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2011/0355 (NLE)

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the proceeding concerning imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Provisional measures are in force and were imposed by Commission Regulation (EU) No 627/2011 of 27 June 2011 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 30 September 2010 the Commission initiated an anti-dumping proceeding concerning imports of seamless pipes and tubes of stainless steel originating in the People's Republic of China.

The Commission imposed provisional anti-dumping duties on these imports by Regulation (EU) No 627/2011 of 27 June 2011.

The attached proposal for a Council Regulation is based on the definitive findings which have confirmed the existence of dumping causing injury, and the fact that the imposition of measures is not against the overall Union interest. All provisional findings were in general confirmed. A minor correction in the calculations resulted in very limited changes (of less than 1 percentage point) in the dumping and injury margins and thus in the duty levels.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published no later than 29 December 2011.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instrument: regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[1] ('the basic Regulation') and in particular Article 9 thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EU) No 627/2011[2] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China ('PRC').

(2) The proceeding was initiated as a result of a complaint lodged on 16 August 2010 ('the complaint') by the Defence Committee of the Seamless Stainless Steel Tubes Industry of the European Union ('the Defence Committee') on behalf of two groups of Union producers ('the complainants') representing a major proportion, in this case more than 50 % of the total Union production of certain seamless pipes and tubes of stainless steel.

(3) It is recalled that, as set out in recital (14) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2009 to 30 June 2010 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP ('the period considered').

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[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 169, 29.6.2011, p. 1.

B. SUBSEQUENT PROCEDURE

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted the opportunity to be heard. The Commission continued to seek information it deemed necessary for its definitive findings.

Individual examination

(5) With regard to the three claims for individual examination, it has been definitively decided that they could not be granted as they would render the investigation unduly burdensome and would prevent the completion of the investigation in good time. As stated in recital (6) of the provisional Regulation, the Commission had selected a representative sample, covering 25 % of the total imports recorded in Eurostat during the IP and over 38 % of the total volume of the cooperating exporters in the IP. As indicated in recital (13) of the provisional Regulation, two of the three sampled exporting producers constitute large groups. The size of the groups amounted to a particular burden for the present investigation in terms of both the investigative effort as well as analysis. In these circumstances, it was not possible to accommodate the claims for individual examination from additional exporting producers.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(6) It is recalled that, as set out in recital (15) of the provisional Regulation, the product concerned is seamless pipes and tubes of stainless steel (excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft), originating in the PRC, currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 ('the product concerned').

(7) In the absence of any comment with regard to the product concerned following provisional disclosure, recitals (15) to (19) of the provisional Regulation are hereby confirmed.

2. Like product

(8) In the absence of any comment, recital (20) of the provisional Regulation is hereby confirmed.

D. DUMPING

1. Market economy treatment

(9) Following provisional disclosure, some parties contested some of the findings related to the MET determination as set out in recitals (21) to (43) of the provisional Regulation.

(10) One party claimed that the Commission did not disclose the price difference of raw materials between the EU and the Chinese market. In this respect, it has to be noted that both the MET disclosure, as well as the provisional Regulation, disclose the nominal price difference between the EU, USA and Chinese prices of raw materials. As stated in recital (27) of the provisional Regulation this difference, on average and depending on the steel grade, amounts to around 30 %. As far the sources of information that formed the basis for this comparison are concerned, the Commission used data available from cooperating EU producers and exporting producers in the PRC. These data have been cross-checked with some publicly available sources[3].

(11) It was further claimed that the Commission conducted no comparison of prices of iron ore imported into the PRC and international market prices. A related claim was that no data have been provided concerning the impact of iron ore on the cost of the raw material (billet, ingot, round bars) purchased by the producers of the product concerned. The reference to iron ore in recital (28) of the provisional Regulation was made in the context of comparative advantage to analyse a possible explanation for the low prices of billets, ingots and round bars in the PRC. Iron ore as well as nickel and chromium are main cost drivers in the production of stainless steel billets, ingots and round bars. But, due to the fact that the prices of iron ore, nickel and chromium are in general based on international market prices, their impact on the price difference between EU and Chinese billets, ingots and round bars and finally on stainless seamless pipes and tubes can only be limited. Therefore, the findings that led to the rejection of criterion 1 of the MET claim were not based on iron ore prices but on the price difference between the raw materials, i.e. billets, ingots and round bars, directly used in the production of the product concerned; this price difference combined with the established State interference (export tax and no VAT refund) led to the conclusion that it has not been shown that criterion 1 for granting MET was fulfilled.

