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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/735

of 30 January 2023

amending Delegated Regulation (EU) 2020/760 with regard to the requirement to submit invoices to establish the reference quantity and clarifying some issues concerning the Licence Operator Registration and Identification (LORI) electronic system

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 186 thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2020/760 ([2]) supplements Regulation (EU) No 1308/2013 as regards the rules for the administration of import and export tariff quotas for agricultural products subject to licences.

(2) In accordance with Article 10(2) of Delegated Regulation (EU) 2020/760, operators are to submit an invoice to the licence issuing authority for establishing the reference quantity. So far the reference quantity was established based on the transitional provision laid down in Article 26, first paragraph, of that Delegated Regulation, thus the provision in question was unused. As other features concerning the management of tariff rate quotas introduced by that Delegated Regulation have proven to be efficient and in order to reduce an administrative burden for the operators and for the licence issuing authorities, it is advisable to abolish the obligation of the operators to submit an invoice to the licence issuing authority for establishing the reference quantity.

(3) Pursuant to Article 13(12) of Delegated Regulation (EU) 2020/760, operators notify the competent licence issuing authority of any changes affecting their Licence Operator Registration and Identification (LORI) record within 10 calendar days from the date of effectiveness of such changes. That deadline should be prolonged due to the length of the implementation of such changes and the difficulties for the operators to notify them on time.

(4) Furthermore, the discrepancy existing in Articles 3(5) and 13(13) of Delegated Regulation (EU) 2020/760 between the obligation and the option as regards the prior registration of operators in case of suspension of reference quantity requirement in accordance with Article 9(9) of that Delegated Regulation should be clarified.

([1]) OJ L 347, 20.12.2013, p. 671.

([2]) Commission Delegated Regulation (EU) 2020/760 of 17 December 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the rules for the administration of import and export tariff quotas subject to licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the lodging of securities in the administration of tariff quotas (OJ L 185, 12.6.2020, p. 1).

(5) Article 14 of Delegated Regulation (EU) 2020/760 lays down rules as regards complaints for undue registration of an operator. The roles of the licence issuing authorities of the Member State where the controlled operator is established and registered for VAT purposes, and of the Member State that received a complaint should be clarified in such a way that the control is to be conducted by the Member State where the controlled operator is established.

(6) Delegated Regulation (EU) 2020/760 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/760

Delegated Regulation (EU) 2020/760 is amended as follows:

(1) Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The operator shall ensure that a certified print out of the customs declaration for free circulation in the Union that it uses to establish the reference quantity contains the number of the invoice referred to in Article 145 of Implementing Regulation (EU) 2015/2447.';

(b) paragraph 3 is replaced by the following:

'3. Licence issuing authorities shall compare the information on import licences and customs declarations. The documents shall not contain discrepancies as regards the importer's or declarant's identity and product description. The verifications of those documents shall be made based on Member States' risk analysis.';

(c) paragraph 4 is deleted;

(2) Article 13 is amended as follows:

(a) in paragraph 12, the first sentence is replaced by the following:

'The operator shall notify the competent licence issuing authority of any changes affecting its LORI record within 30 calendar days from the date of effectiveness of such changes.';

(b) in paragraph 13, the first subparagraph is replaced by the following:

'The Commission shall suspend the requirement of prior registration of operators in the LORI electronic system where the reference quantity requirement has been suspended pursuant to Article 9(9).';

(3) Article 14(2) is replaced by the following:

'2. If the licence issuing authority of the Member State where the complainant is established finds the complaint to be founded, it shall follow it up with the controls that it deems appropriate. Where the controlled operator is established and registered for VAT purposes in another Member State than the licence issuing authority that received the complaint, then that licence issuing authority shall provide the necessary assistance to the licence issuing authority of the Member State in which the operator is established and registered for VAT purposes and which is conducting the control in a timely manner. The result of the control shall be recorded by the licence issuing authority of the Member State where the operator concerned is established and registered for VAT purposes, in the LORI electronic system, as part of its LORI record.'.

Article 2

Entry into force

This Regulation shall enter into force on the third 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, 30 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/736

of 31 March 2023

on the definition of the technical details of the application of the market correction mechanism to derivatives linked to virtual trading points in the Union other than the TTF

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) 2022/2578 ([1]), and in particular Article 9(1) thereof,

Whereas:

(1) Council Regulation (EU) 2022/2578 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (the 'MCM Regulation') sets up a temporary market correction mechanism ('MCM') for orders placed for trading Title Transfer Facility (TTF) derivatives and derivatives linked to other virtual trading points ('VTPs') with maturities between month-ahead and year-ahead. This means that the MCM applies to any commodity derivative, traded on a regulated market, the underlying of which is a transaction in gas in any VTP in the Union.

(2) Pursuant to Article 1 of the MCM Regulation, the MCM applies to orders placed for trading TTF and derivatives linked to other virtual trading points located in the Union.

(3) The MCM regulation sets out the technical details of the application of the MCM solely with respect to orders placed for TTF derivatives, and not for orders placed for derivatives linked to other VTPs. This was due to the urgent need to apply the MCM to the TTF derivatives, commonly seen as the standard pricing proxy on European gas markets, and because the application of the MCM to orders for derivatives linked to other VTPs required additional preparation. Therefore, the MCM Regulation empowers the Commission to adopt an implementing act to define the technical details of the application of the MCM to derivatives linked to such other VTPs, namely regarding the occurrence of a market correction event and the application of a dynamic bidding limit with respect to such derivatives. The MCM Regulation also empowers the Commission to exceptionally exclude certain derivatives amongst those linked to other VTPs.

(4) The definition of the technical details of the application of the MCM to derivatives linked to such other VTPs, as well as the possible exclusion from the scope of application of the MCM of certain derivatives amongst those linked to other VTPs, should be informed by the criteria enshrined in Article 9, paragraph 2 of the MCM Regulation, namely the liquidity and the availability of information on the prices of derivatives linked to other VTPs, and the impact of the extension of the MCM to derivatives linked to other VTPs would have on intra-Union flows of gas and security of supply and on the stability of financial markets. Such definition and possible exclusion should also be informed by the effects assessment reports by ACER and ESMA submitted by 1 March 2023 pursuant to Article 8, paragraph 2, of the MCM Regulation.

(5) The MCM for TTF derivatives activates when a market correction event occurs, that is, when the front-month TTF derivative settlement price, as published by ICE Endex B.V., exceeds EUR 180/MWh and is EUR 35 higher than the reference price for three working days. The MCM for derivatives linked to other VTPs in the Union should be activated at the same moment, when the same market correction event occurs. This is because of two main reasons. First, if compared to the TTF derivative, many of the derivatives linked to VTPs other than TTF are less liquid. If the MCM activation were to be based on illiquid futures, the mechanism may be vulnerable to manipulation and result in unnecessary activations or delayed activations. Second, if the market correction mechanism was to be activated for some VTPs' derivatives only, trading may shift to derivatives linked to other VTPs which could lead to distortions on Union energy or financial markets, for instance through arbitrage by market participants between

([1]) Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (OJ L 335, 29.12.2022, p. 45).

corrected and non-corrected derivatives, to the detriment of consumers. This assessment is shared by ACER's assessment report, which states that also the MCM for derivatives linked to other VTPs in the Union should be activated based on the front-month TTF derivative settlement price, pursuant to Article 4(1) of the MCM regulation.

(6) Upon the occurrence of a market correction event, the MCM regulation sets a dynamic bidding limit, according to which market operators should not accept and TTF derivatives market participants should not submit orders for TTF derivatives that are due to expire in the period from the expiry date of the front-month TTF derivative to the expiry date of the front-year TTF derivative with prices of EUR 35/MWh above the reference price published by ACER on the previous day. This dynamic bidding limit is also appropriate for the orders for derivatives linked to other VTPs and does not require modifications. As with the TTF derivatives, a security of supply premium of EUR 35/MWh proxies the average difference between the reference price and the month-ahead futures price for a number of derivatives linked to other VTPs in summer 2022 and this reflects the costs of possible infrastructure congestions in moving gas from LNG terminal to continental Europe in other regions of the Union. Moreover, the application of the same safety ceiling across all VTPs derivatives should limit the risk of trading unduly shifting between VTPs and the risk of distorting the level playing field between different regions within the Union in attracting LNG, which could lead to fragmentation of markets inside the Union. In its assessment report, ACER agrees that the dynamic bidding limit applying to orders for TTF derivatives is also appropriate for the orders for derivatives linked to other VTPs.

(7) The Commission is of the view that the MCM should apply to all derivatives linked to other VTPs, and that this should be subject to no exception. In their effects assessment reports, ACER and ESMA confirmed the Commission's position, namely that the inclusion of the other VTPs does not lead to significant negative effects on financial or gas markets. Both ACER and ESMA noted that the extension of the MCM to derivatives linked to other VTPs may carry limited additional benefits, that most of those derivatives lack sufficient liquidity, and that some central clearing counterparties ('CCPs') may incur additional costs to change their default management process. However, in view of the implementation of the MCM regulation, both ACER and ESMA concurred with the Commission's conclusion that the application of the MCM to all derivatives linked to other VTPs does not lead to significant negative effects on financial or gas markets. In its assessment and in line with Article 9(2) of the MCM Regulation the Commission has notably analysed the following criteria.

(8) First, information on the prices of derivatives linked to other VTPs covered by this implementing act is readily available as these derivatives are traded on regulated markets which regularly provide information on prices.

(9) Second, the lack of liquidity of some derivatives linked to other VTPs does not lead to significant implementation problems in practice, as the Commission has deliberately chosen the highly liquid TTF month-ahead futures as a trigger for the activation of the MCM for other VTPs.

(10) Third, the extension to the derivatives linked to other hubs is unlikely to have any significantly negative impact on security of supply. This is because the main instrument to prevent security of supply problems, the 'premium' included in the bidding limit (top up vis-à-vis LNG market prices, or 'safety ceiling', as referred to in recital 19 of the MCM Regulation) will apply to *all* derivatives and ensure that the MCM does not impair the Union's ability to attract LNG. The extension is also unlikely to have any significantly negative impact on intra-EU gas flows because of the temporary application of the MCM and the fact that the gas flows within the Union are the outcome of a complex set of positions that result not only from derivative contracts, but also from many other impacts, which are not influenced by the MCM, such as long-term supply commitments, short-term and spot trades, and transactions concluded over-the-counter.

(11) Finally, no significant impact on the stability of financial markets is expected from the MCM extension, because more than 90 % of natural gas derivatives traded on regulated markets in the Union are TTF derivatives. Regarding the potential additional costs that some CCPs may face to change their default management process, ESMA noted that at the time of the publication of its effects assessment report, no CCP has provided information that significant changes may be required because of the MCM regulation.

(12) In light of the above, the Commission concludes that no derivative linked to other VTPs should be exceptionally excluded from the scope of the MCM application.

(13) In order to preserve the sound functioning of derivatives markets and to allow market participants to adequately manage their risk exposures, it is of paramount importance that this Regulation does not interfere with contracts concluded before the entry into application of this Regulation. For the same reason, market participants should be able to effectively offset positions in derivatives linked to other VTPs opened before the application of this Regulation. Therefore, the dynamic bidding limit should not apply to contracts entered into before the entry into force of this Regulation, nor to trades that allow market participants to offset or reduce positions resulting from contracts in derivatives linked to other VTPs concluded before the entry into force of this Regulation. Moreover, CCPs play a key role in assuring the orderly functioning of markets for TTF derivatives by mitigating counterparty risk. It is equally important to ensure that the extension of the mechanism to other VTPs does not put CCPs clearing the relevant instruments at risk in case of default of a clearing member. Those CCPs should therefore be able to implement default management processes without being subject to the bidding limit. To that end, the dynamic bidding limit should not apply to trades executed as part of a default management process organised by a CCP.

(14) There is no conceivable reason not to apply other design features of the MCM to derivatives linked to other VTPs. This includes the rules disciplining the suspension of the MCM. It should be noted that, pursuant to Article 4(8), in case of concrete indications that a market correction event is imminent, the activation of the MCM should be suspended if this would cause unintended market disturbances. Equally, pursuant to Article 6, the MCM should be suspended at any time if the dynamic safety ceiling were to lead to serious market disturbances, affecting the security of supply, the mandatory demand reduction targets, or the stability and orderly functioning of energy derivative markets, the intra-Union flows of gas, the differences between gas market prices within the Union or versus other areas in the world substantially, or the validity of existing gas supply contracts. The assessment of unintended market disturbances should consider the impact on the European market as a whole and also specifically on each VTP to which the MCM applies; in case of such unintended market disturbance, the suspension decision would apply according to Article 6 of the MCM Regulation.

(15) The volatile and unpredictable situation of the natural gas market makes it important to ensure that the MCM can be applied to derivatives linked to other VTPs as soon as possible, if the conditions justifying its activation are met. Therefore, the technical details of the application of the MCM to derivatives linked to other VTPs should be defined by 31 March 2023. However, in order to provide the companies operating the VTPs in the Union other than the TTF with the time to make the necessary adjustments, this implementing act should apply only from 1 May 2023.

(16) The measures provided for in this Regulation are in accordance with the opinion of the MCM Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation defines the technical details of the application of the market correction mechanism to derivatives linked to virtual trading points ('VTPs') in the Union other than the Title Transfer Facility (TTF) Virtual Trading Point in accordance with Article 9(1) of Regulation (EU) 2022/2578.

Article 2

Definitions

For the purpose of this Regulation, the definitions in Article 2 of Regulation (EU) 2022/2578 apply.

The following definitions also apply:

(1) 'front-month derivative linked to other VTPs' means a derivative linked to other VTPs whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given regulated market;

(2) 'front-year derivative linked to other VTPs' means a derivative linked to other VTPs whose expiration date is the nearest among the derivatives with 12 months' maturity traded on a given regulated market.

Article 3

Application of the MCM to other VTPs

This Regulation applies to orders placed for trading derivatives linked to VTPs located in the Union, other than TTF.

Article 4

Market correction event in relation to other VTPs in the Union

1. A market correction event related to derivatives linked to other VTPs shall occur when the conditions defined in Article 4(1) of Regulation (EU) 2022/2578 are met.

2. The dynamic bidding limit pursuant to Article 4 paragraphs (5) and (7) of the MCM Regulation shall apply to derivatives linked to other VTPs that are due to expire in the period from the expiry date of the front-month derivatives to the expiry date of the front-year derivatives.

3. Market operators on the market for derivatives linked to other VTPs and market participants in such derivatives shall monitor the website of ACER on a daily basis.

Article 5

Suspension and deactivation of the MCM in relation to derivatives linked to other VTP

This suspension and deactivation of the MCM with respect to derivatives linked to other VTPs shall take place in accordance with Article 5 and 6 of the MCM Regulation.

Article 6

Grandfathering

This Regulation shall not apply to the following:

(a) contracts for derivatives linked to other VTPs concluded before the date of entry into force of this Regulation;

(b) buying and selling of derivatives linked to other VTPs in order to offset or reduce contracts for derivatives linked to other VTPs concluded before the date of entry into force of this Regulation;

(c) buying and selling of contracts for derivatives linked to other VTP as part of a CCP default management procedure, including OTC trades registered in the regulated market for clearing purposes.

Article 7

Entry into force

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

It shall apply from 1 May 2023.

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

Done at Brussels, 31 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/737

of 4 April 2023

re-imposing a definitive anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China following the judgment of the General Court in joined cases T-30/19 and T-72/19

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) and in particular Articles 9(4) and 14(1) thereof,

Whereas:

1. PROCEDURE

(1) On 4 May 2018, the European Commission ('the Commission') adopted Regulation (EU) 2018/683 ([2]) ('the provisional Regulation') imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 ('tyres' or 'product concerned') originating in the People's Republic of China.

(2) On 18 October 2018 the Commission adopted Implementing Regulation (EU) 2018/1579 ([3]) imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China ('the contested Regulation').

(3) On 9 November 2018, the Commission adopted Implementing Regulation (EU) 2018/1690 ([4]) imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 ('Regulation (EU) 2018/1690').

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

([2]) Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 (OJ L 116, 7.5.2018, p. 8).

([3]) Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 263, 22.10.2018, p. 3).

([4]) Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1).

2. THE JUDGMENT OF THE GENERAL COURT OF THE EUROPEAN UNION

(4) China Rubber Industry Association ('CRIA') and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC') (together 'the applicants'), challenged the contested Regulation before the General Court on behalf of some of their members listed in recitals (9) and (10) ('the exporting producers concerned'). On 4 May 2022 the General Court of the European Union ('the General Court') issued its judgment in Cases T-30/19 and T-72/19 ([5]) ('the judgment').

(5) In its judgment, the General Court annulled the contested Regulation, and Implementing Regulation (EU) 2018/1690.

(6) CRIA and CCCMC raised several claims challenging the contested Regulation and the General Court ruled on two of those: (i) the claim alleging that the Commission's failure to carry out a fair price comparison in the calculation of the price undercutting and of the injury margins in so far as the exporting producers are concerned, and (ii) certain complaints alleging, in essence, inconsistencies and breach of the rights of the defence regarding injury indicators and the weighting of data from the sample of Union producers.

(7) Regarding the calculation of the undercutting margins, the General Court found that the Commission failed to make a fair comparison when it made an adjustment to the export price (namely the deduction of the related importer's SG&A and a notional profit – when sales were made through a related selling entity in the Union. The Court noted that Union producers also made some sales via related selling entities, and their sales prices were not adjusted in the same manner. The General Court concluded that the calculation of the price undercutting carried out by the Commission in the contested Regulation was vitiated by an error of law and a manifest error of assessment and that, as a result, that calculation infringed Article 3(2) and (3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([6]) ('the basic anti-dumping Regulation') and Article 8(1) and (2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council ([7]) ('the basic anti-subsidy Regulation'). Furthermore, the General Court found that the errors had an impact on the overall injury and causality findings as well as on the injury margins, and that it was not possible to determine precisely to what extent the definitive anti-dumping duties remained well founded in part.

(8) In relation to the second point, the General Court found that the Commission did not carry out an objective examination (as required by Article 3(2) of the basic anti-dumping Regulation and Article 8(1) of the basic anti-subsidy Regulation) because, by not revising the calculations of all microeconomic indicators, other than profitability, and not setting out the revised figures in the contested Regulation, the Commission did not use all relevant data available to it. In addition, the General Court found a breach of the applicants' right of defence. In particular, the General Court disagreed that some information not disclosed to interested parties could be considered confidential, and it found that all the data at issue was 'linked to findings of fact in the contested Regulation'. Therefore, they were 'essential facts and considerations' that should have been disclosed to parties.

(9) In light of the above, the General Court annulled the contested Regulation insofar as the companies represented by CRIA and CCCMC (listed in the table below) were concerned.

COMPANY NAME	TARIC ADDITIONAL CODE
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375

([5]) Judgement of the General Court (Tenth Chamber, Extended Composition) of 4 May 2022, *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) v European Commission*, T-30/19 and T-72/19, EU:T:2022:226.

([6]) 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).

([7]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Aeolus Tyre Co., Ltd	C877 ([1])
Shandong Huasheng Rubber Co., Ltd	C360
Chongqing Hankook Tire Co., Ltd	C334
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Jiangsu Hankook Tire Co., Ltd	C334
Shandong Linglong Tire Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Yuelong Rubber Co., Ltd	C875 ([2])
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ([3])
Hefei Wanli Tire Co., Ltd	C876
GITI Tire (Anhui) Company Ltd	C332
GITI Tire (Fujian) Company Ltd	C332
GITI Tire (Hualin) Company Ltd	C332
GITI Tire (Yinchuan) Company Ltd	C332
Qingdao GRT Rubber Co., Ltd	C350

([1]) In the contested regulation, TARIC additional code C333 identifies the following exporting producers:
Aeolus Tyre Co., Ltd;
Aeolus Tyre (Taiyuan) Co., Ltd;
Qingdao Yellow Sea Rubber Co., Ltd;
Pirelli Tyre Co., Ltd.
A new TARIC additional code was assigned to Aeolus Tyre Co., Ltd by the registration Regulation referred to in recital (16) below.

([2]) In the contested regulation, Weifang Yuelong Rubber Co., Ltd is linked to TARIC additional code C999.

([3]) In the contested regulation, TARIC additional code C371 identifies the following exporting producers:
Shanghai Huayi Group Corp. Ltd
Double Coin Group (Jiang Su) Tyre Co., Ltd
A new TARIC additional code is assigned to Double Coin Group (Jiang Su) Tyre Co., Ltd by the registration Regulation referred to in recital (16) below.

(10) In addition, the General Court annulled Regulation (EU) 2018/1690 insofar as the companies represented by CRIA and CCCMC (listed in the table above), and Zhongce Rubber Group Co., Ltd (TARIC additional code C379) were concerned.

3. IMPLEMENTATION OF THE GENERAL COURT'S JUDGMENT

(11) 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-dumping 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 ([8]).

(12) 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 ([9]). That implies, in particular, that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. For instance, where a regulation imposing definitive anti-dumping measures is annulled, the proceeding remains open because it is only the act concluding the proceeding that has disappeared from the Union legal order ([10]), except in cases where the illegality occurred at the stage of initiation. The resumption of the administrative procedure with the re-imposition of anti-dumping 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 ([11]).

(13) In the present case, the General Court annulled the contested Regulation as regards the exporting producers concerned on the ground that the Commission made an error when determining the existence of significant undercutting, which had an effect on the causation analysis. The same methodological error was found when calculating the injury margins of the exporters concerned. The Court also found errors when failing to disclose certain information: (i) the gross injury indicators, before application of the weighting adjustments, and the data relating to SMEs, on the one hand, and large enterprises, on the other; (ii) injury indicators other than profitability after revision of the weighting; (iii) certain information relating to the sources of macroeconomic injury data and the list of SMEs of the Union industry which ceased production; and (iv) the total exact volume of the sales of SMEs of the Union industry which cooperated in the investigations and information relating to the proportion of SMEs in the Union industry.

(14) Findings in the contested Regulation, 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 contested Regulation, remain fully valid and are not affected by this reopening ([12]).

(15) Following the Court's judgments in Cases T-30/19 and T-72/19 of 4 May 2022, the Commission decided to partially re-open the anti-dumping and anti-subsidy investigations concerning imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and to resume the investigation at the point at which the irregularity occurred. The re-opening, by means of a Notice ([13]) ('the re-opening Notice'), was limited in scope to the implementation of the judgment of the General Court with regard to the companies represented by CRIA and CCCMC and listed in the re-opening Notice.

([8]) Joined Cases 97, 193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28 and Case T-440/20 Jindal Saw v European Commission, EU:T:2022:318, paragraph 115.

([9]) 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.

([10]) 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.

([11]) 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.

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

([13]) OJ C 263, 8.7.2022, p. 15.

(16) On the same date, the Commission also decided to make imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China produced by these companies subject to registration and instructed national customs authorities to await the publication of the relevant Commission Implementing Regulations re-imposing the duties before deciding on any claims for repayment and remission of anti-dumping duties insofar as imports concerning these companies were concerned ([14]) ('the registration Regulation').

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

4. **INVESTIGATION PERIOD**

(18) This investigation covers the period from 1 July 2016 to 30 June 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury covers the period from 1 January 2014 to the end of the investigation period ('the period considered').

5. **SUBSEQUENT PROCEDURE**

(19) On 10 January 2023 the Commission disclosed the essential facts and considerations on the basis of which it intended to re-impose the anti-dumping duties ('disclosure'). All parties were granted a period within which they could make comments on the disclosure.

(20) Comments were received from the China Rubber Industry Association ('CRIA'), GITI Group ([15]) and the unrelated importer Hämmerling The Tyre Company GmbH ('Hämmerling'). The comments were considered by the Commission and taken into account, where appropriate. Hämmerling and CRIA requested and were granted hearings.

(21) Upon request by CRIA in its comments on the disclosure, subsequently the Commission disclosed the following additional elements ('additional disclosure'):

— On 30 January 2023, by means of a note to the file, the Commission provided additional information regarding its analysis of prices charged by the Union industry when selling directly, indirectly and to different types of customers.

— On 30 and 31 January 2023, the Commission also provided to Hankook Group ([16]) and Aeolus/Pirelli ([17]) the export sales transactions of the companies concerned, which were used to establish the revised undercutting and underselling calculations. These export sales transactions were the same as already disclosed in the investigation leading to the adoption of the contested Regulation.

— On 31 January 2023, by means of a note to the file, the Commission clarified and corrected the final duty levels for all exporting producers concerned, following an error found regarding the injury calculations for Hankook Group and Aeolus/Pirelli. It also provided further clarifications regarding the legal situation of Zhongce Rubber Group Co., Ltd.

([14]) Commission Implementing Regulation (EU) 2022/1175 of 7 July 2022 making imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgments of 4 May 2022 in joined cases T-30/19 and T-72/19, with regard to Implementing Regulation (EU) 2018/1579 and Implementing Regulation (EU) 2018/1690 (OJ L 183, 8.7.2022, p. 43).

([15]) GITI Group consisted of the following exporting producers: GITI Tire (China) Investment Co., (Shanghai); GITI Tire (Anhui) Co., Ltd; (Hefei); GITI Tire (Hualin) Co., Ltd (Hualin); GITI Tire (Fujian) Co., Ltd; GITI Tire (Yinchuan) Co., Ltd and a related exporter in Singapore.

