

**COMMISSION IMPLEMENTING REGULATION (EU) 2020/1210****of 19 August 2020****re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd following the judgment of the General Court in case T-650/17**

THE EUROPEAN COMMISSION,

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 <sup>(1)</sup>, and in particular Articles 9(4) and 14(1) thereof,

Whereas:

**1. PROCEDURE**

- (1) On 13 May 2013 the Council adopted Council Implementing Regulation (EU) No 430/2013 <sup>(2)</sup> imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China ('PRC') and Thailand and terminating the proceeding with regard to Indonesia ('the original investigation').
- (2) On 12 June 2013, one cooperating Chinese exporting producer, Jinan Meide Castings Co., Ltd ('Jinan Meide' or 'the applicant'), lodged an application at the General Court of the European Union ('the General Court') seeking the annulment of Implementing Regulation (EU) No 430/2013 in so far as it applies to the applicant.
- (3) On 30 June 2016, the General Court in its judgment <sup>(3)</sup> ('the first judgment') found that the rights of defence of Jinan Meide were breached by the rejection of its request for disclosure of normal value calculations using confidential data of an analogue country producer. Therefore, the General Court annulled the Implementing Regulation (EU) No 430/2013 in so far as it imposed an anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, manufactured by Jinan Meide.
- (4) Following this first judgment, the Commission published a notice <sup>(4)</sup> concerning the partial reopening of the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the PRC. The reopening was limited in scope to the implementation of the judgment of the General Court with regard to Jinan Meide.
- (5) On 26 June 2017, the Commission adopted Implementing Regulation (EU) 2017/1146 <sup>(5)</sup> re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the PRC, manufactured by Jinan Meide Castings Co., Ltd ('the contested Regulation').

**1.1. The Judgment of the General Court of the European Union**

- (6) Jinan Meide Castings Co., Ltd ('Jinan Meide') challenged the contested Regulation before the General Court. On 20 September 2019 the General Court issued its judgment in case T-650/17 <sup>(6)</sup> regarding the contested Regulation ('the second judgment').

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> OJ L 129, 14.5.2013, p. 1.

<sup>(3)</sup> Case T-424/13 Jinan Meide Castings Co Ltd. v Council.

<sup>(4)</sup> OJ C 398, 28.10.2016, p. 57.

<sup>(5)</sup> OJ L 166, 29.6.2017, p. 23.

<sup>(6)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, Jinan Meide Casting Co. Ltd v European Commission, T-650/17, ECLI:EU:T:2019:644.

- (7) The General Court found that the Commission did not comply with the provisions of Article 2(10)(a) of Council Regulation (EC) No 1225/2009 <sup>(7)</sup> on protection against dumped imports from countries not members of the European Community ('the basic Regulation') by determining the market value of the physical differences between the like product types on the basis of the export price of the non-matching product types, which was the price paid in the European Union for that good by the first independent customer.
- (8) According to the General Court, the fact that the export price of the non-matching product types constituted the price paid by the first independent customer in the European Union could not be considered as a reasonable estimate of the market value. In view of the objective of Article 2(7)(a) and (10) of the basic Regulation, that notion does not only imply that the price in question is paid by an independent customer in the context of an arm's length transaction, but that it must also be possible to ensure that that price is the normal result of market forces. However, according to the General Court, this cannot be the case where that price is likely to be affected by dumping.
- (9) In the General Court's view, the Commission had used an unreasonable methodology to reflect the differences in physical characteristics between product types produced in the analogue country (India) and those exported from the PRC. In the absence of data relating to domestic production in the analogue country, the Commission used the difference in prices observed for the export sales of the various product types from the PRC. The General Court considered that prices likely to be affected by dumping and originating in a non-market economy country cannot form the basis for a reasonable estimate of the market value of differences in physical characteristics as such prices may not be the result of normal market forces.
- (10) Even though the General Court did not specify what methodology should have been used to reflect the differences in physical characteristics between the like product types, it indicated that the price actually paid or payable in the European Union for the like product, duly adjusted if necessary to include a reasonable profit margin, may serve, under certain conditions, as a reasonable basis for determining normal value <sup>(8)</sup>.
- (11) In light of the above considerations, the General Court annulled the contested Regulation.