(12) One party reiterated on several occasions the same claim related to the procedural aspects of MET determination. The claim related to consultations with the Advisory Committee of Member States, namely the information transmitted to that committee in the course of the current investigation. The issue has been explained in two letters sent to the party and it was subject to several exchanges with the Hearing Officer. In this respect it has to be noted that pursuant to Article 19(5) of the basic Regulation exchanges of information relating to consultations made with the Advisory Committee of Member States shall not be divulged except as specifically provided for in the basic Regulation. Consequently, the provisions in force do not allow granting parties any access to the exchanges between the Commission and the Member States.

(13) The same party made certain claims related mainly to the issue of distortions on the market of raw materials. It was claimed that the stainless steel billets purchased on the Chinese domestic market accounted for a portion only of the purchases of raw materials during the IP. In this regard, it is noted first and foremost that Article 2(7)(c) of the basic Regulation does not establish any threshold with regard to the proportion of raw materials purchases that would have to be affected by distortions. Article 2(7)(c) of the basic Regulation stipulates that costs of major inputs have to substantially reflect market values. Most importantly, however, the Commission explained that the distortions on the raw material market in the PRC concerned the

[3] *inter alia*, www.meps.co.uk.

main raw materials used in the production of seamless stainless steel pipes and tubes and not only billets. The main raw materials used in the production of seamless stainless steel pipes and tubes are stainless steel billets, ingots and round bars which represent more than 50 % of the cost of production of the product concerned. Those raw materials collectively fall under HS Code 7218 10 (ingots and other primary forms of stainless steel). They are all subject to a 15 % export tax and are not subject to any refund of the 17 % VAT when exported. It is in this regard that distortions have been established leading to the conclusion that criterion 1 of the MET evaluation was not met by any of the sampled Chinese exporting producers. For the company concerned, the raw materials used for the production of the product concerned purchased on the Chinese domestic market account for a substantial part – around 30 % of purchases. It should be noted in addition that another major part is imported from related companies. When focussing specifically on purchases from unrelated suppliers, even 56% have been purchased domestically. Consequently, contrary to the party's claim, there was no misrepresentation of facts as far as the MET determination was concerned, neither in the communication with that party nor in the consultation process with the Advisory Committee, which was informed about all the arguments submitted. Consequently, the claim has to be rejected.

(14) One company claimed that the decision to deny MET should be individual and company specific whereas in the present case the institutions extended the general findings at the country level to individual producers. This argument cannot be accepted; indeed the analysis made by the institutions has been made individually for each sampled producer. It is true that the institutions have reached the same conclusion for the three of them but this is due to the fact that there is State interference in the decision making process of each of them, as explained in the provisional Regulation.

(15) Having regard to the above, the finding that all MET claims should be denied, as established in recitals (21) to (43) of the provisional Regulation, is hereby confirmed.

2. **Normal value**

(a) *Analogue country*

(16) One party claimed that the USA should have been used as an analogue country. In this respect it has to be noted that the grounds for the decision not to use USA as an analogue country have been thoroughly laid down in recitals (46) to (48) of the provisional Regulation. In view of the fact that the party did not substantiate its claim and did not provide any additional arguments which could alter the findings with regard to the USA as a possible analogue country, the claim has to be rejected.

(17) At the same time it has to be stressed that the Commission continued efforts to obtain cooperation from an appropriate analogue country. Further to efforts referred to in recital (47) of the provisional Regulation the Commission contacted producers in Brazil, Canada, Malaysia, Mexico, South Africa, South Korea, Taiwan and Ukraine. Altogether 46 companies have been contacted, but no cooperation could be obtained.

(18) Having regard to the above, the provisional conclusion that the normal value should be based on prices actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit, as set out in recital (51) of the provisional Regulation, is hereby confirmed.

(b) *Determination of normal value*

(19) As detailed in recitals (49) to (51) of the provisional Regulation the normal value is based on prices actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit, of the closest resembling product types having the same diameter, steel grade and product type (e.g. cold or hot drawn).

(20) Parties' comments relating to prices actually paid or payable in the Union and well as those concerning adjustments (such as level of trade and quality perception) have been addressed in recitals (45) and (46) below.

(21) One company claimed that the normal value could be constructed on the basis of import prices of the stainless steel hollows into the US from the EU or into the EU by the EU producers. This claim has not been further substantiated. The company presented no arguments with regard to how such construction would be better suited for the determination of the normal value than the method used in the provisional Regulation. In particular it has not been substantiated why it would be more suitable to construct normal value on the basis of prices of hollows rather than basing it on prices of the Union industry for the like product.

