COMMISSION IMPLEMENTING REGULATION (EU) 2016/388

of 17 March 2016

imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India

THE EUROPEAN COMMISSION,

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(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional Measures

(1) On 18 September 2015 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India ('the country concerned') by Commission Implementing Regulation (EU) 2015/1559 ([2]) ('the provisional Regulation').

(2) The investigation was initiated on 20 December 2014 ([3]) following a complaint lodged on 10 November 2014 by Saint-Gobain PAM Group, ('the complainant') on behalf of producers representing more than 25 % of the total Union production of tubes and pipes of ductile cast iron.

(3) As stated in recital 14 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

(4) On 11 March 2015, the Commission initiated a separate anti-subsidy investigation with regard to imports into the Union of tubes and pipes of ductile cast iron originating in India. It published a Notice of Initiation in the *Official Journal of the European Union* ([4]). The definitive findings of that investigation are subject to a separate Regulation ('the anti-subsidy Regulation') ([5]).

1.2. Subsequent procedure

(5) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. In addition another Indian Producer Tata Metaliks DI Pipes Limited ('Tata') made themselves known and provided comments. The parties who so requested were granted an opportunity to be heard.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) Commission Implementing Regulation (EU) 2015/1559 of 18 September 2015 imposing a provisional anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ L 244, 19.9.2015, p. 25).
([3]) Notice of Initiation of an anti-dumping proceeding concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ C 461, 20.12.2014, p. 35).
([4]) Notice of initiation of an anti-subsidy proceeding concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India. OJ C 83 11.3.2015, p. 4.
([5]) Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (see page 1 of this Official Journal).

(6) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. The Commission verified on spot additional information provided by a related company based in Italy of one of the cooperating exporting producer.

(7) Jindal Saw Limited ('Jindal') requested the intervention by the Hearing Officer in trade proceedings ('the Hearing Officer') concerning some aspects of the provisional injury calculations. The Hearing Officer examined the request and responded to the exporting producer directly in writing.

(8) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of tubes and pipes of ductile cast iron originating in India and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the final disclosure.

(9) On 28 January 2016 a hearing with the Hearing Officer was held at the request of Electrosteel Castings Limited ('ECL').

(10) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.3. **Product concerned and like product**

(11) As set out in recitals 15 and 16 of the provisional Regulation the product concerned was provisionally defined as tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes') originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90.

(12) Ductile pipes are used for drinking water supply, sewage disposal and irrigation of agricultural land. The transportation of water through ductile pipes may be based on pressure or solely on gravity. The pipes range between 60 mm and 2 000 mm and are 5,5, 6, 7 or 8 meters long. They are normally lined with cement or other materials and externally zinc-coated, painted or tape wrapped. The main final users are public utility companies.

(13) Jindal and the Government of India ('GOI') claimed that ductile pipes, which are not coated, neither internally nor externally ('bare pipes'), should be excluded from the product concerned on the basis that such tubes and pipes are semi-finished products with different physical, technical and chemical characteristics and cannot be used for conveying water without further processing. Bare pipes are also not interchangeable with the product concerned and have a different end-use.

(14) The complainant contested this claim and argued that all ductile pipes, whether coated or not, share the same basic physical, technical and chemical characteristics and have the same end-use. The complainant further argued that internal and external coating operations are considered as finishing operations, representing only up to 20 % of the total cost of production of ductile pipes, and do not alter the basic characteristics of a ductile pipe. The complainant further stressed that bare pipes as such have no effective end-market/function or use, other than conveying water and sewage, and are not sold on the Union market but must necessarily be coated before being put on the market and to comply with EU standards. In addition, bare pipes of ductile cast iron fall under the same customs code as coated pipes and their exclusion could therefore lead to circumvention of any anti-dumping measures and undermine the effectiveness of such measures given the Indian exporters' significant capacity to carry out coating in the Union (around 80 000 tonnes annually). In this regard, the complainant further claimed that the Indian imports of bare pipes have increased significantly since 2013 and these imports were almost three times higher in 2015 than in 2013. This trend is likely to continue in the complainant's view.

(15) The investigation has demonstrated that bare pipes do not have any effective market function/use and are not sold as such on the Union market. These pipes must necessarily undergo further processing, i.e. internal and external coating, before becoming marketable and fulfilling EU standards for conveying water and sewage. While compliance with EU standards is not necessarily a decisive factor for determining the product scope, the fact that additional processing must be carried out on a bare pipe before it can be put into its intended end-use, is a factor that cannot be overlooked when analysing whether a bare pipe is a final product or a semi-finished product only. The Commission therefore finds that bare pipes of ductile cast iron should be considered as semi-finished ductile pipes.

(16) Semi-finished goods and finished goods may nevertheless be considered to form a single product if (i) they share the same essential characteristics and, (ii) the additional processing costs are not substantial ([6]). It is uncontested that the internal and external coating adds to bare pipes a physical characteristic which confers on these pipes an essential and basic characteristic required for their essential use on the Union market, namely the conveyance of water and sewage in accordance with EU standards. Moreover, it is uncontested that the cost for adding internal and external coating to a bare pipe normally accounts for up to 20 % of the total production costs of a ductile pipe. Accordingly, the additional processing must be considered substantial.

(17) It follows that semi-finished bare tubes and pipes of ductile cast iron cannot be considered forming a single product with the finished (coated internally and externally) ductile pipes and should therefore be excluded from the product concerned.

(18) Moreover, the Commission did not find that there is a considerable risk of circumvention should bare pipes be excluded from the product scope. The bare pipes are only imported by one related company of Jindal which, contrary to the claim by the complainant, has limited coating capacity in the Union. According to the Commission's verified data the actual capacity is around 15 000 tonnes annually. Moreover, although the imports of bare pipes from India appear to be increasing after the investigation period, the volumes are still modest (less than 10 000 tonnes in 2015) according to information from the complainant. Given the limited coating capacity by the related company in the Union and its current business plan for the forthcoming years in respect of bare pipes, between 15 000 tonnes-21 000 tonnes by 2017, it is unlikely that this production site would be turned into an entry gate for a massive influx of bare pipes with the sole objective to coat them in order to avoid duties for finished pipes in the Union, which could potentially raise an issue under Article 13 of the basic Regulation.

(19) Jindal requested after provisional disclosure that flanged pipes of ductile cast iron should be excluded from the product scope. It repeated the request after definitive disclosure.

(20) Contrary to bare pipes, flanged pipes are pipes of ductile cast iron finally processed with internal and external coating. Flanged pipes are therefore suitable for the conveyance of water and sewage without further processing. Essentially, they are cut in length from full length iron ductile pipes and fitted with flanges to be connected with bolts and nuts while other pipes of ductile iron are connected via a socket. The processing costs for cutting the length and adding flanges cannot be considered to change the basic characteristics of a ductile iron pipe, which is the conveyance of water and sewage or incurring substantive processing costs. Therefore, although some additional processing is required to manufacture flanged pipes from pipes of ductile iron pipes, the Commission considered them to form a single product and the exclusion request is rejected.

(21) In view of the above considerations, the product concerned is definitively defined as tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes'), with the exclusion of ductile pipes without internal and external coating ('bare pipes'), originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90.

(22) The investigation showed that the product concerned, as defined above, manufactured and sold in India as well as the product manufactured and sold in the Union, have the same basic physical, chemical and technical characteristics and are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2. **DUMPING**

2.1. **Normal value**

(23) After provisional disclosure, ECL submitted that certain costs reported in the selling, general and administrative expenses (SG&A) for the domestic sales had already been reported as costs of manufacturing, which resulted in double counting, and that accordingly these costs should be corrected. In addition, it requested the correction of certain costs taken into account for the construction of the normal value and the deduction of certain allowances when constructing the normal value. Based on the verified evidence at its disposal, the Commission accepted that certain costs were reported twice and corrected this by deducting these from the SG&A costs. The Commission also made corrections for certain costs and allowances for the construction of the normal value, where necessary.