([16]) Hankook Group consisted of the following exporting producers: Chongqing Hankook Tire Co., Ltd and Jiangsu Hankook Tire Co., Ltd.

([17]) Aeolus/Pirelli consisted of the following exporting producers: Aeolus Tyre Co., Ltd; Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd and Pirelli Tyre Co., Ltd. In Implementing Regulation (EU) 2018/1690 it was found that all of these exporting producers were part of the China National Tire Group. In addition, Pirelli Tyre Co., Ltd was considered as part of China National Tire Group, as it was related to China National Tire & Rubber Co. Ltd through a shareholding of more than 5 % during the investigation period, in accordance with Article 127(d) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

(22) Only CRIA provided comments on the additional disclosure, which were taken into account by the Commission, where appropriate.

6. CRIA'S RIGHTS OF DEFENCE CLAIMS

(23) Following disclosure, CRIA claimed that its rights of defence were violated as:

— CRIA did not receive the undercutting and underselling calculations regarding exporting producers from which CRIA received an authorization letter;

— CRIA was not granted a sufficient period of time for commenting on the disclosure;

— The Commission did not organise a hearing in the timeframe as requested by CRIA;

— The Commission did not address all the claims which were not addressed by the General Court.

(24) As mentioned in recital (160) below, the Commission recalculated the duties of all exporting producers concerned, in particular for the exporting producers which were sampled in the contested Regulation and were subject to the General Court's ruling (i.e. GITI Group, Hankook Group and Aeolus/Pirelli). It should be recalled that the injury margins of the sampled exporting producers concerned were established based on sensitive company data. Accordingly, the calculations could not be disclosed to all interested parties, but only to the companies concerned.

(25) CRIA claimed that the companies mentioned in recital (10) signed authorization letters which included access to company sensitive data, and thus the Commission should have disclosed to CRIA the individual undercutting and injury margin calculations for these companies. Moreover, the content of the authorisation letters was identical to a regular Power of Attorney ('PoA'), authorising a legal counsel to represent a company, according to CRIA.

(26) The Commission analysed the authorization letters submitted by CRIA. Several Chinese producers subject to the General Court's ruling signed such individual authorization letters. The Commission observed that the authorization letters were based on a standard text for all producers (sampled or not) and did not specify whether the respective company authorised CRIA to receive company confidential data. Moreover, not all sampled exporting producers concerned by the current investigation agreed to provide access of their confidential data to CRIA. Furthermore, regarding the claim that the PoA was identical to the authorisation letters in question, the Commission considered that the substantive difference between a PoA and an authorization letter to an association is the entity which is authorised to receive the data. In the case of a PoA, the legal counsel is bound by the ethics rules of the respective Legal Bar where the lawyer is registered, which, amongst others, requires them not to divulge any company confidential data. Therefore, the fact that a PoA may not contain a specific provision on such data does not alleviate the lawyer(s) in question to abide to the highest ethical rules on the matter and ensure the confidentiality of the data received. By contrast, it is exceptional that associations receive unlimited access to company confidential data of its members, which may, inter alia, infringe the respective competition rules in force. Consequently, the Commission considered that the authorisation letters signed by the companies were not sufficiently specific and explicit as to whether the companies in question authorised access to their confidential information to the association.

(27) Based on the analysis above and the due diligence of the Commission in the management of confidential company information at its disposal, the Commission decided to disclose company confidential data directly to the exporting producers concerned only, and not to CRIA, in order to protect the confidentiality of this data. Therefore, the dataset was sent to GITI Group's legal representative and to Hankook's company representative on 10 January 2023. Since neither Aeolus/Pirelli, nor any of the exporting producers concerned in that group, were registered as interested parties, the Commission identified the contact persons in the Aeolus/Pirelli and provided them with the respective exporting producers' specific disclosure on 17 January 2023. They were given until 31 January 2023 to comment.

(28) On 16 January 2023, CRIA requested to receive the undercutting and underselling calculations of the companies concerned, based on the signed authorization letters. In response, for the reasons explained in recitals (26) and (27), the Commission invited CRIA to contact these companies and obtain the data directly from them.

(29) On 19 January 2023, Aeolus Tyre Co., Ltd came forward and authorized explicitly that the Commission could provide CRIA with its specific disclosure. On the same day, the Commission disclosed the undercutting and underselling calculations of Aeolus/Pirelli to CRIA. As far as the detailed sales transactions were concerned, the Commission disclosed to Aeolus Tyre Co., Ltd and to Pirelli Tyre Co., Ltd, separately, only their own respective dataset. This was because CRIA submitted an authorisation letter signed only by Aeolus Tyre Co., Ltd., but not by Pirelli Tyre Co., Ltd.

(30) As far as Hankook Group was concerned, the Commission did not receive an explicit authorisation to share its data with CRIA. Nevertheless, CRIA claimed in its comments on disclosure that the group provided its specific disclosure to the association.

(31) In its comments on disclosure, CRIA informed the Commission that GITI Group withdrew its authorization letter to CRIA. Subsequently, on 3 February 2023, GITI Group provided a new authorisation letter for CRIA authorising the association explicitly to receive the company specific disclosure received on 10 January 2023. Following this letter and upon request by CRIA, on 8 February 2023 the Commission made available to CRIA the specific disclosure in question.

(32) In view of the above considerations, the Commission considered that the rights of defence of the sampled exporting producers and all other exporting producers concerned as well as CRIA's rights of defence were not violated. The companies concerned received the disclosure of the undercutting and underselling calculations and were given sufficient time to comment on the disclosure.

(33) CRIA claimed that the Commission did not take into consideration exceptional circumstances, i.e. Chinese New Year which took place from 21 to 29 January 2023, when rejecting its request for extending the deadline for submitting comments on the disclosure and for organizing a hearing well after the end of the Chinese New Year. CRIA's legal team claimed that the Chinese New Year made it impossible for them to receive proper instructions or input from CRIA for the comments. Moreover, despite a request for intervention from the Hearing Officer, no meaningful extension was granted and the Hearing Officer did not organize a hearing to address this request.

(34) The Commission noted that the request for extension was until 6 February 2023 which was exceptionally long, that is an extension by 14 days. In order not to prevent the completion of the investigation in good time, the Commission, even though it had already given 13 days to comment, granted an extension of two additional working days, that is until 25 January 2023. As regards the hearing request, the Commission initially proposed to organize the hearing on 18 January 2023, and thus before the Chinese New Year. CRIA subsequently proposed to set up the hearing after the Chinese New Year holiday, and ideally in February. The Commission agreed and accepted to organize a hearing on 31 January 2023, thus after the Chinese New Year and the extended deadline for submitting comments.

(35) The Commission observed that the statutory time period for comments by parties is 10 calendar days in accordance with Article 20(3) of the basic anti-dumping Regulation. The deadline set for CRIA and all other interested parties, following the extension of the deadline, went well beyond the 10 calendar days, and CRIA was given even 15 days. Moreover, the Commission, following comments made after disclosure, disclosed additional information and gave interested parties an additional period of time to parties to comment on the additional disclosure of 4 days, that is until 3 February 2023. Also, contrary to CRIA's assertion, there is no requirement for provisional disclosure in re-opening investigations.

(36) Finally, it would be discriminatory vis-à-vis all other interested parties registered in this re-opening investigation to grant only to CRIA an extension of more than two additional weeks.

(37) As far as the comment that Commission did not address all the claims which were not addressed by the General Court, the Commission already dealt with this point in recital (65) below and no new arguments were provided. Therefore, it was rejected.

6.1. **Hearing Officer intervention**

(38) CRIA requested the intervention of the Hearing Officer pursuant to Articles 12, 13, and 16 of the Hearing Officer's Terms of Reference due to the inadequate extension for comments on the disclosure, the unreasonable timing of the proposed hearing with the Commission pursuant to the disclosure, and the lack of disclosure of certain information.

(39) The Hearing Officer noted that CRIA obtained an extension of the deadline until 25 January 2023. With due regard to the specific circumstances outlined and the time constraints of the proceeding concerned, and having consulted with the Commission services responsible for the investigation, the Hearing Officer concurred with the deadline extension provided and rejected further extensions. Regarding the substance of the disclosure, the Hearing Officer recommended that CRIA and the Commission services should hold a hearing first before going to the Hearing Officer.

(40) In view of the above, the Commission considered that CRIA could fully exercise its rights of defence, within the given and extended deadlines, also considering the substance of the disclosure and the additional information made available to interested parties, following comments after disclosure. Following the hearing held with the Commission services on 31 January 2023, CRIA did not request a hearing with the Hearing Office on any of the issues previously raised.

7. **COMMENTS FROM INTERESTED PARTIES**

(41) The Commission received comments from the Union industry, CRIA, GITI Group and Hämmerling and Opoltrans sp. z o.o. ('Opoltrans').

(42) CRIA submitted to the Commission authorisation letters signed by several exporting producers for which the contested Regulation was annulled by the General Court, including those exporting producers concerned which were sampled during the investigation leading to the adoption of the contested Regulation, in particular GITI Group, Aeolus Tyre Co., Ltd, Chongqing Hankook Tire Co., Ltd and Jiangsu Hankook Tire Co., Ltd.

(43) CRIA and GITI Group opposed the Commission's decision to register imports, as in this specific case such registration is not explicitly authorised by basic anti-dumping and anti-subsidy Regulations. These two parties reiterated their claim after disclosure. The Union industry considered that the registration fell well in the Commission's discretion.

(44) Regarding this claim, the Commission considered that the General Court has held that the Commission has the power to require national authorities to take appropriate measures to register imports is of general application, as is shown by the heading 'General provisions' of Article 14 of the 2016 basic anti-dumping Regulation. Moreover, Article 14(5) of that regulation is not subject to any restriction as to the circumstances in which the Commission is empowered to require the national customs authorities to register goods ([18]). Therefore, this claim was rejected.

(45) Moreover, GITI Group claimed that the judgment could still be appealed at the time and therefore did not provide a valid legal ground to proceed to registration. The Commission considered that the judgment was not appealed, and the registration was the appropriate step to take in order to ensure that the duties can be reimposed at the correct level, if any, and to instruct the customs authorities to await the publication of the present Regulation ([19]).

(46) CRIA, GITI Group, Hämmerling and Opoltrans claimed that the Commission could not instruct the national customs authorities not to repay and/or remit duties that had been collected pursuant to the contested Regulation. Such repayment has to happen immediately and in full. They also argued that the situation in the present case is different from the one in the Deichmann judgment ([20]) as, according to the parties, the non-assessment of the market economic treatment and individual treatment claims in that case did not impact the level of the duties. The

([18]) Judgments of 1 June 2022, Jindal Saw and Jindal Saw Italia v Commission, T-440/20 and T-441/20, para. 156.
([19]) See for a similar reasoning, Jindal Saw judgment quoted in footnote 18.above, para 158.
([20]) See Deichmann SE v Hauptzollamt Duisburg, Case C-256/16, Judgment of the Court of 15 March 2018 and C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, Case C-612/16, Judgment of the Court (Eighth Chamber) of 19 June 2019.

parties also claimed that the duties cannot be reimposed retroactively. According to the parties, the contested Regulation 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, the parties 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 the parties' view, means that the duties in their entirety should neither have been imposed, nor re-imposed, since the entire injury and causation analysis was flawed.

(47) After disclosure, GITI Group claimed that the Commission's decision to instruct the national customs authorities not to repay the duties infringes the principle of judicial protection enshrined in Article 47 of the Charter of the Fundamental of the European Union ('CFEU'). The Commission should rather allow the repayment of duties as was the case when fines collected for the infringement of Article 101 of the Treaty on the Functioning of the European Union were annulled by the General Court ([21]). In particular, GITI Group referred to the findings of the Court of Justice that *"when the Court declares that a regulation imposing anti-dumping 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 to that effect"* ([22]). Furthermore, according to GITI Group, a delay of repayment of duties has important practical implications that negatively affect the financial situation of the companies concerned and their return on investments.

(48) The Commission recalled that it is settled case-law that the Commission may direct national customs authorities to wait until the Commission has determined the rates at which such duties should have been fixed, in compliance with a judgment of the Union Courts, before deciding on applications for repayment submitted by operators who have paid such duties ([23]). 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 ([24]).

(49) In the case at hand, the General Court put into question the method of calculating undercutting and its impact on causality as well as the impact of the same error on the injury margin of the companies subject to the Court's judgment ([25]). The Court also required the Commission to revise and disclose certain information regarding the injury indicators. However, those elements did not call into question the validity of all other findings made in the contested Regulation. Furthermore, the Court held that, following the resumption of the proceeding, the Commission may adopt a measure to replace the annulled measure and accordingly reimpose a definitive anti-dumping duty by remedying, in that context, the illegalities specifically found to have occurred ([26]). In this context, it is irrelevant whether the illegalities concern the level of the duties or not. In any case, even if the findings of the re-opened investigation were that no anti-dumping duties should be reimposed, customs authorities would have the possibility to repay the entire amount of duties, which have been collected since the contested Regulation was adopted, in accordance with the relevant customs legislation. Moreover, this repayment would also include appropriate interest in accordance with the relevant customs legislation. Consequently, contrary to the assertion of GITI Group, companies would be duly compensated for having paid the duties in question.

([21]) See Printeous vs Commission, Case T-95/15, Judgment of the General Court of 13 December 2016.
([22]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 62.
([23]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 59.
([24]) C-256/16 Deichmann SE v Hauptzollamt Duisburg, para. 63 and the case-law cited therein.
([25]) See paras 176, 192, 201-207 of the judgment. The contested Regulation remained in place as regards other exporting producers who did not challenge it.
([26]) See judgments of 1 June 2022, Jindal Saw and Jindal Saw Italia v Commission, T-440/20 and T-441/20, para 44; and of 19 June 2019, C & J Clark International, C-612/16, not published, EU:C:2019:508, paragraph 43; of 3 December 2020, Changmao Biochemical Engineering v Distillerie Bonollo and Others, C-461/18 P, EU:C:2020:979, paragraph 97; and of 9 June 2021, Roland v Commission, T-132/18, not published, EU:T:2021:329, paragraph 76.

(50) The Court of Justice has consistently held that Article 10(1) of the basic anti-dumping Regulation 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 ([27]).

(51) Contrary to registration taking place during the period before the adoption of provisional measures, the conditions of Article 10(4) of the basic anti-dumping Regulation are not applicable to the case at hand. The purpose of registration in the context of implementing Court findings is not to allow the possible retroactive collection of trade defence measures as envisaged in those provisions. Rather, it is to safeguard the effectiveness of the measures in place, without undue interruption from the date of entry into force of the contested Regulation until the re-imposition of the corrected duties, if any, by ensuring that the collection of measures in the correct amount is possible in the future. Consequently, as explained in recital (20) of the registration 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. Furthermore, as acknowledged by parties, this very same approach has recently been confirmed by the General Court in its judgment in T-440/20 ([28]). Consequently, the claim that the duties cannot be reimposed was rejected.

(52) As far as the principle of judicial protection enshrined in Article 47 CFEU is concerned, it is settled case-law that the principle of judicial protection cannot prevent an EU institution, an act of which has previously been annulled, from adopting a new act adversely affecting that person, based on different grounds ([29]). In the present case, the findings made are based on grounds different from those on which the contested Regulation was annulled. Accordingly, in line with the findings made by the General Court ([30]), the Commission did not breach the principle of effective judicial protection on the ground that, by the current Regulation, it reimposed a definitive anti-dumping duty following the annulment by the Court of the contested Regulation.

(53) CRIA argued that because "no customs debts were incurred" the re-imposition of duties would "*go beyond the legal period in which the national customs authorities are entitled to levy having regard to the three-year limitation (…)*". The GITI Group's claimed "*the retroactive re-imposition (…) even beyond the three-year deadline risks interfering (by implying that duties can be collected beyond this three-year deadline) in this autonomous decision-making process by national customs authorities and, thereby, risk disturbing the carefully calibrated division of competences between the Commission and EU Member States as set out in the EU Treaties.*" After disclosure, GITI Group reiterated its claim.

(54) The Commission considered that both arguments had to be rejected. First, the Court has stated that time limits are "*not capable of preventing the Commission from adopting a regulation imposing or re-imposing anti-dumping duties or, a fortiori, from opening or resuming the proceeding prior to such adoption*" ([31]). Similarly, the General Court stated that "*[Article 103(1) of the Union Customs Code] applies only to notification of the amount of customs duties to the debtor and its implementation is therefore a matter for the national customs authorities alone, who are competent to make such a notification. Consequently, it does not preclude the Commission from adopting a regulation imposing or reimposing a definitive countervailing duty*" ([32]). Regarding the claim that re-imposition interferes with the division of competences between the Commission and the Member States, the Commission observed GITI Group failed to specify which provision of the Treaties the reimposition of the duties would be infringed. The Court had consistently held that the Commission is entitled to reimpose duties when correcting the errors established by the Court ([33]). Moreover, the present Regulation was subject in its entirety to the examination procedure provided for in Article 15(3) of the basic anti-dumping Regulation. Consequently, the claims were rejected.

([27]) 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.
([28]) Judgments of 1 June 2022, Jindal Saw and Jindal Saw Italia v Commission, T-440/20 and T-441/20.
([29]) See, to that effect, judgment of 29 November 2018, Bank Tejarat v Council, C-248/17 P, EU:C:2018:967, paragraphs 80 and 81 and the case-law cited.
([30]) Judgment T-441/20 quoted in footnote 18, paras 118-123.
([31]) Judgment quoted in footnote 27 above, para 83.
([32]) Judgment quoted in footnote 28 above, para 134.
([33]) See on this point the judgments quoted in footnotes 27-28.

(55) GITI Group claimed that a retroactive re-imposition of (revised) anti-dumping and countervailing duties would also be disproportional and contrary to the principle of proportionality laid down in Articles 5(1) and 5(4) of the Treaty on European Union. Also, GITI Group claimed that the retroactive re-imposition of duties does not – and cannot – provide any "additional" protection to the Union industry or prevent further imports. Therefore, this would violate the principle of proportionality. After disclosure, GITI Group reiterated this claim.

(56) The Commission recalled that it is settled case-law that the Commission did not infringe the principle of proportionality when, in order to give effect to a judgment, it reimposed a definitive duty at an appropriate rate and as from the date of entry into force of the definitive measures. It also found it proportionate that the reimposed duty rates are reduced and the difference is ordered to be refunded or remitted ([34]). Finally, regarding the argument that it would be not proportional that the Union industry receives an additional protection for the past, the General Court found that this claim is '*not as such to establish the requisite legal standard that the reimposition of a definitive anti-dumping duty that is substantially reduced by the contested regulation would be disproportionate in the present case*' ([35]). Consequently, the claims were rejected.

(57) Hämmerling claimed that the current economic situation must be taken into account. Since then the economic sector at issue had to face the COVID-19 crisis, the global surge of prices affecting the whole supply chain (including transport and logistics) and the relevant economic crisis and now issues like the increase in the cost of electricity, high inflation rate etc. caused also by the Russian aggression against Ukraine. It would therefore be unsound to reimpose the duties at issue in a sector, market and micro and macroeconomic situations that are completely different from the one examined in the investigation leading to the adoption of the contested Regulation.

(58) As explained in recital (11), the procedure for replacing an annulled act may be resumed at the very point at which the illegality occurred ([36]). In the case at hand the illegality identified by the General Court occurred in the Regulation imposing definitive anti-dumping measures. Consequently, the Commission cannot take into account, when remedying the illegalities found by the General Court, recent developments which do not concern the investigation period and the period considered. According to Article 9(4) of the basic anti-dumping Regulation, where the facts as finally established show that there is dumping and resultant injury, and the Union interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty 'shall be imposed'. Consequently, the re-opening investigation could lead to the anti-dumping duties not being reimposed only if the Commission found that there was no dumping, resultant injury or Union interest considerations against duties in the investigation period. ([37])

(59) GITI Group claimed that the re-opening should be strictly limited to the issues addressed by the General Court. Thus the Commission is not allowed to replace the undercutting analysis by a price suppression analysis to perform the price effect, as the methodology adopted by the Commission remains valid and thus is not subject to the re-opening. The effects of a price suppression analysis were not addressed by the General Court and therefore not subject to the present re-opening.

(60) The Commission observed that the General Court put into question the undercutting analysis carried out by the Commission in terms of fair comparison between the export prices and the Union industry prices. Consequently, the methodology of undercutting as such was put into question. Moreover, nothing prevented the Commission from taking into account any other possible price effects of the dumped imports within the meaning of Article 3(3) of the basic anti-dumping Regulation. In the Deichmann case, the Court held that the Commission has a wide discretion: only the manifestly inappropriate nature of those measures, having regard to the objective pursued, may affect their lawfulness. ([38]) Consequently, the claim was rejected.

([34]) Judgement cited in footnote 28 above, paras 97-103.
([35]) Judgement cited in footnote 28 above, para 104.
([36]) 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.
([37]) Case C-507/21 P, Puma and others v Commission EU:C:2022:649, paragraph 87.
([38]) See Deichmann, para. 88.

(61) GITI Group claimed that the Commission cannot establish a new approach when establishing price undercutting. In particular, the Commission should not introduce a new PCN structure, i.e. by adding the type of customer, when (re) calculating the undercutting and injury margins ([39]).

(62) Without prejudice to whether the Commission is entitled or not to introduce new elements in the PCN structure, the Commission recalled that the price undercutting calculations described in section 4.1 below did not introduce any new elements in the PCN structure. Consequently, this claim was moot.

(63) CRIA claimed, both at initiation and after disclosure, that legal claims raised but not yet ruled on by the General Court need to be considered and that the Commission should actively take into consideration the claims not addressed by the General Court.

(64) Opoltrans claimed that there were no evidence of dumping of the imports from China at the time of the investigation and, among others, the use of the USA as an analogue country was not appropriate, the Union industry does not suffer from injury, there is no causal link between the situation of the Union industry and the imports from China, it is not in the interest of users to reimpose duties.

(65) As the Commission explained in the re-opening Notice, findings reached in the contested Regulation that 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 contested Regulation, remain fully valid ([40]). This included the issues indicated by CRIA and Opoltrans. Therefore, the Commission was not required to look into allegations on issues beyond what the General Court found illegal.

8. RE-EXAMINATION OF PRICE EFFECTS BY THE IMPORTS FROM THE PRC AND CAUSATION

8.1. Determination of undercutting

(66) As explained in recitals (5) to (7), the General Court found that the Commission failed to make a fair comparison when calculating the price undercutting margins because it adjusted the export price of the exporting producers by applying Article 2(9) of the basic anti-dumping Regulation by analogy while the Union industry also made sales via related selling entities and their sales were not adjusted.

(67) Also, in paragraph 163 of the General Court's judgment, it was found that had no adjustment under Article 2(9) of the basic anti-dumping Regulation been made, 'such a method would have allowed a fair comparison of the prices where the product concerned and the like product are both sold through related selling entities'. In paragraph 190 of the judgment, the General Court further found that such a comparison does '*not make it possible to offset the* ***potential*** *effects of the error consisting in the comparison of actual sales prices charged directly to Union customers by Chinese exporting producers, on the one hand, and the resale prices charged by selling entities related to Union producers, on the other hand*' (emphasis added). Finally, in paragraph 134 of the judgment, the General Court stipulated that, '*irrespective of the lawfulness and relevance of the level of trade chosen by the Commission as relates to exporting producers or as relates to Union producers, the comparison of the prices carried out by that institution must always be fair and, for that purpose, relate to prices which are all at the same level of trade*'.

(68) As explained in paragraph 150 of the General Court's judgment, the percentage of sales of the sampled Chinese exporting producers through related selling entities was 0 % for the Xingyuan Group, 34 % for the GITI Group, 19 % for Aeolus/Pirelli and 98,6 % for the Hankook Group. In addition, in its reply to a measure of organisation of the General Court's procedure, the Commission specified that the percentage of sales made through related sales entities was 46,9 % of the sampled Chinese exporting producers and 87 % of the sampled Union producers. Therefore, the proportion of sales made through related selling entities was high to very high as regards each of the two samples.

([39]) See *Région Nord-Pas-de-Calais v European Commission*, Joined Cases T-267/08 and T-279/08, Judgment of the General Court of 12 May 2011, para. 83.

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

(69) As explained in recital (149) of the provisional Regulation, the Commission determined price undercutting during the investigation period by comparing:

— the weighted average sales prices per product type and segment of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

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

(70) In order to comply with the General Court's judgment, where sales were made via related traders, the export prices were no longer adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The selling, general and administrative ('SG&A') expenses of the related importer and the profit of a sample of unrelated importers were thus added back to the export price.

(71) Furthermore, the Commission assessed whether there were any other potential level of trade issues that should be addressed for the purpose of fair comparison in cases where the exporting producers sold directly to Union customers but the sampled Union producers sold via related selling entities to Union customers. To that end, it carried out a detailed price analysis of all the sales of the sampled Union producers in order to determine the price patterns of direct sales from the factory and indirect sales via related sales entities. The comparison showed considerable variances of prices within a single product type, however without any obvious price pattern. Whilst in principle related sales entities should incur marketing costs when selling to customers in the Union, it appeared that those costs were not passed on consistently in the final prices.

