than sales by producers but the contrary was also true. This could be explained because, as explained before, the market of the product concerned appears to be affected by the use of tenders. Depending on the geographical market, the price of the product type at issue could vary. With regard to geographical markets, the Commission observed that in principle only one sales channel was used on the respective geographical market as described in recital (40). Hence, no comparison of price patters between sales from production companies versus sales via sales domestic sales entities could be carried out on the same geographical market for representative volumes.

(43) Therefore, the Commission concluded that selling directly by the producer or selling via the producer's selling entities had no discernible impact on the price level of such sales to the customer. In particular, selling via a related entity was not found to lead to higher prices than sales made directly by the producer because of the tender price pressure and different price level depending on the geographical location. Even if the Union industry had final sales from its producing companies in its domestic markets, these sales were to the same type customers as the sales of its sales subsidiaries in the other Member States. Accordingly, based on this detailed analysis of the prices charged by the Union industry on the Union market, the Commission found it appropriate to treat direct sales and indirect sales through sales subsidiaries as being carried out at the same level of trade.

4.2.3. *Overall conclusion and Jindal's undercutting margin*

(44) In light of the foregoing, the Commission found that ductile pipes sector has several specificities, which enable it to consider that the Union industry's and Jindal's sales were carried out at the same level of trade:

— Both the Union industry and Jindal had a similar share of direct sales to users and indirect sales via merchants/distributors (around 70 %/30 % respectively);

— As a general rule, the direct sales to unrelated customers from the Union producers did not follow a different price pattern from the sales which were made via their sales subsidiaries;

([33]) The higher ratio of production is explained by the fact that SG PAM was exporting more than Duktus.

([34]) These 10 product types accounted for more than 30 % of all SG PAM Sales. Because the product types were highly scattered – the most sold product type constituted only 6 % of all sales, while the 10th largest only 2,7 %, the Commission considered the top 10 representative.

— The market is tender-driven and as a result there is almost always a significant price pressure. The additional costs entailed by the existence of related selling entities for both exporting producers and the Union industry could not necessarily be passed on to the final independent buyers, as demonstrated by the fact that there were no discernible price patterns for direct and indirect sales.

(45) Given the General Court's findings in case T-300/16 and in particular the statements at para. 248 of the judgment as set out in recital (4) above, the Commission could not find evidence that the additional costs and profit margins of the selling entities of the Union producers generally resulted in higher prices to independent buyers for the reasons explained in recitals 42 and 43. The market particularities in certain instances show that it is not always the case that costs generated by intermediate selling entities and profits can automatically be reflected in the price, like in the present case, as the General Court also implicitly recognised by adding the word 'generally'.

(46) Nevertheless, in order to comply with the judgment and in particular the statements made by the General Court in paragraph 248 of the judgment, the Commission examined whether there would be undercutting even when comparing the prices to the first independent customer at the level of the selling entities, be it the production companies directly or the sales subsidiary. This was done without prejudice to the findings made above.

(47) The Commission hence used the final sales prices to the first independent customer in the Union of both sides (Union industry and Jindal) adjusted for allowances. Where appropriate the Commission adjusted that final price to the first independent customer for transport, insurance, handling, loading costs, packing, credit, warranty expenses and commissions between the company making the sales and the unrelated customer. This resulted in an undercutting margin of 3,1 %.

(48) Accordingly, the re-examination of the specific situation concerning Jindal showed that Jindal's sales prices undercut the Union industry's sales prices although at a lower level than established in the original investigation. As explained below, such undercutting can be considered as significant in a market situation where price sensitivity is important.

4.3. **Price depression**

(49) In any event, even if Jindal's revised undercutting margin were to be deemed marginal or inappropriate, the Commission considered that the subject imports would still exercise negative price effects on Union sales.

(50) Subsidised imports can have a significant impact on the market especially when the products are homogenous and when price sensitivity is important. Ductile pipes are products with high price sensitivity and for this type of products even a small price difference can have a major impact on the market.