(22) Furthermore, it has not been substantiated why the EU exports to the US should be considered. This alternative appears not suitable in particular in view of the fact that all cooperating US producers rely on imports from their EU parent companies as already mentioned in recital (48) of the provisional Regulation. Further, the high processing cost in the USA as stated in recital (48) of the provisional Regulation – the very reason why USA has been considered inappropriate as an analogue country – would make the method suggested not suitable.

(23) As far as exports from the US to the EU are concerned, this question has been dealt with explicitly in recital (49) of the provisional Regulation. It was considered that the US export prices would be tainted by the high production costs and that the volumes of such exports were very limited.

(24) The same company proposed to construct the normal value on the basis of the actual import prices of the stainless steel hollows by EU producers. However, the EU producer importing hollows from India into the EU, as mentioned in the complaint, does not cooperate in the current investigation. Neither do any of the sampled EU producers import hollows from any country outside the EU. Therefore, the proposed methodology cannot be used.

(25) Having regard to the above, the determination of normal value as set out in recitals (49) to (51) of the provisional Regulation is hereby confirmed.

3. **Export price**

(26) One party reiterated its claim that the date of order rather than the date of invoicing should be considered as being the date of sale to ensure a fair comparison. This claim has been made with reference to Article 2(10)(j) of the basic Regulation. As already explained to the party concerned during the hearing with the Hearing Officer held on 11 March 2011, the provision in question specifically refers to currency conversions, i.e. exchange rates applicable when the price comparison requires a conversion of

currencies. Consequently, the reference to the dates of purchase orders concerns currency conversions in the framework of fair comparison between export price and normal value and does not relate to the turnover and the volume of export sales to the EU during the IP.

(27) In all cases the product concerned was exported to independent customers in the Union and, therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable. Therefore, recital (52) of the provisional Regulation is hereby confirmed.

4. **Comparison**

(28) As stated in recital (20) above, the parties' comments relating to the prices actually paid or payable in the Union as well as those concerning adjustments (such as level of trade and quality perception) have been addressed in recitals (45) and (46) below.

(29) One party contested the method of comparing the export price and normal value based on three specific parameters (diameter, steel grade and product type (e.g. cold or hot drawn). The party claimed that comparisons should have been conducted at the level of greater detail, i.e. taking into other parameters as well, notably wall thickness, length and testing.

(30) The Commission services indeed collected information in relation to a number of parameters including the length, wall thickness and testing.

(31) According to Article 2(11) of the basic Regulation, the dumping margin is normally established on the basis of a comparison of weighted average normal value with a weighted average of prices of all export transactions. Article 2(11) of the basic Regulation requires that dumping calculations should be based on ‘all export transactions to the Community’ but they should be ‘subject to the relevant provisions governing fair comparison’. The company referred to the so-called product control number and the parameters contained therein. In this regard, it has to be noted that the product control number is a tool used in the investigation in order to structure and organize the substantial amounts of very detailed data submitted by the companies. It is an aid to conduct a more detailed analysis of different product characteristics within the category of the product concerned and the like product. The comparison was based on the most pertinent characteristics in order to ensure a fair comparison.

(32) Following the company's claim, the Commission explained in a letter that the wall thickness of a pipe was proportionally linked to its weight and was thus indirectly covered by the comparison. Other characteristics, such as testing, have minor effects on the comparison. For example, nearly all products concerned are subject to standard test applications.

(33) It has to be stressed that, contrary to that party's claims, the Commission did not disregard any information. However, it is not uncommon that certain parameters used in the product control number have a lesser weight and that specific parameters more then others form a better basis for fair comparison. No pipes have been disregarded from the comparison on the basis of physical differences or for any other reasons nor have any new product types been created. On the contrary, all sales were included in the comparison, regardless of the diameter or length of the pipe.

(34) The company further submitted that the approach used by the Commission prevented it from making a claim for adjustments for physical characteristics. This claim, again, has been based on the fact that the Commission conducted the comparison on the basis of three parameters and not more and has already been addressed above in recitals (31) et seq.

(35) As far as the procedural angle of the issue of comparison is concerned, also raised by the same party, it has to be noted that the company had full opportunity to comment on the calculations performed in its individual case. Full details of those calculations have been disclosed on the day of publication of the provisional Regulation. The company commented on the issue of parameters used in comparison in a letter of 11 July 2011 requesting further clarifications. A reply has been provided by the Commission services on 19 July 2011. The company then reiterated its arguments in a letter of 29 July 2011. While the company disagreed with the basis for comparison, it repeatedly claimed that parameters like wall thickness, length or testing had an impact on prices. As stated above, the Commission acknowledges that those parameters had some impact on prices. However, it was found more appropriate, that the calculations should be based on 3 most important parameters as this leads to the highest level of matching and at the same time to the possibility to find matching sales for all export transactions.

