Commission Implementing Regulation (EU) 2019/1250 of 22 July 2019 making certain imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India subject to registration following the re-opening of the investigation in order to implement the judgments of 10 April 2019, in cases T-300/16 and T-301/16, with regard to Implementing Regulations (EU) 2016/387 and (EU) 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

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1250

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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 Article 14 thereof,

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[(2)], and in particular Article 24 thereof,

Whereas:

1. PROCEDURE

(1) On 18 September 2015 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India ('the country concerned') by Commission Implementing Regulation (EU) 2015/1559[(3)] ('the provisional Regulation').

(2) On 17 March 2016, the Commission adopted 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[(4)] ('the product concerned'), as amended by Commission Implementing Regulation (EU) 2016/1369[(5)] ('the anti-dumping Regulation at issue').

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(3) On the same date, the Commission adopted Implementing Regulation (EU) 2016/387 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India[6] ('the anti-subsidy Regulation at issue').

(4) Jindal Saw Limited (the exporting producer) and Jindal Saw Italia SpA (its related importer) (together 'the applicants') challenged the anti-dumping and anti-subsidy Regulations at issue in the General Court ('the General Court'). On 10 April 2019 the General Court issued its judgements in cases T-300/16[7] and T-301/16[8] regarding the anti-subsidy and anti-dumping Regulations respectively.

(5) 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 Limited ('Jindal Saw'), was in breach of Article 6(d) of Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union ('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.

(6) 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 cannot 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.

(7) 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

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Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union ('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 and dumped 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 of an anti-dumping duty in accordance with Article 1(1) and Article 3(6) of the basic anti-dumping Regulation, could have been tainted as well.

(8) 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.

(9) As a consequence of those judgments, the anti-dumping and countervailing measures imposed by the anti-dumping and anti-subsidy Regulations at issue in so far as they concern Jindal Saw Limited are not collected, subject to the results of the re-examination, which is unknown at this stage.

(10) Following the General Court's judgments, the Commission decided by means of a Notice[9] ('the reopening Notice'), to partially reopen the anti-subsidy and anti-dumping investigations concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), that led to the adoption of the anti-subsidy and anti-dumping Regulations at issue and to resume them at the point at which the irregularity occurred. The reopening is limited in scope to the implementation of the judgments of the General Court with regard to Jindal Saw Limited.

2. GROUNDS FOR REGISTRATION

(11) The Commission analysed whether it is appropriate to make the imports of the product concerned subject to registration. In that context, the Commission took the following considerations into account.

(12) 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 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[10].

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(13) 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[(11)]. 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 procedure. In a situation where a Regulation imposing definitive trade defence measures is annulled, that means that, subsequent to the annulment, the proceeding is still open, because the act concluding the proceeding has disappeared from the Union legal order[(12)], except if the illegality occurred at the stage of initiation.

(14) As explained in the reopening Notice, and since the illegality did not occur at the stage of initiation but at the stage of the investigation, the Commission decided to reopen the anti-subsidy and the anti-dumping investigations in so far as they concern Jindal Saw Limited, and resumed them at the point at which the irregularity occurred, that is in the context of the original determination relating to the period from 1 October 2013 to 30 September 2014.

(15) According to the case-law of the Court of Justice, the resumption of the administrative procedure and the eventual reimposition of duties cannot be seen as contrary to the rule of non-retroactivity[(13)]. The reopening Notice informs interested parties, including importers, that any future liability, if warranted, would emanate from the findings of the re-examination.

(16) Based on the outcome of the reopened investigations, which is unknown at this stage, the Commission will adopt Regulations correcting the mistakes identified by the Court and re-imposing, where warranted, the applicable duty rates. Those newly established rates, if any, will take effect as from the date on which the anti-subsidy and anti-dumping Regulations at issue entered into force.

(17) In relation to past or future liability for anti-dumping or anti-subsidy duties, the following should be noted.

(18) In the reopening Notice, and since the amount of liability resulting from the re-examination is uncertain, the Commission requested national customs authorities to await the outcome of the re-examination 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 Customs authorities are thus directed to put on hold any claims for reimbursements of the annulled duties until the outcome of the re-examination is published in the Official Journal.

(19) Furthermore, should the re-opening investigations lead to the re-imposition of countervailing and anti-dumping duties, those duties also need to be collected for the period during which the re-opening investigations are carried out. This is considered essential to ensure the effective application of the legally warranted measures during the lifetime of such measures, without any difference based on the time at which imports are taking place, i.e. before or after the reopening of the investigations.