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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2018/1578**of 18 September 2018****concerning the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 186, in conjunction with point (a)(v) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) By Decision 98/591/EC ⁽²⁾, the Council approved the conclusion of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America ('the Agreement'). The Agreement was signed in Washington, DC, on 5 December 1997 and entered into force on 14 October 1998.
- (2) Point (b) of Article 12 of the Agreement provides that the Agreement is concluded for an initial period of five years and may be extended thereafter, with possible amendments, for additional periods of five years, by mutual written agreement between the Parties.
- (3) By Decisions 2004/756/EC ⁽³⁾, 2009/306/EC ⁽⁴⁾ and 2014/240/EU ⁽⁵⁾, the Council successively approved the extension of the Agreement for additional periods of five years. The Agreement is due to expire on 14 October 2018.
- (4) The assessment carried out by the Commission services demonstrates that the Agreement provides an important framework for facilitating cooperation between the Union and the United States of America in common priority areas for science and technology, leading to mutual benefits. It is therefore in the Union's interest to extend the Agreement for a new period of five years.
- (5) Both Parties have confirmed their intention to extend the Agreement for an additional period of five years without any amendments to the Agreement.
- (6) The extension of the Agreement should therefore be approved on behalf of the European Union,

⁽¹⁾ Consent of 3 July 2018 (not yet published in the Official Journal).

⁽²⁾ Council Decision 98/591/EC of 13 October 1998 concerning the conclusion of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America (OJ L 284, 22.10.1998, p. 35).

⁽³⁾ Council Decision 2004/756/EC of 4 October 2004 concerning the conclusion of an Agreement renewing the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America (OJ L 335, 11.11.2004, p. 5).

⁽⁴⁾ Council Decision 2009/306/EC of 30 March 2009 concerning the extension and amendment of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America (OJ L 90, 2.4.2009, p. 20).

⁽⁵⁾ Council Decision 2014/240/EU of 14 April 2014 concerning the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America (OJ L 128, 30.4.2014, p. 43).

HAS ADOPTED THIS DECISION:

Article 1

The extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America, for an additional period of five years, is hereby approved on behalf of the Union.

Article 2

The President of the Council shall, on behalf of the Union, give the notification to the Government of the United States of America that the Union has completed its internal procedures necessary for the extension of the Agreement in accordance with point (b) of Article 12 of the Agreement.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 18 September 2018.

For the Council
The President
G. BLÜMEL

REGULATIONS

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

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

- (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.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ 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 (OJ L 116, 7.5.2018, p. 8).

⁽³⁾ Commission Implementing Regulation (EU) 2018/163 of 1 February 2018 making imports of new and retreaded tyres for buses or lorries originating in the People's Republic of China subject to registration (OJ L 30, 2.2.2018, p. 12).

- (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 Associação 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.

⁽⁴⁾ The Aeolus Group consists of Aeolus Tyre Co., Ltd, Qingdao Yellow Sea Rubber Co., Ltd and Aeolus Tyre (Taiyuan) Co., Ltd. The latter was previously named Chonche Auto Double Happiness Tyre Corp. Ltd until 13 August 2018 when it changed its name.

⁽⁵⁾ The Giti Group consists of Giti Tire (China) Investment Co., (Shanghai); Giti Tire (Anhui) Co., Ltd; (Hefei); Giti Tire (Hualin) Co., Ltd (Hualin); Giti Tire (Fujian) Co., Ltd; Giti Tire (Yinchuan) Co., Ltd and a related exporter in Singapore.

⁽⁶⁾ The Hankook Group consists of Shanghai Hankook Tire Sales Co., Ltd (Shanghai); Chongqing Hankook Tire Co., (Chongqing) Ltd; Jiangsu Hankook Tire Co., Ltd (Jiangsu); and a related exporter in Seoul, Korea.

⁽⁷⁾ The Xingyuan Group consists of Xingyuan Tire Group Ltd, Co. and Guangrao Xinhongyuan Tyre Co., Ltd (Dongying).

- (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

- (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.

⁽⁸⁾ OJ L 174, 10.7.2018, p. 23.

⁽⁹⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

⁽¹⁰⁾ See Article 4(2)(a) of the basic Regulation.

⁽¹¹⁾ See Section 5.2.3 of the Notice of Initiation on investigation unrelated importers, and in particular footnotes 1 on pages 15 and 17.

- (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 investigation ⁽¹⁴⁾. According to the Aeolus Group, most of the data in the proceedings remained confidential, thus hindering the exercise of the right of defence by interested parties. However, the Aeolus Group submitted that the initiation of the investigation was clearly to protect the interests of a specific segment of the Union industry (namely the retreading industry), without taking into consideration that most of the large European tyre manufacturers also import the product concerned from the PRC and resell it on the Union market.
- (32) In reply to those comments the Commission noted that Article 19 of the basic Regulation specifically provides that interested parties can supply information on a confidential basis upon good cause being shown. In addition, a meaningful summary of the confidential information was included in the open file for inspection by interested

⁽¹²⁾ Note for the file (Filing system number t18.007994).

⁽¹³⁾ A range was provided given the confidentiality of the identity of certain Union producers.

⁽¹⁴⁾ WTO Appellate Body Report in WT/DS184/AB/R, United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, para. 109.

parties. The fact that the identity of certain cooperating Union producers was kept confidential did not prevent the Commission from performing an objective examination of the facts, nor did it hinder interested parties from exercising their rights of defence. Furthermore, the rights of defence of interested parties were safeguarded as explained in recital (37) through the intervention of the Hearing Officer.

1.6. Sampling

- (33) The CRIA and the CCCMC claimed that Chinese small and medium-sized (SMEs) producers were discriminated against compared with Union SMEs producers as Union SMEs were entitled to complete a less detailed (and thus less reliable) questionnaire. Those parties claimed that Chinese SME producers may have been discouraged from participating in the investigation because of the significant burden that completing a full questionnaire response entails.
- (34) Furthermore, the CRIA and the CCCMC claimed that, given that the Commission was (allegedly erroneously) basing its injury determination predominantly on the data of the small volume of SME sales, the underrepresentation of Chinese SMEs producers was further aggravated by the fact that Union SMEs producers could provide a less complete and thus less reliable response. A similar claim was reiterated after the final disclosure. Moreover, the CRIA and the CCCMC requested that the Commission disclose the specific data on Union producers sampling, in particular to verify the representativity of the Union industry sample for both new and retreaded tyres. That claim was reiterated after the final disclosure.
- (35) The statement that the injury determination was predominantly based on the data of Union SME producers is incorrect as the Commission established a representative sample to accurately analyse the injury situation of the Union producers. The Commission weighted the Union sales to ensure the proper representation of the SMEs' sales on the Union market. Moreover, it is the constant practice of the Commission to send a simplified questionnaire to SME producers in the Union, but this fact has no impact on the correctness of the data provided or thoroughness of the investigation. Therefore, that claim was rejected.
- (36) As mentioned in recital (15) of the provisional Regulation, two exporting producers argued that confidentiality hindered them from verifying whether the complainant represents more than 25 % of the total Union production. They also maintained that they could not verify whether the sample for the Union industry was sufficiently representative.
- (37) The Commission services requested the intervention of the Hearing Officer in order to guarantee the rights of defence of the interested parties in light of those claims. By note of 12 July 2018, the Hearing Officer added a note to the open file with the following two findings:
- '1. The data in the confidential file support the conclusion that Commission services have correctly reflected the data received in the calculation of the standing requirements. The complainant, including the two Union producers having requested anonymity, represents more than 25 % of total Union production of the product under investigation.*
- 2. The data in the confidential file support the conclusion that the sampling conducted by the Commission services responsible for the investigation has been accurately described in their relevant note for the file of 18 October 2017 on the subject of sampling, which is included in the file for inspection by the interested parties' ⁽¹⁵⁾.*
- (38) Therefore, the Commission considered that the rights of defence of the interested parties were respected.
- (39) Finally, some exporting producers alleged that the lack of knowledge of potential links between anonymous complainants and Chinese exporting producers impeded their rights of defence. However, it was not substantiated how knowledge about such a potential link would help them in defending their case. Even if, hypothetically, there were a link between one or several anonymous Union producers and one or several Chinese exporting producers, the analysis for dumping and injury would not be materially affected.
- (40) The Giti Group submitted that the Commission should have taken the share of each tier in total Union sales into consideration when selecting the sample of Union producers. Such an approach would have been more objective compared to the current approach where the weight of most injured tier 3 data is inflated in the Giti Group's view.

⁽¹⁵⁾ Note for the file on request for verification of information in the confidential file (Filing system number: t18.008053).

- (41) As explained in recital (24) of the provisional Regulation, the Commission indeed took into account the tiers for the selection of the sample of Union producers. In addition, the provisional Regulation in recitals (157) and (158) and further clarifications in the note for the file mentioned in recital (28) of this Regulation contained a thorough explanation of the methodology used to reflect all tiers appropriately in the microeconomic indicators (see further Section 4.5.1.2 below).

1.7. Access to information

- (42) The CRIA and the CCCMC requested that full access should be granted to its legal representatives to the dumping margin, price effects and injury margin calculations carried out by the Commission, including access to any confidential information from other interested parties on which such calculations are based (subject to appropriate non-disclosure commitments). The CRIA and the CCCMC pointed out that the requirements of Article 19 of the basic Regulation should be balanced against the rights of defence, which are guaranteed by Article 41 of the Charter of Fundamental Rights of the European Union.
- (43) The CRIA and the CCCMC argued that the lawyers that would be granted the access are registered at a European bar association and are subject to strict bar rules and disclosing confidential information to their clients would result in severe disciplinary actions, including disbarment and potential criminal action. Therefore, the CRIA and the CCCMC argued that the access to the confidential file would not breach the Commission's obligation to protect confidential information whilst allowing an effective exercise of the rights of defence. Moreover, those parties considered that the intervention of the Hearing Officer to access the confidential information and report its conclusion to interested parties cannot be considered as a substitute for the review of these calculations.
- (44) At the hearing with the Hearing Officer on 16 August 2018 the Hankook Group claimed that the Commission had breached its rights of defence by denying it access to data which the Hankook Group considered as unjustly confidential. The Hankook Group made a general request for a policy change with respect of handling of confidential data and invited the Commission services to change the current practice regarding disclosure of calculations and, in the future, to allow the legal representatives of the interested parties to access the calculations to the fullest extent. In the Hankook's Group view, the protection of confidential data should only apply to an extent that such protection is necessary to prevent possible harm to concerned companies. Such harm would not arise if the legal representatives were to operate under a confidentiality agreement with the Commission services. In respect to the current investigation, the Hankook Group also requested access for their legal representatives to all dumping and injury margins calculations, including the full normal value data.
- (45) Article 19 of the basic Regulation stipulates that the Commission must not reveal any information which is by nature confidential, or which is provided on a confidential basis by parties and for which a good cause is shown, without the specific permission from the supplier of such information. It does not envisage that any other party, including lawyers registered at a European bar association, is granted such access. It should also be noted that, on 9 January 2018, the CRIA and the CCCMC submitted power of attorneys signed by cooperating and sampled exporting producers. The Commission found that some of the power of attorneys given by sampled Chinese exporting producers to the CRIA and the CCCMC did not cover access to confidential information but only covered attending hearings, submitting comments and lodging submissions.
- (46) Furthermore, the case-law of the Court of Justice stipulates that the protection of rights of the defence must, where necessary, be reconciled with the principle of confidentiality, which is specifically laid down in Article 19 of the basic Regulation. In this particular case, good cause was shown because several interested parties requested that their names be kept confidential for fear that they could face retaliation by customers or competitors. The Commission assessed those claims and deemed them warranted. Therefore, it concluded that the disclosure of such confidential information would have a significant adverse effect for these parties.
- (47) That reconciliation permits the receipt of non-confidential summaries of confidential information (provided, for instance, in the form of ranges and/or indexed elements of information) where that non-confidential information would not lead to a disclosure of business secrets. However, full disclosure of the confidential information was not deemed reconcilable with the duty to protect such information. In the same vein, because the Union legislator did not provide for such an exception in the basic Regulation, the Commission considered that the fact that the lawyers registered with a European bar association are subject to strict bar rules and are potentially subject to sanctions in case of breach of these rules does not allow the Commission to grant access to confidential information in breach of the legislation in force. The Commission thus concluded that the access to

confidential information could not be granted to lawyers registered at a European bar association. In any event, an additional element for safeguarding the rights of defence of interested parties is the possibility of having recourse to the Hearing Officer in Trade Proceedings under Article 15 of Decision of the President of the European Commission of 29 February 2012 on the function and terms of reference of the Hearing Officer in certain trade proceedings ⁽¹⁶⁾. Since the interested parties did not seek the Hearing Officer's opinion on that point, that claim must, accordingly, be rejected.

- (48) Furthermore the Commission considered that the open file available to interested parties, including to the CRIA and the CCCMC and the Hankook Group, contained all the relevant case information used in the investigation. If the information was deemed confidential, the open file contained meaningful summaries thereof. All interested parties, including the CRIA and the CCCMC, had access to the open file and could consult it.
- (49) In view of those considerations, the Commission deemed the information provided in the disclosure documents and in the open file sufficient to satisfy the rights of defence of all interested parties. Therefore, that claim was rejected. Nonetheless, after the hearing with the Hearing Officer, the Commission disclosed certain additional data on dumping and injury calculations as set out in recitals (77) and (178).
- (50) Hämmerling requested a hearing with the Hearing Officer to raise legal concerns related to the current investigation and certain horizontal issues concerning data protection of confidential and non-confidential information as included in the TRON TDI database and the current practice of granting access to the non-confidential files to interested parties outside the territory of the Union through that database.
- (51) The Commission observed that the new General Data Protection Regulation ⁽¹⁷⁾ was not applicable to this case. Moreover, Hämmerling confirmed that the personal data protection issue was not directly linked to a possible specific hampering of its rights of defence under trade defence law. The Commission therefore concluded that Hämmerling's individual position in the proceeding and its rights of defence were not affected by the new General Data Protection Regulation.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the segmentation of the Union market for tyres

- (52) Several interested parties reiterated their claim that new and retreaded tyres could not be a single product concerned or be part of one single segment. Moreover, several interested parties claimed that the Union market should be divided into at least four tiers: three tiers for new tyres and a fourth, new category for retreaded tyres should be established. Alternatively a new tier for cheap imported tyres should be introduced. The CRIA and the CCCMC also claimed that an additional segmentation should be made for original equipment and replacement tyres.
- (53) As mentioned in recitals (72) to (74) of the provisional Regulation, new (retreadable or non-retreadable) and retreaded tyres have no different technical, basic physical and chemical characteristics. After provisional disclosure, no additional evidence was provided by the interested parties to the contrary. Therefore, the Commission rejected the claim of the CRIA and the CCCMC that new and retreaded tyres cannot be the same product concerned. Concerning the request to establish a fourth tier for retreaded tyres, the Commission stressed that new and retreaded tyres share the same basic characteristics and are largely interchangeable. Furthermore, as explained in the recitals (55) to (57) of the provisional Regulation, retreaded tyres mostly fall into tier 3. There is hence no need to create a fourth tier for them. The Commission thus rejected that claim as well.
- (54) The Aeolus Group claimed that the Commission should exclude new tyres from the scope of the investigation. It referred to the WTO Appellate Body Report in *European Communities — Measures Affecting Asbestos and Products Containing Asbestos* ⁽¹⁸⁾, according to which the determination of whether two products are alike is fundamentally a determination as to whether the products are in competition with one another. The Aeolus Group claimed that that approach should be taken into consideration by the Commission in determining whether two products may or may not be considered alike.

⁽¹⁶⁾ OJ L 107, 19.4.2012, p. 5.

⁽¹⁷⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

⁽¹⁸⁾ Appellate Body Report in WT/DS/135/AB/R *European Communities — Measures Affecting Asbestos and Products Containing Asbestos*.

- (55) The Commission considered that there is a competitive relationship between new and retreaded tyres. As will be shown below under Section 4.6 in the analysis of the interconnection between tiers, imported (new) tier 3 tyres are in competition with tyres that are retreaded in the Union and are currently taking over the market share of tier 3 retreaded tyres. That, in turn, has a reverse cascading effect also on tier 2 and tier 1 tyres, and so affected the competitive position of Union tyre producers in tiers 1 and 2. That claim was therefore rejected.
- (56) The Hankook Group claimed that its brand Hankook should be classified as tier 2 as all three criteria used by the Commission lead to the same result: (i) brand recognition; (ii) retreadability; and (iii) the sales of tyres directly to manufacturers of buses and lorries, i.e. Original Equipment ('OE') sales.
- (57) With respect to the first criterion — brand recognition, the Hankook Group maintained that not only ETRMA (in its reports of 2017 and 2018), but also the Global Tire Intelligence report of June 2016 and the US International Trade Commission in March 2016 treated Hankook as a tier 2 brand ⁽¹⁹⁾. The Commission accepted that the recognition of Hankook in the four reports pointed to it as a tier 2 brand. At the same time, the Hankook Group markets itself as a 'premium' brand on its group website. In addition, as already noted in recital (63) of the provisional Regulation, the company's internal document provided to the Commission during the verification visit indicated that the brand has moved into tier 1. Hence, the Commission found that the market perception and the self-perception of the Hankook Group do not fully coincide.
- (58) The Hankook Group also presented confidential internal surveys done in 2017 for Hankook's Global Marketing Strategy Team in the UK, Germany, Spain and Italy on passenger car tyres. According to the company, these documents show that other tier 1 brands have higher brand awareness among customers in these countries. The Commission found that two main conclusions could be distilled from these data. First, the Hankook Group itself acknowledged that the classification of brands into tiers is a dynamic concept for all brands. For example, in the UK, one of its competitors was regarded as a tier 2 brand, while the same competitor ranks among the 'top players' or 'tier 1' in Germany, Spain and Italy. Second, the Hankook Group seems to be 'in between' the two tiers according to customer perceptions on passenger cars: 'Aided awareness' ⁽²⁰⁾ for Hankook was generally lower than for tier 1 brands, while 'unaided awareness' ⁽²¹⁾ was — with the exception of the UK — on the same level or even slightly higher than other competitor brands classified by the Commission as falling into tier 1.
- (59) The Commission then turned to the second criterion. It recalled that tier 1 tyres are designed to be 'multi-life' tyres, further increasing the significantly higher mileage of the original product (up to three retreadings for a normal use), as laid down in recital (55) of the provisional Regulation. In that respect, the Hankook Group submitted that it takes a contractual warranty that Hankook tyres can be retreaded no more than once and that the market share of its own retreaded brand Alphantread is negligible and decreasing. Moreover, the pricing of its casings is below the one for casings of the market leaders.
- (60) On the one hand, the Commission took note of Alphantread's position in the market, but found that this fact may be more a question of the company's decision whether or not to operate a vertically integrated retreading business itself. The Commission also accepted that the legal guarantee for Hankook tyres only covers one retreading operation. On the other hand, the retreadability does not only depend on the retreading of Alphantread or a legal warranty issued by the Hankook Group, which is by its nature conservative. Rather, it is more important for the classification how often the tyres are actually retreaded in the market and are thus in competition with other tier 1 tyres on that account.
- (61) The Commission hence inquired with the retreading operators in the Union whether Hankook tyres can be retreaded only once, twice or more than twice. The Association of retreaders BIPAVÉR informed the Commission that all seven consulted retreaders (three from Germany, one from Portugal, one from Spain, one from Italy, and one from the UK) replied that Hankook tyres can be retreaded twice. Moreover, for tyres of a certain dimension, Hankook tyres can also be retreaded more than twice by the consulted retreaders in Portugal, Spain and in the

⁽¹⁹⁾ Hankook Group comments on the provisional disclosure (Filing system number: t18.006816).

⁽²⁰⁾ In an aided brand awareness question, a survey measures whether people can recognise a brand out of a list of well-known brands. Filing system number: t18.007850.

⁽²¹⁾ Unaided brand awareness indicates that a brand impression was noteworthy enough that the brand is top of mind for consumers. To measure unaided brand awareness, an open-ended question is asked, where the brand name is not mentioned specifically. Filing system number: t18.007850.

UK which replied to BIPAYER. Another retreader from Italy responded individually that low aspect ratio tyres from Hankook are retreaded only once, but bigger aspect ratios are retreaded twice. A French retreader answered individually that Hankook tyres are retreaded twice or more than twice. Another Spanish retreader informed that the casings of Hankook have the same quality as premium tyres such as Michelin, Continental, Goodyear and Bridgestone. Against this background, the Commission established that Hankook tyres are predominantly retreaded twice in the Union, while the quality of their casings allows even further retreading for certain dimensions.

- (62) With respect to the third criterion, the Hankook Group argued that its OE sales in the Union constituted only 1,6 % of all OE sales in 2017. Such a small market share is not sufficient to qualify them into tier 1. The Commission disagreed with this assessment. It noted that the Hankook's trend of OE sales was going upwards. While the Hankook Group had no OE sales contracts in 2014, its OE business has so far grown every year until 2017. Moreover, while the 1,6 % appears small in absolute terms, it includes a more significant share of [7-12] % with one of the European leading lorry manufacturers. The Commission found that the very fact that this important lorry producer trusts in the premium quality of the Hankook brand is significant. At a hearing held on 20 June 2018, the Hankook Group further argued that the tyres for OE sales were delivered from South Korea rather than from the PRC. Hence, the OE sales could not be attributed to the Chinese exported tyres. The Commission did not verify that statement. However, even if it is factually correct, it does not explain why the Hankook Group would be unable to apply its know-how also in the Chinese production facilities and have OE sales of the tyres manufactured in the PRC in the near future. The Commission hence established that the Hankook Group was able to establish OE sales with well-known European lorry makers with a potential to increase this business in the near future.
- (63) In light of all three criteria taken into account together, the Commission confirmed its finding at provisional stage that Hankook brand has moved from tier 2 into tier 1. While the predominant market recognition still puts it into tier 2, two elements of the Hankook Group's self-assessment found during the investigation and an analysis of the branding surveys indicate that Hankook tyres belong rather to tier 1. Hence the Hankook Group's perception is 'in between' the tiers. However, the responses from readers show that Hankook tyres are nowadays retreaded at least twice in the Union and the quality of its tyres have enabled it to develop OE sales with well-known European lorry makers as well. The Commission therefore classified the Hankook Group as a tier 1 producer for the purpose of this investigation.
- (64) The Hankook Group also asserted that its brand Aurora should be classified as tier 3. However, as the difference between the brands Aurora and Hankook is not so enormous, and as the Commission confirmed its classification for Hankook as a tier 1 brand, it also maintained its classification for Aurora as tier 2.
- (65) The Giti Group claimed that its Primewell brand should be classified as tier 3. The Commission accepted that claim since the brand Primewell fulfilled the tier 3 criteria: it is a lower quality brand with a very limited retreadability and there are no OE sales of this brand.

