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 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

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1690

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 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 Regulation')[(1)], and in particular Articles 15 and 24(1) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 14 October 2017, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of certain new and retreaded tyres of a kind used on buses or lorries and with a load index exceeding 121, originating in the People's Republic of China ('the PRC' or 'the country concerned'). The initiation was based on Article 10 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ('Notice of Initiation')[(2)].

(2) The Commission initiated the investigation following a complaint lodged on 30 August 2017 by the Coalition against unfair tyres imports ('the complainant') on behalf of Union producers representing more than 25 % of the total Union production of certain new and retreaded tyres of a kind used on buses or lorries and with a load

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1690. (See end of Document for details)*

index exceeding 121 ('TBR tyres'). The complaint contained evidence of subsidisation and of a resulting injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC')[3] that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 10 October 2017, but no mutually agreed solution could be reached.

(4) On 7 May 2018, the Commission imposed a provisional anti-dumping duty on imports of the same product originating in the PRC[4] ('the provisional anti-dumping Regulation') in an investigation which had been initiated on 11 August 2017[5] ('the parallel anti-dumping investigation'). On 22 October 2018, the Commission imposed a definitive anti-dumping duty on imports of the same product originating in the PRC[6] ('the definitive anti-dumping Regulation') in the parallel anti-dumping investigation. The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the parallel anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the sampled Union producers and the investigation period are the same in both investigations. All the relevant elements pertaining to these aspects have been taken into account also in the present investigation.

1.1.1. *Comments concerning initiation*

(5) The GOC claimed that the investigation should not be initiated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) and 11(3) of the WTO Agreement on Subsidies and Countervailing Measures and of Article 10(2) of the Basic Regulation. According to the GOC, there was insufficient evidence of countervailable subsidies, injury and a causal link between the subsidised imports and the injury.

(6) The Commission rejected that claim. The evidence submitted in the complaint constituted the information reasonably available to the complainant at that stage. It was sufficient to show, at initiation stage, that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence of the existence of injury to the Union industry, which was caused by the subsidised imports.

(7) Contrary to what was claimed by the GOC, the complaint did not only rely on the tyre industry policy in 2010, but also contained (in particular in points 81 to 92), a number of other policy documents, plans and catalogues with references to the tyre industry. Moreover, the Commission (where appropriate) relied on other available sources to confirm the alleged subsidisation. For example, given that the US authorities had recently made public determinations on some of the measures, the Commission also relied on this material already at this stage. Moreover, the Commission found it useful to include a reference to a new industrial promotion plan of the Hebei province of 2016, which it had on file, but was not mentioned in the complaint. This additional evidence, which is available in the non-confidential file of the case as part of the memorandum on sufficiency of evidence, further confirmed and complemented the allegations made in

the complaint as regards the existence and nature of the alleged subsidisation. Insofar as the GOC pointed to any deficiencies with respect to the accuracy and adequacy of the complaint, the Commission examined these allegations during the investigation, and found no reason to question the allegations about the existence and extent of subsidisation when initiating the investigation.

(8) Following final disclosure, Hämmerling claimed that the Commission cannot initiate an investigation with a general reference to CN codes *given for information only*. According to Hämmerling, although the CN codes are not binding in their interpretation, such a general reference defining product concerned cannot be accepted, as it impairs the legal certainty of all of the interested parties, concerning whether they will fall within the scope of the investigation and constitutes a direct breach of Article 41 of the Charter of Fundamental Rights of the European Union (hereinafter 'Charter') and the right to good administration. Moreover, such a reference and unclear language referring to '*of a kind used*' convey the message that the scope of the investigation was uncertain and could have been further discretionally extended or narrowed, at the later stage of the investigation, which impairs the right to be heard of interested parties.

(9) In regard to this claim, the Commission found that the party did not substantiate its theoretical claim how the use of CN codes impair legal certainty. The Commission is not bound by the CN codes but by the product definition as stated in the Notice of Initiation. The party made no claims that the Commission did not respect the product definition as stated in the Notice of Initiation. Therefore this claim was rejected.

1.2. **Registration of imports**

(10) The complainant submitted requests for registration of imports of the product concerned originating in the PRC pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic Regulation on 19 August 2017 and on 5 October 2017 respectively.

(11) On 4 October 2017, the China Rubber Industry Association ('CRIA') and the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC') submitted comments on the request for registration. They claimed that the request had failed to satisfy the applicable evidentiary standard as there was no evidence of a history of dumping/subsidy, a substantial rise in imports and that the imports are likely to seriously undermine the remedial effects of the duty. On 19 October 2017, the Commission held a hearing at the request of CRIA during which it reiterated its earlier comments.

