Commission Implementing Regulation (EU) 2020/1210 of 19 August 2020 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd following the judgment of the General Court in case T-650/17

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THE EUROPEAN COMMISSION,

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 13 May 2013 the Council adopted Council Implementing Regulation (EU) No 430/2013[(2)] imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China ('PRC') and Thailand and terminating the proceeding with regard to Indonesia ('the original investigation').

(2) On 12 June 2013, one cooperating Chinese exporting producer, Jinan Meide Castings Co., Ltd ('Jinan Meide' or 'the applicant'), lodged an application at the General Court of the European Union ('the General Court') seeking the annulment of Implementing Regulation (EU) No 430/2013 in so far as it applies to the applicant.

(3) On 30 June 2016, the General Court in its judgment[(3)] ('the first judgment') found that the rights of defence of Jinan Meide were breached by the rejection of its request for disclosure of normal value calculations using confidential data of an analogue country producer. Therefore, the General Court annulled the Implementing Regulation (EU) No 430/2013 in so far as it imposed an anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, manufactured by Jinan Meide.

(4) Following this first judgment, the Commission published a notice[(4)] concerning the partial reopening of the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the PRC. The reopening was limited in scope to the implementation of the judgment of the General Court with regard to Jinan Meide.

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(5) On 26 June 2017, the Commission adopted Implementing Regulation (EU) 2017/1146[(5)] re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the PRC, manufactured by Jinan Meide Castings Co., Ltd ('the contested Regulation').

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

(6) Jinan Meide Castings Co., Ltd ('Jinan Meide') challenged the contested Regulation before the General Court. On 20 September 2019 the General Court issued its judgment in case T-650/17[(6)] regarding the contested Regulation ('the second judgment').

(7) The General Court found that the Commission did not comply with the provisions of Article 2(10)(a) of Council Regulation (EC) No 1225/2009[(7)] on protection against dumped imports from countries not members of the European Community ('the basic Regulation') by determining the market value of the physical differences between the like product types on the basis of the export price of the non-matching product types, which was the price paid in the European Union for that good by the first independent customer.

(8) According to the General Court, the fact that the export price of the non-matching product types constituted the price paid by the first independent customer in the European Union could not be considered as a reasonable estimate of the market value. In view of the objective of Article 2(7)(a) and (10) of the basic Regulation, that notion does not only imply that the price in question is paid by an independent customer in the context of an arm's length transaction, but that it must also be possible to ensure that that price is the normal result of market forces. However, according to the General Court, this cannot be the case where that price is likely to be affected by dumping.

(9) In the General Court's view, the Commission had used an unreasonable methodology to reflect the differences in physical characteristics between product types produced in the analogue country (India) and those exported from the PRC. In the absence of data relating to domestic production in the analogue country, the Commission used the difference in prices observed for the export sales of the various product types from the PRC. The General Court considered that prices likely to be affected by dumping and originating in a non-market economy country cannot form the basis for a reasonable estimate of the market value of differences in physical characteristics as such prices may not be the result of normal market forces.

(10) Even though the General Court did not specify what methodology should have been used to reflect the differences in physical characteristics between the like product types, it indicated that the price actually paid or payable in the European Union for the like product, duly adjusted if necessary to include a reasonable profit margin, may serve, under certain conditions, as a reasonable basis for determining normal value[(8)].

(11) In light of the above considerations, the General Court annulled the contested Regulation.

1.2. **Implementation of the General Court's second judgment**

(12) 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 like 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[(9)].

(13) 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[(10)]. 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[(11)], 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[(12)].

(14) In the present case, the General Court annulled the contested Regulation on the grounds that the Commission used an unreasonable methodology to reflect the differences in physical characteristics between product types produced in the analogue country and those exported from the PRC. According to the General Court, it could not be excluded that the error had a significant impact on the rate of the dumping margin of Jinan Meide.

(15) Findings in the contested Regulation, which were contested but rejected by the General Court and therefore did not lead to the annulment of the contested Regulation, remain fully valid and are hereby incorporated and confirmed[(13)].

(16) Following the General Court's second judgment, the Commission decided by means of a notice[(14)] ('the re-opening notice') to re-open the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the PRC, manufactured by Jinan Meide Castings Co., Ltd that lead to the adoption of the contested Regulation and to resume the investigation at the point at which the irregularity occurred. The re-opening was limited in scope to the implementation of the second judgment of the General Court.

(17) Subsequently, on 29 November 2019, the Commission decided to make imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the PRC, manufactured by Jinan Meide Castings Co., Ltd, subject to registration[(15)] and requested national customs authorities to await the publication of the relevant Commission Implementing Regulation re-imposing the duties before deciding on any claims for repayment and remission of anti-dumping

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duties insofar as imports concerning Jinan Meide were concerned ('the registration Regulation').

