

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**

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⁾ ('the basic anti-dumping Regulation'), and in particular Article 14(5) thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽²⁾ ('the basic anti-subsidy Regulation'), and in particular Article 24(5) thereof,

After informing the Member States,

Whereas:

- (1) On 11 August 2017, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* ⁽³⁾ ('the AD notice of initiation'), the initiation of an anti-dumping proceeding ('the anti-dumping proceeding') with regard to imports into the Union of new and retreaded tyres for buses or lorries originating in the People's Republic of China ('PRC') following a complaint lodged on 30 June 2017 by the coalition against unfair tyres imports ('the complainant') on behalf of producers representing more than 45 % of the total Union production of new and retreaded tyres for buses or lorries.
- (2) On 14 October 2017, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽⁴⁾ ('the AS notice of initiation'), the initiation of an anti-subsidy proceeding ('the anti-subsidy proceeding') with regard to imports into the Union of new and retreaded tyres for buses or lorries originating in the PRC following a complaint lodged on 31 August 2017 by the complainant on behalf of producers representing more than 45 % of the total Union production of new and retreaded tyres for buses or lorries.

1. PRODUCT CONCERNED AND LIKE PRODUCT

- (3) The product subject to registration ('the product concerned') for both proceedings are new and retreaded tyres for buses or lorries with a load index exceeding 121 originating in the PRC, currently falling within CN codes 4011 20 90 and ex 4012 12 00. These CN codes are given for information only.

2. REQUEST

- (4) The complainant submitted registration requests pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation on 19 August 2017 and on 5 October 2017 respectively. The complainant requested that imports of the product concerned be made subject to registration so that measures may subsequently be applied against those imports from the date of such registration.

3. GROUNDS FOR REGISTRATION

- (5) According to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ C 264, 11.8.2017, p. 14.

⁽⁴⁾ OJ C 346, 14.10.2017, p. 9.

- (6) According to the complainant registration is justified as the product concerned is being dumped and subsidised. Significant injury to the Union industry, which is difficult to repair, is being caused by low-priced imports.
- (7) The Commission examined the request in the light of Article 10(4) of the basic anti-dumping Regulation and Article 16(4) of the basic anti-subsidy Regulation.
- (8) With respect to the dumping part of the request, the Commission verified whether the importers were aware, or should have been aware, of the dumping as regards the extent of the dumping and the injury alleged or found. It also analysed whether there was a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.
- (9) With respect to the subsidy part of the request, the Commission verified whether there are critical circumstances where, for the subsidised product in question, injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefitting from countervailable subsidies and whether it is deemed necessary to assess countervailing duties retroactively on those imports in order to preclude the recurrence of such injury.

3.1. Awareness of the importers of the dumping, the extent thereof and the alleged injury

- (10) As regards dumping, the Commission has at its disposal sufficient evidence that imports of the product concerned from PRC are being dumped. In particular, the complainant provided evidence on the normal value based on total cost of production plus a reasonable amount for selling, general and administrative expenses and for profits, based on the choice of the United States of America as analogue country.
- (11) The evidence of dumping is based on a comparison of the normal values thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. As a whole, and given the extent of the dumping margins alleged of at least 74 %, this evidence provides sufficient support at this stage that the exporters practice dumping. The complaint also provided sufficient evidence of alleged injury.
- (12) That information was contained in the notice of initiation for this proceeding on 11 August 2017. By its publication in the *Official Journal of the European Union*, the notice is a public document accessible to all importers. Therefore, the Commission considered that the importers were aware, or should have been aware, of the alleged dumping practices, the extent thereof and the alleged injury at the latest at that moment. It thus concluded that the first criterion for registration was met with respect to the dumping part of the request.

3.2. Further substantial rise in imports

- (13) The volume of imports of the product concerned increased by 14,3 % in the period from April to September 2017 when compared to the volume of imports during the same period in 2016. Consistent with recent findings in other investigations ⁽¹⁾, the Commission considered such an increase in imports to be substantial.
- (14) Therefore, the Commission concluded that the second criterion for registration for the dumping part of the request was also met.

3.3. Other circumstances

- (15) The complainant also included sufficient evidence in the complaint and in the request for registration on the decreasing trend of the import sales prices. According to the publicly-available Eurostat statistics the unit value of imports from the PRC was 38 % lower in the period April to September 2017 than imports from other origins. This is critically low for a price-sensitive industry such as the tyres industry.

⁽¹⁾ Commission Implementing Regulation (EU) 2015/2325 of 11 December 2015 making imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation subject to registration, OJ L 328, 12.12.2015, p. 104, at recital 9 (namely, an increase of 24 %); Commission Implementing Regulation (EU) 2016/1357 of 9 August 2016 making imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China subject to registration, OJ L 215, 10.8.2016, p. 23, at recital 7 (namely, an increase of 15 %).

- (16) In light of the timing, the volume of the dumped imports and other circumstances (such as the decline in the Union industry's sales, turnover, employment and profit notably on the lower market segment) are likely to seriously undermine the remedial effect of any definitive duties, unless such duties are applied retroactively. In addition, given the initiation of the current proceedings, it is reasonable to assume that the imports of the product concerned may further increase prior to the adoption of provisional measures, if any, and importers could rapidly build up stocks.
- (17) Under those circumstances, the Commission concluded that the third criterion for registration for the dumping part of the request was also met.