([6]) Council Regulation (EC) No 1784/2000 of 11 August 2000 imposing a definitive anti-dumping duty and collecting the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand (OJ L 208, 18.8.2000, p. 10).

(24) After definitive disclosure, the Commission established that for the same exporting producer certain price related costs mainly finance costs were erroneously deducted in cases where the normal value was constructed. This was corrected and the company concerned was informed accordingly.

(25) Both exporting producers claimed that the Commission should have deducted average credit costs when constructing the normal value, rather than excluding them altogether, as the Commission did at provisional stage.

(26) This claim was rejected as average credit costs are considered only to be relevant when establishing normal value on the basis of domestic prices, whereas they are irrelevant when the normal value is constructed on the basis of the cost of production, as was the case for the product types concerned. The reason for this is that credit costs are not related to the cost of production, but are, normally, a factor taken into account in the determination of the prices.

(27) After provisional disclosure, Jindal also argued that for non-representative sales ([7]) the Commission should not use the actual profit margin achieved for those sales as it was too high but rather the company weighted average profit margin. The exporting producer reiterated its claim after definitive disclosure, but did not provide any new evidence.

(28) The Commission rejected this claim as the normal value for such non-representative sales was based on the actual profit realised by the exporting producer on those sales as provided for in Article 2(6) of the basic Regulation.

(29) After provisional disclosure, the same exporting producer also claimed that freight costs should have been deducted in the adjustments made to construct the normal value. This was done, however, as the Commission deducted freight costs in order to arrive at an ex-works level in the construction of the normal value already at provisional stage.

(30) After definitive disclosure, the same exporting producer argued that there was a clerical error and, as a result, the packing costs were not deducted in the adjustments made to construct the normal value. The claim was found to be justified and the error was corrected accordingly.

(31) After provisional disclosure, the Union industry reiterated its claim that the Commission should make an adjustment to the normal value taking into account the Indian export tax on iron ore. The Commission established in the parallel anti-subsidy investigation that iron ore prices in India were distorted through the various export restraints in India. In these circumstances, there is no need to address this distortion further in this investigation as to do so would amount to double-counting of the effects of the subsidy.

(32) In the absence of other comments, recitals 19 to 32 of the provisional Regulation are confirmed.

2.2. **Export price**

(33) After provisional disclosure, ECL submitted that certain costs reported in the SG&A of the related companies in the Union for the export sales were already reported as post-importation costs, which resulted in double counting. In addition, it requested the correction of certain costs taken into account in both the determination of the export price in accordance with Article 2(9) of the basic Regulation and in the application of Article 2(10)(g) of the basic Regulation. The Commission accepted that certain costs were reported twice and deducted them from the SG&A costs of the related companies in the Union. The Commission also made corrections for certain costs and allowances for the construction of the export price, where appropriate.

(34) The other exporting producer also identified certain costs which were deducted twice, that is as post importation costs and as part of the SG&A costs of the related companies in the Union. It also requested the recalculation of certain allowances. The Commission analysed the claim and made corrections, where appropriate. As also explained in the definitive disclosure, the few negative export prices that appeared in the annexes to the disclosure were related to credit notes and discounts, which was shown by the fact that the quantities reported were also negative, and did not result from any adjustment made on the basis of Article 2(9) of the basic Regulation.

([7]) At provisional stage, the Commission established the domestic sales of some product types were not representative as they represented less than 5 % of the total volume of export sales of the identical or comparable product type to the Union. See recital 21 of the provisional Regulation.

(35) This exporting producer also claimed that the Commission should not have applied Article 2(9) of the basic Regulation for constructing the export price, but that the export price should have been based on the transfer prices between the exporting producer and its related companies in the Union instead. It argued that these prices are reliable for three reasons. First, the price charged by the company to its related companies in the Union was said to be in line with the price charged by the exporting producer to unrelated importers in the Union. Second, the price charged by the exporting producer to its related companies in the Union was also in line with its export prices to unrelated importers in other markets. Third, the national customs authorities in the Union have consistently considered that the prices charged by the exporting producers to its related companies were reliable. After definitive disclosure, the exporting producer reiterated its claim, without, however, bringing forward new arguments or evidence.

(36) The exporting producer made this claim already at provisional stage (see recital 44 of the provisional Regulation). Consequently, the Commission rejected the exporting producer's first and second arguments for the same reasons as the ones set out in recital 45 of the provisional Regulation. In addition, the Commission refuted the company's third argument for the reasons contained in recital 37 of the provisional Regulation, on the basis of which it rejected a similar claim from the other exporting producer.

(37) After definitive disclosure, Jindal reiterated its claim that the credit costs adjustment for its related entity in Spain should be corrected by applying a new formula for calculating the interest rate. However, the adjustment was calculated on the basis of data that were provided by the company in its questionnaire reply. No evidence was provided as to why this data could not be used. The Commission saw therefore no reason to change its methodology and to apply the publicly available rate of the European Central Bank in the calculation of the credit costs, as was requested by the exporting producer. It was not demonstrated that this was the rate which applied to its entity in Spain. Therefore, this claim was rejected.

(38) In the provisional Regulation, the processing costs for bare pipes processed by a related company in Italy of one of the exporting producers were not deducted for the reasons set out in recitals 40 and 41 of the provisional Regulation.

(39) After provisional and definitive disclosure, the complainant argued that the Commission should have deducted the processing costs for this related company under Article 2(9) of the basic Regulation for two main reasons. First, in order to be consistent with the deduction of the processing costs incurred by a related company in the UK related to flanges (recital 42 of the provisional Regulation). Second, because the Commission has deducted processing costs in previous cases, even when the processing costs in the Union were higher than those incurred in the country of origin.

(40) As specified in recitals 13 to 17 above, bare pipes are excluded from the product scope. The Commission excluded accordingly all sales related to bare pipes further processed in the Union from the calculation of the export price. Consequently, the complainant's claim is without object and is therefore rejected.

(41) In the provisional Regulation (see recitals 42 and 43 thereof), the processing costs of the related companies in the UK of both exporting producers linked to adding flanges and cutting the pipes into smaller sizes were deducted when establishing the export price in accordance with Article 2(9) of the basic Regulation.

(42) Following provisional and definitive disclosure, Jindal requested that the flanged pipes sold by its UK based related company should be excluded from the product concerned and, as a result, from the calculation of the company's dumping margin.

(43) For the reasons set out in recitals 19 and 20 above, the Commission did not consider appropriate to exclude flanged pipes from the definition of the product concerned. The flanged pipes, which constituted only a small part of the total sales of the related importers, were, however, excluded from the determination of the export price.

(44) After provisional disclosure, Jindal argued that the deduction of the SG&A costs and profit in the determination of the export price under Article 2(9) of the basic Regulation for its related companies in Italy and the UK was unreasonable as these items were allegedly manifestly excessive. After definitive disclosure, the company reiterated its claim without, however, providing new evidence. It made the following claim.

(45) First, SG&A costs were said to be impacted by the processing activities of the two related companies in the Union. The company suggested using instead the SG&A costs reported by its related company in Spain, which was not involved in processing activities during the IP. Second, the company also proposed as another option to exclude specific costs incurred by the related company in Italy contained in the SG&A costs which were specific to processing activities and costs related to exporting activities to third countries. For this purpose, it submitted additional data. This data was verified by the Commission during a second verification visit to the related company in Italy. No such information was provided for the related company in the UK, but it was inferred that the same amount of corrected SG&A costs as for the Italian related company should be applied for the purpose of adjusting the export price.

(46) The Commission rejected the first claim as it considered appropriate that the actual SG&A costs borne by each related company should be used when constructing the export price under Article 2(9) of the basic Regulation. The Commission failed to see why taking the actual costs as a starting point cannot be considered as a reasonable basis.