### 1.2. Implementation of the General Court's second judgment

- (12) According to Article 266 of the Treaty on the Functioning of the European Union ('TFEU'), the Union institutions are obliged to take the necessary steps to comply with the Court's judgments. In case of an annulment of an act adopted by the Union institutions in the context of an administrative procedure, such like the anti-dumping investigation in this case, compliance with the General Court's judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the General Court is eliminated <sup>(9)</sup>.
- (13) According to the case-law of the Court of Justice, the procedure for replacing an annulled act may be resumed at the very point at which the illegality occurred <sup>(10)</sup>. That implies, in particular, that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. For instance, where a Regulation imposing definitive anti-dumping measures is annulled, the proceeding remains open because it is only the act concluding the proceeding that has disappeared from the Union legal order <sup>(11)</sup>, except in cases where the illegality occurred at the stage of initiation. The resumption of the administrative procedure with the re-imposition of anti-dumping duties on imports that were made during the period of application of the annulled Regulation cannot be considered as contrary to the rule of non-retroactivity <sup>(12)</sup>.

<sup>(7)</sup> OJ L 343, 22.12.2009, p. 51, now Regulation (EU) 2016/1036.

<sup>(8)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 113.

<sup>(9)</sup> Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28.

<sup>(10)</sup> Case C-415-96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Spheriques v Council* [2000] ECR I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] ECR II-1753, paragraphs 99 and 142; Joined cases T-267/08 and T-279/08 *Region Nord-Pas de Calais v Commission* [2011] ECLI:EU:T:2011:209, paragraph 83.

<sup>(11)</sup> Case C-415/96 *Spain v Commission*, ECR I-6993, paragraph 31; Case C-458/98 P *Industries des Poudres Spheriques v Council* [2000] ECR I-8147, paragraphs 80 to 85.

<sup>(12)</sup> Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg* [2018], ECLI:EU:C:2018:187, paragraph 79; and C-612/16 C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 58.

- (14) In the present case, the General Court annulled the contested Regulation on the grounds that the Commission used an unreasonable methodology to reflect the differences in physical characteristics between product types produced in the analogue country and those exported from the PRC. According to the General Court, it could not be excluded that the error had a significant impact on the rate of the dumping margin of Jinan Meide.
- (15) Findings in the contested Regulation, which were contested but rejected by the General Court and therefore did not lead to the annulment of the contested Regulation, remain fully valid and are hereby incorporated and confirmed <sup>(13)</sup>.
- (16) Following the General Court's second judgment, the Commission decided by means of a notice <sup>(14)</sup> ('the re-opening notice') to re-open the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the PRC, manufactured by Jinan Meide Castings Co., Ltd that lead to the adoption of the contested Regulation and to resume the investigation at the point at which the irregularity occurred. The re-opening was limited in scope to the implementation of the second judgment of the General Court.
- (17) Subsequently, on 29 November 2019, the Commission decided to make imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the PRC, manufactured by Jinan Meide Castings Co., Ltd, subject to registration <sup>(15)</sup> and requested national customs authorities to await the publication of the relevant Commission Implementing Regulation re-imposing the duties before deciding on any claims for repayment and remission of anti-dumping duties insofar as imports concerning Jinan Meide were concerned ('the registration Regulation').
- (18) The Commission informed interested parties of the re-opening and invited them to comment.

### 1.3. Comments from interested parties

- (19) The Commission received comments from the complainants in the original investigation, four unrelated importers and Jinan Meide.
- (20) One of the two original complainants expressed its support for the re-opening and the registration of Jinan Meide's imports.
- (21) Four unrelated importers came forward. All importers expressed their disappointment that the Commission would re-open the original investigation following a second judgment annulling the anti-dumping duties. They also commented on the alleged unlawfulness of the registration of imports and the Commission's possible intention to re-impose duties retroactively. They also expressed their disappointment about the request to the customs authorities to put on hold the repayment of the previously collected duties. In their view, there should be no anti-dumping duty levied on products from Jinan Meide. One of the four importers asked for a joint hearing with Jinan Meide, where the two parties jointly presented their comments.
- (22) One importer expressed disagreement with the Commission's decision to order the registration for imports on the basis of a number of elements. First, it argued that there were insufficient reasons for registration and a lack of proportionality. Specifically, the importer claimed that the reasons put forward for the Commission to register imports did not match with the circumstances of the case at hand: in recital 17 of the registration Regulation, the Commission stated that the registration of imports could be applied, for instance: 'in order to secure the payment in case of application of duties or in anti-circumvention cases', whereas in the proceeding at hand the registration aimed at facilitating the collection of anti-dumping duties after reopening of the investigation.
- (23) In this respect, the Commission recalls that the registration Regulation refers in recital 17 to the list of reasons for registration in Article 14(5) of the basic Regulation, which is non-exhaustive, giving the Commission discretion to decide whether registration of imports is warranted in a given case. Furthermore, recital 18 of the registration Regulation clearly explains the reason to register imports, which is to ensure the effectiveness of the measures:

<sup>(13)</sup> Case T-650/17 Jinan Meide Casting Co. Ltd, ECLI:EU:T:2019:644, paras. 333 – 342.