(36) The company claimed that it was prevented from presenting claims for adjustment. This argument has to be rejected. The opportunities to present claims existed throughout the course of the proceeding, not least at the time of disclosure of provisional findings when the company became fully aware of all the details of the calculations.

(37) One party claimed that applying production costs of smaller diameters to the larger ones did not reflect the actual costs, because the costs for larger diameter were much higher. However, the party did not provide any alternative nor did it substantiate its claim. Consequently, in view of the fact that no alternative method has been presented, the method used is considered to be the most reasonable.

(38) One company claimed that the number of adjustments (the fact that the Commission used three parameters and not more, the quality perception and level of trade adjustments) suggest that the products of the EU producers are hardly comparable to the imported Chinese products. In this regard it is noted that the mere fact that the institutions perform adjustments is an inherent part of any dumping calculation. Those adjustments are foreseen in the basic Regulation and therefore as such do not call into question the comparability between product concerned and the like product. In fact the high matching ratio confirms that the product concerned and the like product are fully comparable.

(39) Having regard to the above, the findings in recitals (53) and (54) of the provisional Regulation are hereby confirmed.

5. **Dumping margins**

(40) One party claimed that due to a high fluctuation of the nickel price, the dumping margin should have been calculated on a quarterly basis. In this respect it is noted that in the present case the comparison between export price and normal value is not a

comparison between prices and costs, but only between weighted average sales prices (normal value was established on the basis of the sales prices of EU industry). Furthermore, the increase in nickel prices was an increase in world market prices and therefore was not an isolated Chinese phenomenon. The increase affected at most three months of the IP, while the sales of the product concerned took place throughout the full IP. Furthermore, changes in raw material prices must be considered as a normal part of the business operations. The increasing nickel prices should be affecting both the EU and Chinese producers equally, as nickel is quoted on the London Metal Exchange. Any differences would be due to the distortion on raw material prices in the PRC and should therefore not be taken into account in the calculation. Consequently, the claim has to be rejected and comparison based on the annual average Chinese export prices with annual average EU prices, duly adjusted to include a reasonable profit margin. This claim was therefore rejected.

(41) One Chinese producer made a substantiated claim that the computation of adjustments in its individual dumping calculation was inaccurate. The Commission accepted this claim and performed a new calculation, which resulted in a dumping margin of 83,7 %. Apart from this change the findings in recitals (55) to (61) of the provisional Regulation are hereby confirmed. The revised dumping margins are as follows:

	Definitive dumping margins
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	83,7 %
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	62,6 %
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	67,1 %
Sample weighted average for the cooperating exporting producers not included in the sample and listed in Annex I	71,5 %
All other companies	83,7 %

E. **INJURY**

1. **Union industry**

(42) With regard to the definition of the Union industry and the representativity of the sample of Union producers, no claims have been received following provisional disclosure. Therefore, recitals (62) and (63) of the provisional Regulation are hereby confirmed.

2. **Union consumption**

(43) In respect of the Union consumption, no claims have been received. Therefore, recitals (64) to (66) of the provisional Regulation are hereby confirmed.

3. Imports from the country concerned

(44) Concerning the provisional findings relating to volume, market share and price evolution of dumped imports, no claims have been submitted by the interested parties. Therefore, recitals (67) to (69) of the provisional Regulation are hereby confirmed.

Price undercutting

(45) With regard to the calculation of price undercutting by imports from the PRC, both the Chinese exporting producers and the Union industry requested further information concerning the method of determining certain adjustments (such as post importation costs, level of trade and market perception of quality) that had been applied in the calculation. The Commission accommodated these requests by disclosing how those adjustments were determined while at the same time ensuring compliance with the rules of confidentiality.

(46) Following the comments of a Chinese producer, a minor correction was made in the calculation of price undercutting, as in the provisional calculation the level of trade adjustment included also a part of post importation costs which had at the same time been covered by a separate adjustment for all post importation costs. The correction resulted in a change of less than one percentage point in the undercutting margins and injury elimination level (for the revision of the injury elimination level see recitals (82) and (83) below) in comparison to the provisional stage.

(47) Apart from the changes mentioned above and in the absence of any comments, recitals (70) and (71) of the provisional Regulation are hereby confirmed.

4. Economic situation of the Union industry

(48) Following provisional disclosure, some Chinese exporting producers claimed that certain indicators should be excluded from the injury analysis. Notably, they stated that production and capacity utilisation fell at the same rate as did Union consumption, alleging that for this reason those indicators should not be considered as factors in the material injury analysis. A similar claim was made with regard to the drop in Union sales which allegedly occurred also at a rate comparable to the reduction of consumption.