(47) Regarding the second option, the Commission considered it justified since for both traders the sales of the processed goods in the Union were excluded from the export price determination. This also justified a division of costs in order to exclude costs related to processing activities. Furthermore, on the basis of the second verification visit during which the additional breakdown of SG&A costs provided for the related company in Italy was verified, the Commission accepted some of the costs as being related exclusively to processing of bare pipes (which are excluded from the product scope as mentioned above). The SG&A costs related to processing activities were thus not taken into account in the construction of the export price under Article 2(9) of the basic Regulation. Regarding the related company in the UK, no further corrections of SG&A costs were made, as the company did not provide after provisional disclosure any additional breakdown of such costs. Finally, all costs related to exports activities to third countries were already deducted at provisional stage for all related companies in the Union.

(48) After definitive disclosure, Jindal argued that its group structure changed after the IP and that exports are no longer made via its related importers in the UK and in Spain. However, alleged changes in the group structure after the IP cannot have an impact on the dumping margins, which were established based on verified data concerning the IP. Accordingly, this argument was rejected.

(49) After provisional and definitive disclosure, the same exporting producer also argued that the Commission adopted a different approach with respect to the adjustment for SG&A, on the one hand, and for profit, on the other hand. For the SG&A adjustment, the Commission relied on actual SG&A costs incurred, whereas for the profit adjustment, the actual amounts were replaced by a theoretical amount.

(50) This related company was, however, lossmaking in the IP. So there was no actual profit margin which could be used. As set out in recital 43 of the provisional Regulation, in the absence of any reasonable benchmark an average profit of 3,7 % was used, which was considered a reasonable level of profit of an unrelated importer. The Commission considered the use of this level of profit more accurate than any use of a level of profit of a related importer, if such profit level should have been available.

(51) After provisional disclosure, ECL also submitted a claim that the full SG&A costs of its related companies in the Union should not be deducted in the context of the export price construction. The company claimed that its subsidiaries in the Union perform the role of an importer as well as those of the marketing division of the exporting producer. It submitted that only those SG&A expenses of the related companies in the Union which related to their activities as importers should be deducted in the construction of the export price. The claim was resubmitted after definitive disclosure, without, however, providing new elements.

(52) The Commission rejected this claim for the following reasons. First, during the IP the exporting producer also directly exported to the Union, although only in small quantities, and not only via its related companies. In addition, the investigation revealed that the exporting producer has also borne costs in India related to the export sales to the Union (e.g. personnel dedicated to the export sales to the Union and other SG&A costs). This showed that the exporting activities and the related costs of the company were shared between the mother company and its related companies in the Union. After definitive disclosure, the company argued that the main marketing functions were carried out by the related companies in the Union and, subsequently, the related costs were borne by them. This does, however, not contradict the Commission's assessment as the company acknowledged that

certain costs related to the export sales to the Union were also borne by the mother company. Therefore, the argument that the related companies in the Union were the marketing departments of the mother company was rejected.

(53) Second, marketing, advertising and other activities related to finding customers in the Union are activities typically carried out by an importer and the costs associated to them are normally borne by the latter. In particular, these costs are part of the costs related to the sales of a product. Furthermore, the costs assigned by the company to the activities of exporting would not have been incurred in the absence of importation of the product concerned into the Union. Therefore, the distinction between the export and import activities made by the exporting producer was not justified and should also be rejected. Nevertheless, the costs borne by the related companies in the Union related to exports of the product concerned or other products to third countries were already deducted from the entities' SG&A costs.

(54) In the absence of other comments, the Commission confirmed recitals 33 to 48 of the provisional Regulation.

2.3. **Comparison**

(55) Following provisional disclosure, ECL submitted that intra-company credit costs, that is credit costs between the mother company in India and its related companies in the Union, should not have been deducted under Article 2(10)(g) of the basic Regulation since the Commission did not accept the transfer price between the exporting producer and its related companies in the EU. Also, the Commission already deducted the credit costs of the related companies in the Union which related to their sales to independent customers when establishing the export price under Article 2(9) of the basic Regulation. This claim was accepted.

(56) The same exporting producer also claimed that an amount equal to the Duty Drawback Scheme and the Focus Product Scheme should be deducted from the normal value under Article 2(10)(b) of the basic Regulation in order to ensure a fair comparison between the normal value and the export price.

(57) The Commission rejected this claim for the following reasons. First, as indicated in recital 53 of the provisional Regulation, no adjustment was made for duty drawback since the exporting producers failed to prove that the tax not paid or refunded on export sales is included in the domestic price. This was also confirmed in the parallel anti-subsidy investigation ([8]) where it was established that the so-called 'Duty Drawback Scheme' and the 'Focus Product Scheme' constitute subsidies in the form of financial contribution by the Government of India and cannot be considered permissible duty drawback system or substitution drawback system.

(58) After definitive disclosure, the same exporting producer reiterated its claim that the Duty Drawback Scheme and the Focus Product Scheme should be deducted from the normal value. However, it did not provide any new factual elements or arguments in this respect. Therefore, the Commission rejected this claim.

(59) After provisional and definitive disclosure, the complainant reiterated its claim that the Commission should apply the exceptional methodology of targeted dumping laid down in the second sentence of Article 2(11) of the basic Regulation.

(60) The Commission did not establish any new elements which would allow it to divert from its provisional assessment that the application of the methodology of targeted dumping was unwarranted.

(61) In the absence of any other comments, the conclusions reached in recitals 49 to 54 of the provisional Regulation were confirmed.

2.4. **Dumping margins**

(62) After provisional disclosure, ECL claimed that the CIF values used for dumping and injury margin calculations were inconsistent. In particular, the company argued that the CIF value used as the denominator for the dumping margin calculation for ECL should be the same CIF value which was used for the purpose of the injury margin calculation and which reflects the constructed export price at CIF level.

(63) The Commission considered that the denominator for the dumping margin calculations should be the actual CIF Union frontier price at which a good has been declared to the Union customs authorities. This methodology

([8]) See recitals 84-86 and 119-125 of the anti-subsidy Regulation.

ensures that the dumping margin is calculated as a percentage of the actual CIF Union frontier price and also ensures that the anti-dumping duty is collected by the Union customs authorities on the basis of this actual CIF Union frontier price. Consequently, this claim was rejected. In addition, in both the dumping and the injury calculations the export prices, at Union frontier level, used were the ones that were constructed pursuant to Article 2(9) of the basic Regulation. The methodology used in both the dumping and the injury calculations is therefore coherent. However, this does not preclude the fact that the final duty has to be expressed as a percentage of the CIF value as reported to the customs authorities.

(64) After definitive disclosure, the complainant argued that a comparison between the dumping and injury margins of the two exporting producers revealed an anomaly, as one of them had a lower dumping margin coupled with a higher injury margin whereas for the other exporting producer it was the opposite.

(65) This difference is due to the fact that, for the reasons explained above, both the export price and the normal value (to a large extent) were constructed for the two exporting producers. Therefore, the dumping margins reflected the cost structure of the two companies rather than the actual prices charged to unrelated customers, both on the Indian domestic market and on the Union market.

(66) The complainant claimed that the exclusion of bare pipes underestimated one of the exporting producers' dumping margin which should be set at a higher level. Since the Commission decided to exclude bare pipes from the product scope for the reasons set out in recitals 13-19 above, this claim is without object and therefore rejected.

(67) The complainant also argued that price levels after the IP should be taken into account in the dumping margins calculations. In particular, it claimed that after the IP the exporting producers decreased their prices on the Union market while their prices on the Indian domestic market allegedly remained stable.

