

**Notice of re-opening the investigations following the judgments of 10 April 2019, in cases T-300/16 and T-301/16, with regard to Commission Implementing Regulations (EU) 2016/387 and (EU) No 2016/388 imposing a definitive countervailing duty and a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India**

(2019/C 209/07)

## Judgments

In its judgments of 10 April 2019, in cases T-300/16 <sup>(1)</sup> and T-301/16 <sup>(2)</sup> *Jindal Saw and Jindal Saw Italia v Commission* ('the judgments'), the General Court of the European Union ('the General Court') annulled respectively Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India <sup>(3)</sup> ('the anti-subsidy Regulation at issue') and Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India <sup>(4)</sup>, as amended by Implementing Regulation (EU) 2016/1369 <sup>(5)</sup> ('the anti-dumping Regulation at issue').

In case T-300/16 the General Court found that in the anti-subsidy Regulation at issue the calculation of the amount of benefit resulting from the target export restrictions found in place with respect to iron ore, as regards Jindal Saw Ltd ('Jindal Saw'), was in breach of Article 6(d) 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 <sup>(6)</sup> ('the basic anti-subsidy Regulation'). In particular, the General Court held that the transport costs actually incurred by Jindal Saw from the mine to its plant in India were higher than those which were taken into account by the Commission, as an average, and included in the calculation of the average purchase price for iron ore in India. In the General Court's view, such difference in transportation costs means that the price at which Jindal Saw sourced iron ore on the Indian market was, in fact, higher than the average purchase price accepted by the Commission to determine the level of remuneration, which had an inevitable impact on the benefit that could be granted to that exporting producer. Accordingly, the Court found that the Commission infringed Article 3(2) and Article 6(d) of the basic anti-subsidy Regulation, in that the Commission wrongly selected at random certain items in the delivery costs of Jindal Saw for the calculation of the standard average transport cost, and the third subparagraph of Article 15(1) of the basic anti-subsidy Regulation, in that the Commission fixed the countervailing duty at a level higher than the countervailable subsidies.

In both cases T-300/16 and T-301/16 the General Court also made findings with respect to the undercutting calculations carried out by the Commission in the anti-subsidy and anti-dumping Regulations at issue. In particular, the General Court found that, since the Commission used the prices of sales made by the selling entities linked to the main Union producer in order to determine the price of the like product of the Union industry while not taking into account the prices of sales of Jindal Saw's selling entities to determine the price of the product concerned produced by Jindal Saw, it could not be considered that the undercutting calculation was made by comparing prices at the same level of trade. According to the General Court, the error made by the Commission in calculating the price undercutting of the product concerned for Jindal Saw's products had the effect of taking into account undercutting of that price, the importance or even existence of which had not been properly established.

As a result, the General Court found that the Commission infringed respectively Article 8(1) of the basic anti-subsidy Regulation and Article 3(1) 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 <sup>(7)</sup> ('basic anti-dumping Regulation'). Since the undercutting as calculated in the anti-subsidy and anti-dumping Regulations at issue was the basis for the conclusion that imports of the product concerned were at the root of the injury to the Union industry, the General Court found that the existence of a causal link between the subsidised imports and the injury to the Union industry as a necessary condition for the imposition of a countervailing duty in accordance with Article 1(1) and Article 8(5) of the basic anti-subsidy Regulation and with Article 1(1) and Article 3(6) of the basic anti-dumping Regulation, could have been tainted as well.

<sup>(1)</sup> ECLI:EU:T:2019:235.

<sup>(2)</sup> ECLI:EU:T:2019:234.

<sup>(3)</sup> OJ L 73, 18.3.2016, p. 1.

<sup>(4)</sup> OJ L 73, 18.3.2016, p. 53.

<sup>(5)</sup> Commission Implementing Regulation (EU) 2016/1369 of 11 August 2016 amending Implementing Regulation (EU) 2016/388 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 217, 12.8.2016, p. 4).

<sup>(6)</sup> OJ L 176, 30.6.2016, p. 55.

<sup>(7)</sup> OJ L 176, 30.6.2016, p. 21.

Moreover, the General Court found that it could not be excluded that, if the price undercutting had been calculated correctly, the injury margin of the Union industry would have been established at a level below that of the subsidy rate and the dumping margin respectively. In that case, in accordance with the third subparagraph of Article 15(1) of the basic anti-subsidy Regulation, the amount of the countervailing duty should be reduced to a rate which would be sufficient to remove that injury. Similarly, in accordance with Article 9(4) of the basic anti-dumping Regulation, the amount of the anti-dumping duty should be reduced to a rate which would be sufficient to remove that injury.

In light of the above, the Court annulled respectively the anti-subsidy and anti-dumping Regulations at issue in so far as they relate to Jindal Saw Ltd.