(49) In this context it should first be noted that according to Article 3(5) of the basic Regulation, "all economic factors and indices having a bearing on the state of the industry" should be examined in an injury analysis. As regards the potential effects of any other factors than dumped imports that may have contributed to the injury, those are addressed under Chapter F. Causation, in particular under the point concerning the effects of any other factors (see recitals (59) to (69) below).

(50) In the absence of any other comments, recitals (72) to (89) of the provisional Regulation are hereby confirmed.

5. Conclusion on injury

(51) In the absence of any other comments, recitals (90) to (92) of the provisional Regulation are hereby confirmed.

F. CAUSATION

1. Effects of the dumped imports and of the economic downturn

(52) Some parties reiterated their claims submitted during the provisional stage that a substantial part of the material injury experienced by the Union industry should be attributed to factors other than dumped imports.

(53) In this context, following the provisional disclosure, some Chinese exporting producers alleged in particular that a substantial part of the loss of sales volume and market share was due to falling demand resulting from the economic crisis rather than to dumped imports from the PRC. They further alleged that the comparable decrease in the prices of Chinese imports and of the Union industry during the period considered (by 9 % and 8 %, respectively) also indicated that the falling prices of the Union industry was purely due to the reduced market demand rather than to the effect of dumped imports.

(54) Firstly, it should be noted that it is recognised in recitals (103) to (106) of the provisional Regulation that the economic downturn and the resulting contraction in demand had a negative effect on the state of the Union industry and that, as such, may have contributed to the injury suffered by the Union industry. However, this does not diminish the injurious effect of the low priced and dumped Chinese imports which have considerably increased their share in the Union market during the period considered.

(55) As explained in recitals (104) and (105) of the provisional Regulation, the effect of dumped imports is actually much more detrimental in a period of falling demand than during years of rapid growth. Chinese imports appear to have continuously undercut the Union prices throughout the period considered. In addition, in the IP the price undercutting was in the range of between 21 % and 32 %, and Chinese imports represented more than 18 % of the Union market share, as a result of a substantial gain of 7,9 percentage points over the period considered. Therefore, while Chinese imports exerted an evident price pressure that prevented the Union industry from setting cost-covering (not to mention profitable prices), at the same time the increased volume and market share of those imports also made it impossible for the Union industry to aim at higher volumes of production, capacity utilisation and sales, particularly with regard to more commodity-type products mainly sold via distributors.

(56) Secondly, drawing conclusions solely based on selected injury indicators such as sales volume and market share, or sales prices only, would distort the analysis in this case. For instance, the losses in sales volume and market share were combined *inter alia* with severe profitability deterioration and were due, to a large extent, to the price pressure from the dumped imports. As concerns specifically the question of market share, the Union industry lost 3,6 percentage points to the Chinese imports during the period considered. Finally, again in view of the rate of undercutting and the increase of Chinese imports in both relative and absolute terms, by no means can be concluded that the reduction of the prices of Union producers was unrelated to the price levels of the dumped imports.

(57) In the light of the above, the causal link between dumped imports and the material injury found is herewith confirmed on the basis of the combined existence of

substantial volume and price pressure exerted by the Chinese imports on the Union industry.

(58) In the absence of any other comments, recitals (94) to (96) of the provisional Regulation are hereby confirmed.

2. **Effects of any other factors**

(59) With regard to the effect of other third country imports to the Union, some Chinese exporting producers claimed that 1,0 of the 3,6 percentage points of market share loss of the Union industry should have been attributed to imports from Japan and India. However, as a matter of fact the Chinese imports gained market share at the expenses of both other imports and the Union industry. The increase of Chinese market share of 7,9 percentage points can be divided into the 3,6 percentage points loss of Union industry market share and the 4,3 percentage points loss of market share of other imports.

(60) The same Chinese exporting producers stated that the average prices of imports of some selected other third countries, notably Ukraine, India and the USA, had also seriously decreased which could have caused injury to the Union industry. In this regard it is noted, however, that overall, the average price of imports from all countries other than the PRC have actually increased by 34 % during the period considered. As already stated in recital (100) of the provisional Regulation, the average import price from the USA had largely exceeded the prices on the Union market. As also emphasised in that same recital, the market share of imports from Ukraine lessened while the American and Indian market shares remained basically stable. Nevertheless, on the basis of Eurostat data on those imports, it cannot be concluded that imports from other third countries would have played a significant role in the deterioration of the state of the Union industry, thereby breaking the causal link established between the dumped Chinese imports and the injury.

