Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty 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 amending 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 7(4) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 30 June 2017, the coalition against unfair tyres imports ('the complainant') lodged a complaint on behalf of producers representing more than 45 % of the total Union production of new and retreaded tyres for buses or lorries. The complaint contained sufficient evidence of dumping and of resulting injury.

(2) On 11 August 2017, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into 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 ('new and retreaded tyres' or 'the product concerned') originating in the People's Republic of China ('the country concerned' or 'the PRC') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union*[(2)] ('the Notice of Initiation').

(3) On 21 October, the Commission issued a corrigendum to the Notice of Initiation in which it clarified the scope of the definition of the product concerned[(3)].

(4) On 14 October 2017, the Commission initiated an anti-subsidy investigation with regard to imports into the Union of new and retreaded tyres for buses and lorries

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originating in the PRC and started a separate investigation. It published a Notice of Initiation in the *Official Journal of the European Union*[(4)].

1.2. **Registration of imports**

(5) On 30 August 2016, the complainant submitted a request for registration of imports of the product concerned originating in the PRC under Article 14(5) of the basic Regulation.

(6) On 4 October 2017, China Rubber Industry Association ('CRIA') and the China Chamber of Commerce of Metals, Minerals & Chemicals Importers and 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, 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.

(7) On 2 February 2018, the Commission published Implementing Regulation (EU) 2018/163 ('the registration regulation')[(5)] making imports of the product concerned originating in the PRC subject to registration as of 3 February 2018 onwards. In that Regulation, the Commission assessed the comments made by interested parties.

(8) After the registration entered into force Hankook Group[(6)] 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.

(9) The Commission observed that prior disclosure is mandatory under Article 20(2) of the basic Regulation before the imposition of definitive measures. The same does not apply to a registration decision under Article 14(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. 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.

1.3. **Investigation period and period considered**

(10) The investigation of dumping and injury covered the period from 1 July 2016 to 30 June 2017 ('the investigation period'). The examination of trends relevant for

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the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

1.4. **Interested parties**

(11) In the Notice of Initiation, the Commission invited interested parties to contact it to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers, the authorities of the People's Republic of China, 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.

(12) 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.

(13) 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 19(1) of the basic Regulation. Moreover, two cooperating Union producers requested the same status subsequently.

(14) 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.

(15) Two exporting producers, the Giti Group[(7)] and the Aeolus Group[(8)], 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[(9)] 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. Therefore, it argued that the initiation of the proceedings constituted an infringement of Article 5(4) of the basic Regulation. Finally, the Giti Group and the Aeolus Group argued that confidentiality hinders interested parties from knowing whether sampled Union producers are related to Chinese exporting producers.

(16) Article 19 of the basic Regulation stipulates that the Commission must not reveal any information which is confidential 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, the representativity of the complainant needs to be assessed on the overall basis of the alleged injured industry and not per market tier. Finally, the Commission was not convinced by the argument that the lack of knowledge of potential links between

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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.

(17) The Commission also informed producers in the Republic of Korea ('Korea'), Japan, the Republic of India ('India'), the Republic of South Africa ('South Africa'), the Republic of Turkey ('Turkey'), the Kingdom of Thailand ('Thailand') and the Federative Republic of Brazil ('Brazil') of the initiation and invited them to participate. In the Notice of Initiation, the Commission informed interested parties that it envisaged the United States of America ('USA') as a third market economy country (analogue country) within the meaning of Article 2(7)(a) of the basic Regulation. Interested parties had an opportunity to comment and provided submissions in this regard (see below Section 3.1.2).

1.5. **Sampling**

(18) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

(a) *Sampling of Union producers*

(19) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected a sample on the basis of the highest representative production and sales volumes whilst ensuring a geographical spread. The Commission invited interested parties to comment on the provisional sample.

(20) Four interested parties submitted comments on the provisional sample (the Aeolus Group; the Giti Group; CRIA and CCCMC). In particular, they considered that the market segmentation into three tiers was not duly reflected in the provisional sample and that the sample should mirror as close as possible the percentage of tier 1, tier 2 and tier 3 production and sales out of the total Union production and sales.

(21) Further to that comment, on 25 September 2017, the Commission requested Union producers to provide additional information on the tiers with a view of establishing a revised sample of Union producers.

(22) Cooperating Union producers that responded to the sample questionnaire include large, and small and medium-sized enterprises ('SMEs')[10] and represent more than 50 % of the total estimated Union production and sales.

(23) In order to establish the definitive sample, the Commission took into consideration the fragmentation of the tyres sector among different tiers, ensuring that all three tiers were covered by the sampled companies. In addition, to ensure that the situation of the SMEs was properly reflected in the injury analysis given that they represent around 15 % of the total Union sales volumes of Union producers, the Commission considered that SMEs should also be represented in the sample.

(24) Eleven Union producers were sampled on the basis of:

— the overall representativity in terms of size of the production and sales volume of the product concerned in the year 2016,

— the representativity of tiers in terms of size of the production volume of the product concerned in the year 2016,

— the geographical spread, and

— the representativity of the Union producers in terms of size, namely between SMEs and larger companies.

(25) The sampled Union producers comprise both large companies and SMEs. The selected Union producers are based in six Member States (Italy, Spain, Poland, Portugal, Germany and France) which together accounted for more than 36 % of Union production and sales reported by the cooperating Union producers.

(26) On 22 December 2017, one of the sampled Union producers, the Polish producer, Geyer&Hosaja, informed the Commission that it had decided to stop cooperating with the investigation. The percentages mentioned in recital (25) above are not impacted by the withdrawal of this producer as its production represents less than 0,1 % of the total Union production. The Commission therefore concluded that the final sample is representative of the Union industry.

(27) Finally, the Giti Group submitted that the Commission should have terminated this investigation immediately because of the procedurally erroneous pre-selection of the sample of Union producers. The Commission recalled that the provisional selection of a sample of Union producers is legally possible and conducive to an effective investigation within tight deadlines. As demonstrated in recitals (21) to (25), the provisional sample was changed further to comments from interested parties. Consequently, the claim was rejected.

(b) *Sampling of importers*

(28) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. Five importers came forward importing around 430 000 units of imports from the PRC. Two companies were sampled accounting for [70 % - 90 %] of the importers that submitted a sampling form.

(c) *Sampling of exporting producers in the PRC*

(29) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(30) 49 exporting producers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of the following four producers on the basis of the largest