(68) The complainant correctly pointed out that *'by using the term "normally", Article 6(1) of the basic Regulation does allow exceptions to the rule against taking into account of information relating to a period subsequent to the investigation period'* ([9]) However, the request to calculate a new export price and a normal value for both exporting producers for a period after the IP would require a new full in-depth investigation by the Commission, including collecting and verifying data from the exporting producers. This is technically and legally not possible within the framework of this proceeding. Consequently, this claim was rejected.

(69) In the absence of other comments, the methodology used for calculating the dumping margins, as set out in recitals 55 to 56 of the provisional Regulation, was confirmed.

(70) Taking into account the adjustments made to the normal value and to the export price, and in the absence of any further comments, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
Jindal Saw Ltd	19,0 %
Electrosteel Castings Ltd	4,1 %
Country-wide margin	19,0 %

3. **INJURY**

3.1. **Preliminary remarks**

(71) Several parties claimed that the provisional disclosure contained insufficient information with regard to Union consumption, import and export statistics as well as data concerning macro-and micro indicators for the determination of injury. The claim was partially accepted and additional information on the injury indicators is set out below, albeit within ranges in order to protect legitimate claims for confidentiality.

([9]) Case T-138/02 of 14 November 2006, *Nanjing Metalink International Co. Ltd* v *Council of the European Union*, para. 61.

(72) Following comments on the final disclosure the Commission found out that it had attributed some of the Union industry export sales to Union sales. The corrected sales figures have led to slight modifications/corrections to some of the ranges and/or indexes relating to certain other injury indicators, namely overall Union consumption, the exporting producers market share, the Union industry market share and the Union sales price. These corrections had, however, only a minor impact on these injury indicators and did not affect the trends and change the conclusion that there was material injury.

3.2. **Definition of the Union industry and Union production**

(73) The like product was manufactured by three producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(74) As there are only three Union producers and SG PAM Group provided the data for its subsidiaries and estimates for the sole non-cooperating Union producer — Tiroler Rohre GmbH ('TRM'), all figures are presented in indexed form or given as ranges to protect confidentiality of the other Union producer who cooperated with the investigation.

(75) The total Union production during the investigation period was established at 590 000 tonnes-610 000 tonnes. The Commission established the total Union production on the basis of all the available information concerning the Union industry, such as information provided in the complaint for the non-cooperating producer and data collected from cooperating Union producers during the investigation. The two cooperating Union producers represent around 96 % of the total Union production.

3.3. **Union consumption**

(76) The Commission established the Union consumption on the basis of the volume of the total Union industry's sales in the Union, plus imports from third countries to the Union. The Commission established the total Union industry's sales on the basis of the data collected from cooperating Union producers and the information provided in the complaint for the non-cooperating producer. Import volumes were extracted from Eurostat data and reconciled with the data provided by the cooperating Indian producers.

(77) Union consumption developed as follows:

Union consumption

	2011	2012	2013	IP
Consumption (in 1 000(k) tonnes)	570-620	490-540	460-510	520-570
Index	*100*	*87*	*83*	*93*

Source: questionnaire replies, information contained in the complaint and Eurostat.

(78) The Union consumption decreased by 7 % during the period considered. The Union consumption followed a U-pattern — it fell significantly between 2011 and 2012 (by more than 13 %), decreased further in 2013 and increased in the investigation period. This pattern can partially be explained by the fact that the final users of ductile iron pipes are water supply utilities, sewerage and irrigation companies. They are most often public entities dependant on governmental funding. In 2011 and 2012 the economic crisis turned into a fully-fledged government debt crisis with repercussions into 2013, which prompted the Union governments to reduce public investment and expenditure. This explains a significant drop in demand for ductile pipes, especially in countries such as Spain, Portugal and Italy.

3.4. **Imports from India**

3.4.1. *Volume and market share of the imports from India*

(79) The Commission established the volume of imports on the basis of Eurostat. The Eurostat data was crosschecked with the data provided by the exporting producers and the differences were marginal. Following the exclusion of bare pipes from the product scope, the Commission removed the volume of bare pipes imported from India from the total imports for the years the bare pipes were imported i.e. 2013 and the IP. The market share of the imports was established on the same basis.

Import volume and market share

	2011	2012	2013	IP
Volume of imports from India (in 1 000(k) tonnes)	75-85	60-70	70-80	80-100
Volume of imports *Index*	*100*	*83*	*94*	*110*
Market share (%)	13-15	13-15	15-17	17-19
Market Share *Index*	*100*	*95*	*112*	*118*

Source: Eurostat, questionnaire replies

(80) The Indian import volumes increased by more than 10 % during the period considered in spite of the shrinking market. In the same period, the Indian exporting producers market share increased by almost 18 %. It is notable that in 2012-2013, when the Union consumption remained at a low level and even further contracted, the Indian imports increased significantly by almost 10 % to increase its market share by almost 17 %. The imports from India continued to rise significantly in the IP with a further increase of its market share by 6 % between 2013 and the IP.

3.4.2. *Prices of the imports from India*

(81) The Commission established the prices of imports on the basis of Eurostat data to analyse the trends in the evolution of price. Following the exclusion of bare pipes, the Commission removed the value and volume of bare pipes imported from India from the average price calculation for the years the bare pipes were imported namely 2013 and the IP.

(82) The average price of imports into the Union from India developed as follows:

Import prices

	2011	2012	2013	IP
India (EUR/tonne)	665	703	671	664
Index	*100*	*106*	*101*	*100*

Source: Eurostat, questionnaire replies.

(83) After showing a 6 % increase in prices between 2011 and 2012, prices fell in 2013 and reached the same level in the IP as at the start of the period considered.

3.4.3. *Price undercutting*

(84) The Commission determined the price undercutting during the investigation period on the basis of the data submitted by the exporting producers and the Union industry by comparing:

(a) the weighted average sales prices per product type of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(b) the corresponding weighted average prices per product type of the imports from the cooperating Indian producers to the first independent customer on the Union market, established on a Cost, Insurance, Freight (CIF) basis, with appropriate adjustments for post-importation costs.

(85) Both exporting producers claimed that there were significant differences between the products sold by the complainant and those sold by it which would affect fair price comparability. In particular, they claimed that they do not manufacture pipes equipped with a double chamber restrained joint that is sold by SG PAM under the brand name Universal joint. They also do not manufacture an automatic joint for pipes with low thickness, matching with plastic pipes used in SG PAM's Blutop product range. In addition, they claimed that they do not manufacture pipes internally lined with thermoplastic which SG PAM markets under the brand name Ductan and uses in their Blutop product range. Ductile pipes users in the Union confirmed these claims and also that neither of the Indian cooperating exporting producers could supply those identified products. Therefore, the Commission excluded SG PAM's pipes fitted with Universal joint as well as SG PAM's Blutop product range from the undercutting and injury margin calculations. This exclusion affected less than 10 % of transactions in volume.

(86) Following final disclosure, the complainant claimed that the exclusion of Universal joint was unfounded as each exporting producer has a technical solution that can replace this kind of joint. The Commission recalled that many users had confirmed that the exporting producers are not able to supply a double chamber restrained joint. In any case, in this investigation, a type of joint was not identified as an essential element to distinguish between different product types for the purpose of making the price comparison. Therefore a fair price comparison on a type by type basis could not be made. In view of the fact that the volume of the product fitted with this joint is low, the difficulties in making a fair price comparison and the fact that, as provided for in recital 91 below, a vast majority of product types was subject to undercutting and injury margin calculation the Commission maintained that it was appropriate to exclude the double restrained joints from the undercutting calculations.

(87) Jindal also claimed that other physical differences in respect of, amongst others, external coating and internal lining affected price comparability and should therefore also be adjusted/excluded. These claims were however rejected. Both the Union industry and the Indian exporting producers had reported sales in the Union of product types with comparable physical characteristics and a fair comparison had therefore been carried out in respect of those other alleged differences for the purpose of undercutting and injury margin calculations.