(72) Therefore, the Commission concluded that selling directly by the producers or selling via the producers' related 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. Accordingly, the Commission did not find any potential effects on the price levels that needed to be offset, as suspected by the General Court in paragraph 190 of the judgment. Therefore, a comparison with the actual sales prices of the sampled Union producers sold directly or via related selling entities to Union customers with the export prices of the sampled exporting producers was thus warranted in this case.

(73) The Commission also made a detailed analysis of the price patterns per sales channel used by the Union industry. In this respect, the Union industry sold to users, distributors, retailers and 'others' in various proportions. The sales to all customers but for 'others' were representative for all product types. The Commission observed that often sales prices to users of the same product type were lower than to distributors and retailers, but the opposite could also be observed. The differences in prices to the various customers did not necessarily depend either on the total volumes sold to a particular customer. Consequently, the Commission concluded that there was no apparent pattern in the prices charged to different types of customers and that no further adjustments were needed to ensure a fair comparison, as prescribed by the General Court.

(74) The Commission recalled that, by means of a note to the file dated 30 January 2023, it provided additional information regarding its analysis of prices charged by the Union industry when selling directly, indirectly and to different types of customers.

(75) After the additional disclosure, CRIA disagreed with the Commission's finding that no price pattern could be identified with respect to the sales by the Union producers. The Commission noted that CRIA did not substantiate its claim and did not provide any evidence showing that the Commission's analysis was wrong. Consequently, it rejected the claim.

(76) The revised undercutting weighted average margin based on the imports of the sampled exporting producers thus established was 14,7 %.

8.2. **Price suppression**

(77) In any event, even if the 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.

(78) Dumped imports can have a significant impact on a market wherece sensitivity is important. As indicated in recital (134) of the provisional Regulation, the Union market for lorry and bus tyres is a very competitive market where price differences can have a major impact on the market.

(79) During the period considered, as evident from tables 7 to 10 of the provisional Regulation, the average price of the Union industry decreased by 8 % while the unit cost of production decreased by 6 %. The situation was most dire in tier 3, where the sales price decreased by 5 % while the unit cost of production increased by 1 %. Ultimately, companies in tier 3 were forced, due to the dumped imports, to sell at a price equalling their cost of production, thereby selling without any profit factored in and therefore at a loss. Consequently, the imports from China exercised price suppression due to their volumes (increase by 32 %) and prices (decrease by 11 %) during the period considered, which did not allow the Union industry to adapt upwards its prices in order to factor in the increase of the unit cost of production.

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

8.3. **Causation**

(81) The Commission examined whether there would still be a causal link between the dumped imports and the injury suffered by the Union producers, in view of the revised undercutting margins for imports from the sampled Chinese exporting producers and the findings of price suppression.

(82) Notwithstanding the reduction in the undercutting margin for all sampled Chinese exporters, but for Xingyuan Group, this did not alter the fact that imports from the sampled Chinese exporters were undercutting the Union industry's sales prices to a significant extent. Thus, the revised undercutting margins did not alter the original finding made by the Commission about the existence of the causal link between the injury suffered by the Union producers and the dumped imports from the PRC, in section 5.1 of the provisional Regulation and confirmed in section 5.1 of the contested Regulation. The revised undercutting margins, as well as the additional findings of price suppression in the case at hand, did not alter either the analysis and findings concerning other causes of injury as presented in section 5.2 of the provisional Regulation and 5.2 of the contested Regulation.

(83) Therefore, the Commission maintained its conclusion that the material injury to the Union industry was caused by the dumped imports from the PRC and the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the dumped imports.

9. **RE-EXAMINATION OF THE INJURY MARGINS OF THE COMPANIES SUBJECT TO THE RE-OPENING**

(84) In paragraph 179 of its judgment, the General Court found that '*the calculation of the injury margin consists in comparing the import prices used in the calculation of the price undercutting, on the one hand, with the non-injurious prices of the like product including a target profit reflecting normal market conditions, on the other hand. Accordingly, an error relating to the level of trade at which the price comparison is carried out is liable to have an impact on both the calculation of the price undercutting and the calculation of the injury margin*'.

(85) In order to comply with the judgment, the Commission recalculated the injury elimination level for all companies that are subject to the re-opening.

(86) In the original investigation the Commission determined the injury elimination level during the investigation period by comparing:

— the weighted average non-injurious price per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level;

— the same export price established in recital (69) second indent above.

(87) The non-injurious price of the Union industry is normally based on the cost of production per product type, including SG&A, 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. Given the particular circumstances in this case, and noting that there was no clear pattern in the differences in prices depending on the sales channel used by the sampled Union producers, the non-injurious price was based on the final sales price per product type, sold directly or via related selling entities, and, charged to unrelated customers on the Union market, adjusted to an ex-works level as described above in recital (86), first indent, from which the actual profit was deducted and a reasonable profit was then added. Given these particular circumstances, and in order to comply with the judgment, it was considered appropriate to compare that price with the final sales price of exporting producers symmetrically, i.e. at the level of the related importers, also adjusted only for customs duties and post-importation costs as described in recital (69) second indent above, but including SG&A and profit of the exporting producers' related importers based in the Union.

(88) Furthermore, in view of the General Court's findings in paragraph 190 of its judgment, the Commission carefully considered whether there were any other level of trade issues that would require an offset for the purpose of carrying out a fair comparison, given the fact that 87 % of the sample of the Union producers sold via related sales entities and many exporting producers also had direct sales to final customers. The Commission recalled that, as explained in recital (87), in the injury margin calculations the final sales prices per product type of the Union industry were used. Consequently, as pointed out by the General Court in paragraph 179 of its judgment, the findings made regarding undercutting calculations were fully valid also for the injury margin calculations, as far as a fair comparison was concerned. As explained in recitals (71) and (72) above, the Commission did not detect any other level of trade issue that would require an adjustment for the purpose of carrying out a fair comparison.

(89) The revised injury margins thus established were the following:

Company	Injury elimination level %
Xingyuan Group	55,07
GITI Group	28,51
Hankook Group	10,31
Aeolus/Pirelli	27,56
Companies cooperating in both anti-subsidy and anti-dumping investigations	23,15
Zhongce Rubber Group Co., Ltd ([1])	55,07
Weifang Yuelong Rubber Co., Ltd; Hefei Wanli Tire Co., Ltd ([2])	55,07

([1]) Zhongce Rubber Group Co., Ltd cooperated in anti-dumping investigation but not in the anti-subsidy investigation. It is the only company listed in Annex II of Regulation (EU) 2018/1690 affected by the annulment of Regulation (EU) 2018/1690, but not by the annulment of the contested Regulation. Therefore, the contested Regulation was not annulled for this company but only the amendments introduced by Regulation (EU) 2018/1690 in Regulation (EU) 2018/1579. Therefore, Zhongce Rubber Group Co., Ltd remains subject to the duties imposed by the contested Regulation.

([2]) These two companies did not cooperate, neither in the anti-dumping nor in the anti-subsidy investigation. Therefore, they are subject to the duty applicable to 'all other companies'.

10. DISCLOSING THE DATA SPECIFIED BY THE COURT TO ALLOW THE APPLICANTS TO EXERCISE THEIR RIGHTS OF DEFENCE

(90) The General Court stated in paragraph 33 of its judgment that the Commission breached the applicants' rights of the defence by not disclosing to them any of the data referred to in paragraph 244 of the same judgment.

(91) The General Court listed the data concerned (paragraph 244 of the judgment):

— the gross injury indicators, before application of the weighting adjustments, and the data relating to SMEs, on the one hand, and large enterprises, on the other;

— injury indicators other than profitability after revision of the weighting;

— certain information relating to the sources of macroeconomic injury data and the list of SMEs of the Union industry which ceased production;

— the total exact volume of the sales of SMEs of the Union industry which cooperated in the investigations and information relating to the proportion of SMEs in the Union industry.

10.1. Injury indicators, with and without weighting, and for SMEs and large enterprises separately

(92) In paragraphs 215 to 235 of its judgment, the General Court found that, following the changes in the weighting made at definitive stage (see recitals (188) to (195) of the contested Regulation), the Commission correctly calculated and showed the profitability of sales in the Union at the level of the Union industry as a whole (table 5 of the contested Regulation) and at tier 3 level (table 6 of the contested Regulation). However, as pointed out by the General Court in paragraph 227 of its judgment, it was necessary to recalculate all microeconomic indicators, other than profitability, as a result of the change in the weighting method. By not doing so, the Commission did not objectively examine the impact of the dumped imports in accordance with Article 3(3) of the basic anti-dumping Regulation.

(93) Consequently, to comply with the General Court's judgment, in the following sections the Commission analysed the impact of applying the weighting established at definitive stage on all microeconomic indicators, other than overall profitability and profitability of tier 3 (the 'revised weighting'). As shown below, the application of this weighting did not modify substantially any of the findings made by the Commission regarding the microeconomic indicators. Consequently, the existence of material injury during the period considered was confirmed.

(94) Furthermore, in paragraph 244 of its judgment, the General Court stated that the Commission breached the applicants' rights of the defence by not disclosing to them the gross injury indicators, before application of the weighting adjustments, and the data relating to SMEs, on the one hand, and large enterprises, on the other hand. However, the General Court did not require the Commission to re-establish its injury findings without the application of any weighting adjustments. Rather, the General Court merely prescribed that those gross injury indicators, before application of any weighting adjustments, should have been disclosed to the parties concerned.

(95) In light of the foregoing, to comply with the General Court's judgment, the Commission showed in the following sections the microeconomic indicators established: (1) at provisional stage contained in the provisional Regulation, (2) at definitive stage after revision of the weighting (called 'revised weighting' in all tables below), (3) without any weighting adjustment and (4) within tier 3: (4a) indicators only for SMEs and (4b) indicators only for large companies.

10.1.1. *Microeconomic indicators*

Preliminary remarks

(96) As explained in the recitals (185) to (192) of the contested Regulation, the Commission considered that the microeconomic indicators could not reflect the actual situation of the Union industry as the large sampled companies had a bigger impact on the overall data than the sampled SMEs while the share of the latter in the total Union industry sales was around 13 %.

(97) Therefore, the Commission decided to increase the weight of the sampled SMEs. The following weighting was applied in the contested Regulation at definitive stage. First, the Commission established the percentages of sales of SMEs and large companies in the total Union sales. Second, the Commission expressed the sales of sampled SMEs and large sampled producers with their respective volume in the total Union sales. Finally, percentages were compared and SMEs data were increased in order to reflect the same percentage as the sampled large companies. This was also explained below in recital (138). At provisional stage, the Commission also used an additional adjustment (i.e. to reflect the proportion of each tier in the Union sales within the sampled data). However, as explained in the contested Regulation, this adjustment was abandoned at definitive stage as the interested parties contested the use of a fixed ratio over the period considered.

(98) The weighting adjustment had an impact on the outcome of the overall micro-indicators but also on tier 3, because both large companies and SMEs were active in that tier. The trends in Tier 1 and tier 2 were not impacted as only large companies were active in those tiers. As pointed out in recital (93), the weighting adjustment had a limited impact on the overall microeconomic indicators because SMEs sales during the investigation period were estimated at around 13 % of the total Union sales during the investigation period.

10.1.1.1. Prices and factors affecting prices

(99) The average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows.

Table 1

Sales prices in the Union and cost of production

Based on:	In EUR/item	2014	2015	2016	Investigation period
Table 7 of the provisional Regulation	Average unit sales price in the Union	237	225	216	218
	Index 2014 = 100	*100*	*95*	*91*	*92*
Revised weighting	Average unit sales price in the Union	239	228	219	220
	Index 2014 = 100	*100*	*95*	*92*	*92*
Without weighting	Average unit sales price in the Union	252	238	226	228
	Index 2014 = 100	*100*	*94*	*90*	*90*
Table 7 of the provisional Regulation	Average cost of production	200	188	183	188
	Index 2014 = 100	*100*	*94*	*91*	*94*
Revised weighting	Average cost of production	202	189	185	190
	Index 2014 = 100	*100*	*94*	*92*	*94*
Without weighting	Average cost of production	209	192	188	192
	Index 2014 = 100	*100*	*92*	*90*	*92*

Source: Verified questionnaire replies of sampled Union producers

(100) Despite the nominal difference between the average unit selling price established under the different options for the period considered, as far as the overall trend is concerned, there was no difference found between the weighting used at provisional and at definitive stage. Without any weighting, the average unit selling price decreased with 2 percentage points more than in the other two scenarios. The same conclusion could be drawn with regard to the trends observed in average costs of production.

(101) The weighting, or rather its absence, had no impact on the conclusion for tier 1 and tier 2. Regarding tier 3, as shown in the tables 2, 3 and 4 below, the Commission examined the impact of the weighting and its non-application to three sets of data: for the overall tier 3, for the large companies active in that tier and the SMEs.

Table 2

Sales prices in the Union and cost of production – Tier 3

Based on:	In EUR/item	2014	2015	2016	Investigation period
Table 10 of the provisional Regulation	Average unit sales price in the Union	181	176	172	172
	Index 2014 = 100	*100*	*97*	*95*	*95*
Revised weighting	Average unit sales price in the Union	180	176	172	171
	Index 2014 = 100	*100*	*98*	*95*	*95*
Without weighting	Average unit sales price in the Union	201	191	182	180
	Index 2014 = 100	*100*	*95*	*90*	*90*
Table 10 of the provisional Regulation	Average cost of production	170	175	167	172
	Index 2014 = 100	*100*	*103*	*98*	*101*
Revised weighting	Average cost of production	170	175	167	172
	Index 2014 = 100	*100*	*103*	*99*	*101*
Without weighting	Average cost of production	182	181	170	173
	Index 2014 = 100	*100*	*99*	*93*	*95*

Source: Verified questionnaire replies of sampled Union producers

(102) For tier 3, the overall trend of the unit selling price and the unit cost of production was not impacted by the revision of the weighting at definitive stage. In the absence of any weighting, the trends in the unit selling price and the unit cost of production showed a more pronounced decrease for both indicators, by at least 5 percentage points during the period considered. These trends reflected mainly the trend observed below for large companies active in the tier 3.

(103) As can be seen in table 3 below, for large companies active in tier 3, the trend was significantly worse compared to the overall trend for the unit selling price and the unit cost of production.

Table 3

Sales prices in the Union and cost of production – Tier 3: Large companies only

Based on EUR/item	2014	2015	2016	Investigation period
Average unit sales price in the Union	207	195	184	183
Index 2014 = 100	*100*	*94*	*89*	*88*
Average cost of production	186	183	171	174
Index 2014 = 100	*100*	*98*	*92*	*93*

Source: Verified questionnaire replies of sampled Union producers

(104) Table 4 below showed that for SMEs which were active only in tier 3, the evolution of the unit cost of production deteriorated over the period considered with a cost increase of 7 %. In parallel, the unit price decreased by 2 %.

Table 4

Sales prices in the Union and cost of production – Tier 3: SMEs only

In EUR/item	2014	2015	2016	Investigation period
Average unit sales price in the Union	164	164	162	161
Index 2014 = 100	*100*	*100*	*99*	*98*
Average cost of production	159	170	164	171
Index 2014 = 100	*100*	*107*	*103*	*107*

Source: Verified questionnaire replies of sampled Union producers

10.1.1.2. Labour costs

(105) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 5

Average labour costs per employee

		2014	2015	2016	Investigation period
Table 11 of the provisional Regulation	Average labour costs per employee (EUR)	43 875	44 961	46 432	46 785
	Index 2014 = 100	*100*	*102*	*105*	*106*
Revised weighting	Average labour costs per employee (EUR)	44 300	45 199	46 605	46 943
	Index 2014 = 100	*100*	*102*	*105*	*106*

Without weighting	Average labour costs per employee (EUR)	46 274	47 180	48 390	48 477
	Index 2014 = 100	*100*	*102*	*105*	*105*

Source: Verified questionnaire replies of sampled Union producers.

(106) The average labour cost increased over the period considered by 6 % in case of both types of weighting and by 5 % when no weighting was applied.

10.1.1.3. Inventories

(107) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 6

Inventories

		2014	2015	2016	Investigation period
Table 12 of the provisional Regulation	Closing stocks *(Index 2014 = 100)*	*100*	*81*	*100*	*144*
	Closing stocks as a percentage of production	7 %	6 %	7 %	9 %
	Index 2014 = 100	*100*	*81*	*97*	*134*
Revised weighting	Closing stocks (Index 2014 = 100)	100	82	99	146
	Closing stocks as a percentage of production	7 %	6 %	7 %	9 %
	Index 2014 = 100	*100*	*83*	*97*	*137*
Without weighting	Closing stocks *(Index 2014 = 100)*	*100*	*84*	*100*	*148*
	Closing stocks as a percentage of production	6 %	5 %	6 %	8 %
	Index 2014 = 100	*100*	*84*	*96*	*135*

Source: Verified questionnaire replies of sampled Union producers.

(108) Stocks increased by 44 %/46 % over the period considered in case of both types of weighting and by 48 % when no weighting was applied. Closing stocks reached around 9 % of the yearly production in case of both types of weightings and 8 % when no weighting was applied. This situation impacted negatively the financial situation of the sampled Union producers.

10.1.1.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(109) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 7

Profitability, cash flow, investments and return on investments

		2014	2015	2016	Investigation period
Table 13 provisional Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	15,6 %	16,7 %	15,2 %	13,7 %
	Index 2014 = 100	*100*	*106,9*	*97,7*	*88,1*
Table 5 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	15,4 %	16,9 %	15,3 %	13,7 %
	Index 2014 = 100	*100*	*109,5*	*99,5*	*88,6*
Without weighting	Profitability of sales in the Union to unrelated customers (% of sales turnover)	16,9 %	19,1 %	17,0 %	15,6 %
	Index 2014 = 100	*100*	*113*	*101*	*92*
Table 13 provisional Regulation	Cash flow (in million EUR)	309	312	292	272
	Index 2014 = 100	*100*	*101*	*94*	*88*
Revised weighting	Cash flow (in million EUR)	272	281	264	244
	Index 2014 = 100	*100*	*103*	*97*	*90*
Without weighting	Cash flow (in million EUR)	264	277	255	246
	Index 2014 = 100	*100*	*105*	*97*	*93*
Table 13 provisional Regulation	Investments (in million EUR)	86	63	59	65
	Index 2014 = 100	*100*	*73*	*69*	*76*
Revised weighting	Investments (in million EUR)	78	55	53	58
	Index 2014 = 100	*100*	*71*	*68*	*74*
Without weighting	Investments (in million EUR)	72	52	50	56
	Index 2014 = 100	*100*	*72*	*69*	*78*

Table 13 provisional Regulation	Return on investments	21,0 %	21,7 %	19,3 %	17,6 %
	Index 2014 = 100	*100*	*103*	*92*	*84*
Revised weighting	Return on investments	23,4 %	24,6 %	21,7 %	20,3 %
	Index 2014 = 100	*100*	*105*	*92*	*87*
Without weighting	Return on investments	23,4 %	24,6 %	21,7 %	20,3 %
	Index 2014 = 100	*100*	*105*	*92*	*86*

Source: Verified questionnaire replies of sampled Union producers

(110) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(111) Based on the two types of weighting, the trend of the overall profitability was similar, with a decrease from 15,6 %/15,4 % in 2014 to 13,7 % in the investigation period. This was calculated on the basis of the weight of each of the tiers in the total sales. Without any weighting, the overall profitability decreased from 16,9 % in 2014 to 15,6 %.

(112) The decreasing profitability for the three methodologies was the result of a difference of 2 percentage points between prices and costs.

(113) The Commission recalled that, as explained in recital (93) above, the overall profitability was already disclosed in the definitive Regulation and was not subject to the General Court's findings with regard to the identified errors. The profitability was shown in the table above only for the sake of completeness. When applying the three different methodologies, the overall profitability was influenced by the profitability in tier 1 and in tier 2, whereas profitability in tier 3 without weighting decreased by around 5 percentage points during the period considered as indicated in table 9 below. Moreover, the relative trend in profitability for the entire Union industry was also decreasing.

(114) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow shows a decrease by 7 – 12 % when expressed without weighting or with the provisional weighting.

(115) The return on investments is the profit in percentage of the net book value of investments. It developed negatively for the three methodologies by around 15 percentage points over the period considered.

(116) Regarding tier 2, the weighting revision between provisional and definitive had an impact on the values but not on the overall trend observed. Therefore, recitals (196) and (197) of the provisional Regulation were confirmed.

Table 8

Profitability, cash flow, investments and return on investments: Tier 2

Based on:		2014	2015	2016	Investigation period
Table 15 provisional Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	17,9 %	16,7 %	16,0 %	15,3 %
	Index 2014 = 100	*100*	*93*	*90*	*86*

Revised weighting	Profitability of sales in the Union to unrelated customers (% of sales turnover)	17,9 %	16,7 %	16,0 %	15,3 %
	Index 2014 = 100	*100*	*93*	*90*	*86*
Table 15 provisional Regulation	Cash flow (in million EUR)	88	76	65	69
	Index 2014 = 100	*100*	*86*	*74*	*78*
Revised weighting	Cash flow (in million EUR)	53	46	39	41
	Index 2014 = 100	*100*	*86*	*74*	*78*
Table 15 provisional Regulation	Investments (in million EUR)	18	16	15	17
	Index 2014 = 100	*100*	*92*	*84*	*97*
Revised weighting	Investments (in million EUR)	10	10	9	10
	Index 2014 = 100	*100*	*92*	*84*	*97*
Table 15 provisional Regulation	Return on investments	20,4 %	21,4 %	20,1 %	16,2 %
	Index 2014 = 100	*100*	*105*	*98*	*79*
Revised weighting	Return on investments	20,4 %	21,4 %	20,1 %	16,2 %
	Index 2014 = 100	*100*	*105*	*98*	*79*

Source: Verified questionnaire replies of sampled Union producers

(117) A specific analysis based on the same methodology as described was made for the tier 3, SMEs active in tier 3 and large companies active in tier 3.

(118) The Commission recalled that, as explained in recital (93), the profitability for tier 3 was already disclosed in the contested Regulation and was not subject to the General Court's findings with regard the identified errors. The profitability was shown in the table above only for the sake of completeness.

(119) For the overall tier 3, the profitability trend for the two types of weighting methodologies was found similar. This is due to the fact that the losses reported by the SMEs had more weight in the overall calculation as the losses for the SMEs were particularly pronounced (-6,1 % in the investigation period). Without weighting, tier 3 profitability was close to the profitability reported by large companies active in that tier. The profitability for the large companies in tier 3 halved from 2014 to the investigation period, from 10 % to 4,8 %.

(120) With regard to tier 3, the net cash flow decreased significantly by around 60 % for the two types of weighting methodologies and by around 35 % without weighting. The return on investments decreased by around 66 percentage points for the two types of weighting methodologies and by around 48 percentage points without weighting over the period considered. Without weighting, the profitability of tier 3 reflected the profitability of large companies in tier 3, as expected based on the recital (198) of the provisional Regulation.

Table 9

Profitability, cash flow, investments and return on investments: Tier 3

Based on:		2014	2015	2016	Investigation period
Table 16 provisional Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	6,1 %	0,6 %	2,7 %	- 0,4 %
	Index 2014 = 100	*100*	*10*	*45*	*- 7*
Table 6 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	5,9 %	0,5 %	2,7 %	- 0,7 %
	Index 2014 = 100	*100*	*9*	*45*	*- 12*
Without weighting	Profitability of sales in the Union to unrelated customers (% of sales turnover)	9,23 %	5,01 %	6,29 %	3,92 %
	Index 2014 = 100	*100*	*54*	*68*	*42*
Table 16 provisional Regulation	Cash flow (in million EUR)	28	17	26	11
	Index 2014 = 100	*100*	*62*	*93*	*38*
Revised weighting	Cash flow (in million EUR)	26,7	16,2	24,4	9,6
	Index 2014 = 100	*100*	*61*	*91*	*36*
Without weighting	Cash flow (in million EUR)	18,7	12,6	16,1	12,1
	Index 2014 = 100	*100*	*67*	*86*	*65*
Table 16 provisional Regulation	Investments (in million EUR)	14	10	10	10
	Index 2014 = 100	*100*	*69*	*66*	*66*
Revised weighting	Investments (in million EUR)	13,4	9,0	8,6	8,7
	Index 2014 = 100	*100*	*68*	*65*	*65*
Without weighting	Investments (in million EUR)	8,2	6,0	6,3	7,4
	Index 2014 = 100	*100*	*73*	*77*	*91*
Table 16 provisional Regulation	Return on investments	7,6 %	0,2 %	4,8 %	2,5 %
	Index 2014 = 100	*100*	*2*	*62*	*33*

Revised weighting	Return on investments	11,2 %	0,7 %	7,0 %	5,8 %
	Index 2014 = 100	*100*	*6*	*63*	*52*
Without weighting	Return on investments	11,2 %	0,7 %	7,0 %	5,8 %
	Index 2014 = 100	*100*	*6*	*63*	*52*

Source: Verified questionnaire replies of sampled Union producers

(121) Regarding the large companies in tier 3, the Commission provided below the complete set of data for their profitability, cash flow, investments and return on investments.