<sup>(14)</sup> OJ C 403, 29.11.2019, p. 63.

<sup>(15)</sup> OJ L 308, 29.11.2019, p. 77.

'imports should be subject to the correct anti-dumping liability without undue interruption from the date of entry into force of the anti-dumping Regulation until the re-imposition of the corrected duties, if any.' Recital 18 of the registration Regulation explains that the conditions of Article 10(4) of the basic Regulation are not applicable to the case at hand, as the purpose of the registration is not retroactive collection of duties, but rather to ensure the effectiveness of the measures.

- (24) Second, according to the importer, the mere reason of facilitating the collection of duties would be disproportionate as it is too burdensome for importers.
- (25) The Commission recalls that the registration Regulation specifically provides that the rate of the duty owed as a result of the re-opening cannot exceed the amount initially imposed by the partially annulled Regulation with respect to the period between the re-opening of the investigation and the date of entry into force of the results of the reopening. Furthermore, the registration Regulation is limited in time, in order to ensure that importers are not subject to registration during unreasonable periods of time, precisely in order to avoid an unnecessary burden. Moreover, the registration technically does not impose any burden on importers but only on the national authorities that need to put in place the registration system, and hence cannot be disproportionate for them.
- (26) Third, the importer further claimed that that the interruptions in this case would be undue, as they were a consequence of illegalities in the Implementing Regulation established by the General Court.
- (27) The Commission recalls that the reopening of the case in order to correct the mistakes found by the General Court is in line with the case law of the Court of Justice as further explained at recitals 13 to 17.
- (28) Four, with regard to the obligation to comply with the judgment according to Article 266 TFEU, the importer expressed doubts as to the possibility to retroactively impose duties on products which were not covered by any relevant legal act at the point when they entered free circulation. The importer further argued that continuous imposition of duties would be against the rule of retroactivity of Article 10(4) of the basic Regulation.
- (29) The Commission recalls that it is settled case-law that, when the EU judiciary declares that a Regulation imposing duties is invalid, such duties are to be considered as never having been lawfully owed within the meaning of Article 236 of the previously applicable Customs Code established by Regulation (EEC) No 2913/92<sup>(16)</sup> and, in principle, are required to be repaid by the national customs authorities under the conditions set out to that effect<sup>(17)</sup>. However, the Court of Justice also held that the exact scope of a declaration of invalidity by the court in a judgment and, consequently, of the obligations that flow from it must be determined in each specific case by taking into account not only the operative part of that judgment, but also the grounds that constitute its essential basis<sup>(18)</sup>.
- (30) In the case at hand, the General Court found that the Commission made an error by using a methodology that did not make a reasonable estimate of the market value of the differences in physical characteristics between the non-matching product types and the directly comparable product types<sup>(19)</sup>. The application of that methodology did not result in a fair comparison between the normal value and export prices. Furthermore, that methodology did not demonstrate that the adjustment to the normal value of the non-matching product types made in this way preserved the reasonable determination of that normal value, that is, a determination based on values and parameters which can be considered to be the normal result of market forces. The application of the erroneous methodology was therefore found not in accordance with Article 2(7)(a) or Article 2(10) ab initio and (a) of the basic Regulation.
- (31) Furthermore, the Court of Justice has consistently held that Article 10(1) of the basic Regulation does not preclude acts from re-imposing anti-dumping duties on imports that were made during the period of application of the regulations declared to be invalid. Consequently, as explained in recitals 14 to 17 of the registration Regulation, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be considered as contrary to the rule of non-retroactivity.

<sup>(16)</sup> OJ L 302, 19.10.1992, p. 1.

<sup>(17)</sup> See, to that effect, Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, and the judgments quoted in paragraph 62 thereof, namely, C-351/04 *Ikea Wholesale*, of 27 September 2007, EU:C:2007:547, paragraphs 66 to 69, and, C-365/15, *Wortmann*, of 18 January 2017 EU:C:2017:19, paragraph 34.

<sup>(18)</sup> C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, para 63 and the case-law cited therein.

<sup>(19)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 96.

- (32) Fifth, the importer claimed that the Commission's actions in this case undermined the legal certainty for the importers, as they could not predict whether their imports would or would not be subject to anti-dumping duties.
- (33) The Commission complied with the principle of legal certainty in respect of the importers by the means of publishing a detailed registration Regulation. The Commission complied by re-opening the investigation with the purpose of correcting the mistakes established in the Court judgments.
- (34) Sixth, the importer further submitted comments on the Commission's request to the customs authorities to hold the refunds of past duties, mentioning the following elements. First, the obligation to comply with the judgment would allegedly require that duties are repaid in full and there applications in that respect should not be put on hold.
- (35) As explained in the re-opening notice as well as the registration Regulation, since the amount of liability resulting from the re-opening is uncertain, the Commission requested national customs authorities to await the outcome of the re-opening before deciding on any repayment claim concerning the anti-dumping duties annulled by the General Court with respect to Jinan Meide. It is established case law that the scope and grounds of the declaration of invalidity by the Court in a judgment should be determined in each specific case and may be such that would not necessitate the full and immediate repayment of the relevant duties <sup>(20)</sup>.
- (36) In addition, concerning the lack of retroactivity for unregistered imports, the importer claimed that if the Commission decides to apply the retroactivity rule according to Article 10 of the basic Regulation to the case at hand, this rule could not apply to imports made before 30 November 2019. According to the importer, such duties have never been lawfully owed and as such should be repaid in full.
- (37) According to the case law of the Court of Justice, resumption of the administrative procedure with the re-imposition of anti-dumping duties on imports that were made during the period of application of the annulled Regulation cannot be considered as contrary to the rule of non-retroactivity (see recitals 13 and 25).
- (38) Moreover, as concerns the alleged breach of the principle of legal certainty, the importer claimed that the request by the Commission to the national customs authorities to put on hold any refund applications in the case at hand undermines the principle of legal certainty.
- (39) Legal certainty is ensured for the importers by the registration Regulation which caps the amount of duties at the amount initially imposed by the partially annulled Regulation with respect to the period between the re-opening of the investigation and the date of entry into force of the results of the re-opening. In addition, the registration Regulation explains that, should the Commission establish, after the re-opening of the investigation, that the re-imposition of the duties is not warranted and the measures should be terminated, the repayment and/or the remittance of the duties will take place from the same date of entry into force of the partially annulled Regulation. Finally, to avoid additional burden and uncertainty for the affected actors, the registration is limited to a period of nine months, after which period the duties will be either repaid in full or adjusted according to the results of the re-opened investigation.
- (40) Lastly, the importer submitted that the judgments in cases C-256/16 and C-612/16 would not justify the imposition of registration or the request to the national authorities on refund applications, as those judgments were issued under the context of the previously applicable Customs Code established by Regulation (EEC) No 2913/92 and previously applicable basic Regulation (EC) No 1225/2009, which were replaced in the meantime. In particular, the importer points out that in case C-256/16 the Court of Justice of the European Union considered the measures in form of request made by the Commission to the national customs authorities to put on hold the refund applications as proportionate, especially due to the fact that *'any delay is being compensated for by the payment of interest.'* The importer claims that the relevant provision in Regulation (EEC) No 2913/92 is now replaced by Article 116(6) of the Union Customs Code <sup>(21)</sup> which explicitly indicates in that repayment of duties does not give rise to the payment of interest. Therefore, the importer claimed that the Commission cannot use the relevant considerations of the judgments in cases C-256/16 and C-612/16 to justify the imposition of registration or the instructions to the national authorities on refund applications.

<sup>(20)</sup> See case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, Judgment of the Court of 15 March 2018, paragraph 70.