(51) Ductile pipes are a product defined by technical standards. Therefore, for the same type of product, there is relatively little difference in quality, which makes prices an overwhelmingly important factor in purchase decisions. In addition, the main sales channel are direct and indirect tenders, where the lowest bidder logic is extremely strong. That logic applies to direct participations in tenders by the manufacturers and their sales subsidiaries, but also for indirect participation when they provide products to other companies who are participating in the tenders. These companies usually are construction companies responding to the tenders of contracting authorities (city councils, water supply companies etc.). These tenders include both the supply and the installation of the pipes. As tenders are usually open to all bidders, all companies were under pressure to reduce their prices to align themselves with the lowest bidder in order to win a contract.

(52) In these specific circumstances, the prices of the product concerned were depressed by the fast increasing Indian subsidised imports as set out in recital (57) below, and the price undercutting alone did not fully reflect the negative impact of the subsidised imports on the Union industry's price. As explained in the regulation at issue, ([35]) whilst the Indian sales and market share increased materially during the investigation period, the volume of sales of the Unioni

([35]) See recitals (336) and (338) of Implementing Regulation (EU) 2016/387 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India.

industry fell much more than the consumption and the Union Industry lost sales by 11 % and its market share fell by 4 %. A continued pressure exerted by low-priced subsidised imports ([36]) did not allow the Union industry to adapt its sales prices.

(53) Consequently, the Commission concluded that, even if the existence of undercutting were to be contested, there would be price depression exercised by the subject imports in this case.

4.4. **Causation**

(54) The Commission further examined whether there would still be a causal link between the subsidised imports and the injury in view of the revised undercutting margin for Jindal and/or the alternative price depression findings. In this respect, the Commission recalled that Jindal's imports accounted for around 20 % of the subsidised imports. The Commission also found that the re-calculated lower undercutting margin for Jindal's sales did not alter the fact that also all other imports from India were undercutting the Union industry's sales prices as set out in recital 25, as those imports were not subject to the General Court's findings. Jindal's revised undercutting margin, together with the significant undercutting margin found for most of the Indian imports in the original investigation confirm the original finding made by the Commission about the existence of material injury as well as the causation in this case.

(55) The Commission then made an overall analysis of the causal link between the injury found and all subsidised imports from India, also bearing in mind the alternative price depression findings.

(56) The Commission found that the profitability of the sales of the Union industry to independent customers was very low. The competitive pressure from subsidised imports made the Union industry unable to increase sufficiently its prices in order to improve its financial situation. The low profitability shows that the subsidised imports depressed the Union industry prices and prevented it from increasing them in order to achieve sustainable levels of profitability.

(57) Moreover, as set out in the regulation at issue (recitals 288 and 289) the volume of subsidised imports increased significantly in spite of a shrinking market. The subsidised imports increased by more than 10 % during the period considered. In this respect, Article 8(5) of the basic anti-subsidy Regulation provides that the volume of the subsidised imports alone may be responsible for the material injury to the Union industry.

(58) Therefore, the Commission concluded that despite the lower level of re-established undercutting margin for Jindal all imports were undercutting the Union Industry's sales. There is hence still a causal link between all subsidised imports from India and the injury suffered to the Union industry. Moreover, even if the undercutting findings with respect to the subject imports could be put into question, the Commission concluded that the Indian imports caused significant price depression and thus the original injury/causation findings are hereby confirmed.

4.5. **Injury margin**

(59) The General Court found at para. 258 of the judgment in case T-300/16 that if the Commission had calculated the price undercutting correctly, it could not be excluded that the injury margin of the Union industry could have been established at a level below that of the subsidy rate.

(60) First, the Commission notes that the rules on the determination of the injury margin that had been applicable when the investigation leading to the measures was concluded, have been changed by Regulation (EU) 2016/1037. The new rules only require in exceptional circumstances to calculate an injury margin.