(88) As outlined in recital 43 above, flanged pipes were excluded from the determination of the exporting producers export price. As a consequence, the Union industry sales of the same product were also excluded from the undercutting calculations. The volume of flanged pipes sold on the Union market was very small (less than 1 %).

(89) Following final disclosure, Jindal claimed that the adjustments to the export price carried out by the Commission, namely the SG&A adjustment and the profit adjustment, are contrary to WTO law. The same exporting producer claimed that such adjusted export prices (which are sometimes 0 or even negative) cannot form the basis to assess whether the dumped imports are causing an injury to the Union industry. The Commission disagreed. In line with the Commission's usual practice the Union producers' prices have been also adjusted to an ex-works level by deducting, inter alia, transport related expenses. Hence comparing the importer's resale price with a Union ex-works price would not be a fair comparison. In addition, the only instance of the exporting producer's price lesser than 0 was eliminated from the undercutting calculation after final disclosure, with insignificant impact on the margins.

(90) After final disclosure Jindal pointed out that the Commission had failed to provide information concerning the matching of the Union products and the exporting producers' products for each individual product type (PCN) and the producer was therefore not able to ascertain whether the Commission had analysed the significance of price undercutting in relation to the proportion of product types for which no undercutting was found.

(91) The product matching in the undercutting calculations was 99 % and 95 % for the two exporting producers respectively and undercutting was found for 98 % and 91 % of the different product types sold on the Union market. Considering the very high proportion of product types that were undercut, the Commission rejected the claim that a proper analysis of the impact of the undercutting was not carried out.

(92) Following the final disclosure Tata claimed that the price undercutting based on Union industry's cost of production was not a suitable indication for examining injury as the cost of production was inflated due to high fixed costs and overcapacity. As noted below, price undercutting is a price to price comparison. In any event, price undercutting is only one of several indicators that are examined to determine if the Union industry suffered material injury.

(93) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period. It showed weighted average undercutting margins of 30,9 % and 31,7 % for the two cooperating exporting producers.

3.5. **Economic situation of the Union industry**

3.5.1. *General remarks*

(94) The microeconomic and macroeconomic data are disclosed as ranges and index numbers in order to protect legitimate claims for confidentiality as set out recital 71.

3.5.2. *Macroeconomic indicators*

3.5.2.1. Production, production capacity and capacity utilisation

(95) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Union production, production capacity and capacity utilisation

	2011	2012	2013	IP
Production (in 1 000(k) tonnes)	580-600	460-480	530-550	590-610
Production Volume *Index*	*100*	*79*	*91*	*101*
Production Capacity (in 1 000(k) tonnes)	1 000-1 100	1 000-1 100	1 000-1 100	1 000-1 100
Production Capacity *Index*	*100*	*100*	*100*	*100*
Capacity utilisation (%)	52-57	42-47	45-50	53-58

Source: Questionnaire replies and information contained in the complaint.

(96) The overall production of the Union industry was slightly higher in the investigation period than it was in 2011, in spite of much lower Union sales in the investigation period (see table below). An increase in production in 2013 and the IP is driven by increased export sales (see recital 128).

(97) The capacity remained stable throughout the period considered. The capacity utilisation went marginally up in line with the increase in production in the period considered. Nonetheless, the capacity utilisation remained relatively low at 53 %-58 %. Ductile pipes production is an industry characterised by a relatively high fixed cost. Low capacity utilisation deteriorates the absorption of fixed costs, which may affect the profitability of the Union industry.

3.5.2.2. Sales volume and market share

(98) The Union industry's sales volume and market share developed over the period considered as follows:

Sales volume and market share of Union Industry

	2011	2012	2013	IP
Sales volume (in 1 000(k) tonnes)	430-470	370-410	340-380	380-420
Sales volume *Index*	*100*	*88*	*82*	*89*
Market share (%)	75-80	76-81	73-78	71-76
Market share *Index*	*100*	*101*	*98*	*96*

Source: Questionnaire replies, information contained in the complaint and Eurostat.

(99) The Union industry sales decreased by 11 % during the period considered to 380 kt-420 kt in the investigation period. The Union industry lost significantly larger volume of sales than the volume of decrease in consumption and, as a consequence, its market share decreased by 4 % during the period considered.

(100) ECL claimed that the decrease in sales volumes based on metric tonnes does not take into account that the complainant introduced and sold largely lighter tubes and pipes during the period considered and that therefore the decrease is exaggerated. This claim was not substantiated by any supporting evidence and was therefore rejected. Nevertheless, the Commission excluded a range of lighter pipes — Blutop from the undercutting and injury margin calculations, for the reasons set out in recital 85.

3.5.2.3. Growth

(101) The overall consumption of the product concerned in the Union decreased by 7 % in the period considered. The consumption fell drastically in 2012 by more than 13 %, remained depressed in 2013 and started recovering in the investigation period. At the beginning of the period considered the sales of the Union Industry, the imports from third countries as well as Indian imports fell in line with the consumption. By the end of the period considered, whilst the Union consumption started going up, the Union industry could not benefit fully from this recovery since both its Union sales volume and market share had decreased while Indian imports had gained market shares.

3.5.2.4. Employment and productivity

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

Number of Employees and productivity

	2011	2012	2013	IP
Employees	2 400-2 500	2 300-2 400	2 300-2 400	2 400-2 500
Employees Index	100	93	93	99
Productivity/Employee	220-240	180-200	210-230	230-250
Productivity Index	100	82	96	102

Source: Questionnaire replies.

(103) The employment and productivity were at similar level in the investigation period as they had been in 2011. However, the fact that employment did not go down is mainly attributable to a significant increase in the sales outside of the Union as mentioned in recitals 127 and 128 below, which enabled the Union Industry to re-hire staff.

3.5.2.5. Magnitude of the dumping margin and recovery from past dumping

(104) All dumping margins were above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volumes and significant price undercutting by the dumped imports from the country concerned.

(105) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

3.5.3. *Microeconomic indicators*

3.5.3.1. Prices and factors affecting prices

(106) The average unit sales prices of the cooperating Union producers to unrelated customers in the Union developed over the period considered as follows:

Sales prices in the Union

	2011	2012	2013	IP
Average unit sales price in the Union (EUR/tonne)	990-1 050	1 000-1 060	1 020-1 060	1 000-1 060
Index	*100*	*102*	*104*	*101*
Unit cost of production (EUR/tonne)	900-950	1 000-1 050	900-950	850-900
Index	*100*	*110*	*104*	*96*

Source: Questionnaire replies.

(107) The average unit selling price increased in 2012 and 2013, dropped by 3 % during the IP and returned to a level similar to that of the beginning of the period considered. The cost of production went up in 2012 and went down in 2013 and in the IP, mainly due to the reduction in the price of the main raw material — iron ore and scrap metal.

(108) Jindal claimed that a decreasing profitability of the Union industry is inconsistent with the fact that the spread between the Union industry's selling price per unit and the cost of production had increased in the IP. The Commission disagreed with this argument. The cost of production indicated in the table above was not used in the calculation of the profitability. The cost of production was established on the basis of the cost of manufacturing of the product concerned and the selling, general and administrative (SG&A) expenses for the four cooperating production companies in the Union. The profitability, on the other hand, was calculated on the basis of the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales, which included the costs of goods sold, SG&As, R & D costs and certain other costs for all the Union's cooperating production companies as well as sales subsidiaries. Therefore, the profitability can evolve differently than the unit selling prices and the cost of production.

3.5.3.2. Labour costs

(109) The average labour costs of the cooperating Union producers developed over the period considered as follows:

Average labour costs per employee

	2011	2012	2013	IP
Labour Cost (kEUR/employee/year)	56-58	56-58	58-60	58-60
Index	*100*	*100*	*103*	*104*

Source: Questionnaire replies.