<sup>(21)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (41) The Commission recalls that while Article 116(6) of the Union Customs Code indeed indicates that the repayment of duties does not give rise to the payment of interest, Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(22)</sup> provides for the compensatory interest in case of reimbursements following a judgment of the Court of Justice of the European Union. In the case at hand, since any repayments would be subject to a decision following the judgment of the Court of Justice, they would be subject to interest rate equal to 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* on the first calendar day of each month'. The argument on the lack of interest rate in case of repayments is therefore rejected.
- (42) Jinan Meide claimed that the Commission could not request the national customs authorities not to repay and/or remit duties that had been collected pursuant to contested Regulation. Allegedly the situation in the present case would be different from the one in the Deichmann judgment <sup>(23)</sup>. According to Jinan Meide, the contested Regulation was annulled in its entirety, which means that it had been removed from the legal order of the Union with retroactive effect, whereas in the Deichmann judgment the measures were declared to be invalid in the context of a reference for preliminary ruling. Additionally, in the Deichmann judgment the Court of Justice found that there were no factors 'capable of affecting the validity of the definitive regulation', whereas no such findings were made in the case at hand.
- (43) As explained in recital 13, the Commission, in accordance with the established case law <sup>(24)</sup>, can resume the proceedings at the very point at which the illegality occurred. In the case at hand, the Commission reopened the investigation with the purpose of rectifying the errors found by the General Court. The Deichmann judgment reiterated in paragraph 78 the general interpretation of Article 10(1): 'However, the wording of Article 10(1) of Regulation No 384/96 does not preclude such a resumption of the proceeding in a case in which the anti-dumping duties concerned have expired since that date, provided that such duties are re-imposed during their initial application period, [...]'. This interpretation of the General Court is general in nature and therefore applies also to the case at hand.
- (44) Jinan Meide also claimed that the Commission cannot re-impose the duties retroactively and thus claimed that the Commission's request to national customs authorities to await the publication of the new Implementing Regulation re-imposing the duties before deciding on the claims for repayment for previously levied duties was unfounded. This is because the contested Regulation was not a partial annulment, but a full annulment and hence the contested Regulation never existed in the legal order. Jinan Meide submits that the circumstances of the Deichmann case were different and the Commission cannot base its decisions in the case at hand on the findings in the Deichmann judgment. Jinan Meide also claimed the Commission was eroding the judicial protection afforded to parties affected by Union's administrative proceedings, by eroding the authority of the Court of Justice of the European Union. The practical effect of the Commission's approach would allegedly be that there was no point for a party affected by trade defence measures to bring an action against illegal measures.
- (45) Jinan Meide further claimed that the registration imposed by the Commission falls outside the scope of the reopening, as the judgment does not contain any findings that could form the basis for registration.
- (46) The reasons for registration in the case at hand were explained in recital 23. It is not necessary that the Court determine in detail every step of the anti-dumping procedure as the Commission has discretion to decide on the proceedings following a re-opening due to the Court's judgment, in line with relevant case law and the rules of the basic Regulation, including the rules concerning registration.
- (47) Furthermore, Jinan Meide claimed that there would be no legal basis for registration of imports in the case at hand, as neither Article 10(2), nor 10(4), 10(5), 11(4), 12(5) and 13(3) of the basic Regulation are applicable in this case. Jinan Meide also claimed that no derogation from the general principle of non-retroactivity applies as none of the exceptions to the general principle of non-retroactivity can be deemed to apply to the case at hand.

<sup>(22)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(23)</sup> Case C-256/16 Deichmann SE v Hauptzollamt Duisburg [2018], ECLI:EU:C:2018:187.

<sup>(24)</sup> Case C-415-96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Spheriques v Council [2000] ECR I-8147, paragraphs 80 to 85; Case T-301/01 Alitalia v Commission [2008] ECR II-1753, paragraphs 99 and 142; Joined cases T-267/08 and T-279/08 Region Nord-Pas de Calais v Commission [2011] ECLI:EU:T:2011:209, paragraph 83.

- (48) As explained in detail in recital 23, the basis to register is Article 14(5) of the basic Regulation. Recital 23 further explains that the conditions of Article 10(4) of the basic anti-dumping Regulation are not applicable to the case at hand, as the purpose of the registration is not retroactive collection of duties, but rather to ensure the effectiveness of the measures.
- (49) Jinan Meide also considered that none of the data from the investigation period, which covered the period from 1 January to 31 December 2011, could still be treated as confidential given the passing of time. Jinan Meide submitted that the General Court has considered, and the Court of Justice has confirmed, that a period of five years in itself to be sufficient for information to lose its qualification as business secrets or other confidential information.
- (50) Article 19 of the basic Regulation does not set up any time limit to the protection of confidential information. This is in line with Article 6.5 of the WTO Anti-Dumping Agreement which does not contain any time limit either and specifically provides that information for which confidential treatment was requested 'shall not be disclosed without specific permission of the party submitting it' without any time limitation. Therefore, the argument is rejected.

#### 1.4. Re-calculation of the dumping margin as regards Jinan Meide

- (51) It is recalled that as stated in recital 15 the parts of the contested Regulation that were contested but rejected by the General Court remain fully valid.
- (52) As was established during the original investigation, the non-matching product types represent 28 % of Jinan Meide's exports during the investigation period. 55 % of the applicant's total export volume were considered to be directly comparable product types and in respect of which the dumping margin was determined by calculating the normal value, on the basis of the domestic sales of the analogue country producer made in the ordinary course of trade or on the basis of constructed value. The remaining 17 % of that total volume were considered to be 'quasi-matching' product types, for which the dumping margin was determined by adjusting the normal value<sup>(25)</sup>. Only the methodology concerning the non-matching products constituting 28 % of Jinan Meide's export volume was contested by the applicant.
- (53) According to the General Court, Article 2(10)(a) of the basic Regulation provides that an adjustment is to be made for differences in the physical characteristics of the product concerned and that the amount of the adjustment is to correspond to a reasonable estimate of the market value of the difference<sup>(26)</sup>. However, that provision does not specify how such a reasonable estimate should be arrived at. Furthermore, the General Court noted that in order to re-establish the symmetry between the normal value of the like product and the export price of the product concerned, that provision does not require the amount of the adjustment thus assessed to accurately reflect such a market value, but only to constitute a reasonable estimate thereof.
- (54) Furthermore, the General Court stated that the Commission had a wide discretion both in assessing the normal value of a product and in assessing facts justifying the fairness of the comparison of normal value and export price made, with the vague concepts of reasonableness and fairness to be applied by the Commission in the context of those provisions having to be made concrete by it on a case-by-case basis, depending on the relevant economic context<sup>(27)</sup>.
- (55) According to the applicant, the contested methodology was based on the erroneous assumption that the market value of the physical differences was reflected in the export prices whereas, according to the Commission's own findings, the same export prices reflected the dumping at least partially. Furthermore, the applicant claimed that that methodology was based on the erroneous assumption that the export prices of the non-matching product types reflected a level of dumping equivalent to that found for those product types for which there was a directly comparable product type ('the directly comparable product types'). According to the applicant, that assumption is unreasonable and unverifiable<sup>(28)</sup>.

<sup>(25)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 65.

<sup>(26)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 49.

<sup>(27)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 50.

<sup>(28)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 54.

- (56) According to the General Court, the use of that methodology was likely to have had a significant impact on the calculation of the dumping margin determined for exports of non-matching product types <sup>(29)</sup>.
- (57) The General Court stated that in order to be able to determine the dumping margin in a reasonable and objective manner, the calculation of the normal value of a given product type must be based, in principle, on data independent of the export prices for which the Commission specifically seeks to assess, by establishing that normal value, the undervaluation to which they are subject <sup>(30)</sup>.
- (58) The General Court further stated that it was not demonstrated that the use of a constituent element of the export prices of the non-matching product types, in order to correct the normal value to which those prices are compared, was such as to re-establish the symmetry between those prices and that normal value in accordance with the objective of Article 2(10) of the basic Regulation. In particular, there was no indication that the ratio between the export price of each non-matching product type and the average unit export price of the directly comparable product types correctly reflected the value of the physical differences between the latter category of product type and the non-matching product type in question <sup>(31)</sup>.
- (59) The General Court stated that the contested methodology is implicitly based on the presumption that that price difference corresponds to the market value of the physical differences for all non-matching product types <sup>(32)</sup>. Consequently, this presumption implies that the dumping margin likely to affect the prices of certain specific non-matching product types and the export prices of directly comparable product types is at the same level. Otherwise, the price differences between the two categories of product types at issue may result, at least in part, from the differences in the dumping margin and therefore cannot be considered with sufficient reliability to reflect only the differences in physical characteristics <sup>(33)</sup>.
- (60) The General Court stated that the price actually paid or payable in the European Union for the like product, duly adjusted if necessary to include a reasonable profit margin' may serve, under certain conditions, as a reasonable basis for determining normal value. So for the purpose of a fair comparison, a reasonable estimate of the market value of the physical differences can be based, in the absence of other data available, on the difference between the price of the non-matching product types and the average price of the directly comparable product type at one or more Union producers <sup>(34)</sup>.
- (61) Using the approach outlined by the General Court, the Commission re-calculated the dumping margin of Jinan Meide in respect of the contested 28 % of its exports. The Commission used as normal value for these non-matching product types exported to the EU by Jinan Meide the actual sales price of the European industry for the same product type.
- (62) The Commission observed that there were a small quantity of Chinese exports (4,5 %) the Commission could not match with either the product types sold by the Indian producer or by the Union industry. This quantity corresponded to niche products for which the Commission did not receive specific information about their physical characteristics. Therefore, the Commission used the weighted average Indian normal value in the absence of a more appropriate method. The impact on the overall dumping margin was very minor. The Commission invited the exporting producer to comment on this method. The Commission also invited this exporting producer to provide full information about the physical characteristics of those niche products and an indication of the closest corresponding product type exported to the EU.
- (63) Under these circumstances, the re-calculated dumping margin for Jinan Meide is 75,1 %.

<sup>(29)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 66.

<sup>(30)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 74.

<sup>(31)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 77.

<sup>(32)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 79.

<sup>(33)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 82.

<sup>(34)</sup> Judgment of the General Court (Fifth Chamber) of 20 September 2019, *Jinan Meide Casting Co. Ltd v European Commission*, T-650/17, ECLI:EU:T:2019:644, para 113.



## 2. DISCLOSURE

- (64) On 23 June 2020, the Commission informed all interested parties of the above findings on the basis of which it was intended to propose to re-impose the anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, manufactured by Jinan Meide on the basis of the facts collected and submitted relating to the original investigation ('the final disclosure').
- (65) Following the final disclosure, Jinan Meide claimed that none of the European industry's data from the investigation period, which covered the period from 1 January to 31 December 2011, could still be treated as confidential given the passing of time. They have also requested that the Commission checked with the European industry whether their data was still to be treated confidential. Jinan Meide claimed that they did not have adequate access to the essential facts and considerations underlying the calculation. According to Jinan Meide, all data used in the calculation should be disclosed to them.
- (66) The Commission already replied to these comments in recital 50. In addition, in this case the Commission concluded that the Union producers provided good reasons showing that the information originally submitted should remain confidential. Jinan Meide requested the intervention of the Hearing Officer in this respect, who also confirmed that the data provided by the sampled Union producers was still confidential despite of the passage of time.
- (67) One importer also similarly claimed that the Commission provided only limited information in its final disclosure, from which the importers were not able to reconstruct the calculation method, which limits their rights of defence in this case and does not comply with the requirement of a good administration.
- (68) It is recalled that only Jinan Meide has received a full disclosure of its dumping calculation as it includes sensitive data. All other parties received the general disclosure and the additional disclosure, which explain the methodology used in the dumping calculation.
- (69) In reply to the information disclosed to the company (recital 62), Jinan Meide provided a list of the most comparable product types sold domestically by the Indian analogue country producer for all non-matching product types exported to the Union by Jinan Meide.
- (70) The Commission assessed Jinan Meide comments and concluded that the information provided allowed it to establish a normal value for all product types exported by Jinan Meide to the Union based on the information provided by the Indian analogue country producer. It was therefore no longer necessary to use information provided by the sampled Union producers to establish normal value, as referred to in recital 60. On this basis, the Commission established a revised duty rate on this basis at the level of 36,0 %.
- (71) Interested parties made a number of comments concerning the methodology and duty rate referred to in recitals 61 to 63. However, following the submission of additional information by Jinan Meide, the methodology was revised. Therefore, these comments became moot.
- (72) Jinan Meide also repeated their comments concerning the reopening of this case – that the retroactive imposition of the duties and the direction to the customs authorities not to repay/remit the illegally imposed duties and the registration of Jinan Meide's exports to the EU were all illegal. The same comments concerning retroactivity were submitted also by several importers.
- (73) The Commission already addressed this issue in recitals 21 to 48. The Commission considered that there is no retroactive imposition of duties, but only the establishment of the lawful amount of duties to be collected as regards Jinan Meide since the original measures were introduced. Moreover, the requests to the customs authorities seeks to ensure the proper collection of the anti-dumping liability.
- (74) Several importers also claimed that this reopening puts in question the effectiveness of the judicial review in the European Union.
- (75) The Commission replied to this comment in recital 33. The effectiveness of judicial review does not prevent the Commission from re-imposing anti-dumping duties at the proper amount in cases where the anti-dumping liability remains in place when implementing the judgments of EU courts.

- (76) On 14 July 2020, after reviewing the comments received from all interested parties concerning the disclosure of 23 June 2020, the Commission sent an Additional Disclosure informing interested parties of its decision to change the methodology to be used in the calculation of Jinan Meide's anti-dumping duty and informed them of the revised duty rate.
- (77) Several European producers commented on the list provided by Jinan Meide of the most comparable product types sold domestically by the Indian analogue country producer for all non-matching product types exported to the Union by Jinan Meide referred to in recital 69. The producers claimed that the name of the list was misleading, as the product types were not the most comparable, but rather had much lower prices than Jinan Meide's products to which they were supposed to be a match. Therefore, they considered the resulting calculation to be not valid and inadequate and that it distorts the dumping calculation. To support this argument, reference was made to the price list of Jinan Meide.
- (78) The Commission did not agree with this argument. It considered the list provided by Jinan Meide to reasonably reflect the most comparable types. In addition, no interested parties provided an alternative list of more comparable product types in support of their allegations. Furthermore, the reference to the price list of Jinan Meide cannot be relevant in this respect, since prices of Jinan Meide were affected by dumping and cannot be used as a reference. Therefore, this argument was dismissed.
- (79) Jinan Meide welcomed the use of the data of the analogue country to calculate the normal value for the non-matching types, as suggested by Jinan Meide. Yet, Jinan Meide proposed, for non-matching product types, to adjust the average Indian normal value by applying the ratio between the average price of the sampled Union producers and the non-matching product type. Jinan Meide further claimed that this methodology was feasible, since all matching product types were allegedly also sold by the sampled Union producers.
- (80) However, the allegation of Jinan Meide is incorrect. According to the list of product types sold by the sampled Union producers, which was also available to Jinan Meide, there were numerous matching products types that were not sold by the sampled Union producers. Furthermore, since Jinan Meide made available additional information about the originally non-matching product types, it was no longer necessary to use information provided by the sampled Union producers to establish normal value, as mentioned in recital 70. Therefore, the Commission found that it was not appropriate or necessary to use the methodology proposed by Jinan Meide. Jinan Meide also failed to substantiate any request for further adjustments on the basis of the final calculation.
- (81) One importer repeated its comment about their inability to comment on the concrete calculation, as the details of the underlying calculation methodology were not made available to them and requested more information on how the finally proposed duty rate was calculated in order to provide more meaningful comments. They also repeated their comment concerning the refunds for duties paid on the basis of an annulled Regulation for imports prior to registration.
- (82) The arguments above was addressed in recital 68 and recitals 34 to 46 respectively.

