II

(Non-legislative acts)

REGULATIONS

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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 15 thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 11 March 2015, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to 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') on the basis of Article 10 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 26 January 2015 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. The complaint contained prima facie evidence of subsidisation and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the proceedings and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of India ('the GoI') that it had received a properly documented complaint alleging that subsidised imports of tubes and pipes of ductile cast iron originating in India were causing material injury to the Union industry. The GoI was invited for consultations with the aim of clarifying the situation as regards the content of the complaint and arriving at a mutually agreed solution. The GoI accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at.

1.2. Subsequent procedure

(4) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive countervailing duty on imports into the Union of tubes and pipes of ductile cast iron originating in India. In addition another Indian Producer Tata Metaliks DI Pipes Limited ('Tata') made themselves known and provided comments.

(5) All parties were granted a period within which they could make comments on the disclosure.

(1) OJ L 188, 18.7.2009, p. 93.
(2) OJ C 83, 11.3.2015, p. 4.

(6) On 28 January 2016 a hearing with the Hearing Officer for Trade was held at the request of Electrosteel Castings Limited.

1.3. **Parallel anti-dumping proceeding**

(7) On 20 December 2014, the Commission published a notice in *Official Journal of the European Union* [3] on the initiation of an anti-dumping investigation against imports into the Union of tubes and pipes of ductile cast iron originating in India based on Council Regulation (EC) No 1225/2009 [4] ('the basic anti-dumping Regulation').

(8) On 18 September 2015, by Commission Implementing Regulation (EU) 2015/1559 [5], the Commission imposed a provisional anti-dumping duty on imports of tubes and pipes of ductile cast iron originating in India ('provisional anti-dumping Regulation'). The definitive findings of that investigation are subject to a separate Regulation [6].

(9) The injury, causation and Union interest analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations.

1.4. **Interested parties**

(10) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In particular, the Commission informed the complainant, other known Union producers, the known exporting producers and the Indian authorities, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(11) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No interested party requested a hearing to comment on the initiation.

1.5. **Sampling**

(12) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.5.1. *Sampling of Union producers and importers*

(13) No sampling of Union producers was necessary. There are only three companies or group of companies manufacturing the product concerned in the Union and two of them, representing around 96 % of the total Union production, cooperated with the investigation.

(14) As regards unrelated importers, to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. No unrelated importers made themselves known within the time limits set out in the Notice of Initiation.

1.5.2. *Sampling of exporting producers in India*

(15) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Republic of India to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

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[3] OJ C 461, 20.12.2014, p. 35.

[4] Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

[5] 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).

[6] 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 (see page 53 of this Official Journal).

(16) Three exporting producers in the country concerned provided the requested information and agreed to be included in the sample. They covered 100 % of the exports from India during the investigation period. Therefore, the Commission decided that sampling was not necessary.

1.6. **Questionnaire replies and verification visits**

(17) Questionnaires were sent to three exporting producers or groups of producers in India, to the three Union producers as well as to users that made themselves known within the time limits set out in the Notice of Initiation.

(18) Questionnaire replies were received from two out of the three Indian exporting producers. The Commission therefore considered that the third exporting producer ceased cooperation with the investigation.

(19) At initiation stage, the cooperating Union producers and users agreed that the information collected in the parallel anti-dumping investigation could also be used in this proceeding. Several dozen users submitted information in addition to those which had already made themselves known in the parallel anti-dumping investigation.

(20) The Commission sought and verified all the information provided by the exporting producers in India and deemed necessary for a provisional determination of subsidisation. Verification visits were carried out at the following companies:

— Electrosteel Castings Ltd, Kolkata, India ('ECL'),

— Jindal Saw Limited, New Delhi, India ('Jindal').

1.7. **Investigation period and period considered**

(21) The investigation of subsidy 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').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(22) The product concerned is 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. These CN codes are given for information only.

(23) 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 metres 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.

(24) 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.

(25) 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 countervailing 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.

(26) 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.

(27) 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 ([7]). 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.

(28) 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.

(29) 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 and 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 23 of the basic Regulation.

(30) Jindal requested that flanged pipes of ductile cast iron should be excluded from the product scope.

(31) 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.

(32) 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.

([7]) Council Regulation (EC) No 1784/2000 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).

2.2. **Like product**

(33) 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 2(c) of the basic Regulation.

3. **SUBSIDISATION**

(34) On the basis of the information contained in the complaint and the replies to the Commission questionnaires by the GoI and the exporting producers, the following subsidy practices and specific related measures (schemes), which allegedly involve the granting of subsidies, were investigated:

(I) Direct transfer of funds and potential direct transfer of funds (Article 3(1)(a)(i) of the basic Regulation):

— loan guarantees from the State Bank of India,

— loans granted under the Steel Development Fund,

— promotion of R & D in the iron and steel sector,

— facilitation of land acquisition process (State of Rajasthan),

— Duty Drawback Scheme.

(II) Government revenue foregone or not collected that is otherwise due (Article 3(1)(a)(ii) of the basic Regulation):

— Export Oriented Units Scheme,

— Focus Product Scheme,

— Focus Market Scheme,

— Duty Free Import Authorisation Scheme,

— Export Promotion of Capital Goods Scheme,

— Advance Authorisation Scheme,

— Incremental Exports Incentivisation Scheme,

— exemption from or remission of VAT (Government of Gujarat).

(III) Provision of goods or services for less than adequate remuneration (Article 3(1)(a)(iii) of the basic Regulation):

— granting of captive mining rights (coal),

— granting of captive mining rights (iron ore),

— provision of land (State of Rajasthan),

— export tax on iron ore.

3.1. **Schemes for which evidence of subsidisation was not found**

3.1.1. *Schemes that did not confer benefit the companies*

— Loan guarantees from the State Bank of India

(35) The complainant claimed that in the past the GoI provided loan guarantees through the State Bank of India to producers in the steel sector. The benefit conferred is said to be the difference between the amount paid for the loan, which was guaranteed and the amount that would have been paid for a similar loan without Government guarantee. The subsidy is said to consist in the difference between the amount of interest or premium that the company would have paid for the loan if it had been obtained on a commercial basis having regard to benchmarks and the amount it actually paid as a result of the fact that the loan was guaranteed by the GoI.

(36) The two Indian exporting producers received loans from a number of banks, including the State Bank of India. However those loans were not guaranteed by the GoI. In addition, the interest rates paid were in line with market conditions charged by other banks for similar loans.

(37) As a consequence, the Commission did not find any evidence of subsidisation for this scheme.

— ***Loans granted under the Steel Development Fund***

(38) The complainant claimed that the GoI provides loans to finance R & D projects in the iron and steel sector using the Steel Development Fund. The benefit conferred is said to be the difference between interest charged on loans from the Steel Development Fund and interest which would be charged under market conditions on a commercial loan.

(39) The two Indian exporting producers did not receive loans from the Steel Development Fund during the IP.

(40) As a consequence, the Commission did not find any evidence of subsidisation for this scheme.

— ***Promotion of R & D in the iron and steel sector***

(41) The complainant claimed that the GoI provides funds to encourage R & D projects in the iron and steel sector. The benefit is said to correspond to the amount of funding provided (50 % of the costs borne for R & D).

(42) The two Indian exporting producers did not receive funds under this scheme during the IP.

(43) As a consequence, the Commission did not find any evidence of subsidisation for this scheme.

— ***Facilitation of land acquisition process and provision of land at less than adequate remuneration (State of Rajasthan)***

(44) The complainant claimed that one Indian exporting producer was eligible for this scheme. The scheme consists of facilitating the purchase of land for projects envisaging investment of 1 billion rupees and above and if 25 % of land is purchased by the developer on its own. The benefit is said to be the payment by the Rajasthan Government of the remaining 75 % of the value of the land.

(45) The two Indian exporting producers did not receive funds under this scheme during the IP.

(46) As a consequence, the Commission did not find any evidence of subsidisation for this scheme.

— ***Export Oriented Units Scheme***

(47) The complainant claimed that the exporting producers of the product concerned are eligible for this scheme and it must be presumed that they have applied for it since they export a major part of their output.

(48) A company registered as an Export Oriented Unit is entitled to exemption from and/or reimbursement of a number of duties and taxes. The benefit is said to be the amount of Government revenues which would be due and are foregone.

(49) The two Indian exporting producers were not registered as Export Oriented Units during the IP.

(50) As a consequence, the Commission did not find any evidence of subsidisation for this scheme during the IP.

— ***Focus Market Scheme***

(51) The complainant claimed that the exporting producers of the product concerned are eligible for this scheme which entitles to duty credits corresponding to a percentage of the FOB value of exports to certain countries. The duty credits can be used to offset import duties and thus the benefit conferred corresponds to the amount of Government revenues which would be due and are foregone.

(52) The two Indian exporting producers did not receive duty credits under this scheme during the IP.

(53) As a consequence, the Commission did not find any evidence of subsidisation for this scheme during the IP.

— ***Duty Free Import Authorisation Scheme***

(54) The complainant claimed that the exporting producers of the product concerned are eligible for this scheme which allows for duty free import of inputs, fuel, oil, energy sources and catalyst which are used as input in the production process, provided that certain conditions are met. The benefit is said to be the amount of Government revenues which would be due and are foregone.

(55) The two Indian exporting producers did not benefit from this scheme during the IP.

(56) As a consequence, the Commission did not find any evidence of subsidisation for this scheme during the IP.

— ***Advance Authorisation Scheme***

(57) The complainant claimed that the exporting producers of the product concerned are eligible for this scheme which allows for duty free import of input materials for the production of a specific product or category of products, or intermediate products to be exported or deemed to be exported. The benefit is said to be the amount of Government revenues which would be due and are foregone.

(58) The two Indian exporting producers did not benefit from this scheme during the IP.

(59) As a consequence, the Commission did not find any evidence of subsidisation for this scheme during the IP.

— ***Incremental Exports Incentivisation Scheme***

(60) The complainant claimed that the exporting producers of the product concerned are eligible for this scheme, which is similar to the Focus Market Scheme and entitles to duty credits corresponding to a percentage of the incremental growth achieved in the financial year 2012-2013 compared to the financial year 2011-2012. The duty credits can be used to offset import duties and thus the benefit conferred corresponds to the amount of Government revenues which would be due and are foregone.

(61) The two Indian exporting producers did not benefit from this scheme during the IP.

(62) As a consequence, the Commission did not find any evidence of subsidisation for this scheme during the IP.

— ***Exemption from or remission of VAT (Government of Gujarat)***

(63) The complainant claimed that one exporting producer of the product concerned (with operations in Gujarat) is eligible for and has probably benefited from this scheme, which allows for VAT exemption of purchases of goods used in connection with exports. The exemption is said to represents a financial contribution since it reduces the VAT revenues of the government. The benefit conferred corresponds to the amount of Government revenues which would be due and are foregone.

(64) The two Indian exporting producers did not benefit from this scheme during the IP for the product concerned.

(65) As a consequence, the Commission did not find any evidence of subsidisation for this scheme during the IP.

3.1.2. *Captive mining rights for coal and iron ore*

(66) The complainant claimed that the GoI provides goods to steel producers by providing them with iron ore and coal through the grant of captive mining rights (i.e. rights that allowed steel producers to mine iron ore and coal for their own internal use).

(67) The complainant referred to the applicable Indian legislation concerning mining of iron ore and coal, including recent developments, and mentioned that some Indian producers of the product concerned have their own mines.

(68) The complainant considered that the captive mining of iron ore is de facto specific, since it is limited to certain enterprises, such as steel producers and that the captive mining of coal is de jure specific, since preference is given in the allocation of coal blocks to steel producers whose annual production capacity exceeds one million tons.

(69) The complainant considered that the benefit of the captive mining licences for coal to the Indian producers of the product concerned is the difference between, the total cost of the royalties paid for the mining licence, the cost of extraction and refining to bring it up to the required level of quality and the benchmark CIF price of Australian coking coal at the Indian port.

(70) As regards the benefit of the captive mining licences for iron ore, the complainant considered that the benefit should be assessed: either: (i) having regard to the terms and conditions prevailing on the world market for the purchase of iron ore in accordance with Article 6(d)(ii) of the basic Regulation; or (ii) on the basis of terms and conditions prevailing in India adjusted to account for the effect of the export tax on iron ore since it is a factor which distorts normal market conditions.

(71) The complainant noted that the United States Department of Commerce (USDOC) investigated and countervailed the Captive Mining of Iron Ore Programme and the Captive Mining of Coal Programme in a number of investigations against imports of Certain Hot-Rolled Carbon Steel Flat Products from India.

(72) The GoI indicated the legal bases under which mineral concession is processed and granted to the applicants:

— the Mines and Minerals Development and Regulation (MMDR) Act No 67 of 1957, as amended,

— the MMDR Amendment Ordinance Act No 3 of 2015,

— the Mining Concession Rules (MCR) of 1960,

— the Mineral Conservation and Development Rules (MCDR) of 1988,

— the Coal Bearing Areas Acquisition and Development Act of 1957,

— the Coal Mine (Nationalisation) Act of 1973,

— the Coal Mine (Special Provisions) Second Ordinance of 2014,

— the Competitive Bidding of Coal Mines Amendment Rules, 2012.

(73) The GoI explained that the iron ore sector in India has always been a deregulated market and that the coal sector was deregulated with effect from January 2000.

(74) One of the two Indian exporting producers was granted mining rights for iron ore (but not for coal). However the iron ore extracted in that mine is not used for the production of the product concerned (due to its low Fe content) but for other business operations of the group. The producer in question was sourcing the iron ore needed for the production of the product concerned from unrelated suppliers in India.

(75) The other Indian exporting producers was granted mining rights for coal (but not for iron ore). The volume of coal extracted annually was not enough to satisfy its needs and therefore this producer was also purchasing coal from unrelated suppliers in Australia.

(76) Following a judgement of the Indian Supreme Court in 2014, this exporting producer showed that all mining rights of coal previously allocated were withdrawn and a competitive bidding procedure is currently in place to obtain coal mining rights in India. The producer in question is therefore no longer procuring coal via captive mining rights. In addition, this exporting producer also showed that under the new procedure on the allocation of the mining rights introduced by the GoI it will legally not be entitled to obtain the mining rights because of the restrictions attached to the procedure.

(77) As a consequence, the Commission does not need to further analyse this scheme.

3.2. **Schemes for which evidence of subsidisation was found**

3.2.1. *Focus Product Scheme (FPS)*

(a) ***Legal basis***

(78) The detailed description of FPS is contained in paragraph 3.15 of the Foreign Trade Policy (FTP) 2009-2014 and in paragraph 3.9 of the Handbook of Procedure (HoP) 2009-2014.

(b) ***Eligibility***

(79) According to paragraph 3.15.2 of the FTP 09-14, exporters of notified products in Appendix 37D of HOP I 09-14 are eligible for this scheme.

(c) ***Practical implementation***

(80) Under this scheme exports of products listed in Appendix 37D of the HoP are entitled to duty credit equivalent to 2 % of the FOB value. The rate of the duty credit for ductile pipes was increased to 5 % in 2012. Ductile pipes are thus eligible for the duty credit.

(81) The duty credits under FPS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

(82) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GoI has no discretion over the granting of the duty credits.

(83) Both companies used this scheme during the IP.

(d) ***Conclusion on FPS***

(84) The FPS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FPS duty credit is a financial contribution by the GoI, since the credit will eventually be used to offset import duties, thus decreasing the GoI's duty revenue which would be otherwise due. In addition, the FPS duty credit confers a benefit upon the exporter, because it improves its liquidity.

(85) Furthermore, the FPS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(86) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (I), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (I) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FPS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FPS. Moreover, an exporter can use FPS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (I) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) ***Changes brought by the new Foreign Trade Policy 2015-2020***

(87) The new five-year Foreign Trade Policy 2015-2020 introduced a new scheme named 'Merchandise Exports from India Scheme' (MEIS) which replaced a number of pre-existing schemes including the FPS. Since the eligibility criteria for FPS and for MEIS are basically the same, it is clear that the FPS was not discontinued but just renamed and the benefit conferred by the FPS continues to be conferred by the new scheme. As a consequence the benefit conferred by the FPS can still be countervailed.

(88) After disclosure, ECL claimed that MEIS cannot automatically be considered as a variant or a replacement scheme of the FPS. The Commission rejected this argument since the eligibility criteria and beneficiaries for FPS and MEIS are the same as far as the ductile iron pipes producers are concerned. In its questionnaire response, the GoI acknowledged itself that FPS '*has been merged into a new scheme (MEIS)*' ([8]). Therefore, this claim was rejected.

(89) However there is a difference in the amount of benefit conferred by the two schemes. The duty scrip rate offered by the MEIS is currently 2 % of the FOB value of exports (it was 5 % for the FPS during the IP).

(90) The two Indian producers claimed before and after definitive disclosure that this lower value should be the parameter for quantifying the amount of benefit to be countervailed, if any. ECL referred to the Commission 'Guidelines for the calculation of the amount of subsidy in countervailing duty investigations' ([9]) and Example 1 where the revised benefit applicable to the latter part of the IP should be applied 'if the change is permanent in nature'. This claim was also raised by the GoI after definitive disclosure.

(91) The Commission rejected this claim for the following reason. Pursuant to Article 5 of the basic Regulation, 'the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation'. During the IP the benefit conferred on the exporting producers was a duty credit of 5 % of the FOB value of exports of the product concerned.

(92) Pursuant to Article 11 of the basic Regulation, '*information relating to a period subsequent to the IP shall not, normally, be taken into account*'. That means that post-IP developments can be taken into account only in exceptional circumstances, namely when ignoring them would be 'manifestly inappropriate' ([10]). This threshold has been reached, for example, when the 10 new Member States acceded to the European Union in 2004, triggering a duty for the Commission to investigate whether the information obtained during the investigation was still representative for the enlarged EU ([11]).

(93) This threshold is, however, not met in the present case. The basic subsidy scheme remains in place post-IP and the exporters have benefitted from the 5 % rate during the IP. The assumption that the reduced rate of 2 % post-IP is permanent in nature, cannot be confirmed either, as the government is empowered to change the rate of the

([8]) Reply by the GoI to the anti-subsidy questionnaire of 15 May 2015, p 24.
([9]) OJ C 394, 17.12.1998, p. 6.
([10]) CFI, Case T-462/04, 2008 ECR II-3685, § 67.
([11]) CFI, Case T-462/04, 2008 ECR II-3685, §§ 68-74.

scheme at any time ([12]). Such changes are not only hypothetical in nature, as the practice under the previous regime shows. The former FPS had been introduced by law in 2009, and the Government changed the rate from 2 % to 5 % effective from 31 December 2012 ([13]). In view of all these factors, the Commission concludes that countervailing an amount of 5 % for the FPS during the IP is not manifestly inappropriate. If the current rate of 2 % proves its longevity, the exporters will be free to request an interim review demonstrating the lasting change of circumstances with respect to this subsidy scheme.

(f) ***Calculation of the subsidy amount***

(94) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the IP as booked by the cooperating exporting producer on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated over the export turnover during the IP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(95) The subsidy rate established with regard to this scheme during the IP for the company ECL and its subsidiary Srikalahasthi Pipes Limited, (hereinafter referred to as the 'ECL Group') amounted to 4,35 % and for the company Jindal Saw India amounted to 3,11 %.

3.2.2. *Export Promotion of Capital Goods Scheme (EPCGS)*

(a) ***Legal basis***

(96) The detailed description of the EPCGS is contained in Chapter 5 of the FTP 2009-2014 as well as in Chapter 5 of the HoP 2009-2014.

(b) ***Eligibility***

(97) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) ***Practical implementation***

(98) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. An export obligation is an obligation to export a minimum value of goods corresponding to, depending on the sub-scheme chosen, six or eight times the amount of duty saved. To this end, the GoI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under the FTP 2009-2014 the capital goods can be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

(99) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

([12]) Paragraph 3.13 of the new policy states: '…*Government reserves the right to impose restriction/change the rate/ceiling on duty script under this chapter…*'.

([13]) Public Notice No 42(RE2012)/2009-14 of the Directorate-General for Foreign Trade of India.

(100) It was found that the two companies received concessions under the EPCGS which could be allocated to the product concerned during the IP.

(d) ***Conclusion on the EPCGS***

(101) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GoI, since this concession decreases the GoI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

(102) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(103) The EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (I), of the basic Regulation, because they are not consumed in the production of the exported products.

(104) The new five-year Foreign Trade Policy 2015-2020 maintained this scheme, although it provides only for the 0 % duty option. Since the eligibility criteria are basically the same, it cannot be said that the EPCGS was discontinued and thus should no longer be countervailable.

(e) ***Calculation of the subsidy amount***

(105) The amount of countervailable subsidies was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The amount so calculated, which is attributable to the IP, has been adjusted by adding interest during this period in order to reflect the full time value of the money. The commercial interest rate during the investigation period in India was considered appropriate for this purpose.

(106) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the IP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(107) After definitive disclosure, ECL claimed that EPCGS are used in the total production of the ductile iron pipes and not only for the production of the exported goods. Therefore, it requested that the subsidy should be calculated on the basis of the total turnover rather than on the basis of the export turnover.

(108) The Commission rejected this claim since, as already indicated above, the subsidy is contingent upon export performance only. This approach is also consistent with the Commission's practice on the same scheme ([14]).

(109) The same exporting producer requested that the benefit should not take into account entries/machines which have already been depreciated long before the IP. The Commission accepted this claim and informed the company accordingly.

(110) The subsidy rate established with regard to this scheme during the IP for the ECL Group amounted to 0,03 % and for the company Jindal Saw India amounted to 0,38 %.

([14]) See Commission Regulation (EU) No 115/2012 of 9 February 2012 imposing a provisional countervailing duty on imports of certain stainless steel fasteners and parts thereof originating in India (OJ L 38, 11.2.2012, p. 6), recital 64.

3.2.3. *Duty Drawback Scheme (DDS)*

(a) ***Legal basis***

(111) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules, 1995 as amended by successive notifications.

(b) ***Eligibility***

(112) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) ***Practical implementation***

(113) An eligible exporter can apply for drawback amount which is calculated as a percentage of the FOB value of products exported under this scheme. The drawback rates have been established by the GoI for a number of products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. The DDS rate for the product concerned during the IP was 1,9 % of the FOB value.

(114) To be eligible to benefits under this scheme, a company must export. At the moment when shipment details are entered in the customs server (Icegate), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM) and the customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.

(115) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.

(116) The drawback amount can be used for any purpose.

(117) Indeed, in accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(118) It was also found that the two Indian companies received benefits under the DDS during the IP.

(d) ***Conclusion on the DDS***

(119) The DDS provides subsidies within the meaning of Article 3(1)(a)(I) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GoI as it takes form of a direct transfer of funds by the GoI. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.

(120) The rate of duty drawback for exports is determined by the GoI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.

(121) After disclosure, the GoI first argued that the Commission has not provided the requirements which it considered imperative for DDS to constitute a legitimate duty drawback system or provided a rational for such a determination. Second, in the GoI's opinion, there is an adequate link between the drawback rates as well as the duties paid on raw materials. This is because the GoI takes into account the average quantity or value of materials used as inputs in the manufacturing of the product as well as the average amount of duties paid on inputs in determining the duty drawback rates. ECL put forward arguments similar to the ones of the GoI.

(122) The Commission rejected these arguments for the following reasons. On the first argument, the Commission stated in the disclosure the reasons for which it did not consider the scheme a permissible duty drawback system or substitution drawback system. Indeed, it clarified that the cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.

(123) Regarding the second claim, the Commission does not consider that the alleged link between the drawback rates and the duties paid on raw materials is sufficient in order for the scheme to conform to the rules laid down in Annex I item (I), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (I) of Annex I, and Annexes II and III of the basic Regulation. Therefore, this claim was also rejected.

(124) Consequently, the payment which takes form of a direct transfer of funds by the GoI subsequent to exports made by exporters has to be considered as a direct grant from the GoI contingent on export performance and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(125) In view of the above, it is concluded that DDS is countervailable.

(e) ***Calculation of the subsidy amount***

(126) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period. In this regard, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(I) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the DDS as being the sum of the drawback amounts earned on export transactions made under this scheme during the review investigation period.

(127) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts over the total export turnover of the product concerned during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(128) One of the two companies calculated the share of raw material used in the production of the product concerned which were imported and on which it paid duties. This company subsequently claimed, both before and after definitive disclosure, that, if the Commission were to countervail the benefit conferred by the DDS, it should not countervail the total amount of DDS received, but only the amount in excess of the duties actually paid on imports of input used in the production of the product concerned. The company's claim was also supported by the GoI in its comments to the definitive disclosure.

(129) The Commission rejected this claim because, as explained in Section (d) 'Conclusion on the DDS' above, notwithstanding the name 'Duty Drawback', this scheme is in essence a direct transfer of funds rather than revenue

foregone. The cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials. Therefore, there is no certainty that the share of raw material imported and used in the production of ductile pipes will remain unchanged.

(130) The subsidy rate established with regard to this scheme during the IP for the ECL Group amounted to 1,66 % and for the company Jindal Saw India amounted to 1,37 %

3.2.4. *Provision of iron ore for less than adequate remuneration*

3.2.4.1. Introduction

(131) The complainant claimed that the prices of iron ore (the main raw material for the product concerned) in India are distorted due to the imposition of an export tax on iron ore and the dual freight policy for railway transport with the objective and the effect of subsidising the Indian producers of the product concerned. Such interventions are said to reduce the cost of this raw material in India compared to other markets which are unaffected by the GoI's interventions.

(132) The complainant added that by intervening on the iron ore market, the GoI is not directly providing iron ore at less than adequate remuneration but is entrusting or directing iron ore mining companies to do so.

(133) In the complainant's view, all state-owned and privately-owned iron ore mining companies in India are entrusted or directed by the Government to carry out the tasks of providing iron ore for less than adequate remuneration as a part of a strategy to help the iron and steel industry.

3.2.4.2. Analysis

(134) In order to establish the existence of a countervailable subsidy three elements must be present: (a) a financial contribution; (b) a benefit; and (c) specificity (Article 3 of the basic Regulation).

(a) ***Financial contribution***

(135) Article 3(1)(a)(iv), second indent of the basic Regulation states that a financial contribution exists if a government: 'entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (I), (ii) and (iii) which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments;'. The type of functions described by Article 3(1)(a)(iii) occurs where 'a government provides goods or services other than general infrastructure, or purchases goods …'. These provisions mirror Article 1.1(a)(1)(iv) and (iii) of the SCM Agreement and should be interpreted and applied in the light of the relevant WTO case law.

(136) In the WTO case on export restraints, as a third party the EU offered to the Panel its initial interpretation on these provisions, which had not been interpreted by then ([15]). After disclosure, several parties referred to these suggestions.

(137) The panel ruled that the ordinary meanings of the two words 'entrust' and 'direct' in Article 1.1(a)(1)(iv) of the SCM Agreement require that the action of the government must contain a notion of delegation (in the case of entrustment) or command (in the case of direction) ([16]). It rejected the US 'cause-and-effect-argument' and asked for an explicit and affirmative action of delegation or command ([17]).

([15]) Panel Report, DS 194, Annex B-3, para. 4.
([16]) Panel Report of 29 June 2001, DS194 United States — Measures treating export restraints as subsidies, paragraph 8.29.
([17]) Panel Report, DS 194, paragraph 8.44.

(138) However, in a subsequent case, the Appellate Body held that the replacement of the words 'entrusts' and 'directs' by 'delegation' and 'command' is too rigid as a standard ([18]). According to the Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body ([19]). In both cases, the government uses a private body as proxy to effectuate the financial contribution, and 'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement' ([20]). At the same time, paragraph (iv) does not allow Members to impose countervailing measures to products 'whenever the government is merely exercising its general regulatory powers' ([21]) or where government intervention 'may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market' ([22]). Rather, entrustment and direction implies 'a more active role of the government than mere acts of encouragement' ([23]).

(139) It follows that the standard of proof established by the Appellate Body, in particular its finding that 'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement', is less strict than the original EU position advocated in the US — Export Restraints case. The same applies to EU's opinion that a private body would perform the functions which would normally be vested in the government only if the private body is given no choice whatsoever when entrusted or directed by the government, for example when the government fixes the prices at which the private body is obliged to sell.

(140) Consequently, the EU has adapted its interpretation to the guidance received by the Appellate Body on these matters.

(141) In line with those WTO rulings, not all government measures capable of conferring benefits rise to the level of a financial contribution under Article 3 of the basic Regulation and Article 1.1(a) of the SCM Agreement. There must be evidence of a government policy or programme to promote the industry under investigation (in this particular case the ductile pipes industry), by exercising authority over or giving responsibility to public or private bodies (here: the iron ore mining companies) to provide iron ore for less than adequate remuneration to the ductile pipes industry.

(142) In line with the WTO's five-step test ([24]), the Commission has therefore reviewed very carefully the nature of the government's intervention (Does it involve entrustment or direction of iron ore mining companies?), the nature of the entrusted bodies (Are the mining companies private bodies within the meaning of Article 3(1)(a)(iv) of the basic Regulation?), and the action of the entrusted or directed bodies (Did the entrusted or directed iron ore mining companies provide iron ore to the ductile pipes industry for less than adequate remuneration and hence act as a proxy for the government?). Moreover, the Commission has verified whether the function carried out would normally be vested in the government (Is the provision of iron ore at less than adequate remuneration to producing companies in India a normal government activity?) and whether such function does not, in real sense, differ from the practices normally followed by governments (Does the actual provision of iron ore by mining companies, in real sense, differ from what the government would have done itself?).

(i) Entrustment of the iron ore mining companies by the Government of India

(143) In view of the Appellate Body's conclusions referred to above, the Commission analysed first whether the GoI's support to the ductile pipes industry is effectively an objective of a government policy and not merely a 'side effect' of the exercise of general regulatory powers. The investigation examined in particular whether the price distortions found were part of the governments' objectives, or whether the lower prices of iron ore were rather an 'inadvertent' by-product of general governmental regulation.

(144) A number of documents show that the GoI explicitly pursued as a policy objective the support of the ductile pipes industry.

([18]) Appellate Body Report of 21 February 2005, DS296 United States — Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea, paragraphs 110-111.
([19]) Appellate Body Report, DS 296, par.116.
([20]) Appellate Body Report, DS 296, para. 116.
([21]) Appellate Body Report, DS 296, para. 115.
([22]) Appellate Body Report, DS 296, para. 114, agreeing with the Panel Report, DS 194, para. 8.31. on that account.
([23]) Appellate Body Report, DS 296, para. 115.
([24]) Panel Report, DS 194, paragraph 8.25.

(145) In 2005 an expert group constituted by the Ministry of steel for formulating guidelines for preferential grant of mining lease, issued a report (the 'Dang Report') with a number of relevant findings and recommendations. Already at that time it was noted that '… One major competitive advantage for Indian steel, apart from human resources, would appear to lay in assured access to indigenous iron ore supplies at a discount to world prices. This advantage must be preserved, nurtured and fully leveraged' ([25]) (emphasis added).

(146) After disclosure, the GoI and ECL claimed that the Commission relied only on the Dang Report as a legal basis. They quoted a Panel Report where the panel concluded that 'we are not convinced that the single reference to the Dang Report to the [p]olicy of captive mining leases' provides support for determining the existence of a Captive Mining of Iron Ore Programme' ([26]). ECL also submitted that the Dang Report was prepared by an independent expert with no legal value and incapable of setting policy goals for India.

(147) The Commission first observes that Government's policy objectives are not necessarily contained in legally binding texts. They could be included in a whole range of government documents and policy statements, such as reports, speeches and submissions to the Parliament, declarations, etc.

(148) Second, the claims put forward by the parties are factually incorrect. As illustrated in recitals 153-169 below, in addition to the Dang Report, the Commission took into account a number of other documents and legal acts in order to conclude that the GoI pursued a policy objective of supporting of the ductile pipes industry.

(149) Third, concerning their claim on the basis of the Panel Report it is appropriate to quote the entire relevant paragraph 7.211 thereof:

— '[…] we are not persuaded that the single reference in the Dang Report to the "[p]olicy of captive mining leases" provides support for determining the existence of a Captive Mining of Iron Ore Programme. We consider it highly relevant that, although the Dang Report describes the Indian iron ore industry, and the policies applicable to that industry, there is no reference to any programme or policy benefiting captive mining. Nor is there any suggestion that mining leases were provided to steel producers on terms any different than those provided to other miners. Indeed, it is entirely possible that the reference to a "[p]olicy of captive mining leases", on which the United States relies, was merely intended to refer back to the fact that mining leases are provided to steel companies, and to suggest that mining leases should continue to be provided to steel producers.' (emphasis added, footnote omitted) ([27]).

(150) It is evident from this quote that the panel did not challenge the fact that the Dang Report describes the Indian iron ore industry, and the policies applicable to that industry. Indeed, the members of the expert group ([28]) were, among others, government and industry representatives and it is reasonable to consider that they are well-informed about the existing government policies and the situation of the industry. In addition, contrary to captive mining, the report is explicit regarding the policy objective of benefiting Indian steel producers ('assured access to indigenous iron ore supplies at a discount to world prices') and that this advantage has to be preserved and encouraged.

(151) In the light of the foregoing, the Commission rejected these claims.

(152) The GoI took the following two measures to implement the above-mentioned specific policy goal (discouraging exports of iron ore).

([25]) The report of the 'Expert Group' on preferential grant of mining leases for iron ore, manganese and chrome ore, submitted to the Ministry of Steel on 26 August 2005, page 36. The report is placed on the website of the Ministry of Steel and was last accessed on 23 November 2015: http://steel.gov.in/GRANT%20OF%20MINING%20LEASES.pdf

([26]) Panel Report of 14 July 2014, DS436 United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, paragraph 7.211.

([27]) Panel Report, DS436, paragraph 7.211.

([28]) Page 1 of the Dang report indicates that the expert group was chaired by Shri R.K Dang, Former Secretary, Ministry of Mines and its members included representatives of departments/ministries, state governments, industry representatives and representatives from industry associations and experts in the area of environment and mining.

(153) The first measure is the decision taken on 1 March 2007 to impose export taxes on iron ore, initially at a rate of 300 INR per tonne ([29]) and subsequently changed from time to time. In particular, in March 2011 the rate was increased to 20 % ([30]), and in December 2011 it was increased to 30 % ([31]); in April 2015 the export tax on low-grade iron ore (Fe content below 58 %) was reduced to 10 % ([32]). It should be noted that low-grade iron ore does not have much use in India and therefore there is no need to keep low-grade iron ore available for Indian users of iron ore.

(154) In general, the support of downstream industries can be a major motivation for imposing export restraints and export taxes in particular. The fact that the major policy objectives of export restrictions (and significant export taxes) is to protect and promote downstream industries by providing domestic downstream industries with cheap raw materials and inputs was also established by the OECD report 'The Economic Impact of Export Restrictions on Raw Materials' ([33]) ('the OECD report').

(155) The second measure is the introduction of a Dual Freight Policy (DFP) by the Ministry of Railways on 22 May 2008 ([34]). The DFP created a freight charge difference between the transportation of iron ore for domestic consumption and for export. The average difference is threefold ([35]). The railway freights accounts for a very significant part of the total cost of the iron ore ([36]).

(156) Before and after definitive disclosure, ECL claimed that DFP had been abolished in 2009. However, on the basis of the information provided by the GoI and the exporting producer, the Commission established that by means of a number of Rates Circulars issued by the GoI, the GoI continues to apply during and after the IP different freight charges to the transportation of iron ore for domestic consumption and for export to the advantage of domestic consumption ([37]). In particular, a distance based charge applies to exports, while under certain conditions, domestic consumption is exempted from this charge. Therefore, the Commission rejected the claim.

(157) These two measures together constitute a targeted export restraint, basically established in 2007/2008 and further expanded in March and December 2011 with the increases in the rate of the export tax on iron ore. The following policy documents show, on the one hand, the existence of a policy objective to support the ductile pipes industry, and, on the other hand, the GoI satisfaction to have achieved its objectives so far:

(158) The report of the Working Group on Steel Industry for the 12th five-year plan, issued in November 2011 ([38]) states explicitly that:

— '*The Ministry has taken measures to discourage export by imposing higher tariffs and special levies*' (page 16),

— '*At present export of iron ore is being discouraged through higher tariff levels. It is essential to continue with this policy and if required the tax rates may further be jacked up. At the same time, there is a need to closely monitor the export of*

([29]) Based on the average domestic price of iron ore in that period, this would correspond to a percentage between 12 % and 15 %.
([30]) Customs notification No 27/2011 of 1 March 2011. The notification is placed on the website of the Ministry of Finance and was last accessed on 23 November 2015 http://indiabudget.nic.in/ub2011-12/cen/cus2711.pdf
([31]) Second schedule of export tariff, published by the central Board of Excise and Customs. It was last accessed on 23 November 2015 http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-tariff2015-16/sch2-exptariff.pdf
([32]) Customs Notification No 30/2015 of 30 April 2015, published by the central Board of Excise and Customs. It was last accessed on 23 November 2015 http://www.cbec.gov.in/resources//htdocs-cbec/ub1516/do-ltr-jstru1-post-budget.pdf
([33]) OECD Trade Policy Studies, The Economic Impact of Export Restrictions on Raw Materials, published on 16 November 2010. It was last accessed on 23 November 2015 http://www.oecd.org/publications/the-economic-impact-of-export-restrictions-on-raw-materials-9789264096448-en.htm
([34]) Office of the Comptroller and Auditor General (CAG) of India, audit report on dual freight policy for transportation of iron ore traffic in Indian Railways, dated 8 May 2015. The information is placed on the CAG webpage and was last accessed on 23 November 2015 at http://www.saiindia.gov.in/english/home/public/In%20_Media/14of2015.pdf
([35]) Government of India, Ministry of Finance, Department of Economic Affairs, Working Paper No 3/2014-DEA, 'India's Merchandise Exports: some important issues and policy suggestions', page 40. This document is placed on the website of the Ministry of Finance. It was last accessed on 23 November 2015 http://finmin.nic.in/workingpaper/Working%20Paper%20on%20Trade%2028082014.pdf
([36]) Article 'India hikes rail freight rates on iron ore exports', in The Wall Street Journal 16 March 2010, last accessed on 23 November 2015 http://www.wsj.com/articles/SB10001424052748703734504575125151243861216
([37]) The last amendment of the freight rates applicable to iron ore was Addendum No 16 to Rates Circular No 36 of 2009 dated 1.9.2015 adopted by the Ministry of Railways, GoI. See: http://www.indianrailways.gov.in/railwayboard/uploads/directorate/traffic_comm/Freight_Rate_2k15/RC_36_09_Addendum-16.pdf, last accessed on 26 January 2016.
([38]) Ministry of Steel, report of the working group on steel industry for the twelfth five year plan (2012-2017), November 2011. The report is placed on the website of Planning Commission of the GoI and was last accessed on 23 November 2015: http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_steel2212.pdf

iron ore to make sure that higher tariffs alone can effectively tackle the issue of conservation of resources for domestic use. Additional measures such as higher freight rate on export cargo, increase in inland freight rate etc. and other administrative measures may also be considered' (point 3.6.3.3 on page 46);

— '*During 2010-2011, export of iron ore declined mainly due to the ban on exports by Karnataka and the fiscal measures taken by the Central Government for restricting export of iron ore from the country…The high export demand in the past several years has driven up the production base in the country, leading to an output level far above domestic demand. Government has taken several important initiatives to discourage excessive mining to satisfy growing export market. These have so far included imposition of fiscal measures such as export duty, increasing railway freight for exports, etc.*' (points 4.2.5.2 and 4.2.5.4 on page 57);

— '*Long-term policy measures for curbing iron ore exports should aim at attracting investment in steel-making capacity so that value addition and export of finished products are promoted. In the short and more immediate time frame the same may be achieved by taking recourse to appropriate fiscal measures. At present export of iron ore from the country is discouraged through: (i) imposition of an export duty of 20 % ad-valorem on iron ore; and (ii) charging of significantly higher railway freight on iron ore meant for export. These measures have contributed to reduction in iron ore prices in the domestic market as compared to the international market and played a vital role in making available iron ore to domestic industries at competitive prices. To effectively discourage export of iron ore from the country, it is recommended that appropriate fiscal measures should be designed and calibrated on a continuous basis in line with the exigencies of the ore market — both domestic and international*' (point 4.2.6.5 on page 60). (emphasis added).

(159) The 12th five-year plan [39] (2012-2017) confirms the policy statements of the report of the Working Group on Steel Industry:

— '*Some natural resources like good-quality coal and iron ore are becoming short in supply in the global economy with growing demand from developing economies especially China and now India. Domestic availability of some of these raw materials provides us a competitive advantage which we should leverage to build domestic industries that add value to these resources, thus creating additional jobs and improving our trade balance. Going further up the value change Government policies and duty structure should be designed in a way to incentivise value addition of steel rather than exporting steel in raw material form.*' (page 67, paragraph 13.72) (emphasis added).

(160) After disclosure, ECL challenged the Commission's referral to the documents above. First, it argued that the Report of the Working Group on Steel Industry had no legal value as it was just an opinion or assessment of some individuals and it was not Government endorsed document. Second, it stated that the 12th five-year plan was incorrectly quoted as it contained, for example, a recommendation that 'large scale exports of iron ore have raised serious concerns about the future availability. […] there is an urgent need to address the problems of degradation of the environment, displaced population, transportation bottleneck and so on.'

(161) On the first argument, the Commission is of the view that, although the Report of the Working Group on Steel Industry is not issued by the Government, it describes the status of the Indian iron ore industry and the Government policy applied to it. Indeed, the working group was composed of, among others, government and industry representatives [40] and it is reasonable to consider that they are well-informed about the existing government policies and the situation of the industry.

(162) Concerning the second argument, the Commission had never claimed that this five year plan was limited to the policy objectives and recommendations it quoted concerning iron ore. The recommendations the exporting producer is referring to are related to allegations of illegal mining and environmental violations which were an important problem at the time when the report was issued. This was addressed by the numerous court decisions to close mines for instance in the states of Karnataka, Odisha and Goa. The fact that the policy pursues an additional environmental objective does not nullify the primary economic objective. Rather, it is perfectly acceptable that a government policy pursues two objectives at the same time. Consequently, the Commission rejected these claims.

(163) ECL also submitted that the Planning Commission of India existing since 1950 which formulated the five-year plans was dissolved on 1 January 2015 and that there will no longer be five-year plans.

[39] The twelfth five year plan (2012-2017) Economic Sectors Volume II Chapter 13, page 67, paragraph 13.72. The plan, dated 10 May 2013, is placed on the website of the Planning Commission of the GoI and was last accessed on 23 November 2015: http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol2.pdf

[40] For reference, see footnote 38, page 185 thereof.

(164) From the provided website ([41]) it appears that the Planning Commission has been indeed dissolved ([42]). However, a possible expiration of the Five Year Plan after 2017 does not affect the finding that the plan will remain in place until then.

(165) Finally, ECL quoted another part of the Report of the Working Group on Steel Industry where it was stated that iron ore prices are 'free from government intervention' and 'are determined by […] market forces'; in addition, 'domestic iron ore prices have generally moved in tandem with the international prices.' ([43])

(166) The targeted export restraints do not eliminate the market forces altogether on the Indian domestic market but have serious effects with regards to reducing exports and inducing market operators to sell their goods for a lower price than they could obtain in the absence of this policy. This finding does not contradict the assertion made by the report that domestic iron ore prices have generally moved with the international prices. Indeed, exports and imports of India have not been banned altogether. Therefore, it is inevitable that international prices have some impact on Indian domestic prices. This, however, does not mean that domestic prices are at the same or higher level than international prices. Consequently, this claim was rejected.

(167) By imposing such targeted export restraints (in particular through export taxes and the dual freight policy), the GoI puts Indian iron ore mining companies into an economically irrational situation, which induces them into selling their goods for a lower price than they could obtain in the absence of this policy.

(168) The GoI took a 'more active role than mere acts of encouragement', as required by the Appellate Body ([44]). The measures taken by the GoI restrict the freedom of action of the iron ore mining companies by limiting in practice their business decision as to where to sell their product and at what price. They are prevented from maximising their income as their proceeds are harshly reduced by those measures.

(169) The policy statement in the Dang report of 2005 that 'assured access to indigenous iron ore supplies at a discount to world prices must be preserved, nurtured and fully leveraged' (see recital 145 above) and the subsequent finding in the 12th five-year plan that 'Domestic availability of some of these raw materials provides us a competitive advantage' ([45]) also show that the GoI expects the iron ore mining companies not to dramatically reduce domestic output but to maintain a stable supply of domestic iron ore. These expectations were fulfilled as the GoI itself observed in the report for the 12th five-year plan cited in the fourth indent in recital 158 as well as in the statements made by the Ministry of Steel referred to in recitals 174 to 176 below. Further, nothing on the record supports the proposition that the GoI permitted iron ore producers to freely adapt their output to the demand as affected by the GoI's targeted export restraints. On the contrary, it is well-known that operating in a free market system it is reasonable to assume that iron ore mining companies would not frustrate significant initial investments and high fixed costs by lowering the production output just in order to avoid oversupply and subsequent downward pressure on domestic prices pursuant to the GoI's measures. Thus, iron ore producers are encouraged by the GoI to maintain production to supply the domestic market even if a rational supplier would adapt its output in a situation where exports have been dis-incentivised.

(170) Therefore, through those measures the GoI induces the iron ore mining companies to keep the iron ore in India because they cannot sell at better prices which would prevail in India absent these measures.

(171) In this sense, the input producers are 'entrusted' by the government to provide goods to the domestic users of iron ore, i.e. steel manufacturers, including the ductile pipes producers for less than adequate remuneration. The iron ore mining companies are given the responsibility to create an artificial, compartmentalised, low-priced domestic market in India.

(172) In other words, when applying the target export restraints, the GoI knows how the iron ore producers will respond to the measures and what consequences will result from them. While these producers may lower their domestic production a bit to respond to the export restraint, they would not shut it down or adapt it to a very low level. Rather, as explained in recital 169 in the mining sector the adaptation of their production will remain

([41]) http://niti.gov.in/content/index.php, accessed on 27 January 2016.
([42]) This is confirmed by the archived website of the Commission: http://planningcommission.gov.in/ accessed on 27 January 2016.
([43]) See footnote 38 above, page 57.
([44]) See above recital 138.
([45]) See references in footnote 39 above.

moderate, which results in lower domestic prices. In this regard, the effects are established on an *ex ante*, not *ex post* basis and are therefore not 'inadvertent'. There is a clear 'demonstrable link' between the policy and the conduct of private bodies involved, which are acting as a proxy for the Government to carry out its policy of providing iron ore for less than adequate remuneration to the ductile pipes industry.

(173) The GoI itself acknowledges the success of its targeted export restraints policy. In 2013 the standing committee on Coal and Steel within the Ministry of Steel issued its thirty-eight report on 'review of export or iron ore policy' ([46]).

(174) In reply to a question from the committee, the Ministry of Steel informed that 'although domestic consumption of iron ore by the domestic industries have shown an increasing trend since 2004-2005, the production of iron ore has always been much higher than the domestic consumption, due to export-led production of iron ore in the country. However, to improve availability of iron ore for the domestic iron and steel industry and to conserve iron ore for future long term domestic requirement, fiscal measures have been taken to discourage export of iron ore and presently, export duty at the rate of 30 % *ad valorem* is levied on all varieties of iron ore (except pellets), which has resulted in significant decrease in exports during 2011-2012 and the current year' (point 2.7 on page 14).

(175) The Ministry of Steel submitted highlights of Foreign Trade Policy regarding export of iron ore (point 4.13 on page 23), including:

— the export of iron ore with Fe content above 64 % is canalised through the Metal and Mineral Trading Company (MMTC) and is allowed against licences issued by the Directorate General for Foreign Trade (DGFT),

— high-grade iron ore (Fe content above 64 %) from Bailadila in Chhattisgarh is allowed to be exported with restrictions on quantity imposed primarily, with a view to meet domestic demand on priority. Export quantities cannot exceed annually 1,81 million tonnes for lumps and 2,71 million tonnes for fines.

(176) The Ministry of Steel also reported to the committee that '*With the increase in export duty to 20 %* ad valorem *with effect from 1st March, 2011, the export of iron ore reduced by about 37 % to 61,74 million tonnes during 2011-2012 as compared to 97,66 million tonnes during the year 2010-2011. With further increase of export duty on iron ore to 30 %* ad valorem *from 30th December, 2011, the export has further reduced. During the first half of the year 2012-2013, the export has declined by more than 50 % to 14,4 million tonnes as compared to 30,75 million tonnes during the same period previous year. Ministry of Steel has been taking up the matter regularly with the Ministry of Finance for levying of appropriate export duty on iron ore in order to discourage its export effectively and to improve availability of iron ore for the domestic iron and steel industry at affordable price*' (point 4.19 on page 26).

(177) In conclusion, the Commission found that the Government had entrusted the mining companies to carry out its policy to create a compartmentalised domestic market and to provide iron ore to the domestic iron and steel industry for less than adequate remuneration.

(ii) Entrustment of private bodies within the meaning of Article 3(1)(a)(iv) of the basic Regulation

(178) The Commission then assessed whether the iron ore mining companies in India are entrusted by the GoI within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(179) The two Indian exporting producers were purchasing the overwhelming majority of the iron ore from private undertakings, except for a small quantity of iron ore purchased from the National Mineral Development Corporation (NMDC) which is one of the biggest players on the market and is owned by the GoI.

(180) Without prejudice to the question whether the GoI exercises meaningful control over the NMDC within the meaning of Article 2(b) of the basic Regulation, which is irrelevant for the purpose of this investigation, the Commission considered that all iron ore mining companies, regardless of whether or not they are publicly owned, are private bodies which were entrusted by the GoI within the meaning of Article 3(1)(a)(iv) of the basic Regulation to provide iron ore for less than adequate remuneration.

([46]) Ministry of Steel, Standing Committee on coal and steel (2012-2013), review of export of iron ore policy, thirty-eight report. The report is placed on the website of the India environmental portal and was last accessed on 23 November 2015. http://admin.indiaenvironmentportal.org.in/files/file/Review%20of%20Export%20of%20Iron%20Ore%20Policy.pdf

(iii) Provision of iron ore by the iron ore mining companies for less than adequate remuneration

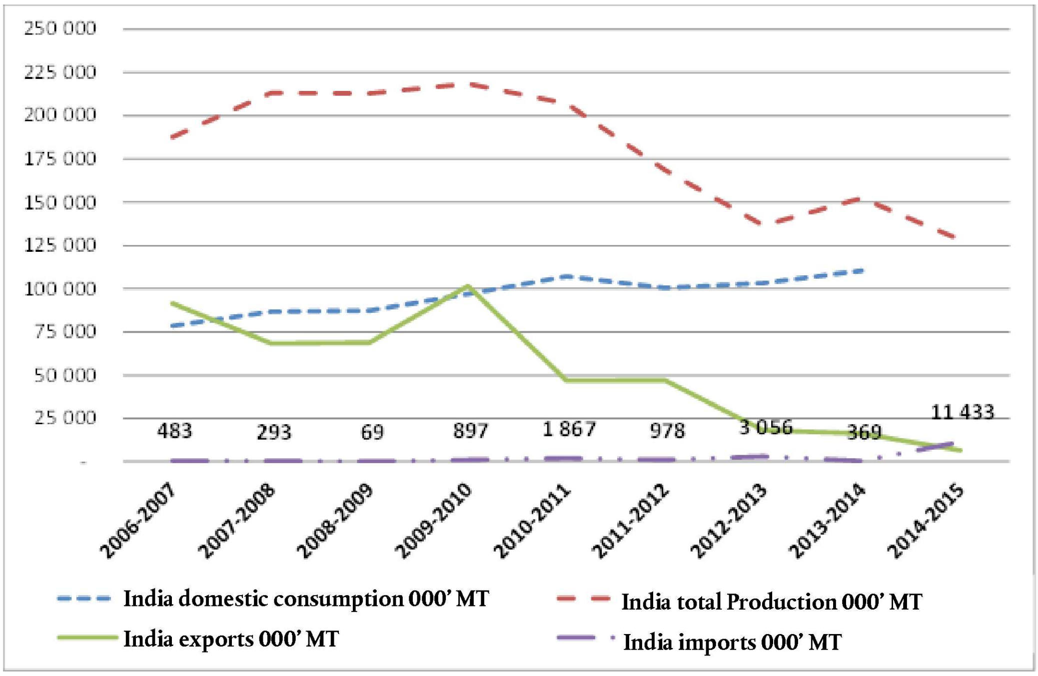
(181) In the next step, the Commission verified whether the iron ore mining companies have actually carried out the above-mentioned governmental policy to provide iron ore for less than adequate remuneration. That necessitated a detailed analysis of the market developments in India against an appropriate benchmark.

(182) Through the targeted export restraints and other related measures, the GoI induced the mining companies to sell locally at lower prices than otherwise (i.e. absent those measures, the mining companies would have exported the iron ore at higher prices). In contrast, the mining companies did not do so because of the GoI's policy to favour the downstream industry, including the ductile pipes industry.

(183) The data concerning production, consumption, import and export of iron ore over the years are as follows ([47]):

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Production ('000 tonnes)	187 696	213 250	212 960	218 553	207 157	168 582	136 618	152 433	128 187
Consumption ('000 tonnes)	78 601	86 816	86 816	96 955	107 220	100 572	103 399	110 500	N/A
Imports ('000 tonnes)	483	293	69	897	1 867	978	3 056	369	11 433
Exports ('000 tonnes)	91 425	68 473	68 904	101 531	46 890	47 153	18 122	16 302	7 492

(184) The trends are shown in the graph below:



(185) The data show the impact of the export restraint on the domestic market for iron ore in India.

([47]) Source: Indian Bureau of Mines http://ibm.nic.in/index.php?c=pages&m=index&id=87&mid=17951 and questionnaire replies by the GoI. The data are reported by financial year which goes from 1 April of year x to 31 March of year x+1.

(186) The most visible effect of the policy is the impressive reduction of the volume of export of iron ore following the introduction of the targeted export restraints in 2007 and then again following their expansion in 2011. Hence, the targeted export restraints achieved the goal pursued by the GoI of discouraging exports and keeping iron ore available for the domestic downstream industry at lower prices.

(187) The trends of iron ore production show that the domestic production had been rather stable until 2011 when it started decreasing. The decrease does not appear to be the consequence of any adaptation of the production by iron ore mining companies to the export restrictions; rather, it is mainly explained by the numerous court decisions to close mines due to allegations of illegal mining and environmental violations, for instance in the states of Karnataka, Odisha and Goa.

(188) After disclosure, ECL argued that if the aim of the Indian Government was to ensure oversupply of iron ore to make iron ore available at cheap prices to the domestic users, it seems counterintuitive that the Supreme Court and local State Courts banned mining in the states mentioned above. The GoI could have challenged the various mine closures.

(189) The Commission notes that the judicial system of India is independent from the GoI and bound only by law. At the same time, it is evident from the information at the Commission's disposal that the closures were due to violations of the domestic environmental and mining rights legislation. As explained in recital 162 above, it appears that the government's iron ore policy pursued economic and environmental objectives at the same time. It follows that the non-challenge of courts decisions relating to the environmental pillar of this policy does not imply that the government had abandoned the economic pillar thereof. Therefore, this claim was rejected.

(190) Notwithstanding a reduction in production of iron ore, the Indian market shows a constant and irrational overcapacity compared to the sum of domestic consumption and exports minus imports. This led to an excess supply of iron ore on the domestic market as acknowledged and sought by the GoI.

(191) After disclosure, referring to the table contained in recital 183 above, ECL claimed that the Commission failed to analyse the fact that exports of iron ore from India were high and carried on even after export tax on iron ore had been increased to 30 % in December 2011.

(192) The Commission stressed that the objective of the export tax on iron ore was not to stop altogether the exports, but to reduce them, while increasing availability on the domestic market. Therefore, it is unreasonable to expect that exports will disappear after the imposition of the export tax. Nevertheless, the Commission observed that the export tax had significant effects on exports shortly after its introduction. Indeed, in the period 2012-2013 the export sales decreased by more than 60 % compared with 2011-2012 and continued to decrease significantly, reaching a drop by 84 % in 2014-2015 in comparison with 2011-2012. At the same time production decreased only by 24 % between 2011-2012 and 2014-2015 for the reasons explained in recital 187 above. Thus the availability of iron ore for domestic sales remained stable for the same period. This clearly shows that the export tax achieved its objectives to curb exports of iron ore.

(193) After disclosure, ECL contended that the Commission should have also compared iron ore production in India for captive and non-captive use. According to ECL, captive use had been historically significant, while non-captive production of iron ore had declined by 41 % between 2009-2010 and 2013-2014 which also partially explained the decline in exports by the non-captive producers since 2009-2010.

(194) This claim is not factually correct as illustrated by the following table [48]:

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Captive ('000 tonnes)	43 797	44 761	42 967	44 961	50 099	43 885
Index	*100*	*102*	*98*	*103*	*114*	*100*

[48] Source: Indian Bureau of Mines http://ibm.nic.in/index.php?c=pages&m=index&id=87&mid=17951 and questionnaire replies by the GoI. The data are reported by financial year which goes from 1 April of year x to 31 March of year x+1.

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Non-captive ('000 tonnes)	174 756	162 396	125 615	91 657	102 334	84 302
Index	*100*	*93*	*72*	*52*	*59*	*48*
Total production ('000 tonnes)	218 553	207 157	168 582	136 618	152 433	128 187

(195) Indeed, non-captive production declined since 2011-2012. As explained above, the decline was mainly due to mine closures during that period. However, the decline in non-captive production cannot be accepted as a reason for the decline in exports. As evident from the table in recital 183 above, exports declined by 59 % between 2012-2013 (when the higher rate of 30 % of export tax started having effects) and 2014-2015, while the non-captive production decreased by only 8 % during the same period. Therefore, this claim was dismissed.

(196) ECL also claimed that the Commission should have also taken into account differences in developments of the various iron ore grades. In particular, for the iron ore grades most used by ductile pipes producers, between 2010-2011 and 2013-2014, the production of iron ore fines 60 %-62 % fell by 44 % and between 2009-2010 and 2013-2014 the production of iron ore fines 62 %-65 % fell by 30 %.

(197) The developments in the production of high grade iron ore are in line with the general trends established above concerning production of iron ore. Therefore, the Commission found that they do not modify the conclusions reached in recitals 183 to 187 above.

(198) Imports of iron ore to India have always been negligible in quantity and value. There was a slight increase of imports during the tax year 2012-2013 which dropped again the following year. In 2014-2015 imports increased again to their highest level in history though still remaining at below 10 % of the Indian domestic production.

(199) This post-IP development is due to the current situation of exceptionally low international prices caused by the increase in iron ore supply (the main producing countries Australia, Brazil and South Africa have all increased production) and the contextual decrease in iron ore demand, due to the slowdown of the Chinese growth and the worldwide economic context.

(200) Further, the Commission analysed the impact of the excess supply of iron ore due to the GoI's export restraints on the domestic price of iron ore in India, if any.

(201) The Commission calculated the average domestic price of iron ore in India based on the data published monthly at country level and state by state by the Indian Bureau of Mines (IBM) distinctly per grade (lumps or fines) and Fe content ([49]).

(202) Those prices are based on the returns filed by the miners to the IBM pursuant to the Indian Mineral Conservation and Development Rules (MCDR) and are therefore considered more representative than prices published by specialised press concerning a single company (such as the National Mineral Development Corporation — NMDC) or a single area in India.

(203) Of all the grades, the Commission analysed the trend of the average price of iron ore fines with a Fe content between 60 % and 65 % because this is the quality mostly used by the producers of the product concerned in India. However, such detailed break-down of data per grade was only available as of mid-2009. Therefore, for the previous years, the Commission made use of the data concerning Indian average domestic price of all grades and

([49]) Indian Bureau of Mine's monthly average sales price of minerals, link to the web page provided by the GoI, last accessed on 23 November 2015 http://ibm.nic.in/index.php?c=pages&m=index&id=87&mid=17951

types of iron ore (again including average royalty of 14 %, taxes of 2 %, and transport of INR 900 per tonne), with no distinction between the types (lumps or fines) and the Fe content. The average transport costs were based on the ones reported by the two exporting producers. The Commission also added INR 25 to cover handling and loading between the mine head and the train/truck based on verified cost data from one of the exporting producers. The method of calculation of royalty and taxes was based on the data submitted by the GoI and was subsequently disclosed to the exporting producers.

(204) The average domestic price for iron ore fines with a Fe content between 60 % and 65 % was compared to the average price of iron ore fines with a Fe content of 62 % ([50]) imported in China (CFR Tianjin port) as published by the International Monetary Fund ([51]). China being the biggest importer of iron ore, the import price in China is considered to be the benchmark price for this commodity.

(205) To remove the costs of international freight, the average domestic price was also compared with the FOB price for iron ore exports from Australia. Australia being the biggest producer of iron ore, its FOB export price is also representative of the international prices. Similar to the Indian domestic prices, the data from Australia are available at aggregate level of lumps and fines ([52]). In addition, FOB export prices from Australia are also available from another source, but only for fines ([53]).

(206) After disclosure, ECL requested that Australian FOB prices and Chinese CFR prices should be adjusted downward for absence of moisture (2 % for lumps and 8 % for fines) and handling loss (2 %) which is allegedly higher for export than in the case of domestic prices. The exporting producer also requested a further adjustment of the Australian FOB prices with stevedoring costs ([54]) because they are necessarily included in the Australian FOB prices, while they are not incurred in India when iron ore is sold domestically.

(207) The Commission accepted the request for adjusting downwards the Australian FOB price for absence of moisture since the Indian statistical data is based on iron ore containing moisture. In addition, the moisture content differences for iron ore fines and lumps could be verified with data from the complainant. The Australian FOB prices are available at aggregate level, and based on the split between lumps and fines as reported by the Australian authorities (Australia's Department of Industry, Innovation and Science), an adjustment was done on a weighted average basis for the complete 'basket of fines and lumps' (– 6,75 %).

(208) The Commission also decided to deduct stevedoring costs from the Australian FOB prices. In fact, most of the services included in stevedoring at a port relate to handling of the iron ore within the port and loading them subsequently on a ship. Such costs do not occur after unloading iron ore from a truck to an Indian factory and were hence deducted from the Australian FOB price. It thus made a fair comparison between Indian domestic prices of iron ore brought from an Indian mine to a factory in India (but not unloaded in the factory) and Australian domestic prices of iron ore brought from a mine to a port (but not unloaded in the port).

(209) However, the Commission rejected the claim for an adjustment for handling loss as it was unable to establish with certainty from various sources that FOB prices incorporate handling losses and that those handling losses are 2 % higher than the handling losses possibly incurred when iron ore is sold domestically.

(210) Furthermore, ECL argued that the Australian export price includes a 22,5 % tax on mining profits and thus Australian prices are not comparable to the Indian iron ore prices. However, it is evident from the website referred to by the exporting producer that this tax replaces the royalties paid by mining companies and all royalties which have been paid prior to its entry would be rebated ([55]). Since, as indicated in the recital above, Indian prices contain royalties, it is reasonable to keep this tax contained in the Australian price in order to ensure fair comparison.

([50]) The benchmark is based on this level of Fe content.
([51]) International Monetary Fund, primary Commodity prices, last accessed on 23 November 2015, http://www.imf.org/external/np/res/commod/External_Data.xls
([52]) http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/default.aspx last accessed on 1 February 2016.
([53]) Australian Government Department of Industry, Innovation and Science, China Resources Quarterly Southern spring ~ Northern autumn 2015, http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Westpac-Industry-Science-China-Resources-Quarterly.aspx# last accessed on 1 February 2016.
([54]) According to the information provided by ECL, stevedoring costs for iron ore fines for export include, inter alia, paying a rent for the store in the port; costs for using specialised equipment in the port; additional costs to putting the iron ore onto the ship.
([55]) See http://www.mining-tax.com.au accessed on 29 January 2016.

(211) On this basis, the Commission calculated an adjusted FOB Australian price, as the closest possible proxy for an undistorted Indian domestic price. The comparison between the various sets of data is shown in the table and succeeding graph below:

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
India domestic price (all grades and types) (1)	1 803	2 197	2 480	2 330	3 143	3 564	3 712	3 363	3 903
India domestic price (fines 60-65 %) (1)	1 803	2 197	2 480	2 931	3 038	3 914	3 569	3 117	3 676
China imports fines 62 % CFR Tianjin ex. AU (2)	1 545	1 716	2 966	4 481	7 229	7 582	7 121	7 948	5 017
Australia FOB IODEX (fines only 62 %) (3)	N/A	N/A	2 758	4 167	6 723	7 193	6 692	7 138	4 557
Australia FOB (all grades and types) 62 % (4)	1 884	2 365	3 448	3 359	5 225	7 083	6 152	6 755	5 130
Adjusted Australia FOB (all grades and types 62 %) (5)	1 396	1 844	2 854	2 771	4 510	6 241	5 374	5 936	4 421

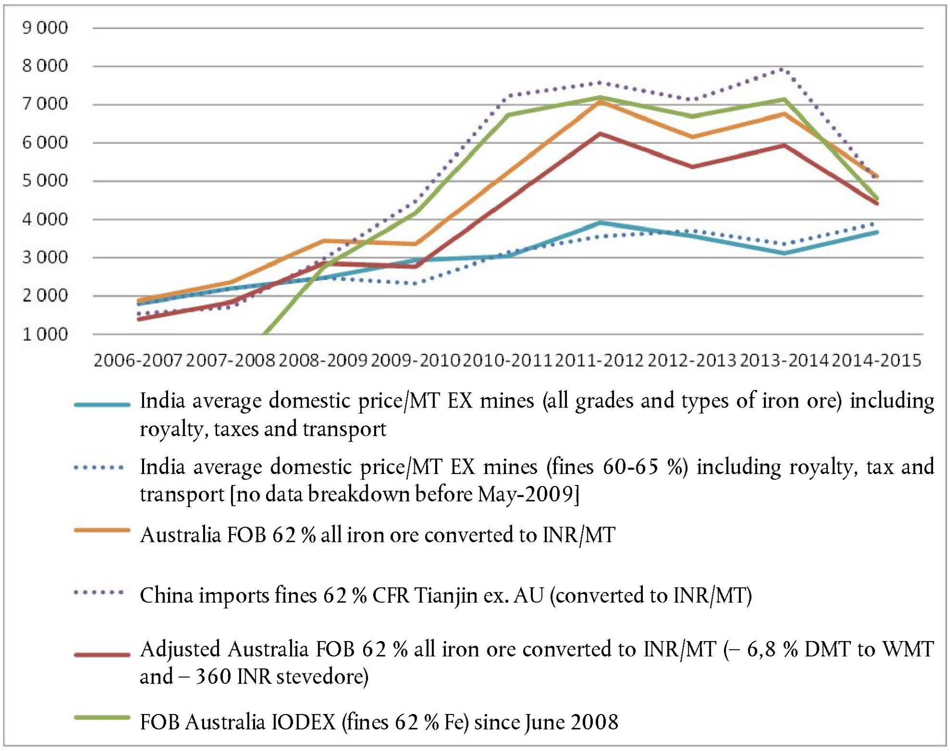
(1) Indian Bureau of Mines' monthly average sales price of minerals, link to the webpage provided by the GoI, http://ibm.nic.in/index.php?c=pages&m=index&id=87&mid=17951 last accessed on 23 November 2015.

(2) International Monetary Fund, primary Commodity prices, last accessed on 23 November 2015, http://www.imf.org/external/np/res/commod/External_Data.xls

(3) Australian Government Department of Industry, Innovation and Science, China Resources Quarterly Southern spring ~ Northern autumn 2015, http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Westpac-Industry-Science-China-Resources-Quarterly.aspx# last accessed on 1 February 2016

(4) http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/default.aspx last accessed on 1 February 2016.

(5) Based on data available at http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Resources-and-energy-quarterly.aspx# last accessed on 1 February 2016, adjusted for: (i) moisture content, of weighted average of – 6,75 %; and (ii) — INR 360 stevedoring costs.



(212) The comparison shows that the GoI interventions on iron ore which led to a drastic reduction of exports of iron ore and to an excess supply in India, have also had an impact on the domestic prices of iron ore. First, since 2008 domestic prices of iron ore in India are constantly lower than international prices. Second, while international prices show a significant increase over the years 2008 to 2011, corresponding to the two points in time when the export restraints were introduced (2007/2008) and enhanced (2011), the trend of domestic prices of iron ore in India is rather flat, as if it was separated and unaffected by the situation in the rest of the world.

(213) Hence, the GoI targeted export restraints achieved the objective of making iron ore available to domestic industries at lower prices by keeping the domestic Indian price stable, although the iron ore prices were increasing significantly on the world market. There is no reason why the Indian prices should not have followed the trends of international prices, but for the targeted export restraints and other related measures set up by the GoI. Indian producers of iron ore would have benefited from more profitable sales at the higher international prices absent the targeted export restraints. Instead, they were induced to continue production and provide iron ore locally at lower prices.

(214) After disclosure, ECL claimed that the significantly increased imports into India in 2014-2015 show that the Indian domestic price was not entirely decoupled from international prices. If the GoI really had wished to provide iron ore at less than adequate remuneration, it then would have entrusted and directed the iron ore producers to reduce prices even further. Moreover, Indian iron ore producers such as NMDC and Rundta have allegedly maintained iron ore prices which were much higher than international prices as noted in the complaint.

(215) The Commission observed that Indian domestic prices remained below international prices throughout the entire period of existence of the import tax and remained almost unchanged since 2013 in comparison with the parallel significant decrease in international prices. In addition, nothing in the file supports the claim that NMDC and Rundta have maintained iron ore prices higher than international prices. Therefore, this claim was rejected.

(216) After disclosure, Jindal also challenged the Commission's finding of entrustment since the iron ore producers could decide, as they allegedly did, to decrease production and the price in other markets could decrease, as it allegedly happened.

(217) Concerning the allegation that iron ore producers allegedly decided to decrease production, as explained in recital 187 above, the Commission found that the decrease in the production in the past was mostly due to closing of allegedly illegal mines. Second, as explained in recital 169 above, the mining companies would not decrease output, given the significant initial investment they make in production. Therefore, this claim was rejected.

(218) With regards to the decrease of prices in other markets, the Commission rejected this claim for the same reasons as the ones contained in recital 269 below.

(219) In light of the foregoing, the Commission concluded that the iron ore mining companies in India were entrusted to provide the iron ore to the domestic ductile pipe industry for less than adequate remuneration.

(iv) The function which would normally be vested in the government and the practice, which, in no real sense, differs from practices normally followed by governments

(220) After definitive disclosure, ECL alleged that the Commission had only assessed the first of the five relevant criteria (entrustment and direction) and not assessed the four other ones. The Commission dismissed this argument as it had discussed the nature of the mining companies (recitals 178-180) and the function carried out by them (recitals 181-219) in great detail already at that stage. It then briefly added its considerations on the fourth and the fifth criterion.

(221) With respect to the 'normally vested' criterion, which had not been further clarified by the Panel ([56]) yet, the Commission considered that the provision of raw materials located within a country to national companies is a function which is normally vested in the government. Under general international law, States have sovereignty

([56]) Panel, DS 194, paragraph 8.59.

over their natural resources. While they enjoy large discretion how to organise the exploitation of their natural resources, their sovereignty normally translates into a regulatory governmental power to do so. In this respect, it is irrelevant whether or not a government would *habitually* engage in this function ([57]). The Commission therefore found that the provision of iron ore located in Indian soil to the Indian steel industry is a function which is normally vested in the government.

(222) As regards the 'in no real sense differs' criterion, the Commission noted that the language originated in the 1960 report of the Panel on Review Pursuant to Article XVI:5, in which similar language was used in respect of producer-funded levies that were deemed not to differ, in any real sense, from government practices of taxation and subsidisation ([58]). Against that background, this criterion requires an affirmative finding that the provision of goods by the entrusted private bodies does not, in any real sense, differ from the hypothesis that the government had provided such goods itself.

(223) ECL alleged that a difference in the practice between the Indian government and the Indian mining companies in providing iron ore could lie in the level of price-determination. While the government might have opted to fix a cheap price for providing iron ore to domestic steel companies, the mining companies do not have such a power at their disposal.

(224) However, the hypothesis that the government could have also intervened into the market by way of fixing prices does not create any difference in real sense. In the present case, the government had chosen to entrust private companies to provide iron ore for less than adequate remuneration, the level of which fluctuates over time. This does not differ from a practice where the government would have provided iron ore directly to the Indian steel producers at fluctuating price levels, which it could have fixed on a daily or monthly basis, following certain indicators relating to the situation of domestic Indian demand and supply. It follows that there is no difference, in any real sense, between directly intervening in the market with providing iron ore under a system of constantly changing government prices or by entrusting the responsibility to provide iron ore at less than adequate remuneration to mining companies. The Commission hence rejected the claim that the issue of 'government pre-determined conditions' would show a difference, in a real sense, between direct and indirect provision of iron ore to the Indian ductile pipes industry.

(225) Finally, the Commission found that the practice to indirectly intervene in the market through export restraints is followed by a number of governments worldwide. Only in India itself, an enormous variety of export taxes exist. Therefore, it was self-evident for the Commission that it was also dealing with a practice 'normally followed by governments'.

(v) Conclusion

(226) With the targeted export restraints (see recital 157 above), the GoI induced the domestic iron ore mining companies to sell iron ore locally and 'entrusted' them to provide this raw material in India for less than adequate remuneration. The measures at issue achieved the desired effect to distort the domestic market of iron ore in India and to depress the price to an artificially low level to the advantage of the downstream industry. The function to provide iron ore for less than adequate remuneration is normally vested in the government and the practice of the mining companies to carry it out does not, in any real sense, differ from practices normally followed by governments. The Commission thus concluded that the GoI provided an indirect financial contribution within the meaning of Article 3(1)(a)(iv) and (iii) of the basic Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) and (iii) of the SCM Agreement.

(227) After definitive disclosure, the GoI as well as the two exporting producers challenged the Commission's assessment that the identified targeted exports restraints can be termed as a financial contribution by a government. In particular, they asserted that the Commission analysed the reaction to (or the effects of) an imposed measure instead of examining the affirmative action of a government or the nature of the imposed measure to determine a financial contribution. Moreover ECL found that the Commission failed to establish the existence of an act giving responsibility to or authoritatively directing iron ore producers. Furthermore, the same parties disputed the Commission's reliance on references in isolated reports, arguing that they cannot be considered as sufficient evidence or support for determining a financial contribution by the GoI.

([57]) Panel, DS 194, paragraph 8.59 dismissing Canada's argument made in 8.56 to that effect.
([58]) Panel, Review Pursuant to Article XVI.5, L/1160, adopted 24 May 1960 (BISD 9S/188), para. 12.

(228) The Commission did not agree with the parties' position that it had analysed only the effects of the imposed targeted exports restrictions. As explained above in this section, the Commission's analysis went through several steps. First, it established the policy objectives pursued, that is discouraging exports of iron ore. Second, by means of the iron ore export tax and the dual freight policy, the Commission determined the existence of the legal acts inducing iron ore producers to sell domestically in India at lower prices than they would have sold otherwise. Then, the Commission established that the iron ore mining companies in India were indeed induced by the government to provide the iron ore to the ductile pipe industry for less than adequate remuneration. Furthermore, the function to provide iron ore for less than adequate remuneration is normally vested in the government and the practice of the mining companies to carry it out does not, in any real sense, differ from practices normally followed by governments.

(229) The Commission therefore did not only rely on several reports and policy statements or only on the effects of the identified measures but rather analysed all necessary elements in order to establish the existence of an indirect financial contribution in accordance with Article 3(1)(a)(iv) and (iii) of the basic Regulation.

(b) ***Benefit***

(230) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period.

(231) The Commission first calculated the weighted average purchase price of iron ore made by the two Indian producers during the IP. The weighted average was calculated month-by-month and as delivered from the mine to the plant in India.

(232) The average purchase price was based on the prices, net of VAT, and quantities indicated in transaction-by-transaction listing of invoices submitted by the companies and verified during the verification visits. When the Fe content of the iron ore purchased was different from 62 %, the purchase price was adjusted to take account of the quality (and price) difference.

(233) This average price needed to be compared with an appropriate benchmark. Under Article 6(d) of the basic Regulation the adequacy of remuneration shall be determined in relation to prevailing market conditions for the product in question in the country of provision. This mirrors Article 14(d) of the SCM Agreement and should be interpreted and applied in the light thereof.

(234) The Commission noted that the prevailing market terms and conditions in India are all affected by the government's targeted export restraints. No single transaction for iron ore in India escapes the fact that the entire Indian market is compartmentalised and low-priced. Hence, it was impossible to establish an undistorted cost of iron ore for an Indian ductile pipe producer or elsewhere in the Indian market. Accordingly, there were no domestic prices in India which could be used as appropriate benchmark.

(235) In line with Article 6(d) 2nd subparagraph (I) of the basic Regulation, the Commission then tried to adjust the terms and conditions prevailing in India, on the basis of actual costs, prices and other factors available in the country. In other words, the Commission considered what would have been the price of iron ore in India absent the government's targeted export restraints. This methodology would have been able to capture the natural comparative advantage India may have in providing iron ore to its domestic producers, while eliminating the undue additional advantage received through the measures taken by the GoI.

(236) However, also this methodology did not produce an appropriate benchmark. In particular, it was impossible to calculate what the 'normal' cost for purchasing iron ore in India would have been absent the system of export restraints as such costs are determined by a series of other factors unknown to the Commission. While the Commission had facts at hand how production and demand developed with the targeted exports restraints in place since 2007/2008, it did not have any reliable source to model how offer and demand for iron ore in the Indian market in a given year would have developed in the absence thereof. Taking the costs of iron ore of any year prior to the establishment of the targeted export restraints (i.e. any year before 2007) would have led to arbitrary and unreliable decisions. Taking Indian costs from 2004 or 2005 as proxy for the costs during the IP

was not considered appropriate as costs in a span of 10 years may differ significantly. Accordingly, it was also impossible to calculate how the hypothetical costs in India for a ductile producer would have been absent the distortion. Accordingly, also adjusted terms and conditions in India could not be used as an appropriate benchmark.

(237) After disclosure, ECL challenged the rejection by the Commission of the use of Indian domestic prices as a benchmark, arguing that it failed to analyse non-captive market suppliers, importance of traders or iron ore imports by individual producers such as ECL. Furthermore, the Commission should adduce positive evidence that private prices are distorted.

(238) The Commission was unable to determine how the behaviour of suppliers or traders would have been in the absence of the export tax and the dual freight policy. In addition, as illustrated in the section on provision of goods at less than adequate remuneration, the Commission presented a number of elements that all domestic prices in India have been distorted by the export tax.

(239) ECL further stated that the Commission should have adjusted the prevailing prices in India on the basis of FOB export prices from India. As already stated above, export prices from India cannot be regarded as an appropriate benchmark, since Indian exporters need to incorporate in the prices they charge to their international customers the additional costs they incur for transport within India as well as the export tax charged at the border of India. This distinguishes significantly the case at hand to previous cases, to which ECL referred, where the Commission used as a benchmark the export price of a raw material (mainly gas) from the same country of export ([59]). At the hearing of 28 January 2016 (see recital 6 above) the Hearing Officer also took the view that the export tax in India is likely to distort the FOB export prices from India, which are hence unreliable to serve as a proper benchmark. Therefore, this claim was also rejected.

(240) Finally, and in line with Article 6(d) 2nd subparagraph (ii) of the basic Regulation, the Commission thus reverted to the terms and conditions prevailing in the market of another country which are available for the recipient.

(241) The Commission tried to identify an undistorted price of iron ore produced in the mine of a representative other country and to simulate that such mine would actually be located in India. In the case at hand, it occurs that a majority of iron ore worldwide is exported from Australia to China. It was thus decided to look at the ex-mine prices in Australia. However, such ex-mine prices in Australia were not available for the Commission. Moreover, as the Indian price includes transport costs from the mine to the factory, it was considered appropriate to include also the transport costs that would be payable from the Australian mine to an Australian buyer of iron ore so that the comparison is made at the same level of trade. Given that such data is neither available, the Commission used transport costs from the Australian mine to any Australian port instead.

(242) The Commission equated the transport cost from an Australian mine to the port with the transport cost from an Australian mine to an Australian buyer of iron ore for the following reason. While one particular mine in Australia may be located closer to a certain customer than to the nearest port, another mine may be located closer to the nearest port than to a certain customer. Hence, on a nation-wide level, it is reasonable to assume that transportation costs from an Australian mine to a port in Australia mirror the relevant delivery charges to a customer.

(243) The Commission was also mindful of the Appellate Body's ruling that adjustments for delivery charges must reflect the generally applicable delivery charges for the good in question in the country of provision. ([60]) Given the factual background that India is largely self-sufficient in iron ore and that there were no significant imports of iron ore to India as Indian producers do not need any imports due to overcapacity in India and low prices, it was hence not appropriate to add the international freight costs to the Australian ex-port price (at FOB level). Adding international delivery charges would thus not have been representative of the generally applicable delivery charges for iron ore in India.

(244) The Commission hence used as a benchmark a proxy FOB price in Australia which reflects the terms and conditions that would have been available to Indian iron ore users, as if the iron ore would have been delivered from an India mine to a factory absent the targeted export restraints.

([59]) See for example Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ L 185, 12.7.2008, p. 1).

([60]) Appellate Body Report, DS 436, paragraph 4.317.

(245) More specifically, the Commission used the Australian FOB price published by the China Resources Quarterly Southern winter ~ Northern summer 2015 publication ([61]) for 62 % iron ore (information found in the table of recital 211 above).

(246) After disclosure, ECL challenged the use by the Commission of Australian FOB prices and requested that it uses Brazilian FOB prices instead as they were on average 10 %-15 % lower than Australian FOB prices.

(247) The Commission considered that Australian FOB prices are a more appropriate benchmark since Australia represents approximately 50 % of the world's exports of iron ore, while Brazil's share in international export sales is around only 26 %. Therefore, it rejected this claim.

(248) The Commission then compared the price paid by the Indian producers to purchase iron ore (including intra-Indian transports costs) with this FOB price in Australia (which includes intra-Australian transport costs).

(249) After disclosure, ECL requested that Australian FOB prices should be compared with the adjusted domestic Indian prices to a FOB level. Alternatively, if the Commission compares Australian FOB prices with domestic Indian prices, it should add handling and loading costs on the Indian price from the mine to port and at the port, as well as stevedoring costs at the port. In addition, Australian FOB prices should be adjusted downwards for absence of moisture (2 % for lumps and 8 % for fines) and handling loss (2 %) which is higher for export than in the case of domestic prices.

(250) In line with its assessment in recitals 205-210 above, the Commission acknowledged that also for the purposes of the calculation of benefit, some further adjustments were necessary in order to apply the same types of delivery charges both on the Indian domestic prices and the Australian FOB prices.

(251) In fact, most of the services included in stevedoring at a port relate to handling of the iron ore within the port and loading them subsequently on a ship. Such costs do not occur after unloading iron ore from a truck to an Indian factory and were hence deducted from the Australian FOB price. However, as stevedoring costs also include the costs for unloading the iron ore to the port in the first place, the Commission decided to also eliminate such handling costs from the Indian price of iron ore. It thus made a fair comparison between Indian domestic prices of iron ore brought from an Indian mine to a factory in India (but not unloaded in the factory) and Australian domestic prices of iron ore brought from a mine to a port (but not unloaded in the port).

(252) Consequently, the Australian FOB price was adjusted downwards for absence of moisture. The Commission used a weighted average basis for the complete 'basket of fines and lumps' which it calculated individually for each of the two exporting producers (and not on a weighted average basis as was the case in recital 207 above).

(253) For the same reasons as stated in recitals 208-209 above, the Commission also deducted stevedoring costs from the Australian FOB prices, but did not make an adjustment for handling loss.

(254) Concerning the Indian domestic price, the Commission dismissed the request to adjust domestic Indian prices to a FOB level since this implies that the iron ore will not be delivered at the factory gate of the exporting producers. Thus in order to establish a price of iron ore as delivered to the factory gate, the Commission also added — in addition to average transport costs — an amount to cover handling and loading between the mine head and the train/truck based on verified enumerated cost data from one of the exporting producers.

(255) On this basis, the Commission made a fair comparison between Indian domestic prices of iron ore brought from an Indian mine to a factory in India (but not unloaded in the factory) and Australian domestic prices of iron ore brought from a mine to a port (but not unloaded in the port).

(256) After disclosure, Jindal claimed that the Commission should not have used average Indian transport costs from the mine to the plant obtained from one of the exporting producers but the actual costs reported by Jindal.

([61]) Australian Government, Department of Industry and Science, China Resources Quarterly, Southern winter — Northern Summer 2015, page 20. It was accessed last on 23 November 2015 http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/crq/CRQ-Winter-2015.pdf.

(257) However, the Commission considered that it should use a standard weighted average transport cost from the mine to the plant in order to calculate the benefit in unbiased and non-discriminatory way for both exporting producers. In the context of comparison with a benchmark price outside India, any other method would lead to an artificial advantage or disadvantage for the companies, depending on the actual logistical costs and geographical distance between the exporting producer and the mines it has purchased from.

(258) The Commission further multiplied the difference between the two average prices by the quantities of iron ore actually purchased by the Indian producers during the IP.

(259) After disclosure, ECL claimed that the Commission should not have used all the quantities of iron ore actually purchased, but only that part which was consumed for the production of ductile pipes during the IP. In addition, purchases of both fines and lumps — and not only of fines — should have been used. The Commission accepted the request and informed both exporting producers of the changes made.

(260) In addition, ECL claimed that only purchases of fines had been included when calculating the benefit for some of the companies in the group. The Commission corrected this error for both exporting producers. It included all purchases of iron ore (fines and lumps). When the Fe content was different from 62 %, the Commission adjusted the purchase price accordingly on a pro-rata basis. The two exporting producers were informed respectively of the corrections made.

(261) The total amount of the difference represents the 'savings' obtained by the Indian producers which purchase iron ore in the Indian distorted market compared to the price which they would have paid in the absence of distortions. Ultimately, this total amount represents the benefit conferred on the Indian producers by the GoI during the IP.

(262) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts over the total turnover of the product concerned during the review investigation period as appropriate denominator, because the subsidy granted a benefit to the entire production of the product concerned and not only to the production destined to exports.

(263) After disclosure, Jindal claimed that the Commission has calculated a negative benefit for certain months of the IP. Consequently, iron ore was not provided at less than adequate remuneration to the company. It also argued that it did not receive any subsidy after the IP as it imported iron ore and therefore the subsidy is not countervailable vis-à-vis this company.

(264) Similarly, ECL argued that for the period 2014-2015 the Indian domestic prices are no longer lower than Australian FOB prices. Consequently, the Commission cannot negate this fact as it needs to take into account the situation at the time of imposition of the measures.

(265) The Commission acknowledged that for some months of the IP the calculated benefit was negative. However, this was offset by the positive benefit received during the rest of the IP, the overall result being to establish a positive subsidy margin for the company concerned.

(266) Article 15(1), second subparagraph, of the basic Regulation requires the Commission not to adopt countervailing measures under two conditions (I) 'if the subsidy or subsidies have been withdrawn' or (ii) 'it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved'.

(267) With respect to the first condition, the Commission observed that the system of export restraints has not been abolished or withdrawn. Therefore this condition has not been met.

(268) Regarding the second condition, it should be recalled that its principal objective is to apply to one-off, non-recurring subsidies, allocated over a set period of time which would not continue to provide benefits in the future to any of the exporting producers [62]. This is not the situation in the case at hand for the following reasons.

[62] See in this respect, Council Regulation (EC) No 320/2008 of 7 April 2008 repealing the countervailing duty imposed on imports of certain electronic microcircuits known as DRAMs (Dynamic Random Access Memories) originating in the Republic of Korea and terminating the proceeding (OJ L 96, 9.4.2008, p. 1); recital 88.

(269) After the IP the benchmark Australian FOB prices, as adjusted for stevedoring costs and moisture, are similar to the Indian domestic prices. However, the Commission established in recital 212 above that the trend of Indian domestic prices of iron ore is rather flat and does not follow the price fluctuations in the rest of the world. At the same time, it is not excluded that in the near future international prices, including Australian FOB prices, will increase again, in response to the fluctuations in international demand and supply of iron ore. Therefore, it cannot be concluded that the system of export restraints is a one-off, non-recurring subsidy, as it is likely that it will provide benefits in the future. Should, however, international prices remain constantly below the Indian domestic prices in the future, each exporting producer is entitled to request reimbursement of duties collected where it is shown that the amount of countervailable subsidies has been eliminated or reduced in accordance with Article 21 of the basic Regulation.

(270) In light of the above, the conditions of Article 15(1), second subparagraph, of the basic Regulation, for not adopting countervailing measures are not fulfilled.

(271) The subsidy rate established with regard to this scheme during the IP for the ECL Group amounted to 3,01 % and for the company Jindal Saw India amounted to 3,91 %.

(c) ***Specificity***

(272) The GoI's export restraints only benefit the iron and steel industry. They are therefore specific under Article 4(2)(a) of the basic Regulation. Even though they lay benefit on other downstream products than ductile pipes, the benefit is available only to certain industries in India. The inherent characteristics of iron ore limit the possible use of the subsidy to a certain industry but this does not mean that, in order to be specific, the subsidy must be further limited to a subset of this industry ([63]).

(273) After disclosure, ECL and Jindal challenged the Commission's assessment of specificity claiming that it was inadequate and legally flawed. In particular, ECL quoted an Appellate Body Report where the latter held that '*[I]t may be that, in respect of a provision of goods, there is a greater likelihood of a finding of specificity in instances where the input good is used by only a circumscribed group of entities and/or industries. At the same time, we are not persuaded that every provision of goods with limitations inherent in the characteristics of the goods will necessarily lead to a finding of specificity.*' ([64])

(274) The Commission noted that the exporting producer did not refer to the footnote at the end of the same paragraph, where the Appellate Body made reference to the Panel Report on the case ([65]), which in its turn quoted the Panel Report in US — Softwood Lumber. In the later the panel held the following:

'We do not consider that this would imply that any provision of a good in the form of a natural resource automatically would be specific, precisely because in some cases, the goods provided (such as for example oil, gas, water, etc.) may be used by an indefinite number of industries. This is not the situation before us. As Canada acknowledges, the inherent characteristics of the good provided, standing timber, limit its possible use to "certain enterprises" only' ([66]).

(275) In the same vein, the Commission considered that, although high grade iron ore is a natural resource, by contrast to oil, gas and water and similarly to standing timber, it may not be used by an indefinite number of industries. Its use is also narrower than low-grade iron ore. Indeed, the consumption of high grade iron ore is strictly limited to circumscribed group of entities or industries, such as certain products of the steel industry and in particular, the production of ductile pipes. On this basis, the Commission established the existence of a limitation that expressly and unambiguously restricts the availability of the subsidy to 'certain enterprises' and thereby does not make the subsidy 'sufficiently broadly available throughout the economy' ([67]). Therefore, the Commission rejected ECL's arguments.

([63]) Appellate Body Report DS 436, para 4.398.
([64]) Appellate Body Report DS 436, para 4.393.
([65]) Panel Report, 436R, paras. 7.131 and 7.132.
([66]) Panel Report, United States — Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/R and Corr.1, adopted 17 February 2004, as modified by Appellate Body Report WT/DS257/AB/R, para. 7.116.
([67]) See European Communities And Certain Member States –Measures Affecting Trade in Large Civil Aircraft, WT/DS316/R of 30 June 2010, para 7.919.

(276) ECL also claimed that the Commission failed to establish the basis on which it found the subsidy to be *de jure* specific. In this respect, the Commission considered that the subsidies in question are *de jure* specific as they are limited to iron ore by means of the legal acts imposing an export tax on iron ore ([68]), on the one hand, and the legal acts establishing dual freight policy for the transportation of iron ore ([69]), on the other hand.

(277) In light of the foregoing, the Commission considered that the GoI interventions are specific to the ductile pipes producers within the meaning of Article 4(2)(a) of the basic Regulation.

3.2.4.3. Conclusions

(278) By imposing a system of export restraints the GoI has entrusted the iron ore mining companies to provide iron ore at less than adequate remuneration. This provision of goods constitutes a financial benefit for the recipient and is specific, thus countervailable.

3.3. **Amount of countervailable subsidies**

(279) The countervailable subsidy amounts established were as follows:

Company	FPS (point 3.2.1)	EPCGS (point 3.2.2)	DDS (point 3.2.3)	Total export subsidies	Iron ore (point 3.2.4)	Total
ECL Group	4,35 %	0,03 %	1,66 %	6,04 %	3,01 %	9,0 %
Jindal Saw	3,11 %	0,38 %	1,37 %	4,86 %	3,91 %	8,7 %

4. **INJURY**

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

(280) 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 9(1) of the basic Regulation.

(281) 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.

(282) The total Union production during the investigation period was established at 590 000–610 000 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. There are only three producers in the Union and the two cooperating companies represent around 96 % of the total Union production.

4.2. **Union consumption**

(283) 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.

([68]) The last legal act is Second schedule of export tariff, published by the central Board of Excise and Customs, see footnote 32 above.
([69]) The last amendment of the freight rates applicable to iron ore was Addendum No 16 to Rates Circular No 36 of 2009 dated 1.9.2015 adopted by the Ministry of Railways, GoI. See: http://www.indianrailways.gov.in/railwayboard/uploads/directorate/traffic_comm/Freight_Rate_2k15/RC_36_09_Addendum-16.pdf, last accessed on 26 January 2016.

(284) Following comments on the 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.

(285) Union consumption developed as follows:

Union consumption (in 1 000(k) tonnes)

	2011	2012	2013	IP
Consumption	570 - 620	490 - 540	460 - 510	520 - 570
Index	*100*	*87*	*83*	*93*

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

(286) 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. This prompted the Union governments to drastically reduce public investment and expenditure, which explains a significant drop in demand for ductile pipes, especially in countries such as Spain, Portugal and Italy.

4.3. **Imports from India**

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

(287) The Commission established the volume of imports on the basis of Eurostat. The Eurostat data was in line with the data submitted by the exporting producers from India. The market share of the imports was established on the same basis.

(288) Imports into the Union from the country concerned developed as follows:

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

(289) The Indian import volumes increased by more than 10 % during the period considered in spite of the shrinking market. 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 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 between 2013 and the IP.

4.3.2. *Prices of the imports from India*

(290) 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 in 2013 and the IP.

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

Import prices (EUR/tonne)

	2011	2012	2013	IP
India	665	703	671	664
Index	*100*	*106*	*101*	*100*

Source: Eurostat, questionnaire replies

(292) The Indian prices remained stable during the period considered.

4.3.3. *Price undercutting*

(293) 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.

(294) 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. In addition, given the low volumes sold on the Union market also flanged pipes were excluded from the undercutting calculations.

(295) Following 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, 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.

(296) 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.

(297) Following 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 subsidised 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 disclosure, with insignificant impact on the margins.

(298) After 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.

(299) 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.

(300) Following the 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.

(301) 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.

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

4.4.1. *General remarks*

(302) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(303) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the questionnaire replies from the cooperating Union producers and the estimates contained in the complaint for the non-cooperating producer. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the cooperating Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(304) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the amount of the countervailable subsidies, and recovery from past subsidisation.

(305) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(306) 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	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

(307) 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. An increase in production in 2013 and the IP is driven by increased export sales.

(308) 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.

4.4.2.2. Sales volume and market share

(309) 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 (in 1 000(k) tonnes)	430 - 470	370 - 410	340 - 380	380 - 420
Sales volume *Index*	*100*	*88*	*82*	*89*

	2011	2012	2013	IP
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

(310) 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.

(311) 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 294.

4.4.2.3. Growth

(312) 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.

4.4.2.4. Employment and productivity

(313) 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 t/Employee	220 - 240	180 - 200	210 - 230	230 - 250
Productivity *Index*	*100*	*82*	*96*	*102*

Source: Questionnaire replies

(314) 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.

4.4.2.5. Magnitude of the amount of the countervailable subsidies and recovery from past subsidisation or dumping

(315) All subsidy margins were above the *de minimis* level. The impact of the magnitude of the amount of countervailable subsidies on the Union industry was substantial, given the volume and prices of imports from the country concerned.

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

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(317) 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 - 1050	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

(318) 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.

(319) 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.

4.4.3.2. Labour costs

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

Average labour costs per employee (kEUR/employee/year)

	2011	2012	2013	IP
Labour Cost	56 - 58	56 - 58	58 - 60	58 - 60
Index	*100*	*100*	*103*	*104*

Source: Questionnaire replies

(321) 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.

(322) 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 ([70]) was 6,9 % between 2011 and 2014 and almost 5 % between 2011 and 2013.

4.4.3.3. Inventories

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

Inventories (in 1 000(k) tonnes)

	2011	2012	2013	IP
Closing stocks	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

(324) 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.

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

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

Profitability, cash flow (m EUR), investments (m EUR) 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	8m - 10m	7m - 9m	5m - 7m	8m - 10m
Cash Flow *Index*	*100*	*92*	*67*	*101*
Investments	18m - 20m	11m - 12m	13m - 15m	22m - 24m
Investments *Index*	*100*	*60*	*67*	*120*
Return on Investments (%)	49	(–)155	(–)29	20

Source: Questionnaire replies

([70]) 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).

(326) 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. Most of the sales of the product concerned in the EU were made through the sales subsidiaries of the cooperating EU producers and their costs and profitability were taken into account.

(327) The complainant claimed that the industry expected a profitability exceeding 12 % that had been common in the years 2007-2009. However, in those years the sales were particularly high to due to an economic boom in the years 2007-2008 and the Union governments' fiscal stimulus spending to counteract the effects of economic crisis in the year 2009. Therefore those years cannot be considered as representative. The complainant also claimed that double-digit profitability is justified by a high-level of R & D spending. The investigation found little evidence for an intense R & D activity — the R & D expenditure accounted for 1,8 % of the turnover in 2011 and 1,6 % in the investigation period for the Union producer who had the highest R & D spending. Based on the profitability achieved in similar industries, such as seamless pipes and tubes of stainless steel it has been considered that a 5 % profitability margin is reasonable for this kind of industry.

(328) 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.

(329) 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.

4.4.4. *Conclusion on injury*

(330) The Union industry lost market share by 4 % in a declining market, while its sales in the Union market decreased by more than 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 327).

(331) 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 334 below.

(332) 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 claim. First, Article 8(4) 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 ([71]).

(333) Low profitability, coupled with a continued loss of sales and the market share in the Union, puts the Union industry in a difficult economic situation.

([71]) Case T-310/12 of 20 May 2015, Yuanping Changyuan Chemicals Co. Ltd v Council of the European Union, para 134 and 135.

(334) 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 the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

5. CAUSATION

(335) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from the country concerned caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. These factors are: the economic crisis and decrease of demand, imports from third countries, export performance of the Union industry and the competition from substitute products such as plastic pipes.

5.1. Effects of the subsidised imports

(336) The Indian exporting producers' volume of sales in the Union were almost twice as large [75 kt - 85 kt] as all other imports combined (45,8kt) already at the beginning of the period considered. The Indian sales fell in line with the consumption in the year 2012 but maintained its market share. However, in the year 2013, when the consumption was still depressed and the profitability of the Union industry negative, the Indian manufacturers managed to increase significantly both their sales and market share. Such successful expansion of the Indian sales in a declining market was made possible through aggressive subsidised prices and selling the product concerned at prices substantially lower than the ones charged by the Union producers. The aggressive pricing continued in the investigation period. The volume of sales from the Indian exporting producers reached [85 kt - 95 kt] and their market share reached [17 %-19 %] in the investigation period. The level of undercutting was established at 30,9 % and 31,7 %. Whilst the Indian sales and market share increased materially, the volume of sales of the Union industry fell much more than the consumption and the Union Industry lost sales by 11 % and its market share fell by 4 %.

(337) Following 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.

(338) When analysing whether subsidised imports have caused injury under Article 8(6) of the basic Regulation a particular consideration must be given to whether there has been significant price undercutting by the subsidised 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 subsidised imports that does not allow the Union industry to adapt its sales prices may constitute causality within the meaning of the basic Regulation ([72]).

(339) 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 subsidised 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 subsidised export prices undercut the Union prices by more than 30 %.

(340) 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

([72]) Commission Regulation (EU) No 1043/2011 of 19 October 2011imposing 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 subsidised 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. There was thus a coincidence in time between the subsidised 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.

(341) Given the coincidence in time between significant undercutting of the Union producers' prices by the subsidised Indian imports and the Union's industry loss of sales and market share, resulting in a very low profitability, it is concluded that the subsidised imports were responsible for the injurious situation of the Union industry.

5.2. **Effects of other factors**

5.2.1. *The economic crisis and decrease in demand*

(342) The Union consumption of the product concerned decreased by 7 %. The fall in consumption (13 % from 2011 to 2012) was caused by an economic crisis and shrinking public expenditure. The decrease in consumption seems to have contributed to the injury at the beginning of the period considered, and may also have contributed in the year 2013. However, in 2013 and, especially in the investigation period, the subsidised Indian imports are the main injury factor exerting downward pressure on the Union sales of the Union Industry and preventing the return to a sustainable profitability.

5.2.2. *Imports from third countries*

(343) The volume of imports from other third countries developed over the period considered as follows:

Imports from third countries in volume (metric tonnes)

	2011	2012	2013	IP
China	31 136	28 019	12 266	13 903
Index	*100*	*90*	*39*	*45*
Third countries except China	14 693	12 183	20 153	22 524
Index	*100*	*83*	*137*	*153*
All third countries	45 828	40 202	32 419	36 427
Index	*100*	*88*	*71*	*79*

Source: Eurostat

(344) The imports from India constituted the majority of all imports in the Union in the investigation period. While Indian imports increased materially during the period considered other imports decreased by more than 20 % in the same period. While Indian imports gained market, the market share of imports from other countries decreased. Given the low volumes of imports from third countries as well as the fact that they decreased both in volume and in market share terms, there is no indication that they caused injury to the Union industry.

(345) The exporting producers claimed that one of the Union producers imported the product concerned from its Chinese production facilities, inflicting injury on itself. No evidence was found to support those claims. The verified evidence demonstrated that imports into the Union from the related Chinese facilities of the Union producer had been very low. In addition, the total imports from China as reported by Eurostat decreased significantly during the period considered. The Chinese total imports lost market share by more than 2 percentage points, which rules them out as the cause of injury.

5.2.3. *Export performance of the Union industry*

(346) 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

(347) 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 be in an even more injurious situation.

(348) 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.

(349) 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.

5.2.4. *Competition from substitute products*

(350) Interested parties claimed that the injury was caused by fierce competition from substitute products, in particular plastic pipes (polyethylene (PE), polyvinyl chloride (PVC) & polypropylene (PP)). Plastic pipes in smaller diameters are initially much cheaper per unit. However, taking into account the maintenance cost and the product life, the product concerned have cost advantages in the long term. Plastic pipes exert some competitive pressure on the product concerned, especially for smaller diameters. However, ductile pipes did not lose market shares to plastic pipes during the period considered, and in some instances, ductile pipes even managed to regain some market

share from plastic pipes during the period considered. Therefore, the competition from plastic substitutes was unlikely to be the cause of the material injury in the period considered.

5.2.5. *Other Factors*

(351) 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.

(352) 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.

(353) 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 million-24 million, was relatively low in relation to the total Union industry sales, exceeding EUR 400 million. In addition, 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. ECL made a claim that reduced profitability of the Union industry is the effect of the breakdown. It must be noted that a set of calculations was made to isolate the impact of the mixer breakdown on profitability and this claim is therefore rejected.

(354) 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 subsidised imports and the injury. As explained above in recital 319, 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.

(355) 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 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 %.

5.3. **Conclusion on causation**

(356) A causal link was established between the injury suffered by the Union producers and the subsidised imports from the country concerned. There was a coincidence in time between the undercutting of the Union industry's prices by the subsidised imports and the Union's industry decrease in EU sales and the EU market share. The subsidised imports from India undercut the Union industry prices by 30,9 % and 31,7 % during the investigation period. This resulted in a very low profitability of the EU industry.

(357) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports. The economic crisis and decrease in demand contributed to the injury at the beginning of the period considered. However, in the absence of significant undercutting of the Union industry by subsidised imports, the situation of the Union industry would not have been affected to such an extent. In particular, the sales would not fall so much, the capacity utilisation would be higher and the profitability would be more sustainable. Therefore, the fall in consumption was found not to break the casual link between the subsidised imports and the material injury.

(358) The other identified factors such as imports from third countries, export performance of the Union industry and the competition from substitute products were not found to break the causal link established above, even considering their possible combined effect.

(359) On the basis of the above, the Commission concluded that the material injury to the Union industry was caused by the subsidised imports from India and that the other factors, considered individually or collectively, did not break the causal link. The injury consisted mainly in the fall in the Union sales, the loss of market share by the Union industry, low capacity utilisation rate and low profitability.

6. UNION INTEREST

(360) In accordance with Article 31 of the basic Regulation, the Commission examined whether the imposition of countervailing measures would be against the Union interest. It gave special consideration to the need to eliminate the trade distorting effects of injurious subsidisation and to restore effective competition. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, distributors and final users, such as water, sewerage and irrigation utilities.

6.1. Interest of the Union industry

(361) The Union industry's production plants are located in France, Germany, Spain and Austria. The Union industry employed directly more than 2 400 employees in the production and sales of the product concerned. Two out of three producers cooperated with the investigation. The non-cooperating producer did not oppose the initiation of the investigation. As demonstrated above, the two cooperating companies experienced material injury and were negatively affected by the subsidised imports.

(362) It is expected that the imposition of countervailing duties will restore fair trade conditions on the Union market and will enable the Union producers to increase their sales and increase the low capacity utilisation rate. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry and prevent the loss of employment. In the absence of measures, a further deterioration of the Union industry's economic situation appears very likely.

(363) It is therefore concluded that the imposition of countervailing duties would be in the interest of the Union industry.

6.2. Interest of unrelated importers, distributors, users and other interested parties

(364) No unrelated importers made themselves known within the time limits set out in the Notice of Initiation. Many distributors came forward and expressed their views.

(365) Both exporting producers claimed that it would not be in the Union interest to impose countervailing 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.

(366) 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.

(367) As indicated in the provisional anti-dumping Regulation, the Commission sent a supplementary information request to analyse more in-depth the impact of measures on the Union users. 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.

(368) 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.

(369) 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 ([73]). In the present case, the Commission was unable to define the relevant product and geographic market absent any formal competition complaint brought before it.

(370) Exclusive distribution agreements offering more advantageous conditions or even stricter vertical restraints in the distribution of goods are not illegal per se ([74]) 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.

(371) In anti-subsidy proceedings the Commission examines competition concerns to establish whether, on balance, it would be clearly against the Union interest to impose countervailing 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 countervailing 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.

(372) It is recalled that the purpose of imposing countervailing 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.

(373) 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 an aggressive competition from the Indian producers. The Indian subsidised prices were well below the prices of all other major importing countries (with the exception of Russia). The users confirmed that in case the Union industry unilaterally increases prices, the imports from other countries may increase rather in the medium term, once such exporters from third-countries will have received additional certifications required by the Member States. The users also confirmed that the Swiss company, although it is present on the Union market, manufactures more sophisticated, high-value added pipes that are not readily substitutable with the Indian products.

Average import price in EUR

	2011	2012	2013	IP
India	665	703	671	664
China	955	1 014	1 059	1 054

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

	2011	2012	2013	IP
Switzerland	1 711	1 678	1 554	1 526
Russia	697	696	652	627
Turkey	1 246	1 544	1 272	1 010

Source: Eurostat

6.3. **Conclusion on Union interest**

(374) The Commission was therefore satisfied that in the weighing and balancing of interests, the protection of the Union industry against injurious subsidisation 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 countervailing 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, the Commission is ready to monitor the effect of its measures on competition on the Union market.

7. **DEFINITIVE COUNTERVAILING MEASURES**

(375) On the basis of the conclusions reached by the Commission on subsidisation, injury, causation and Union interest, and in accordance with Article 15(1) of the basic Regulation, a definitive countervailing duty should be imposed on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India.

7.1. **Injury elimination level**

(376) For the purpose of determining the level of these measures, account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury suffered by the Union industry.

(377) When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it was considered that any measure should allow the Union industry to cover its costs of production and obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union.

(378) Therefore, the injury elimination level was calculated on the basis of a comparison of the weighted average price of the subsidised imports, as established for the price undercutting calculations in recital 301 above, and the non-injurious price of the Union industry for the like product. The non-injurious price was established by adding to the cost of production a reasonable profit level. The target profit margin was set at 5 % as stated in recital 327.

(379) Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import price.

(380) Following 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 351 and therefore rejected this claim.

(381) Following 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.

(382) The purpose of calculating an injury margin is to determine whether applying to the export price of the subsidised imports a lower duty rate than the one based on the subsidy margin would be sufficient to remove the injury caused by the subsidised 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. Otherwise, there would be two different results in assessing the same injury margin situation under the two instruments. Therefore, the Commission considered that the methodology applied provides for an accurate basis for comparing prices and thus establishing the injury elimination level. This claim is therefore rejected and the methodology for determining the injury elimination level is confirmed.

7.2. **Definitive measures**

(383) In view of the findings above, a definitive countervailing duty should be imposed at a level sufficient to eliminate the injury caused by the subsidised imports without exceeding the subsidy margin found.

(384) Following disclosure, 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* anti-dumping 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

(385) In regard to the industry's first and second reasons above which are somewhat linked, any decrease in Indian export prices after the investigation period may not necessarily have led to an increase in subsidisation. The extent to which an *ad valorem* duty would not be effective in counteracting the level of subsidisation taking place after the investigation period should, if appropriate, be subject to an interim review request by the Union industry under Article 19 of the basic Regulation. 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. 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. However, such a decrease in prices does not automatically lead to an increase in the level of subsidisation. 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.

(386) 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.

7.3. **Undertaking Offer**

(387) In the hearing with the Hearing Officer (see recital 5 above) and subsequently in writing, ECL proposed an undertaking in order to be subject to the lower FPS rate of 2 % but to automatically accept a higher duty without review if the 5 % rate would be reinstated. According to Article 13 of the basic Regulation, an undertaking offer

consists either of a commitment on the part of the country of origin to eliminate the subsidy or take other measures concerning its effects or a commitment of the exporter to revise its prices. The submission made by the exporter did not contain any price commitment. In any case, an undertaking is an equivalent form of measures as determined on the basis of the investigation findings. The Commission therefore rejected the offer for undertaking.

(388) Furthermore, importers can also request a refund for the precise amount granted through this scheme.

(389) Therefore, the countervailing duty rates were established by comparing the injury margins and the subsidy margins. Consequently, the proposed countervailing duty rates are as follows:

Company	Subsidy margins	Injury margins	Countervailing duty rate
ECL Group	9,0 %	54,6 %	9,0 %
Jindal Saw	8,7 %	48,8 %	8,7 %
All other companies	9,0 %	54,6 %	9,0 %

(390) The individual company countervailing duty rates specified in 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 these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are exclusively applicable to imports of products originating in India and produced by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of the present regulation, 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'.

(391) Any claim requesting the application of an individual company countervailing duty rates (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 ([75]) 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 present Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.

(392) 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 countervailing 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.

(393) In order to ensure a proper enforcement of the anti-subsidy duty, the residual 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.

(394) 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 countervailing 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.

([75]) European Commission, Directorate-General for Trade, Directorate H, CHAR, 4/35 1049 Brussels, Belgium.

2. The rate of the definitive countervailing 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 countervailing duty (%)	TARIC additional code
Electrosteel Castings Ltd	9,0	C055
Jindal Saw Limited	8,7	C054
All other companies	9,0	C999

3. The application of the individual countervailing 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

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 the Member States in accordance with the Treaties.

Done at Brussels, 17 March 2016.

For the Commission

The President

Jean-Claude JUNCKER