(110) During the period considered, the average labour cost per employee went up by 4 %. This increase was below the overall increase in wages and salaries in the Union as reported by Eurostat.

(111) Jindal pointed out that Commission did not provide the Eurostat data on which it relied to support the statement that the labour costs for the Union industry increased less than for the whole industrial sector in the Union. The Commission clarified that the annual growth in labour costs in the whole industrial sector in the European Union as reported by the Eurostat ([10]) was 6,9 % between 2011 and 2014 and almost 5 % between 2011 and 2013.

3.5.3.3. Inventories

(112) Stock levels of the cooperating Union producers developed over the period considered as follows:

Inventories

	2011	2012	2013	IP
Closing stocks (in 1 000(k) tonnes)	110-130	80-100	80-100	90-110
Closing stocks *Index*	*100*	*74*	*73*	*82*
Closing stocks to production ratio (%)	20-22	20-22	16-18	16-18

Source: Questionnaire replies.

(113) During the period considered the level of closing stocks went down. The reduction in the level of stocks is mainly caused by a more stringent working capital requirements imposed by the Union industry's management.

([10]) http://ec.europa.eu/eurostat/data/database# → Population and Labour Conditions → Labour Costs → Labour Cost index, nominal value — annual data (NACE Rev. 2) (lc_lci_r2_a), dataset for Industry (except construction).

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

(114) Profitability, cash flow, investments and return on investments of the cooperating Union producers developed over the period considered as follows:

Profitability, cash flow, investments and return on investments

	2011	2012	2013	IP
Profitability of the sales in the Union to unrelated customers (% of sales turnover)	2,5-3,0	(–)5,5-(–)6,0	(–)1,0-(–)1,5	1,5-2,0
Cash Flow (Millions EUR)	8-10	7-9	5-7	8-10
Cash Flow *Index*	*100*	*92*	*67*	*101*
Investments (Millions EUR)	18-20	11-12	13-15	22-24
Investments *Index*	*100*	*60*	*67*	*120*
Return on Investments (%)	49	(–)155	(–)29	20

Source: Questionnaire replies.

(115) The Commission established the profitability of the cooperating Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry went down from 2,5 %-3,0 % in 2011 to 1,5 %-2,0 % in the investigation period and it was negative in 2012 and 2013.

(116) The net cash flow is the ability of the cooperating Union producers to self-finance their activities. The cash flow was at a similar level in 2011 and the investigation period.

(117) The level of investment was larger in the IP than it had been in 2011. However in the years 2012 and 2013 the level of investment was much lower and the increase in the investigation period did not offset the decrease in the preceding years. An increase in investment during the IP can be largely explained by one large investment by one cooperating Union producer to replace a vital piece of equipment that had broken down. The return on investments is the profit in percentage of the net book value of investments. The return on investments was significantly lower in the investigation period than it was in 2011.

3.6. **Conclusion on injury**

(118) The Union industry lost market shares by 4 % in a declining market, while its sales in the Union market decreased by 11 %. The capacity utilisation remained low throughout the whole period considered although it slightly increased as compared to the beginning of the period considered, mainly due to a considerable increase in Union industry exports. Whilst the Union industry has to some extent recovered from the negative results incurred in 2012 and 2013, its profitability has overall decreased during the period considered and was by the end of the investigation period only 1,5 %-2,0 %, well below the target profit, which has been established at 5 % (see recital 126 of the provisional Regulation).

(119) The fact that some other injury indicators such as production, capacity utilisation, productivity, cash flow, investment or return on investment remained relatively stable or even improved, cannot change the conclusion that the Union industry suffered material injury as explained in recital 122 below.

(120) The exporting producers and Tata claimed that the fact that several indicators show a positive/stable trend means that the Union Industry is not in an injurious situation. The Commission rejected this argument. First, Article 3(5) of the basic Regulation states that the examination of the Union industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry and that 'any one or more of these factors necessarily give decisive guidance'. Second, for finding the existence of material injury it is not necessary for all the relevant economic factors and indices to show a negative trend. Moreover, the existence of stable or even positive trends in some of the injury indicators does not preclude the existence of material injury. Rather, such a finding must be based on an overall assessment of all indicators which has been fully endorsed by the European jurisprudence ([11]).

(121) Low profitability, coupled with a loss of sales and market shares in the Union, puts the Union industry in a difficult economic and financial situation.

(122) On the basis of an overall analysis of all relevant injury indicators and given the difficult economic and financial situation of the Union industry it is concluded that it is suffering from material injury within the meaning of Article 3(5) of the basic Regulation.

4. **CAUSATION**

(123) Following provisional disclosure both exporting producers from India and Tata claimed that there is no coincidence in time between the situation of the Union industry and imports from India and that the injurious situation of the Union industry has not been caused by imports from India. In particular, they argued that the Union industry returned to profitable figures and increased its sales volumes during the IP while imports from India were high. They also claimed that the Commission failed to properly assess other factors, particularly the financial crisis and the Union industry's overcapacity as the main cause of injury. These claims were also largely repeated after final disclosure.

(124) When analysing whether dumped imports have caused injury under Article 3(6) of the basic Regulation a particular consideration must be given to whether there has been significant price undercutting by the dumped imports. This entails a comparison with the price of the like product of the Union industry. The Commission analysed whether the effects of such imports depressed prices to a significant degree or prevented price increases that would have otherwise occurred. The Commission recalled that a continued pressure exerted by low-priced dumped imports that does not allow the Union industry to adapt its sales prices may constitute causality within the meaning of the basic Regulation ([12]).

(125) In recital 102 of the provisional Regulation the Commission acknowledged that a significant fall in Union consumption in 2011 and 2012 was due to the global financial crisis and shrinking public expenditure and that this decrease in consumption contributed to the situation of the Union industry at the beginning of the period considered. However, from 2013 when the Union consumption was still depressed until the end of the investigation period, Indian dumped imports to the Union increased significantly, by 16 % as compared to an overall increase of 10 % during the whole period considered. At the same time the Indian imports increased their market share by almost 18 % over the period considered and by 6 % from 2013 until the end of the IP. This was made possible by selling the product concerned at prices substantially lower than the ones charged by the Union industry. Indeed, for the IP the investigation has established that Indian dumped export prices undercut the Union prices by more than 30 %

(126) As a consequence, despite the global recovery from the financial crisis and an increase in Union consumption from 2013, the Union industry could not fully benefit thereof. Although the Union industry increased its sales volumes between 2013 and the end of the investigation period, the sales volumes decreased overall during the period considered by 10 % as compared to Indian imports, which increased by 10 % during the same period. The

([11]) Case T-310/12 of 20 May 2015, Yuanping Changyuan Chemicals Co. Ltd v Council of the European Union, paras 134 and 135.
([12]) Commission Regulation (EU) No 1043/2011 imposing a provisional anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China (OJ L 275, 20.10.2011, p. 1), recital 103.

influx of dumped imports from India, which significantly undercut the Union industry's prices, prevented the Union industry from increasing its sales volumes on the Union market to levels that could ensure sustainable profit levels. In order to maintain the production volume the Union industry increased its export volumes (see the table below). There was thus a coincidence in time between the dumped imports at prices significantly undercutting the Union industry prices (around 30 %), which significantly depressed prices on the Union market that in turn prevented price increases that would otherwise have occurred, and the material injury suffered by the Union industry in the investigation period.

(127) The volume of exports of the cooperating Union producers developed over the period considered as follows:

Export performance of the cooperating Union Producers

	2011	2012	2013	IP
Export Volume (in 1 000(k) tonnes)	120-140	100-120	150-170	160-180
Export Volume *Index*	*100*	*78*	*116*	*130*
Export Price (EUR/t)	1 000-1 050	1 050-1 100	1 000-1 050	950-1 000
Average Export Price *Index*	*100*	*108*	*104*	*99*

Source: Questionnaire replies.