2.2. Product exclusion requests

- (66) Several interested parties claimed that the competition cases referred to in recitals (68) to (83) of the provisional Regulation and investigations carried out by third countries should not be dismissed and reiterated the same concerns following final disclosure. Rather than dismissing those decisions on procedural grounds, the Commission should have analysed their findings on the substance. Those parties reiterated that the investigations carried-out by the US, India, the Eurasian Economic Commission and Egypt should be considered and also that the competition proceeding initiated in May 1996 was relevant for the current proceeding ⁽²²⁾. Moreover, the CRIA and the CCCMC claimed that the Commission cannot simply dismiss the Commission's findings in a merger case ⁽²³⁾ that low-budget new replacement tyres are not substitutes for retreaded tyres. Those parties considered that those findings were highly relevant for the Commission's segmentation and more generally, for the injury analysis.

⁽²²⁾ European Commission, Case COMP/E-2/36.041/PO Michelin.

⁽²³⁾ European Commission, Case COMP/M.4564 — Bridgestone/Bandag, paras. 20-22.

- (67) With respect to those claims, the Commission reiterated that competition and anti-dumping investigations differ substantially with respect to how the relevant product concerned is defined. Furthermore, under the WTO Anti-dumping Agreement members enjoy a wide discretion when defining the product concerned and the like product. Therefore, neither the competition cases nor other anti-dumping cases in third countries are directly applicable to the investigation at hand. Accordingly, those claims were rejected.
- (68) Several interested parties claimed that there are differences in terms of essential physical, chemical and technical characteristics, applications and sales channels between new and retreaded tyres and reiterated a similar claim following the final disclosure. Those parties claimed that the raw materials for the production of new tyres differ significantly from those needed to manufacture retreaded tyres. Retreadable or multi-life tyres should therefore be excluded from the definition of the product concerned
- (69) As mentioned in recital (72) of the provisional Regulation, the new and retreaded tyres have the same technical characteristics, components, and the structure of a new tyre. A new tyre provides the casing used by the retreading industry. The tread is similar to a new tyre. Therefore, the Commission rejected that claim.
- (70) Moreover, the CRIA and the CCCMC claimed that retreaded and new tyres do not have the same applications because the retreaded tyres' safety performance is significantly worse than that of new tyres and reiterated the same concerns following final disclosure. They provided as evidence a quote from US law ⁽²⁴⁾. Moreover, they claimed that the Union institutions also consider retreaded tyres to be separate from new tyres in other spheres. Indeed, Regulation (EC) No 1222/2009 of the European Parliament and of the Council ⁽²⁵⁾. They would thus not subject to the same legislation, contrary to the suggestion in recital (75) of the provisional Regulation.
- (71) The Commission rejected that claim. In recital (73) of the provisional Regulation, the Commission addressed how tyres were perceived in terms of safety performance and concluded that exactly the same technical, quality and safety perception differences arise between two new tyres from different tiers. In addition, Council Decision of 13 March 2006 amending Decisions 2001/507/EC and 2001/509/EC with a view to making United Nations Economic Commission for Europe (UN/ECE) Regulation Nos 109 and 108 on retreaded tyres compulsory ⁽²⁶⁾ lays down that the provisions of UN/ECE Regulations 108 and 109 are to apply as a compulsory condition for the placing on the market of retreaded tyres on the Union market, to ensure that retreaded tyres fulfil similar safety and quality control requirements as new tyres ⁽²⁷⁾.
- (72) Following final disclosure, the CRIA and the CCCMC claimed that the new tyres production process is essentially different from the process for retreaded tyres. While the Commission agrees with those parties that the production process is different, the use of new and retreaded tyres is the same — they are mounted on the wheels of either buses or lorries to form a soft contact with the road. Therefore, that claim was rejected.

2.3. Like product

- (73) All the Chinese sampled exporting producers, the CRIA and the CCCMC requested the Commission to disclose more information on the tyre types that were used for comparison purposes. They claimed that it was highly likely that certain differences were not reflected in the PCN/product types and adjustments should be made. The Chinese exporters and the CRIA and the CCCMC claimed that they were unable to identify such differences as they did not have information on the products sold by the sampled Union producers. Those parties reiterated similar claims following final disclosure.
- (74) The Commission found that the open file already contained sufficient information regarding the definition of the PCN/product types. The product type definition is rather complex involving seven characteristics (including the section width, the aspect ratio, construction type, the rim/wheel diameter, tyre position, winter tyre (yes or no), tubeless tyre (yes or no)). The Commission, accordingly, concluded that the PCN characteristics were detailed enough to take account of all product characteristics found on the Union market. Indeed, no other interested

⁽²⁴⁾ Under US law: 'No bus shall be operated with regrooved, recapped or retreaded tires on front wheel'; 49 CFR 393.75 — Tires.(d).

⁽²⁵⁾ Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters explicitly would not apply to retreaded tyres (OJ L 342, 22.12.2009, p. 46).

⁽²⁶⁾ OJ L 181, 4.7.2006, p. 1.

⁽²⁷⁾ <http://www.etrma.org/tyres/retreading/eu-regulatory-framework> [last accessed 12 July 2018].

party claimed that the PCNs would not reflect all the differences between the different product types, and that the same product type produced in the Union differed from the same product type produced in the PRC. Nor did any interested party provide any information as to which other characteristics would be necessary to ensure an even more complete or greater comparison between imported and domestic types of the product concerned. Therefore, the Commission maintained its finding that the characteristics of the PCNs were detailed enough to capture all relevant differences between the different product types, allowing a fair product (and price) comparison. Therefore, the Commission rejected that claim.

- (75) The CRIA and the CCCMC claimed that it was unclear whether the notions of product types and PCNs differ and requested the Commission to clarify that issue. For the purpose of this proceeding, the Commission confirmed that the two notions are interchangeable.

3. DUMPING

- (76) The CRIA and the CCCMC, the Aeolus Group and Pirelli, the Hankook Group and the Giti Group objected to the fact that not only the identity of the analogue country producer has been kept confidential but also the detailed normal value calculations. They claimed that made it impossible for them to exercise their due process rights and meaningfully comment on the calculation of the normal value. The Giti Group and the Hankook Group reiterated this claim following final disclosure.
- (77) The Commission reminded that the analogue country producer requested the confidential treatment of its identity and provided a justification for it. The Commission examined the merits of the anonymity request and established that there was evidence of a significant possibility of retaliation, and accepted that the name of the company should not be disclosed. In addition, the analogue country producer provided evidence that on the basis of its sales and costs data, in particular its sales by tier, its competitors could assess its identity and so threaten retaliation in case of continued cooperation. Therefore, the Commission agreed with the producer that the detailed normal value calculations had to be kept either confidential or in ranges. Following the hearing with the Hearing Officer mentioned in recital (14) the Commission disclosed additional information on the analogue country producer's Cost of Manufacturing ('COM') and General and Administrative expenses ('SG&A').

3.1. Normal value

3.1.1. Market economy treatment ('MET')

- (78) Following provisional disclosure, the Giti Group, the CRIA and the CCCMC claimed that the Commission's approach of continuing to apply Article 2(7) of the basic Regulation (prior to the amendment adopted on 19 December 2017 ⁽²⁸⁾) constituted a violation of the Union's commitments made in China's WTO Accession Protocol and was therefore illegal. In this context, the Giti Group disagreed with the Commission's claim that the burden of proof is on the Giti Group and noted as a final point that there was nothing legally precluding the Commission from determining normal value on the basis of the Giti Group's own costs and (domestic) sales data.
- (79) As noted in recital (88) of the provisional Regulation, the Commission followed in its investigation the applicable law at the time of the investigation, including Articles 2(7)(b) and 2(7)(c) of the basic Regulation. In this respect, the claim that the burden of proof is not on the Giti Group is not reconcilable with the applicable Article 2(7)(c) of the basic Regulation which provides that '*A claim under point (b) must be made in writing and contain sufficient evidence that the producer operates under market-economy conditions ...*'. Moreover, for determining normal value, Article 2(7)(a) of the basic Regulation provides that the normal value can be determined '*on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union ...*'.
- (80) Following provisional disclosure, the Giti Group also alleged that the Commission had violated its rights of defence in two ways by rejecting its MET claim:
- (a) the Giti Group had been given insufficient time to meaningfully comment on the MET disclosure as the deadline to submit comments on the MET disclosure had been inadequate and unreasonable; and

⁽²⁸⁾ Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 338, 19.12.2017, p. 1).

- (b) the Commission only disclosed its report on the MET verification (on 3 May 2018), or about one month after the final MET decision was made (on 9 April 2018).
- (81) The Commission disagreed with those allegations for the following reasons:
- (a) The Commission had shared its MET assessment on 15 March 2018 with a deadline to comment by 27 March 2018 close of business. Such a deadline of 12 days is reasonable and allowed the Giti Group to properly defend its interest.
- (b) The MET disclosure document of 15 March 2018 contained not only the essential facts, but also the results of the on-the-spot investigation. In this specific document, the Commission services detailed in a transparent way all relevant elements thus allowing the Giti Group to defend its interests with respect to the MET assessment. Moreover, verification visits at the Giti Group took place during a time span of three weeks during which at least one legal counsel representing the Giti Group was present. During the verification visits, the Commission services kept the representatives of the company informed, both orally and by e-mails, of the information which had been successfully verified and which still had to be verified or provided. An identical list of all exhibits collected during the verification process had been provided to the legal counsel of the Giti Group at the end of each verification visit. Hence, even without a mission report, which only takes stock of the factual findings which had already been disclosed in the MET disclosure document, the Giti Group had ample opportunity to comment on the essential considerations for the MET assessment.
- (82) In conclusion, following provisional disclosure, the comments on the MET did not put into question the factual findings and were not such as to alter the Commission's findings on MET. In accordance with Article 2(7)(c) of the basic Regulation, the Commission has made its determination whether the Giti Group met the MET criteria — within seven months of, but in any event not later than eight months — after the initiation of the investigation, after the Union industry has been given an opportunity to comment. Consequently, the Commission considered that the rights of defence of the Giti Group have been fully respected with regards to its findings on MET.

3.1.2. *Analogue country*

- (83) In the provisional Regulation, the Commission selected Brazil as the analogue country in accordance with Article 2(7) of the basic Regulation.
- (84) Following provisional disclosure, the Giti Group claimed that Brazil did not constitute an appropriate analogue country because: (1) there are less favourable conditions of access to raw materials in Brazil, as China is a bigger producer of natural rubber and is closer to the main sources of production in South-East Asia; (2) Brazil has anti-dumping duties in place against several countries; (3) Brazil has high regular import duties of 16 % on certain bus and lorry tyres.
- (85) The Commission recalled that Brazil is a competitive market where five large producers are active in production of bus and lorry tyres. It is a large market in terms of consumption and it has significant imports and exports, in spite of the anti-dumping duties and the regular customs duties in place. The Commission also recalled that it did not have any other viable alternative. The only Thai producer that had been willing to cooperate was active only in tube type tyres, which made it unsuitable as more than 95 % of the exports to the Union are tubeless type tyres. Finally, South Africa was much smaller in terms of production and consumption and had even higher regular anti-dumping duties, which made it less suitable than Brazil. Therefore, the Commission confirmed that Brazil was the most appropriate analogue country among the proposed alternatives.
- (86) The Commission also looked in-depth at the cost of natural rubber in the analogue country producer's COM. The cost of natural rubber per kilo of bus and lorry tyres produced by the analogue country producer was [4,1-4,5] RMB, which was in line with the cost of the Chinese exporting producers reported in their questionnaire reply. Overall, the analogue country producer's COM/kg of output is higher than the COM/kg of the Chinese exporting producers. However the main difference in the level of COM in Brazil stems from higher labour cost, direct depreciation cost and other direct and indirect manufacturing costs. Therefore, the claim to make an adjustment for the difference in price of the raw materials in the analogue country and in the PRC was rejected.

- (87) Following provisional disclosure, the Giti Group, the Hankook Group, the Aeolus Group and Pirelli asserted that the normal value had to be constructed for most of their sales volume to the Union and claimed that this cast serious doubt on the comparability of the product types sold on the analogue country domestic market. Following final disclosure the Giti Group reiterated that claim.
- (88) The product concerned includes a large range of product types with many different sizes and other characteristics. The fact that certain sizes and tyre types were not produced in Brazil does not mean that the Brazilian product types were not comparable. Indeed, the product types produced by the Brazilian producer belong to the same product group and could to a certain extent be matched with those exported by the sampled Chinese exporting producers to the Union. The Commission thus dismissed this argument.
- (89) In the absence of any further comments regarding the suitability of the analogue country, the Commission's provisional conclusion to use Brazil as analogue country, as set out in recital (112) of the provisional Regulation is confirmed.

3.1.3. Normal value

- (90) The details for the calculation of the normal value are set out in recitals (113) to (115) of the provisional Regulation.
- (91) All sampled exporting producers claimed that the method for constructing the normal value, which the Commission applied at the provisional stage resulted in extraordinarily high dumping margins and produced results that did not appear to correspond to reality, that is the normal value did not go down for tier 2 and tier 3, although in reality tier 2 and 3 tyres are always cheaper. The exporting producers urged the Commission to make adjustments to the normal value, which would reflect the decreasing cost of production of tier 2 and 3. The Giti Group also requested an adjustment which would reflect a decreasing COM of tyres with a larger section width.
- (92) The Commission accepted the claim that the method it provisionally used for constructing the normal value for non-matching PCNs might have not sufficiently accounted for the tier segmentation. The Commission analysed the product types, which the analogue country producer manufactured in all three tiers and observed that tier 2 COM/item was on average [83-87] % of the tier 1 COM/item and the tier 3 COM/item was on average [77-82] % of the tier 1 COM/item. The Commission, therefore, decided to refine the method for constructing the normal value in order to take into account these differences in COM/item for each tier as follows. First, it calculated the average COM/kg for all tier 1 tyres produced by the analogue country producer: [19-21] RMB per kg. Second, it reduced the tier 2's COM/kg used in the construction of the normal value by the average difference of COM/item between tier 1 and tier 2 namely [83-87] %, which gave tier 2's COM/kg: [16-18] RMB/kg; the tier 3 COM/kg was reduced by the average difference in COM/item between tier 1 and tier 3 namely [77-82] %, which gave [15-17] RMB/item. The product types, which the analogue country producer manufactured in all three tiers, accounted for [70-80] % of the analogue country's production in volume and was therefore considered representative to be used as a basis for the adjustment.
- (93) The Commission constructed the normal value of each non-matching product type exported by the Chinese producers by multiplying its weight by the respective COM/kg for each tier. The Commission then added a reasonable amount of SG&A and a reasonable amount of profit to each product type.
- (94) On the basis of the above adjustments, the Commission constructed the normal value for the non-matching product types ('PCNs') taking into account the differences identified in the costs of manufacturing between the three tiers.
- (95) Following the claims that the analogue country producer's SG&A is unreasonably high, the Commission re-investigated in detail the producer's SG&A expenses and noticed that the domestic transport expense was double-counted at the provisional stage. The Commission, therefore, removed this expense from the normal value calculations, which resulted in reducing the SG&A used for the construction of normal value from [35-45] % of the analogue country producer's COM to [20-30] % of its COM. This revision has no impact on the provisional duty levels, as it did not decrease the provisional dumping margin below the level of the injury margin. The revised SG&A is in line with the Union Industry's average SG&A for all the sampled producers in all three tiers. Therefore, the Commission considered this revised level of SG&A reasonable.

- (96) Following final disclosure, the Giti Group claimed that the Commission did not make adjustments for the fact that tier 1 producers typically have much higher marketing expenses (when establishing the SG&A) and that the profitability of tier 1 producers is much higher than for tier 2 and tier 3 producers (when establishing the profit). It therefore submitted that when constructing the normal value, the Commission should use a lower profit margin for tier 2 tyres than for tier 1 tyres and an even lower profit margin for tier 3 tyres.
- (97) The Commission recalled that it had revised its methodology after provisional stage to take into account the differences between tiers when constructing the normal value (see recital (92)). The data from the analogue country producer did not warrant any further adjustment. Therefore, that claim was rejected.
- (98) As regards the request to adjust the normal value for the decreasing COM of larger tyres, the Commission noted that the Giti Group did not provide any detailed analysis quantifying to what extent larger tyres are less expensive to produce and if there is any clear pattern of decrease in the COM. Finally, the Giti Group did not put forward any potential methodology to make such an adjustment. Following final disclosure the Giti Group claimed that it had not received sufficient data to be able to put forward any potential methodology for tyre size adjustments. The Commission considered that Giti Group could use its own data to demonstrate that there are significant differences in the COM for larger and smaller tyre sizes and on this basis suggest a methodology for adjustment. However, no such submission was made. Those claims were therefore rejected.
- (99) The Giti Group also pointed out that during the investigation period, the interest rates published by the Central Bank of Brazil ranged between 14,25 % and 11,25 % whereas, during the same period, the interest rate published by the People's Bank of China was 4,35 %. The Giti Group claimed that, if a large part of the SG&A expenses were related to financial expenses, these expenses should be adjusted downward to reflect the higher interest rates on lending in Brazil compared to the PRC.
- (100) The Commission recalled that it had to use the analogue country's costs because of the presence of important competitive distortions linked to high state intervention in the PRC. As the access of Chinese companies to bank financing is one of those competitive distortions, the Commission considered that it was appropriate to use the analogue country's interest rate. Therefore, that claim was rejected.
- (101) Following final disclosure, the Giti Group reiterated its claim that the Commission should make an adjustment for the difference in financing costs in the PRC and Brazil, namely between the interest rates applied by the People's Bank of China and the Central Bank of Brazil. The Giti Group also made a request to make downward adjustments to the analogue country producer's COM to compensate its higher overhead expenses and SG&A to compensate other costs and higher taxes.
- (102) The Commission recalled that, pursuant to Article 2(7)(a) and (b) of the basic Regulation, in the case of the PRC, the normal value is to be determined on the basis of the price or constructed normal value in a market economy third country. As mentioned in recital (100) there are important competitive distortions in the PRC having an effect on Chinese financing costs. Therefore, the fact that there might be differences in the financing cost between the PRC and the analogue country does not justify the requested adjustment. With regard to the additional claim that the analogue country producer's COM should be adjusted downwards to compensate for higher overhead costs and taxes in Brazil, the Commission recalled that it had rejected the MET request by the Giti group. One reason for this rejection was that its accounting records had not properly reflected the full SG&A expenses. Accordingly, the Commission could not rely on the Giti group's company specific cost data and had neither used, nor verified them. It follows that it could not make a comparison with the allegedly higher overhead and taxation costs in Brazil. Since accepting the requested adjustment would have had the effect of reintroducing such unreliable Chinese data, the Commission rejected this claim as well.

3.2. Export price

- (103) The details for the calculation of the export price are set out in recitals (116) to (119) of the provisional Regulation.
- (104) The Hankook Group claimed that it should be treated as a single economic entity and consequently no adjustments under Article 2(9) of the basic Regulation are needed or otherwise warranted. It submitted that the elimination of the SG&A expenses and profit of the related companies in the Union under Article 2(9) of the

basic Regulation had the effect of removing from the export price all costs and expenses incurred by an export sales department, and a share of the profit. Following final disclosure, the Hankook Group reiterated its claim that it is a single economic entity and, in their view, the Commission should neither adjust the SG&A expenses nor the profit of the related traders in the Union. Instead the Commission should use the actual price to the first independent customer in the Union, as in its view, this price is reliable.

- (105) Concerning the construction of the export price under Article 2(9) of the basic Regulation, it is settled case law that the existence of a single economic entity does not preclude the Commission from constructing the export price under Article 2(9) ⁽²⁹⁾. Pursuant to Article 2(9) first and second subparagraph of the basic Regulation, the Commission is entitled to construct the export price where it appears that the export price is unreliable because of an association between the exporter and the importer. In such a case adjustments for all costs, including duties and taxes, incurred between the importation and resale, and for profits accruing are made to establish a reliable export price, at the Union frontier level. Pursuant to Article 2(9) third subparagraph of the basic Regulation the items for which adjustments are to be made include those normally borne by an importer but paid by any party, including a reasonable margin for SG&A costs and profit. In this case, the Commission established that this association exists since the exporting producers and the importers belong to the same group of companies i.e. the Hankook Group. Therefore, the Commission is entitled to make adjustments to SG&A costs incurred by and profits of the related importers of the Hankook Group. The Commission also considered that the verified profits made by cooperating unrelated importers constitute a reasonable basis for the construction of the export price. Therefore, that claim was rejected.
- (106) The Hankook Group submitted that, if the Commission rejected its claim against adjustments under Article 2(9) of the basic Regulation to the Hankook Group's export price, it should have adjusted the analogue country producer's normal value by deducting the sales costs and reasonable profit in accordance with Article 2(10)(d) of the basic Regulation. In its view, including the sales expenses and profit margin made by the analogue country producer creates an asymmetry affecting price comparability, which must be adjusted. Following additional disclosure, the Hankook Group quantified the adjustments that, in its view, needed to be made to the analogue country producer's SG&A and profit to remove the asymmetry affecting price comparability.
- (107) The Commission clarified that the purpose of the adjustments made pursuant to Article 2(9) of the basic Regulation is to establish a reliable export price unaffected by the association between the exporter and the importer in the Union as recalled in recital (105). At the same time, the Court held that determination of the normal value and determination of the export price are governed by separate rules and therefore SG&A expenses need not necessarily be treated in the same way in both cases ⁽³⁰⁾. The Commission reaffirmed its position that the analogue country producer's final sales price was brought down to the same ex-works level of trade by adjusting it with duly verified allowances reported in its transaction by transaction table. Accordingly, that claim was rejected.

3.3. Comparison

- (108) Recitals (120) and (121) of the provisional Regulation explain how the comparison between the normal value and the export price was made.
- (109) In their comments on the provisional and definitive findings, the Giti Group, the Hankook Group and the CCCMC and the CRIA contested the methodology for the VAT adjustment on several grounds as detailed in recitals (110) to (117).
- (110) Those parties considered that, having rejected Chinese prices and costs for the determination of the normal value, the Commission subsequently reintroduced the Chinese VAT tax rates in the calculation of the normal value. In addition, those parties claimed the methodology inflated the dumping margin upwards, in particular due to the fact that adjustment is made to the normal value, instead of the export price.