3.4. Injury, which is difficult to repair, is caused by massive imports of a subsidised product in a relatively short period

- (18) As regards subsidisation, the Commission has at its disposal sufficient evidence that imports of the product concerned from the PRC are being subsidised. The alleged subsidy practices consist, namely, of direct transfer of funds and potential direct transfers of funds or liabilities, government revenue forgone or not collected, and government provision of goods or services for less than adequate remuneration. This includes, for example, evidence of the existence of various grants, preferential loans and directed credits by State-owned banks as well as private banks, export credits and export guarantees and insurances; government provision of land, energy, water and raw materials for producing the product concerned; and income tax reductions and exemptions, import tariff rebates and VAT exemptions and rebates.
- (19) It is alleged that those measures are subsidies since they involve a financial contribution from the Government of the PRC or other regional and local governments (including public bodies) and confer a benefit to the exporting producers of the product concerned. They are alleged to be contingent upon export performance and/or the use of domestic over imported goods and/or are limited to certain sectors and/or types of enterprises and/or locations, and are therefore specific and countervailable.
- (20) Therefore, the available evidence at this stage tends to indicate that the exports of the product concerned are benefiting from countervailable subsidies.
- (21) Furthermore, the Commission has at its disposal sufficient evidence that the exporters' dumping and subsidy practices are causing material injury to the Union industry. In the complaint and the subsequent submissions related to the requests for registration, the evidence regarding the price and volume of imports shows a massive increase of imports in absolute terms and in terms of market share in the period between 2013 and 2016. Specifically, the evidence available shows that Chinese exporters have almost doubled the volume of the product concerned imported into the Union, from 2,3 to 4,4 million units (+ 2,1 million units), which resulted in a sharp increase of market share from 13,2 % to 20,9 %. The volume and prices of the product concerned have had a negative impact on the quantities sold and level of the prices charged in the Union market and the market share held by the Union industry. This is resulting in substantial adverse effects on the overall performance and the financial situation of the Union industry. The evidence concerning the injury factors set out in Article 3(5) of the basic anti-dumping Regulation and Article 8(4) of the basic anti-subsidy Regulation consists of data contained in the complaints and the subsequent submissions regarding registration, supported by publicly available data from Eurostat.
- (22) In addition, the Commission assessed at this stage whether the injury suffered was difficult repair. Once the customers of the Union industry get accustomed to significantly lower prices from Chinese competitors they are unlikely to accept higher prices from the Union industry even if, hypothetically, the Commission were to impose countervailing measures without retroactive effect in the future. Such threat of permanent loss of market share or reduced income constitutes an injury which is difficult to repair. Moreover, the retreading business of the Union industry may become unsustainable and hard to re-establish if its base is eroded by continuing low-priced imports of new tyres from China.

3.5. Preclusion of recurrence of injury

- (23) Finally, given the data set out in recital 21 and the considerations laid down in recital 22 the Commission deemed it necessary to prepare the potential retroactive imposition of measures by imposing registration in order to preclude the recurrence of such injury.

4. PROCEDURE

- (24) Therefore, the Commission has concluded that there is sufficient evidence to justify making the imports of the product concerned subject to registration in accordance with Article 14(5) of the basic anti-dumping Regulation and with Article 24(5) of the basic anti-subsidy Regulation.

- (25) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

5. REGISTRATION

- (26) Pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation imports of the product concerned should be made subject to registration for the purpose of ensuring that, should the investigation result in findings leading to the imposition of anti-dumping and/or countervailing duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with the applicable legal provisions.
- (27) Any future liability would emanate from the findings of the anti-dumping and the anti-subsidy investigations respectively.
- (28) The allegations in the complaint requesting the initiation of an anti-dumping investigation estimate an average dumping margin of 74-152 % and an average underselling margin of 26 %-37 % for the product concerned. The amount of possible future liability is set at the level of underselling estimated on the basis of the complaint, namely 26 %-37 % *ad valorem* on the CIF import value of the product concerned.
- (29) At this stage of the investigation is not yet possible to estimate the amount of subsidisation.. The allegations in the complaint requesting the initiation of an anti-subsidy investigation estimate an underselling to represent 26 %-37 % for the product concerned. The amount of possible future liability is set at the level of underselling estimated on the basis of the anti-subsidy complaint, namely 26 %-37 % *ad valorem* on the CIF import value of the product concerned.

6. PROCESSING OF PERSONAL DATA

- (30) Any personal data collected in the context of this registration will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EU) 2016/1036 and Article 24(5) of Regulation (EU) 2016/1037, to take the appropriate steps to register imports into the Union of new and retreaded tyres 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. Registration shall expire nine months following the date of entry into force of this Regulation.
3. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 21 days from the date of publication of this Regulation.

Article 2

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

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

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

Done at Brussels, 1 February 2018.

For the Commission

The President

Jean-Claude JUNKER