(61) Second, the Commission recalled that the analysis of undercutting and the determination of the injury margin pursue different objectives. The undercutting analysis aims at determining whether the subject imports have an impact on the prices of the Union industry. Findings on undercutting are one of the elements that the Commission considers in the injury and causal link analysis. By contrast, the purpose of establishing an injury margin is to examine whether a duty lower than the subsidy amount found would be sufficient to remove the injury. Unlike in the context of determining injury and the detailed obligations in Article 8 of the basic anti-subsidy Regulation, the legislator has not set a comprehensive set of rules on how the Commission should estimate such a duty level, At the time, Article 15(1) simply stipulated: 'The amount of the countervailing duty shall not exceed the amount of

([36]) The fact that Indian imports were made at prices lower than the Union sales could be seen in the tables in recitals (291) (Indian import prices) and (317) (average unit price in the Union) of the regulation at issue.

countervailable subsidies established, but it should be less than the total amount of countervailable subsidies if such lesser duty would be adequate to remove the injury to the Union industry.' In the case in question the Commission was calculating a price sufficient to cover the cost of production of the Union industry increased by a reasonable amount of profit (so called 'non-injurious price'). This price was compared to the import price. This difference in price was expressed as a percentage of the CIF price of the imported product so that such percentage or margin could then be compared to the amount of subsidisation found (also expressed on the basis of CIF prices). Indeed, whether based on the injury margin or on the amount of subsidisation, the duty will always be applied to the CIF price of the imported products when such products are cleared through customs in the Union.

(62) Moreover, the methodology and figures used in the context of undercutting are different to the ones in the underselling calculations. An undercutting margin is calculated per product type ('PCN') as a difference between the actual import prices of the exporting producer and the actual Union producers' prices expressed as a percentage of the Union Industry's price. The overall weighted undercutting margin is then calculated as a difference between the actual import prices of the exporting producer and the actual Union producers' prices expressed as a percentage of the 'theoretical turnover' of the exporting producer, i.e. the amount the exporting producer would have made, had it sold the imported quantities at the same price as the Union producers. In contrast, the injury margin is calculated (also on a PCN basis) as a difference between the non-injurious price of the Union industry and the actual import price, expressed as a percentage of the actual exporting producer's CIF value (thus, actual as opposed to theoretical turnover).

(63) Thus, an error in determining the existence and amount of undercutting for a given exporting producer does not necessarily has an automatic impact on the determination of the injury margin for such an exporting producer.

(64) In any event, in light of para. 258 of the General Court's judgment the Commission reviewed Jindal's injury margin.

(65) In normal circumstances, the non-injurious price of the Union industry is based on the cost of production per product type, including SGA, plus a reasonable profit and established at ex-works level. However, in this particular case the Commission did not have sufficiently detailed and verified information concerning the costs of production on a PCN basis, which is necessary for calculating the injury margin as described above. The Commission had, on the other hand, in its possession information also including the selling costs and profits of the Union producers' selling entities. Given the particular circumstances in this case, especially the numerous variances in product types and specific technical standards/specifications stemming from tender specifications, the non-injurious price was exceptionally based on the final sales price per product type, adjusted for allowances as described above in recital 47, from which the actual profit was deducted and a reasonable profit was then added. Given these special circumstances, in order to comply with the judgment, it was exceptionally considered appropriate to compare that price with the final sales price of Jindal symmetrically, i.e. at the level of its related importers, also adjusted only for allowances as described in recital (47) above, but including SG&A and profit if any.

(66) The re-calculated injury margin was thus established at 9,0 %.

(67) Following disclosure SG PAM took issue with the injury margin established at this level. First, SG PAM claimed that the Commission over-implemented the Court's findings by recalculating the injury margin as, in their view, the Court did not find any error in the calculation of the injury margin. Second, SG PAM claimed that the proposed injury margin would not remove the injury to the Union Industry given that the re-established level of duty would be comparable to that of ECL. Based on the market intelligence SG PAM claimed that such a level of duties affected neither ECL's volumes nor prices, which made SG PAM unable to reach a non-injurious level of prices and improve its profitability. The Commission should either not apply the lesser duty rule or use a different calculation methodology.