(61) In the absence of any other comments regarding the findings set out in recitals (97) to (102) of the provisional Regulation, those findings are hereby confirmed.

(62) As concerns the effect of the economic downturn, the reasons why the economic downturn cannot be considered an element to break the causal link are analysed in recitals (52) to (58) above. As none of the submitted comments indicated the opposite, the findings set out in recitals (103) to (106) of the provisional Regulation are hereby maintained.

(63) As for the export performance of the Union industry, in the absence of any comments regarding the findings in recitals (107) and (108) of the provisional Regulation, those findings are hereby confirmed.

(64) A number of Chinese exporting producers claimed that the 18 % increase in the unit cost of production described in recital (109) of the provisional Regulation played an important role in the deterioration of the profitability of the Union industry rather than dumped imports, and requested a more detailed analysis of the effect of that unit cost increase.

(65) The Commission examined the issue and found that the increase in the unit cost of production can be attributed to: higher manufacturing costs as a result of higher raw material prices, as well as to fixed costs such as direct labour, depreciation, manufacturing overheads and SG&A costs, and also to the rapid drop in production.

(66) Given that the raw material cost fluctuation is to a large extent covered by the price setting mechanism of the Union industry – the so-called "alloy surcharge" mechanism directly links prices to the quotation of the most important raw materials such as nickel, molybdenum and chromium – its impact on the profitability is unlikely to be significant. However, the other elements, related to the insufficient production and sales volumes, had a direct effect on the profitability levels. As the production and sales volumes of the Union industry would have been significantly higher in the absence of dumped imports, it cannot be concluded that the increase in the unit cost of production in itself is a major factor leading to the injury rather than dumped imports, as it is inextricably linked to the augmented volume of dumped imports.

(67) Some Chinese exporting producers also submitted that the Union industry's failure to restructure despite the falling consumption may have been an important factor leading to the injury established.

(68) In this respect it should first be noted that the Union industry had to cope with not only the effect of falling consumption in itself but with the impact of dumped imports in a period of falling consumption. Nonetheless, the investigation has shown that the Union industry (i) maintained its production capacity in the expectation of the temporary nature of the crisis and of a forthcoming recovery, and cannot be expected to adapt capacity because of the increasing volumes of Chinese imports made at abnormally low, dumped prices, (ii) continuously developed its product mix with a focus on higher value specialised products where Chinese competition is less prominent and (iii) reduced its workforce by 8 % and cut the average labour cost per employee by 2 % in the period considered (if these reductions are viewed only in the crisis period, i.e. between 2008 and the IP, they amount to as much as 19 and 11 percentage points, respectively). All these elements show that the Union industry was very active in taking measures in an attempt to respond to the negative effects deriving from the injury suffered. However, the above steps proved to be insufficient to counteract the injurious effects of dumped imports in a period of weak demand.

(69) In the absence of any other comments, recitals (109) and (110) of the provisional Regulation are hereby confirmed.

3. **Conclusion on causation**

(70) None of the arguments submitted by the interested parties demonstrates that the impact of factors other than dumped imports from the PRC is such as to break the causal link between the dumped imports and the material injury established. In the light of the foregoing it is concluded that the dumped imports from the PRC caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

(71) Therefore the conclusions on causation in the provisional Regulation, as summarised in the recitals (111) to (113) thereof, are hereby confirmed.

G. UNION INTEREST

(72) In view of parties' comments, the Commission continued its analysis pertaining to the Union interest.

1. Interest of the Union industry

(73) Regarding the interest of the Union industry, no further comments or information was received. Therefore the findings in recitals (116) to (120) of the provisional Regulation are hereby confirmed.

2. Interest of unrelated importers in the Union

(74) In the absence of any comments on this point, recitals (121) to (123) of the provisional Regulation are hereby confirmed.

3. Interest of the users

(75) After the imposition of provisional measures, a user company that had not cooperated submitted comments with regard to the Union interest. Notably, the user argued that the impact of the anti-dumping measures will be significant on the company. It stated that stainless steel tubes are a critical component for several downstream products including those manufactured by that user (e.g. heat exchangers), and that there was also an additional concern of security of supply in view of the delays the company had experienced in respect of certain deliveries made by Union producers.

(76) However, given that this user only purchases 5 % of their stainless steel pipes and tubes from China, the possible impact on this company would appear limited, both in terms of costs and security of supply.

(77) As concerns the alleged cost impact in particular, the company failed to substantiate this claim with actual data. Furthermore, it is recalled that, as set out in recitals (124) and (125) of the provisional Regulation, the cost impact on the sole fully cooperating user was considered to be insignificant, both with regard to the whole company and to its division using stainless steel tubes.