Table 10

Large companies – Profitability, cash flow, investments and return on investments – Tier 3

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	9,97 %	6,08 %	7,05 %	4,81 %
Index 2014 = 100	*100*	*61*	*70*	*48*
Cash flow (in million EUR)	17,9	12,2	15,3	12,4
Index 2014 = 100	*100*	*68*	*85*	*69*
Investments (in million EUR)	7,7	5,7	6,1	7,3
Index 2014 = 100	*100*	*74*	*78*	*95*
Return on investments	12,2 %	0,8 %	7,5 %	6,6 %
Index 2014 = 100	*100*	*6*	*61*	*54*

Source: Verified questionnaire replies of sampled Union producers

(122) Regarding the SMEs in tier 3, the Commission provided below the complete set of data for their profitability, cash flow, investments and return on investments. The losses reported during the investigation period were reported in recital (198) of the provisional Regulation.

Table 11

Profitability, cash flow, investments and return on investments – Tier 3 – SMEs

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,71 %	- 3,55 %	- 1,31 %	- 6,13 %
Index 2014 = 100	*100*	*- 131*	*- 48*	*- 226*

Cash flow (in million EUR)	0,8	0,4	0,9	- 0,2
Index 2014 = 100	*100*	*48*	*109*	*- 30*
Investments (in million EUR)	0,5	0,3	0,2	0,1
Index 2014 = 100	*100*	*61*	*48*	*24*
Return on investments	5,0 %	- 0,3 %	2,2 %	- 1,2 %
Index 2014 = 100	*100*	*- 6*	*44*	*- 23*

Source: Verified questionnaire replies of sampled Union producers

(123) The Commission considered that the microeconomic indicators, based on the revised weighting, confirmed recital (196) of the contested Regulation, and, accordingly, that the conclusions based on the trends as set out in the provisional Regulation remained valid.

(124) Moreover, the microeconomic indicators, based on the absence of weighting, were also found in line with the microeconomic indicators based on the two types of weighting methodologies. The absence of weighting had mainly an impact on tier 3. In particular, the overall profitability of tier 3 without weighting reflected the profitability of large companies active in tier 3. Recital (198) of the provisional Regulation showed the profit margin of large companies during the investigation period.

(125) Large companies active in tier 3 faced a significant decrease of their profit margin and of their return on investments, which declined, as well as the cash flow. For SMEs, their losses were particularly pronounced (-6,1 %) in the investigation period. Similar conclusions could be drawn for the cash flow and the return on investments which went negative. Therefore, the conclusion regarding SMEs situation remained valid and the trends of the provisional Regulation and contested Regulation were confirmed.

(126) While for this case the trends of the microeconomic indicators, established on basis of the revised weighting, were similar to the microeconomic indicators without weighting, the Commission considered that the weighting methodology applied at definitive stage was accurate in a market situation where the Union industry consisted of both large companies and numerous SMEs. The Commission also observed that this methodology as such was not put into question by the General Court.

10.2. **Macroeconomic indicators**

(127) Regarding the macroeconomic indicators, the General Court considered that, as claimed by CRIA and CCCMC, the Commission failed to provide further information regarding the sources of the data used. Also, at definitive stage, CRIA and CCCMC claimed that they had doubts about the reliability of some information relied on as indicated in recital (201) of the contested Regulation.

(128) In order to comply with the judgment, the Commission requested further information and received additional clarifications during a meeting with the European Tyre & Rubber Manufacturers' Association representatives ('ETRMA'). ETRMA provided detailed information regarding the methodology used by the association for the aggregation of market data. An open version of the meeting minutes was made available to all interested parties together with several annexes. The annexes described in detail how the data was compiled by ETRMA, with the help of its affiliate Europol Governance, which compiled the macroeconomic data on its behalf. The Commission reiterated that the macroeconomic data provided by ETRMA were not challenged as such at definitive disclosure by some of the exporting producers (such as the Hankook Group and Aeolus/Pirelli) which were members of ETRMA.

(129) On this basis, the Commission considered that it complied with the General Court's findings regarding the issue of sources of macroeconomic data, as set out in paragraph 244 of its judgment.

10.3. **SMEs of the Union industry which ceased production**

(130) The General Court stated that the applicants correctly argued at the hearing that the communication of the names of the 85 SMEs which had ceased production, as provided by eight different tread suppliers, did not allow identifying individual business relations between a supplier and a customer and that, consequently, these names did not concern any data liable to be confidential. In those circumstances, the Commission has not shown that the list of Union industry SMEs which ceased production was confidential (see paragraph 253 of the judgement).

(131) The Commission considered that in principle the name of a company should not be disclosed to other interested parties without the explicit agreement of the company in question. Moreover, removing the link between the tread supplier and its customer may not be sufficient for allowing the disclosure of this information. A list of customers is one of the main assets of a company and thus there is no interest for a tread supplier for disclosing this type of information to its competitors. Furthermore, some of the SMEs concerned were not only 100 % focused on the retreading business but the retreading was one activity amongst others (for example sales of new tyres or a workshop for large truck fleet companies). Finally, the fact that a customer had been reported by a company as having stopped purchasing tread materials did not necessarily mean that this company was bankrupt or dissolved. Thus, providing this information would reveal sensitive commercial information.

(132) While the aggregation of data regarding volumes or values from several parties may be disclosed without issues of confidentiality, in particular if the aggregated data are within the same range, this cannot apply to a company name. Moreover, a cooperating party cannot disclose such information without the authorization of the party whose name is provided. Consequently, for disclosing such list of customers, each tread supplier should have requested each of its customers the authorization for disclosing its name to other interested parties.

(133) At the time of the contested Regulation, only the companies reported bankrupt or liquidated, could have been disclosed to interested parties. However, the Commission did not have details about which company went bankrupt or was liquidated or simply stopped production. In its Note for the File dated 19 July 2019, the Commission provided detailed explanations regarding the methodology used for establishing the list mentioned above. At the time of the contested Regulation, the Commission contacted 8 tread suppliers in order to obtain information concerning their customers list and their sales during the period considered (1 January 2014 – 30 June 2017). As the retreaders may have several suppliers, the data provided by the suppliers was aggregated per customer in order to identify the companies which stopped purchasing tread material during the period considered. Based on that database, the Commission was in a position to identify the retreaders which shifted from one supplier to another one. The Commission also stated in recital (244) of the contested Regulation that at least 85 SMEs stopped production, referring to recital (202) of the provisional Regulation.

(134) The Commission did not have information regarding the legal status of each retreader. In particular, the Commission was not in a position to identify the bankrupt or dissolved companies, and thus to report it to interested parties.

(135) In the course of this investigation, the Commission contacted the cooperating tread suppliers in order to obtain the actual legal status of those companies which have stopped purchasing tread materials. Based on this request of the Commission, tread suppliers provided their agreement for the disclosure of these names but on the condition that their company name should be dissociated from the customer names. The Commission found that most of the companies listed were inactive. Therefore, the Commission decided to disclose the list of SMEs which stopped purchasing tread materials from the interested parties. Their names were contained in the non-confidential case file.

10.4. **Information relating to the proportion of SMEs as part of the Union industry**

(136) The General Court considered that the Commission did not disclose information relating to the proportion of SMEs in the Union industry (see paragraphs 244 to 266 of the judgment).

(137) The Commission provided, however, the exact proportion of the SMEs as part of the Union industry in table 4 of the contested Regulation.

(138) As indicated in table 4 of the contested Regulation, the revised weighting methodology was not based on the volume reported by the cooperated companies, but on the total volume of sales of SMEs and of large companies as shown in the table below. The specific underlying data used is provided in Table 12 below.

Table 12

Share of SMEs' sales in the total Union sales (in %)

	2014	2015	2016	Investigation period
Union sales volume, shown in Table 8 of the contested Regulation in items	14 834 175	14 738 216	14 532 627	14 584 104
Share of SMEs' sales in the total Union sales, shown in Table 4 of the contested Regulation	16,9 %	15,3 %	13,7 %	13,2 %
Share of large companies in the total Union sales	83,1 %	84,7 %	86,3 %	86,8 %
sampled SMEs volume of sales in items	91 700	84 500	79 300	74 600
% sampled SMEs compared with total volume of SMEs sales	3,6 %	3,7 %	3,9 %	3,8 %
% sampled large companies compared with total volume of large companies	[20 – 45]	[20 – 45]	[20 – 45]	[20 – 45]
Weighting Ratio applied	[4,5 – 11,3]	[4,3 – 11,0]	[4,0 – 10,3]	[4,2 – 10,6]

Weighting ratio
=(% sampled large companies x total SMEs volume of sales)/(sampled SMEs volume of sales) – 1

10.5. **The volume of the sales of SMEs which cooperated in the investigation**

(139) The Commission recalled that, having received duly justified requests, it granted anonymity throughout the investigations to all the complainants. In addition, and with a view to further protecting such anonymity, the ratio used for establishing the revised weighting values was only based on the total Union sales, including the total sales of SMEs, and not on the sales volumes of only the cooperating SMEs. Consequently, the exact sales volumes of cooperating SMEs as such did not constitute an essential fact or consideration on the basis of which the Commission established the injury indicators of the Union industry. Yet, the General Court considered in paragraph 256 of its judgment that the Commission did not explain in specific terms how disclosure of an aggregated figure would be liable to reveal the identity of certain complainants.

(140) The Commission considered that, in certain cases, the disclosure of aggregated figures may indeed not reveal the identity of the complainants. This could be the case for example, for an industry where the sales volumes of the companies are spread unevenly, with small market share of each operator. However, in the case at hand, the Union industry was split between few large group of companies, on the one hand, and more than 380 SMEs on the other hand. The large groups of companies made up around 85 % of the Union sales as explained in the recital (129) of the provisional Regulation. Consequently, revealing the exact volumes of the SMEs (or even ranges) would have allowed the other parties to conclude what the share was of the complainants that are large Union producers and, ultimately, could have led to the identification of those large Union producers cooperating in the investigation

leading to the contested Regulation. Consequently, after careful re-examination of the data at its disposal, the Commission concluded that revealing the exact volumes (or even ranges) of sales of SMEs, which cooperated in the investigation would have jeopardised the anonymous status of the complainants.

(141) Following disclosure, CRIA reiterated its claim that the Commission should have provided the exact volume of the sales of SMEs which cooperated in the investigation leading to the contested Regulation.

(142) The Commission considered that the volume of the sales of SMEs which cooperated in the investigation was available during the investigation leading to the contested Regulation, through the sampling forms that were filed by all cooperating companies and made available in the open file. The sampling forms were, accordingly, accessible to all interested parties. Moreover, as indicated in recital (139) the exact sales volume of cooperating SMEs was not considered when establishing the SMEs ratio; rather, in order to establish the revised weighting values, the Commission only used the total Union sales. Thus, the exact volume of cooperating SMEs was not part of the essential facts used for the establishment of the revised values. Finally, as explained in recital (140) above, disclosing this data would have jeopardised the anonymous status of the complainants. Consequently, the claim was rejected.

11. **DEFINITIVE MEASURES**

(143) In view of the above, a definitive anti-dumping duty should be re-imposed on the imports of the product concerned at the level of the lower of the dumping and the injury margins found, in accordance with the lesser duty rule. In this case, for all exporting producers concerned, the definitive anti-dumping duty rate should accordingly be set at the level of the injury margins found.

(144) It is noted that an anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. Pursuant to Article 24(1) of Regulation (EU) 2016/1037, in view of the use of the lesser duty rule and the fact that the definitive subsidy rates are lower than the injury elimination level, it is appropriate to impose a definitive countervailing duty at the level of the established definitive subsidy rates and then impose a definitive anti-dumping duty up to the relevant injury elimination level.

(145) As explained in recitals from (335) to (343) of the contested Regulation, the Commission decided that the appropriate form of the measures was fixed duties.

(146) Following disclosure and additional disclosure, CRIA claimed that the Commission used inconsistent CIF values as a denominator when establishing the undercutting and underselling margins. Both margins should have been established based on the denominator used for calculating the undercutting margin.

(147) As set out by the Commission in section 9 above, the export price used to calculate the undercutting margin was established by removing from the selling price to the first independent customers of the sampled exporting producers all the costs incurred in the Union (which depended on the incoterms of each transaction) in order to establish the value at the Union border. For example, transportation costs in the Union were deducted. To this value was added, where appropriate, customs duties and post-importation costs. The result was the so-called 'CIF landed price', which was compared with the sales price of the Union producers, similarly adjusted, in order to establish the undercutting margin, which was expressed as a percentage of the Union sales price.

(148) The underselling margin was established in the following way per product type:

— The numerator was calculated by comparing the same CIF landed price (used for calculating the undercutting margin) with the Union industry target price;

— The denominator was the Union customs CIF value, as reported by the sampled exporting producers.

(149) The denominator value used for establishing the underselling margin and the dumping margin should be the same value for comparison purposes for the application of the lesser duty rule, pursuant to Article 7(2) of the basic Regulation. The purpose of this comparison is to determine the percentage by which the import price declared at customs needs to be increased by way of anti-dumping duties to remove the effects of the underselling or dumping amounts previously calculated. Evidently, since the duty will apply to the declared Union customs CIF value, such duty must mathematically be expressed as a percentage of the same above-mentioned CIF price which as explained before constitutes the basis for the application of the duty at customs. It would be illogical and mathematically erroneous to calculate a percentage on the basis of one value used as a denominator to then apply the resulting percentage to a different value.

(150) Following the comments made, the Commission re-examined the calculations that were disclosed and confirmed that the methodology used for establishing the denominator values was correct. Consequently, the Commission rejected the claim that the CIF values used were inconsistent and that the CIF landed price, which was compared to the Union price for the purposes of the undercutting and underselling calculations, on the one hand, and the CIF value used as a denominator to establish both the underselling margin and the dumping margin, on the other hand, should be the same.

(151) CRIA claimed that the Commission used an erroneous methodology when establishing the fixed duty, as the injury margin percentage was extrapolated in a duty per tyre based on the overall volume of imports instead of using only the volume of matching product types that had been used for calculating injury margin originally calculated.

(152) The Commission used the same methodology as in the contested Regulation, which was not invalidated by the General Court. In any event, the Commission noted that anti-dumping measures must have an equivalent remedial effect irrespective of the form they take. It is uncontested that if the duty had taken the form of an *ad valorem* measure, the *ad valorem* duty would apply to all imports and all types of the product concerned, irrespective of whether a particular type was considered in the determination of the underselling or dumping amount. As a result, in circumstances where it is decided to express the duty as a specific amount, such specific duty must be based on the sales of all imports of the product concerned during the relevant investigation period, since it will apply to all imports of all product types in the same way as an equivalent *ad valorem* duty. Consequently, the Commission considered that it was appropriate to take into account the total volume of imports as it would have done if it were to apply an *ad valorem* duty. Therefore, it rejected the claim.

(153) Following additional disclosure, CRIA claimed that the Commission made an error when establishing the duty level of Zhongce Rubber Group Co., Ltd.

(154) In the note to the file dated 31 January 2023, the Commission clarified that it took into account the injury elimination level of 32,39 % applicable to Zhongce Rubber Group Co., Ltd's during the period before the Regulation imposing countervailing duties entered into force (from 8 May 2018 to 12 November 2018). The corresponding fixed duty was thus EUR/item 49,31 for that period. However, from 13 November 2018, when Regulation (EU) 2018/1690 entered into force and amended accordingly the contested Regulation, the Commission made Zhongce Rubber Group Co., Ltd subject to the higher injury margin of 55,07 %, as far the subsidy investigation was concerned, because it cooperated in the anti-dumping investigation, but not in the anti-subsidy investigation. This resulted in a dumping margin of zero and a subsidy rate of 51,8 %, equalling EUR/item 57,28 fixed countervailing duty. No comments were received by CRIA regarding this explanation. Consequently, the claim by CRIA that the Commission committed an error regarding the calculation of the injury elimination level for this company was rejected.

(155) Following disclosure, CRIA also argued that the duty level for three companies, namely Zhongce Rubber Group Co., Ltd, Weifang Yuelong Rubber Co., Ltd, and Hefei Wanli Tire Co., Ltd, should also be reduced as the Commission failed to adequately implement paragraphs 190-192 of the judgment of the General Court.

(156) As explained in recital (70) above, in addition to the adjustment made of adding back, where applicable, SG&A and profit to the exporting producers' export price previously removed by applying Article 2(9) of the basic Regulation by analogy, the Commission established that no further adjustments were needed. Indeed, as pointed out in recitals (72), (73) and (88) above, the Commission established that there was no issue of fair comparison between indirect and direct sales or between different types of customers. As a result, similar to the methodology applied in the contested Regulation, direct sales of the sampled exporting producers were compared, per product type, with sales of the sampled Union producers to establish the injury margins. This also applied to the calculation of the residual duty, which was based on the injury margin of 55,1 % for the Xingyuan Group which had only direct sales. On this basis, the Commission established that the residual anti-dumping and countervailing duties applicable to Weifang Yuelong Rubber Co., Ltd and Hefei Wanli Tire Co., Ltd and the residual countervailing duty applicable to Weifang Yueling should remain unchanged. Consequently, the Commission considered that its findings were in line with paragraphs 190-192 of the judgment of the General Court and rejected the claim.

(157) Following disclosure, the Commission found an error in the fixed duty based on the injury margin established for Aeolus/Pirelli. The injury margin was corrected from 29,79 % to 27,56 % and all parties were informed accordingly.

(158) Following additional disclosure, CRIA claimed that the Commission made an error when establishing the duty level of Hankook Group.

(159) After analysing the claim, indeed the Commission found a clerical error and corrected the injury margin of Hankook Goup from 11,18 % to 10,31 %.

(160) On the basis of the above, the definitive anti-dumping duty rates should be as follows:

Company	Dumping margin	Subsidy rate	Injury margin	Counter-vailing duty	Anti-dumping duty	Fixed counter-vailing duty	Fixed anti-dumping duty [1]	Fixed Anti-dumping duty [2]
GITI Group	56,8 %	7,74 %	28,51 %	7,74 %	20,77 %	11,07	35,74	46,81
Hankook Group	60,1 %	2,06 %	10,31 %	2,06 %	8,25 %	3,75	17,37	21,12
Aeolus/Pirelli	85,0 %	32,85 %	27,56 %	27,56 %	0	39,77	0	39,77
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex	71,5 %	18,01 %	23,15 %	18,01 %	5,14 %	27,69	10,29	37,98
Zhongce Rubber Group Co., Ltd [3]	71,5 %	51,08 %	55,07 %	51,08 %	0	57,28	0	49,31
Weifang Yuelong Rubber; Hefei Wanli Tire Co., Ltd [4]	106,7 %	51,08 %	55,07 %	51,08 %	3,99 %	57,28	4,48	61,76

(1) For the period from 13 November 2018.
(2) For the period from 8 May 2018 to 12 November 2018.
(3) See endnote 1 in recital 89 for details about the situation of this company.
(4) Weifang Yuelong Rubber Co., Ltd and Hefei Wanli Tire Co., Ltd neither cooperated in the anti-dumping nor in the anti-subsidy investigation. Therefore, they are subject to the duty applicable to 'all other companies'. In the current reopening, this duty is applicable solely to these two companies.

(161) The revised level of anti-dumping duties applies without any temporal interruption since the entry into force of the provisional Regulation (namely, as of 8 May 2018 onwards).

(162) It is also necessary to apply a different level of the anti-dumping duties during the period before the entry into force of the definitive anti-subsidy Regulation (namely, in the period from 8 May 2018 to 12 November 2018). The duty applicable during this period equals the injury margin established for all companies concerned.

(163) Even though only Aeolus Tyre Co., Ltd and Double Coin Group (Jiang Su) Tyre Co., Ltd were applicants in cases T-30/19 and T-72/19, the Commission considered that the corrected duty is applicable to the entire respective groups. For Aeolus Group the exporting producers concerned are: Aeolus Tyre Co., Ltd, Aeolus Tyre (Taiyuan) Co., Ltd,; Qingdao Yellow Sea Rubber Co., Ltd and Pirelli Tyre Co., Ltd. For Double Coin Group (Jiang Su) Tyre Co., Ltd the exporting producers concerned are: Double Coin Group (Jiang Su) Tyre Co., Ltd and Shanghai Huayi Group Corp. Ltd.

(164) Customs authorities are instructed to collect the appropriate amount on imports concerning the exporting producers concerned and refund any excess amount collected in accordance with the applicable customs legislation.

(165) This Regulation does not modify the duty rates of the exporting producers that were not concerned by the Notice of reopening and by the registration Regulation. Therefore, their duties remained unchanged and, as a result, these companies were not identified in this Regulation.

(166) After disclosure, Hämmerling claimed that since the Commission intended to re-impose the duties beyond the three year limitation period provided for in the Union Customs Code, it should also specify that the difference between the re-imposed duties and the ones previously applicable should also be reimbursed beyond the three year limitation period.

(167) The Commission first recalled that it is settled case-law that the Union Customs Code does not preclude the Commission from adopting a Regulation re-imposing a definitive anti-dumping or countervailing duty for a period exceeding three years ([41]).

(168) Furthermore, as explained in recital (164), customs authorities shall collect the appropriate amount on imports concerning the exporting producers concerned and refund any excess amount collected in accordance with the applicable customs legislation. The General Court clarified in T-440/20 that the applicable customs legislation is, inter alia, Article 101(1), the first subparagraph of Article 102(1), Article 103(1) and Article 104(2) of the Union Customs Code. Under those provisions, the amount of duty payable is to be determined by the competent customs authorities, which are responsible for notifying customs debts, unless a period of three years from the date on which that debt was incurred has expired. The Court further clarified that *'It follows that the rule set out in Article 103(1) of the Union Customs Code does indeed have the effect not only of preventing the amount of customs duties from being notified to the debtor after the expiry of a period of three years from the date on which his or her customs debt was incurred, but also of causing that customs debt itself to become subject to a time bar upon the expiry of that period. However, that rule applies only to notification of the amount of customs duties to the debtor and its implementation is therefore a matter for the national customs authorities alone, who are competent to make such a notification.'* ([42]). Consequently, the Commission confirmed that the three year limitation period for reimbursement applied to the case at hand and rejected the request.

([41]) See T-440/20 Jindal Saw v European Commission, EU:T:2022:318, paragraphs 134 and 135 and judgment cited therein.
([42]) Judgement quoted in footnote 41 above, paras 133-134.

12. **FINAL PROVISIONS**

(169) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ([43]), 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.

(170) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling under CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10) and originating in the People's Republic of China as far as the companies listed in paragraphs (2) and (3) are concerned.

2. The definitive anti-dumping duties applicable in euros per item of the product described in paragraph 1 and produced by the companies listed below shall be as follows, in the period from 8 May 2018 to 12 November 2018.

Company	Anti-dumping duty	TARIC Additional Code
GITI Tire (Anhui) Company Ltd; GITI Tire (Fujian) Company Ltd; GITI Tire (Hualin) Company Ltd; GITI Tire (Yinchuan) Company Ltd	46,81	C332
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd	21,12	C334
Aeolus Tyre Co., Ltd, Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co., Ltd	39,77	C877 ([1])
Other companies subject to this reimposition cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex	37,98	
Zhongce Rubber Group Co., Ltd	49,31	C379
Weifang Yuelong Rubber Co., Ltd	61,76	C875
Hefei Wanli Tire Co., Ltd	61,76	C876

([1]) The TARIC additional code C333 ceases to exist and C877 is applicable to the entire group.

3. The definitive anti-dumping duties applicable in euros per item of the product described in paragraph 1 and produced by the companies listed below shall be as follows, as from 13 November 2018.

([43]) 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).

Company	Anti-dumping duty	TARIC Additional Code
GITI Tire (Anhui) Company Ltd; GITI Tire (Fujian) Company Ltd; GITI Tire (Hualin) Company Ltd; GITI Tire (Yinchuan) Company Ltd	35,74	C332
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd	17,37	C334
Aeolus Tyre Co., Ltd, Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co., Ltd	0	C877 ([1])
Other companies subject to this re-imposition cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex	10,29	
Zhongce Rubber Group Co., Ltd	0	C379
Weifang Yuelong Rubber Co., Ltd	4,48	C875
Hefei Wanli Tire Co., Ltd	4,48	C876

([1]) The TARIC additional code C333 ceases to exist and C877 is applicable to the entire group.

Article 2

Any definitive anti-dumping duty paid by the exporting producers referred to in Article 1(2) and (3) pursuant to Implementing Regulation (EU) 2018/1579 in excess of the definitive anti-dumping 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 reimbursement that took place following the General Court's ruling in in Cases T-30/19 and T-72/19 *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) v European Commission* shall be recovered by the authorities which made the reimbursement up to the amount set out in Articles 1(2) and 1 (3).

Article 3

The definitive anti-dumping duty imposed by Article 1 shall also be collected on imports registered in accordance with Article 1(3) of Implementing Regulation (EU) 2022/1175 making imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgments of 4 May 2022 in joined cases T-30/19 and T-72/19, with regard to Implementing Regulation (EU) 2018/1579 and Implementing Regulation (EU) 2018/1690.

Article 4

Customs authorities are directed to discontinue the registration of imports, established in accordance with Article 1(1) of Implementing Regulation (EU) 2022/1175, 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, 4 April 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Companies cooperating in both anti-subsidy and anti-dumping investigations subject to this re-imposition:

COMPANY NAME	ADDITIONAL TARIC CODE
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375
Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Shandong Huasheng Rubber Co., Ltd	C360
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Shandong Linglong Tyre Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Shanghai Huayi Group Corp. Ltd; Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ([1])
Qingdao GRT Rubber Co., Ltd	C350

([1]) In the contested regulation, TARIC additional code C371 identifies the following exporting producers:
Shanghai Huayi Group Corp. Ltd and Double Coin Group (Jiang Su) Tyre Co., Ltd.
A new TARIC additional code was assigned to Double Coin Group (Jiang Su) Tyre Co., Ltd in the registration regulation referred to in recital (16) of this regulation.