⁽²⁹⁾ Judgment of the Court of Justice of 4 May 2017 in Case C-239/15 P *RFA International v Commission*, ECLI:EU:C:2017:337 paragraphs 24-26, and of the General Court of 17 March 2015 in Case T-466/12 *RFA International v Commission*, ECLI:EU:T:2015:151, paragraphs 51-56.

⁽³⁰⁾ Judgment of the Court of Justice of 10 March 1992 in Case C-178/87, *Minolta v Council*, EU:C:1992:112, paragraph 12.

- (111) The Commission rejected those claims. The purpose of adjustments made under Article 2(10) of the basic Regulation is to ensure that the dumping margin is established on the basis of a fair comparison between the normal value and the export price. That requirement applies irrespective of the basis on which the normal value is established, including when the normal value is established in an analogue country in situations where companies are not granted MET. In relation to the VAT adjustment made pursuant to Article 2(10)(b), the Commission ensured that the normal value and the export price were compared at the same level of taxation, as further explained in recitals (115) and (116) in accordance with settled case-law ⁽³¹⁾.
- (112) The Giti Group claimed that, in their view, the situation in the case law quoted by the Commission i.e. *Dashiqiao* judgment ⁽³²⁾ was different than the Giti Group's situation as the company concerned by that judgment had obtained MET and no adjustment was made pursuant to Article 2(10)(b) of the basic Regulation.
- (113) The Commission acknowledged that the circumstances in the investigation examined in the *Dashiqiao* judgment were different. In that case, export sales were subject to a VAT liability at the full rate of 17 % during the investigation period and hence no adjustment was necessary to the normal value to ensure a fair comparison with a normal value reflecting the same rate of VAT. By contrast, in the current investigation, export sales were liable to a reduced VAT liability and an adjustment was therefore necessary to bring the normal value price inclusive of VAT down to the same level of taxation as that affecting export sales. As set out in recital (111), it is not relevant whether a Chinese exporting producer is granted MET or not. What is relevant is whether the export price and the normal value are compared at the same level of taxation in order to ensure a fair price comparison.
- (114) The Giti Group also claimed that the burden of proof for the need of an adjustment falls on the Commission. The Hankook Group stressed that no VAT was levied on export sales at all according to Chinese legislation and that therefore no adjustment was warranted. Alternatively, the Hankook Group claimed that even if an adjustment for VAT liability was necessary, the adjustment ought to be done on the export price and not on the normal value. The Giti Group also claimed that any adjustment for VAT liability should rather be made to offset any difference in VAT eventually paid by the Group after offsetting the VAT or other taxes paid on purchases of raw materials and other input against the VAT liability on export sales and domestic sales respectively. In other words, Giti argued that any VAT adjustment should reflect the difference in costs between exported and domestically sold materials.
- (115) The arguments submitted by the Giti Group and the Hankook Group are based on a misunderstanding of the rationale underpinning the adjustment made for VAT liability. First, as to the merits of an adjustment, both parties do not contest the fact that export sales of the product concerned trigger a VAT liability for the exporting producer. Indeed, the parties submitted that the adjustment should either be made to the export price or that the adjustment should be made to offset the difference in costs between domestic and export sales (i.e. the costs resulting from the inability to recuperate all VAT paid on the purchase of raw materials or other input because of the VAT liability triggered by export sales of the product concerned). While the Commission disagreed with those arguments for the reasons developed in recitals (116) and (117), it notes that those arguments confirm that export sales lead to VAT liability (contrary to what the Hankook Group also argued) equivalent to the so-called 'non-refundable rate' on exports which is a flat rate applied to the FOB export price of the product concerned. Second, as to the adjustment itself, the Commission reiterated that the purpose of the adjustment is to ensure that the normal value and the export price are compared at the same level of VAT rate.
- (116) On that basis, the Commission first established a normal value on a VAT inclusive basis at a rate of 17 %, which is the normal rate of VAT for domestic sales in the PRC. Subsequently, the Commission adjusted that normal value downwards to match the lower rate of VAT liability observed for export sales of the product concerned (i.e. the so-called non-refundable rate). That ensured the required symmetry between the normal value and the export price for the level of indirect taxation. In response to the arguments made by the Hankook Group that the adjustment should be made to the export price, the Commission noted that Article 2(10)(b) of the basic Regulation makes it clear that any difference in the level of indirect taxation is a matter to be addressed in the normal value, not in the export price.

⁽³¹⁾ Judgment of the Court of Justice of 19 September 2013 in Case C-15/12 P *Dashiqiao Sanqiang Refractory Materials v Council*, EU:C:2013:572, paragraphs 34-35 thereof.

⁽³²⁾ *Idem*.

- (117) In relation to the argument that the adjustment should be made to neutralise any difference in costs of raw materials or inputs between export and domestic sales resulting from residual VAT liability on such cost items, the Commission recalled that the purpose of the adjustment performed in this context is not meant to deal with any alleged difference in costs of raw materials or other inputs. Rather, the adjustment ensures that prices used in the comparison are at the same level of taxation. Lastly, as to the Giti Group's argument on the burden of proof, the Commission recalled that the fact that export sales of the product concerned trigger a VAT liability was established as a matter of fact in the investigation and is, in reality, not contested by either Group which rather offer a different approach to address this fact (adjustment to the export price or adjustments for differences in costs). These claims were therefore rejected.
- (118) Following final disclosure, the Hankook Group reiterated that it is a single economic entity and therefore the Commission should not make adjustments for the commissions under Article 2(10)(i) of the basic Regulation.
- (119) The Commission reaffirmed its position that under Article 2(10)(i) of the basic Regulation it is entitled to make adjustments for commissions paid in respect of the sales under consideration. In this case, the Commission established that the commissions were provided for in a contract between the parties and *de facto* paid by the exporting producers to the related parties. The payments were reported, acknowledged by the exporting producer and verified during the investigation. They have been found to affect the price comparison. The Commission was therefore required to make adjustments for the commissions irrespective whether the companies formed a single economic entity or not. The Commission also recalled that the concept of single economic entity in the context of adjustments under Article 2(10) of the basic Regulation was developed in the Court's case law ⁽³³⁾ on 'notional commissions' including the mark-up received by a trader as referred to in the second subparagraph of Article 2(10)(i) and not for situations where actual commissions are clearly defined and *de facto* paid. Therefore, that claim was rejected.
- (120) Following final disclosure, the Hankook Group reiterated its claim that the royalties paid to the Korean headquarters for the use of Hankook's technology and brand should not be deducted from the export price. The Commission re-examined the claim, found that it was warranted and re-calculated the dumping margin accordingly.

3.4. Dumping margin

- (121) As set out in Sections 3.1 to 3.3, the Commission took into account a number of comments from interested parties received after provisional disclosure and recalculated the dumping margins of all the sampled exporting producers. This led to the decrease of the provisionally established dumping margins. This change also had an impact on the dumping margin of all other cooperating and non-cooperating companies since these margins are based on the margins of the sampled companies.
- (122) The definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 1

Definitive Dumping Margins

Company	Definitive dumping margin
Xingyuan Group	106,7 %
Giti Group	56,8 %
Aeolus Group and Pirelli	85 %
Hankook Group	60,1 %
Other Cooperating Companies	71,5 %
All other companies	106,7 %

⁽³³⁾ Judgment of the Court of Justice of 16 February 2012 in Joined Cases C-191/09 P and C-200/09 P, *Council v Interpipe*, Judgment of the Court of Justice of 26 October 2016 in Case C-468/15 P, *PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council*.

4. INJURY

4.1. Definition of the Union industry

- (123) As described in the provisional Regulation in recitals (127) to (129), the like product was manufactured by more than 380 producers in the Union, producing both new and retreaded tyres. Together, they were defined as the Union industry.
- (124) Following final disclosure, the CRIA and the CCCMC claimed that the retreaders operating or not under tolling arrangements cannot form part of the Union industry. They considered that retreading is an after service market which cannot be protected by anti-dumping measures as the retreaders take an existing tyre that is part-worn and reprocess it so it can be used. Moreover, retreaders operating on a tolling basis cannot own the casing. Customers retain ownership of the casing while the casing is serviced and a new tread applied to a worn tyre before it is returned to the owner.
- (125) The Commission noted the retreading industry provides a second life (or more as the same casing can be retreaded several times) to a casing originating from a worn-tyre. A worn-tyre is no longer safe to be used on public road and cannot be put back into circulation. Without the retreading process, the fate of a worn-tyre is to end in a scrap heap; though part of the worn tyre can be pyrolysed to produce tyre-derived fuel. As described in recital (49) of the provisional Regulation, retreading is a recycling process whereby a worn tyre is refurbished through a replacement of the tread on an old casing. Therefore, retreading is not merely a service, but a production process. Irrespective of ownership arrangements, the retreaders are Union producers whose production process starts from a casing and who are producing a tyre.
- (126) In addition, the life cycle of worn tyres ends in one of two ways: they are either discarded as a waste or used as a good casing to be retreaded. If considered waste, the owner of the worn tyre may have to pay a fee to dump the worn tyre. In the second scenario, the worn tyre becomes a source of revenue. Retreaders may purchase the worn tyre from a service garage or retread a worn tyre under a tolling agreement. All verified retreaders use two sources of supply (namely either stock casing or tolling agreement) to produce tyres. The purchase price of a worn tyre was around 10 % in average of the overall cost of production of a retreaded tyre. The Commission considered that the difference in costs of production or in the added-value between the two ways of retreading casings, was not significant, and regarded those as two different business models of retreading. Therefore, the Commission concluded that the retreaders were part of the Union industry.
- (127) As a result, data provided by the retreaders and verified by the Commission (including actual costs and sales prices) were used for the establishment of the injury indicators and the injury margin calculation.

4.2. Injury segmented analysis

- (128) As explained in recital (162) of the provisional Regulation, the economic situation of the Union industry was analysed on an aggregated basis and, in certain microeconomic indicators at the level of tiers given the Union market segmentation. Certain interested parties reiterated the same concerns following the final disclosure that the injury analysis by segment should consider all injury indicators and causation indicators. They referred to the Appellate Body Report in United States — Hot Rolled Steel Products from Japan ⁽³⁴⁾. Moreover, these parties requested that the Commission should also distinguish between new and retreaded tyres, original equipment and replacement tyres as the original equipment market was shielded from Chinese competition, again by reference to the Appellate Body report in United States — Hot Rolled Steel Products from Japan ⁽³⁵⁾. The CRIA and the CCCMC reiterated the same concerns following the final disclosure.
- (129) The jurisprudence mentioned above indicates that the investigating authorities who undertake an examination of one part of a domestic industry ‘*should, in principle, examine, in like manner, all of the other parts that make up the industry, as well as examine the industry as a whole*’ ⁽³⁶⁾. However, the Appellate Body Report does not impose on the investigating authorities an obligation to provide all injury indicators by segment.

⁽³⁴⁾ Appellate Body in WT/DS184/AB/R, United States — Hot Rolled Steel Products from Japan, paras. 195-196.

⁽³⁵⁾ Appellate Body in WT/DS184/AB/R, United States — Hot Rolled Steel Products from Japan, para. 207.

⁽³⁶⁾ Appellate Body in WT/DS184/AB/R, United States — Hot Rolled Steel Products from Japan, para. 204.

- (130) Moreover, the facts in that case were different. In the Appellate Body report in United States — Hot Rolled Steel Products from Japan, a significant part of the domestic production in the United States — captive production — was shielded by the structure of the domestic market from direct competition from subject imports. In that specific situation, the Appellate Body took issue with 'comparative examination' of each part of the domestic market — which 'juxtaposed' the merchant market and captive market. For the Appellate Body, this 'enhanced' the ability of the investigating authorities to make an appropriate determination about the state of the domestic industry as a whole. In the present case, though, there is no protection of the tier 1 and 2 segments of the Union market. The Chinese imports' sales are concentrated mainly in the replacement market; this is a factual situation which is not imposed by the structure of the Union market. Moreover, the product concerned was also sold to original equipment manufacturers. Therefore, the claim that Union original equipment market was shielded from the Chinese competition and should thus be analysed separately was rejected.
- (131) Moreover, as noted in recital (160) of the provisional Regulation, case-law also confirms that, when examining whether there is injury for the Union industry as a whole, such analysis may focus on the segment most affected by dumped imports. In the present case, around 65 % of Chinese imports of tyres relate to tier 3. Therefore, a proper injury analysis cannot disregard the impact of the dumped imports especially in a market situation where tier 3 tyre sales are continuously growing, and where all tiers that make up the Union tyre market are interrelated.
- (132) For these reasons, the Commission resolved to have conducted a proper examination of the industry as a whole.

4.3. Union consumption

- (133) As mentioned in the recital (9), the Commission carried out verification visits at the premises of two unrelated importers. It was found that the imports of the product concerned were also declared during the period considered under the CN codes 4011 90 00 and 4011 99 00. These imports concerned tier 3 tyres. However, it was not possible to establish whether there was a systemic problem with the declaration of the product concerned, or whether the issue was limited to this particular importer.
- (134) In addition, the total volume reported by the cooperating Chinese exporting producers in the investigation period exceeded the total of imports originating from the People's Republic of China provided by Eurostat Comext. However, as there is no data reported by these exporting producers concerning the preceding years the Commission decided to follow a conservative approach and not to revise the import volumes from the PRC.
- (135) Following the provisional disclosure, it was found that the sales of tread suppliers not members of ETRMA Europool had been omitted when establishing the Union consumption. Therefore, the Commission revised the Union consumption for the period considered.
- (136) During the period considered the Union consumption ⁽³⁷⁾ developed as follows:

Table 2

Union consumption (in items)

	2014	2015	2016	Investigation period
Total Union consumption	20 499 603	20 962 782	21 600 223	21 748 781
<i>Index 2014 = 100</i>	100	102,3	105,4	106,1

Source: ETRMA and tread suppliers not members of ETRMA Europool.

- (137) Accordingly, the Union consumption increased over the period considered. Overall over the period considered the consumption increased by 6,1 % from around 20,5 million tyres to around 21,7 million tyres in the investigation period.

⁽³⁷⁾ Note for the file concerning the methodology used to estimate the Union consumption (Filing system number: t18.004870).

4.4. Interconnection between new and retreaded tyres

- (138) A number of interested parties challenged the provisional findings on the interconnection between new and retreaded tyres and among tiers and reiterated the same concerns following the final disclosure. The Commission compiled all information on this matter in a note for the file on interconnection ⁽³⁸⁾.
- (139) Regarding recital (140) of the provisional Regulation, the CRIA and the CCCMC claimed that there was no value attribution to tiers 1 and 2 tyres from the existence of the retreading industry.
- (140) Information regarding the importance of the retreading business is well spread out and publicly available. As mentioned in recital (58) of the provisional Regulation, the producers of new tyres are also producing retreaded tyres. Some Chinese exporting producers have their own brands for retreaded tyres such as Hankook Alphantread or Giti Genesis. As explained in the note for the file on interconnection, the Commission found that the main tyre producers including Chinese exporting producers were engaged in the retreading business. Hankook Group relies on Union retreaders such as Vacu-Lug in the United Kingdom or B.R.P. Pneumatici in Italy for its retreading activity. Giti Genesis previously known as GT Ree Tread relies on Vacu-Lug in the United Kingdom.
- (141) Moreover, Pirelli Italy declared in 2009 concerning a contract signed with Marangoni (a Union provider of retread solutions) that this project, which is part of the strategy of strengthening and enlarging the supply of services by Pirelli Truck, aims to add value in particular to the new products in the 88 Series and the 01 Series, launched on the European market in 2009, characterised, among other qualities, by their high suitability for retreading ⁽³⁹⁾. Other producers are also marketing that their tyres are retreadable, for instance Athos brand importer providing that Athos tyres are regroovable and suitable for cold and hot retreading as well as the Aeolus brand ⁽⁴⁰⁾ (reported both as tier 3). This shows that retreadability is a significant value factor both in the European Union and in the country concerned. Indeed, the Commission's investigation has shown that 'upper tier' producers rely heavily on the existence and availability of a retreading industry to not only create high value market perception, but also for their consumer and business continuity strategies. As the note for the file on interconnection in addition shows, retreadability is viewed by the production industry in the Union and the country concerned as more than a mere marketing asset, but a real value driver for the upper tiers. Accordingly, the value and sales price of the upper tiers are indissolubly linked to a healthy retreading industry 'downstream'. It is for those reasons that the Commission, at recital (140) of the provisional Regulation, stated that 'a large value attributed to tiers 1 and tier 2 tyres originate, in fact, from the existence of a retreading industry in tier 3'.
- (142) On that basis, the Commission confirmed its initial findings on the interconnection between new and retreaded tyres and among tiers.
- (143) Regarding recital (141) of the provisional Regulation, the CRIA and the CCCMC considered that the Commission did not disclose the source of the high interchangeability of retreaded tyres that in turn, established price as a determining factor in the customer's decision to purchase a retreaded or tier 3 new tyres.
- (144) The Commission accepted that claim. Accordingly, in its note for the file on interconnection, it showed examples of tyres of different tiers having common sales channels.

4.5. Imports from the country concerned

4.5.1. Volume and market share of the imports from the country concerned

- (145) The Aeolus Group and Pirelli claimed that the Commission should have considered for its analysis the increase in the Union consumption and should have provided a separate analysis for the three tiers. The parties claimed that, with reference to tier 1 and tier 2, Chinese imports decreased by 2,7 % and 2 % respectively, whereas tier 3 imports increased by 3,9 % from 2015 and 2016. In conclusion, they claimed that any alleged rise in imports (in absolute or relative terms) during the investigation period was not substantial and did not injure the Union industry.

⁽³⁸⁾ Note for the file on interconnection (Filing system number: t18.007993).

⁽³⁹⁾ <https://www.pirelli.com/tyre/ww/en/news/2009/12/04/pirelli-tyre-collaboration-with-marangoni-for-truck-tyre-retreading/> [last accessed 7 September 2018].

⁽⁴⁰⁾ <https://www.aeolus-tyres.com/aeolus-eco-twin-a-second-life-for-tyres/> [last accessed 17 July 2018].

- (146) As explained in recitals (128) and (132), the economic situation of the Union industry was analysed on an aggregated basis, and this included the analysis of imports. It was only in certain key microeconomic indicators that the additional analysis at the level of tiers was performed, given the Union market segmentation. The import volumes of the product concerned from the PRC increased. On the basis of the import statistics from Eurostat Comext (which as explained in recitals (133) and (134) could be underestimated), such increase in the volume of imports from the PRC was substantial, both in absolute and relative terms.

4.5.2. Prices of the imports from the country concerned

- (147) The Aeolus Group and Pirelli claimed that the Commission's analysis lacks any reference to the market segmentation and reports only Eurostat figures, without any reference to import figures collected from the sampled exporting producers.
- (148) As explained in recitals (128) and (132), the economic situation of the Union industry was analysed on an aggregated basis and, in certain key microeconomic indicators, was also analysed at the level of tiers given the Union market segmentation. However, in the undercutting calculations the prices from the sampled exporting producers were indeed compared to the prices of the Union producers taking into account the specific tier where they belonged.
- (149) The Aeolus Group and Pirelli further claimed that import prices were significantly affected by currency rate fluctuations. The Commission failed to see the relevance of the currency exchange rate as all prices used for the comparison purposes in the injury margin calculation are denominated in euros. Hence, the fluctuation between USD and EUR did not play a role in determining either the undercutting or level of the measures. Therefore, that claim was rejected.
- (150) Some interested parties (Pirelli, the Giti Group) claimed that according to Eurostat Chinese import prices (mainly related to tier 3 tyres) have decreased over the past three years only due to declining raw material prices (by EUR 15,6 per item). The parties stated that the prices of raw materials (natural rubber and oil) significantly decreased, with a consistent impact on import prices during the period of investigation.
- (151) The evolution of the average price of imports into in the Union from the country concerned with the evolution of main raw materials prices developed as follows:

Table 3

Evolution of import and main raw materials prices

	2014	2015	2016	Investigation period
PRC import price (EUR/item)	144,4	144,3	127,7	128,8
<i>Index 2014 = 100</i>	100	100	88	89
Natural Rubber:				
SGX RSS3 USD/tonne	1 957	1 560	1 641	2 050
<i>Index 2014 = 100</i>	100	80	84	105
SGX TSR20 USD/tonne	1 710	1 370	1 378	1 660
<i>Index 2014 = 100</i>	100	80	81	97
Butadiene US cents per lb	59,0	34,0	37,2	62,5
<i>Index 2014 = 100</i>	100	58	63	106
Brent indicator USD per barrel	99,7	53,4	43,6	49,6
<i>Index 2014 = 100</i>	100	54	44	50

Source: Eurostat Comext and the Complaint

- (152) Over the period considered, the Chinese import prices have not reflected the evolution of raw material prices. While the Chinese import prices remained stable between 2014 and 2015, the price of main raw materials have decreased significantly by 20 % for natural rubber and by around 45 % of butadiene and Brent indicators. While the Chinese import prices decreased by 12 % between 2015 and 2016, the raw material prices remained rather stable. Finally, for the period 2016 and the investigation period where most of raw material prices have significantly increased as from the second quarter 2016 until first quarter 2017, the Chinese import prices remained stable. The Commission concluded that the Chinese import prices were disconnected from the evolution of raw material prices. Therefore, that claim was rejected.