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

1.3. **Comments from interested parties**

(19) The Commission received comments from the complainants in the original investigation, four unrelated importers and Jinan Meide.

(20) One of the two original complainants expressed its support for the re-opening and the registration of Jinan Meide's imports.

(21) Four unrelated importers came forward. All importers expressed their disappointment that the Commission would re-open the original investigation following a second judgment annulling the anti-dumping duties. They also commented on the alleged unlawfulness of the registration of imports and the Commission's possible intention to re-impose duties retroactively. They also expressed their disappointment about the request to the customs authorities to put on hold the repayment of the previously collected duties. In their view, there should be no anti-dumping duty levied on products from Jinan Meide. One of the four importers asked for a joint hearing with Jinan Meide, where the two parties jointly presented their comments.

(22) One importer expressed disagreement with the Commission's decision to order the registration for imports on the basis of a number of elements. First, it argued that there were insufficient reasons for registration and a lack of proportionality. Specifically, the importer claimed that the reasons put forward for the Commission to register imports did not match with the circumstances of the case at hand: in recital 17 of the registration Regulation, the Commission stated that the registration of imports could be applied, for instance: 'in order to secure the payment in case of application of duties or in anti-circumvention cases', whereas in the proceeding at hand the registration aimed at facilitating the collection of anti-dumping duties after reopening of the investigation.

(23) In this respect, the Commission recalls that the registration Regulation refers in recital 17 to the list of reasons for registration in Article 14(5) of the basic Regulation, which is non-exhaustive, giving the Commission discretion to decide whether registration of imports is warranted in a given case. Furthermore, recital 18 of the registration Regulation clearly explains the reason to register imports, which is to ensure the effectiveness of the measures: 'imports should be subject to the correct anti-dumping liability without undue interruption from the date of entry into force of the anti-dumping Regulation until the re-imposition of the corrected duties, if any.' Recital 18 of the registration Regulation explains that the conditions of Article 10(4) of the basic Regulation are not applicable to the case at hand, as the purpose of the registration is not retroactive collection of duties, but rather to ensure the effectiveness of the measures.

(24) Second, according to the importer, the mere reason of facilitating the collection of duties would be disproportionate as it is too burdensome for importers.

(25) The Commission recalls that the registration Regulation specifically provides that the rate of the duty owed as a result of the re-opening cannot exceed the amount initially imposed by the partially annulled Regulation with respect to the period between the re-opening of the investigation and the date of entry into force of the results of the reopening. Furthermore, the registration Regulation is limited in time, in order to ensure that importers are not subject to registration during unreasonable periods of time, precisely in order to avoid an unnecessary burden. Moreover, the registration technically does not impose any burden on importers but only on the national authorities that need to put in place the registration system, and hence cannot be disproportionate for them.

(26) Third, the importer further claimed that that the interruptions in this case would be undue, as they were a consequence of illegalities in the Implementing Regulation established by the General Court.

(27) The Commission recalls that the reopening of the case in order to correct the mistakes found by the General Court is in line with the case law of the Court of Justice as further explained at recitals 13 to 17.

(28) Four, with regard to the obligation to comply with the judgment according to Article 266 TFEU, the importer expressed doubts as to the possibility to retroactively impose duties on products which were not covered by any relevant legal act at the point when they entered free circulation. The importer further argued that continuous imposition of duties would be against the rule of retroactivity of Article 10(4) of the basic Regulation.

(29) The Commission recalls that it is settled case-law that, when the EU judiciary declares that a Regulation imposing duties is invalid, such duties are to be considered as never having been lawfully owed within the meaning of Article 236 of the previously applicable Customs Code established by Regulation (EEC) No 2913/92[(16)] and, in principle, are required to be repaid by the national customs authorities under the conditions set out to that effect[(17)]. However, the Court of Justice 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[(18)].

(30) In the case at hand, the General Court found that the Commission made an error by using a methodology that did not make a reasonable estimate of the market value of the differences in physical characteristics between the non-matching product types and the directly comparable product types[(19)]. The application of that methodology did not result in a fair comparison between the normal value and export prices. Furthermore, that methodology did not demonstrate that the adjustment to the normal value of the non-matching product types made in this way preserved the reasonable determination of that normal value, that is, a determination based on values and parameters which can be considered to be the normal result of market forces. The application of the erroneous methodology was therefore found not in accordance with Article 2(7)(a) or Article 2(10) ab initio and (a) of the basic Regulation.