COMMISSION IMPLEMENTING REGULATION (EU) 2023/738

of 4 April 2023

re-imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China following the judgment of the General Court in joined cases T-30/19 and T-72/19

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 4 May 2018, the European Commission ('the Commission') adopted Regulation (EU) 2018/683 ([2]) ('the provisional Regulation') imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 ('tyres' or 'product concerned') originating in the People's Republic of China.

(2) On 18 October 2018 the Commission adopted Implementing Regulation (EU) 2018/1579 ([3]) imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China.

(3) On 9 November 2018, the Commission adopted Implementing Regulation (EU) 2018/1690 ([4]) imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/1579 ('the contested Regulation').

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

([2]) Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 (OJ L 116, 7.5.2018, p. 8).

([3]) Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 263, 22.10.2018, p. 3).

([4]) Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1).

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

(4) China Rubber Industry Association ('CRIA') and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC') (together 'the applicants'), challenged the contested Regulation before the General Court on behalf of some of their members listed in recitals (9) and (10) ('the exporting producers concerned'). On 4 May 2022 the General Court of the European Union ('the General Court') issued its judgment in Cases T-30/19 and T-72/19 ([5]) ('the judgment').

(5) In its judgment, the General Court annulled Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 ('Regulation (EU) 2018/1579'), and the contested Regulation.

(6) CRIA and CCCMC raised several claims challenging the contested Regulation and the General Court ruled on two of those: (i) the claim alleging that the Commission's failure to carry out a fair price comparison in the calculation of the price undercutting and of the injury margins in so far as the exporting producers are concerned, and (ii) certain complaints alleging, in essence, inconsistencies and breach of the rights of the defence regarding injury indicators and the weighting of data from the sample of Union producers.

(7) Regarding the calculation of the undercutting margins, the General Court found that the Commission failed to make a fair comparison when it made an adjustment to the export price (namely the deduction of the related importer's SG&A and a notional profit) when sales were made through a related selling entity in the Union. The Court noted that Union producers also made some sales via related selling entities, and their sales prices were not adjusted in the same manner. The General Court concluded that the calculation of the price undercutting carried out by the Commission in the contested Regulation was vitiated by an error of law and a manifest error of assessment and that, as a result, that calculation infringed Article 3(2) and (3) of 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 ('the basic anti-dumping Regulation ([6])) and Article 8(1) and (2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic anti-subsidy Regulation'). Furthermore, the General Court found that the errors had an impact on the overall injury and causality findings as well as on the injury margins, and that it was not possible to determine precisely to what extent the definitive countervailing duties remained well founded in part.

(8) In relation to the second point, the General Court found that the Commission did not carry out an objective examination (as required by Article 3(2) of the basic anti-dumping Regulation and Article 8(1) of the basic anti-subsidy Regulation) because, by not revising the calculations of all microeconomic indicators, other than profitability, and not setting out the revised figures in the contested Regulation, the Commission did not use all relevant data available to it. In addition, the General Court found a breach of the applicants' right of defence. In particular, the General Court disagreed that some information not disclosed to interested parties could be considered confidential, and it found that all the data at issue was 'linked to findings of fact in the contested Regulation'. Therefore, they were 'essential facts and considerations' that should have been disclosed to parties.

(9) In light of the above, the General Court annulled Regulation (EU) 2018/1579 insofar as the companies represented by CRIA and CCCMC (listed in the table below) were concerned.

([5]) Judgement of the General Court (Tenth Chamber, Extended Composition) of 4 May 2022, *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC)v European Commission*, T-30/19 and T-72/19, EU:T:2022:226.

([6]) OJ L 176, 30.6.2016, p. 21.

COMPANY NAME	TARIC ADDITIONAL CODE
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375
Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Aeolus Tyre Co., Ltd	C877 ([1])
Shandong Huasheng Rubber Co., Ltd	C360
Chongqing Hankook Tire Co., Ltd	C334
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Jiangsu Hankook Tire Co., Ltd	C334
Shandong Linglong Tire Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Yuelong Rubber Co., Ltd	C875 ([2])
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ([3])
Hefei Wanli Tire Co., Ltd	C876
GITI Tire (Anhui) Company Ltd	C332
GITI Tire (Fujian) Company Ltd	C332
GITI Tire (Hualin) Company Ltd	C332
GITI Tire (Yinchuan) Company Ltd	C332
Qingdao GRT Rubber Co., Ltd	C350

([1]) In the contested regulation, TARIC additional code C333 identifies the following exporting producers:
Aeolus Tyre Co., Ltd;
Aeolus Tyre (Taiyuan) Co., Ltd;
Qingdao Yellow Sea Rubber Co., Ltd;
Pirelli Tyre Co., Ltd
A new TARIC additional code was assigned to Aeolus Tyre Co., Ltd by the registration Regulation referred to in recital (16).

([2]) In the contested regulation, Weifang Yuelong Rubber Co., Ltd is linked to TARIC additional code C999.

([3]) In the contested regulation, TARIC additional code C371 identifies the following exporting producers:
Shanghai Huayi Group Corp. Ltd;
Double Coin Group (Jiang Su) Tyre Co., Ltd;
A new TARIC additional code is assigned to Double Coin Group (Jiang Su) Tyre Co., Ltd for the registration by the registration Regulation referred to in recital (16) below.

(10) In addition, the General Court annulled the contested Regulation insofar as the companies represented by CRIA and CCCMC (listed in the table above), and Zhongce Rubber Group Co., Ltd (TARIC additional code C379), were concerned.

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

(11) 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 ([7]).

(12) 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 ([8]). 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 measures is annulled, the proceeding remains open because it is only the act concluding the proceeding that has disappeared from the Union legal order ([9]), 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 ([10]).

(13) In the present case, the General Court annulled the contested Regulation as regards the exporting producers concerned on the ground that the Commission made an error when determining the existence of significant undercutting which had an effect on causation analysis. The same methodological error was found when calculating the injury margins of the exporters concerned. The Court also found errors when failing to disclose certain information: (i) the gross injury indicators, before application of the weighting adjustments, and the data relating to SMEs, on the one hand, and large enterprises, on the other; (ii) injury indicators other than profitability after revision of the weighting; (iii) certain information relating to the sources of macroeconomic injury data and the list of SMEs of the Union industry which ceased production; and (iv) the total exact volume of the sales of SMEs of the Union industry which cooperated in the investigations and information relating to the proportion of SMEs in the Union industry.

(14) Findings in the contested Regulation, 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 contested Regulation, remain fully valid and are not affected by this reopening ([11]).

(15) Following the Court's judgments in Cases T-30/19 and T-72/19 of 4 May 2022, the Commission decided to partially re-open the anti-dumping and anti-subsidy investigations concerning imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and to resume the investigation at the point at which the irregularity occurred. The re-opening, by means of a Notice ([12]) ('the re-opening Notice'), was limited in scope to the implementation of the judgment of the General Court with regard to the companies represented by CRIA and CCCMC and listed in the re-opening Notice.

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

([8]) 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] EU:T:2011:209, paragraph 83.

([9]) 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.

([10]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg [2018], 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.

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

([12]) OJ C 263, 8.7.2022, p.15.

(16) On the same date, the Commission also decided to make imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China produced by these companies subject to registration and instructed national customs authorities to await the publication of the relevant Commission Implementing Regulations re-imposing the duties before deciding on any claims for repayment and remission of countervailing duties insofar as imports concerning these companies were concerned ([13]) ('the registration Regulation').

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

2. **INVESTIGATION PERIOD**

(18) This investigation covers the period from 1 July 2016 to 30 June 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury covers the period from 1 January 2014 to the end of the investigation period ('the period considered').

3. **SUBSEQUENT PROCEDURE**

(19) On 10 January 2023 the Commission disclosed the essential facts and considerations on the basis of which it intended to re-impose the anti-dumping duties ('disclosure'). All parties were granted a period within which they could make comments on the disclosure.

(20) Comments were received from the China Rubber Industry Association ('CRIA'), GITI Group ([14]) and the unrelated importer Hämmerling The Tyre Company GmbH ('Hämmerling'). The comments were considered by the Commission and taken into account, where appropriate. Hämmerling and CRIA requested and were granted hearings.

(21) Upon request by CRIA in its comments on the disclosure, subsequently the Commission disclosed the following additional elements ('additional disclosure'):

(22) On 30 January 2023, by means of a note to the file, the Commission provided additional information regarding its analysis of prices charged by the Union industry when selling directly, indirectly and to different types of customers.

(23) On 30 and 31 January 2023, the Commission also provided to Hankook Group ([15]) and Aeolus/Pirelli ([16]) the export sales transactions of the companies concerned, which were used to establish the revised undercutting and underselling calculations. These export sales transactions were the same as already disclosed in the investigation leading to the adoption of the contested Regulation.

(24) On 31 January 2023, by means of a note to the file, the Commission clarified and corrected the final duty levels for all exporting producers concerned, following an error found regarding the injury calculations for Hankook Group and Aeolus/Pirelli. It also provided further clarifications regarding the legal situation of Zhongce Rubber Group Co., Ltd.

([13]) Commission Implementing Regulation (EU) 2022/1175 of 7 July 2022 making imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgments of 4 May 2022 in joined cases T-30/19 and T-72/19, with regard to Implementing Regulation (EU) 2018/1579 and Implementing Regulation (EU) 2018/1690 (OJ L 183, 8.7.2022, p.43).

([14]) GITI Group consisted of the following exporting producers: GITI Tire (China) Investment Co., (Shanghai); GITI Tire (Anhui) Co., Ltd; (Hefei); GITI Tire (Hualin) Co., Ltd (Hualin); GITI Tire (Fujian) Co., Ltd; GITI Tire (Yinchuan) Co., Ltd and a related exporter in Singapore.

([15]) Hankook Group consisted of the following exporting producers: Chongqing Hankook Tire Co., Ltd and Jiangsu Hankook Tire Co., Ltd.

([16]) Aeolus/Pirelli consisted of the following exporting producers: Aeolus Tyre Co., Ltd; Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd and Pirelli Tyre Co., Ltd. In the contested Regulation it was found that all of these exporting producers were part of the China National Tire Group. In addition, Pirelli Tyre Co., Ltd was considered as part of China National Tire Group, as it was related to China National Tire & Rubber Co., Ltd through a shareholding of more than 5 % during the investigation period, in accordance with Article 127(d) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

(25) Only CRIA provided comments on the additional disclosure, which were taken into account by the Commission, where appropriate.

4. CRIA'S RIGHTS OF DEFENCE CLAIMS

(26) Following disclosure, CRIA claimed that its rights of defence were violated as:

(27) CRIA did not receive the undercutting and underselling calculations regarding exporting producers from which CRIA received an authorization letter;

(28) CRIA was not granted a sufficient period of time for commenting on the disclosure;

(29) The Commission did not organise a hearing in the timeframe as requested by CRIA;

(30) The Commission did not address all the claims which were not addressed by the General Court.

(31) As mentioned in recital (171) below, the Commission recalculated the duties of all exporting producers concerned, in particular for the exporting producers which were sampled in the contested Regulation and were subject to the General Court's ruling (i.e. GITI Group, Hankook Group and Aeolus/Pirelli). It should be recalled that the injury margins of the sampled exporting producers concerned were established based on sensitive company data. Accordingly, the calculations could not be disclosed to all interested parties, but only to the companies concerned.

(32) CRIA claimed that the companies mentioned in recital (10) signed authorization letters which included access to company sensitive data, and thus the Commission should have disclosed to CRIA the individual undercutting and injury margin calculations for these companies. Moreover, the content of the authorisation letters was identical to a regular Power of Attorney ('PoA'), authorising a legal counsel to represent a company, according to CRIA.

(33) The Commission analysed the authorization letters submitted by CRIA. Several Chinese producers subject to the General Court's ruling signed such individual authorization letters. The Commission observed that the authorization letters were based on a standard text for all producers (sampled or not) and did not specify whether the respective company authorised CRIA to receive company confidential data. Moreover, not all sampled exporting producers concerned by the current investigation agreed to provide access of their confidential data to CRIA. Furthermore, regarding the claim that the PoA was identical to the authorisation letters in question, the Commission considered that the substantive difference between a PoA and an authorization letter to an association is the entity which is authorised to receive the data. In the case of a PoA, the legal counsel is bound by the ethics rules of the respective Legal Bar where the lawyer is registered, which, amongst others, requires them not to divulge any company confidential data. Therefore, the fact that a PoA may not contain a specific provision on such data does not alleviate the lawyer(s) in question to abide to the highest ethical rules on the matter and ensure the confidentiality of the data received. By contrast, it is exceptional that associations receive unlimited access to company confidential data of its members, which may, inter alia, infringe the respective competition rules in force. Consequently, the Commission considered that the authorisation letters signed by the companies were not sufficiently specific and explicit as to whether the companies in question authorised access to their confidential information to the association.

(34) Based on the analysis above and the due diligence of the Commission in the management of confidential company information at its disposal, the Commission decided to disclose company confidential data directly to the exporting producers concerned only, and not to CRIA, in order to protect the confidentiality of this data. Therefore, the dataset was sent to GITI Group's legal representative and to Hankook's company representative on 10 January 2023. Since neither Aeolus/Pirelli, nor any of the exporting producers concerned in that group, were registered as interested parties, the Commission identified the contact persons in Aeolus/Pirelli and provided them with the respective exporting producers' specific disclosure on 17 January 2023. They were given until 31 January 2023 to comment.

(35) On 16 January 2023, CRIA requested to receive the undercutting and underselling calculations of the companies concerned, based on the signed authorization letters. In response, for the reasons explained in recitals (33) and (34), the Commission invited CRIA to contact these companies and obtain the data directly from them.

(36) On 19 January 2023, Aeolus Tyre Co., Ltd came forward and authorized explicitly that the Commission could provide CRIA with its specific disclosure. On the same day, the Commission disclosed the undercutting and underselling calculations of the Aeolus/Pirelli Group to CRIA. As far as the detailed sales transactions were concerned, the Commission disclosed to Aeolus Tyre Co., Ltd and to Pirelli Tyre Co., Ltd, separately, only their own respective dataset. This was because CRIA submitted an authorisation letter signed only by Aeolus Tyre Co., Ltd., but not by Pirelli Tyre Co., Ltd.

(37) As far as Hankook Group was concerned, the Commission did not receive an explicit authorisation to share its data with CRIA. Nevertheless, CRIA claimed in its comments on disclosure that the group provided its specific disclosure to the association.

(38) In its comments on disclosure, CRIA informed the Commission that GITI Group withdrew its authorization letter to CRIA. Subsequently, on 3 February 2023, GITI Group provided a new authorisation letter for CRIA authorising the association explicitly to receive the company specific disclosure received on 10 January 2023. Following this letter and upon request by CRIA, on 8 February 2023 the Commission made available to CRIA the specific disclosure in question.

(39) In view of the above considerations, the Commission considered that the rights of defence of the sampled exporting producers and all other exporting producers concerned as well as CRIA's rights of defence were not violated. The companies concerned received the disclosure of the undercutting and underselling calculations and were given sufficient time to comment on the disclosure.

(40) CRIA claimed that the Commission did not take into consideration exceptional circumstances, i.e. Chinese New Year which took place from 21 to 29 January 2023, when rejecting its request for extending the deadline for submitting comments on the disclosure and for organizing a hearing well after the end of the Chinese New Year. CRIA's legal team claimed that the Chinese New Year made it impossible for them to receive proper instructions or input from CRIA for the comments. Moreover, despite a request for intervention from the Hearing Officer, no meaningful extension was granted and the Hearing Officer did not organize a hearing to address this request.

(41) The Commission noted that the request for extension was until 6 February 2023 which was exceptionally long, that is an extension by 14 days. In order not to prevent the completion of the investigation in good time, the Commission, even though it had already given 13 days to comment, granted an extension of two additional working days, that is until 25 January 2023. As regards the hearing request, the Commission initially proposed to organize the hearing on 18 January 2023, and thus before the Chinese New Year. CRIA subsequently proposed to set up the hearing after the Chinese New Year holiday, and ideally in February. The Commission agreed and accepted to organize a hearing on 31 January 2023, thus after the Chinese New Year and the extended deadline for submitting comments.

(42) The Commission observed that the statutory time period for comments by parties is 10 calendar days in accordance with Article 30(3) of the basic anti-subsidy Regulation. The deadline set for CRIA and all other interested parties, following the extension of the deadline, went well beyond the 10 calendar days, and CRIA was given even 15 days. Moreover, the Commission, following comments made after disclosure, disclosed additional information and gave interested parties an additional period of time to parties to comment on the additional disclosure of 4 days, that is until 3 February 2023. Also, contrary to CRIA's assertion, there is no requirement for provisional disclosure in re-opening investigations.

(43) Finally, it would be discriminatory vis-à-vis all other interested parties registered in this re-opening investigation to grant only to CRIA an extension of more than two additional weeks.

(44) As far as the comment that Commission did not address all the claims which were not addressed by the General Court, the Commission already dealt with this point in recital (72) below and no new arguments were provided. Therefore, it was rejected.

4.1. **Hearing Officer intervention**

(45) CRIA requested the intervention of the Hearing Officer pursuant to Articles 12, 13, and 16 of the Hearing Officer's Terms of Reference due to the inadequate extension for comments on the disclosure, the unreasonable timing of the proposed hearing with the Commission pursuant to the disclosure, and the lack of disclosure of certain information.

(46) The Hearing Officer noted that CRIA obtained an extension of the deadline until 25 January 2023. With due regard to the specific circumstances outlined and the time constraints of the proceeding concerned, and having consulted with the Commission services responsible for the investigation, the Hearing Officer concurred with the deadline extension provided and rejected further extensions. Regarding the substance of the disclosure, the Hearing Officer recommended that CRIA and the Commission services should hold a hearing first before going to the Hearing Officer.

(47) In view of the above, the Commission considered that CRIA could fully exercise its rights of defence, within the given and extended deadlines, also considering the substance of the disclosure and the additional information made available to interested parties, following comments after disclosure. Following the hearing held with the Commission services on 31 January 2023, CRIA did not request a hearing with the Hearing Office on any of the issues previously raised.

5. **COMMENTS FROM INTERESTED PARTIES**

(48) The Commission received comments from the Union industry, CRIA, GITI Group and Hämmerling and Opoltrans sp. z o.o. ('Opoltrans').

(49) CRIA submitted to the Commission authorisation letters signed by several exporting producers for which the contested Regulation was annulled by the General Court, including those exporting producers concerned which were sampled during the investigation leading to the adoption of the contested Regulation, in particular GITI Group, Aeolus Tyre Co., Ltd, Chongqing Hankook Tire Co., Ltd and Jiangsu Hankook Tire Co., Ltd.

(50) CRIA and GITI Group opposed the Commission's decision to register imports, as in this specific case such registration is not explicitly authorised by the basic anti-dumping and anti-subsidy Regulations. These two parties reiterated their claim after disclosure. The Union industry considered that the registration fell well in the Commission's discretion.

(51) Regarding this claim, the Commission considered that the General Court has held that the Commission had the power to require national authorities to take appropriate measures to register imports is of general application, as is shown by the heading 'General provisions' of Article 24 of the 2016 basic anti-subsidy regulation. Moreover, Article 24(5) of that regulation is not subject to any restriction as to the circumstances in which the Commission is empowered to require the national customs authorities to register goods ([17]). Therefore, this claim was rejected.

(52) Moreover, GITI Group claimed that the judgment could still be appealed at the time and therefore did not provide a valid legal ground to proceed to registration. The Commission considered that the judgment was not appealed, and the registration was the appropriate step to take in order to ensure that the duties can be reimposed at the correct level, if any, and to instruct the customs authorities to await the publication of the present Regulation ([18]).

([17]) Judgments of 1 June 2022, Jindal Saw and Jindal Saw Italia v Commission, T-440/20 and T-441/20, para. 156.
([18]) See for a similar reasoning, Jindal Saw judgment quoted in footnote 21 above, para 158.

(53) CRIA, GITI Group, Hämmerling and Opoltrans claimed that the Commission could not instruct the national customs authorities not to repay and/or remit duties that had been collected pursuant to the contested Regulation. Such repayment has to happen immediately and in full. They also argued that the situation in the present case is different from the one in the Deichmann judgment ([19]) as, according to the parties, the non-assessment of the market economic treatment and individual treatment claims in that case did not impact the level of the duties. The parties also claimed that the duties cannot be reimposed retroactively. According to the parties, the contested Regulation 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, the parties 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 the parties' view, means that the duties in their entirety should neither have been imposed, nor re- imposed, since the entire injury and causation analysis was flawed.

(54) After disclosure, GITI Group claimed that the Commission's decision to instruct the national customs authorities not to repay the duties infringes the principle of judicial protection enshrined in Article 47 of the Charter of the Fundamental of the European Union ('CFEU'). The Commission should rather allow the repayment of duties as was the case when fines collected for the infringement of Article 101 of the Treaty on the Functioning of the European Union were annulled by the General Court ([20]). In particular, GITI Group referred to the findings of the Court of Justice that *"when the Court declares that a regulation imposing anti-dumping 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 to that effect"* ([21]). Furthermore, according to GITI Group, a delay of repayment of duties has important practical implications that negatively affect the financial situation of the companies concerned and their return on investments.

(55) The Commission recalled that it is settled case-law that the Commission may direct national customs authorities to wait until the Commission has determined the rates at which such duties should have been fixed, in compliance with a judgment of the Union Courts, before deciding on applications for repayment submitted by operators who have paid such duties ([22]). 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 ([23]).

(56) In the case at hand, the General Court put into question the method of calculating undercutting and its impact on causality as well as the impact of the same error on the injury margin of the companies subject to the Court's judgment ([24]). The Court also required the Commission to revise and disclose certain information regarding the injury indicators. However, those elements did not call into question the validity of all other findings made in the contested Regulation. Furthermore, the Court held that, following the resumption of the proceeding, the Commission may adopt a measure to replace the annulled measure and accordingly reimpose a definitive countervailing duty by remedying, in that context, the illegalities found to have occurred ([25]). In this context, it is irrelevant whether the illegalities specifically concern the level of the duties or not. In any case, even if the findings of the re-opened investigation were that no countervailing duties should be reimposed, customs authorities would have the possibility to repay the entire amount of duties, which have been collected since the contested Regulation

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

([20]) See Printeous vs Commission, Case T-95/15, Judgment of the General Court of 13 December 2016.

([21]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 62.

([22]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 59.

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

([24]) See paras 176, 192, 201-207 of the judgment. The contested Regulation remained in place as regards other exporting producers who did not challenge it.

([25]) See judgments of 1 June 2022, Jindal Saw and Jindal Saw Italia v Commission, T-440/20 and T-441/20, para 44; and of 19 June 2019, C & J Clark International, C-612/16, not published, EU:C:2019:508, paragraph 43; of 3 December 2020, Changmao Biochemical Engineering v Distillerie Bonollo and Others, C-461/18 P, EU:C:2020:979, paragraph 97; and of 9 June 2021, Roland v Commission, T-132/18, not published, EU:T:2021:329, paragraph 76,

was adopted, in accordance with the relevant customs legislation. Moreover, this repayment would also include appropriate interest in accordance with the relevant customs legislation. Consequently, contrary to the assertion of GITI Group, companies would be duly compensated for having paid the duties in question.

(57) The Court of Justice has consistently held that Article 10(1) of the basic anti-dumping Regulation and the corresponding Article 14(1) of the basic anti-subsidy Regulation does not preclude acts from re-imposing anti-dumping or countervailing duties on imports that were made during the period of application of the regulations declared to be invalid ([26]).

(58) Contrary to registration taking place during the period before the adoption of provisional measures, the conditions of Article 14(4) of the basic anti-subsidy Regulation are not applicable to the case at hand. The purpose of registration in the context of implementing Court findings is not to allow the possible retroactive collection of trade defence measures as envisaged in those provisions. Rather, it is to safeguard the effectiveness of the measures in place, without undue interruption from the date of entry into force of the contested Regulation until the re-imposition of the corrected duties, if any, by ensuring that the collection of measures in the correct amount is possible in the future. Consequently, as explained in recital (20) of the registration 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. Furthermore, as acknowledged by parties, this very same approach has recently been confirmed by the General Court in its judgment in T-440/20 ([27]). Consequently, the claim that the duties cannot be reimposed was rejected.

(59) As far as the principle of judicial protection enshrined in Article 47 CFEU is concerned, it is settled case-law that the principle of judicial protection cannot prevent an EU institution, an act of which has previously been annulled, from adopting a new act adversely affecting that person, based on different grounds ([28]). In the present case, the findings made are based on grounds different from those on which the contested Regulation was annulled. Accordingly, in line with the findings made by the General Court ([29]), the Commission did not breach the principle of effective judicial protection on the ground that, by the current Regulation, it reimposed a definitive anti-dumping duty following the annulment by the Court of the contested Regulation.