4.5.3. Price undercutting

- (153) Several interested parties claimed that the price undercutting calculations should be established by analogy with the methodology used for the calculation of the dumping margin on the basis of a comparison of a weighted average sales prices per product type and segment of the sampled Union producers charged to unrelated customers with a weighted average of prices of all comparable export transactions. Moreover, the CRIA and the CCCMC claimed that the Commission should adjust the Chinese prices upwards or the Union prices for retreaded tyres downwards to ensure that the prices compared reflect a similar mileage and for after sales and warranty services provided by the Union producers selling retreaded tyres, in particular for tier 3 as the Chinese producers did not provide such services. The parties reiterated similar claims after the final disclosure.
- (154) As explained in recitals (149) and (150) of the provisional Regulation, the methodology of the price undercutting comparison considered the average sales price per product type (PCN) and per segment. The price undercutting was calculated on the basis of comparable transactions by reference to the product type or type-by-type. As within each tier, the tyres are considered similar in terms of mileage, no overall adjustment is thus needed. The same is true for warranty services, with the exception of tier 3, whereby by contrast to the Chinese producers, the Union may indeed provide after sales and warranty services. Consequently, the Commission adjusted the prices of the sampled Union producers for after sales and warranty services for tier 3 when necessary. The undercutting and the underselling margins were established without any weighting. Therefore, that claim was rejected.
- (155) Regarding the claim on the analogy between dumping and injury calculations, the Commission noted that the dumping calculations indeed require to take ‘all comparable export transactions’ into account when calculating dumping margins for the like product as a whole ⁽⁴¹⁾. By contrast, ‘an investigating authority is not required [...] to establish the existence of price undercutting for each of the product types under investigation, or with respect to the entire range of goods making up the domestic like product. That said, an investigating authority is under an obligation to examine objectively the effect of the dumped imports on domestic prices’ ⁽⁴²⁾. In the case at hand, the Commission was satisfied with the very high level of matching between the Union producers’ and the exporting producers’ product types sold on the Union market (the overall matching is ranging between 80 % and 90 %). Therefore, that claim was rejected.
- (156) The CRIA and the CCCMC claimed that the Commission should disclose further information about the physical characteristics of the tyre types that were used for comparison purposes as it is highly likely that there are differences, which are not reflected in the PCNs that merit an adjustment, but the Chinese exporters and the CRIA and the CCCMC are simply unable to identify such differences as they have no information about the products sold by the sampled Union producers. The parties claimed that the WTO Appellate Body Report in EC — Fasteners ⁽⁴³⁾ supports this approach. The parties reiterated similar claims after the final disclosure.
- (157) The Commission did not accept this argument. It pointed out that the Appellate Body Report mentioned above is about a failure to provide the necessary information regarding the characteristics of a given product which was used in determining the normal value. This led to a situation in which the producers were not in a position to decide about the necessity to request level of trade adjustments or not in order to ensure a fair comparison under Article 2(10) of the basic Regulation in the context of dumping calculations. However, the Panel report in the

⁽⁴¹⁾ Appellate Body Compliance Report in WT/DS397/AB/RW, EC — Fasteners, para. 5.265.

⁽⁴²⁾ Appellate Body Report in WT/DS454/AB/R and WT/DS460/AB/R, China — HP-SSST (Japan)/China — HP-SSST (EU), para. 5.180.

⁽⁴³⁾ Appellate Body Compliance Report in WT/DS397/AB/RW, EC — Fasteners, para. 5.189.

same case stated that ‘while it is clear that the general requirements of objective examination and positive evidence of Article 3(2) of the basic Regulation limit an investigating authority’s discretion in the conduct of a price undercutting analysis, this does not mean that the requirements of Article 2(10) of the basic Regulation with respect to due allowance for differences affecting price comparability are applicable’ ⁽⁴⁴⁾. Therefore, this jurisprudence cannot be relied upon in the present case where the CRIA and the CCCMC make speculations about the absence of disclosure of information about ‘any other relevant characteristics’ and differences not reflected in the PCNs for the purpose of undercutting and injury calculations. Furthermore, the Commission carried out the undercutting calculation in line with its usual practice to ensure a fair comparison whereby PCNs sufficiently reflect physical and all other differences between the product types sold by the Union producers and the exporting producers. Moreover, should the exporting producers consider that their products have specific features which are normally different to the characteristics of the Union products and which, in their view, are not captured by the PCN, they should have raised them in due course. Therefore, that claim was rejected.

- (158) Certain interested parties claimed the Commission did not establish undercutting for the whole period considered. A detailed undercutting calculation was only made for the investigation period. While average Chinese import prices in previous periods can be compared with sales prices by the Union industry, such a comparison is essentially meaningless as (1) no separate data are available for Chinese import prices by tier; and (2) these average prices do not take into account the possibility that the product mix may have changed during the period.
- (159) The WTO Appellate Body Report in *China — HP-SSST (EU)* ⁽⁴⁵⁾ requested that an investigating authority has to assess the significance of the price undercutting by the dumped imports in relation to the proportion of domestic production for which no price undercutting was found. The parties considered that the Commission did not carry out such assessment. The parties reiterated similar claims after the final disclosure.
- (160) As stated in recital (149) of the provisional Regulation, the Commission performed in accordance with the applicable jurisprudence the customary calculations on the basis of the verified data for the investigation period, per PCN and tiers. All relevant calculations were disclosed to the interested parties respecting their procedural rights. The overall level of price undercutting during the investigation period was around 21 %, which the Commission considers significant. Therefore, that claim was rejected.
- (161) The CRIA and the CCCMC, however, considered that it is likely that the Commission only found undercutting for a small subset of sales by the sampled Union producers. In their view, the Commission has to assess the price pressure, if any, that could be exercised by the Chinese imports on the remaining Union industry sales for which it did not find undercutting.
- (162) That claim was rejected because the volume of sales of the sampled Union producers that matched the imports of the Chinese exporting producers is significant (between 80 % and 90 %). Moreover, the weighted average undercutting margin in the three tiers was found to be significant, between 18 % and 24 %.
- (163) The Aeolus Group and Heuver requested that the Aeolus’ CIF prices should be revised in order to reflect Heuver’s post-importation costs. Pirelli claimed that the Commission must take its additional costs into account when comparing the Pirelli tyres to other tyres produced and sold by the Union industry and to the (independent) retailers.
- (164) The Commission found that Heuver was not related to the Aeolus Group. Therefore, no adjustment was warranted. Regarding Pirelli, the CIF weighted average price was established in accordance with Article 2(9) of the basic Regulation as described in recital (118) of the provisional Regulation. Therefore, that claim was rejected.
- (165) Several parties claimed that the Commission cannot rely on constructed export prices when making the price undercutting analysis and the determination of the injury level and that the methodology used is contrary of Article 3(2)(a) and Article 3(3) of the basic Regulation. Moreover, Hankook Group claimed that it should be treated as a single economic entity for both the dumping and the injury margin calculations.

⁽⁴⁴⁾ Panel Report in WT/DS397/REC — *Fasteners (China)*, para. 7.328; see also Panel Report in WT/DS219/R, EC — *Tube or Pipe Fittings*, para. 7.292.

⁽⁴⁵⁾ Appellate Body Report in WT/DS460/AB/R, *China — HP-SSST (EU)*, para.5.180.

- (166) Firstly, Article 3(2) of the basic Regulation refers to the effect of dumped imports that may cause injury to the Union producers and not to the resale price of a company (related importer) within the Union to another customer.
- (167) Secondly, as far as undercutting is concerned, the basic Regulation does not provide any specific methodology of that concept. The institutions therefore enjoy a wide margin of discretion in assessing this injury factor. That discretion is limited by the need to base conclusions on positive evidence and to make an objective examination, as requested by Article 3(2) of the basic Regulation.
- (168) When it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union producers in the Union market. This point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas customers. By contrast, to look at resale prices of unrelated importers does not reflect the point where real competition takes place. This is only the point where the established sales structure of the exporter tries to find customers but it is already after the point where the decision to import has been taken. Indeed, once the exporter has established its system of related companies in the Union, they have already decided that the source of their merchandise will be from overseas. Hence, the point of comparison should be right after the good crosses the Union border, and not at a later stage in the distribution chain, e.g. when selling to the final user of the good.
- (169) This approach also ensures coherence in cases where an exporting producer is selling the goods directly to an unrelated customer (whether importer or final user) because under this scenario, resale prices would not be used by definition. A different approach would lead to a discrimination between exporting producers based solely on the sales channel that they use.
- (170) In this case, the import price cannot be taken at its face value because the exporting producer and the importer are related. Therefore, in order to establish a reliable import price at arm's length basis, such price has to be reconstructed by using the resale price of the related importer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic Regulation are pertinent, just as they are pertinent for the determination of the export price for dumping purposes. The application of Article 2(9) of the basic Regulation allows arriving at a price that is fully comparable to the CIF price (Union border) that is used when examining sales made to unrelated customers.
- (171) Therefore, in order to allow for a fair comparison, a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer is warranted in order to arrive to a reliable CIF price.
- (172) Certain parties requested the Commission to disclose the nature of certain post-importation costs and the percentage applied, with an indication of the source. Moreover, the Xingyuan Group claimed that these fixed costs should be allocated as a fixed amount per tyre instead of a percentage which will unfairly penalise exporters whose prices are at the lower end of the scale.
- (173) The Commission noted that it increased the CIF value by 3,2 % for post-importation costs (of which transport represented 60 %, handling 32 % and customs expenses 8 %). The percentages were calculated on the basis of verified post-importation costs per piece and were subsequently expressed into a percentage of the CIF price of the verified unrelated importers.
- (174) Following final disclosure, the CCCMC and the CRIA claimed that the differences between new tyres and retreaded tyres should be taken into account for the fair comparison in the investigation for the purposes of the undercutting and underselling determination.
- (175) As stated in the recital (84) of the provisional Regulation new tyres and retreaded tyres have the same basic physical characteristics as well as the same basic uses. Therefore, that claim was rejected.
- (176) Following final disclosure, the Hankook Group found a discrepancy between the profit margin reported for tier 1 and the target profit margin used to establish the underselling margin.
- (177) The Commission reviewed the underselling margins and found a clerical error when establishing the underselling margin for tier 1 and tier 2. Therefore, the Commission corrected the underselling margin calculation.

- (178) After the hearing with Hankook, mentioned in recital (14), the Commission disclosed additional information on the SG&A items deducted from the price to the first independent customer in order to reach an ex-works level. The Commission confirmed that the costs deducted were: transport, insurance costs, handling, loading and ancillary, packing, credit, discounts and commissions. The Commission did not deduct from the Union producers' prices indirect sales expenses, R & D, finance, marketing nor profit.

4.6. Economic situation of the Union industry

4.6.1. General remarks

4.6.1.1. The weighting methodology

- (179) Several parties requested more detailed information regarding the methodology used at provisional stage to weight the different categories of companies (large or SME) and by tiers as described in the provisional Regulation in recitals (157) and (158).
- (180) The weighting process was based on the sales as this is the relevant parameter when considering the sales price in the Union for establishing the cost of production or the profitability of sales in the Union to unrelated customers.
- (181) One of the criteria for the selection of the sample of Union producers was the representativity of the Union producers in terms of size, namely between SMEs and larger companies (recital (24) of the provisional Regulation). Five SMEs were sampled. One SME decided to stop cooperating with the investigation. Four replied to the sampling questionnaire. As mentioned in recital (10), the Commission verified the questionnaire of the SME for which the verification visit had not been carried out before the imposition of the provisional measures.
- (182) In addition, the Commission took into consideration comments from interested parties that considered that the market segmentation into three tiers had to be reflected in the sample of Union producers (recital (20) of the provisional Regulation). Additional information was provided by the cooperating producers as explained in recital (21) of the provisional Regulation. Union producers were requested to provide information regarding the sales value and volume concerning production and Union sales per tier and in case of retreaded tyres the source of the casings (tolling/stock casings). The sampling questionnaire or the Union producer's questionnaire did not provide information regarding the origin/the brand of the casings used by retreaders.
- (183) The Commission sampled 11 Union producers. This is an unusually large number of Union producers to be investigated. However, despite this effort, the performance of the SMEs and per tier required a weighting for a proper analysis of the resulting aggregation of the microeconomic injury indicators.
- (184) The split per tier of the sales of the cooperating Union producers and of the sampled Union producers were similar: in the range of 60 % to 70 % for tier 1, in the range of 15 % to 25 % in tier 2 and in the range of 10 % to 20 % in tier 3. SMEs represented in the range of 7 % to 10 % of the total Union sales reported by cooperating Union producers. Moreover, sampled Union producers are producing new and retreaded tyres in tier 2 and tier 3. Around half of the sales of the sample in tier 3 are retreaded tyres.
- (185) The first step was to estimate the split between the sales of large companies and SMEs. The estimation of SME sales was based on the information provided by ETRMA (for cold process) and by tread suppliers not members of ETRMA Europool. For the purpose of this investigation, it was considered that cold process sales are made by SMEs and hot process by large producers. This is a conservative approach to estimate the sales of SMEs as the Commission verified one SME producer with both techniques. The estimation of the sales of the large companies is the difference between the total Union sales of the Union producers minus the estimation of SME sales. At a provisional stage, the Commission found that SME sales represented around 15 % of the total Union sales of the Union industry in 2016 (as mentioned above this was a conservative estimate since some SMEs also use hot retreading processes). As a result, the ratio was established at around 85 % for large companies and around 15 % for SMEs.
- (186) The second step was to compare the ratio of 85 %/15 % with the ratio of the sample (in which large companies weighed over 95 %). Moreover, the sales data of the sampled SMEs represented around 4 % of the estimated total Union sales of Union SMEs producers. To ensure a proper reflection of the relative importance of the two categories of Union producers in the microeconomic indicators, the Commission weighted the individual company indicators when aggregating on the basis of the 85 %/15 % ratio mentioned above. The methodology resulted in an increase of the weight of tier 3 sales used to establish the microeconomic indicators.

- (187) At provisional stage, both weightings, the weighting of the category of companies and the weighting of the tiers, were applied equally throughout the period considered, on the basis of 2016. The Commission considered this approach reasonable in view of the available evidence.
- (188) Following final disclosure, the CRIA and the CCCMC claimed that the Commission should not use a fixed ratio (namely a ratio calculated for 2016) over the period considered but rather a ratio for each period of the period considered. Moreover, they claimed that some large producers of tread were producing retreaded tyres by using the cold process and that two producers of retreaded tyres were part of a larger group qualifying them as large company. Therefore, the parties claimed that the methodology used could not be considered as conservative and that the volume of SMEs sales was overestimated. Bipaver claimed that the hot process is not only used by one retreader but by several Union retreaders ⁽⁴⁶⁾.
- (189) Firstly, the Commission examined the claims made and the evidence provided by the parties. It found that indeed some large suppliers of treads have related subsidiaries producing retreaded tyres by using the cold process. Moreover, the two producers initially considered as SMEs mentioned by the parties were part of a larger groups, hence they cannot be considered as SMEs. The Commission hence adjusted the ratios used in the weighting. The large suppliers and SMEs provided their sales over the period considered. The total volume reported is between 227 000 and 254 000 retreaded tyres, representing around 5,5 % of the estimated retreaded tyres sales during the period considered.
- (190) Secondly, regarding SMEs hot production sales, the Commission found that more than one SME is producing retreaded tyres using the hot process. It requested from a few producers to provide the volume of the hot process production for the period considered. The total volume reported is between 132 000 and 150 000 retreaded tyres, representing around 3,2 % of the estimated retreaded tyres sales during the period considered.
- (191) Thirdly, the Commission recalculated the estimation of the SMEs sales during the period considered by adding the SMEs hot production sales and deducting the large companies' cold production sales.
- (192) Finally, the Commission calculated the share of SMEs sales in the total Union sales for each period of the period considered:

Table 4

Share of SMEs' sales in the total Union sales (in %)

	2014	2015	2016	Investigation period
Share of SMEs' sales in the total Union sales	16,9	15,3	13,7	13,2
Ratio used at provisional stage for SMEs sales in the total Union sales	14,6	14,6	14,6	14,6

- (193) As shown in Table 4, the weight of SMEs in the total Union sales during the period considered has been increased by 2,3 percentage points in 2014, 0,7 percentage points in 2015 and decreased by 0,9 percentage points in 2016 and 1,4 percentage points in the investigation period. The Commission concluded that the establishment of a ratio per year has a marginal impact on the overall outcome of the analysis. On the basis of the above, the conclusions based on the trends of the provisional Regulation remain valid.
- (194) Regarding the second adjustment by tiers, the Commission relied at the provisional stage on the information provided by the Complaint (Annex 15) which provides the estimation of the weight of each tier for the Union consumption for 2016. However, as mentioned in recital (188), the CRIA and the CCCMC claimed that the Commission should use a ratio for each period of the period considered.

⁽⁴⁶⁾ Kraiburg, a tread supplier, provided to Bipaver a list of its customers purchasing raw materials for the hot process. That list contains 38 company names.

- (195) The investigation did not reveal any data that would have been more appropriate which in turn could have been used for the calculation of the weighting of the tiers throughout the period considered, nor have interested parties been able to present such data. Therefore, the Commission decided not to apply the second adjustment by tiers at definitive stage. This approach has increased the weight of tier 1 and tier 2 used to establish the microeconomic indicators.
- (196) As shown in Table 5, with the revised weighting the conclusions based on the trends of the provisional Regulation remain valid for all the microeconomic indicators analysed on aggregated basis:

Table 5

Profitability of sales in the Union to unrelated customers (% of sales turn-over)

	2014	2015	2016	Investigation period
Profit margin as in Table 13 of the provisional regulation (% of sales turn-over)	15,6	16,7	15,2	13,7
<i>Index 2014 = 100</i>	100	106,9	97,7	88,1
Profit margin with revised weighting (% of sales turn-over)	15,4	16,9	15,3	13,7
<i>Index 2014 = 100</i>	100	109,5	99,5	88,6

- (197) As shown in Table 6, with the revised weighting the conclusions based on the trends of the provisional Regulation remain valid for tier 3:

Table 6

Tier 3 profitability of sales in the Union to unrelated customers (% of sales turn-over)

	2014	2015	2016	Investigation period
Profit margin as in Table 16 of the provisional regulation (% of sales turn-over)	6,1	0,6	2,7	– 0,4
<i>Index 2014 = 100</i>	100	10	45	– 7
Profit margin with revised weighting (% of sales turn-over)	5,9	0,5	2,7	– 0,7
<i>Index 2014 = 100</i>	100	9	45	– 12

4.6.1.2. Illegality of the weighting process

- (198) The CRIA and the CCCMC claimed that the weighting process was illegal, as the basic Regulation did not allow for amendments to the sampling of the Union producers that is supposed to be representative for the entire Union industry. Moreover, they argued that the Commission's methodology did not comply with the requirement to base the injury determination on positive evidence to carry out an objective examination since a very limited number of companies eventually determined the whole outcome of the injury assessment, to the detriment of a much larger dataset the importance of which is downgraded. The parties reiterated similar claims after the final disclosure. Moreover, after the final disclosure the CRIA and the CCCMC claimed that the Commission cannot rely on the information provided by four sampled SMEs which would be the basis for the weighting of the injury indicators.
- (199) The Commission recalled the methodology used in recitals (179) to (195).

- (200) Furthermore, the Commission reiterated that as a result of the weighting, the selected sample became statistically more representative of the Union industry as a whole, in accordance with the applicable WTO and EU case-law ⁽⁴⁷⁾. In addition, this allowed the Commission to better take into account the performance of the non-sampled Union producers (SMEs and large producers), which would otherwise be not sufficiently reflected in the injury indicators had the Commission based its findings on the sample without applying the weighting in the case at hand. Given the fragmented character of the Union industry, the Commission could not simply disregard the significance of the SMEs producers on the Union market. As mentioned in recital (186), the sales data provided by the sampled SMEs represented around 4 % of the estimated total Union sales of Union SMEs producers. To reflect the relative importance of the two categories of companies, the Commission based its findings on the verified data of the sampled companies and applied the weighting. The information relied on was available on the open file, duly verified where needed. The Commission accordingly considered that it had carried out an objective examination of the existence of injury based on positive evidence. Therefore, those claims were rejected.

4.6.2. Macroeconomic indicators

- (201) The CRIA and the CCCMC claimed that they had doubts about the reliability of some of the information relied on concerning the macroeconomic indicators.
- (202) As mentioned in recital (28), a document providing clarifications on the provisional Regulation was included in the open file before the final disclosure.
- (203) Regarding the establishment of the macroeconomic indicators, the Commission relied on various sources, including data provided by the European Tyre & Rubber Manufacturers' Association ('ETRMA'). ETRMA publishes market analysis that is publicly available on its website. The open version of the complaint included a document originating from ETRMA (Annex 16 — ETRMA booklet for 2016 ⁽⁴⁸⁾). The Commission noted that some of the exporting producers as well as certain Union producers are members of ETRMA and were also providing submissions supported by data from ETRMA (such as the Hankook Group and Pirelli).

4.6.2.1. Production, production capacity and capacity utilisation

- (204) As implied in recital (135), the Union production in the provisional Regulation did not contain the sales of tread suppliers not members of ETRMA Europool. Moreover, a clerical error was found when establishing the production capacity.
- (205) The estimated total Union production, production capacity and capacity utilisation were revised accordingly and developed over the period considered as follows:

Table 7

Production, production capacity and capacity utilisation

	2014	2015	2016	Investigation period
Production volume (in items)	20 973 089	20 360 055	20 619 725	21 111 923
<i>Index 2014 = 100</i>	100	97,1	98,3	100,7
Production capacity (in items)	29 038 117	28 225 985	27 115 950	26 525 214
<i>Index 2014 = 100</i>	100	97,2	93,4	91,3
Capacity utilisation	72,2 %	72,1 %	76,0 %	79,6 %
<i>Index 2014 = 100</i>	100	100	105	110

Source: ETRMA, tread suppliers not members of ETRMA Europool, Eurostat Comext and information submitted by the complainant.

⁽⁴⁷⁾ WT/DS184/AB/R, 23.8.2001, *United States — Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan*, paragraph 204 and General Court, Judgment of 28 October 2004, Case T-35/01 *Shanghai Teraoka Electronic Co. Ltd v Council*, paragraphs 129 and 258.

⁽⁴⁸⁾ ETRMA website provides the booklet for the years 2016 and 2017. Please refer to <http://www.etrma.org/uploads/Modules/Documentsmanager/20180329—statistics-booklet-2017—alternative-rubber-section-final-web.pdf>

- (206) As shown in Table 7, production remained relatively stable, with 21,1 million units in the investigation period, while the capacity utilisation rate increased by 7,4 percentage points (from 72,2 % to 79,6 %) over the period considered given the decrease in production capacity.

4.6.2.2. Sales volume and market share

- (207) As implied in recital (135), the total sales volume in the Union market in the provisional Regulation did not contain the sales of tread suppliers not members of ETRMA Europool.
- (208) The Union industry's sales volume and market share were revised accordingly and developed over the period considered as follows:

Table 8

Sales volume and market share

	2014	2015	2016	Investigation period
Total sales volume on the Union market (in items)	14 835 082	14 738 677	14 533 199	14 584 885
Index 2014 = 100	100	99,4	98,0	98,3
Market share	72,4 %	70,3 %	67,3 %	67,1 %
Index 2014 = 100	100	97,2	93,0	92,7

Source: ETRMA, tread suppliers not members of ETRMA Europool and Eurostat Comext.