(128) The sales of the Union industry outside of the Union increased considerably by 30 % over the period considered, while the average selling price remained relatively stable. Therefore, the sales outside of the Union are actually a factor alleviating the injury. Absent an increase of sales outside of the Union, the Union industry would have been in an even more injurious situation.

(129) Jindal pointed out that the export sales prices of the Union Industry were below the Union sales prices, and could therefore not alleviate the injury. The increased sales outside of the Union enabled the Union industry to have a higher level of production, maintain the level of employment and increase the capacity utilisation, which means a better absorption of fixed costs. The fact that the average exports unit prices were slightly lower (within a 5 % range) than the Union sales prices can be due to many different factors, such as the sales of less sophisticated product types, larger diameters, larger volumes of sales transactions, etc. and therefore the prices outside of the Union could be lower than the cost of sales in the EU.

(130) The exporting producers also claimed that the injury was self-inflicted because the complainant focused increasingly on Chinese manufacturing activity in the PRC and a large part of their sales to countries other than the EU are Chinese products, which causes, inter alia, low capacity utilisation. The Commission did not accept this argument. As noted above, the Union industry's export sales increased considerably by 30 %, which prevented the fall in production and a deterioration of several other injury indicators.

(131) The exporting producers and Tata claimed that the injury is due to structural overcapacity. However, the fact that the Union industry had a low capacity utilisation rate during the period considered does not necessarily mean that it suffers from structural overcapacity and/or inefficiencies of such magnitude that it would justify a downwards adjustment of the non-injurious price. It is recalled that despite a low capacity utilisation in 2011, that was even lower than the rate established during the investigation period, the Union industry had a higher profitability. This claim was therefore rejected.

(132) Jindal claimed that the Union industry's SG&A doubled over the period considered and this was a factor causing injury that broke the causal link. However, as it was found that that SG&A costs had only increased slightly during the period considered this argument was rejected.

(133) The exporting producers and Tata claimed that an increase in investments is a clear indication of an improved situation and that growing Indian imports do not cause the injury. The Commission disagreed. First of all, even the increased volume of investments EUR 22 Millions-24 Millions was relatively low in relation to the total Union industry sales exceeding EUR 400 Millions. In addition, as noted in recital 117 there was a breakdown of a large liquid iron mixer for one Union producer. The replacement of the mixer required a high level of expenditure in the fixed assets in the IP.

(134) ECL considered that a reduced profitability is the effect of the breakdown. It must be noted that already at the provisional stage a set of calculations was made to isolate the impact of the mixer breakdown on profitability and this claim is therefore rejected.

(135) Jindal also claimed that an increased spread between the unit selling price and the cost of production in the IP indicates a lack of causality between the dumped imports and the injury. As explained above in recital 108, the unit selling price and the cost of production per unit are not established on the same basis and there is hence not a direct correlation between these two indicators. In any event, the price increase over the cost of production in the IP was not sufficient to restore the target profitability of the Union Industry.

(136) The same exporting producer considered that given that the import prices were at the similar level in 2011 and in the IP (based on Comext data) it may be concluded that there is a coincidence in time between the undercutting/substantially lower prices and a good performance of the Union industry in 2011. This hypothesis is clearly based on premises that the Commission does not share. The situation of the Union industry was not healthy in 2011 as its profitability was also below the target profit of 5 %.

(137) Absent the significant price undercutting of the Union industry sales prices by dumped Indian imports, which served to depress prices to a significant degree or prevent price increases that would otherwise have occurred, the Union industry's sales volumes would have increased, capacity utilisation would have improved and the profitability levels would have increased further. The Commission therefore concludes that the material injury suffered by the Union industry was caused by the dumped Indian imports which prevented price increases that would have enabled the Union industry to return to a sustainable profitability. This causal link was not broken by other factors, such as the financial crises, Union export sales, low capacity utilisations, etc. as explained in the preceding recitals.

(138) Absent any other comments on causation, the findings in recital 109 of the provisional Regulation are confirmed.

5. **UNION INTEREST**

(139) Both exporting producers claimed that it would not be in the Union interest to impose anti-dumping measures against India in view of the complainant's dominant position on the Union market, taking into account also that the complainant has production of the product concerned in China, which it could easily import to the Union should measures against India be imposed thus further exacerbate its dominant position.

(140) The investigation has demonstrated that imports into the Union from the complainant's related Chinese facilities were insignificant during the investigation period. There are also no indications that the complainant would in the future use those Chinese production facilities to replace Indian imports should measures be imposed.

(141) Furthermore, as indicated in the provisional Regulation, the Commission sent a supplementary information request to analyse more in-depth the possible effect the imposition of measures could have on competition. The Commission received around 50 replies, mainly from the EU distributors of the product concerned, construction companies and several water utilities, whose identity can be located on the open file.

(142) Almost all users who replied to the supplementary information request were concerned about the very high market share of the complainant and expressed their apprehension that after the imposition of duties its main

competitors, i.e. Indian companies, would be forced to exit the Union market leaving the complainant as a dominant player. Some distributors also alleged that SG PAM had refused to trade with them or had offered them less advantageous conditions since they had started cooperating with the exporting producers. One user provided two price quotes demonstrating in its view that SG PAM had increased its prices by around 25 % in December 2015. Some users also alleged that SG PAM had used its strong position to manipulate tenders in favour of their products.

(143) While it is true that the EU competition rules impose more stringent standards of behaviour on a company that has a significant market share it is ultimately up to the competition authorities to determine whether there is a dominant position and whether it is abused. The competition authorities proceed first by examining the relevant product and geographic market. For example in the case regarding HDPE and MDPE pipes for sewage, it was not excluded that they competed with ductile iron pipes and steel pipes, though ultimately the product market definition was left open ([13]). In the present case, the Commission was unable to define the relevant product and geographic market absent any formal competition complaint brought before it.

(144) Exclusive distribution agreements offering more advantageous conditions or even stricter vertical restraints in the distribution of goods are not illegal per se ([14]) and it is ultimately up to a competition authority to conduct an assessment if such restraints are anti-competitive or even abusive. As regards the price quotes allegedly pointing to price increases by SG PAM, the Commission found them hard to compare without any more in-depth investigation about the precise offers and circumstances involved. In addition, the Commission received only one piece of evidence of alleged price increases, which in itself cannot prove that they have been wide-spread.

(145) In anti-dumping proceedings the Commission examines competition concerns to establish whether, on balance, it would be clearly against the Union interest to impose anti-dumping measures. Such an analysis cannot encompass a competition assessment in the strict legal sense, which can only be carried out by a competent competition authority. In any case, no robust evidence was provided that would suggest that the complainant would engage in anti-competitive behaviour should anti-dumping measures be imposed other than the fact that it has a strong position already on the market. No decision from a competition authority was provided where the complainant was found to engage in anti-competitive behaviour for the product concerned. No court ruling was provided where the complainant was found to manipulate tenders.

(146) It is recalled that the purpose of imposing anti-dumping measures is to restore a level playing field where Union producers and third country producers compete on fair conditions and not to force exporting producers out of the market. Accordingly, under Union rules duties would only be set at a level that would still enable the Indian exporters to continue competing with the Union producers, but at fair prices. Indeed, the combined anti-dumping and countervailing measures are set at the dumping and subsidisation level below the level of undercutting.

(147) Moreover, there are several producers located in third countries (China, Turkey, Russia, and Switzerland) who are already selling to the Union market. Their sales volumes during the period considered were low and declining. However, one of the causes of such a decline in other importers sales appears to have been the aggressive pricing from the Indian producers as those prices were well below the prices of all other major importing countries (with the exception of Russia).