(68) Regarding the first claim, the Commission recalled as set out in recital 6 that the General Court explicitly instructed the Commission to examine if recalculating the undercutting margin would also have an effect on the final duty level because of a potential change in the injury margin.

(69) Second, the Commission reiterated the legal framework for setting the appropriate level for countervailing measures. Under Article 15(1) third subparagraph, the 'amount of the countervailing duty shall not exceed the amount of countervailable subsidies established, but it should be less than the total amount of countervailable subsides if such lesser duty would be adequate to remove the injury to the Union industry'. Accordingly, there is no general rule to set the duty at a level, which removes injury for the Union. Rather, this question only comes into play where the injury margin is *lower* than the amount of subsidisation.

(70) This is not the case here. As the injury margin of 9 % was higher than the amount of subsidisation of 6 %, the basic Regulation directs the Commission to enact the latter as the duty rate.

(71) Third, there was no legal requirement to calculate the injury margin differently. The current re-investigation is limited to correcting the errors identified by the Court. While this entails a correction of the appropriate level for establishing the injury margin, it does not mean that the other steps in the originally applied methodology can be overhauled.

(72) For these reasons, the Commission rejected these claims.

5. **DEFINITIVE COUNTERVAILING MEASURES**

(73) On the basis of the conclusions reached by the Commission on subsidisation, injury and causation in this re-opened anti-subsidy investigation, a definitive countervailing duty shall be re-imposed on imports of pipes and tubes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India and manufactured by Jindal Saw Limited.

(74) Given that the re-established injury margin (9,0 %) is higher than the re-calculated subsidy amount (6,0 %), in accordance with the applicable rules in the original investigation, the countervailing duty rate should be set at the level of the amount of subsidisation. Accordingly, the re-imposed countervailing duty rates for Jindal Saw Limited are as follows.

Company	Amount of subsidisation	Injury margin	Countervailing duty rate
Jindal Saw Limited	6,0 %	9,0 %	6,0 %

(75) The revised level of countervailing duty applies without any temporal interruption since the entry into force of the regulation at issue (namely, as of 19 March 2016 onwards). Customs authorities are instructed to collect the appropriate amounts on imports concerning Jindal Saw Limited and refund any excess amount collected so far in accordance with the applicable customs legislation.

(76) In view of Article 109 of Regulation (EU, Euratom) No 2018/1046 ([37]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(77) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) No 2016/1036.

([37]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), currently falling under CN codes ex 7303 00 10 and ex 7303 00 90 (TARIC codes 7303 00 10 10, 7303 00 90 10), originating in India and manufactured by Jindal Saw Limited, as of 19 March 2016.

2. The rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price before duty, of the product described in paragraph 1 and manufactured by Jindal Saw Limited, shall be 6,0 % (TARIC additional code C054).

Article 2

Any definitive countervailing duty paid by Jindal Saw Limited pursuant to Implementing Regulation (EU) 2016/387 in excess of the definitive countervailing duty established in Article 1 shall be repaid or remitted.

The repayment or remission shall be requested from national customs authorities in accordance with the applicable customs legislation. Any reimbursements that took place following the General Court's ruling in case T-300/16 *Jindal Saw* shall be recovered by the authorities which made the reimbursements up to the amount set out in Article 1(2).

Article 3

The definitive countervailing duty imposed by Article 1 shall also be collected on imports registered in accordance with Article 1 of Commission implementing Regulation (EU) 2019/1250 making certain imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India subject to registration following the re-opening of the investigation in order to implement the judgments of 10 April 2019 in cases T-300/16 and T-301/16, with regard to Implementing Regulations (EU) 2016/387 and (EU) No 2016/388 imposing a definitive countervailing and a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India.

Article 4

Customs authorities are directed to discontinue the registration of imports, established in accordance with Article 1(1) of Implementing Regulation (EU) 2019/1250, which is hereby repealed.

Article 5

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

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

Done at Brussels, 15 April 2020.

For the Commission
The President
Ursula VON DER LEYEN