- (209) In a growing market, sales in the Union decreased slightly over the period considered. This resulted in a decrease by 5,3 percentage points of market share (from 72,4 % to 67,1 %) while import volume from the PRC increased by over 1,1 million of tyres, or an increase of 4,2 percentage points of market share (from 17,1 % to 21,3 %).
- (210) The Aeolus Group and Pirelli claimed that the sales volume in the Union market remained stable over the previous three years and the market share of the Union industry decreased by 5 percentage points from 2014 to 2017, which is an insignificant decrease.
- (211) Moreover, they also claimed that the volume of Union sales reported by the complaints for the period 2013 and 2016 showed a strong decline for tier 3 (– 30 %), a decline in sales for tier 2 (– 7 %) and a slight decline in sales for tier 1 (– 1 %). As such, it was clear that the only injury could be found in the tier 3 segment and that the injury analysis must take into consideration the market segmentation.
- (212) The Commission noted that the figures mentioned in the previous recital relate to the sales of the complainants only, and not to the Union industry as a whole. They also relate to a different period in time. Therefore, it is not possible to transpose the evolution of the complainants' sales volume to the Union industry. As explained in recitals (128) and (132), the Commission considered that the existence of material injury must be determined with regard to the product concerned and the Union industry as a whole, and not only for certain parts thereof. Therefore, the Commission did not examine the trends in isolation, namely per tier, since it followed an aggregated approach.

4.6.2.3. Growth

- (213) The Union consumption increased by 6,1 % during the period considered. The sales volumes of the Union industry decreased by 1,7 % in spite of the growing consumption, which resulted in the Union industry losing market share. The market share of the imports from the country concerned increased during the period considered (by more than 4 percentage points).
- (214) The Giti Group claimed that the Union consumption had to be analysed in value instead of in volume. On this basis, Union consumption decreased by 5 % in value, and only started to slowly increase between 2016 and the Investigation Period.
- (215) The Commission rejected that claim. The Union consumption gave a snap-shot of the number of tyres available on the Union market at a given moment. Union consumption is customarily calculated in volume precisely to avoid that the pricing behaviour of the market players may affect the trends over the period considered.

4.6.2.4. Employment and productivity

(216) Employment and productivity developed over the period considered as follows:

Table 9

Employment and productivity

	2014	2015	2016	Investigation period
Number of employees	38 445	36 478	34 959	34 188
<i>Index 2014 = 100</i>	100	95	91	89
Productivity (unit/employee)	546	558	590	618
<i>Index 2014 = 100</i>	100	102	108	113

Source: Verified questionnaire replies of the sampled Union producers, submissions from tread suppliers and ETRMA.

- (217) The Aeolus Group and Pirelli stated that the employment, for which the Commission found a decrease of 11 %, exclusively relates to the retreading industry. The development of productivity can instead be explained by the fact that the Union industry has recently gone through a period of restructuring and rationalisation.
- (218) The statement of interested parties regarding the decrease in employment is factually incorrect, since around half of it is from large manufacturers. Therefore, that claim was rejected.
- (219) Heuver requested the names of the 85 retreaders mentioned in recital (171) of the provisional Regulation.
- (220) The Commission concluded in the provisional Regulation that there were at least 85 producers that stopped production based on the list of customers that tread suppliers had provided in this investigation. The Commission granted confidential treatment to the identity of the customers and the volume of sales per customers since this is sensitive business information. Moreover, interested parties are not requested to provide a summary for this type of document. That being said, exceptionally, the tread suppliers provided a summary of their submissions which can be found in the open file.
- (221) Following final disclosure, the CRIA and the CCCMC claimed that the Commission's assumption that all cold process sales are made by SMEs is erroneous as many large companies are using the cold process retreading methodology. The parties concluded that the resulting estimation of employment and productivity were therefore unreliable.
- (222) As mentioned in recital (189), the Commission found that the production of large companies using the cold process is rather limited and cannot as such dismiss the estimation made by the Commission regarding the employment and productivity. Moreover, the productivity relates mostly to the type of production (namely retreading or new). Therefore, that claim was rejected.
- (223) In addition, the CRIA and the CCCMC claimed that the list of customers provided by one tread supplier show that one customer was mentioned inactive while its financial statements lodged to the local authorities showed that the company was still active in 2017. The Commission in its note for the file ⁽⁴⁹⁾ explained that the list was built by aggregating the information on sales provided by eight tread suppliers. For the purposes of the investigation a retreader was considered as having stopped production when it did not purchase treads any longer. Therefore, it is not possible to conclude positively on whether a retreader is active or inactive solely on the basis of the list of unique supplier and/or on the basis of filed financial statements. Moreover, while it is true that the company mentioned by the CCCMC had not closed down, it confirmed to the Commission that it does not operate any longer its retreading workshop. Therefore, the Commission continued to use the list as established.

⁽⁴⁹⁾ Note for the file (Filing system number t18.007994).

4.6.2.5. Magnitude of the dumping margin

- (224) All dumping margins were revised as mentioned in recital (122) and all remain significant. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.

4.6.3. Microeconomic indicators

- (225) The Giti Group requested the Commission to also disclose the evolution in the microeconomic factors without the weighting adopted by the Commission to allow it to analyse whether such unmanipulated data would result in a different injury picture. After the final disclosure, the CRIA, the CCCMC and the Giti Group reiterated the claim.
- (226) The Commission rejected that claim, as disclosing the injury indicators without the weighting would not reflect the real situation of the Union industry given that it is not possible to sample as many SMEs as it would be necessary to reflect their real weight among the Union producers.

4.6.3.1. Prices and factors affecting prices

- (227) The CRIA and the CCCMC requested the Commission to clarify whether transfer prices between related companies had been considered when establishing the injury indicators.
- (228) When related companies were involved in the sales, the sampled producers were requested to provide the sales to the first independent customers. Regarding the purchases of raw materials through related companies, the transfer price policy was examined by the Commission and did not result in any adjustments.

4.6.3.2. Inventories

- (229) The Aeolus Group and Pirelli claimed that the Commission should consider analysing not only the overall industry but also the distinction between new and retreaded tyres or between different categories of tiers. They argued that according to the complaint, no increase in stock has taken place for tier 1 or 2 tyres. On the contrary, tier 1 and 2 stocks decreased by 15 % and 21 %, respectively, between 2013 and 2016. Conversely, the complaint reported a 17 % stock increase for tier 3 tyres. For them, the reported increase in stocks relates only to the retreading industry. Furthermore, stock fluctuations can be explained by various factors. For instance, stock increases can be triggered by increased sales, which are made on anticipated orders. Specifically, Prometeon Tyre Group S.r.l. recorded an increase in stock due to several factors, all related to the European economic crisis. Tyre production is strictly connected to transportation, and transportation depends mainly on trade in general. A trade crisis results in low transportation and this, logically, means fewer tyre sales.
- (230) The Commission first noted that the increase of the stocks of the sampled Union producers had occurred between 2016 and the investigation period. Therefore, it was not directly concerned by the financial crisis of 2011. Furthermore, the figures quoted by the interested parties only concerned the complainant and did not reflect the situation of the sampled Union producers. Thus drawing any conclusions from them cannot be considered representative of the Union industry for the investigation. On this basis, that claim was rejected.

4.6.3.3. Profitability, cash flow, investments, return on investments and ability to raise capital

- (231) Regarding the investments, the Aeolus Group and Pirelli claimed that the investigation contradicted the figures provided by the complainant. The Giti Group claimed that the profitability of the Union industry as a whole was understated because the Commission tinkered with the data of the sampled Union producers to increase the importance of tier 3 data. The Giti Group also claimed that the only segment of the industry with deteriorating (and low) profit margins was the tier 3 segment. This segment of the market, however, accounted for only 20 % of the total Union sales/consumption. The Aeolus Group and Pirelli considered that the Union industry is in general very profitable, clearly positive in tier 1 and positive in the tier 2 segment.
- (232) Regarding the comment on the methodology for calculating the profitability, the Commission explained in recitals (179) to (195) the methodology applied for the weighting of the microeconomic indicators to reflect the economic reality of the Union producers. It also noted that the profitability of all tiers deteriorated from 2014 to the end of the investigation period and that the absolute figures on profitability had to be read in conjunction with its findings on the interconnection between tiers.

4.7. Interconnection between new and retreaded tyres and between the tiers

- (233) Interested parties generally accepted the principle of the market segmentation into three tiers. As described in recitals (54) to (59) of the provisional Regulation, in the Union market, the brands were positioned in one of the three tiers. All tiers were generally sold through common sales channels.
- (234) There were a number of interested parties that challenged the provisional findings on the interconnection between the tiers and reiterated the same concerns following final disclosure. The Commission compiled the information on this matter in a note for the file on interconnection between new and retreaded tyres and between the tiers ⁽⁵⁰⁾.
- (235) The CRIA and the CCCMC claimed that the idea that the prices in tier 3 would drive the pricing in tiers 1 and 2 (recitals (203) and (207) of the provisional Regulation) is baseless and that the Commission failed to give any reason for this alleged impact. Even assuming that the aforementioned findings were correct, none of these could lead to the conclusion that prices in tier 3 would impact prices in tiers 1 and 2. They also claimed that the prices of tyres are led by the cost of raw materials and that it was incorrect that competition takes place across the different segments. They contended that the Commission simply refers to 'the impact of the prices in the lower tiers on the pricing in the higher tier' (recital (203) of the provisional Regulation), echoing the complainant without any supporting evidence. The Giti Group submitted that the Commission's reverse-cascading theory was not supported (and was in fact contradicted) by the facts on the record. In this connection, the Giti Group also recalled that the Complaint itself had stated that: 'Actors, pricing, competition and strategies vary significantly from one segment to the other and a decisive factor on one segment might be irrelevant on another. While direct competition may exist between extremities of segments, intersegment competition is mostly the result of a strategic choice between quality and price' ⁽⁵¹⁾.
- (236) As mentioned in recital (234), the Commission produced a note for the file containing the basis for concluding that there is interconnection between tiers. This conclusion was based on a number of elements. The first one is that competition across tiers takes place at the moment a purchase is decided. The purchaser then has the option to choose:
- a tier 1 tyre, with greater durability, the latest technology and the best performance, at a higher initial price, or
 - a tier 2 tyre, often made by premium tyre makers, with a greater durability than tier 3 brands and lower cost than premium brands, at a higher initial price than tier 3 tyres, or
 - tier 3 tyre, with the lowest upfront cost, but the least durability and lowest performance.
- (237) This decision, translated into prices, results in a two-fold analysis: the upfront payment and overall cost per tyre. Regarding the upfront payment, the tier 1 tyres are the ones that involve a higher investment. At the same time, on a cost per tyre per km basis, they have the lowest cost. The variables are exactly opposite for tier 3 tyres, where the upfront payment is the lowest, but the cost per tyre per km is the highest ⁽⁵²⁾.
- (238) Another element that played a critical role was the common sales channels, which usually display the tyres of different tiers together for sale, facilitating the dynamic of the interconnection between tiers ⁽⁵³⁾.
- (239) The Commission also noted that the claim regarding the cost of raw materials was not supported by evidence.
- (240) In the final disclosure document, the Commission referred to the development in Union sales of the different tiers, relying, in this regard, on a table provided by interested parties (Prometeon/Pirelli). This table was labelled as 'Estimated evolution of Union sales for Union producers members of ETRMA'. Following final disclosure, the CRIA and the CCCMC claimed that the figures differed from the Table 4 of the final disclosure document.

⁽⁵⁰⁾ Note for the file on interconnection (Filing system number: t18.007993).

⁽⁵¹⁾ Complaint paragraph 107.

⁽⁵²⁾ Tables 8 to 10 of the provisional Regulation for the average Union sales price per tier and the note for the file on interconnection, pages 7 to 10 (Filing system number: t18.007993).

⁽⁵³⁾ Note for the file on interconnection, pages 11 and 12 (Filing system number: t18.007993).

The Commission examined the claim and requested a clarification from ETRMA. ETRMA explained that the data in the Table 6 of the final disclosure document was erroneously labelled. The data contained in Table 6 of the final disclosure document in fact concerned the evolution of the Union replacement market of new tyres (Table 10 below). According to that data, there was a clear and rapidly growing interest of Union producers in the lower price, tier 3 segment of the market.

Table 10

Estimated evolution of Union replacement market of new tyres

In million	2014	2015	2016	2017	estimate 2018
Tier 1 + Tier 2	8,7	9,0	9,1	9,0	9,2
<i>Index 2014 = 100</i>	100	103	105	103	106
Tier 3	3,6	4,0	5,0	5,4	5,5
<i>Index 2014 = 100</i>	100	111	139	150	153
Share of ETRMA producers on T3 segment	12,5 %	12,4 %	13,1 %	14,1 %	18,9 %

Source: Prometeon Tyre Group and Pirelli ⁽⁵⁴⁾

- (241) On the basis of the above table, estimated 2018 sales of tier 3 new tyres are expected to increase by more than 53 % in comparison with their 2014 levels, while the volumes of sales of tier 1 and 2 tyres remain similar, and are expected to increase by only 6 % compared with their 2014 levels. This development must be viewed against the background of a drastic increase of tier 3 competition from exporting producers in the country concerned during the period 2014-2018 as well as financially unviable profit levels in tier 3 for Union producers of the product concerned.
- (242) The Commission observed that this shift in Union replacement market has affected the Union producers who would have yielded far higher profit levels in tiers 1 and 2. This can only be understood in light of the reasons set out in recital (141) et seq., namely as a move to protect the main value driver for higher tiers distinguishing Union tier 1 and 2 sales from imports of tier 1 and 2 imports from the country concerned. The increase in low-profit tier 3 sales and, thereby, competition in the tier 3 sales segment, showcases that pressure from the reverse-cascading effect to tier 1 and 2 sales was felt by Union producers of the product concerned during the investigation period and beforehand, and that this pressure will increase even during the post-investigation period.
- (243) The CRIA and the CCCMC noted that the Commission stated that it became less possible to retread a high-quality worn-out tyre (recital (202) of the provisional Regulation). However, no figures were provided. The fact that there might be closures of plants and workshops of retreaders does not necessarily mean that there are less possibilities to retread high-quality worn-out tyres, as the demand for such high-quality tyres dropped after the economic crisis according to the Commission itself (recital (200) of the provisional Regulation). The CRIA and the CCCMC requested the Commission to disclose the sales figures of tier 1 tyres and the actual capacity of retreading, to allow to assess to which extent the availability of retreading facilities really dropped taking into account the decreasing sales of tier 1 tyres. The Giti Group noted that the Commission did not present data on market share by tier that would be necessary information to check whether the Commission's reverse-cascading theory is supported by facts. This theory was built on the assumption that cheap tier 3 imports put price pressure on and took market share away from Union producers in tier 2 (and tier 1). However, should market share data by tier show that tier 1 and/or tier 2 Union producers actually managed to maintain (or even increase) their market share, this would fatally undermine this theory. It is not clear to the Giti Group whether the Commission has opted to not disclose information on market share or whether this information has simply not been collected. In any event, the Giti Group urged the Commission to disclose (and if necessary collect) this information to check the correctness of the Commission's reverse-cascading theory.

⁽⁵⁴⁾ Hearing presentation by Prometeon Tyre Group and Pirelli, 9 April 2018 (Filing system number: t18.007993).

- (244) Concerning the macro-indicators The Giti Group requested to have analysed per tier, the Commission explained in recitals (128) and (132), that it was appropriate to analyse the economic situation of the Union industry as a whole. There was capacity, production and imports in all tiers. Tier 3 where most of Chinese imports take place were dragging down the industry as a whole, as shown in the provisional Regulation. Chinese dumped prices significantly undercut the prices of the Union industry in all tiers during the investigation period. Over the period considered, the overall performance of the Union industry deteriorated. Some plants that produced different tiers had to close ⁽⁵⁵⁾ and many retreaders had to stop production. The Commission established that at least 85 SMEs stopped production, which reduced the retreading capacity, as explained in recital (202) of the provisional Regulation.
- (245) The CRIA and the CCCMC claimed that the Commission's allegation that 'Union producers of new tyres have no option but to strengthen their presence in tier 3, too' (recital (202) of the provisional Regulation) was difficult to understand as the Commission itself explained that all integrated retreaders (thus, producers of new tyres who also do retreading) would be part of tier 2 (recital (58) of the provisional Regulation).
- (246) The Commission noted that in the Note with the mapping of new and retreaded tyres by brand, there were brands of Union producers of new tyres classified in tier 3.
- (247) The Commission stated that 'information available to the Commission showed' that the pricing trend changed and that now allegedly tier 3 prices inversely affect tier 1 prices (recital (206) of the provisional Regulation). The CRIA and the CCCMC requested that this information was made available to interested parties.
- (248) The Commission considered that the interconnection between tiers also encompassed a rationale of price setting across tiers. In fact, Union new tyre manufacturers following a multi-brand strategy agreed that a price change on one tier necessarily triggered an adjustment of the price on the overall portfolio and one of the sampled Union producer provided a substantiated explanation, which were also considered by the Commission for the conclusion on the price pressure across tiers ⁽⁵⁶⁾.
- (249) Certain interested parties claimed that the evolution of profitability of tier 1, tier 2 and tier 3 did not correlate with the interconnection between the tiers. They pointed out that the profitability of tier 1 of Union producers during the investigation period (at 17,5 %) is higher than the target profit (namely the profit that could be expected in the absence of dumped imports) established by the Commission (at 15,6 %) (as described in recital (196) the profitability was revised after the Final Disclosure at 15,4 %). Similarly, the profitability of tier 2 Union producers during the investigation period (at 15,3 %) was essentially the same as that target profit. Moreover, if profitability of Union producers in tier 1 and tier 2 was (indirectly) affected by cheap tier 3 imports, one would expect to see a similar evolution in profitability as for tier 3 Union producers. That is not the case. While profitability of tier 3 dropped from 6,1 % to 0,6 % in 2015 (as described in recital (197) the profitability was revised after the Final Disclosure from 5,9 % to 0,5 %), between 2014 and 2015, the profitability of tier 1 producers actually increased from 17,9 % to 21,8 %. Conversely, while profitability of tier 1 and 2 dropped between 2015 and 2016, during the same period profitability of tier 3 producers quadrupled from 0,5 % to 2,7 %. In short, those parties claim that there was no correlation in the development of the profitability of tier 3 and the profitability of tier 1 and tier 2. The only period in which there was a correlation in the development of profitability was between 2016 and the investigation period. The slight decrease in profitability during the investigation period can be, however, allegedly explained by a sudden increase in raw material costs that had not translated yet into higher sales prices. As concerns the development of sales prices, even if it was correct that the data provided in the provisional Regulation showed a decrease in sales prices of 9 % (for tier 1) and 12 % (for tier 2) over the period considered. This downward trend cannot be attributed to tier 3 Chinese imports for the following reasons. First, as the Commission acknowledged in other sections of the provisional Regulation — but appeared to have ignored when developing its reverse-cascading theory — the cost of production (because of a decline in raw material prices) decreased during the investigation period. For tier 1, the cost of production decreased by 9 %, exactly the same decrease as the one observed for the sales prices. Similarly, for tier 2, the cost of production dropped by 9 %. In other words, those interested parties alleged that the decrease in prices that the Commission observed is fully (for tier 1) and for 75 % (for tier 2) explained by the drop in the cost of

⁽⁵⁵⁾ In 2017, Goodyear Group closed its UK plant (around 330 jobs); Michelin Group closed several plants in the Union: in France two plants (in 2014 700 employees and in 2017 330 employees), in Germany (2016 200 employees), in Hungary (2015 500 employees) and in Italy; Continental Group closed one plant in Germany.

⁽⁵⁶⁾ Note for the file on interconnection, pages 12 to 14 (Filing system number: t18.007993).

production. They claim that that is also evident from the fact that once the cost of production increased between 2016 and the investigation period, so did sales prices. Second, there was a shift towards smaller tyres on the Union market. The unit price of smaller tyres is lower than for bigger tyres and this explains part of the decrease in the sales prices over the period considered. Those interested parties claim that the Commission did not take this development in consideration.

- (250) The Commission considered that the lack of correlation on the development of the profitability of the different tiers can be explained by the way the purchasing decisions were taken. There is a time lag given the nature of the product and the range of options the user has depending on the situation. Indeed, the range of options the user has will depend on whether it has a tyre, and if so, whether the tyre it has could be further retreadable or not, the relative price of the available options, etc. For example, if the user needs to purchase a tyre, it will probably decide based on the whole range available. However, if the user has a retreadable tyre already, the cost of retreading the tyre it has will probably compete with the cost of purchasing a new tier 3 net of the income of selling the carcass.
- (251) Additionally, the information gathered by the Commission concerning different sizes commercialised in the Union market over the period considered did not support the argument that prices and costs were lower because of the relatively stronger presence of smaller tyres on the market ⁽⁵⁷⁾. The data showed indeed that the product mix on the market was stable and remains concentrated on the main dimensions. Moreover, such a reduction of the average size of the product could not be found in the Eurostat data for Chinese imports, revealing that, on the contrary the weight of the imported tyres from China increased by 3 % between 2014 and the investigation period. Conversely, the Commission noted overall structural adaptations made by the Union industry in order to reduce costs, as a result of the 'knock-on effect' on the different tiers at play.
- (252) Certain interested parties claimed that there were substantial imports (accounting for a market share of 11,9 %; up by more than 1 % compared to 2014) from other countries and these were made at decreasing prices (over the period considered, the average import price dropped by 17 %). Their pricing also indicated that these imports were aimed at the tier 1 and/or tier 2 segment of the market. The imports from Turkey, Thailand, Japan, South Korea as well as other countries (excluding Russia) have consistently undercut prices of Union producers in tier 1 in a range between 10 %-25 %. At provisional stage and after the final disclosure, the Giti Group claimed that the price decreases in tier 1 and tier 2 may have been caused by imports of tier 1 and tier 2 tyres from other countries and not by price pressure from Chinese tier 3 tyres. Again, such a situation would fatally undermine the Commission's theory. In any case, that party noted, in the absence of an examination of import volumes (and import prices) of tier 1 and tier 2 tyres from other countries, it would be impossible to determine whether the Commission's theory is factually correct.
- (253) With regard to that claim, the Commission found that the analysis advanced by the Giti Group was flawed as it was considering that all imports were sold directly to the first independent customers in the Union. That theory disregards that average prices may be affected by the fact that of some of these imports are sold to interested related parties. Moreover, imports statistics did not provide an average price per tier, so that the Commission was not in a position to examine import prices on a tier basis, as was requested by the Giti Group. Therefore, the analysis proposed cannot be carried out with the information that the Commission was able to collect so far during the investigation, or that which was received from interested parties, and was rejected accordingly.
- (254) Therefore, the Commission rejected the claims brought forward by interested parties and confirmed its initial findings.