(78) As regards the issue of security of supply raised by the user, it should be recalled that there is a large number of third countries other than the PRC that continue to import stainless steel tubes into the Union. In addition, as the Union industry remains the most important supplier of the product, their continued existence is critical also for the user industry.

(79) Although at provisional stage it was also considered that the anti-dumping measures may have a more serious impact on those users that use substantial quantities of stainless steel tubes imported from the PRC for manufacturing their downstream products (see recital (126) of the provisional Regulation), in view of the lack of any substantiated claim or any new information following provisional disclosure, it can be concluded that the essential benefits of the Union industry from the imposition of anti-dumping measures appear to outweigh the expected negative impacts on such users. Therefore the findings with regard to the interest of users as laid down in recitals (124) to (130) of the provisional Regulation are hereby confirmed.

4. Conclusion on Union interest

(80) On the basis of the above, it is definitively concluded that on balance, no compelling reasons exist against the imposition of definitive anti-dumping duties on imports of the product concerned originating in the PRC. Therefore the conclusions in recitals (131) and (132) of the provisional Regulation are hereby confirmed.

H. DEFINITIVE MEASURES

1. Injury elimination level

(81) The complainants argued that the 5 % target profit, as established at the provisional stage, was excessively low and it reiterated the view that a level of 12 % would be justified, in view of the fact that the industry at hand is capital intensive and necessitates permanent technical improvements and innovation updates, consequently substantial investments. The complainants argued that such a profitability level would be needed to generate sufficient return on capital and allow for those investments. However, the above claim was not convincingly substantiated by actual figures. Therefore it is concluded that the 5 % profit margin established at the provisional stage should be maintained.

(82) As regards the determination of the injury elimination level, as already stated in recital (45) above, the small correction with regard to the adjustment for the level of trade that affected the calculation of price undercutting was also applied in the calculation of the injury elimination level.

(83) The above change led to a minor revision of the injury elimination level. As a result, the injury elimination level is in the range between 48,3 % and 71,9 %, as shown in the table below:

Company/companies	Injury elimination level
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	71,9 %
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	48,3 %
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	48,6 %
Sample weighted average for the cooperating exporting producers not included in the sample and listed in Annex I	56,9 %
All other companies	71,9 %

(84) One Chinese exporting producer claimed that due to the injury caused by the economic crisis, the injury margin should be based on price undercutting rather than price underselling, claiming that this method had been followed in a number of anti-

dumping proceedings[4]. However, in all the investigations cited by the exporting producer, there were particular reasons regarding the industry or the economic sector (such as the threat of creating a monopoly, a substantial capacity increase of the Union industry in a mature market, the long-term absence of profits of the industry on a global scale) which supported the exceptional application of this particular methodology. In the current investigation this is not the case, as the economic crisis affected the global economy as such, and can therefore not be considered to be specific to the industry producing seamless pipes and tubes of stainless steel.

2. **Definitive measures**

(85) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed on the product concerned at the level of the lower of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, as the injury elimination levels are lower than the dumping margins established, the definitive measures should be based on the injury elimination levels.

(86) On the basis of the above, the duty rates, expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Company/companies	Definitive anti-dumping duty rate
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	71,9 %
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	48,3 %
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	48,6 %
Sample weighted average for the cooperating exporting producers not included in the sample and listed in Annex I	56,9 %
All other companies	71,9 %

[4] Commission Regulation (EC) No 2376/94 of 27 September 1994 imposing a provisional anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand, OJ L 255, 1.10.1994, p. 50, Commission Regulation (EEC) No 129/91 of 11 January 1991 imposing a provisional anti-dumping duty on imports of small-screen colour television receivers originating in Hong Kong and the People's Republic of China, OJ L 14, 19.1.1991, p. 31, Commission Decision of 21 June 1991 accepting undertakings given in connection with the anti-dumping proceeding concerning imports of certain asbestos cement pipes originating in Turkey, and terminating the investigation (91/392/EEC), OJ L 209, 31.7.1991, p. 37, Commission Regulation (EEC) No 2686/92 of 16 September 1992 imposing a provisional anti-dumping duty on imports of certain types of electronic microcircuits known as DRAMs (dynamic random access memories) originating in the Republic of Korea, OJ L 272, 17.9.1992, p. 13 and Council Regulation (EC) No 1331/2007 of 13 November 2007 imposing a definitive anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China, OJ L 296, 15.11.2007, p. 1.

(87) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to the companies concerned. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the People's Republic of China and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(88) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex II of this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(89) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, *inter alia*, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(90) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission[5] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be accordingly amended by updating the list of companies benefiting from individual duty rates.