### 3. LEVEL OF MEASURES

- (83) Given that the re-established dumping margin is lower than the injury margin, in accordance with the applicable rules, the anti-dumping duty rate should be set at the level of the dumping rate. Accordingly, the re-imposed antidumping duty rate for Jinan Meide is as follows.

Company	Dumping margin (%)	Injury margin (%)	Duty Rate (%)
Jinan Meide Castings Co., Ltd	36,0 %	84,4 %	36,0 %

- (84) The revised level of anti-dumping duties applies from the date of entry into force of this Regulation. As stated in recital 21 of the registration Regulation, no duties higher than 39,2 % shall be collected prior to the entry into force of this Regulation. Since the anti-dumping duty resulting from this proceeding is lower, customs authorities are instructed to collect the appropriate amount on imports concerning Jinan Meide (namely 36,0 %) and refund any excess amount collected so far in accordance with the applicable customs legislation.

- (85) In view of Article 109 of Regulation (EU, Euratom) 2018/1046, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should 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* on the first calendar day of each month.

#### 4. CONCLUSION

- (86) On the basis of the above, the Commission considered it was appropriate to re-impose the definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling under CN code ex 7307 19 10 (TARIC codes 7307 19 10 10 and 7307 19 10 20), originating in the PRC and manufactured by Jinan Meide at the rate of 36,0 %.

##### 4.1. Duration of measures

- (87) As a result of an expiry review <sup>(35)</sup> of this product which imposed a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the PRC and Thailand, the anti-dumping duties established in the original investigation are maintained until 24 July 2024.
- (88) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

##### Article 1

1. A definitive anti-dumping duty is hereby imposed on the imports into the Union of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling under CN code ex 7307 19 10 (TARIC codes 7307 19 10 10 and 7307 19 10 20), originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (TARIC additional code B336) as of 15 May 2013.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at Union-frontier price before duty, of the product described in paragraph 1 and manufactured by Jinan Meide, shall be 36,0 % (TARIC additional code B336).
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

##### Article 2

Any definitive anti-dumping duty paid by Jinan Meide pursuant to Implementing Regulation (EU) 2017/1146 in excess of the definitive anti-dumping duty established in Article 1 shall be repaid or remitted.

The repayment or remission shall be requested from national customs authorities in accordance with the applicable customs legislation. Any reimbursement that took place following the General Court's ruling in case T-650/17 Jinan Meide shall be recovered by the authorities which made the reimbursement up to the amount set out in Article 1(2).

<sup>(35)</sup> Commission Implementing Regulation (EU) 2019/1259 of 24 July 2019 imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China and Thailand (OJ L 197, 25.7.2019, p. 2).

*Article 3*

1. A definitive anti-dumping duty shall also be collected on imports registered in accordance with Article 1 of Commission Implementing Regulation (EU) 2019/1982 <sup>(36)</sup> making certain imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgment of 20 September 2019, in case T-650/17, with regard to Implementing Regulation (EU) 2017/1146 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd.
2. The rate of the definitive anti-dumping duty on imports registered, applicable to the net, free-at Union-frontier price before duty, of the product described in Article 1(1) and manufactured by Jinan Meide, shall be 36,0 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 4*

Customs authorities are directed to discontinue the registration of imports, established in accordance with Implementing Regulation (EU) 2019/1982, which is hereby repealed.

*Article 5*

This Regulation shall enter into force on the day following 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, 19 August 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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<sup>(36)</sup> OJ L 308, 29.11.2019, p. 77.