4.8. Conclusion on injury

- (255) In view of the considerations above the Commission confirmed its initial findings in recitals (208) and (209) of the provisional Regulation. The Union industry as a whole was under intense pressure. There was a reduction of production capacity, investment and employment over the period considered and a remarkable loss of market share despite the ongoing decrease in sales prices. Chinese imports were substantially undercutting Union industry prices. Profitability of the Union industry as a whole also declined, and even faster toward the end of the period considered. In addition, stocks of all types of tyres increased, in particular during the investigation period,

⁽⁵⁷⁾ Note for the file on interconnection, pages 12 and 13 (Filing system number: t18.007993).

negatively impacting the financial situation of the Union industry. Many SMEs retreaders stopped production and could not benefit from the economic recovery. The Commission also attached importance to the submissions of AIRP, Bundesverband Reifenhandel und Vulkaniseur-Handwerk (respectively the Italian and German retreaders association) or Banden Plan Europa BV (Union retreader) or Vipal Europe (tread supplier) noting that the imposition of provisional measures has already triggered a positive momentum in the sector. In particular, retreaders in several Union Member States have seen increased orders since May 2018 and believe this optimistic outlook would continue should the provisional measures be confirmed.

- (256) Following final disclosure, the Giti Group claimed that the improved performance of retreaders may have much to do with increasing raw materials costs rather than the imposition of provisional measures. The Commission did not see evidence linking the evolution of the raw material costs with the increase of the commercial orders reported by the retreaders. Therefore, that claim was rejected.
- (257) With respect to the profitability of the Union industry, the Commission acknowledged the critical comments received from the Aeolus Group that tier 3 is loss-making in the investigation period (-0,7 %) while the profitability of tiers 1 and 2 are in the double digits. However, the Commission did not share the conclusion that this indicator, showing a difference in profitability depending on the tiers, could negate a finding of material injury for the Union industry as a whole.
- (258) All relevant indicators show that the Union industry has suffered material injury in tier 3. In addition to the negative profit margin, there was a significant decrease in employment, in particular for the retreading business. The level of undercutting of 31 % is significant in tier 3, where the volume effect of Chinese competition is also felt the most. As shown in Table 9, there is a noticeable and constant (year after year) shift of new tyre sales by Union producers towards tier 3. In 2016, Union sales shown in Table 9 stood at 5 million tyres in tier 3. That development continued in 2017. The forecast for 2018 shows an even higher increase in that shift of sales to tier 3 thus clearly demonstrating the price pressure that Union producers in tiers 1 and 2 find themselves under.
- (259) In that regard, as laid down in recitals (210) and (211) of the provisional Regulation and further substantiated in Section 4.6 of this Regulation, the Commission maintained that there is a strong interconnection between tiers with a reverse-cascading effect. Contrary to the comments from many interested parties, there is only one market for tyres from the Union producers' point of view, who divide it into three tiers mainly for reasons of marketing strategy and differences in quality. This means that Union producers take into account the developments in all three tiers. Hence, the price and volume pressure in tier 3 has a direct impact on the other two tiers as well, as is set out in recital (234) et seq. Moreover, consumers of tyres chose between tyres from all three tiers: they balance their willingness to pay a higher price with the expected lifetime of the tyres and the associated costs. Accordingly, the behaviour of producers and consumers confirms that there is a strong interconnection between the tiers. It follows that the observed shift towards tier 3 exercises an ongoing pressure on the other two tiers as well. In that respect, the Commission further noted that the dumped imports concern mainly tier 3. In view of the interconnection between tiers and the growing importance of tier 3, the Commission considered that the negative trends already observed for the Union industry as a whole can only but continue in the near future.
- (260) Furthermore, despite the express invitation to comment in recitals (213) and (214) of the provisional Regulation, none of the Chinese exporting producers refuted the allegation from the Union industry that there is a risk of further aggravation of injury. The Commission hence accepted that unused capacities in the PRC represent about 40 % of current Chinese exports.
- (261) Following final disclosure, the CRIA and the CCCMC claimed they had no need to comment on the assertions about the level of unused capacities in the PRC as these are irrelevant to the case.
- (262) The Commission disagrees. The risk of further aggravation of injury is also evidenced by the 13th Five-Year Plan for the Development of the Chemical and the Petrochemical industry in China, which aims at technological innovation, structural adjustment and green development. This plan applies to the tyres industry, and in the parallel anti-subsidy investigation the Commission has already found an important number of subsidies. They underpin that Chinese exporting producers have the structural advantage to climb up the value chain with continued access to cheap financing. If higher-quality tyres from the PRC were competing more and more with Union tyres at dumped prices, this would reduce the Union tyre industry margins and hence its capacity to invest and innovate. This, in turn, would likely force the Union industry to rely on lower quality tyres requiring limited investment in R & D, further affecting their retreadability, and so causing injury to all three tiers.

- (263) Because of the injurious situation in tier 3 and the presently-felt reverse-cascading effect on tiers 2 and 1, the Commission hence maintained its conclusion that the industry as a whole suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Effects of the dumped imports

- (264) Certain interested parties claimed that the Commission did not demonstrate how the volume and price levels of the imports of Chinese tyres have materially affected the Union industry, either individually or jointly. Although imports from Chinese exporters into the Union increased by 1 124 101 items during the period considered, the consumption in the Union also increased by 1 249 178 items. Thus, the increase in Chinese imports at competitive prices could not by itself harm the Union industry's sales in the market. Further, the fact that some Union producers had to exit a segment of the market and that the price setting changed in the Union market does not necessarily mean that Chinese imports are responsible for causing material injury to the Union industry. The fact that Chinese exporters' prices were lower than those of the Union industry and that Union producers could not capture the consumption increase and had to reduce their prices to be more competitive is not sufficient to prove that Chinese imports are responsible for the injury suffered by the Union industry.
- (265) The Commission reiterated that the Chinese dumped prices significantly undercut the prices of the Union industry in all tiers during the investigation period. They were on average significantly lower during the whole period considered. Moreover, the fact that import prices remained stable between 2014 and 2015, dropped in 2016 and remained at the same low level during the investigation period (see recital (147) of the provisional Regulation) cannot be explained by the evolution in the raw material prices. The latter decreased at the beginning of the period considered, but increased during the investigation period. Nevertheless, the Chinese exporting producers did not revise their prices upwards. This showed that they wished to gain further market share to the detriment of the Union industry.
- (266) One exporting producer claimed that there is no causal link between the Chinese imports and the injury caused to the Union industry as the Chinese exports are predominantly present on tier 3 market while the majority of the Union producers sell tier 1 and 2 products. This statement is factually incorrect. Products falling under tier 1 and 2 represent around 35 % of the total Chinese imports. Furthermore, as explained in Section 4.7 above regarding the interconnection between new and retreaded tyres and between the different tiers there is a symbiotic relationship between the different tiers. Price and volume pressure from cheap, the dumped Chinese tyres in tier 3 also affect the price in the other tiers. Therefore that claim was rejected.
- (267) The same exporting producer claimed that injury analysis and thus the causation analysis should be performed taking into consideration that tier 3 tyres were lower priced since they have a significantly shorter lifespan than tier 1 and tier 2 tyres. The evaluation of the market share should be made by comparing the market share in value and not in quantity. If one takes this into account the decrease in the market share of the Union industry and the increase in the market share of the Chinese exporting producer are much less pronounced.
- (268) The Commission acknowledged that the lifespan of tyres is an important aspect of the analysis, which demonstrates the interconnection between tiers. However, it did not accept that this aspect would negate the finding of causality. Even if, admittedly, the market share of Chinese tyres in the Union is lower in value due to 'shorter lifespan' than 'per unit', it does not change the fact that it is precisely because of the growing attractiveness for consumers to buy Chinese 'low-price — low-mileage' tyres that the Union industry has become under pressure and suffered material injury.
- (269) One interested party claimed that the decrease in price of Chinese imports is caused by a change in product mix triggered by the growing demand for smaller tyres. There was no evidence supporting that claim. In any event, even if the size had an impact on the evolution of the average prices, Chinese imports were undercutting the Union industry's prices also for the same sizes as the comparison is always made per product type. Therefore, the Commission rejected that claim.

5.2. Imports from third countries

- (270) Several interested parties claimed that the Commission should provide further analysis of the impact of the Russian imports, which were priced at the level of the Chinese imports.

- (271) The Commission found that there is a crucial difference between the volumes imported. While Chinese imports increased from 3,5 million tyres in 2014 to 4,6 million tyres (namely by 1 100 000 items) in the investigation period, Russian imports increased from 0,2 million tyres to 0,3 million tyres (namely with only 100 000 items) in the same period. Given the limited quantities originating from Russia (they constitute only 6 % of the total volumes of import from the PRC and have only 1,29 % market share of the Union market) at a similar price, these imports cannot weaken the causal link between the Chinese imports and the injury suffered by the Union industry.
- (272) Other interested parties claimed that imports from other countries such as Japan, South Korea and Turkey took place at significant quantities and at lower prices than that of the Union industry. Due to their price and quantity they allegedly severed the causal link between the Chinese imports and the injury suffered by the Union industry.
- (273) The Commission observed that the import prices from Japan, South Korea and Turkey were well above the Chinese import prices. Moreover, they are mostly transfer prices to related importers. Therefore, those import prices cannot serve as a basis for a comparison with the prices of the Union industry. Finally, the Japanese, South Korean and Turkish tyres were sold at a price corresponding to their respective tier in the Union market. Therefore, those imports should not cause injury to the Union industry. As far as the quantities are concerned their market shares remained stable (the volume decreased for South Korea by 50 000 items, remained stable for Japan and increased for Turkey by 170 000 items) and represented around half of the volume of imports originating in the PRC. Therefore that claim was rejected.

5.3. Export performance of the Union industry

- (274) Certain interested parties claimed that the Union industry suffered losses as they are exporting at a loss throughout the period considered which impacted their return on investment and the ability to invest. As indicated in recital (226) of the provisional Regulation, average export prices are affected by transfer values to related companies. Moreover, the costs of production reported in recital (176) of the provisional Regulation were calculated for the sales by the sampled Union producers charged to unrelated customers. This does not allow drawing meaningful conclusions on the basis of comparing these two sets of data. Moreover, the micro-indicators showed that the exports of the sampled Union producers were found profitable. Therefore, that claim was rejected.
- (275) The Commission reiterated that the volumes remained stable during the period considered. Furthermore, these prices are transfer prices between related parties, and therefore no conclusion can be drawn from the fact that these prices show a downward trend during period considered. Those claims were therefore rejected. Thus, the Commission confirms that there is no evidence that the export activity of the Union industry could attenuate the causal link between the dumped imports and the injury found.

5.4. Costs evolution

- (276) The Giti Group claimed that the new tyres have become cheaper as costs dropped, but the retreaders could not benefit from this decrease as the proportion of raw materials in their cost of production is significantly lower compared to new tyres. This explains the loss suffered by the retreading industry in tier 3, which is mainly due to the evolution of raw material prices as they have been continuously declining since 2012 and only started to recover in 2017.
- (277) As mentioned in recital (152), the Chinese import prices did not follow the evolution of the raw materials prices while the cost of production of the Union industry reflected this evolution ⁽⁵⁸⁾. The losses were due to the fact that Chinese imports are substantially undercutting the Union industry prices over the period considered. Therefore, that claim was rejected.

5.5. Other known factors

- (278) The Aeolus Group and Pirelli claimed that the Commission did not take into consideration that two major producers have invested heavily in their retreading business. This could allegedly explain why other Union producers had to exit tier 3 of the market. According to these parties, the economic crisis pushed two major producers (Goodyear and Continental) to invest in their retreading business and they opened their own retreading plants. According to the information available, the production capacity of each plant is equivalent to the annual

⁽⁵⁸⁾ Recitals (176) to (182) of the provisional Regulation.

production of ten small retreaders. The Aeolus Group believes that these investments have led to self-inflicted injury. These investments are said to have created over-capacity and artificially increased the unit costs and as a result caused profit reduction. The effect of the investments on the overall Union industry is allegedly sufficient to attenuate any potential causal link between the dumped Chinese imports and the injury suffered by the Union industry, whether considered individually or jointly with the other known factors.

- (279) According to information provided by ETRMA and by some large manufacturers as described in recitals (189) to (191), the production of large manufacturers (using mainly hot cured retread process) actually decreased during the period considered (the output went from around 2,4 million in 2014 to 2,2 million in the investigation period). These figures did thus not support the claim that the investment of the two major producers had produced an overcapacity. Therefore, that claim about self-inflicted injury was rejected.
- (280) Some interested parties submitted that a growing demand for smaller tyres probably affected the product mix in different years in such a way that proportionally more small-sized tyres were sold towards the end of the investigation period. Due to inner-city weight and size restrictions on vehicles and the growth of the e-commerce business (which requires loads to be broken down into smaller quantities, which in turn requires more light trucks and light commercial vans), there has been a shift towards increased demand for smaller tyres. This observation did not only apply to sales by the Union producers. Chinese imports also catered to the increased demand for smaller tyres and this, therefore, (partly) explained the decrease in sales prices of the Chinese imports.
- (281) With regard to the claim on the evolution of the product mix, the information gathered by the Commission concerning sizes commercialised in the Union market over the period considered does not support the argument that prices and costs are lower because of the relatively stronger presence of smaller tyres on the market ⁽⁵⁹⁾. The data for the investigation period rather shows that the product mix on the market is stable and remains concentrated on the main dimensions. Moreover, such a reduction of the average size of the product cannot be found in the Eurostat data for Chinese imports, revealing that, on the contrary the weight of the imported tyres from China increased by 3 % between 2014 and the investigation period ⁽⁶⁰⁾. Conversely, the Commission noted that the industry had made overall structural adaptations in order to reduce costs in view of the 'knock-on' effect on the different tiers at play. Therefore, that claim was rejected.

5.6. Conclusion on causation

- (282) Neither the Russian imports (because of their small volume), nor the imports from Japan, South Korea and Turkey (because of their transfer prices which were even higher than the Chinese prices) had been the main cause of injury to the Union industry. Also the Union's export performance and its cost evolution were not at the root of the Union's injurious situation. The latter can also not be explained by other facts, such as the investment into the retreading business by two major producers and the evolution of the product mix.
- (283) Therefore, the Commission confirmed its findings in recitals (229) and (232) of the provisional Regulation that the material injury to the Union industry was caused by the dumped imports from the PRC and that the other factors, considered individually and collectively did not attenuate the causal link between the dumped imports and the injury suffered by the Union industry.

6. UNION INTEREST

6.1. Interest of the Union industry

- (284) The Commission confirmed its provisional findings in recitals (234) and (235) of the provisional Regulation that the imposition of measures will be in the interest of the Union manufacturers.
- (285) The Aeolus Group and Pirelli, the Giti Group and Kirkby considered that the retreading industry in the Union would be negatively affected by a decreased supply and an increased price of casings. In their view, the anti-dumping measures on tier 1 and 2 tyres would negatively impact the independent Union retreaders, which use the casings of those tiers in its production line. The Giti Group reiterated similar claims following the final disclosure.

⁽⁵⁹⁾ Analysis of the dimension sold on the market based on ETRMA Europool data. Third party data summarised in the open version of the Coalition's comments on provisional Regulation

⁽⁶⁰⁾ Weight/unit calculation based on the Eurostat data and it is fully available on the sheet 'Var. Imports Weight' of the open version of Annex 2 of Coalition's rebuttal of the exporters' and importers' claims (Filing system number: t18.007295).

- (286) The Commission disagreed with this assessment. In spite of the fact that large Union producers have integrated retreading operations, many of their casings are still retreaded by independent Union retreaders. In addition, independent Union retreaders indicated to the Commission that there is an oversupply of casings at present. In their assessment, many consumers find it cheaper to buy low tier Chinese tyres than to retread the existing ones. This means that many casings that could be retreaded had to be discarded. Most importantly, while independent retreaders and associations supported the measures, no single Union retreader came forward opposing the measures. This indicates that the measures are in the interest of the retreading Union industry.
- (287) Following the final disclosure, the CRIA and the CCCMC claimed that one Union retreader stated that the measures were not in its interest. However, as it was not supported by any evidence, that claim was disregarded.

6.2. Interest of the Union users and importers

- (288) The Aeolus Group and Pirelli, the Giti Group, and Heuver claimed that if measures were adopted, there would be a decrease in Chinese imports leading to a general decline in supply. This, in turn would lead to a speculative increase in prices, to the detriment of end-users. Measures protecting the Union industry would also imply that final consumers would have less product choice.
- (289) The Commission considered that there was sufficient overall capacity in the Union to supply the internal market as indicated in Table 4. Moreover, there are many producers located in third countries (Turkey, South Korea, Japan, Russia, Thailand, and many other countries) who are already selling to the Union market. Their combined sales volumes during the period considered were relatively stable, with a market share of around 10 %. The Commission recalled that the Chinese prices were well below the prices of all other major importing countries. According to Eurostat the average import price from the People's Republic of China was 128,8 EUR/item, (as indicated in Table 3 of the provisional Regulation) while the import prices from all other countries were 189 EUR/item in the investigation period (as indicated in Table 18 of the provisional Regulation). Therefore, it can be reasonably expected that once the level playing field is restored in the Union market, imports from all countries will provide for the necessary supply.
- (290) The Commission also recalled that the Union market is a competitive market in which many producers active in all tiers are fiercely competing. Therefore, the imports at a fair level of prices will keep exerting an additional competitive pressure on the Union industry's prices.
- (291) Several importers claimed that they might exit the market altogether if the measures are imposed. The Commission recalled that the purpose of imposing anti-dumping measures is to restore a level playing field so that Union producers and third country producers compete on a level playing field. Accordingly, the duties are only set at a level that would still enable the Chinese imports to continue competing with the Union producers, but at fair prices. In addition, given that the high difference between dumped Chinese prices and the import prices from all other countries will be reduced through the measures, the importers will have increased business opportunities to sell bus and lorry tyres from other countries.
- (292) Following final disclosure, the Retread Manufacturing Association claimed that the supply is secured. According to the Association there is no product shortage as trade data show that manufacturers are switching their sourcing from the People's Republic of China to other countries, such as South Korea. The party claimed that since the announcement of provisional duties the local demand has increased between 5 and 10 %.
- (293) The Commission concluded that measures would not be in the interest of importers who predominantly rely on the import of very cheap Chinese tyres. However, importers with a broader portfolio are unlikely to be severely affected by the restoration of fair competition.

6.3. Interest of suppliers

- (294) In the absence of any comments on the matter, the Commission confirmed its finding in recital (242) of the provisional Regulation that measures are in the interest of treads suppliers.

6.4. Other interests

- (295) In the absence of comments to the contrary provided within the deadline set for submitting comments on the Final Disclosure Document ⁽⁶¹⁾, the Commission confirmed its findings in recitals (243) to (249) of the provisional Regulation that measures are in the interest of the Union's policy to reduce waste and to manage raw materials in a sustainable way. Moreover, given that it is mostly SMEs which are active in the retreading business, the imposition of measures would also be in line with the important Commission objective to support SMEs.

6.5. Conclusion on Union interest

- (296) Therefore, the Commission confirmed its conclusion in recitals (234) to (249) of the provisional Regulation. There are no compelling reasons under Article 21 of the basic Regulation that it would not be in the interest of the Union to impose measures.

7. CONSIDERATION OF RETROACTIVE IMPOSITION OF THE MEASURES

- (297) As mentioned in recital (4), imports of the product concerned were subject to registration from 3 February 2018 until the date of entry into force of the provisional measures on 8 May 2018 with a view of the possible retroactive collection of duties on the registered imports.
- (298) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.
- (299) The data available at the time of registration had shown that a substantial rise in imports had taken place on a CN code level. However, newer data demonstrates that no further substantial rise in imports took place as compared to the level of imports during the investigation period. Therefore, that condition under Article 10(4)(d) of the basic Regulation is not met.
- (300) Therefore, the Commission concluded that the retroactive collection of the definitive duties was not justified in this case.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Injury elimination level (Injury margin)

- (301) Following provisional disclosure, several interested parties asserted that there was broad agreement on the segmentation of the Union market into three tiers, and that in the provisional Regulation there was extensive analyses and data provided per segment. However, the approach used at the provisional stage of one target profit for all tiers had the effect of overprotecting the Union producers from the dumped imports of tier 3 tyres, which could not reach the stipulated target profit for the industry as a whole. Therefore, the Commission should use the profitability of each tier to calculate the non-injurious price and the injury margin for a proper application of the lesser duty rule.
- (302) The Commission accepted the claim. It considered that it is more appropriate to establish target profits per tier in this particular case because the form of the measures is a fixed duty per tyre, which in turn is based on an injury margin derived from a product control number per tier. Therefore, it revised the target profit to 17,9 % for tier 1, 17,9 % for tier 2 and 6,1 % for tier 3.
- (303) Following final disclosure, the Giti Group claimed that 2014, which is used as a basis for the target profit, was an abnormal year because the profitability for tier 1 and tier 2 were the same whereas they differed in the next two years.
- (304) The Commission recalled that it is bound to establish a target profit by identifying a year which resembles most to normal conditions of competition undistorted by dumped imports. Against that yardstick, 2014 amounts to the year with lowest volumes and market share of dumped imports, as compared to 2015 or 2016 and the latter should therefore be excluded. Likewise, the Commission could not resort to years prior to 2014 as no verified information existed for those years. Therefore, that claim was rejected.

⁽⁶¹⁾ The Lithuanian National Road Carriers' Association sent comments well after the deadline for submitting comments on the Final Disclosure Document claiming that the Chinese imports represent 37 % of the total Lithuanian tyre import market, and therefore that Lithuanian hauliers will face disproportionate negative consequences compared to other Union companies due to the full dependence of the Lithuanian tyre market on imports. The Commission found that the comments were submitted out of time and that the comments were not substantiated with evidence. Therefore, that claim was disregarded.