(148) The users confirmed that in case the Union industry unilaterally increases prices, the imports from other countries may increase in the medium term, once such exporters from third-countries will have received additional certifications required by the Member States.

(149) The Commission was therefore satisfied that in the weighing and balancing of interests, the protection of the Union industry against injurious dumping must be given priority over the interests of users to avoid potential negative effects on competition on the Union market. While there is a fear that anti-dumping duties may reinforce an already strong position of the leading Union producer, a number of mitigating factors, such as continuing competition from Indian, other exporters and substitute products, ensures that a sufficient competitive pressure is maintained on the Union industry to avoid potential negative effects on competition on the Union market. Finally it must be reiterated that the Commission is ready to monitor the effect of its measures on competition on the Union market.

([13]) Case M.565, Solvay/Winerberger, para. 19, referred to in other cases M.2294 EtexGroup/Glynwed PipeSystems, para. 8.
([14]) The Commission's Guidelines on Vertical Restraints (2010/C-130/01).

(150) The finding in recital 121 of the provisional Regulation is therefore confirmed.

6. DEFINITIVE ANTI-DUMPING MEASURES

6.1. **Injury elimination level**

(151) Following provisional disclosure Jindal claimed that rather than adding SG&A and profit to the cost of production to establish a non-injurious price for the Union industry, the non-injurious price should be adjusted downwards due to structural overcapacity and inefficiencies of the Union industry. The Commission did not consider that there was a structural overcapacity as mentioned in recital 131 and therefore rejected this claim.

(152) Following provisional disclosure both exporting producers claimed that the methodology used for calculating the injury elimination level was flawed as the comparison with Union sales prices is not based on the actual price charged to the first independent customer in the Union but on a constructed export price which is artificially low. The injury margins are therefore artificially high. This claim was reiterated after final disclosure.

(153) The purpose of calculating an injury margin is to determine whether applying to the export price of the dumped imports a lower duty rate than the one based on the dumping margin would be sufficient to remove the injury caused by the dumped imports. This assessment is based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. In case of export sales via related importers, by analogy with the approach followed for the dumping margin calculations, the export price is constructed on the basis of the resale price to the first independent customer, duly adjusted pursuant to Article 2(9) of the basic Regulation. As the export price is an indispensable element for the injury margin calculation and as this Article is the only Article in the basic Regulation that gives guidance on the construction of the export price, the application of this Article by analogy is justified. Article 2(9) of the basic Regulation also provides the basis for the deduction of processing costs, if appropriate, as well as for all costs, incurred between importation and resale shall be made. Therefore, the Commission considered that the methodology applied provides for an accurate basis for comparing prices and thus establishing the injury elimination level.

(154) This claim is therefore rejected and the methodology for determining the injury elimination level, as set out in recitals 123-127 in the provisional Regulation, is confirmed.

6.2. **Definitive measures**

(155) 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, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the dumping margins, in accordance with the lesser duty rule. In this case the duty rate should accordingly be set at the level of the dumping margins found.

(156) Following disclosure of the final findings, the Union industry requested the imposition of measures in the form of specific duties rather than *ad valorem* duties. It is recalled that *ad valorem* duties were imposed at provisional stage. Indeed, *ad valorem* duties are the usual preferred form of measures as they render the measures more effective in the event of export price movements. The Union industry requested the imposition of measures in the form of specific duties for three main reasons:

— the Indian export prices of ductile iron pipes have been following a decreasing trend, which has exacerbated since the imposition of provisional anti-dumping duties;

— absorption practices by the Indian exporting producers have already started since the imposition of provisional anti-dumping measures and arrangements between related companies are highly likely in this case;

— the prices of ductile iron pipes can fluctuate in line with raw material price fluctuations.

(157) In regard to the industry's first reason above, any decrease in Indian export prices after the investigation period which has led to an increase in dumping is more appropriately dealt with in the context of an interim review under Article 11(3) of the basic Regulation. In regard to the second reason, which is somewhat linked to the first reason, there is a specific provision in the basic regulation for dealing with absorption practices. It is worth noting that the absorption provision (Article 12 of the basic Regulation) provides that changes in normal value can be re-examined, which implicitly acknowledges that decreases in export prices can potentially be caused by changes in costs that lead to consequent decreases in normal value and hence the level of dumping. Finally, in regard to the third point, the industry itself acknowledged that prices of the main raw material for producing ductile pipes, iron ore, have decreased since 2014. This will impact on the normal value as well as the export price with a consequential effect on the level of dumping. Indeed, the fall in iron ore prices is likely to be a factor in the decrease in ductile pipe prices since the end of the investigation period. The fact that prices of ductile iron pipes price can fluctuate in line with raw material price fluctuations is not a reason to impose a fixed duty instead of an *ad valorem* duty.

(158) For all the above reasons, it is considered that a fixed duty, which would be excessively burdensome on importers in situations where export prices were decreasing in line with raw material prices, is not warranted. Furthermore, fixed duties are more appropriate for homogenous products, and not for products like the present one, which come in a variety of product types.

(159) An anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. In view of the use of the lesser duty rule and the fact that the definitive subsidy margins are lower than the injury elimination level, the Commission should impose the definitive countervailing duty at the level of the established definitive subsidy margins and then impose the definitive anti-dumping duty up to the relevant injury elimination level.

(160) In regard to the anti-dumping measures, to avoid double counting the Commission took account of the fact that three of the subsidy schemes are export subsidies which effectively reduce export prices and thus increase accordingly the dumping margins. Thus, the Commission reduced the dumping margin by the subsidy amounts found in relation to the export contingent schemes in the parallel anti-subsidy investigation. On the basis of the above, the rate at which such duties will be imposed are set as follows:

Name of company	Subsidy margin	Dumping margin	Injury elimination level	Countervailing duty	Anti-dumping duty	Total Duties
Jindal Saw Ltd	8,7 %	19,0 %	48,8 %	8,7 %	14,1 %	22,8 %
Electrosteel Castings Ltd	9,0 %	4,1 %	54,6 %	9,0 %	0 %	9,0 %
All other companies				9,0 %	14,1 %	23,1 %

(161) 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 this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company whose name is not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should not benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.

(162) Any claim requesting the application of these individual company anti-dumping duty rates (for example 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 ([15]) 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 present Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.

([15]) European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

(163) In order to minimise the risks of circumvention, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping measures. These special measures include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice which shall conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by such an invoice shall be made subject to the duty rate applicable to all other companies.

6.3. **Definitive collection of the provisional duties**

(164) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected. Amounts secured in excess of the combined definitive rates of the anti-dumping and the countervailing duties should be released.

6.4. **Enforceability of the measures**

(165) After provisional disclosure, the complainant claimed that one of the exporting producers has started absorbing the imposed provisional duties by refusing to increase its prices. This claim cannot be verified in the framework of this investigation. Should a separate anti-absorption request be filed, a review under Article 12(1) of the basic Regulation could be initiated, if prima facie evidence is provided.

(166) The Committee established by Article 15(1) of Regulation (EC) No 1225/2009 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), currently falling within CN codes ex 7303 00 10 and ex 7303 00 90 (TARIC codes 7303 00 10 10, 7303 00 90 10), originating in India.

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	Definitive anti-dumping duty	TARIC additional code
Electrosteel Castings Ltd	0 %	C055
Jindal Saw Limited	14,1 %	C054
All other companies	14,1 %	C999

3. The application of the individual anti-dumping 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, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in India. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate 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 the provisional anti-dumping duties pursuant to Implementing Regulation (EU) 2015/1559 shall be definitively collected. The amounts secured in excess of the combined rates of the anti- dumping duties contained in Article 1(2) above and of the countervailing duties adopted by Commission Implementing Regulation (EU) 2016/387 ([16]) shall be released.

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, 17 March 2016.

For the Commission
The President
Jean-Claude JUNCKER

([16]) See footnote 5.