### Consequences

Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Courts' judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping or anti-subsidy investigations, compliance with the General Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated <sup>(8)</sup>.

According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred <sup>(9)</sup>. 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. In a situation where for instance a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order <sup>(10)</sup>, except if the illegality occurred at the stage of initiation. The resumption of the administrative procedure cannot be seen as contrary to the rule of non-retroactivity <sup>(11)</sup>.

In the present case, the General Court annulled the anti-dumping and anti-subsidy Regulations at issue for one common reason (namely, that the Commission failed to make a fair comparison at the same level of trade when determining the existence of significant undercutting). This error, potentially, could taint the causation analysis as well as the injury margin.

In addition, the General Court annulled the anti-subsidy Regulation at issue also because it found that the Commission calculated wrongly the amount of benefit for Jindal Saw Ltd to the extent that not all actual transport costs incurred by Jindal Saw were taken into account when calculating the domestic price of iron ore in India.

Findings reached in the anti-subsidy and anti-dumping Regulations at issue which were not contested, or which were contested but rejected by the judgment of the General Court or not examined by the General Court, and therefore did not lead to the annulment of the Regulations at issue, remain in principle valid.

### Reopening procedure

In view of the above, the Commission decided to reopen the anti-subsidy and anti-dumping investigations on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India that led to the adoption of Implementing Regulations (EU) 2016/387 and (EU) 2016/388, in so far as they concern Jindal Saw Ltd. The reopening of the original investigations resumes them at the point at which the irregularity occurred.

The purpose of the reopening of the original investigations is to fully address the mistakes identified by the General Court and to assess whether the correct application of the rules could justify the re-imposition of the measures at the original or a revised level as from the date on which the anti-subsidy and anti-dumping Regulations at issue entered into force originally or not.

Interested parties are informed of this reopening through the publication of this Notice in the *Official Journal of the European Union*.

<sup>(8)</sup> Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28.

<sup>(9)</sup> Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* [2011] II-0000, paragraph 83.

<sup>(10)</sup> Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.

<sup>(11)</sup> Case C-256/16 *Deichmann* [2018], paragraph 79.

### Written submissions

All interested parties, and in particular Jindal Saw, are invited to make their views known, submit information and provide supporting evidence on issues pertaining to the reopening of the investigation. Unless otherwise specified, this information and supporting evidence must reach the Commission within 20 days from the date of publication of this Notice in the *Official Journal of the European Union*.

### Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the reopening of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with these parties.

### Instructions for making written submissions and sending correspondence

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.

All written submissions, including the information requested in this Notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' <sup>(12)</sup>. Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. These summaries must be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

Interested parties are invited to make all submissions and requests via TRON.tdi (<https://webgate.ec.europa.eu/tron/TDI>) including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using TRON.tdi or email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: [http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc\\_148003.pdf](http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf) The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by TRON.tdi or email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions via TRON.tdi and by email, interested parties should consult the communication instructions with interested parties referred to above.

<sup>(12)</sup> A 'Limited' document is a document which is considered confidential under 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) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected under Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

Commission address for correspondence:

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TRADE-DUCTILE-ADAS@ec.europa.eu

### **Non-cooperation**

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation, the result may be less favourable to that party than if it had cooperated.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

### **Hearing Officer**

Interested parties may request the intervention of the Hearing Officer for trade proceedings. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of interested parties and third parties as may arise during the proceeding.

The Hearing Officer may organise hearings and mediate between the interested party/-ies and Commissions services to ensure that the interested parties' rights of defence are being fully exercised. A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in due course.

Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. Where hearing requests are submitted outside the relevant timeframes, the Hearing Officer will also examine the reasons for such late requests, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

### **Processing of personal data**

Any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>(13)</sup>.

<sup>(13)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's website: <http://trade.ec.europa.eu/doclib/html/157639.htm>

### **Information to all parties concerned**

Interested parties, including importers, are hereby informed that future liability, if any, would emanate from the findings of this re-examination.

Since the amount of final liability resulting from the re-examination is uncertain at this stage, the Commission requests national customs authorities to await the outcome of this investigation before deciding on any repayment claim concerning the anti-dumping and/or countervailing duties annulled by the General Court with respect to Jindal Saw Limited.

Consequently, the anti-dumping and countervailing duties paid respectively under Implementing Regulations (EU) 2016/387 and (EU) No 2016/388 on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), currently falling under CN codes ex 7303 00 10 and ex 7303 00 90 (TARIC codes 7303 00 10 10 and 7303 00 90 10), originating in India, produced by Jindal Saw Limited (TARIC additional code C054) should not be repaid or remitted until the outcome of this investigation.

### **Disclosure**

All interested parties which have been registered as such during the investigations leading to adoption of the anti-subsidy and anti-dumping regulations at issue will be subsequently informed of the essential facts and considerations on the basis of which it is intended to implement the judgment and will be given an opportunity to comment.

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