- (305) Some interested parties (the complainant, Tyre Specialists of Finland, Italian Tyre Retreaders Association, Bipaver, VIPAL, Portuguese Association of Retreading Industries, Bundesverband Reifenhandel und Vulkaniseur-Handwerk) considered that the target profit of 6,1 % for tier 3 used in the final disclosure was too low to address the injury suffered by the retreaders and that a profit rate of around 10 % achieved before the surge of imports was warranted.
- (306) The Commission recalled that the tier 3 tyre market is identifiable by the particular presence of retreaded and new tyres, which actively compete against each other for market share. As preliminarily established in recital (209) of the provisional Regulation, unsustainable levels of losses in the retreading industry put the survival of the entire retreading activity in the Union at risk. As further preliminarily established in recital (230) of the provisional Regulation, these losses also affect the profitability that the companies active in tiers 1 and 2 can achieve. These findings are to be seen in light of the clear Union interest for the existence of a strong retreading industry, as established in recitals (243) to (249) of the provisional Regulation and (232) of the Final Disclosure Document.
- (307) The Commission accordingly decided to assess the claim that the profitability of 6,1 % reached in 2014 for tier 3, as noted in the Final Disclosure Document, would not adequately ensure the survival of the retreading activity in the Union.
- (308) For that, it decided to look at the profitability levels achieved by companies active in that tier for year 2014, on the basis of the data received in the verified questionnaire replies. For sampled large companies active in the tier 3 retreading business, the profitability figure for 2014 was – 6,04 %. For sampled SMEs, this figure was 2,71 %. These figures show that the retreading industry, representing a significant part of the Union industry as a whole, was already affected by Chinese imports in 2014.
- (309) The Commission accordingly sought to determine what target profit Union producers in tier 3 should achieve under normal conditions of competition with due attention given to retreaders. For this assessment, it also turned to the information available on the file. In the complaint, the target profit for tier 3 producers of the product concerned was set at 9,2 %, which, according to the complainants, would ensure adequate operations for all producers active in tier 3 (including retreaders of the product concerned). This figure was also in line with comments made by retreaders of the product concerned, in reply to the Final Disclosure Document, which argued that the Commission should look at profitability levels of around 9 % for tier 3 producers. Their argument principally centred around 2014 figures already showing an injured state of the retreading industry in the Union. Similarly, the Commission considered the submitted data from the sampled Union retreaders for the years 2006 and 2007, which, according to Union retreaders, represented the last years during which normal conditions of competition took place. For those years, profitability of Union retreaders was 9,4 %.
- (310) The Commission compared these figures with aggregated tier 3 profitability figures for the sampled Union producers in 2014. Without reflecting the weight of the performance of SMEs in the entire Union industry, the profitability in tier 3 in that year stood at 9,2 %. This unweighted figure was more appropriate than the previously weighted figure of 6,1 %. SMEs in tier 3 were already heavily affected in 2014 by Chinese imports, so that the weighted figures for that year do not fully reflect normal conditions of competition in the retreading industry.
- (311) As a result, the Commission considered it more appropriate to calculate the target profit in year 2014 in a manner which attenuates the injurious impact of the Chinese imports already observed in that year also for the Union retreading industry. In light of the above information, the Commission decided to set the target profit for tier 3 producers of the product concerned at 9,2 %. This accounts for the minimum non-injurious price that Union tier 3 producers need to achieve under normal conditions of competition, with due respect given to the needs of the retreading industry.
- (312) As mentioned in recital (16), the Commission disclosed this additional finding and invited interested parties to comment.
- (313) Heuver claimed that the Commission cannot distinguish between retreaded tyres and new tyres as it was consistently considered as the same products in view of their interchangeability. Moreover, the entire injury and causality analysis was made without making any distinction whatsoever.

- (314) That party claimed that the Commission did not provide a valid basis for departing from the period considered of this investigation and that the Union industry as a whole was already affected by the Chinese imports in 2014. Moreover, that party claimed that the fact they have not reached this target profit level at times when the imports from the PRC did not cause injury to the Union industry (2008-2014) clearly means that there are other causes of injury.
- (315) Hämmerling also claimed that the deadline of three days provided to submit comments to substantial changes made to the document and final conclusions reached by the Commission was too short and amounted to a breach of its rights of defence.
- (316) The Xingyuan Group claimed that the target profit of 9,2 % was inappropriate because it was unverified. The years 2006 and 2007 were too distant from the current situation and there was no evidence that the Union industry was suffering injury in 2014. In addition, that party claimed that the aim of the target profit was not to ensure the survival of the industry, but to remove the effect of injurious dumping. It claimed that using an unweighted profitability was inappropriate.
- (317) The Aeolus Group claimed that the Commission did not conduct an analysis on the causal link between the Chinese imports and the performance of the Union retreading industry. Moreover, that party claimed that the profit margin must be limited to the profit margin that the Union industry could reasonably count on under normal market conditions of competition. It claimed that the Commission must not differentiate between new tyres and retreaded tyres when evaluating the appropriate target profit for tier 3. Finally, it claimed that the Commission had not justified why it had set the target profit for tier 3 at 9,2 %.
- (318) The CCCMC and CRIA claimed that setting the target profit at 9,2 % for tier 3 did not reflect normal conditions of competition and the years 2006 and 2007 are no proper benchmarks for identifying injury. As the Commission had overly paid attention to tier 3 retreaders it had also undermined its injury analysis for the Union industry as a whole.
- (319) Prometeon claimed that the revised injury margin calculation reinforces the conclusion that the alleged injury is marginal. The total loss attributable to tier 3 would be around 54 million EURO representing 91 % of the total injury suffered by the Union industry, whereas tier 1 and tier 2 tyres are not affected. It also reiterated its claim that another form of the measure should be used.
- (320) The Commission rejected those claims for the following reasons.
- (321) First, the target profit for tier 3 at a level of 9,2 % is based on the actual profitability of the sampled Union producers in tier 3 in 2014 before the weighting of companies per tier. It is not improper to unweigh the figures for that purpose in order to lessen the impact of the performance of the SMEs which were already affected by the significant level of Chinese imports.
- (322) Second, the Commission's reference to the years 2006-2007 does not alter that assessment. Rather, it confirmed the findings on the basis of unweighted figures for 2014 as a reasonable benchmark. None of the interested parties has alleged that the conditions of competition in the years 2006-2007 were distorted. The sampled retreaders have substantiated with financial statements the claim that their normal profitability stood on average between 9 and 10 % in the years 2006-2007.
- (323) Third, the target profit for tier 3 found on the basis of unweighted figures for 2014 also conformed to the level of target profit suggested in the complaint. Already at initiation phase the Union industry thus considered this figure (namely 9,2 %) to be an appropriate target profit — i.e. long before the Commission had engaged in the weighting process.
- (324) The Commission therefore rejected those claims and confirmed its choice of a target profit set at 9,2 % for tier 3 tyres.
- (325) Finally, pursuant to Article 20(5) of the basic Regulation, parties should be given 10 days for comments on final disclosure. In this instance, the Commission granted two full weeks for that purpose. When an additional final disclosure is necessary, a shorter period may be set. Contrary to what Hämmerling alleges, the additional final disclosure was neither complex nor fundamental. Rather, it only concerned a specific aspect, namely the target profit, explained in a two-page document. In this situation, granting three days for comments was sufficient for all parties to exercise their rights of defence.

8.2. Definitive anti-dumping measures

- (326) Definitive anti-dumping measures should be imposed on imports of the product concerned originating in the PRC, in accordance with the lesser duty rule stipulated in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (327) Therefore, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Table 11

Definitive anti-dumping duty rates

Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Xingyuan Group	106,7	55,07	55,07
Giti Group	56,8	29,56	29,56
Aeolus Group and Pirelli	85	37,29	37,29
Hankook Group	60,1	23,41	23,41
Other cooperating companies	71,5	32,39	32,39
All other companies	106,7	55,07	55,07

- (328) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to those companies. Those individual anti-dumping duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (329) A company may request the application of those individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (330) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) hereof. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (331) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.
- (332) In view of the recent case-law of the Court of Justice ⁽⁶²⁾, it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties, because the relevant provisions in force concerning customs duties do not provide for such an interest rate, and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.

⁽⁶²⁾ Judgment of the Court (Third Chamber) of 18 January 2017, *Wortmann v Hauptzollamt Bielefeld*, C-365/15, EU:C:2017:19, paragraphs 35 to 39.

- (333) As mentioned in recital (263) of the provisional Regulation, there is a risk that operators use the import of wheels fitted with Chinese tyres to circumvent the measures. Therefore, the Commission considered it appropriate to monitor imports of road, trailer and semi-trailer wheels fitted with pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 in order to minimise the risk.
- (334) Hämmerling claimed that the basic Regulation does not provide the Commission a legal basis to classify goods for customs purposes and that therefore Article 1(5) of the provisional Regulation was illegal. As mentioned in recital (263) of the provisional Regulation, according to the Harmonised System Explanatory Notes (HSEN) to headings 8708 and 8716, road, trailer and semi-trailer wheels fitted with tyres are to be classified in headings 8708 and 8716. That recital explained the Commission's intention to monitor imports of pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 that were fitted in a wheel and are correctly classified according to customs law in Chapter 87 of the Combined Nomenclature ⁽⁶³⁾. To clarify that the Commission did not intend to classify goods for customs purposes on the basis of the basic Regulation but intended to monitor imports, the relevant wording of the corresponding article in this Regulation, namely Article 1(4), was drafted accordingly.

8.3. Form of the measures

- (335) The Aeolus Group claimed that the anti-dumping measure should take the form of an *ad valorem* duty. In its view, a fixed duty would violate Articles 7(2) and 9(4) of the basic Regulation, which require that the provisional and definitive anti-dumping duty imposed may not exceed the margin that is adequate to remove the injury to the Union industry. Accordingly, the most suitable solution would be that the Commission implements different *ad valorem* duties based on the market segmentation, namely tier 1, 2 and 3. The Aeolus Group claimed that this would be in line with the Commission's considerations regarding the importance of avoiding disproportionate measures for high-quality tyres and the need to remove the injury to the Union industry for tyres with different physical characteristics — thus creating a much healthier market.
- (336) As mentioned in recital (302), the Commission revised the injury margin and established a target profit per tier. Therefore, it considered that the resulting fixed duty properly removed the injury to the Union industry while being proportionally applied to the different tiers.
- (337) The CRIA and the CCCMC claimed that the fixed duties are inappropriate, in particular for tier 3 and proposed that the Commission should consider imposing *ad valorem* duties or, in the alternative, fixed duties for high quality products and *ad valorem* duties for low quality products. Moreover, some parties claimed that the Commission should take into consideration the size of tyres as the size difference is reflected in the price of the tyre. The CRIA and the CCCMC also claimed an *ad valorem* duty was more appropriate.
- (338) The Giti Group and Prometeon claimed that the duty should take the form of a variable duty whereby tyres above a certain minimum import price ('MIP') or a MIP per tier were not subject to duties. Moreover, the Giti Group claimed that non-cooperating producers should remain subject to the residual *ad valorem* duty, to exclude tier 1 and tier 2 from the scope of the final measures.
- (339) As mentioned in recital (302), the Commission revised the injury margin and established a target profit per tier. Therefore, it considered that the resulting fixed duty properly removed the injury to the Union industry while being proportionally applied to the different tiers.
- (340) Regarding the claims that one MIP for all tiers or a MIP per tier would be more appropriate to remove the injury caused by dumped imports, the Commission considered the following:
- There is no acceptable definition of quality differences stemming from physical characteristics alone; the differences per tier also stem from branding, customer perception and retreadability. Therefore, it is not possible to draw a borderline, with which customs can operate.
 - The distribution of the imported tyres mainly through related subsidiaries and through unrelated importers but with very close and longstanding business relationship is very complex. To monitor this vast net of activities is practically impossible.

⁽⁶³⁾ Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).

— The importers usually also import other tyres that are not under investigation (such as car tyres). This poses a high risk of kickbacks and compensation agreements.

(341) Regarding the claims that the form of the measures had to be *ad valorem*, the Commission maintained that an *ad valorem* duty would provide an incentive to continue importing the lower-end of the product mix, as motivated in recitals (270) and (271) of the provisional Regulation. Regarding the sizes, the Commission found that small tyres represented around 15 % of the volume of exports of the sampled Chinese producers, and that importers normally import all sizes. Therefore, the Commission concluded that this consideration did not override the benefits of imposing a fixed duty.

(342) Therefore, the Commission maintained the fixed duties as the form of the definitive measures.

(343) The Xingyuan Group claimed that the import price used as a basis to calculate the fixed duty erroneously contained post-importation costs. The Commission accepted the claim and adjusted the calculations accordingly.

8.4. Definitive collection of the provisional duties

(344) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected. The amounts secured in excess of the definitive duty rate determined pursuant to Article 1(2) of this Regulation should be released.

(345) The Commission was informed that the company Chonche Auto Double Happiness Tyre Corp., Ltd (additional TARIC code C333), changed its name to Aeolus Tyre (Taiyuan) Co., Ltd as of 13 August 2018. Therefore, any measures that provisionally applied to Chonche Auto Double Happiness Tyre Corp., Ltd are to apply to Aeolus Tyre (Taiyuan) Co., Ltd.

(346) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is 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, currently falling within CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10) and originating in the People's Republic of China.

2. The definitive anti-dumping duties applicable in euros per item of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty (in EUR per item)	TARIC additional code
Xingyuan Tire Group Co. Ltd; Guangrao Xinhongyuan Tyre Co., Ltd	61,76	C331
Giti Tire (Anhui) Company Ltd; Giti Tire (Fujian) Company Ltd; Giti Tire (Hualin) Company Ltd; Giti Tire (Yinchuan) Company, Ltd	47,96	C332
Aeolus Tyre Co., Ltd; Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co., Ltd	49,44	C333
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd	42,73	C334
Other cooperating companies listed in the Annex	49,31	
All other companies	61,76	C999

3. The application of the individual duty rates specified for the companies listed in paragraph 2 or in the Annex shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: '*I, the undersigned, certify that the (item(s)) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.*' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The Commission shall monitor imports of road, trailer and semi-trailer wheels fitted with pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, under TARIC codes 8708 70 10 15, 8708 70 10 80, 8708 70 50 15, 8708 70 50 80, 8708 70 91 15, 8708 70 99 15, 8716 90 90 15 and 8716 90 90 80.

5. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by three and a half percentage points.

6. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of Commission Implementing Regulation (EU) 2015/2447, the amount of anti-dumping duty laid down in paragraph 2 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Article 2

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in Article 1(1) in the period between 1 July 2016 to 30 June 2017,
- it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation,
- it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

the Commission may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty of not exceeding 49,31 EUR per item.

Article 3

The amounts secured by way of the provisional anti-dumping duties pursuant to Commission Implementing Regulation (EU) 2018/683 shall be definitively collected. The amounts secured in excess of the definitive amount of euros per item of the anti-dumping duties contained in Article 1(2) of this Regulation shall be released.

Article 4

The Commission Implementing Regulation (EU) 2018/163 is repealed.

Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 October 2018.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Cooperating Chinese exporting producers not sampled:

Name of the Company	TARIC additional code
Bayi Rubber Co., Ltd	C335
Bridgestone (Huizhou) Tire Co., Ltd	C336
Briway Tire Co., Ltd	C337
Chaoyang Long March Tyre Co., Ltd	C338
Goodyear Dalian Tire Company Limited	C339
Guizhou Tyre Co., Ltd	C340
Jiangsu General Science Technology Co., Ltd	C341
Megalith Industrial Group Co., Ltd	C342
Michelin Shenyang Tire Co., Ltd	C343
Nanjing Kumho Tire Co., Ltd	C344
Ningxia Shenzhou Tire Co., Ltd	C345
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Qingdao Fudong Tyre Co., Ltd	C348
Qingdao Hairunsen Tyre Co., Ltd	C349
Qingdao GRT Rubber Co., Ltd	C350
Sailun Jinyu Group Co., Ltd	C351
Shaanxi Yanchang Petroleum Group Rubber Co., Ltd	C352
Shandong Kaixuan Rubber Co., Ltd	C353
Shandong Changfeng Tyres Co., Ltd	C354
Shandong Haohua Tire Co., Ltd	C355
Shandong Hawk International Rubber Industry Co., Ltd	C356
Shandong Hengfeng Rubber & Plastic Co., Ltd	C357
Shandong Hengyu Science & Technology Co., Ltd	C358
Shandong Homerun Tires Co., Ltd	C359
Shandong Huasheng Rubber Co., Ltd	C360
Shandong Hugerubber Co., Ltd	C361
Shandong Jinyu Tire Co., Ltd	C362
Shandong Linglong Tyre Co., Ltd	C363
Shandong Mirage Tyres Co., Ltd	C364

Name of the Company	TARIC additional code
Shandong Vheal Group Co., Ltd	C365
Shandong Wanda Boto Tyre Co., Ltd	C366
Shandong Wosen Rubber Co., Ltd	C367
Shandong Yongfeng Tyres Co., Ltd	C368
Shandong Yongsheng Rubber Group Co., Ltd; Shandong Santai Rubber Co., Ltd	C369
Shandong Yongtai Group Co., Ltd	C370
Shanghai Huayi Group Corp. Ltd; Double Coin Group (Jiang Su) Tyre Co., Ltd	C371
Shengtai Group Co., Ltd	C372
Sichuan Kalevei Technology Co., Ltd	C373
Toyo Tire (Zhucheng) Co., Ltd	C374
Triangle Tyre Co., Ltd	C375
Weifang Goldshield Tire Co., Ltd	C376
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Xuzhou Armour Rubber Company Ltd	C378
Zhongce Rubber Group Co., Ltd	C379

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1580**of 19 October 2018****amending Implementing Regulation (EU) 2015/2197 laying down implementing technical standards with regard to closely correlated currencies in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽¹⁾ and in particular Article 354(3) thereof,

Whereas:

- (1) In order to ensure that the currency pairs referred to in the Annex to Commission Implementing Regulation (EU) 2015/2197 ⁽²⁾ continue to reflect the actual correlation between the relevant currencies, it is necessary to update the list of closely correlated currencies.
- (2) The list uses 31 March 2017 as the end date for the purpose of computing the three and five year data series required to assess the currency pairs in accordance with Regulation (EU) No 575/2013.
- (3) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (4) Given that the necessary amendments to Implementing Regulation (EU) 2015/2197 do not involve significant changes in substantive terms, in accordance with the second subparagraph of Article 15(1) of Regulation (EU) No 1093/2010 ⁽³⁾, EBA has not conducted an open public consultation, considering that it would be disproportionate in relation to the scope and impact of the draft implementing technical standards concerned.
- (5) Implementing Regulation (EU) 2015/2197 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1***Subject matter**

The Annex to Implementing Regulation (EU) 2015/2197 is replaced by the text as set out in the Annex to this Regulation.

*Article 2***Entry into force**This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.⁽¹⁾ OJ L 176, 27.6.2013, p. 1.⁽²⁾ Commission Implementing Regulation (EU) 2015/2197 of 27 November 2015 laying down implementing technical standards with regard to closely correlated currencies in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 313, 28.11.2015, p. 30).⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 October 2018.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

List of closely correlated currencies

Part 1- List of closely correlated currencies against the Euro (EUR)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Croatian Kuna (HRK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Romanian Leu (RON), Serbian Dinar (RSD).

Part 2- List of closely correlated currencies against the Arab Emirates Dirham (AED)

Chinese Yuan (CNY), Hong Kong Dollar (HKD), Lebanese Pound (LBP), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 3- List of closely correlated currencies against the Albanian Lek (ALL)

Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Danish Krone (DKK), Croatian Kuna (HRK), Moroccan Dirham (MAD), Romanian Leu (RON), Serbian Dinar (RSD), Euro (EUR).

Part 4- List of closely correlated currencies against the Bosnia and Herzegovina Mark (BAM)

Albanian Lek (ALL), Bulgarian Lev (BGN), Czech Koruna (CZK), Danish Krone (DKK), Croatian Kuna (HRK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Romanian Leu (RON), Serbian Dinar (RSD), Euro (EUR).

Part 5- List of closely correlated currencies against the Bulgarian Lev (BGN)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Czech Koruna (CZK), Danish Krone (DKK), Croatian Kuna (HRK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Romanian Leu (RON), Serbian Dinar (RSD), Euro (EUR).

Part 6- List of closely correlated currencies against the Chinese Yuan (CNY)

Arab Emirates Dirham (AED), Hong Kong Dollar (HKD), Lebanese Pound (LBP), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 7- List of closely correlated currencies against the Czech Koruna (CZK)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Danish Krone (DKK), Croatian Kuna (HRK), Moroccan Dirham (MAD), FYROM Denar (MKD), Romanian Leu (RON), Serbian Dinar (RSD), Euro (EUR).

Part 8- List of closely correlated currencies against the Danish Krone (DKK)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Croatian Kuna (HRK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Romanian Leu (RON), Serbian Dinar (RSD).

Part 9- List of closely correlated currencies against the Hong Kong Dollar (HKD)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Lebanese Pound (LBP), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 10- List of closely correlated currencies against the Croatian Kuna (HRK)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Danish Krone (DKK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Romanian Leu (RON), Serbian Dinar (RSD), Euro (EUR).

Part 11- List of closely correlated currencies against the Hungarian Forint (HUF)

Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Danish Krone (DKK), Croatian Kuna (HRK), Moroccan Dirham (MAD), Polish Zloty (PLN), Romanian Leu (RON), Serbian Dinar (RSD), Euro (EUR).

Part 12- List of closely correlated currencies against the Israeli New Shekel (ILS)

Moroccan Dirham (MAD), Thai Baht (THB).

Part 13- List of closely correlated currencies against the Indian Rupee (INR)

Thai Baht (THB).

Part 14- List of closely correlated currencies against the South Korean Won (KRW)

Singapore Dollar (SGD).

Part 15- List of closely correlated currencies against the Lebanese Pound (LBP)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 16- List of closely correlated currencies against the Moroccan Dirham (MAD)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Danish Krone (DKK), Croatian Kuna (HRK), Hungarian Forint (HUF), Israeli New Shekel (ILS), Romanian Leu (RON), Serbian Dinar (RSD), Singapore Dollar (SGD), Euro (EUR).

Part 17- List of closely correlated currencies against the former Yugoslav Republic of Macedonia Denar (MKD)

Czech Koruna (CZK).

Part 18- List of closely correlated currencies against the Macau Pataca (MOP)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), Lebanese Pound (LBP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 19- List of closely correlated currencies against the Philippine Peso (PHP)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), Lebanese Pound (LBP), Macau Pataca (MOP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 20- List of closely correlated currencies against the Polish Zloty (PLN)

Hungarian Forint (HUF).

Part 21- List of closely correlated currencies against the Romanian Leu (RON)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Danish Krone (DKK), Croatian Kuna (HRK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Serbian Dinar (RSD), Euro (EUR).

Part 22- List of closely correlated currencies against the Serbian Dinar (RSD)

Albanian Lek (ALL), Bosnia and Herzegovina Mark (BAM), Bulgarian Lev (BGN), Czech Koruna (CZK), Danish Krone (DKK), Croatian Kuna (HRK), Hungarian Forint (HUF), Moroccan Dirham (MAD), Romanian Leu (RON), Euro (EUR).