(60) CRIA argued that because "no customs debts were incurred" the re-imposition of duties would "*go beyond the legal period in which the national customs authorities are entitled to levy having regard to the three-year limitation (…)*". The GITI Group's claimed "*the retroactive re-imposition (…) even beyond the three-year deadline risks interfering (by implying that duties can be collected beyond this three-year deadline) in this autonomous decision-making process by national customs authorities and, thereby, risk disturbing the carefully calibrated division of competences between the Commission and EU Member States as set out in the EU Treaties.*" After disclosure, GITI Group reiterated its claim.

(61) The Commission considered that both arguments had to be rejected. First, the Court has stated that time limits are "*not capable of preventing the Commission from adopting a regulation imposing or re-imposing anti-dumping duties or, a fortiori, from opening or resuming the proceeding prior to such adoption*" ([30]). Similarly, the General Court stated that "*[Article 103(1) of the Union Customs Code] applies only to notification of the amount of customs duties to the debtor and its implementation is therefore a matter for the national customs authorities alone, who are competent to make such a notification. Consequently, it does not preclude the Commission from adopting a regulation imposing or reimposing a definitive countervailing duty*" ([31]). Regarding the claim that re-imposition interferes with the division of competences between the Commission and the Member States, the Commission observed GITI Group failed to specify which provision of the Treaties the reimposition of the duties would be infringed. The Court had consistently held that the Commission is

([26]) 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.
([27]) Judgments of 1 June 2022, Jindal Saw and Jindal Saw Italia v Commission, T-440/20 and T-441/20.
([28]) See, to that effect, judgment of 29 November 2018, Bank Tejarat v Council, C-248/17 P, EU:C:2018:967, paragraphs 80 and 81 and the case-law cited.
([29]) Judgment T-441/20 quoted in footnote 21, paras 118-123.
([30]) Judgment quoted in footnote 30 above, para 83.
([31]) Judgment quoted in footnote 31 above, para 134.

entitled to reimpose duties when correcting the errors established by the Court ([32]). Moreover, the present Regulation was subject in its entirety to the examination procedure provided for in Article 25(3) of the basic anti-subsidy Regulation. Consequently, the claims were rejected.

(62) GITI Group claimed that a retroactive re-imposition of (revised) anti-dumping and countervailing duties would also be disproportional and contrary to the principle of proportionality laid down in Articles 5(1) and 5(4) of the Treaty on European Union. Also, GITI Group claimed that the retroactive re-imposition of duties does not – and cannot – provide any "additional" protection to the Union industry or prevent further imports. Therefore, this would violate the principle of proportionality. After disclosure, GITI Group reiterated this claim.

(63) The Commission recalled that it is settled case-law that the Commission did not infringe the principle of proportionality when, in order to give effect to a judgment, it reimposed a definitive duty at an appropriate rate and as from the date of entry into force of the definitive measures. It also found it proportionate that the reimposed duty rates are reduced and the difference is ordered to be refunded or remitted ([33]). Finally, regarding the argument that it would be not proportional that the Union industry receives an additional protection for the past, the General Court found that this claim is '*not as such to establish the requisite legal standard that the reimposition of a definitive anti-dumping duty that is substantially reduced by the contested regulation would be disproportionate in the present case*' ([34]). Consequently, the claims were rejected.

(64) Hämmerling claimed that the current economic situation must be taken into account. Since then the economic sector at issue had to face the COVID-19 crisis, the global surge of prices affecting the whole supply chain (including transport and logistics) and the relevant economic crisis and now issues like the increase in the cost of electricity, high inflation rate etc. caused also by the Russian aggression against Ukraine. It would therefore be unsound to reimpose the duties at issue in a sector, market and micro and macro-economic situations that are completely different from the one examined in the investigation leading to the adoption of the contested Regulation.

(65) As explained in recital (11), the procedure for replacing an annulled act may be resumed at the very point at which the illegality occurred ([35]). In the case at hand the illegality identified by the General Court occurred in the Regulation imposing definitive countervailing measures. Consequently, the Commission cannot take into account, when remedying the illegalities found by the General Court, recent developments which do not concern the investigation period and the period considered. According to Article 15(1) of the basic anti-subsidy Regulation, where the facts as finally established show the existence of countervailable subsidies and injury caused thereby, and the Union interest calls for intervention in accordance with Article 31, a definitive countervailing duty shall be imposed by the Commission. Consequently, the re-opening investigation could lead to the countervailing duties not being reimposed only if the Commission found that there was no subsidisation, resultant injury or Union interest considerations against duties in the investigation period ([36]).

(66) GITI Group claimed that the re-opening should be strictly limited to the issues addressed by the General Court. Thus Commission is not allowed to replace the undercutting analysis by a price suppression analysis to perform the price effect as the methodology adopted by the Commission remains valid and thus is not subject to the re-opening. The effects of a price suppression analysis were not addressed by the General Court and therefore not subject to the present re-opening.

([32]) See on this point the judgments quoted in footnotes 30-31.
([33]) Judgement cited in footnote 31 above, paras 97-103.
([34]) Judgement cited in footnote 31 above, para 104.
([35]) 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] EU:T:2011:209, paragraph 83.
([36]) See, *mutatis mutandi*, Case C-507/21 P, Puma and others v Commission, EU:C:2022:649, paragraph 87.

(67) The Commission observed that the General Court put into question the undercutting analysis carried out by the Commission in terms of fair comparison between the export prices and the Union industry prices. Consequently, the methodology of undercutting as such was put into question. Moreover, nothing prevented the Commission from taking into account any other possible price effects of the subsidised imports within the meaning of Article 8(3) of the basic anti-subsidy Regulation. In Deichmann case, the Court held that the Commission has a wide discretion; only the manifestly inappropriate nature of those measures, having regard to the objective pursued, may affect their lawfulness ([37]). Consequently, the claim was rejected.

(68) GITI Group claimed that the Commission cannot establish a new approach when establishing price undercutting. In particular, the Commission should not introduce a new PCN structure, i.e. by adding the type of customer, when (re) calculating the undercutting and injury margins ([38]).

(69) Without prejudice to whether the Commission is entitled or not to introduce new elements in the PCN structure, the Commission recalled that the price undercutting calculations described in section 4.1 below did not introduce any new elements in the PCN structure. Consequently, this claim was moot.

(70) CRIA claimed, both at initiation and after disclosure, that legal claims raised but not yet ruled on by the General Court need to be considered and that the Commission should actively take into consideration the claims not addressed by the General Court.

(71) Opoltrans claimed that there were no evidence of dumping of the imports from China at the time of the investigation and, among others, the use of the USA as an analogue country was not appropriate, the Union industry does not suffer from injury, there is no causal link between the situation of the Union industry and the imports from China, it is not in the interest of users to reimpose duties.

(72) As the Commission explained in the re-opening Notice, findings reached in the contested Regulation that 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 contested Regulation, remain fully valid ([39]). This included the issues indicated by CRIA and Opoltrans. Therefore, the Commission was not required to look into allegations on issues beyond what the General Court found illegal.

6. RE-EXAMINATION OF PRICE EFFECTS BY THE SUBJECT IMPORTS AND CAUSATION

6.1. Determination of undercutting

(73) As explained in recitals (5) to (7), the General Court found that the Commission failed to make a fair comparison when calculating the price undercutting margins because it adjusted the export price of the exporting producers by applying Article 2(9) of the basic anti-dumping Regulation by analogy while the Union industry also made sales via related selling entities and their sales were not adjusted.

(74) Also, in paragraph 163 of the General Court's judgment, it was found that had no adjustment under Article 2(9) of the basic anti-dumping Regulation been made, 'such a method would have allowed a fair comparison of the prices where the product concerned and the like product are both sold through related selling entities'. In paragraph 190 of the judgment, the General Court found that such a comparison does '*not make it possible to offset the* ***potential*** *effects of the error consisting in the comparison of actual sales prices charged directly to Union customers by Chinese exporting producers, on the one hand, and the resale prices charged by selling entities related to Union producers, on the other hand*' (emphasis added). Finally, in paragraph 134 of the General Court's judgment, the General Court stipulated that, '*irrespective of the lawfulness and relevance of the level of trade chosen by the Commission as relates to exporting producers or as relates to Union producers, the comparison of the prices carried out by that institution must always be fair and, for that purpose, relate to prices which are all at the same level of trade*'.

([37]) See Deichmann, para. 88.

([38]) See *Région Nord-Pas-de-Calais v European Commission*, Joined Cases T-267/08 and T-279/08, Judgment of the General Court of 12 May 2011, para. 83.

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

(75) As explained in paragraph 150 of the General Court's judgment, the percentage of sales of the sampled Chinese exporting producers through related selling entities was 0 % for the Xingyuan Group, 34 % for the GITI Group, 19 % for the Aeolus Group and 98,6 % for the Hankook Group. In addition, in its reply to a measure of organisation of the General Court's procedure, the Commission specified that the percentage of sales made through related sales entities was 46,9 % of the sampled Chinese exporting producers and 87 % of the sampled Union producers. Therefore, the proportion of sales made through related selling entities was high to very high as regards each of the two samples.

(76) As explained in recital (658) of the contested Regulation, the Commission determined price undercutting during the investigation period by comparing:

(77) the weighted average sales prices per product type and segment of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

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

(79) In order to comply with the General Court's judgment, where sales were made via related traders, the export prices were no longer adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The selling, general and administrative ('SG&A') expenses of the related trader and the profit of a sample of unrelated importers were thus added back to the export price.

(80) Furthermore, the Commission assessed whether there were any other potential level of trade issues that should be addressed for the purpose of fair comparison in cases where the exporting producers sold directly to Union customers but the sampled Union producers sold via related selling entities to Union customers.. To that end, it carried out a detailed price analysis of all the sales of the sampled Union producers in order to determine the price patterns of direct sales from the factory and indirect sales via related sales entities. The comparison showed considerable variances of prices within a single product type, however without any obvious price pattern. Whilst in principle related sales entities should incur marketing costs when selling to customers in the Union, it appeared that those costs were not passed consistently on in the final prices.

(81) Therefore, the Commission concluded that selling directly by the producers or selling via the producers' related 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. Accordingly, the Commission did not find any potential effects on the price levels that needed to be offset, as suspected by the General Court in paragraph 190 of the judgment. Therefore, a comparison with the actual sales prices of the sampled Union producers sold directly or via related selling entities to Union customers with the export prices of the sampled exporting producers was thus warranted in this case.

(82) The Commission also made a detailed analysis of the price patterns per sales channel used by the Union industry. In this respect, the Union industry sold to users, distributors, retailers and 'others' in various proportions. The sales to all customers but for 'others' were representative for all product types. The Commission observed that often sales prices to users of the same product type were lower than to distributors and retailers, but the opposite could also be observed. The differences in prices to the various customers did not necessarily depend either on the total volumes sold to a particular customer. Consequently, the Commission concluded that there was no apparent pattern in the prices charged to different types of customers and that no further adjustments were needed to ensure a fair comparison, as prescribed by the General Court.

(83) The Commission recalled that, by means of a note to the file dated 30 January 2023, it provided additional information regarding its analysis of prices charged by the Union industry when selling directly, indirectly and to different types of customers.

(84) After the additional disclosure, CRIA disagreed with the Commission's finding that no price pattern could be identified with respect to the sales by the Union producers. The Commission noted that CRIA did not substantiate its claim and did not provide any evidence showing that the Commission's analysis was wrong. Consequently, it rejected the claim.

(85) The revised undercutting weighted average margin based on the imports of the sampled exporting producers thus established was 14,7 %.

6.2. **Price suppression**

(86) In any event, even if the 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.

(87) Subsidised imports can have a significant impact on a market where price sensitivity is important. As indicated in recital (628) of the contested Regulation, the Union market for lorry and bus tyres is a very competitive market where price differences can have a major impact on the market.

(88) During the period considered, as evident from tables 9-12 of the contested Regulation, the average price of the Union industry decreased by 8 % while the unit cost of production decreased by 6 %. The situation was most dire in tier 3, where the sales price decreased by 5 % while the unit cost of production increased by 1 %. Ultimately, companies in tier 3 were forced, due to the subsidised imports, to sell at a price equalling their cost of production, thereby selling without any profit factored in and therefore at a loss. Consequently, the imports from China exercised price suppression due to their volumes (increase by 32 %) and prices (decrease by 11 %) during the period considered, which did not allow the Union industry to adapt upwards its prices in order to factor in the increase of the unit cost of production.

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

6.3. **Causation**

(90) The Commission examined whether there would still be a causal link between the subsidised imports and the injury suffered by the Union producers, in view of the revised undercutting margins for imports from the sampled Chinese exporting producers and the findings of price suppression.

(91) Notwithstanding the reduction in the undercutting margin for all sampled Chinese exporters, but for Xingyuan Group, this did not alter the fact that imports from the sampled Chinese exporters were undercutting the Union industry's sales prices to a significant extent. Thus, the revised undercutting margins did not alter the original finding made by the Commission about the existence of the causal link between the injury suffered by the Union producers and the subsidised imports from the PRC, in section 5.1 of the provisional Regulation and confirmed in section 5.1 of the contested Regulation. The revised undercutting margins, as well as the additional findings of price suppression in the case at hand, did not alter either the analysis and findings concerning other causes of injury as presented in section 5.1 of the contested Regulation.

(92) Therefore, the Commission maintained its conclusion that the material injury to the Union industry was caused by the subsidised imports from the PRC and the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the subsidised imports.

7. **RE-EXAMINATION OF THE INJURY MARGINS OF THE COMPANIES SUBJECT TO THE RE-OPENING**

(93) In paragraph 179 of its judgment, the General Court found that '*the calculation of the injury margin consists in comparing the import prices used in the calculation of the price undercutting, on the one hand, with the non-injurious prices of the like product including a target profit reflecting normal market conditions, on the other hand. Accordingly, an error relating to the level of trade at which the price comparison is carried out is liable to have an impact on both the calculation of the price undercutting and the calculation of the injury margin*'.

(94) In order to comply with the judgment, the Commission recalculated the injury elimination level for all companies that are subject to the re-opening.

(95) In the original investigation the Commission determined the injury elimination level during the investigation period by comparing:

— the weighted average non-injurious price per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level;

— the same export price established in recital (76) second indent above.

(96) The non-injurious price of the Union industry is based on the cost of production per product type, including SG&A, 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. Given the particular circumstances in this case, and noting that there was no price difference depending on the sales channel used by the sampled Union producers, the non-injurious price was exceptionally based on the final sales price per product type, sold directly or via related selling entities, and, charged to unrelated customers on the Union market, adjusted to an ex-works level, as described above in recital (95), first indent, from which the actual profit was deducted and a reasonable profit was then added. Given these special circumstances, and in order to comply with the judgment, it was considered appropriate to compare that price with the final sales price of exporting producers symmetrically, i.e. at the level of the related importers, also adjusted only for customs duties and post-importation costs as described in recital (76) second indent above, but including SG&A and profit of the exporting producers' related importers based in the Union.

(97) Furthermore, in view of the General Court's findings in paragraph 190 of its judgment, the Commission carefully considered whether there were any other level of trade issues, that would require an offset for the purpose of carrying out a fair comparison, given the fact that 87 % of the sample of the Union producers sold via related sales entities and many exporting producers also had direct sales to final customers. The Commission recalled that, as explained in recital (96), in the injury margin calculations the final sales prices per product type of the Union industry were used. Consequently, as pointed out by the General Court in paragraph 179 of its judgment, the findings made regarding undercutting calculations were fully valid also for the injury margin calculations, as far as a fair comparison was concerned. As explained in recitals (80) and (81) above, the Commission did not detect any other level of trade issue that would require an adjustment for the purpose of carrying out a fair comparison.

(98) The revised injury margins thus established were the following:

Company	Injury elimination level %
Xingyuan Group	55,07 %
GITI Group	28,51 %
Hankook Group	10,31 %
Aeolus / Pirelli	27,56 %
Companies cooperating in both anti- subsidy and anti-dumping investigations	23,15 %

Zhongce Rubber Group Co., Ltd ([1])	55,07 %
Weifang Yuelong Rubber Co., Ltd; Hefei Wanli Tire Co., Ltd ([2])	55,07 %

([1]) Zhongce Rubber Group Co., Ltd cooperated in anti-dumping investigation but not in the anti-subsidy investigation. It is the only company listed in Annex II of contested Regulation affected by the annulment of the contested Regulation, but not by the annulment of Regulation (EU) 2018/1579. Therefore, the contested Regulation was not annulled for this company but only the amendments introduced by the contested Regulation in Regulation (EU) 2018/1579. Therefore, Zhongce Rubber Group Co., Ltd remains subject to the duties imposed by Regulation (EU) 2018/1579.

([2]) These two companies did not cooperate, neither in the anti-dumping nor in the anti-subsidy investigation. Therefore, they are subject to the duty applicable to 'all other companies'.

8. DISCLOSING THE DATA SPECIFIED BY THE COURT TO ALLOW THE APPLICANTS TO EXERCISE THEIR RIGHTS OF DEFENCE

(99) The General Court stated in paragraph 33 of its judgment that the Commission breached the applicants' rights of the defence by not disclosing to them any of the data referred to in paragraph 244 of the same judgment.

(100) The General Court listed the data concerned in paragraph 244 of the judgment:

— the gross injury indicators, before application of the weighting adjustments, and the data relating to SMEs, on the one hand, and large enterprises, on the other;

— injury indicators other than profitability after revision of the weighting;

— certain information relating to the sources of macroeconomic injury data and the list of SMEs of the Union industry which ceased production;

— the total exact volume of the sales of SMEs of the Union industry which cooperated in the investigations and information relating to the proportion of SMEs in the Union industry.

8.1. Injury indicators, with and without weighting, and for SMEs and large enterprises separately

(101) In paragraphs 215-235 of its judgment, the General Court found that, following the changes in the weighting made at definitive stage (see recitals (707) to (711) of the contested Regulation), the Commission correctly calculated and showed the profitability of sales in the Union at the level of the Union industry as a whole (table 16 of the contested Regulation) and at tier 3 level (table 20 of the contested Regulation). However, as pointed out by the General Court in paragraph 227 of its judgment, it was necessary to recalculate all microeconomic indicators, other than profitability, as a result of the change in the weighting method. By not doing so, the Commission did not objectively examine the impact of the subsidised imports in accordance with Article 8(3) of the basic anti-subsidy Regulation.

(102) Consequently, to comply with the General Court's judgment, in the following sections the Commission analysed the impact of applying the weighting established at definitive stage on all microeconomic indicators, other than overall profitability and profitability of tier 3 (the 'revised weighting'). As shown below, the application of this revised weighting did not modify substantially any of the findings made by the Commission regarding the microeconomic indicators. Consequently, the existence of material injury during the period considered was confirmed.

(103) Furthermore, in paragraph 244 of its judgment, the General Court stated that the Commission breached the applicants' rights of the defence by not disclosing to them the gross injury indicators, before application of the weighting adjustments, and the data relating to SMEs, on the one hand, and large enterprises, on the other hand. However, the General Court did not require the Commission to re-establish its injury findings without the application of any weighting adjustments. Rather, the General Court merely prescribed that those gross injury indicators, before application of any weighting adjustments, should have been disclosed to the parties concerned.

(104) In light of the foregoing, to comply with the General Court's judgment, the Commission showed in the following sections the microeconomic indicators established: (1) at provisional stage contained in the provisional Regulation, (2) at definitive stage after revision of the weighting (called 'revised weighting' in all tables below), (3) without any weighting adjustment and (4) within tier 3: (4a) indicators only for SMEs and (4b) indicators only for large companies.

8.1.1. *Microeconomic indicators*

Preliminary remarks

(105) As explained in the recitals (704) to (711) of the contested Regulation, the Commission considered that the microeconomic indicators could not reflect the actual situation of the Union industry as the large sampled companies had a bigger impact on the overall data than the sampled SMEs while the share of the latter in the total Union industry sales was around 13 %.

(106) Therefore, the Commission decided to increase the weight of the sampled SMEs. The following weighting was applied in the contested Regulation at definitive stage. First, the Commission established the percentages of sales of SMEs and large companies in the total Union sales. Second, the Commission expressed the sales of sampled SMEs and large sampled producers with their respective volume in the total Union sales. Finally, percentages were compared and SMEs data were increased in order to reflect the same percentage as the sampled large companies. Please refer also to recital (138) below. At provisional stage, the Commission also used an additional adjustment (i.e. to reflect the proportion of each tier in the Union sales within the sampled data). However, as explained in the contested Regulation, this adjustment was abandoned at definitive stage as the interested parties contested the use of a fixed ratio over the period considered.

(107) The weighting adjustment had an impact on the outcome of the overall micro-indicators but also on tier 3, because both large companies and SMEs were active in that tier. The trends in tier 1 and tier 2 were not impacted as only large companies were active in those tiers. As pointed out in recital (93), the weighting adjustment had a limited impact on the overall microeconomic indicators because SMEs sales during the investigation period were estimated at around 13 % of the total Union sales during the investigation period.

8.1.1.1. Prices and factors affecting prices

(108) The average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows.

Table 1

Sales prices in the Union and cost of production

Based on:	In EUR/item	2014	2015	2016	Investigation period
Table 9 of the contested Regulation	Average unit sales price in the Union	237	225	216	218
	Index 2014=100	*100*	*95*	*91*	*92*
Revised weighting	Average unit sales price in the Union	239	228	219	220
	Index 2014=100	*100*	*95*	*92*	*92*
Without weighting	Average unit sales price in the Union	252	238	226	228
	Index 2014=100	*100*	*94*	*90*	*90*

Table 9 of the contested Regulation	Average cost of production	200	188	183	188
	Index 2014=100	*100*	*94*	*91*	*94*
Revised weighting	Average cost of production	202	189	185	190
	Index 2014=100	*100*	*94*	*92*	*94*
Without weighting	Average cost of production	209	192	188	192
	Index 2014=100	*100*	*92*	*90*	*92*

Source: Verified questionnaire replies of sampled Union producers.

(109) Despite the nominal difference between the average unit selling price established under the different options for the period considered, as far as the overall trend is concerned, there was no difference found between the weighting used at provisional and at definitive stage. Without any weighting, the average unit selling price decreased with 2 percentage points more than in the other two scenarios. The same conclusion could be drawn with regard to the trends observed in average costs of production.

(110) The weighting, or rather its absence, had no impact on the conclusion for tier 1 and tier 2. Regarding tier 3, as shown in the tables 2, 3 and 4 below, the Commission examined the impact of the weighting and its non-application to three sets of data: for the overall tier 3, for the large companies active in that tier and the SMEs.

Table 2

Sales prices in the Union and cost of production — Tier 3

Based on:	In EUR/item	2014	2015	2016	Investigation period
Table 12 of the contested Regulation	Average unit sales price in the Union	181	176	172	172
	Index 2014=100	*100*	*97*	*95*	*95*
Revised weighting	Average unit sales price in the Union	180	176	172	171
	Index 2014=100	*100*	*98*	*95*	*95*
Without weighting	Average unit sales price in the Union	201	191	182	180
	Index 2014=100	*100*	*95*	*90*	*90*
Table 12 of the contested Regulation	Average cost of production	170	175	167	172
	Index 2014=100	*100*	*103*	*98*	*101*
Revised weighting	Average cost of production	170	175	167	172
	Index 2014=100	*100*	*103*	*99*	*101*
Without weighting	Average cost of production	182	181	170	173
	Index 2014=100	*100*	*99*	*93*	*95*

Source: Verified questionnaire replies of sampled Union producers.

(111) For tier 3, the overall trend of the unit selling price and the unit cost of production was not impacted by the revision of the weighting at definitive stage. In the absence of any weighting, the trends in the unit selling price and the unit cost of production showed a more pronounced decrease for both indicators, by at least 5 percentage points during the period considered. These trends reflected mainly the trend observed below for large companies active in the tier 3.

(112) As can be seen in table 3 below, for large companies active in tier 3, the trend was significantly worse compared to the overall trend for the unit selling price and the unit cost of production.

Table 3

Sales prices in the Union and cost of production — Tier 3: Large companies only

Based on EUR/item	2014	2015	2016	Investigation period
Average unit sales price in the Union	207	195	184	183
Index 2014=100	*100*	*94*	*89*	*88*
Average cost of production	186	183	171	174
Index 2014=100	*100*	*98*	*92*	*93*

Source: Verified questionnaire replies of sampled Union producers.

(113) Table 4 below showed that for SMEs which were active only in tier 3, the evolution of the unit cost of production deteriorated over the period considered with a cost increase of 7 %. In parallel, the unit price decreased by 2 %.

Table 4

Sales prices in the Union and cost of production — Tier 3: SMEs only

In EUR/item	2014	2015	2016	Investigation period
Average unit sales price in the Union	164	164	162	161
Index 2014=100	*100*	*100*	*99*	*98*
Average cost of production	159	170	164	171
Index 2014=100	*100*	*107*	*103*	*107*

Source: Verified questionnaire replies of sampled Union producers.

8.1.1.2. Labour costs

(114) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 5

Average labour costs per employee

		2014	2015	2016	Investigation period
Table 13 of the contested Regulation	Average labour costs per employee (EUR)	43 875	44 961	46 432	46 785
	Index 2014=100	*100*	*102*	*105*	*106*
Revised weighting	Average labour costs per employee (EUR)	44 300	45 199	46 605	46 943
	Index 2014=100	*100*	*102*	*105*	*106*
Without weighting	Average labour costs per employee (EUR)	46 274	47 180	48 390	48 477
	Index 2014=100	*100*	*102*	*105*	*105*

Source: Verified questionnaire replies of sampled Union producers.

(115) The average labour cost increased over the period considered by 6 % in case of both types of weighting and by 5 % when no weighting was applied.

8.1.1.3. Inventories

(116) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 6

Inventories

		2014	2015	2016	Investigation period
Table 14 of the contested Regulation	*Closing stocks (Index 2014=100)*	*100*	*81*	*100*	*144*
	Closing stocks as a percentage of production	7 %	6 %	7 %	9 %
	Index 2014=100	*100*	*81*	*97*	*134*
Revised weighting	*Closing stocks (Index 2014=100)*	*100*	*82*	*99*	*146*
	Closing stocks as a percentage of production	7 %	6 %	7 %	9 %
	Index 2014=100	*100*	*83*	*97*	*137*
Without weighting	*Closing stocks (Index 2014=100)*	*100*	*84*	*100*	*148*
	Closing stocks as a percentage of production	6 %	5 %	6 %	8 %
	Index 2014=100	*100*	*84*	*96*	*135*

Source: Verified questionnaire replies of sampled Union producers.

(117) Stocks increased by 44 % / 46 % over the period considered in case of both types of weighting and by 48 % when no weighting was applied. Closing stocks reached around 9 % of the yearly production in case of both types of weightings and 8 % when no weighting was applied. This situation impacted negatively the financial situation of the sampled Union producers.

8.1.1.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(118) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 7

Profitability, cash flow, investments and return on investments

		2014	2015	2016	Investigation period
Table 15 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	15,6 %	16,7 %	15,2 %	13,7 %
	Index 2014=100	*100*	*106,9*	*97,7*	*88,1*
Table 16 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	15,4 %	16,9 %	15,3 %	13,7 %
	Index 2014=100	*100*	*109,5*	*99,5*	*88,6*
Without weighting	Profitability of sales in the Union to unrelated customers (% of sales turnover)	16,9 %	19,1 %	17,0 %	15,6 %
	Index 2014=100	*100*	*113*	*101*	*92*
Table 15 of the contested Regulation	Cash flow (in million EUR)	309	312	292	272
	Index 2014=100	*100*	*101*	*94*	*88*
Revised weighting	Cash flow (in million EUR)	272	281	264	244
	Index 2014=100	*100*	*103*	*97*	*90*
Without weighting	Cash flow (in million EUR)	264	277	255	246
	Index 2014=100	*100*	*105*	*97*	*93*
Table 15 of the contested Regulation	Investments (in million EUR)	86	63	59	65
	Index 2014=100	*100*	*73*	*69*	*76*
Revised weighting	Investments (in million EUR)	78	55	53	58
	Index 2014=100	*100*	*71*	*68*	*74*
Without weighting	Investments (in million EUR)	72	52	50	56
	Index 2014=100	*100*	*72*	*69*	*78*

Table 15 of the contested Regulation	Return on investments	21,0 %	21,7 %	19,3 %	17,6 %
	Index 2014=100	*100*	*103*	*92*	*84*
Revised weighting	Return on investments	23,4 %	24,6 %	21,7 %	20,3 %
	Index 2014=100	*100*	*105*	*92*	*87*
Without weighting	Return on investments	23,4 %	24,6 %	21,7 %	20,3 %
	Index 2014=100	*100*	*105*	*92*	*86*

Source: Verified questionnaire replies of sampled Union producers.

(119) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(120) Based on the two types of weighting, the trend of the overall profitability was similar, with a decrease from 15,6 % / 15,4 % in 2014 to 13,7 % in the investigation period. This was calculated on the basis of the weight of each of the tiers in the total sales. Without any weighting, the overall profitability decreased from 16,9 % in 2014 to 15,6 %.

(121) The decreasing profitability for the three methodologies was the result of a difference of 2 percentage points between prices and costs.

(122) The Commission recalled that, as explained in recital (102), the overall profitability was already disclosed in the definitive Regulation and was not subject to the General Court's findings with regard to the identified errors. The profitability was shown in the table above only for the sake of completeness. When applying the three different methodologies, the overall profitability was influenced by the profitability in tier 1 and in tier 2, whereas profitability in tier 3 without weighting decreased by around 5 percentage points during the period considered as indicated in table 9 below. Moreover, the relative trend in profitability for the entire Union industry was also decreasing.

(123) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow shows a decrease by 7 - 12 % when expressed without weighting or with the provisional weighting.

(124) The return on investments is the profit in percentage of the net book value of investments. It developed negatively for the three methodologies by around 15 percentage points over the period considered.

(125) Regarding tier 2, the weighting revision between provisional and definitive had an impact on the values but not on the overall trend observed. Therefore, recitals (781) and (782) of the contested Regulation were confirmed.

Table 8

Profitability, cash flow, investments and return on investments: Tier 2

Based on:		2014	2015	2016	Investigation period
Table 18 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	17,9 %	16,7 %	16,0 %	15,3 %
	Index 2014=100	*100*	*93*	*90*	*86*

Revised weighting	Profitability of sales in the Union to unrelated customers (% of sales turnover)	17,9 %	16,7 %	16,0 %	15,3 %
	Index 2014=100	*100*	*93*	*90*	*86*
Table 18 of the contested Regulation	Cash flow (in million EUR)	88	76	65	69
	Index 2014=100	*100*	*86*	*74*	*78*
Revised weighting	Cash flow (in million EUR)	53	46	39	41
	Index 2014=100	*100*	*86*	*74*	*78*
Table 18 of the contested Regulation	Investments (in million EUR)	18	16	15	17
	Index 2014=100	*100*	*92*	*84*	*97*
Revised weighting	Investments (in million EUR)	10	10	9	10
	Index 2014=100	*100*	*92*	*84*	*97*
Table 18 of the contested Regulation	Return on investments	20,4 %	21,4 %	20,1 %	16,2 %
	Index 2014=100	*100*	*105*	*98*	*79*
Revised weighting	Return on investments	20,4 %	21,4 %	20,1 %	16,2 %
	Index 2014=100	*100*	*105*	*98*	*79*

Source: Verified questionnaire replies of sampled Union producers.

(126) A specific analysis based on the same methodology as described was made for the tier 3, SMEs active in tier 3 and large companies active in tier 3.

(127) The Commission recalled that, as explained in recital (102), the profitability for tier 3 was already disclosed in the contested Regulation and was not subject to the General Court's findings with regard the identified errors. The profitability was shown in the table above only for the sake of completeness.

(128) For the overall tier 3, the profitability trend for the two types of weighting methodologies was found similar. This is due to the fact that the losses reported by the SMEs had more weight in the overall calculation as the losses for the SMEs were particularly pronounced (-6,1 % in the investigation period). Without weighting, tier 3 profitability was close to the profitability reported by large companies active in that tier. The profitability for the large companies in tier 3 halved from 2014 to the investigation period, from 10 % to 4,8 %.

(129) With regard to tier 3, the net cash flow decreased significantly by around 60 % for the two types of weighting methodologies and by around 35 % without weighting. The return on investments decreased by around 66 percentage points for the two types of weighting methodologies and by around 48 percentage points without weighting over the period considered. Without weighting, the profitability of tier 3 reflected the profitability of large companies in tier 3, as expected based on the recital (783) of the contested Regulation.

Table 9

Profitability, cash flow, investments and return on investments: Tier 3

Based on:		2014	2015	2016	Investigation period
Table 19 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	6,1 %	0,6 %	2,7 %	- 0,4 %
	Index 2014=100	*100*	*10*	*45*	*- 7*
Table 20 of the contested Regulation	Profitability of sales in the Union to unrelated customers (% of sales turnover)	5,9 %	0,5 %	2,7 %	- 0,7 %
	Index 2014=100	*100*	*9*	*45*	*- 12*
Without weighting	Profitability of sales in the Union to unrelated customers (% of sales turnover)	9,23 %	5,01 %	6,29 %	3,92 %
	Index 2014=100	*100*	*54*	*68*	*42*
Table 19 of the contested Regulation	Cash flow (in million EUR)	28	17	26	11
	Index 2014=100	*100*	*62*	*93*	*38*
Revised weighting	Cash flow (in million EUR)	26,7	16,2	24,4	9,6
	Index 2014=100	*100*	*61*	*91*	*36*
Without weighting	Cash flow (in million EUR)	18,7	12,6	16,1	12,1
	Index 2014=100	*100*	*67*	*86*	*65*
Table 19 of the contested Regulation	Investments (in million EUR)	14	10	10	10
	Index 2014=100	*100*	*69*	*66*	*66*
Revised weighting	Investments (in million EUR)	13,4	9,0	8,6	8,7
	Index 2014=100	*100*	*68*	*65*	*65*
Without weighting	Investments (in million EUR)	8,2	6,0	6,3	7,4
	Index 2014=100	*100*	*73*	*77*	*91*
Table 19 of the contested Regulation	Return on investments	7,6 %	0,2 %	4,8 %	2,5 %
	Index 2014=100	*100*	*2*	*62*	*33*
Revised weighting	Return on investments	11,2 %	0,7 %	7,0 %	5,8 %
	Index 2014=100	*100*	*6*	*63*	*52*

Without weighting	Return on investments	11,2 %	0,7 %	7,0 %	5,8 %
	Index 2014=100	*100*	*6*	*63*	*52*

Source: Verified questionnaire replies of sampled Union producers.

(130) Regarding the large companies in tier 3, the Commission provided below the complete set of data for their profitability, cash flow, investments and return on investments.

Table 10

Large companies - Profitability, cash flow, investments and return on investments – Tier 3

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	9,97 %	6,08 %	7,05 %	4,81 %
Index 2014=100	*100*	*61*	*70*	*48*
Cash flow (in million EUR)	17,9	12,2	15,3	12,4
Index 2014=100	*100*	*68*	*85*	*69*
Investments (in million EUR)	7,7	5,7	6,1	7,3
Index 2014=100	*100*	*74*	*78*	*95*
Return on investments	12,2 %	0,8 %	7,5 %	6,6 %
Index 2014=100	*100*	*6*	*61*	*54*

Source: Verified questionnaire replies of sampled Union producers.

(131) Regarding the SMEs in tier 3, the Commission provided below the complete set of data for their profitability, cash flow, investments and return on investments. The losses reported during the investigation period were reported in recital (783) of the contested Regulation.

Table 11

Profitability, cash flow, investments and return on investments - Tier 3 – SMEs

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,71 %	- 3,55 %	- 1,31 %	- 6,13 %
Index 2014=100	*100*	*- 131*	*- 48*	*- 226*
Cash flow (in million EUR)	0,8	0,4	0,9	- 0,2
Index 2014=100	*100*	*48*	*109*	*- 30*
Investments (in million EUR)	0,5	0,3	0,2	0,1

Index 2014=100	*100*	*61*	*48*	*24*
Return on investments	5,0 %	- 0,3 %	2,2 %	- 1,2 %
Index 2014=100	*100*	*- 6*	*44*	*- 23*

Source: Verified questionnaire replies of sampled Union producers.

(132) The Commission considered that the microeconomic indicators, based on the revised weighting, confirmed recital (781) of the contested Regulation, and, accordingly, that the conclusions based on the trends as set out in the provisional Regulation remained valid.

(133) Moreover, the microeconomic indicators, based on the absence of weighting, were also found in line with the microeconomic indicators based on the two types of weighting methodologies. The absence of weighting had mainly an impact on tier 3. In particular, the overall profitability of tier 3 without weighting reflected the profitability of large companies active in tier 3. Recital (783) of the contested Regulation showed the profit margin of large companies during the investigation period.

(134) Large companies active in tier 3 faced a significant decrease of their profit margin and of their return on investments, which declined negative, as well as the cash flow. For SMEs, their losses were particularly pronounced (-6,1 %) in the investigation period. Similar conclusions could be drawn for the cash flow and the return on investments which went negative. Therefore, the conclusion regarding SMEs situation remained valid and the trends of the provisional Regulation and definitive Regulation were confirmed.

(135) While for this case the trends of the microeconomic indicators, established on basis of the revised weighting, were similar to the microeconomic indicators without weighting, the Commission considered that the weighting methodology applied at definitive stage was accurate in a market situation where the Union industry consisted of both large companies and numerous SMEs. The Commission also observed that this methodology as such was not put into question by the General Court.

8.2. **Macroeconomic indicators**

(136) Regarding the macroeconomic indicators, the General Court considered that, as claimed by CRIA and CCCMC, the Commission failed to provide further information regarding the sources of the data used. Also, at definitive stage, CRIA and CCCMC claimed that they had doubts about the reliability of some information relied on as indicated in recital (723) of the contested Regulation.

(137) In order to comply with the judgment, the Commission requested further information and received additional clarifications during a meeting with the European Tyre & Rubber Manufacturers' Association representatives ('ETRMA'). ETRMA provided detailed information regarding the methodology used by the association for the aggregation of market data. An open version of the meeting minutes was made available to all interested parties together with several annexes. The annexes described in detail how the data was compiled by ETRMA, with the help of its affiliate Europol Governance, which compiled the macroeconomic data on its behalf. The Commission reiterated that the macro-economic data provided by ETRMA were not challenged as such at definitive disclosure by some of the exporting producers (such as the Hankook Group and Aeolus/Pirelli) which were members of ETRMA.

(138) On this basis, the Commission considered that it complied with the General Court's findings regarding the issue of sources of macro-economic data, as set out in paragraph 244 of its judgment.

8.3. **SMEs of the Union industry which ceased production**

(139) The General Court stated that the applicants correctly argued at the hearing that the communication of the names of the 85 SMEs which had ceased production, as provided by eight different tread suppliers, did not allow identifying individual business relations between a supplier and a customer and that, consequently, these names did not concern any data liable to be confidential. In those circumstances, the Commission has not shown that the list of Union industry SMEs which ceased production was confidential (see paragraph 253 of the judgment).

(140) The Commission considered that in principle the name of a company should not be disclosed to other interested parties without the explicit agreement of the company in question. Moreover, removing the link between the tread supplier and its customer may not be sufficient for allowing the disclosure of this information. A list of customers is one of the main assets of a company and thus there is no interest for a tread supplier for disclosing this type of information to its competitors. Furthermore, some of the SMEs concerned were not only 100 % focused on the retreading business but the retreading was one activity amongst others (for example sales of new tyres or a workshop for large truck fleet companies). Finally, the fact that a customer had been reported by a company as having stopped purchasing tread materials did not necessarily mean that this company was bankrupt or dissolved. Thus, providing this information would reveal sensitive commercial information.

(141) While the aggregation of data regarding volumes or values from several parties may be disclosed without issues of confidentiality, in particular if the aggregated data are within the same range, this cannot apply to a company name. Moreover, a cooperating party cannot disclose such information without the authorization of the party whose name is provided. Consequently, for disclosing such list of customers, each tread supplier should have requested each of its customers the authorization for disclosing its name to other interested parties.

(142) At the time of the contested Regulation, only the companies reported bankrupt or liquidated, could have been disclosed to interested parties. However, the Commission did not have details about which company went bankrupt or was liquidated or simply stopped production. In its Note for the File dated 19 July 2019, the Commission provided detailed explanations regarding the methodology used for establishing the list mentioned above. At the time of the contested Regulation, the Commission contacted 8 tread suppliers in order to obtain information concerning their customers list and their sales during the period considered (1 January 2014 – 30 June 2017). As the retreaders may have several suppliers, the data provided by the suppliers was aggregated per customer in order to identify the companies which stopped purchasing tread material during the period considered. Based on that database, the Commission was in a position to identify the retreaders which shifted from one supplier to another one. The Commission also stated in recital (810) of the contested Regulation that at least 85 SMEs stopped production, referring to recital (724) of the contested Regulation.

(143) The Commission did not have information regarding the legal status of each retreader. In particular, the Commission was not in a position to identify the bankrupt or dissolved companies, and thus to report it to interested parties.

(144) In the course of this investigation, the Commission contacted the cooperating tread suppliers in order to obtain the actual legal status of those companies which have stopped purchasing tread materials. Based on this request of the Commission, tread suppliers provided their agreement for the disclosure of these names but on the condition that their company name should be dissociated from the customer names. The Commission found that most of the companies listed were inactive. Therefore, the Commission decided to disclose the list of SMEs which stopped purchasing tread materials from the interested parties. Their names were contained in the non-confidential case file.

8.4. **Information relating to the proportion of SMEs as part of the Union industry**

(145) The General Court considered that the Commission did not disclose information relating to the proportion of SMEs in the Union industry (see paragraphs 244 to 266 of the judgment).

(146) The Commission provided, however, the exact proportion of the SMEs as part of the Union industry in table 5 of the contested Regulation.

(147) As indicated in table 5 of the contested Regulation, the revised weighting methodology was not based on the volume reported by the cooperated companies, but on the total volume of sales of SMEs and of large companies as shown in the table below. The specific underlying data used is provided in Table 12 below.

Table 12

Share of SMEs' sales in the total Union sales (in %)

	2014	2015	2016	Investigation period
Union sales volume, shown in Table 7 of the contested Regulation in items	14 834 175	14 738 216	14 532 627	14 584 104
Share of SMEs' sales in the total Union sales, shown in Table 5 of the contested Regulation	16,9 %	15,3 %	13,7 %	13,2 %
Share of large companies in the total Union sales	83,1 %	84,7 %	86,3 %	86,8 %
sampled SMEs volume of sales in items	91 700	84 500	79 300	74 600
% sampled SMEs compared with total volume of SMEs sales	3,6 %	3,7 %	3,9 %	3,8 %
% sampled large companies compared with total volume of large companies	[20 - 45]	[20 - 45]	[20 - 45]	[20 - 45]
Weighting Ratio applied	[4,5 – 11,3]	[4,3 – 11,0]	[4,0 – 10,3]	[4,2 – 10,6]
Weighting ratio = (% sampled large companies x total SMEs volume of sales) / (sampled SMEs volume of sales) - 1				

8.5. **The volume of the sales of SMEs which cooperated in the investigation**

(148) The Commission recalled that, having received duly justified requests, it granted anonymity throughout the investigations to all the complainants. In addition, and with a view to further protecting such anonymity, the ratio used for establishing the revised weighting values was only based on the total Union sales, including the total sales of SMEs and not on the sales volumes of only the cooperating SMEs. Consequently, the exact sales volumes of cooperating SMEs as such did not constitute an essential fact or consideration on the basis of which the Commission established the injury indicators of the Union industry. Yet, the General Court considered in paragraph 256 of its judgment that the Commission did not explain in specific terms how disclosure of an aggregated figure would be liable to reveal the identity of certain complainants.

(149) The Commission considered that, in certain cases, the disclosure of aggregated figures may indeed not reveal the identity of the complainants. This could be the case for example, for an industry where the sales volumes of the companies are spread unevenly, with small market share of each operator. However, in the case at hand, the Union industry was split between few large group of companies, on the one hand, and more than 380 SMEs on the other hand. The large groups of companies made up around 85 % of the Union sales as explained in the recital (615) of the contested Regulation. Consequently, revealing the exact volumes (or even ranges) of the SMEs would have allowed the other parties to conclude what the share was of the complainants that are large Union producers and, ultimately, could have led to the identification of those large Union producers cooperating in the investigation

leading to the contested Regulation. Consequently, after careful re-examination of the data at its disposal, the Commission concluded that revealing the exact volumes (or even ranges) of sales of SMEs, which cooperated in the investigation would have jeopardised the anonymous status of the complainants.

(150) Following disclosure, CRIA reiterated its claim that the Commission should have provided the exact volume of the sales of SMEs which cooperated in the investigation leading to the contested Regulation.

(151) The Commission considered that the volume of the sales of SMEs which cooperated in the investigation was available during the investigation leading to the contested Regulation, through the sampling forms that were filed by all cooperating companies and made available in the open file. The sampling forms were, accordingly, accessible to all interested parties. Moreover, as indicated in recital (148) the exact sales volume of cooperating SMEs was not considered when establishing the SMEs ratio; rather, in order to establish the revised weighting values, the Commission only used the total Union sales. Thus, the exact volume of cooperating SMEs was not part of the essential facts used for the establishment of the revised values. Finally, as explained in recital (149) above, disclosing this data would have jeopardised the anonymous status of the complainants. Consequently, the claim was rejected.

9. **DEFINITIVE MEASURES**

(152) In view of the above, a definitive countervailing duty should be re-imposed on the imports of the product concerned at the level of the lower of the amounts of subsidisation and the injury margins found, in accordance with the lesser duty rule.

(153) It is noted that the anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. Pursuant to Article 24(1) of Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union ([40]), in view of the use of the lesser duty rule and the fact that the definitive subsidy rates are lower than the injury elimination level, it is appropriate to impose a definitive countervailing duty at the level of the established definitive subsidy rates and then impose a definitive anti-dumping duty up to the relevant injury elimination level.

(154) As explained in recital (941) of the contested Regulation, the Commission decided that the appropriate form of the measures was fixed duties.

(155) Following disclosure and additional disclosure, CRIA claimed that the Commission used inconsistent CIF values as a denominator when establishing the undercutting and underselling margins. Both margins should have been established based on the denominator used for calculating the undercutting margin.

(156) As set out by the Commission in section 9 above, the export price used to calculate the undercutting margin was established by removing from the selling price to the first independent customers of the sampled exporting producers all the costs incurred in the Union (which depended on the incoterms of each transaction) in order to establish the value at the Union border. For example, transportation costs in the Union were deducted. To this value was added, where appropriate, customs duties and post-importation costs. The result was the so-called 'CIF landed price', which was compared with the sales price of the Union producers, similarly adjusted, in order to establish the undercutting margin, which was expressed as a percentage of the Union sales price.

(157) The underselling margin was established in the following way per product type:

(158) The numerator was calculated by comparing the same CIF landed price (used for calculating the undercutting margin) with the Union industry target price;

(159) The denominator was the Union customs CIF value, as reported by the sampled exporting producers.

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

(160) The denominator value used for establishing the underselling margin and the dumping margin should be the same value for comparison purposes for the application of the lesser duty rule, pursuant to Article 7(2) of the basic Regulation. The purpose of this comparison is to determine the percentage by which the import price declared at customs needs to be increased by way of anti-dumping duties to remove the effects of the underselling or dumping amounts previously calculated. Evidently, since the duty will apply to the declared Union customs CIF value, such duty must mathematically be expressed as a percentage of the same above-mentioned CIF price which as explained before constitutes the basis for the application of the duty at customs. It would be illogical and mathematically erroneous to calculate a percentage on the basis of one value used as a denominator to then apply the resulting percentage to a different value.

(161) Following the comments made, the Commission re-examined the calculations that were disclosed and confirmed that the methodology used for establishing the denominator values was correct. Consequently, the Commission rejected the claim that the CIF values used were inconsistent and that the CIF landed price, which was compared to the Union price for the purposes of the undercutting and underselling calculations, on the one hand, and the CIF value used as a denominator to establish both the underselling margin and the dumping margin, on the other hand, should be the same.

(162) CRIA claimed that the Commission used an erroneous methodology when establishing the fixed duty, as the injury margin percentage was extrapolated in a duty per tyre based on the overall volume of imports instead of using only the volume of matching product types that had been used for calculating injury margin originally calculated.

(163) The Commission used the same methodology as in the contested Regulation, which was not invalidated by the General Court. In any event, the Commission noted that anti-dumping measures must have an equivalent remedial effect irrespective of the form they take. It is uncontested that if the duty had taken the form of an *ad valorem* measure, the *ad valorem* duty would apply to all imports and all types of the product concerned, irrespective of whether a particular type was considered in the determination of the underselling or dumping amount. As a result, in circumstances where it is decided to express the duty as a specific amount, such specific duty must be based on the sales of all imports of the product concerned during the relevant investigation period, since it will apply to all imports of all product types in the same way as an equivalent *ad valorem* duty. Consequently, the Commission considered that it was appropriate to take into account the total volume of imports as it would have done if it were to apply an *ad valorem* duty. Therefore, it rejected the claim.

(164) Following additional disclosure, CRIA claimed that the Commission made an error when establishing the duty level of Zhongce Rubber Group Co., Ltd.

(165) In the note to the file dated 31 January 2023, the Commission clarified that it took into account the injury elimination level of 32,39 % applicable to Zhongce Rubber Group Co., Ltd's during the period before the Regulation imposing countervailing duties entered into force (from 8 May 2018 to 12 November 2018). The corresponding fixed duty was thus EUR/item 49,31 for that period. However, from 13 November 2018, when the contested Regulation entered into force and amended accordingly Regulation 2018/1579, the Commission made Zhongce Rubber Group Co., Ltd subject to the higher injury margin of 55,07 %, as far the subsidy investigation was concerned, because it cooperated in the anti-dumping investigation, but not in the anti-subsidy investigation. This resulted in a dumping margin of zero and a subsidy rate of 51,8 %, equalling EUR/item 57,28 fixed countervailing duty. No comments were received by CRIA regarding this explanation. Therefore, the claim by CRIA that the Commission committed an error regarding the calculation of the injury elimination level for this company was rejected.

(166) Following disclosure, CRIA also argued that the duty level for three companies, namely Zhongce Rubber Group Co., Ltd, Weifang Yuelong Rubber Co., Ltd, and Hefei Wanli Tire Co., Ltd, should also be reduced as the Commission failed to adequately implement paragraphs 190-192 of the judgment of the General Court.

