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

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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 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional measures

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

(2) The Commission had initiated the investigation on 11 August 2017 by publishing a Notice of Initiation in the *Official Journal of the European Union* ('the Notice of Initiation') following a complaint lodged on 30 June 2017 by the coalition against unfair tyres imports ('the complainant') on behalf of producers representing more than 25 % of the total Union production of new and retreaded tyres for buses or lorries.

(3) The Commission made imports of the product concerned originating in the PRC subject to registration by Commission Implementing Regulation (EU) 2018/163[(3)]. The registration of imports ceased with the entry into force of the provisional measures on 8 May 2018.

1.2. Investigation period and period considered

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1579. (See end of Document for details)*

(4) As stated in recital (10) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2016 to 30 June 2017 ('the investigation period') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

1.3. **Subsequent procedure**

(5) Following the imposition of provisional anti-dumping duties, the complainant, the 'China Chamber of Commerce of Metals, Minerals & Chemicals Importers and Exporters' ('the CCCMC'), the China Rubber Industry Association ('the CRIA'), five Chinese exporting producers, five unrelated importers, a Union importers association l'Association Française des Importateurs de Pneumatiques ('AFIP') and one Union supplier ('Kraiburg') made written submissions commenting on the provisional findings.

(6) One interested party, Hämmerling The Tyre Company GmbH ('Hämmerling'), submitted additional comments on the provisional findings on 2 July 2018, well after the deadline to submit comments on the provisional disclosure. The Commission addressed them together with other comments received on the General Disclosure Document at the definitive stage.

(7) Interested parties who so requested were granted an opportunity to be heard. Hearings took place with the CCCMC and the CRIA; all the sampled exporting producers: the Aeolus Group[4], Pirelli Tyre Co., Ltd ('Pirelli') and the related importer Prometeon Tyre Group S.r.l. ('Prometeon'), the Giti Group[5], the Hankook Group[6], and the Xingyuan Group[7]; two unrelated importers and Union producers, associations and Union tread and repairing material suppliers supporting the measures.

(8) The Commission considered the comments submitted by interested parties, analysed them, and, where appropriate, modified the provisional findings.

(9) The Commission continued seeking and verifying all information it deemed necessary for its final findings. In order to verify the questionnaires replies which were not verified at the provisional stage of the procedure, verification visits were carried out at the premises of the following parties:

(a) Unrelated importers in the Union:
- Heuver Bandengroothandel BV, the Netherlands ('Heuver')
- Hämmerling The Tyre Company GmbH, Germany;

(b) Related importers in the Union:
- Hankook Tire Italia S.r.l.
- Hankook España SA
- Prometeon Tyre Group S.r.l.
- Prometeon Tyre Group España y Portugal, S.L.U.
- Pneumobil Reifen und KFZ-Technik GmbH

— Prometeon Tyre Deutschland GmbH.

(10) Following final disclosure, a verification visit was carried out at the premises of Roline NV, a Union producer in the Netherlands.

(11) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain tyres for buses and lorries ('the final disclosure') and to definitively collect the amounts secured by way of provisional duty.

(12) All interested parties were granted a period within which they could make comments on the final disclosure. The complainant, the Chinese exporting producers (Aeolus Group, Giti Group, Hankook Group, Pirelli and its related importer Prometeon), industry associations (the CRIA, the CCCMC, the Associazione Italiana Ricostruttori Pneumatici, the Assoiaçao Nacional de Industriais de Recauchtagem de Pneus, Bipaver, Bundesverband Reifenhandel und Vulkaniseur-Handwerk, the Czech Retread Tire Manufacturers Association, the Retread Manufacturing Association), importers (Hämmerling and Kirkby Tyres Ltd), retreader producer (Rula-BRW) and retreaders raw material suppliers (Vipal, Kraiburg, RemaTipTop) submitted written submissions.

(13) Following final disclosure, hearings were held with the CRIA and the CCCMC, the Aeolus Group, the Giti Group, Prometeon, the complainant and Bipaver.

(14) The Hearing Officer organised hearings at the request of Hankook Group on 16 August 2018 and Hämmerling on 29 August 2018.

(15) On 10 September 2018, the Commission submitted to all interested parties an additional final disclosure limited to the specific issue of the level of the tier 3 target profit.

(16) All interested parties were granted a period of three days within which they could make comments on the additional final disclosure document. The complainant, the Chinese exporting producers (Aeolus Group, Giti Group, Pirelli and its related importer Prometeon, Xingyuan), industry associations (the CRIA, the CCCMC, the Associazione Italiana Ricostruttori Pneumatici, Bipaver, Bundesverband Reifenhandel und Vulkaniseur-Handwerk, the Czech Retread Tire Manufacturers Association, ITMA Europe, the Retread Manufacturing Association), importers (Hämmerling, Heuver and Kirkby Tyres Ltd), a retreader (Rula-BRW), an association of users (Lithuanian National Road Carriers' Association LINAVA) and a raw material supplier to retreaders (Kraiburg) submitted written comments.