Part 23- List of closely correlated currencies against the Singapore Dollar (SGD)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), South Korean Won (KRW), Lebanese Pound (LBP), Moroccan Dirham (MAD), Macau Pataca (MOP), Philippine Peso (PHP), Thai Baht (THB), Taiwanese Dollar (TWD), US Dollar (USD).

Part 24- List of closely correlated currencies against the Thai Baht (THB)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), Israeli New Shekel (ILS), Indian Rupee (INR), Lebanese Pound (LBP), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Taiwanese Dollar (TWD), US Dollar (USD).

Part 25- List of closely correlated currencies against the Taiwanese Dollar (TWD)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), Lebanese Pound (LBP), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), US Dollar (USD).

Part 26- List of closely correlated currencies against the US Dollar (USD)

Arab Emirates Dirham (AED), Chinese Yuan (CNY), Hong Kong Dollar (HKD), Lebanese Pound (LBP), Macau Pataca (MOP), Philippine Peso (PHP), Singapore Dollar (SGD), Thai Baht (THB), Taiwanese Dollar (TWD).

DIRECTIVES

COMMISSION IMPLEMENTING DIRECTIVE (EU) 2018/1581

of 19 October 2018

amending Council Directive 2009/119/EC as regards the methods for calculating stockholding obligations

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2009/119/EC of 14 September 2009, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products ⁽¹⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) In accordance with Article 22 of Directive 2009/119/EC the Commission carried out a review of its functioning and implementation ('mid-term evaluation'), which highlighted the need to introduce a number of technical changes to the Directive, in order to facilitate its implementation. ⁽²⁾
- (2) Postponing the start of the new yearly stockholding obligation under Directive 2009/119/EC by three months should give Member States additional time to complete the internal administrative procedures and facilitate compliance within the deadline and, possibly, at lower costs.
- (3) Regulation (EC) No 1099/2008 of the European Parliament and of the Council ⁽³⁾ is a reference point for the definition of 'oil stocks' and for identifying the different petroleum products that are relevant for calculating the stockholding obligation, the level of emergency and specific stocks held and for reporting purposes. Regulation (EC) No 1099/2008 has been modified several times. As a result references to specific provisions of Regulation (EC) No 1099/2008 in Directive 2009/119/EC have become outdated and need to be adapted so that they refer to the appropriate provisions of that Regulation.
- (4) The application of two different formulas for calculating the quantities of naphtha that are not relevant for calculating the stockholding obligation, depending on whether the naphtha yield over the previous year was smaller or greater than 7 %, has led in practice to fluctuations in the stockholding obligations for some Member States which may cause a substantial financial burden and lack of compliance, without being justified by the Directive's objectives. Removing the 7 % threshold and giving the same options to all Member States should eliminate inequalities and unjustified fluctuations.
- (5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽⁴⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.
- (6) The measures provided for in this Directive are in accordance with the opinion of the Committee set up under Article 23 of Directive 2009/119/EC,

⁽¹⁾ OJ L 265, 9.10.2009, p. 9.

⁽²⁾ Commission Staff Working Document, Mid-term evaluation of Council Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (SWD(2017) 439 final)

⁽³⁾ Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1).

⁽⁴⁾ OJ C 369, 17.12.2011, p. 14.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/119/EC is amended as follows:

(1) in Article 2, point (i) is replaced by the following:

‘(i) “oil stocks” means stocks of the energy products listed in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008’;

(2) in Article 3, paragraph (3) is replaced by the following:

‘3. However, notwithstanding paragraph 2, the daily averages of net imports and inland consumption, as referred to in that paragraph, shall be determined, as regards the period from 1 January to 30 June of each calendar year, on the basis of the quantities imported or consumed during the last year but one before the calendar year in question.’;

(3) in Article 6, the second sentence of paragraph (1) is replaced by the following:

‘That register shall contain, in particular, information needed to pinpoint the depot, refinery or storage facility where the stocks in question are located, as well as the quantities involved, the owner of the stocks and their nature, with reference to the categories identified in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008.’;

(4) in Article 9, the first sentence of paragraph (2) is replaced by the following:

‘2. Specific stocks can only be composed of one or more of the following product categories, as defined in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008.’;

(5) in Article 9, the third subparagraph of paragraph (3) is replaced by the following:

‘The crude oil equivalents referred to in the first and second subparagraphs are calculated by multiplying by a factor of 1,2 the sum of the aggregate “observed gross inland deliveries”, as defined in Section 3.2.2.11 of Annex C to Regulation (EC) No 1099/2008, for the products included in the categories used or concerned. International marine bunkers are not included in the calculation’;

(6) in Annex II, the second subparagraph is replaced by the following:

‘Inland consumption is the sum of the aggregate “observed gross inland deliveries”, as defined in Section 3.2.2.11 of Annex C to Regulation (EC) No 1099/2008, of the following products only: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) as defined in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008.’;

(7) in Annex III, point (a) of the sixth subparagraph is replaced by the following:

‘(a) include all other stocks of the petroleum products identified in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008 and calculate the crude oil equivalent by multiplying the quantities by a factor of 1,065; or’.

(8) Annex I is replaced by the text in the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 19 October 2019 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2020.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 October 2018.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

'ANNEX I

METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF IMPORTS OF PETROLEUM PRODUCTS

Member States shall calculate the crude oil equivalent of imports of petroleum products, as referred to in Article 3, using the following method.

- (1) The sum of net imports of crude oil, natural gas liquids (NGL), refinery feedstocks and other hydrocarbons, as defined in Annex A, Chapter 3.4 of Regulation (EC) No 1099/2008 (*), shall be calculated and adjusted to take account of any stock changes. From the resulting figure, one of the following figures shall be deducted for naphtha yield:
 - 4 %,
 - the average naphtha yield,
 - the net actual naphtha consumption.
- (2) The sum of the net imports of all other petroleum products, as defined in Annex A, Chapter 3.4 of Regulation (EC) No 1099/2008, excluding naphtha, shall be calculated and adjusted to take account of stock changes and shall be multiplied by a factor of 1,065.

The sum of the figures resulting from (1) and (2) represents the crude oil equivalent.

International marine bunkers shall not be included in the calculation.

(*) As modified by Commission Regulation (EU) 2017/2010 of 9 November 2017.'

DECISIONS

COUNCIL DECISION (EU) 2018/1582

of 15 October 2018

on the position to be taken on behalf of the Union within the Joint Committee established by the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part, as regards the adoption of the rules of procedure of the Joint Committee, and the establishment of subcommittees and specialised working groups and the adoption of their terms of reference

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 207 and 209 in conjunction with Article 218(9), thereof,

Having regard to the proposal of the European Commission,

Whereas:

- (1) The Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part ⁽¹⁾ ('the Agreement') entered into force on 1 October 2016.
- (2) Article 52(1) of the Agreement establishes a Joint Committee, whose tasks include ensuring the proper functioning and implementation of the Agreement.
- (3) Article 52(5) of the Agreement provides that the Joint Committee is to adopt its rules of procedure, and Article 52(3) provides that it is to set up subcommittees and specialised working groups.
- (4) In order to ensure the effective implementation of the Agreement, the Joint Committee's rules of procedure should be adopted as soon as possible.
- (5) The position of the Union within the Joint Committee as regards the adoption of the rules of procedure of the Joint Committee, and the establishment of subcommittees and specialised working groups and the adoption of their terms of reference should therefore be based on the attached draft Decisions of the Joint Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the first meeting of the Joint Committee established pursuant to Article 52 of the Framework Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part, as regards the adoption of the rules of procedure of the Joint Committee, and the establishment of subcommittees and specialised working groups and the adoption of their terms of reference, shall be based on the draft Decisions of the Joint Committee attached to this Decision.

⁽¹⁾ OJ L 329, 3.12.2016, p. 8.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 15 October 2018.

For the Council
The President
F. MOGHERINI

ANNEX 1

DECISION No 1/... OF THE EU-VIET NAM JOINT COMMITTEE
of ...
adopting its Rules of Procedure

THE EU-VIET NAM JOINT COMMITTEE,

Having regard to the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part ('the Agreement'), and in particular Article 52 thereof,

Whereas:

- (1) The Agreement entered into force on 1 October 2016
- (2) In order to contribute to the effective implementation of the Agreement, the Rules of Procedure of the Joint Committee should be adopted

HAS DECIDED AS FOLLOWS:

Sole Article

The Rules of Procedure of the Joint Committee, as set out in Annex A, are hereby adopted.

Done at ..., xxxx.

For the EU-Viet Nam Joint Committee
The Chair

ANNEX A

Rules of Procedure of the Joint Committee*Article 1***Tasks and Composition**

1. The Joint Committee shall perform the tasks provided for in Article 52 of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part ('the Agreement').
2. The Joint Committee shall be composed of representatives of both sides at the highest possible level

*Article 2***Meetings**

1. The Joint Committee shall normally meet annually. The meeting of the Joint Committee shall be convened by the Chair. Meetings shall be held in Ha Noi and Brussels alternately, on a date fixed by mutual agreement. Special sessions of the Joint Committee may be held at the request of either Party, if the Parties so agree.
2. If both Parties agree, the meetings of the Joint Committee may exceptionally be held by means of video- or teleconference.
3. The meetings of the Joint Committee shall be held behind closed doors, unless the Chair, in agreement with the Parties, decides that the meeting shall be public.

*Article 3***Chair**

1. The Joint Committee shall be chaired alternately, for a period of one calendar year, by the Party hosting the meeting in the calendar year in question. The High Representative of the Union for Foreign Affairs and Security Policy or the Deputy Prime Minister/Minister of Foreign Affairs of the Socialist Republic of Viet Nam shall chair the Joint Committee provided for in Article 52 of the Agreement. A Party can delegate the authority to preside over all or part of the Joint Committee meetings to a senior official.
2. The Party hosting the first Joint Committee meeting shall hold the chair from the date of that meeting until 31 December that year.

*Article 4***Participants**

1. Before each meeting, each Party shall inform the Chair of the intended composition of its delegation.
2. The Chair, when appropriate and by mutual agreement between the Parties, may invite experts or representatives of other bodies to the meeting to act as observers or to provide information on a particular subject.

*Article 5***Secretariat**

A representative of the European External Action Service and a representative of the Government of the Republic of Viet Nam shall act jointly as Secretaries of the Joint Committee. All communications to and from the Chair shall be forwarded to the Secretaries. Correspondence to and from the Chair may be by any written means, including electronic mail.

*Article 6***Agendas for meetings**

1. The Chair shall draw up a provisional agenda for each meeting. The provisional agenda shall be sent, by any written means, together with the relevant documents, to the Parties at least 30 days before the beginning of the meeting. The Chair may, in agreement with the Parties, fix a different time limit for a particular meeting.
2. Either Party may request the Chair to place an item on the agenda by any written means. The provisional agenda shall include all items in respect of which the Chair has received such a request not later than 21 days before the date of the meeting.
3. The agenda shall be adopted by the Joint Committee at the beginning of each meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the Parties so agree.
4. Both sides may exchange information on the Viet Nam-EU Human Rights Dialogue at the Joint Committee Meeting.

*Article 7***Minutes**

1. Following each meeting, the Chair shall sum up the conclusions reached by the Joint Committee. The two Secretaries shall jointly draw up draft minutes on the basis of those conclusions, within 30 days following the date of the meeting.
2. The Parties shall approve the draft within 60 days following the date of the meeting or by any date agreed by the Parties. Once the Parties have approved the draft minutes, two original copies shall be signed by the Chair. Each Party shall receive one original.

*Article 8***Decisions and recommendations**

1. Upon the agreement by the Parties, the Joint Committee may take decisions and make recommendations only within its functions and tasks as stipulated in Article 52 of the Agreement.
2. Decisions or recommendations adopted by the Joint Committee shall be entitled 'Decision' or 'Recommendation' respectively, followed by a serial number, the date of their adoption and a description of the subject matter. Each decision shall state the date on which it enters into force.
3. The Joint Committee may decide to adopt decisions or recommendations by means of a written procedure. In such cases, the Parties shall agree a time-limit for the duration of the procedure. If at the expiry of that time-limit, no Party has expressed opposition to the proposed decision or recommendation, the Chair of the Joint Committee shall declare the decision or recommendation to have been adopted by common agreement.
4. Decisions and recommendations adopted by the Joint Committee shall be made in two authentic copies signed by the Chair of the Joint Committee.
5. Each Party may publish the decisions and recommendations of the Joint Committee in its respective official publication.

*Article 9***Expenses**

1. Each Party shall bear the expenses it incurs as a result of participating in the meetings of the Joint Committee, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.
2. Each party shall bear the expenses it incurs in connection with interpreting at meetings and translation.
3. The Party hosting the meeting shall bear the expenses in connection with the organisation of meetings and reproduction of documents.

*Article 10***Sub-committees and specialised working groups**

1. In accordance with Article 52(3) of the Agreement, the Joint Committee may set up sub-committees and specialised working groups in order to assist it in the performance of its tasks. The sub-committees and specialised working groups shall report to the Joint Committee after each of their meetings.
 2. The Joint Committee may decide to abolish any existing sub-committees and specialised working groups define or amend its terms of reference or set up further sub-committees and specialised working groups to assist it in carrying out its duties.
 3. The sub-committees and specialised working groups shall not have any decision-making power.
-

ANNEX 2

DECISION No 2/... OF THE EU-VIET NAM JOINT COMMITTEE**of ...****establishing four sub-committees and specialised working groups and adopting their terms of reference**

THE EU-VIET NAM JOINT COMMITTEE,

Having regard to the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part ('the Agreement'), and in particular Article 52(3) thereof, and to Article [10] of the Rules of Procedure of the Joint Committee,

Whereas:

- (1) To allow for expert level discussions on the key areas falling within the scope of the Agreement, sub-committees and specialised working groups should be established. Upon request, the Parties may further agree to amend the list of sub-committees or specialised working groups and/or their scope.
- (2) According to Article [8] of its Rules of Procedure, the Joint Committee may decide to adopt decisions by means of a written procedure, *[If the written procedure is used in this case]*
- (3) This Decision should be adopted in order for the sub-committees and specialised working groups to become operational in a timely manner.

HAS ADOPTED THIS DECISION:

Sole Article

The sub-committees and specialised working groups listed in Annex A are hereby established. The terms of reference of the sub-committees and specialised working groups shall be as set out in Annex B.

Done at,

For the EU-Viet Nam Joint Committee
The Chair

ANNEX A

EU-Viet Nam Joint Committee
Sub-committees and specialised working groups

- (1) Sub-committee on [Political issues];
 - (2) Sub-committee on [Trade and Investment];
 - (3) Sub-committee on [Sustainable Development];
 - (4) Sub-committee on [Good governance, Rule of law and Human Rights]
-

ANNEX B

Terms of reference**of sub-committees and specialised working groups established under the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part***Article 1*

1. At its meetings, each sub-committee and specialised working group may discuss the implementation of the Agreement in the areas it covers. The Sub-committee on Good Governance, Rule of Law and Human Rights may elaborate cooperation on rule of law, good governance and exchange information on human rights cooperation upon the agreed agenda but shall not cover the issues discussed within the framework of the Viet Nam – EU Human Rights Dialogue.

2. The sub-committees and specialised working groups may also discuss subjects or specific projects related to the relevant area of bilateral cooperation.

Article 2

The sub-committees and specialised working groups shall work under the authority of the Joint Committee. They shall report and transmit their minutes and conclusions to the Chair of the Joint Committee within 30 calendar days after each meeting.

Article 3

1. The sub-committees and specialised working groups shall be composed of representatives of both sides.
2. Upon agreement of the Parties, the sub-committees and specialised working groups may invite experts to their meetings and may hear them regarding specific points on the agenda, as appropriate.

Article 4

The sub-committees and specialised working groups shall be co-chaired/chaired alternatively by the Party holding the Chair of the Joint Committee.

Article 5

A representative of the European Union and a representative of the Government of the Socialist Republic Viet Nam shall act jointly as Secretaries of the sub-committees and specialised working groups.

Article 6

1. The sub-committees and specialised working groups shall meet whenever circumstances require upon agreement of the Parties, on the basis of a written request from either Party, and at least once a year. Each meeting shall be held at a place and date agreed by the Parties.
2. Where one Party requests a meeting of a sub-committee or a specialised working group, the Secretary of the other Party shall reply within 20 working days of receipt of that request. In cases of particular urgency, sub-committees and specialised working groups meetings may be convened at shorter notice, subject to the agreement of the Parties.
3. Meetings of the sub-committees and specialised working groups shall be jointly convened by the two Secretaries.
4. Before each meeting, each Party shall inform the Chair of the intended composition of its delegation.

Article 7

1. Either Party may request the Chair to place an item on the agenda of a meeting of a sub-committee or a specialised working group. Items for inclusion on the agenda shall be submitted to the Secretaries at least 20 working days before the date of the meeting in question. Any supporting documentation shall be provided to the Secretaries at least 20 working days before the meeting.

2. The Secretaries shall communicate the draft agenda to the Parties not later than 10 working days before the meeting. The agenda shall be finalised upon the agreement of both Parties. In exceptional circumstances, upon agreement of the Parties, items may be added to the agenda at short notice.

Article 8

1. The Secretaries shall jointly draw up draft minutes of each meeting.
2. The meetings of the sub-committees and specialised working groups shall not be public, unless otherwise decided.

Article 9

1. Each Party shall bear the expenses it incurs as a result of participating in the meetings of the sub-committees and specialised working groups, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.
 2. Each Party shall bear the expenses it incurs in connection with interpreting at meetings and translation.
 3. The Party hosting the meeting shall bear the expenses in connection with the organisation of meetings and reproduction of documents.
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COMMISSION IMPLEMENTING DECISION (EU) 2018/1583**of 18 October 2018****amending Annexes I and II to Decision 2006/766/EC as regards the import of bivalve molluscs and fishery products from Peru and Myanmar for human consumption***(notified under document C(2018) 6778)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽¹⁾, and in particular Article 11(1) thereof,

Whereas:

- (1) Regulation (EC) No 854/2004 provides that products of animal origin are to be imported only from a third country or part of a third country that appears on a list drawn up in accordance with that Regulation.
- (2) Regulation (EC) No 854/2004 also provides that when drawing up and updating such lists, account is to be taken of Union controls in third countries and guarantees provided by the competent authorities of third countries, as regards compliance or equivalence with the Union feed and food law and animal health rules as specified in Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽²⁾, and in particular Article 48(3) thereof.
- (3) Commission Decision 2006/766/EC ⁽³⁾ lists those third countries, which satisfy the criteria referred to in Regulation (EC) No 854/2004 and are therefore able to guarantee that those products meet the sanitary conditions laid down in Union legislation to protect the health of consumers, and can be exported accordingly to the Union. Accordingly, Annex I to that Decision sets out a list of third countries from which imports of bivalve molluscs, echinoderms, tunicates and marine gastropods for human consumption are permitted, while Annex II thereto sets out a list of third countries and territories from which imports of fishery products for human consumption, other than those listed in Annex I, are permitted. The lists set out in Annexes I and II to Decision 2006/766/EC also indicate restrictions concerning such imports from certain third countries.
- (4) Peru is included in the list in Annex I to Decision 2006/766/EC with an indication that ‘only frozen or processed bivalve molluscs, echinoderms, tunicates and marine gastropods’ may be imported into the Union from that third country. However, following an outbreak of Hepatitis A related to the consumption of bivalve molluscs imported from Peru and contaminated with that virus the Commission adopted Decision 2008/866/EC ⁽⁴⁾ suspending imports from Peru as regards those products.
- (5) The Peruvian competent authority was requested to provide satisfactory guarantees to ensure that the shortcomings identified in relation to the monitoring system for virus detection in live bivalve molluscs were corrected. The period of application of Decision 2008/866/EC has been extended several times and will expire on 30 November 2018.
- (6) The last Union audit in Peru to evaluate the control system in place governing the production of bivalve molluscs intended for export to the Union took place from 25 September to 5 October 2017. According to the conclusions of this audit, and the guarantees provided by the Peruvian authorities, eviscerated aquaculture scallops are the only bivalve molluscs for which it can be considered that the Peruvian authorities can provide

⁽¹⁾ OJ L 139, 30.4.2004, p. 206.

⁽²⁾ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).

⁽³⁾ Commission Decision 2006/766/EC of 6 November 2006 establishing the lists of third countries and territories from which imports of bivalve molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted (OJ L 320, 18.11.2006, p. 53).

⁽⁴⁾ Commission Decision 2008/866/EC of 12 November 2008 on emergency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption (OJ L 307, 18.11.2008, p. 9).

sufficient guarantees to comply with the EU import requirements. Therefore, the authorization of imports of bivalve molluscs from this country should be limited to eviscerated aquaculture scallops. Accordingly, the entry for Peru in the list in Annex I to Decision 2006/766/EC should include that restriction.

- (7) Myanmar is included in the list in Annex II to Decision 2006/766/EC with an indication that 'only wild caught frozen fishery products' may be imported into the Union from that third country.
- (8) The Myanmar competent authority requested the Commission to withdraw the restriction on the current list and to authorise the imports of aquaculture and fishery products into the Union. Two Union controls took place in November 2016 and March 2018 to evaluate whether the official control system put in place by the Myanmar authorities can guarantee that the conditions of production of aquaculture and fishery products in Myanmar destined for export to the Union are in line with the requirements laid down in Union legislation and in particular with the health attestations contained in the model health certificate laid down in Appendix IV to Annex VI to Commission Regulation (EC) No 2074/2005 ⁽¹⁾.
- (9) Considering the favourable outcome of those controls, the inclusion of Myanmar in the Annex to Commission Decision 2011/163/EU ⁽²⁾ and the guarantees provided by the competent authorities of Myanmar, the imports of fishery products intended for human consumption, including those from aquaculture should be permitted without any restriction.
- (10) Therefore, Decision 2006/766/EC should be amended accordingly.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2006/766/EC is amended as follows:

- (a) in Annex I, the entry for Peru is replaced by the following:

'PE	PERU	Only eviscerated <i>Pectinidae</i> (scallops) of aquaculture origin'
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- (b) in Annex II the entry for Myanmar is replaced by the following:

'MM	MYANMAR'	
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Article 2

This Decision will enter into force on 1 December 2018.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 18 October 2018.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

⁽¹⁾ Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004 (OJ L 338, 22.12.2005, p. 27).

⁽²⁾ Commission Decision 2011/163/EU of 16 March 2011 on the approval of plans submitted by third countries in accordance with Article 29 of Council Directive 96/23/EC (OJ L 70, 17.3.2011, p. 40).