(167) As explained in recital (79) above, in addition to the adjustment made of adding back, where applicable, SG&A and profit to the exporting producers' export price previously removed by applying Article 2(9) of the basic Regulation by analogy, the Commission established that no further adjustments were needed. Indeed, as pointed out in recitals (81), (82) and (97) above, the Commission established that there was no issue of fair comparison between indirect and direct sales or between different types of customers. As a result, similar to the methodology applied in the contested Regulation, direct sales of the sampled exporting producers were compared, per product type, with sales of the sampled Union producers to establish the injury margins. This also applied to the calculation of the residual duty, which was based on the injury margin of 55,1 % for the Xingyuan Group which had only direct sales. On this basis, the Commission established that the residual anti-dumping and countervailing duties applicable to Weifang Yuelong Rubber Co., Ltd and Hefei Wanli Tire Co., Ltd and the residual countervailing duty applicable to Weifang Yuelong Rubber Co., Ltd should remain unchanged. Consequently, the Commission considered that its findings were in line with paragraphs 190-192 of the judgment of the General Court and rejected the claim.

(168) Following disclosure, the Commission found an error in the fixed duty based on the injury margin established for Aeolus/Pirelli. The injury margin was corrected from 29,79 % to 27,56 % and all parties were informed accordingly.

(169) Following additional disclosure, CRIA claimed that the Commission made an error when establishing the duty level of Hankook Group.

(170) After analysing the claim, indeed the Commission found a clerical error and corrected the injury margin of Hankook Group from 11,18 % to 10,31 %.

(171) On the basis of the above, the definitive amount of subsidisation should be as follows:

Company	Dumping margin	Subsidy rate	Injury margin	Counter-vailing duty	Anti-dumping duty	Fixed countervail-ing duty	Fixed anti-dumping duty [1]	Fixed Anti-dumping duty [2]
GITI Group	56,8 %	7,74 %	28,51 %	7,74 %	20,77 %	11,07	35,74	46,81
Hankook Group	60,1%	2,06%	10,31 %	2,06 %	8,25 %	3,75	17,37	21,12
Aeolus / Pirelli	85,0 %	32,85 %	27,56 %	27,56 %	0	39,77	0	39,77
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex	71,5 %	18,01 %	23,15 %	18,01 %	5,14 %	27,69	10,29	37,98
Zhongce Rubber Group Co., Ltd [3]	71,5 %	51,08 %	55,07 %	51,08 %	0	57,28	0	49,31
Weifang Yuelong Rubber Co., Ltd; Hefei Wanli Tire Co., Ltd [4]	106,7 %	51,08 %	55,07 %	51,08 %	3,99 %	57,28	4,48	61,76

(1) For the period from 13 November 2018.
(2) For the period from 8 May 2018 to 12 November 2018.
(3) Zhongce Rubber Group Co., Ltd cooperated in anti-dumping investigation but not in the anti-subsidy investigation. It is the only company listed in Annex II of contested Regulation affected by the annulment of the contested Regulation, but not by the annulment of Regulation (EU) 2018/1579. Therefore, the contested Regulation was not annulled for this company but only the amendments introduced by the contested Regulation in Regulation (EU) 2018/1579. Therefore, Zhongce Rubber Group Co., Ltd remains subject to the duties imposed by Regulation (EU) 2018/1579.
(4) Weifang Yuelong Rubber Co., Ltd and Hefei Wanli Tire Co., Ltd neither cooperated in the anti-dumping nor in the anti-subsidy investigation. Therefore, they are subject to the duty applicable to 'all other companies'. In the current reopening, this duty is applicable solely to these two companies.

(172) The revised level of countervailing duties applies without any temporal interruption since the entry into force of the provisional Regulation (namely, as of 12 November 2018 onwards).

(173) It is also necessary to apply a different level of the anti-dumping duties during the period before the entry into force of the definitive anti-subsidy Regulation (namely, in the period from 8 May 2018 to 12 November 2018). The duty applicable during this period equals the injury margin established for all companies concerned.

(174) Even though only Aeolus Tyre Co., Ltd and Double Coin Group (Jiang Su) Tyre Co., Ltd were applicants in cases T-30/19 and T-72/19, the Commission considered that the corrected duty is applicable to the entire respective groups. For Aeolus Group the exporting producers concerned are: Aeolus Tyre Co., Ltd, Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd and Pirelli Tyre Co., Ltd. For Double Coin Group (Jiang Su) Tyre Co., Ltd the exporting producers concerned are: Double Coin Group (Jiang Su) Tyre Co., Ltd and Shanghai Huayi Group Corp. Ltd.

(175) Customs authorities are instructed to collect the appropriate amount on imports concerning the exporting producers concerned and refund any excess amount collected in accordance with the applicable customs legislation.

(176) This Regulation does not modify the duty rates of the exporting producers that were not concerned by the Notice of reopening and by the registration Regulation. Therefore, their duties remained unchanged and, as a result, these companies were not identified in this Regulation.

(177) After disclosure, Hämmerling claimed that since the Commission intended to re-impose the duties beyond the three year limitation period provided for in the Union Customs Code, it should also specify that the difference between the re-imposed duties and the ones previously applicable should also be reimbursed beyond the three year limitation period.

(178) The Commission first recalled that it is settled case-law that the Union Customs Code does not preclude the Commission from adopting a Regulation re-imposing a definitive anti-dumping or countervailing duty for a period exceeding three years ([41]).

(179) Furthermore, as explained in recital (175), customs authorities shall collect the appropriate amount on imports concerning the exporting producers concerned and refund any excess amount collected in accordance with the applicable customs legislation. The General Court clarified in T-440/20 that the applicable customs legislation is, inter alia, Article 101(1), the first subparagraph of Article 102(1), Article 103(1) and Article 104(2) of the Union Customs Code. Under those provisions, the amount of duty payable is to be determined by the competent customs authorities, which are responsible for notifying customs debts, unless a period of three years from the date on which that debt was incurred has expired. The Court further clarified that *'It follows that the rule set out in Article 103(1) of the Union Customs Code does indeed have the effect not only of preventing the amount of customs duties from being notified to the debtor after the expiry of a period of three years from the date on which his or her customs debt was incurred,*

([41]) See T-440/20 Jindal Saw v European Commission, EU:T:2022:318, paragraphs 134 and 135 and judgment cited therein.

but also of causing that customs debt itself to become subject to a time bar upon the expiry of that period. However, that rule applies only to notification of the amount of customs duties to the debtor and its implementation is therefore a matter for the national customs authorities alone, who are competent to make such a notification.' ([42]). Consequently, the Commission confirmed that the three year limitation period for reimbursement applied to the case at hand and rejected the request.

10. **FINAL PROVISIONS**

(180) In view of Article 109 of Regulation 2018/1046 ([43]), 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.

(181) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling under CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10) and originating in the People's Republic of China as far as the companies listed in paragraph (2) are concerned.

2. The definitive countervailing duties applicable in euros per item of the product described in paragraph 1 and produced by the companies listed below shall be as follows, as from 13 November 2018.

Company	Countervailing duty	TARIC Additional Code
GITI Tire (Anhui) Company Co., Ltd; GITI Tire (Fujian) Company, Co., Ltd; GITI Tire (Hualin) Company Co., Ltd; GITI Tire (Yinchuan) Company Co., Ltd	11,07	C332
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd	3,75	C334
Aeolus Tyre Co., Ltd, Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co., Ltd	39,77	C877 ([1])
Other companies subject to this reimposition cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex	27,69	
Zhongce Rubber Group Co., Ltd	57,28	C379
Weifang Yuelong Rubber Co., Ltd	57,28	C875
Hefei Wanli Tire Co., Ltd	57,28	C876

([1]) The TARIC code C333 seizes to exist and C877 is applicable to the entire group.

([42]) Zhongce Rubber Group Co., Ltd cooperated in anti-dumping investigation but not in the anti-subsidy investigation. It is the only company listed in Annex II of contested Regulation affected by the annulment of the contested Regulation, but not by the annulment of Regulation (EU) 2018/1579. Therefore, the contested Regulation was not annulled for this company but only the amendments introduced by the contested Regulation in Regulation (EU) 2018/1579. Therefore, Zhongce Rubber Group Co., Ltd remains subject to the duties imposed by Regulation (EU) 2018/1579.

([43]) 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).

Article 2

Any definitive countervailing duty paid by exporting producers referred to in Article 1(2) pursuant to Implementing Regulation (EU) 2018/1690 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 reimbursement that took place following the General Court's ruling in in Cases T-30/19 and T-72/19 *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC)v European Commission* shall be recovered by the authorities which made the reimbursement 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(3) of Implementing Regulation (EU) 2022/1175 of 7 July 2022 making imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgments of 4 May 2022 in joined cases T-30/19 and T-72/19, with regard to Implementing Regulation (EU) 2018/1579 and Implementing Regulation (EU) 2018/1690.

Article 4

Customs authorities are directed to discontinue the registration of imports, established in accordance with Article 1(1) of Implementing Regulation (EU) 2022/1175, 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, 4 April 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Companies cooperating in both anti-subsidy and anti-dumping investigations subject to this re-imposition:

COMPANY NAME	ADDITIONAL TARIC CODE
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375
Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Shandong Huasheng Rubber Co., Ltd	C360
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Shandong Linglong Tyre Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Shanghai Huayi Group Corp. Ltd; Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ([1])
Qingdao GRT Rubber Co., Ltd	C350

([1]) In the contested regulation, TARIC additional code C371 identifies the following exporting producers:
Shanghai Huayi Group Corp. Ltd and Double Coin Group (Jiang Su) Tyre Co., Ltd.
A new TARIC additional code was assigned to Double Coin Group (Jiang Su) Tyre Co., Ltd in the registration regulation referred to in recital (16) of this regulation.

COMMISSION IMPLEMENTING REGULATION (EU) 2023/739

of 4 April 2023

providing for an emergency support measure for the cereal and oilseed sectors in Bulgaria, Poland and Romania

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 221(1) thereof,

Whereas:

(1) Russia's invasion of Ukraine on 24 February 2022 is impacting shipping operations in Ukrainian Black Sea ports which accounted for about 90 % of Ukrainian cereal and oilseed exports. To avoid threats to global food security and support Ukrainian farmers, alternative logistic routes were urgently needed and the Union took concrete measures to facilitate Ukraine's agricultural exports outlined by the communication from the Commission entitled 'An action plan for EU-Ukraine Solidarity Lanes to facilitate Ukraine's agricultural export and bilateral trade with the EU ("EU-Ukraine Solidarity Lanes")' ([2]).

(2) Changes in logistical routes resulted in more expensive transport costs for Ukrainian cereals and oilseeds to reach their traditional markets. This led to a shift in exports to the Union market.

(3) The increased imports of cereals and oilseeds from Ukraine to the Member States of the Union close to Ukraine, where main 'EU-Ukraine Solidarity Lanes' corridors were developed, impact local farmers. In certain regions of the Union, the additional imports cause oversupply, depress local prices or saturate logistics chains.

(4) Considering the domestic supply situation and logistical challenges in Member States located close to the Ukrainian border, farmers in Bulgaria, Poland and Romania are considered to be the most affected, in particular, the ones closest to a border or transit hub. The drop in local cereal and oilseed prices affects the economic viability of those farmers and may impact their planting decisions. This situation is likely to cause a rapid deterioration of production in the concerned areas, as well as difficulties in the implementation of 'EU-Ukraine Solidarity Lanes'. This situation constitutes a specific problem within the meaning of Article 221 of Regulation (EU) No 1308/2013. This specific problem in a limited number of regions in some Union Member States cannot be addressed by measures taken pursuant to Article 219 or 220 of that Regulation since it is not specifically linked to an existing market disturbance or a precise threat thereof nor linked to measures for combating the spread of diseases of animals or a loss of consumer confidence due to public, animal or plant health risks. Furthermore, in order to avoid a rapid deterioration of the production of cereals and oilseeds, the situation requires an urgent intervention, such as the adoption of emergency measures provided for under Article 221 of that Regulation.

(5) It is therefore appropriate to provide Bulgaria, Poland and Romania with a financial grant to support farmers affected by the increased imports of cereals and oilseeds from Ukraine for a period strictly necessary. The amount available to each of those Member States should be set out, taking into account the potential loss in production value for selected crops and the farmers in the regions affected.

([1]) OJ L 347, 20.12.2013, p. 671.

([2]) COM/2022/217 final. (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An action plan for EU-Ukraine Solidarity Lanes to facilitate Ukraine's agricultural export and bilateral trade with the EU.

(6) Bulgaria, Poland and Romania should distribute the aid through the most effective channels on the basis of objective and non-discriminatory criteria that take account of the extent of the difficulties faced by farmers growing cereals and oilseeds in the affected areas, while ensuring these farmers are the ultimate beneficiaries of the aid, and avoiding any market and competition distortion.

(7) As the amount allocated to Bulgaria, Poland and Romania would compensate only part of the actual loss suffered by farmers in the affected regions, those Member States should be allowed to grant additional national support to those producers, under the conditions and within the time limit set by this Regulation.

(8) In order to give Bulgaria, Poland and Romania the flexibility to distribute the aid as circumstances require coping with farmers difficulties, they should be allowed to cumulate it with other support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.

(9) As the Union aid is fixed in euro, it is necessary, in order to ensure a uniform and simultaneous application, to fix a date for the conversion of the amount allocated to Member States not having adopted the euro into their national currencies, as it is the case for Bulgaria, Poland and Romania. Since this Regulation does not provide for a deadline for the submission of the applications for aid, it is appropriate to consider, for the purposes of Article 30(3) of Commission Delegated Regulation (EU) 2022/127 ([3]), the date of entry into force of this Regulation as the operative event for the exchange rate regarding the amounts set out in this Regulation.

(10) For budgetary reasons, the Union should finance the expenditure incurred by Bulgaria, Poland and Romania only where such expenditure is made by a certain eligibility date.

(11) The support for this emergency measure should be paid by 30 September 2023. As no payments are to be made after 30 September 2023, Article 5(2) of Delegated Regulation (EU) 2022/127 should not be applicable.

(12) To allow the Union to monitor the efficiency of this emergency measure, Bulgaria, Poland and Romania should communicate to the Commission detailed information on its implementation.

(13) In order to ensure that farmers receive aid as soon as possible, Bulgaria, Poland and Romania should be enabled to implement this Regulation without delay. Therefore, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

1. Union aid of a total amount of EUR 56 300 000 shall be available to Bulgaria, Poland and Romania, to provide exceptional support to farmers producing cereals and oilseeds referred to in the Annex subject to the conditions set out in this Regulation.

2. Bulgaria, Poland and Romania shall use the amounts referred to in Article 2 for measures aiming to compensate farmers for the economic loss due to increased imports of cereals and oilseeds from Ukraine in the affected regions.

([3]) Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).

3. The measures shall be taken on the basis of objective and non-discriminatory criteria that take account the economic losses borne by the affected farmers and ensure that the resulting payments do not cause any market or competition distortion.

4. Expenditure borne by Bulgaria, Poland and Romania in relation to the payments for the measures referred to in paragraph 2 shall only be eligible for Union aid if those payments have been made by 30 September 2023.

5. For the purposes of Article 30(3) of Delegated Regulation (EU) 2022/127, the operative event for the exchange rate as regards the amounts set out in Article 2(1) shall be the date of entry into force of this Regulation.

6. Measures under this Regulation may be cumulated with other support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.

Article 2

1. The Union expenditure incurred in accordance with Article 1 shall not exceed a total amount of:

(a) EUR 16 750 000 for Bulgaria;

(b) EUR 29 500 000 for Poland;

(c) EUR 10 050 000 for Romania.

2. Bulgaria, Poland and Romania may grant additional national aid for the measures taken under Article 1 up to a maximum of 100 % of the corresponding amount set out in paragraph 1 of this Article, on the basis of objective and non-discriminatory criteria, provided that the resulting payments do not cause any market or competition distortion.

3. Bulgaria, Poland and Romania shall pay the additional support referred to in paragraph 2 by 30 September 2023.

Article 3

1. Without delay and no later than 30 June 2023, Bulgaria, Poland and Romania shall notify the Commission of the following:

(a) a description of the measures to be taken;

(b) the criteria used to determine the methods for granting the aid and the rationale for distributing the aid across farmers;

(c) the intended impact of the measures in view of compensating farmers from economic loss caused by imports of cereals and oilseeds from Ukraine;

(d) the actions taken to check that the intended impact of the measures is reached;

(e) the actions taken to avoid distortion of competition;

(f) the forecast for payments of the Union expenditure broken-down per month until 30 September 2023;

(g) the level of additional support granted pursuant to Article 2 paragraph 2.

2. No later than 15 May 2024, Bulgaria, Poland and Romania shall notify the Commission of the total amounts paid per measure, when applicable, broken down by Union aid and additional national aid, the number and type of beneficiaries and the assessment of the effectiveness of the measure.

Article 4

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, 4 April 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

List of products referred to in Article 1(1)

CN code	Description
1001	Wheat and meslin
1002	Rye
1003	Barley
1004	Oats
1005	Maize
1008 60	Triticale
–	Mixes of products with CN codes 1001, 1002, 1003, 1004, 1005 and 1008 60
1205	Rape or colza seeds, whether or not broken
1206	Sunflower seeds, whether or not broken

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2023/740

of 4 April 2023

on harmonised standards for toys drafted in support of Directive 2009/48/EC of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council ([1]), and in particular Article 10(6) thereof,

Whereas:

(1) In accordance with Article 13 of Directive 2009/48/EC of the European Parliament and of the Council ([2]), toys which are in conformity with harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, are to be presumed to be in conformity with the requirements covered by those standards or parts thereof set out in Article 10 of Directive 2009/48/EC and Annex II to that Directive.

(2) Directive 2009/48/EC lays down, in Part III of Annex II thereto, specific requirements in order to ensure that there are no risks of adverse effects on human health due to exposure to the chemical substances or mixtures of which the toys are composed or which they contain. Moreover Article 10(2) lays down the general safety requirement.

(3) By letter M/445 ([3]) of 9 July 2009 the Commission made a request to the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) for the drafting of new and the revision of existing harmonised standards in support of Directive 2009/48/EC. That request was replaced by a new request set out in Commission Implementing Decision C(2022)7410 ([4]), which requested among others a revision of standard EN 71-13 'Safety of toys – Part 13: Olfactory board games, cosmetic kits and gustative games'.

(4) CEN revised harmonised standard EN 71-13:2021 'Safety of toys – Part 13: Olfactory board games, cosmetic kits and gustative games', the reference of which was published by Commission Implementing Decision (EU) 2021/1992 ([5]). This resulted in the adoption of harmonised standard EN 71-13:2021+A1:2022.

([1]) OJ L 316, 14.11.2012, p. 12.

([2]) Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1).

([3]) M/445 of 9 July 2009 on a standardisation mandate addressed to CEN and Cenelec within the framework of Directive 2009/48/EC revising Directive 88/378/EEC concerning the safety of toys.

([4]) Commission Implementing Decision C(2022)7410 of 24 October 2022 on a standardisation request to the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation as regards toys in support of Directive 2009/48/EC of the European Parliament and of the Council.

([5]) Commission Implementing Decision (EU) 2021/1992 of 15 November 2021 on harmonised standards for toys drafted in support of Directive 2009/48/EC of the European Parliament and of the Council (OJ L 405, 16.11.2021, p. 14).

(5) The specifications of harmonised standard EN 71-13:2021+A1:2022 are more clearly related to the requirements of Directive 2009/48/EC. In particular, this new version of standard EN 71-13:2021 aligns the standard with Directive 2009/48/EC as amended by Commission Directives (EU) 2020/2088 ([6]) and (EU) 2020/2089 ([7]). Tables 1 and 2 of the standard have been revised and an additional table 3 has been inserted in the standard in order to take into account changes to the allergenic fragrance lists in Directive 2009/48/EC, introduced by Directives (EU) 2020/2088 and (EU) 2020/2089. Table 3 of the standard includes allergenic fragrances which, in accordance with Directive 2009/48/EC, are to be listed on a label affixed to the toy, on the packaging or in an accompanying leaflet to the toy. Standard EN 71-13:2021+A1:2022 includes the specification that cosmetic kits and gustative games are not to be used by children under 36 months of age. This specification clearly reflects the requirement set out in Part III, point 12, second paragraph, of Annex II to Directive 2009/48/EC.

(6) The Commission together with CEN has assessed whether harmonised standard EN 71-13:2021+A1:2022 drafted by CEN complies with the request M/445 of 9 July 2009. The Commission has also assessed compliance with the new request set out in Implementing Decision C(2022)7410. The harmonised standard satisfies the requirements which it aims to cover and which are set out in Directive 2009/48/EC. It is therefore appropriate to publish the references of that standard in the *Official Journal of the European Union*.

(7) Harmonised standard EN 71-13:2021+A1:2022 replaces harmonised standard EN 71-13:2021. It is therefore necessary to withdraw the references of that standard from the *Official Journal of the European Union*.

(8) In the interests of clarity, rationality and simplification, a complete list of references of harmonised standards drafted in support of Directive 2009/48/EC and satisfying the requirements they aim to cover should be published in a single act. The references of harmonised standards drafted in support of Directive 2009/48/EC are currently published by Implementing Decision (EU) 2021/1992. Consequently, it is necessary to replace Implementing Decision (EU) 2021/1992 by a new decision.

(9) Compliance with a harmonised standard confers a presumption of conformity with the corresponding essential requirements set out in Union harmonisation legislation from the date of publication of the reference of such standard in the *Official Journal of the European Union*. This Decision should therefore enter into force on the date of its publication,

HAS ADOPTED THIS DECISION:

Article 1

The references of the harmonised standards for toys drafted in support of Directive 2009/48/EC, listed in the Annex to this Decision, are hereby published in the *Official Journal of the European Union*.

Article 2

Implementing Decision (EU) 2021/1992 is repealed.

Article 3

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

([6]) Commission Directive (EU) 2020/2088 of 11 December 2020 amending Annex II to Directive 2009/48/EC of the European Parliament and of the Council as regards the labelling of allergenic fragrances in toys (OJ L 423, 15.12.2020, p. 53).

([7]) Commission Directive (EU) 2020/2089 of 11 December 2020 amending Annex II to Directive 2009/48/EC of the European Parliament and of the Council as regards the prohibition of allergenic fragrances in toys (OJ L 423, 15.12.2020, p. 58).

Done at Brussels, 4 April 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

<table>
<tr><th>No</th><th>Reference of the standard</th></tr>
<tr><td>1.</td><td>EN 71-1:2014+A1:2018

Safety of toys – Part 1: Mechanical and physical properties</td></tr>
<tr><td>2.</td><td>EN 71-2:2020

Safety of toys – Part 2: Flammability</td></tr>
<tr><td>3.</td><td>EN 71-3:2019+A1:2021

Safety of toys – Part 3: Migration of certain elements</td></tr>
<tr><td>4.</td><td>EN 71-4:2020

Safety of toys – Part 4: Experimental sets for chemistry and related activities</td></tr>
<tr><td>5.</td><td>EN 71-5:2015

Safety of toys – Part 5: Chemical toys (sets) other than experimental sets</td></tr>
<tr><td>6.</td><td>EN 71-7:2014+A3:2020

Safety of toys – Part 7: Finger paints – Requirements and test methods</td></tr>
<tr><td>7.</td><td>EN 71-8:2018

Safety of toys – Part 8: Activity toys for domestic use</td></tr>
<tr><td>8.</td><td>EN 71-12:2016

Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances

Informative note: The limit values in point (a) of Table 2 of clause 4.2 of standard ‘EN 71-12:2016 Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances’ are lower than the limit values to be complied with set in point 8 of part III of Annex II to Directive 2009/48/EC. In particular those values are as follows:
<table>
<tr><th>Substance</th><th>Standard EN 71-12:2016</th><th>Directive 2009/48/EC</th></tr>
<tr><td>N-nitrosamines</td><td>0,01 mg/kg</td><td>0,05 mg/kg</td></tr>
<tr><td>N-nitrosatable</td><td>0,1 mg/kg</td><td>1 mg/kg.</td></tr>
</table>
</td></tr>
<tr><td>9.</td><td>EN 71-13:2021+A1:2022

Safety of toys – Part 13: Olfactory board games, cosmetic kits and gustative games</td></tr>
<tr><td>10.</td><td>EN 71-14:2018

Safety of toys – Part 14: Trampolines for domestic use</td></tr>
<tr><td>11.</td><td>EN IEC 62115:2020

Electric toys – Safety
EN IEC 62115:2020/A11:2020</td></tr>
</table>

CORRIGENDA

Corrigendum to Commission Regulation (EU) 2023/334 of 2 February 2023 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products

(Official Journal of the European Union L 47 of 15 February 2023)

On page 31, in recital 8, footnote 19:

for:	'Ministerio de Ganadería, Agricultura y PESCA de Paraguay. Resolución No 503/019 DGSA Modificación de etiquetas para los Productos Fitosanitarios a base de los ingredientes activos Clotianidina, Imidacloprid, Tiametoxan y Clorpirifos. December 2019.',
read:	'Ministerio de Ganadería, Agricultura y Pesca de Uruguay. Resolución No 503/019 DGSA Modificación de etiquetas para los Productos Fitosanitarios a base de los ingredientes activos Clotianidina, Imidacloprid, Tiametoxan y Clorpirifos. December 2019.'.

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