(12) On 2 February 2018, the Commission published Implementing Regulation (EU) 2018/163 ('the registration Regulation')[7] making imports of the product concerned originating in the PRC subject to registration as of 3 February 2018 onwards. The Commission took into account comments by interested parties when assessing the validity of the request for registration.

(13) After the registration entered into force Hankook Group[8] claimed that its rights of defence were violated as no information regarding the Commission's

intention to make imports of the product concerned subject to registration had been communicated to it before the entry into force of the registration Regulation. For that reason the Hankook Group claimed that there was a breach of Article 41 of the Charter of Fundamental Rights of the European Union.

(14) The Commission observed that prior disclosure is mandatory under Article 30(2) of the basic Regulation before the imposition of definitive measures. The same does not apply to a registration Regulation under Article 24(5) of the basic Regulation. That Article only provides for the prior information to Member States in due time. Moreover, the right to be heard under Article 41(2)(a) of the Charter of Fundamental Rights of the European Union only applies to individual adverse measures. In this case, the Commission directed the Union customs authorities to register imports. The registration Regulation is not an individual measure affecting the Hankook Group adversely. It was neither addressed to the Hankook Group nor did it produce individual negative effects for that group. In this respect, it should also be recalled that the registration of imports is an appropriate step in order to allow for the subsequent imposition of duties against registered imports and duly informs operators about the potential liability attached to those imports which may be incurred in case of definitive measures. Therefore, neither the rights of defence of the Hankook Group nor Article 41 of the Charter of Fundamental Rights of the European Union were violated by failing to inform the Hankook Group in advance of the registration decision.

1.3. **Investigation period and period considered**

(15) The investigation of subsidisation and injury covered the period from 1 July 2016 to 30 June 2017 (‘the investigation period’ or ‘IP’). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to end of June 2017 (‘the period considered’).

1.4. **Interested parties**

(16) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(17) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(18) Two Union producers, represented by the complainant, took this opportunity to request the Commission to keep their names confidential for fear that they could face retaliation by customers or competitors concerned by this investigation, in accordance with Article 29(1) of the basic Regulation. Moreover, two other cooperating Union producers requested the same status subsequently.

(19) The Commission individually examined the merits of each confidentiality request. It established that there was indeed evidence of a significant possibility of retaliation in each case and accepted that the names of those companies should not be disclosed.

(20) Two exporting producers, the Giti Group[(9)] and the China National Tire Group[(10)], claimed that the anonymity of two Union producers represented by the complainant could seriously affect the parties' right of defence as it is not possible to verify that the complainant effectively represents more than 25 % of total Union production. In addition, the anonymity does not allow interested parties to know in which tier[(11)] the complainant is active and thus, to meaningfully comment on the material injury that it could suffer due to Chinese exports of the product concerned to the Union. Moreover, the Giti Group claimed that, according to the complainant, tier 3 Union production represented only 16 % of total Union production. Finally, the Giti Group and the China National Tire Group argued that confidentiality hinders interested parties from knowing whether sampled Union producers are related to Chinese exporting producers.

(21) In light of these comments, the Commission re-assessed the non-confidential version of the complaint but came to the conclusion that the version available for inspection by interested parties sufficiently permitted interested parties to assess the standing requirements underlying this investigation. In any case, the Commission noted that whether a complainant belongs to a particular market tier is not determinative of the finding of standing since standing is assessed on the basis of the total production (regardless of any tier segmentation) of the product concerned. Finally, the Commission observed that there was insufficient evidence or explanation provided how the alleged lack of knowledge of potential links between anonymous complainants and Chinese exporting producers would impede the rights of defence of interested parties. The Commission invited interested parties to provide such evidence or explanations, but no further evidence was provided. The claims levied against granting of confidentiality were therefore rejected.

(22) Article 29 of the basic Regulation stipulates that the Commission must not reveal any information which is deemed confidential upon good cause being shown without specific permission from the supplier of such information. The Commission considered that the open version of the complaint permitted interested parties to assess the standing requirements. Moreover, whether the complainant belongs to a particular market tier is irrelevant since standing is assessed on the basis of the total production (regardless of any tier segmentation). Finally, the Commission was not convinced by the argument that the lack of knowledge of potential links between anonymous complainants and Chinese exporting producers should impede the rights of defence of interested parties. The claims levied against granting of confidentiality were therefore rejected.

1.5. **Sampling**