(17) Following the additional final disclosure, a hearing was held with Prometeon on 14 September 2018.

(18) The comments submitted by interested parties were considered and taken into account where appropriate.

1.4. **Corrigendum**

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1579. (See end of Document for details)*

(19) Following the publication of the provisional Regulation, Pirelli pointed out that Pirelli Tyre Co., Ltd was not a subsidiary of the Aeolus Group as incorrectly stated in recital (119) of the provisional Regulation. It explained that Pirelli Tyre Co., Ltd is an autonomous company from Aeolus Tyre Co., Ltd and the Aeolus Group.

(20) Acknowledging its error, the Commission issued a corrigendum on 10 July 2018[8].

(21) Concerning the reference to the Aeolus Group, the Commission noted that its investigation deals with companies or groups of related companies. The relationship between exporting producers is analysed in accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447[9]. Therefore, in the context of this investigation, Pirelli Tyre Co., Ltd and Aeolus Tyre Co., Ltd are considered to be related since both had a common shareholder during the investigation period — namely China National Tire & Rubber Co., Ltd ('CNRC'). The use of shortened form 'the Aeolus Group' was for ease of reference to related companies throughout the provisional Regulation. The shortened form 'the Aeolus Group' was chosen because Aeolus Tyre Co., Ltd is the biggest producing entity within the related companies. Despite the use of the short form to reference the Aeolus Group in the provisional Regulation, the dumping margin was calculated separately for each related exporting producer and then a single weighted average dumping margin was established for all the related companies.

(22) Following final disclosure, Pirelli claimed that it should not be considered as a related company of CNRC and the Aeolus Group. Pirelli disagreed with the application of Article 127 of Regulation (EU) 2015/2447 for the purpose of calculating a weighted average dumping margin established for the related companies. Pirelli proposed the use of Article 4 of Regulation (EU) 2016/1036 (the 'basic Regulation') to establish the relation between companies.

(23) The Commission recalled that Article 4 of the basic Regulation concerns the definition of the Union industry and the relationship of Union producers to exporting producers. In that context, a Union producer is not considered part of the Union industry, if it is controlled by an exporting producer[10]. However, Article 2(1) of the basic Regulation explicitly refers to Article 127 of Regulation (EU) 2015/2447 in order to determine whether two parties are associated for the purpose of establishing a dumping margin. Examining whether parties are associated ensures that anti-dumping measures are enforced effectively. In particular, it avoids the risk that exports are channelled through a related company with a lower anti-dumping duty. In addition, the Notice of Initiation[11] clearly referred to Article 127 of Regulation (EU) 2015/2447 at the start of the proceeding.

(24) According to Article 127(d) of Regulation (EU) 2015/2447 two persons are deemed to be related if: a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them. CNRC is the largest shareholder of Pirelli. During the investigation period, CNRC owned 65 % of Pirelli's shares. As of September 2018, it still held 46 % of Pirelli's shares. Therefore,

in the context of this investigation, Pirelli and the Aeolus Group are considered to be related through a common parent company (CNRC). Pirelli 's claim that it should not be considered as a related company of CNRC or to the Aeolus Group was thus rejected.

(25) Following final disclosure, Pirelli further claimed that it should be considered only as a cooperating party, and not as exporting producer, since it stopped producing the product concerned in November 2017.

(26) The Commission established that Pirelli was an exporting producer during the period under investigation. The fact that subsequently Pirelli ceased the production does not alter that fact. That claim was therefore rejected.

1.5. **Provisional disclosure**

(27) Several interested parties claimed that the Commission's provisional disclosure was insufficient, thus affecting their rights of defence and asked the Commission to make further clarifications and disclosure and reiterated the same concerns following final disclosure.

(28) The Commission considered that the open file and the provisional Regulation already contained sufficient information allowing all interested parties to fully exercise their rights of defence. Nevertheless, a note for the file[(12)] providing clarifications on the provisional Regulation was included in the open file before the definitive disclosure and some additional clarifications concerning the data underlying the individual dumping calculations were provided to two exporting producers.

(29) The Commission noted that the CRIA and the CCCMC stated that the Commission failed to disclose detailed information on the undercutting and underselling calculations to them and to the Chinese exporters, thereby depriving them of any possibility to check potential mistakes made by the Commission or to comment on certain aspects of those calculations.

(30) The CRIA, the CCCMC, and the Chinese exporters received all information respecting their procedural rights. The Chinese sampled exporters received the list of the product control numbers (‘PCNs’) sold, the unit sales price and a range[(13)] of the total sales volume involved. As stated in recitals (45) to (49), the Commission must not reveal any information which is deemed confidential upon good cause being shown without the specific permission from the supplier of such information.

(31) The Aeolus Group claimed that a determination of injury for purposes of Article VI of GATT 1994 should be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products; and (b) the consequent impact of these imports on domestic producers of such products. It considered that the Commission should not base its decisions on vague elements or on confidential data supplied by the parties but on all the information and objective facts available. The requirement of ‘objective examination’ implies that the domestic industry and the effects of dumped imports must be investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the