(91) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the PRC. They were also granted a period of time within which they could make representations subsequent to the final disclosure.

(92) The comments submitted by the interested parties were duly considered. None of the comments was such as to alter the findings of the investigation.

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[5] European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË.

(93) In order to ensure a proper enforcement of the anti-dumping duty, the country-wide duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

(94) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in Annex I to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as that Article does not apply where sampling has been used.

3. **Definitive collection of provisional duties**

(95) In view of the magnitude of the dumping margins found and given the level of the injury caused to the Union industry (the definitive duty imposed by this Regulation having been set at a level higher than the provisional duty imposed by the provisional Regulation), it is considered necessary that the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of seamless pipes and tubes of stainless steel (excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft), currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 (TARIC codes 7304 41 00 90, 7304 49 93 90, 7304 49 95 90, 7304 49 99 90 and 7304 90 00 91), and originating in the People's Republic of China.

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 the companies listed below shall be as follows:

Company/companies	Definitive anti-dumping duty rate	TARIC additional code
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	71,9 %	B120
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	48,3 %	B118
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	48,6 %	B119
Companies listed in Annex I	56,9 %	

All other companies	71,9 %	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EU) No 627/2011 on imports of seamless pipes and tubes of stainless steel (excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft), currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 and originating in the People's Republic of China, shall be definitively collected.

Article 3

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) during the investigation period (1 July 2009 to 30 June 2010),

– it is not related to any of the exporters or producers in the People's Republic of China which are subject to the 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 Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, 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 rate of 56,9 %.

Article 4

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,

For the Council
The President

ANNEX I

CHINESE COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Name	TARIC additional code
Baofeng Steel Group, Co. Ltd., Lishui,	B 236
Changzhou City Lianyi Special Stainless Steel Tube, Co. Ltd., Changzhou,	B 237
Huadi Steel Group, Co. Ltd., Wenzhou,	B 238
Huzhou Fengtai Stainless Steel Pipes, Co. Ltd., Huzhou,	B 239
Huzhou Gaolin Stainless Steel Tube Manufacture, Co. Ltd., Huzhou,	B 240
Huzhou Zhongli Stainless Steel Pipe, Co. Ltd., Huzhou,	B 241
Jiangsu Wujin Stainless Steel Pipe Group, Co. Ltd., Beijing,	B 242
Jiangyin Huachang Stainless Steel Pipe, Co. Ltd., Jiangyin	B 243
Lixue Group, Co. Ltd., Ruian,	B 244
Shanghai Crystal Palace Pipe, Co. Ltd., Shanghai,	B 245
Shanghai Baoluo Stainless Steel Tube, Co. Ltd., Shanghai,	B 246
Shanghai Shangshang Stainless Steel Pipe, Co. Ltd., Shanghai,	B 247
Shanghai Tianbao Stainless Steel, Co. Ltd., Shanghai,	B 248
Shanghai Tianyang Steel Tube, Co. Ltd., Shanghai,	B 249
Wenzhou Xindeda Stainless Steel Material, Co. Ltd., Wenzhou,	B 250
Wenzhou Baorui Steel, Co. Ltd., Wenzhou,	B 251
Zhejiang Conform Stainless Steel Tube, Co. Ltd., Jixing,	B 252
Zhejiang Easter Steel Pipe, Co. Ltd., Jiaxing,	B 253
Zhejiang Five - Star Steel Tube Manufacturing, Co. Ltd., Wenzhou,	B 254
Zhejiang Guobang Steel, Co. Ltd., Lishui,	B 255
Zhejiang Hengyuan Steel, Co. Ltd., Lishui,	B 256
Zhejiang Jiashang Stainless Steel, Co. Ltd., Jiaxing City,	B 257
Zhejiang Jinxin Stainless Steel Manufacture, Co. Ltd., Xiping Town,	B 258
Zhejiang Jiuli Hi-Tech Metals, Co. Ltd., Huzhou,	B 259
Zhejiang Kanglong Steel, Co. Ltd., Lishui,	B 260
Zhejiang Qiangli Stainless Steel Manufacture, Co. Ltd., Xiping Town,	B 261
Zhejiang Tianbao Industrial, Co. Ltd., Wenzhou,	B 262
Zhejiang Tsingshan Steel Pipe, Co. Ltd., Lishui,	B 263
Zhejiang Yida Special Steel, Co. Ltd., Xiping Town.	B 264

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

(1) the name and function of the official of the entity issuing the commercial invoice;

(2) the following declaration:

"I, the undersigned, certify that the (volume) of seamless pipes and tubes of stainless steel sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature."