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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of  
iron or non-alloy steel**

(presented by the Commission)

Proposal for a

**COUNCIL REGULATION**

**imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel**

- originating in Belarus, the People's Republic of China and Russia following a proceeding pursuant to Article 5 of Regulation (EC) No 384/96,**
- originating in Thailand following an expiry review pursuant to Article 11(2) of the same Regulation,**
- originating in the Ukraine following an expiry review pursuant to Article 11(2) and interim review pursuant to Article 11(3) of the same Regulation,**
- and terminating the proceedings in respect of imports of the same product originating in Bosnia and Herzegovina and in Turkey.**

## **EXPLANATORY MEMORANDUM**

### **CONTEXT OF THE PROPOSAL**

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

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') to imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, Bosnia and Herzegovina, the People's Republic of China ('PRC'), Russia, Thailand, Turkey and Ukraine

#### **General context**

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

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

Council Regulation (EC) No 1697/2002 of 23 September 2002 imposing definitive anti-dumping duties on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Thailand, Turkey and Ukraine.

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

Not applicable.

### **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

#### **Consultation of interested parties**

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

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

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

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

## **LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed action**

- a) Anti-dumping investigation pursuant to Article 5 of the basic Regulation concerning imports of certain welded tubes and pipes of iron or non-alloy steel originating in the PRC, Russian Federation, Bosnia Herzegovina, and Belarus

In 2007, the Defence Committee of the Welded Steel Tube Industry of the European Union, lodged a complaint in accordance with Article 5 of the basic Regulation, on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of the product concerned.

Having determined that sufficient evidence existed for the initiation of an anti-dumping investigation, the Commission initiated the case on 26.09.2007<sup>1</sup>. The investigation found dumping of the product concerned, which caused injury to the Community industry by imports from the countries concerned, with the exception of Bosnia and Herzegovina. The investigation also showed that there was no compelling Community interest aspect against the imposition of definitive anti-dumping measures.

It is thus proposed that definitive anti-dumping duties be imposed on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia and that the proceeding in respect of imports of the same product originating in Bosnia and Herzegovina be terminated.

- b) Expiry reviews of the anti-dumping measures in force on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Turkey, Thailand and Ukraine, and interim review concerning imports originating in Turkey

The request was lodged by the Defence Committee of the Welded Steel Tube Industry of the European Union, on behalf of producers representing a major proportion, in this case more than 50 % of the total Community production of the product concerned.

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<sup>1</sup>

OJ C 226, 26.9.2007, p. 7, as amended by OJ 294, 6.12.2007, p. 21.

Having determined that sufficient evidence existed for the initiation of the reviews, the Commission initiated the case on 26.09.2007<sup>2</sup>.

The investigation confirmed the likelihood of continuation or recurrence of dumping and injury and it is hereby proposed to maintain the anti-dumping measures on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Thailand and Ukraine, with the exception of Turkey.

Regarding the interim review in respect of Turkey, Defence Committee of the Welded Steel Tube Industry of the European Union provided information that, with regard to imports of the product concerned from Turkey, the level of the measure was no longer sufficient to counteract the injurious dumping, which appeared to have significantly increased.

For Turkey, the interim review concluded that the duties set by the previous regulation should be lifted.

c) Interim review of the anti-dumping measures in force on imports of certain welded tubes and pipes of iron or non-alloy steel limited to dumping for a Ukrainian company, Interpipe Group

The request was lodged by the Ukrainian company, Interpipe Group, which alleged that a comparison of normal value based on its own costs/domestic prices and its export prices to a third country market comparable to the EU, would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of the measure at its current level is no longer necessary to offset dumping.

Having determined that sufficient evidence existed for the initiation of the review, the Commission initiated the case on 24.01.2008.<sup>3</sup>

The investigation concluded that the rates of duty set in the previous regulation should be adjusted.

Member States were consulted during the Anti-Dumping Committee of .... 2008. X Member States were in favour of the proposed course of action, X opposed, X abstained and X did not react.

It is proposed that the Council adopt the attached proposal for a Regulation which

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<sup>2</sup> OJ C 226, 26.9.2007, p. 12.

<sup>3</sup> OJ C 17, 24.1.2008, p. 14.

should be published in the *Official Journal of the European Union* on XX at the latest.

### **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

### **Subsidiarity principle**

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

### **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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

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

### **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The basic Regulation does not foresee alternative options.

### **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

## Proposal for a

### COUNCIL REGULATION

**imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel**

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- and terminating the proceedings in respect of imports of the same product originating in Bosnia and Herzegovina and Turkey.**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>4</sup> ('the basic Regulation'), and in particular Articles 9, 11(2) and 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

#### A. PROCEDURE

##### 1. Measures in force

(1) The Council, by Regulation (EC) No 1697/2002 imposed definitive anti-dumping duties on imports of certain welded tubes and pipes, of iron or non-alloy steel originating inter alia in Thailand, Turkey and Ukraine (the 'measures in force').<sup>5</sup>

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<sup>4</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>5</sup> OJ L 259, 27.9.2002, p. 8, on 1 May 2004 the European Union enlarged to include 10 new Member States, inter alia the Czech Republic and Poland. As from that date, the antidumping measures in force in the Community of 15 Member States were automatically extended to be applied also by the new Member States to imports from third countries. Measures against the new Member States automatically lapsed on the same date.

2. Present investigation

2.1. Complaint

(2) A complaint was lodged on 20 August 2007 by the Defence Committee of the Welded Steel Tube Industry of the European Union (the Defence Committee), the complainant, on behalf of producers representing a major proportion, in this case more than 50%, of the total Community production of certain welded tubes and pipes, of iron or non-alloy steel.

(3) The complaint contained sufficient evidence of dumping of the said product, originating in Belarus, Bosnia and Herzegovina, the People's Republic of China ('PRC') and Russia, and of material injury resulting therefrom to justify, after having consulted the Advisory Committee, the initiation of a proceeding.

2.2. Requests for review

(4) On 25 June 2007, a request for reviews pursuant to Article 11(2) and 11(3) of the basic Regulation was lodged by the Defence Committee of the Welded Steel Tube Industry of the European Union, the complainant, on behalf of producers representing a major proportion, in this case more than 50%, of the total Community production of certain welded tubes and pipes, of iron or non-alloy steel.

(5) The request contained sufficient evidence for the initiation of an expiry review of the anti-dumping measures applicable to imports of the said product from Thailand, Turkey and Ukraine; and an interim review, covering dumping and injury, as far as imports from Turkey are concerned. After having consulted the Advisory Committee, the Commission initiated reviews in accordance with Article 11(2) and (3) of the basic Regulation.

(6) Regarding Turkey, the request contained sufficient evidence that imports of the product concerned remained at significantly high levels both in absolute terms and in terms of market share. It further stated that the volumes and prices of the imported product concerned from this country had, among other consequences, a negative impact on the market share held and on the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance and the financial situation of the Community industry.

(7) A request for a partial interim review pursuant to Article 11(3) of the basic Regulation was lodged on 15 October 2007 by Interpipe Group, an exporter from Ukraine. The request was limited in scope to the examination of dumping.

2.3. Initiation

(8) On 26 September 2007, the Commission announced by a notice ('notice 1') published in the *Official Journal of the European Union*<sup>6</sup>, the initiation of an anti-dumping proceeding pursuant to Article 5 of the basic Regulation with regard to imports of certain welded tubes and pipes, of iron or non-alloy steel originating in Belarus,

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<sup>6</sup> OJ C 226, 26.9.2007, p. 7, as amended by OJ C 294, 6.12.2007, p. 21.

Bosnia and Herzegovina, the People's Republic of China and Russia (the 'anti-dumping investigation').

- (9) On the same day, pursuant to Article 11(2) and (3) of the basic Regulation, the Commission announced by a notice ('notice 2') published in the *Official Journal of the European Union*<sup>7</sup>, the initiation of an expiry review for imports from Thailand, Turkey and Ukraine (the 'expiry review') and an interim review as far as imports from Turkey are concerned with regard to imports of certain welded tubes and pipes, of iron or non-alloy steel (the 'Turkey interim review').
- (10) On 24 January 2008, pursuant Article 11(3) of the basic Regulation, the Commission published in the *Official Journal of the European Union*<sup>8</sup> a notice of initiation ('notice 3') of an interim review limited to the dumping of one exporter of certain welded tubes and pipes, of iron or non-alloy steel originating in Ukraine, the Interpipe Group (the 'Ukraine interim review').
- (11) The above-mentioned investigations have been treated jointly since they are obviously interlinked with each other, in particular as regards the determination of injury and likelihood of recurrence of injury. For the sake of good administration, they have been combined in a single Regulation.

### 3. Parties concerned by this proceeding

- (12) The Commission services officially advised the complainant, the Community producers mentioned in the complaint and the request, any other known Community producers, importers, traders, the known exporting producers in Belarus, Bosnia and Herzegovina, the People's Republic of China, Russia, Thailand, Turkey and Ukraine, and the authorities of the countries concerned.
- (13) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the notices of initiation. A number of exporting producers and Community producers represented by the complainant made use of this opportunity and submitted claims to be considered during the investigation.

#### 3.1. Sampling

- (14) In view of the large number of exporting producers for certain exporting countries, Community producers and importers involved in the investigations, the application of sampling techniques was envisaged wherever relevant in the anti-dumping proceeding, the expiry review and the Turkey interim review, as set out in recitals (8) and (9) above, in accordance with Article 17 of the basic Regulation.
- (15) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and representatives acting on their behalf, Community producers and importers were requested to make themselves known and to provide information as specified in the notices of initiation.

##### 3.1.1. Sampling of the Community producers

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<sup>7</sup> OJ C 226, 26.9.2007, p. 12.

<sup>8</sup> OJ C 17, 24.1.2008, p. 14.

- (16) Fifteen parties, 13 complainants and 2 supporting producers, replied to the sampling form, a further 2 companies cooperated by completing a mini-questionnaire. The level of cooperation reached around 95% of Community production.
- (17) In accordance with Article 17 of the basic Regulation, the sample was selected, after consultation with the complainant, based on the largest representative volume of sales. As a result of this exercise, a sample of 9 companies was selected. The sampled companies accounted for 67% of the total Community production during the IP.

### 3.1.2. Sampling of the importers

- (18) Around 140 importers were contacted based on the information available to the Commission. Out of those 140, 16 declared that they were not importing welded tubes from the countries concerned and 3 companies replied that they were no longer active on the market of the product concerned. Thirteen unrelated importers replied to the questionnaire, but only two submitted a complete response. The cooperating unrelated importers represented less than 5% of total imports concerned - a very low level of cooperation.

### 3.1.3. Sampling of the exporters

- (19) As mentioned in the notices of initiation, sampling was envisaged for the exporters/producers in the PRC, Russia, Turkey, Ukraine, and Thailand. Detailed information on the sampling exercise per country concerned is set out in the analysis for each country below.

## 4. Verification of information received

- (20) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of dumping, resulting injury and Community interest. Information submitted by the following companies was verified on-spot:

### a) Community industry producers

- Jäkl Karvina, Czech Republik (member of the ArcelorMittal Group)
- ArcelorMittal Poland S.A., Poland (member of the ArcelorMittal Group)
- Corus Tubes UK, United Kingdom
- Corus Tubes B.V., the Netherlands
- Laminaciones Arregui S.L., Spain
- Ruukki Sverige AB, Sweden

For the remaining 3 sampled companies:

- Mittal steel Iasi, Romania
- Arvedi Tubi Acciaio spa, Italy

- Zelezarny Veseli a.s., Czech Republik (in this case the verification method entailed a detailed analysis and cross-check of the reply on the basis of supporting documentation provided).

b) Unrelated importers

- Comercial de Tubos, Spain
- Anastel Ltd, United Kingdom

c) Exporting producers and producers in the People's Republic of China

- Jinghua Steel Pipe Group:
  - Hengshui Jinghua Steel Pipe Co. Ltd.
  - Tangshan Jinghua Steel Pipe Co. Ltd.
  - Laiwu Jinghua Steel Pipe Co. Ltd.
  - Jilin Jinghua Steel Pipe Co. Ltd.
  - Guangzhou Jinghua Steel Pipe Co. Ltd.
  - Chengdu Pengzhou Jinghua Steel Pipe Co Ltd.
- Zhejian Kingland Group:
  - Zhejian Kingland Pipeline and Technologies Co. Ltd.
  - Kingland Group Co. Ltd.
- Fubo Group:
  - Shandong Fubo Group Co. Ltd.
  - Zibo Fubo Steel Pipes Factory Co. Ltd.
- Weifang East Steel Pipe Co. Ltd,
- Huludao Group:
  - Huludao City Steel Pipe Industrial Co. Ltd.
  - Huludao Seven-Star Steel Pipe Group Co. Ltd.
- Jiangsu Guoqiang Zinc-plating Industrial Co. Ltd.

d) Exporting producers in Russia

- TMK Group (Joint Stock Company Taganrog Metallurgical Works ('Tagmet'), Taganrog)

- OMK Group (Open Joint Stock Company Vyksa Steel Works ('VMZ'), Vyksa)

In each of the two groups only the producer with the largest volume of Community exports was verified.

Related traders in Russia

- CJSC Trade House TMK, Moscow, TMK Group
- Closed Joint Stock Company United Metallurgical Company ('UMC'), Moscow, OMK Group
- OMK Steel, LLC, Moscow, OMK Group

Related importer

- TMK Sinara Handel GmbH, Köln, Germany, TMK Group

In order to avoid any circumvention in the future, dumping margins have been calculated on a group-wide basis.

e) Exporting producer in Thailand

- Samchai Steel Industries Public Company Ltd., Samutsakorn, Thailand

f) Exporting producers in Ukraine

- OJSC Interpipe Novomoskovsk Pipe Production Plant
- OJSC Interpipe Nizhnedneprovsk Tube Rolling Plant.

Related traders/importers located in Ukraine:

- Interpipe Ukraine LLC

Related traders/importers located outside Ukraine:

- Interpipe -M LLC.
- Interpipe Europe, S.A

In order to avoid any circumvention in the future, dumping margins have been calculated on a group-wide basis.

g) Exporting producer in Bosnia and Herzegovina

- Unis Fabrika cijevi a.d., Derventa

h) Operator in Belarus

- Mogilev Metallurgical Works Joint Stock Company

Unrelated importer and owner of exports:

- FB Stahlhandel GmbH

i) Exporting producers in Turkey

- Cayirova Boru Sanayi ve Ticaret AŞ<sup>9</sup>
- Yücel Boru ve Profil Endüstrisi AŞ
- Noksel Çelik Boru Sanayi AŞ, Ankara
- Erbosan Erciyas Boru Sanayii ve Ticaret AŞ, Kayseri
- Borusan Mannesmann Boru Sanayi ve Ticaret AŞ, İstanbul
- Toscelik Profil ve Sac Endustri AS, Iskenderun.

In order to avoid any circumvention in the future, dumping margins have been calculated on a group-wide basis.

5. Investigation period

(21) The investigation of dumping and injury for the anti-dumping investigation covered the period from 1 July 2006 to 30 June 2007 ('investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 2004 to the end of the IP ('period under consideration'). The same IP was also used for the Turkey interim review and for the expiry review, which also had the same period under consideration.

(22) The investigation period for the Ukraine interim review covered the full calendar year 2007 ('Interpipe investigation period' or 'IIP').

6. Disclosure

(23) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:

- the imposition of definitive anti-dumping duties on imports from certain countries
- the termination of the proceeding against imports from Bosnia and Herzegovina and Turkey

(24) In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representation subsequent to this disclosure.

(25) The oral and written comments submitted by the parties were considered and, when appropriate, the definitive findings have been modified accordingly.

**B. PRODUCT CONCERNED AND LIKE PRODUCT**

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<sup>9</sup> For this company as well as for Yücel Boru ve Profil Endüstrisi AŞ and Noksel Çelik Boru Sanayi AŞ, Ankara, see recital 143.

7. Product concerned

(26) The product concerned is welded tubes and pipes, of iron or non-alloy steel, of circular cross-section and of an external diameter not exceeding 168,3 mm, excluding line pipe of a kind used for oil or gas pipelines, casing and tubing of a kind used in drilling for oil or gas, precision tubes and tubes and pipes with attached fittings suitable for conducting gases or liquids for use in civil aircraft, originating in Belarus, Bosnia and Herzegovina, the People's Republic of China, Russia, Thailand, Turkey and Ukraine. It is normally declared within CN codes ex 7306 30 41, ex 7306 30 49, ex 7306 30 72 and ex 7306 30 77.

(27) Welded tubes and pipes are used in a wide range of applications including amongst others, the conveyance of water, steam, natural gas, air and other liquids and gases in plumbing, heating and ventilation systems, air-conditioner units, automatic sprinkler systems, and other similar uses. Quite often they are also used for construction purposes, for load-bearing, fence tubing, protection means and scaffoldings.

(28) The major raw material for the product concerned is hot-rolled coils, which are formed into tubes. Welded tubes and pipes may then further be treated by coating or galvanisation. These further treatments are intended to increase the quality of the product. They are mostly delivered with plain ends, but can also have bevelled or threaded ends, with or without couplings. The product concerned is produced in numerous sizes and according to various standards and classifications. They are, to a considerable extent, interchangeable with regard to their end-use and, therefore, there exists a significant degree of overlap and competition between the various types of the product concerned. It is therefore concluded, as has been done in previous investigations covering the same product, that all types of the product concerned should be considered as a single product for the purpose of the investigation.

(29) For the purposes of the expiry review, the Turkey interim review and the Ukraine interim review, the product concerned is the same as that covered by the original and previous investigation, mentioned under recital (1).

8. Like product

(30) The product produced in Belarus, Bosnia and Herzegovina, the People's Republic of China, Russia, Thailand, Turkey and Ukraine and exported to the Community is alike in all aspects to the product sold on the domestic market of these countries as well as to the product produced by the Community producers and sold on the Community market. The same is true with regard to the product produced and sold for export to the Community as compared to the product produced and sold in the USA which served as a market economy third country for the People's Republic of China and Belarus. All these products were therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## C. DUMPING

1. GENERAL METHODOLOGY

(31) The general methodology set out below has been applied to all exporting operators as appropriate. The subsequent presentation of the findings on dumping aspects for the

countries concerned describes therefore only those issues which are specific to a particular exporting country.

## 2. NORMAL VALUE

- (32) In accordance with Article 2(2) of the basic Regulation, it was first examined for each cooperating exporting producer whether its domestic sales of welded tubes and pipes were representative, i.e. whether the total volume of such sales represented at least 5% of its total export sales volume to the Community.
- (33) The Commission subsequently identified those types of welded tubes and pipes sold domestically that were identical or directly comparable with the types sold for export to the Community. With regard to the examination on the basis of product type, the Commission considered domestically sold and exported product types, which had similar origin, size (outside diameter), wall thickness, outer finish and end finish as being directly comparable.
- (34) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of welded tubes and pipes sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of welded tubes and pipes were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5% or more of the total sales volume of the comparable type of welded tubes and pipes exported to the Community.
- (35) An examination was also made whether the domestic sales of each type of welded tube could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exporting producer in the country concerned, the proportion of profitable sales to independent customers on the domestic market, of each exported type of the product concerned on the domestic market during the investigation period.
  - (a) For those product types where more than 80%, by volume, of sales on the domestic market were not below unit costs, i.e., where the average sales price of the product type concerned was equal to or higher than the average production cost for the product type concerned, normal value was calculated as the average price of all domestic sales of the product type in question irrespective of whether these sales were profitable or not.
  - (b) For those product types where at least 10% but no more than 80%, by volume, of sales on the domestic market were not below unit costs, normal value was calculated as the weighted average sales price of those transactions which were made at or above unit costs of the type in question.
  - (c) For those product types where less than 10%, by volume, was sold on the domestic market at a price not below unit cost, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation.

- (36) For those product types where there were no domestic sales made in the ordinary course of trade, it was examined whether normal value could be established on the basis of the domestic prices of other producers in accordance with Article 2(1) of the basic Regulation. If no reliable domestic prices of other producers were available constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.
- (37) If the normal value was constructed in accordance with Article 2(3) of the basic Regulation, the selling, general and administrative expenses ('SG&A') and amount of profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer in question, pursuant to Article 2(3) and (6) of the basic Regulation.

### 3. EXPORT PRICE

- (38) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (39) Where the export sale was made via a related importer and it was not deemed to be reliable, the export price was constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related importer's own SG&A costs were used. The profit margin was established on the basis of the information available from cooperating unrelated importers.
- (40) In cases where there was no export price and consequently no resale of imported products the export price was constructed, pursuant to Article 2(9) of the basic Regulation, on any reasonable basis.

### 4. COMPARISON

- (41) The normal value and export prices for comparable product types were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

### 5. DUMPING MARGIN FOR THE COMPANIES INVESTIGATED

- (42) As a general rule and according to Article 2(11) of the basic Regulation, the dumping margin for each exporting producer was established on the basis of a comparison between the weighted average normal value with the weighted average export price per product type.
- (43) In cases of groups of several companies related to each other a common dumping margin applicable for all companies in the group, was established, in accordance with the standard practice of the Commission in order to avoid potential circumvention of the measures.

## 6. RESIDUAL DUMPING MARGIN

- (44) For non-cooperating companies, a residual dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (45) In order to determine the residual dumping margin, the level of cooperation was first established. The level of cooperation was considered to be high when the volume of exports by the cooperating exporting producers was close to that provided by Eurostat for the country concerned and there was no reason to believe that any exporting producer abstained from cooperating. In such cases, the residual dumping margin was set at the level of the cooperating company with the highest dumping margin, in order to ensure the effectiveness of any measure.
- (46) In general, where the level of cooperation was low, the residual dumping margin was set at the highest margin established for a representative model for another cooperating producer. This approach was also considered necessary in order to avoid rewarding non-cooperation

## 7. BOSNIA AND HERZEGOVINA

### 7.1. General remarks

- (47) The imports from Bosnia and Herzegovina amounted to 33 kilotonnes (KT) in the IP and reached a market share of about 2.5%. The largest exporting producer represented more than 90% of the total production in Bosnia and Herzegovina (destined for domestic market and exports). It cooperated with the investigation and replied to the questionnaire.

### 7.2. Normal value

- (48) The total volume of domestic sales of the like product was representative, as defined in recital (32). In accordance with the general methodology described above, normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in Bosnia and Herzegovina, or, where applicable, constructed.

### 7.3. Export price

- (49) In all cases the product concerned was sold to independent customers in the Community. Thus, the export price was based on the prices paid or payable by unrelated customers in the Community, pursuant to Article 2(8) of the basic Regulation.

- (50) The exporter contested the transport cost rate alleged by the complainant. Indeed, it could demonstrate during the on-spot investigation that such costs were lower.

### 7.4. Comparison

- (51) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. After disclosure, one party questioned alleged adjustments made for physical characteristics made by the Commission. However, adjustments for

physical characteristics were neither warranted nor actually applied when calculating the dumping margin for the sole exporting producer in Bosnia-Herzegovina.

7.5. Dumping margin

- (52) The comparison between the normal value and the export price on a weighted average to weighted average basis was applied and this method showed a dumping margin of 0,7%.
- (53) Since the dumping margin is *de minimis*, i.e. less than 2%, in accordance with Article 9(3) of the basic Regulation, the proceeding against Bosnia Herzegovina should be terminated without imposition of measures. The nature and impact of imports from this country are analysed in the injury part under “other factors”.

8. THE PEOPLE'S REPUBLIC OF CHINA (PRC)

8.1. General remarks

- (54) As reported by Eurostat (all CN Codes), Chinese imports increased sharply in the recent years from 22 KT in 2004 to 111 KT in 2006 (180 KT in the IP). The PRC is thus by far the biggest importer on the Community market with a market share which increased from 1.8% in 2004 to more than 13.8% in the IP. The co-operating producers have reported even higher volumes of 233 KT exports. Six sampled companies reported 219 KT. A first implication of this discrepancy is that the market penetration and share of Chinese exports is even more significant than originally thought.
- (55) This discrepancy in quantities reported by Eurostat and by the co-operating producers could also correspond to a customs misdeclaration of the product concerned. This coincides with the allegations made by the Community industry, which indicate that the product concerned is being misdeclared. The investigation as a whole has shown that operators may sell different types of tubes (some belonging to the product concerned, some not) under the same invoice. It is therefore not excluded that, depending on how clearly these differences are specified on the invoice, this could be used for an incorrect declaration by a declarant of the product concerned under codes other than those associated to the product concerned.

8.2. Market economy treatment (MET)

- (56) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (57) Briefly, and for ease of reference only, the MET criteria are set out in a summarised form below:
  1. Business decisions and costs are made in response to market conditions and without State interference.
  2. Accounting records are independently audited, in line with international accounting standards and applied for all purposes.

- 3. There are no significant distortions carried over from the former non-market economy system.
- 4. Legal certainty and stability is provided by bankruptcy and property laws.
- 5. Currency exchanges are carried out at the market rate.

(58) Following the initiation of the present investigation, a sample of six Chinese producers/groups of producers ('entities') was selected, all of which had claimed MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines. Pursuant to their claims they were verified on spot. It is the Commission's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET. Therefore, where a subsidiary or any other company related to the applicant is a producer and/or an exporter and/or a trader of a product concerned, the company was invited to complete a separate MET claim form.

(59) Pursuant to on-spot-verifications at the premises of the six sampled entities, it was decided that all their MET claims had to be rejected. This was due to the fact that none of the entities fulfilled criteria 1, 2, and 3 (see analysis below). The investigation revealed that all entities fulfil criteria 4 and 5. This means that the bankruptcy and property laws guarantee stability and legal certainty and that the exchange rate conversions are carried out at market rates.

Criterion 1 - Business decisions are made in response to market signals, without significant State interference, and costs reflect market values

(60) In many cases the documentation of the companies was not reliable. Some companies presented different versions of the same document (e.g. corrected business licences, two different sets of Articles of Association with different shareholders, Articles of Association that have never been signed). The local authorities not only accepted such a situation but even issued corresponding certificates and documents without any substantiation. Such unreliable documents made the legal status of the companies uncertain and suggested that state influence has not been eliminated.

(61) In some other cases, there were ambiguities regarding the business license. In one case, initially a business license was produced which specified neither the start nor the end date of operation. At a later stage, a version was produced which contained only an end-date. This casts a general doubt on the reliability of documents produced.

(62) After the Commission's findings had been disclosed, the companies generally pointed out they were privately owned. However, contrary to their claims, state interference was also established where there was no or only partial state ownership. As demonstrated above, other elements led to the conclusion that on balance there was significant state interference.

(63) The comments received were not such as to alter the Commission's findings. It was concluded that the companies were subject to significant State interference.

Criterion 2 - Firms have one clear set of independently audited accounting records

- (64) A number of irregularities were found with regard to the accounting practices of the investigated companies. For all entities it was found that the accounts were not kept in a coherent manner.
- (65) For example, some irregularities were established with regard to the manner in which companies increased their registered capital (the increase of capital did not reflect any actual investment). In some cases the value of the company's equity was never deposited in cash or in kind. In some other cases, bad debts were not booked in accordance with international accounting standards. The financial statements of some companies did not reflect the registered capital as stated in the company documents like Articles of Association or Business Licence. Irregularities were established with regard to depreciation (some companies ceased to depreciate some assets) or land-use rights, which were not booked properly.
- (66) Some entities claimed that the irregularities in the accounting system should not have had an impact on the decision on MET to such an extent. According to those claims, the irregularities in the accounting system, even if numerous, are not sufficient in themselves to lead to the conclusion that criterion 2 is not met. However, even assuming that criterion 2 could be deemed to be met if accounting irregularities could be qualified as minor, in this particular case, as explained in the previous paragraphs, the irregularities were not minor.
- (67) It was also claimed in some cases that the accounts were audited by external, hence independent, auditors. However, the auditors did not point out any of the problems that were found during the investigation and were thus not in line with international accounting standards. Therefore, the entities concerned could not demonstrate that they had one clear set of basic accounting records which were independently audited in line with international standards.

**Criterion 3 - No distortions carried over from the non-market economy system**

- (68) There were also irregularities with regard to land-use contracts. In many cases no proof of payment for land-use rights could be presented, which, given the fact that land is State-owned, exposes those entities to significant state influence. Some entities failed to present reliable evidence on the acquisition and transfer of shares. In some cases the revaluation of assets had been clearly arbitrary. The irregularities of the privatisation process shed doubts upon all subsequent transfers of shares and seem to be the source of power for local authorities to interfere with the operation of some of the companies.
- (69) Consequently, the irregularities concerning the privatisation process still have an impact on the current situation and operations of the companies, since the production costs and the value of assets are subject to significant distortions carried over from the former non-market economy system.
- (70) The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The Community industry was given the opportunity to comment, but no comments were received concerning the MET determination.
- (71) The Commission received comments from the MET applicants. Those comments have been addressed where appropriate, either in the analysis above or in an individual

reply to the exporter concerned. However, none of the comments received was such as to alter the findings on market economy treatment.

8.3. Individual treatment (IT)

(72) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

(73) The nature of State interference established for all companies affects their activity as a whole. Therefore, it cannot be excluded that such an influence would impact on the determination of export prices and quantities as well as the determination of the terms of sale and other related aspects regarding export activity.

(74) Equally, it is recalled that the six investigated entities covered almost the totality of the exports into the Community. Given this concentration, the relatively small number of market operators and the significant level of state interference established with regard to all entities investigated, it cannot be excluded that state interference will be used to circumvent measures if individual exporters are given different duty rates.

(75) Consequently, the companies could not demonstrate that they fulfilled criteria (b) and (e), as set out in Art. 9 (5) of the basic Regulation.

8.4. Determination of normal value for all exporting producers not granted MET

8.4.1. Analogue country

(76) According to Article 2(7) of the basic Regulation, normal value for companies to which MET could not be granted was established on the basis of the prices or constructed value in an analogue country.

(77) In notice 1, the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and Belarus, and interested parties were invited to comment. One interested party objected to this proposal, indicating that Turkey would be a more appropriate choice and pointing out that, according to Article 2(7) of the basic Regulation, where appropriate, a market economy third country which is subject to the same investigation shall be used. It was further noted that Turkey was used as an analogue country for Ukraine in the original investigation.

(78) However, the institutions maintained their view that the USA was a more appropriate choice of analogue country for the purposes of the present new investigation, in view of the arguments set out below.

(79) Firstly, the Community institutions would agree, in principle, that in a review it would be logical to take as a starting point to use the same analogue country as in the original investigation (although even in a review there may be valid reasons for a change). However, in as far as the PRC and Belarus are concerned, this regulation is not based on a review, but on a new investigation. Such considerations there do not apply.

Moreover, as explained elsewhere in this Regulation, pursuant to the WTO *beef and rice (Mexico)* Appellate Body report,<sup>10</sup> those Turkish companies who were found to have a zero-duty in the original investigation were not considered to be subject to the present proceeding. The institutions therefore do not have a full picture of normal value on the Turkish market. In addition, certain distortions appear to exist on the Turkish market. In particular, the market share of imports in Turkey was very low, at 3,3%, whereas the market penetration of imports in the USA was at 39%. Such low market share of imports may point to some impediment in international competition on the Turkish market, despite the fact that there are around 15 known producers in Turkey.

- (80) On the other hand, the USA is a large market for welded tubes in general and for the product concerned, of a similar size as the Community. The degree of competition appears to be significant. There appear to be more than 15 domestic producers in competition with each other, accounting for a significant level of domestic sales when compared to Chinese exports to the Community.
- (81) In addition, there are significant imports into the USA from third countries, notwithstanding the existence of anti-dumping measures during the IP on imports from several countries (Taiwan, Mexico, Turkey, Thailand, Brazil, India, and Korea). During the IP, imports were estimated to cover more than a third of the US consumption, and originated, for ca. three quarters of the volume of imports, from countries which were subject to 0% customs duties and not subject to anti-dumping duties. In fact, the IP corresponds to a period where the USA authorities were investigating the Chinese exports for the alleged injurious dumping practices, which led in January 2008 to the imposition of measures (later amended in April 2008 and ranging from 69,2% to 85,55%).<sup>11</sup> These measures thus have had no discernible impact on the aforementioned analysis, but rather point to the price levels in the USA during the IP which could well be artificially suppressed or depressed due to the impact of the dumped Chinese imports.
- (82) Furthermore, the production process and the access to raw materials are comparable in the USA and the PRC, the latter not appearing to enjoy any discernible natural advantage in the production and sale of the product concerned.
- (83) Comparing Turkey and the USA on that basis, it has been concluded that the USA is a more appropriate analogue country for the PRC and Belarus.
- (84) Questionnaires were sent to all known producers in the USA. The Commission received a reply from a significant producer. Both the production and the domestic sales of the co-operating producer were representative for the purpose of establishing normal value.

#### 8.4.2. Determination of normal value in the analogue country

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<sup>10</sup> Appellate Body report on *Mexico – Definitive Anti-Dumping Measures on Beef and Rice: Complaint with Respect to Rice* (WT/DS295/AB/R) and the Panel report (WT/DS295/R), as modified by the Appellate Body report.

<sup>11</sup> Federal Register / Vol. 73, No. 10 / Tuesday, January 15, 2008 / Notices, p. 2456; Federal Register / Vol. 73, No. 80 / Thursday, April 24, 2008 / Notices, p. 22130.

- (85) Following the choice of USA as an analogue country and pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information received from the co-operating producer in the analogue country, i.e. on the basis of prices paid or payable, in accordance with the methodology set out in recitals (32) to (37) above.
- (86) The domestic sales of the producer of the like product were found to be representative compared to the product concerned exported to the Community by the exporting producers in the PRC. Furthermore, its domestic sales were considered to be made in the ordinary course of trade.

#### 8.5. Export price

- (87) Where export sales to the Community were made directly to independent customers, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.
- (88) Where export sales to the Community were made through unrelated trading companies, export prices were established on the basis of the prices of the product when sold for export to the trading companies i.e. to an unrelated buyer, by the producers concerned in accordance with Article 2(8) of the basic Regulation.

#### 8.6. Comparison

- (89) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport and insurance, credit, commission and bank charges were granted where warranted. Due adjustments were also made for physical differences, wherever necessary.

#### 8.7. Determination of Dumping

- (90) In order to calculate the country-wide dumping margin applicable to all exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of Eurostat and the volume of exports as reported in the questionnaire replies submitted by the exporters in the PRC. As mentioned above in recital (54) there was a discrepancy between the quantity of exports as reported by Eurostat and the quantity declared by the exporting producers in their questionnaire replies (180 KT as compared to 216 KT). On this basis it was established that the level of cooperation was very high.
- (91) The dumping margin was consequently calculated as follows. The export price was calculated on the basis of the detailed information provided by the cooperating exporters in the questionnaire replies, with the exception of one entity, the reply of which was not complete and made impossible the comparison of the physical characteristics of the products. The export price was compared to the normal value established in the analogue country.

(92) The country-wide level of dumping was established at 130,8% of the CIF Community frontier price.

## 9. BELARUS

### 9.1. General remarks

(93) According to Article 2(7)(a) of the basic Regulation, Belarus is not considered a market-economy country. Therefore the normal value in respect of Belarusian exports to the Community was determined on the basis of data obtained from a producer in a market-economy third country.

(94) During the IP, imports from Belarus totalled around 29 KT and had thus a market share of about 2,3%. The only known Belarusian manufacturer co-operated with the investigation and sent a questionnaire reply. It works under a tolling agreement with two importers in Germany and Switzerland. Only the EU-based importer co-operated with the investigation.

(95) Under the tolling agreement the German importer, who is an independent entity from the Belarusian manufacturer, supplies the latter with the raw material and covers all expenses linked to their imports into Belarus (transportation, handling and insurance costs). It then pays a tolling fee and covers the transportation, handling and insurance expenses from Belarus to the EU. Throughout the process of manufacturing, the German importer remains the owner of the product concerned exported from Belarus. Due to the fact that under the tolling agreement there is no actual export price, it had to be constructed.

(96) A comparison was made between the total imports of the product concerned originating in Belarus calculated on the basis of Eurostat (using CN codes ex 7306 30 41, ex 7306 30 49, ex 7306 30 72 and ex 7306 30 77) and the volume of exports as reported in the questionnaire replies submitted by the co-operating manufacturer and the aforementioned German operator. On this basis it was established that the level of cooperation was low, i.e. 30% of the overall Belarusian exports to the Community.

(97) There were no requests for individual treatment pursuant to Article 9(5) of the basic Regulation.

### 9.2. Normal value

(98) Normal value was established on the basis of the prices or constructed value in an analogue country, pursuant to Article 2(7) of the basic Regulation.

#### 9.2.1. Analogue country

(99) As mentioned above in the part concerning the PRC, notice 1 indicated USA as an appropriate analogue country for the purpose of establishing normal value for Belarus as well as the PRC. The main reasons justifying the choice of the USA, mentioned above in the analysis of the PRC, also apply to Belarus. Two parties opposed the choice of the USA as an analogue country and suggested Turkey instead. The main reasons that led the Commission to choose the USA over Turkey have been outlined in recitals (76) to (84) above.

(100) Consequently, the methodology detailed in recitals (32) to (37) has been applied to determine the normal value.

### 9.3. Export price

(101) The data furnished by the German importer only related to a part of the products originating in Belarus and exported to the Community. No data were furnished for the other, very substantial part of those imports. Therefore, use had to be made, with regard to that latter part to the best facts available pursuant to Article 18 of the basic Regulation.

(102) Two main sources of information were analysed. Eurostat data was not considered adequate. Firstly, it contained tolling transactions with the German operator for which there was no export price. Secondly, it contained also tolling transactions with the Swiss company which did not co-operate. It should also be stressed that, according to the claim by certain parties, and according to the website of the Interpipe Group, the Ukrainian company which is the subject of the Ukraine interim review, this group is related both to the Swiss company and to the Belarusian company. In the absence of any co-operation from the Swiss company, no export prices could be established for the transactions made by it.

(103) On the other hand, the detailed type-by-type data from transactions associated with the aforementioned German operator, including the operator's cost and expenses, were available. This allowed the investigating authority to establish the export price on a type-by-type basis, as explained below. This was therefore considered the best information available to the Commission.

(104) The export price was constructed on the basis of the price of the product concerned sold to the first independent customer of the co-operating German importer. In this specific case, due to the tolling agreement, certain adjustments had to be made in order to establish a reliable export price, at the Community frontier level. Adjustments were thus made for all costs incurred between the Community border and the first independent customer of the German importer. These included SG&A and profit of the German importer, as well as transportation, insurance and custom fees within the Community.

### 9.4. Comparison

(105) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowances in the form of adjustments were made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning physical characteristics, transport, insurance costs and customs charges were granted where they were found to be justified, accurate and supported by verified evidence.

### 9.5. Determination of dumping

(106) On this basis the country-wide level of dumping was established at 92,4% of the CIF Community frontier price.

## 10. RUSSIA

#### 10.1. General remarks

- (107) The volume of Russian imports amounted to around 36 KT, corresponding to a market share of 3.3% in the IP.
- (108) Due to the apparent large number of exporting producers, a sample was initially selected. In that context, four groups were notified to reply to the Commission's questionnaire, but replies were received only from two, therefore sampling was no longer necessary.

#### 10.2. Normal value

- (109) For both exporting producers, domestic sales of the product concerned were representative as defined in recital (32). In accordance with the methodology described in recitals (33) *et seq.*, normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in the Russian Federation.
- (110) With regard to manufacturing costs, and in particular energy costs, as far as gas is concerned, it was examined whether the gas prices paid by the exporting producers reasonably reflected the costs associated with the production and distribution of gas.
- (111) It was found that the domestic gas price paid by the exporting producers was around one fourth of the export price of natural gas from Russia. In this regard, all available data indicates that domestic gas prices in Russia are regulated prices, which are far below market prices paid in unregulated markets for natural gas. Therefore, since gas costs were not reasonably reflected in the exporting producers' records as provided for in Article 2(5) of the basic Regulation, they had to be adjusted accordingly. In the absence of any sufficiently representative, undistorted gas prices relating to the Russian domestic market, it was considered appropriate to base the adjustment, in accordance with Article 2(5), on the basis of information from other representative markets. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), adjusted for local distribution costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for the Russian gas and has prices reasonably reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation.
- (112) For those product types where the normal value was constructed, as described above, the construction was done on the basis of the manufacturing costs of the exported types after the adjustment for the gas cost.

#### 10.3. Export price

- (113) For those cases where exports to the Community were made via a related importer located in the Community, a constructed export price has been established pursuant to Article 2(9) of the basic Regulation. In cases where exports were made to independent customers in the Community, via a related trader located in the Russian Federation, export prices were based on prices paid or payable by independent customers in the Community.

#### 10.4. Comparison

(114) Appropriate adjustments concerning credit, transport costs and ancillary charges were made where they were found to be warranted and supported by verified evidence.

10.5. Dumping margin

(115) The comparison between the normal value and the export price showed the existence of dumping. After disclosure, comments were submitted by both Russian exporting producers. In the first case, substantiated comments, dealing in particular with adjustments on constructed normal values, led to a minor change of the dumping margin, which will have no impact on the anti-dumping duty, as the revised dumping margin is still above the injury margin. In the second case, the interested party pointed to a clerical mistake leading to the double counting of the SG&A; this mistake has been corrected. On that basis, the dumping margins (per group of exporting producer) expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

- TMK Group (Seversky Pipe Plant Open Joint Stock Company and Joint Stock Company Taganrog Metallurgical Works) – 22,7%
- OMK Group (Open Joint Stock Company Vyska Steel Works and Joint Stock Company Almetjvesk Pipe Plant) – 10,1%

10.6. Conclusions on dumping regarding Russia

(116) Since the level of cooperation was high (more than 90 % of the exports of the product concerned from the Russian Federation to the Community, as reported in Eurostat), the residual dumping margin applicable to all other exporters in the Russian Federation was set at the same level as the one established for the cooperating exporting producer TMK Group, namely 22,7%.

**D. LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING ACCORDING TO ARTICLE 11(2) OF THE BASIC REGULATION; ADEQUACY OF THE LEVEL OF THE MEASURE AS REGARDS DUMPING ACCORDING TO ARTICLE 11(3) OF THE BASIC REGULATION.**

1. GENERAL

(117) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was likely to continue or recur upon a possible expiry of the measures in force against Thailand, Turkey and the Ukraine.

(118) Further, in accordance with Article 11(3) of the basic Regulation, for Turkey and for the one Ukrainian company, it was examined whether there were changed circumstances since the original investigation regarding dumping which could be considered to be of a lasting nature.

2. THAILAND

2.1. Preliminary remarks

(119) Unlike in the original investigation there were no exports of the product concerned from Thailand in the IP according to Eurostat data. The single co-operating producer

declared no export sales to the Community, and no other exporting operators co-operated. Thai export statistics did suggest that there were some Thai exports recorded in the IP that could relate also in part to the product concerned but these were in any event negligible in terms of volume and would thus not have been representative.

(120) The cooperation level in the current review was very low, with only one Thai producer making itself known in the course of the proceeding. According to the complaint and as confirmed from publicly available data, there were however at least twelve other producers of the product concerned in Thailand during the IP. None of these cooperated in the investigation and as a consequence the cooperation level corresponded to less than 10% of the total estimated Thai production of the product concerned.

## 2.2. Dumping of imports during the investigation period

(121) The single cooperating Thai producer had no exports to the Community during the IP. Considering that there were no exports of the product concerned to the Community originating in Thailand, there could be no continuation of dumping. It follows that the analysis in this case has to be based on the likelihood of recurrence of dumping should measures be terminated.

## 2.3. Development of imports should measures be repealed

### 2.3.1. Preliminary remarks

(122) As outlined in recital (120), the investigation has shown that there were at least thirteen producers of the product concerned in Thailand during the IP and only one cooperated in the investigation.

(123) It was examined to what extent data from the one cooperating Thai producer could be used for the purpose of analysing the overall situation pertaining to the likely development of exports from Thailand as well as, more specifically, to serve as a benchmark in terms of indicators of domestic and export prices, costs, production capacities and capacity utilisation.

(124) In this respect a number of deficiencies were noted in relation to the data provided by the cooperating company. Firstly, the company was unable to reconcile domestic and export prices with actual transactions and with its audited accounts for the IP. Furthermore the company could not provide a breakdown of the cost of production by product control number, as defined in the questionnaires sent to interested parties ('PCN'). The producer was only able to provide the cost of production as the average of the cost of production broken down between black and galvanised of all the PCNs produced. Evidence of the PCNs' cost structure from different producers in other countries concerned by the investigation including the Community, showed that there indeed is a large variation in the cost of production per PCN. This also applies to the specific product types produced and sold by the Thai company in question. Under these circumstances, a cost breakdown that does not allow a comparison per PCN cannot be considered sufficient for the purpose of determining domestic normal value.

(125) Even in the event that such data could have been obtained it should be borne in mind that the co-operating producer corresponded to less than 10% of the total production of

the product concerned in Thailand meaning that the data in any event would have to be complemented by other statistical material in order to assess the representativity for the purpose of the country wide assessment.

- (126) The company was notified of the Commission's intention to apply Article 18 of the basic Regulation and the reasons for which this was considered necessary within a reasonable period of time, due account being taken of the time-limits of the investigation. Comments were received, thoroughly analysed and replied to in detail. None of explanations given by the company was considered to be satisfactory as to allow the Commission to avoid the application of best facts available to the areas highlighted above.
- (127) Consequently, information on domestic and export prices to other countries for Thai exporters has been based on best facts available including the complaint and publicly available information.
- (128) Conversely, data pertaining to stocks, production level and capacity that had been provided by the company could be verified. This information in conjunction with data from the complaint could therefore be used to establish the production volume and capacity of all exporting producers in Thailand.
- (129) In view of the above, the following considerations were taken into account when assessing the likely impact should measures be repealed.

### 2.3.2. Production, unused capacities and likelihood that these capacities would be directed to the Community

- (130) The complaint shows a spare capacity in Thailand of more than 370 KT, accounting for almost 30% of the total capacity. This spare capacity corresponds to more than 25% of the total Community consumption (as defined in recital (231)) which could be directed toward the Community market.
- (131) The level of spare capacity was even more pronounced in the cooperating producer, which represented less than 10% of the Thai total production in the IP. For this producer, spare capacities of above 50% were found in the IP.
- (132) Together, these factors point to the existence of significant spare capacity in Thailand. In the absence of evidence showing that this capacity could be absorbed by increased domestic sales, sales to other third countries or the production of products other than the product concerned, it is concluded that should measures expire, such spare capacities would in all likelihood be directed towards the Community, not least because of the Community's attractiveness as an export market.
- (133) Considering that the Community market is one of the biggest in the world, its sheer size makes it attractive to any Thai exporting producer of the product concerned. The potential importance of the Community market is further enhanced by the fact that the US which is another major market, has measures in place against imports from Thailand.
- (134) Taken together with the relatively attractive price level in the Community, where well developed distribution channels exist, it is considered that, in the absence of measures,

there would be a clear economic incentive for a shift of exports away from major third markets such as the US and towards the Community.

(135) Overall, under these circumstances it is considered that any increase in the current capacity utilisation is likely to be directed towards exports, and specifically to the Community market.

### 2.3.3. Likely price levels

(136) A number of factors point to the likelihood that Thai export prices to the Community would be dumped.

(137) To start with, exports to major third country markets appear to have been made at dumped prices. This was confirmed by the existence of US anti-dumping measures in the range of 15% for Thai exports of welded tubes. This points to a more general pattern of behaviour based on dumping to large third markets. The fact that Thai exports to the Community stopped after measures were imposed appears to reinforce the idea that Thai exporting producers would be unable or unwilling to sell at non-dumped price levels.

(138) In addition, for the product under consideration, which is in general rather homogeneous, would-be Thai sellers would be likely to provide products at the prevailing prices of other imports in the Community. As has been concluded in the sections above, the import prices of other exporting countries are generally low. When considering that potential export prices of Thai producing exporters are likely to have to mirror these low prices and when considering the cost structure of the product concerned, which is heavily based on steel coil and zinc prices that have seen a significant increases across the world, it would be likely that export prices would be dumped.

### 2.4. Conclusion

(139) A significant amount of Thai exports would therefore be likely to be sold in the Community at dumped prices should measures be allowed to lapse.

## 3. TURKEY (i): GENERAL DUMPING AND ARTICLE 11(2) ASPECTS

### 3.1. General issues

(140) The complainant claimed that the dumped imports from Turkey would likely lead to a very serious injury to the Community industry, should the measures be allowed to lapse. In the context of the interim review (see below) the complainant submitted that the measures should be adjusted upwards due to the allegedly increased dumping and injury levels.

(141) Statistical data showed that imports from Turkey amounted to 110 KT, representing almost 9% of the Community consumption (as defined in recital (231)). There was a discrepancy between the amounts reported by Eurostat and those reported by the companies (138 KT). Reference is made to comments made under recital (55).

(142) The general methodology used to calculate dumping (set out in recitals (31) to (46) above) has been applied to all exporting producers in Turkey. It differs from the

methodology applied in the original investigation, which was used exceptionally for some exporters due to significant currency fluctuations during the original investigation period. Due to these fluctuations, it was considered more appropriate in the original investigation to make a comparison between the monthly weighted average normal value and the monthly weighted average export price. However, these exceptional circumstances were absent in the current investigation and the standard methodology, as described in recitals (31) to (46) above, was applied instead. Thus, in the current investigation, the dumping margin for the exporting producers in Turkey was established on the basis of a comparison of a weighted average normal value with a weighted average export price.

(143) The following companies: Cayirova Boru Sanayi ve Ticaret AS, İstanbul, Yücel Boru ve Profil Endüstrisi AS, İstanbul, and Noksel Çelik Boru Sanayi AŞ, Ankara, each of whose individual dumping margin in the original investigation was zero, were initially investigated in the review and chosen as part of the sample. However, although Article 9(3) of the basic Regulation provides that companies with a zero or *de minimis* margin in the original investigation may be included in a review, it does not oblige the Community institutions to include such companies. Moreover, after the adoption of the basic Regulation, in the case *Mexico-Beef and Rice*, the WTO dispute settlement body has interpreted the relevant provision of the ADA as prohibiting reviews of such companies. Therefore, the Community institutions concluded that it is appropriate not to use data gathered during the review concerning these three companies. Consequently, these companies were excluded from the sample. Moreover, in this Regulation, it is assumed that none of these companies are currently engaged in dumping.

### 3.2. Sampling (exporters) and co-operation

(144) Sampling forms were sent out to 15 potential producers/exporters in Turkey and 8 of them responded. Three companies/groups, which account for 41% of the total Turkish imports into the Community, were selected for the sample.

### 3.3. Normal value

(145) As mentioned above the normal value was either constructed or established on the basis of prices paid or payable, in the ordinary course of trade, by independent customers in Turkey. Some of the adjustments claimed by the exporting producers have been rejected or amended.

#### 3.3.1. Credit costs

(146) Following the disclosure of the Commission's findings some of the exporters claimed that credit costs should be established on the basis of the actual payment terms agreed between the producers and their customers. These claims were accepted.

#### 3.3.2. Duty drawback

(147) Certain companies claimed an allowance for duty drawbacks on the grounds that import charges were levied on the raw material used for the like product when intended for consumption in Turkey but were refunded when the product was sold for export to the Community.

- (148) In one case, the amount claimed was found to be higher than the amount of duty levied on materials physically incorporated in the like product sold in the domestic market. It was established that the duty burden was less because that company/group of companies used in their domestic production not only coils imported with a duty but also coils imported with 0% duty rate, as well as locally purchased coils. Consequently, the allowances were adjusted accordingly.
- (149) Another company for which the allowance was originally rejected claimed that it should have been allowed as their domestically sold products did bear the burden of the duty. The claim was partly accepted.
- (150) In this context, it was claimed by the Community industry that this would be a countervailable subsidy. However, it has to be noted that the present proceeding is an anti-dumping investigation. Therefore, this allegation has not been analysed.

### 3.3.3. Selling, general and administrative expenses (SG&A)

- (151) One of the Turkish exporters, for those of its sales for which the normal value had to be constructed, claimed negative SG&A. This was due to the fact that their foreign currency exchange gains were substantial and higher than the total amount of SG&A. In this case those financial gains were disregarded. Only financial costs related to the companies' loans were taken into account. The SG&A were thus adjusted accordingly.

### 3.4. Export price

- (152) In all cases the product concerned was sold to independent customers in the Community. Thus, for all exporters, the export price was based on the prices paid or payable by unrelated customers in the Community, pursuant to Article 2(8) of the basic Regulation.

### 3.5. Comparison

- (153) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for rebates, discounts, transport, handling, charging costs, bank charges and insurance and credit costs, where appropriate and supported by verified evidence.

### 3.6. Dumping during the investigation period

- (154) The dumping margin for the exporting producers in Turkey was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.
- (155) The comparison of weighted average export prices with a weighted average normal value showed the following dumping margins:
  - Erbosan Erciyas Boru Sanayii ve Ticaret AŞ, Kayseri ('Erbosan') 0,5%,
  - Borusan Mannesmann Boru Sanayi ve Ticaret AŞ, İstanbul ('Borusan') -1,4%,

- Toscelik Profil ve Sac Endustrisi AS, Iskenderun ('Toscelik') 0,9%.

(156) Two companies declared their intention to co-operate but were not included in the sample. Given that the dumping margins determined for all the companies in the sample were *de minimis* and the co-operation in the investigation was very high, the countrywide dumping margin was also considered to be *de minimis*.

(157) Therefore, it is concluded that there was no continuation of dumping in case of Turkey. The further analysis in the framework of Article 11(3) of the basic Regulation will therefore solely concentrate on the likelihood of recurrence of dumping.

### 3.7. Likelihood analysis

#### 3.7.1. General remarks

(158) The EU market is undeniably a very attractive market for the Turkish producers. This is due to a number of factors, the first of which is size. Size pertains not only to the large consumption, but also to the fact that most Turkish exports to other third country markets are fragmented - i.e. small quantities being shipped to many different destinations. In that sense the Community is more attractive as a single destination with large absorption capacity.

(159) Geographical proximity is another important factor, as transportation costs for these products are not insignificant.

(160) The Community is also a traditional market for Turkish exporters who have well established distribution channels and a wide range of clients.

#### 3.7.2. Share of exports to the EU and pricing practices

(161) Despite the measures in force exports from Turkey continued throughout the IP. However, no dumping was found for any of the sampled companies. It should be noted that the sampled companies and the non-sampled companies that co-operated in the current reviews as well as those whose margin in the original investigation was found to be zero or *de minimis* cover around 90% of total Turkish exports to the Community. The market for these Turkish exports appears to be stable and there is no indication that the companies would change their pricing strategies. Furthermore, the three sampled companies as well as those three whose dumping margin in the original investigation was found to be zero or *de minimis* are by far the biggest players on the market and price leaders. Therefore, it is likely that any other company would rather follow their pricing practices. It thus appears unlikely that dumping would recur for Turkey. Nevertheless, for the sake of completeness, the factors below were also examined.

#### 3.7.3. Unused capacity in Turkey

(162) The investigation established a total spare capacity of about 143 000 tonnes in the IP for the co-operating producers, including sampled and non-sampled companies. This quantity would correspond to around 10% of the total Community consumption (as defined in recital (231)) of welded tubes.

#### 3.7.4. Possible absorption capacity of third country markets

(163) The largest third-country market for the product concerned (the USA) has antidumping measures in place for Turkish exports ranging up to 14,7%. This would imply that, other things being equal, the USA would not be likely to absorb significant additional export quantities from Turkey. However, the fact that the exports to third countries are fragmented with shipments to many different destinations appears to indicate that the Turkish exporters are actively in the process of exploring new markets, and it is therefore not unlikely that third country markets could absorb some of the capacities. In addition, taking into account the actual ratio of Turkish exports to the Community and to third countries (70/30), the same ratio can reasonably be expected if the currently unused capacities were sold. This would then amount to an additional import into the Community of around 100 000 tonnes, which would correspond to an additional market share of 7 %, based on the IP consumption figures. It has to be noted, however, that this would be the maximum theoretical increase of sales based on the assumption that the spare capacity is used at the rate of 100%, which is rare in such industry.

### 3.7.5. Price factors

(164) The price differences between Turkish exports to the Community and to third countries have not been significant and depended on the company concerned. After further analysis subsequent to the disclosure, it was established that the Turkish export prices to third countries were slightly higher than those to the Community. Given that no dumping was established for Turkey in respect of their exports to the Community, it can be assumed that generally exports to third countries were not made at dumped prices. There are also no other indications that Turkish exporters would change their price strategy. Nothing in the circumstances of the market or the situation of the exporters as a whole showed that they were likely to change their overall market behaviour.

(165) In view of the foregoing it is concluded that dumping is not likely to recur for imports originating in Turkey.

## 4. TURKEY (ii): ARTICLE 11(3) ASPECTS

(166) The complainant claimed that the measures in force did not prevent the continuation of dumped imports and that the level of measures was no longer sufficient to counteract the injurious dumping by imports of the product concerned from Turkey.

### 4.1. Lasting nature of changed circumstances

(167) As found above, imports from Turkey no longer continued to be made at dumped prices. Indeed, all levels of dumping established in the present investigation are below the *de minimis* threshold. In particular, this is true for three companies, which originally were found to be dumping.

(168) The Community market will, as mentioned, most likely remain an attractive market for the Turkish exporters in terms of prices as well as well-established and long-lasting commercial relations. At the same time, Turkish producers sell significant volumes on their domestic market. These quantities are sold at competitive and relatively low prices, when compared to other major markets, including the EU and USA. Indeed,

domestic prices and subsequently normal values were at such levels that dumping in respect to exports to the Community has disappeared entirely.

(169) The investigation has not detected any other circumstances which would suggest that the price and dumping are likely to change if measures are allowed to lapse. For the companies that have been subject to zero-duties since the original investigation, the considerations based on the *Mexico Beef and Rice* report, as explained above in recital (143) will continue to apply. As regards the other companies, the present investigation indeed showed that circumstances have changed, as they were found not to be dumping any more. In addition, no compelling reasons are at hand that would indicate that such changed circumstances are not of a lasting nature. Moreover, all investigated companies made exports to third countries in 2006 and the IP at prices higher than export prices to the Community. In the same periods, exports to the Community were made at prices exceeding domestic sale prices. This clearly indicates that the changed circumstances (exports no longer dumped) are of a lasting nature.

#### 4.2. Conclusion

(170) It can therefore be concluded that, should the measures be allowed to lapse, the exports to the Community will not be likely to be made at dumped prices. Also, the changed circumstances with respect to the original investigation regarding the lack of dumping can reasonably be considered to be of a lasting nature.

(171) In view of the foregoing the proceeding concerning imports originating in Turkey should be terminated.

### 5. UKRAINE (i): ARTICLE 11(3) ASPECTS

#### 5.1. General remarks

(172) The Interpipe Group alleged that a comparison of normal value based on its own costs/domestic prices and its export prices to a third country market comparable to the EU, would lead to a reduction of dumping significantly below the level of the current measures. Therefore, it is alleged that the continued imposition of the measure at its current level was no longer necessary to offset dumping.

(173) During the course of the investigation, the company was notified of the Commission's intention to apply Article 18 of the basic Regulation. This was because the company did not provide cost of production data in the product type (product control number (PCN)) format required. The company only submitted cost of production data as an average of all the product types produced in a specific workshop.

(174) Examination of the facts showed that the cost of production data submitted could not be accepted by the Commission as they would not permit a proper comparison with domestic market selling prices by product type.

(175) The company was notified of the reasons why this was necessary within a reasonable period of time as required by Article 18(4) of the basic Regulation. Comments were received, analysed and replied to in detail. None of the explanations given by the company was considered to be satisfactory as to allow the Commission to avoid the application of best facts available to the area highlighted below.

(176) Following the disclosure, the complainant claimed that the case should be terminated as the cooperation of the sole Ukrainian producer was so poor that the Commission had to use Article 18 of the basic Regulation to adjust the cost of manufacturing. However, it should be noted that Article 18 was applied in order to allow the Commission to complete the information submitted by the sole Ukrainian co-operating producer by using the best information available. The claim was therefore rejected.

## 5.2. Normal value

(177) The Commission examined whether the domestic sales could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. To this end, the cost of production of the product produced and sold by the co-operating exporting producers on the domestic market was examined.

(178) OJSC Interpipe Novomoskovsk Pipe Production Plant (NMPP), which produces the product concerned, failed to provide a breakdown of the cost of production ('CoP') by PCN. This exporting producer only provided the average CoP of all the PCNs produced in each of its two workshops. Evidence of the PCNs' cost structure from different producers in other countries concerned by the investigation including the Community showed that there is a large variation in the cost of production per PCN.

(179) OJSC Interpipe Nizhnedneprovsk (NTRP) tube rolling plant which is related to NMPP, submitted the break down of the CoP per PCN.

(180) As explained in recital (173), the Commission applied Article 18 of the basic Regulation to NMPP to obtain the cost of production by PCN. The option of using data available from the original investigation was considered, but as Ukraine has since been granted market economy status, such data was not considered to be the best information available. In addition, the Commission considered that the quality of the information reported by the Community industry was such as would allow conclusions to be drawn on the Cost of Production (CoP) per Product Control Number (PCN). Therefore, the information submitted by the co-operating Community industry was considered to be the most reliable and the best information available from which to derive the CoP per PCN. In this respect, the findings of the investigation showed that the variances between the cheapest Community industry PCN and all other PCNs could be calculated. This variance was then applied to the average CoP reported by NMPP. When there was a match between the PCN produced by the Community industry and the same PCN produced by NTRP, the NTRP cost was used.

(181) The same party questioned the fact that the Commission used data from the IP to construct the normal value and the export price in the IIP. Some of the claims related thereto were accepted. The Commission considered the weighted average of the CIF export prices to the Community during the overlapping six months of both proceedings. In addition, to allow a fair comparison within the same period of time, between the weighted average normal values of each type of the product concerned exported to the Community when compared to the weighted average export price of each corresponding type of the product concerned, the cost of production of the co-operating producers was adjusted. The adjustment was made to reflect the cost of manufacturing for the same six months taken into account to calculate the CIF export prices to the Community. The sole Ukrainian co-operating exporter argued that the Commission should use the unit manufacturing cost from the related company, OJSC

Interpipe Nizhnedneprovsk (NTRP) tube rolling plant, when the PCNs are nearly identical to those produced by OJSC Interpipe Novomoskovsk Pipe Production Plant (NMPP). As explained in recital (175), the Commission has however evidence of large variations in the cost of production per PCN. This claim thus was rejected.

### 5.3. Export price

(182) As regards to the exports to the Community, the group exported a negligible volume of the product concerned to the Community during the IIP. These transactions, on their own, could not be considered as representative to establish whether any change of behaviour of a lasting nature had taken place.

(183) The Interpipe Group suggested using exports to third countries in order to establish the level of prices at which the exports to the Community would take place. In particular, the exporter claimed that exports to Russia should be used in this regard. The company provided evidence of its exports to third country markets, and to the Russian market.

(184) It was first determined whether the export volumes of the product concerned to the third countries proposed by the Interpipe Group were sufficiently significant in terms of overall sales. In this respect it was concluded that sales to Russia represented more than half of the total exports of the group and were in principle adequate to draw conclusions, should the Russian market be sufficiently similar to the Community.

(185) On the basis of the information at the Commission's disposal, it was examined whether Russia had similar market conditions and structure to those which exist in the Community, in order to assess whether exports to Russia are a reliable proxy of likely export prices to the Community for the purposes of establishing a new level of the measure.

(186) On the one hand, the size of the Russian market for the product concerned, like that of the Community, appears to be significant and the product types sold in both areas are generally similar.

(187) On the other hand, salient differences were detected between the two markets. To start with, significant import duties exist in Russia, in contrast to the absence of such duties in the Community<sup>12</sup>. This is reflected in import shares which are significantly lower than in the Community. In addition, the production sector in Russia appears to be much more concentrated, with a handful of large producers accounting for the bulk of activity – whereas in the Community activity is spread across a larger number of producers. Also, channels of distribution appear to involve fewer stockists than in the Community. Furthermore, the fact that significant Russian dumping exists in the Community points to differences in price formation and to distortions in the Russian domestic market without which such practices could not exist.

(188) In addition, the existence of dumping indicates that domestic price levels in Russia are above the prices at which exporters would be likely to export to the Community. This

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In addition a safeguard investigation regarding the product concerned is on-going. If its conclusions are similar to the safeguard measures imposed at the end of 2006 on pipes of larger diameter (a special duty of 8% was introduced then), this would introduce a further structural difference as compared to the Community.

is because prevailing prices for importers which maintain a significant presence in the Community are likely to be at the same level as those of Russian export prices and because of the homogeneous nature of the product concerned, which implies that exporters wishing to make inroads in the Community would, in all likelihood, need to align themselves to the level of prices of the lowest bidders.

- (189) The foregoing points to dissimilarities which would affect price formation and hence levels, and which therefore imply that Russian prices may not be used for the purpose of establishing a new level of measures.
- (190) The Commission further examined whether export prices to third countries other than Russia could be used for this purpose. It was first examined whether the second largest market in terms of exports could be taken as a reference country. However, this option was disregarded, as Belarus is not a market economy country. Sales to other countries were also analysed but their exports volumes were too small to be considered as representative.
- (191) In these circumstances, the use of export prices from Ukraine to Russia (and to other third countries where the applicant exported during the IIP) cannot be considered as representative of the likely export price behaviour to the Community and are therefore disregarded. In view of the above, it was instead considered necessary to apply Article 2(9) of the basic Regulation for the Interpipe Group. In this respect, it was considered whether the weighted average of the CIF export prices to the Community during the IP from all the co-operating exporting producers in all countries concerned by the investigation, could be aggregated on a per PCN basis and used as a reference to establish an export price for the Ukrainian exporting producer.
- (192) This method was found to be appropriate since it is reasonable to presume that should Ukrainian exports enter the Community market, they would not deviate to any significant extent from the price pattern of their direct competitors, i.e. the other exporters to the Community.
- (193) As explained in recital (181), when establishing the export price, the Commission only used the data from the six overlapping months of the IP and IIP.
- (194) The matching PCN unit export prices of these exporters were thus used to establish the export price of the Interpipe group.
- (195) Following the disclosure, the sole Ukrainian exporting producer claimed that when determining the export price, no deduction should be made for the related company's SG&A and profit, as Article 2(9) of the basic Regulation is not applicable in the present case. It was argued that Article 2(9) of the basic Regulation only applies to related importers located in the Community as its wording makes a clear distinction between 'importation and resale'. It was further argued that the related company acts as an export department.
- (196) It should be noted that, for sales of the product concerned to the Community, the sole Ukrainian exporting producer consigned the product concerned directly to the Community, invoiced its related company in Switzerland for each consignment and received payment accordingly. Thus, the exporting producer performed all functions of an exporter. The related company in Switzerland negotiated sales contracts and

invoiced the first independent buyer in the Community. The related company also arranged the delivery of the products sold.

(197) Concerning the disclosure comments made by the Ukrainian company, it is held that export prices may be constructed under Article 2(9) of the basic Regulation where there is no export price (first option under article 2(9)). Again under Article 2(9), export prices can be constructed on any reasonable basis. Such reasonable basis will also cater for a deduction of the related company's SG&A and a reasonable profit. Even if it was considered that these elements are more appropriately reflected as "commissions"/"mark-ups" in accordance with Article 2(10)(i) of the basic Regulation, *quod non*, the resulting dumping margin would be the same.. Since the profit of the related company was affected by the fact that it purchased under inter-company conditions, a reasonable profit was therefore determined on the basis of data gathered from independent importers/traders co-operating with the investigation.

(198) Following disclosure, the Community industry claimed that the Basic Regulation and WTO law do not allow the calculation of dumping margins when there are no exports made to the Community. For the reasons stated in the previous recitals, it is reiterated that Article 2(9) of the basic Regulation explicitly mentions that when there is no export price, such price may be constructed on any reasonable basis. Consequently, the claim is rejected.

#### 5.4. Dumping margin

(199) The comparison between the normal value calculated as described above and the export price also calculated as described above, showed the existence of dumping. The dumping margin for the Ukrainian group expressed as a percentage of the CIF import price at the Community border, duty unpaid, is the following:

Interpipe Group (OJSC Interpipe Novomoskovsk Pipe Production Plant and OJSC Interpipe Nizhnedneprovsk tube rolling plant): 10.7%.

#### 5.5. Conclusions on dumping regarding Ukraine

(200) In conclusion, dumping by the Interpipe Group was found to exist at the level described in recital (199). As regards all other exporting producers in the Ukraine, the applicable residual dumping margin will not change.

### 6. UKRAINE (ii): ARTICLE 11(2) ASPECTS

#### 6.1. Preliminary remarks

(201) The exported volumes from the country concerned to the EU have steadily decreased from 29 KT in 2002 to 17.2 KT in 2005 to nearly nil in the IP.

(202) Only two Ukrainian producers belonging to the same group (the Interpipe Group) made themselves known and submitted a questionnaire reply, OJSC Interpipe Novomoskovsk Pipe Production Plant and OJSC Interpipe Nizhnedneprovsk Tube Rolling Plant.

(203) It was established that there were at least another 7 producers operating in Ukraine. On the basis of the information available to the Commission, the Interpipe Group accounts

for around 26% of the Ukrainian production. Under these conditions, it is considered that the level of co-operation was very low.

6.2. Dumping of imports during the investigation period

(204) The single cooperating Ukrainian group producer had negligible exports to the Community during the IP. The very low level of Ukrainian exports of the product concerned to the Community was not representative and thus did not provide a reliable and meaningful basis for establishing whether there was a continuation of dumping. It was therefore considered appropriate to base the analysis in this case on the likelihood of recurrence of dumping should measures be terminated.

6.3. Development of imports should measures be repealed

6.3.1. Preliminary remarks

(205) As outlined in recital (203), the investigation has shown that there were at least 7 producers of the product concerned in Ukraine during the IP and only one group cooperated in the investigation.

(206) It was examined to what extent data from the one cooperating Ukrainian group could be used for the purpose of analysing the overall development of likely exports from Ukraine as well as, more specifically, to serve as a benchmark in terms of indicators of domestic and export prices, costs, production capacities and capacity utilisation.

(207) The information pertaining to stocks, production level and capacity that was provided by the company has been used in conjunction with data from the complaint in order to establish the production volume and capacity of Ukrainian producers.

(208) In view of the above, the following considerations were taken into account when assessing the likely impact should measures be repealed.

6.3.2. Production, unused capacities and likelihood that these capacities would be directed to the Community.

(209) Based on the information available to the Commission, it was established that production capacity of the product concerned in the Ukraine exceeds 400 KT per year.

(210) In the absence of evidence showing that this capacity could be absorbed by increased domestic sales, sales to other third countries or the production of products other than the product concerned, it is concluded that should measures expire, significant spare capacities would in all likelihood be directed towards the Community, not least because of the Community's attractiveness as an export market. This is further confirmed by the significant spare capacity existing at the Interpipe Group.

(211) Considering that the Community market is one of the biggest in the world, its sheer size makes it attractive to any Ukrainian exporting producer of the product concerned.

(212) It is recalled that the Interpipe Group supplies coils from Ukraine to the manufacturing company Mogilev in Belarus, which transforms the product on a toll manufacturing basis into the product concerned, which is then sold by Interpipe's Swiss subsidiary to the Community. Throughout the process, Interpipe maintains ownership of the

product. As mentioned above, these exports have been found to be dumped. Especially since it is proposed to impose measures on Belarus, it cannot be excluded that certain exports made by the group from Belarus would be sourced instead from Ukraine.

- (213) Taken together with the relatively attractive price level in the Community, where well developed distribution channels exist, it is considered that, in the absence of measures, there would be a clear economic incentive for a shift of exports away from third markets such as Russia or Belarus and towards the Community.
- (214) Overall, under these circumstances, it is considered that any increase in the current capacity utilisation is likely to be directed towards exports, and specifically to the Community market.

#### 6.3.3. Likely price levels

- (215) In a context of low cooperation and of the information mentioned above, it is considered that the allegations made in the complaint as to likelihood of recurrence of dumping should be confirmed. This is further supported by additional factors.
- (216) The export prices to other third countries are at the same level as that of the prevailing import prices in the Community. This would imply that it is likely that export prices to such other third countries are also dumped, pointing to a more general pattern of behaviour based on dumping.
- (217) In addition for the product under consideration, which is in general rather homogeneous, would-be Ukrainian sellers would be likely to provide products at the prevailing prices of other imports in the Community. As has been concluded in the sections above, the import prices of other exporting countries are generally low. When considering that potential export prices of Ukrainian producing exports are likely to have to mirror these low prices and when considering the cost structure of the product concerned, which is heavily based on steel coil and zinc prices that have seen significant increases across the world, it would be likely that export prices would be dumped at around 10.7% as concluded in recital (199).

#### 6.4. Conclusion

- (218) A significant amount of Ukrainian exports would therefore be likely to be sold in the Community at dumped prices should measures be allowed to lapse.

### **E. INJURY ASPECTS (Anti-dumping investigation, Expiry review, Turkey interim review)**

#### 1. Definition of the Community Industry and Community Production

- (219) Within the Community, it was found that the like product was manufactured by 17 companies which cooperated with the investigation and supported the complaint and 2 Community producers that did not cooperate with the investigation. No Community producer came forward and opposed the investigation.
- (220) In the absence of the cooperation of 2 producers in the Community, the Community production was established on information submitted in the complaint and the information collected during the investigation from the co-operating producers.

(221) The 17 co-operating Community producers accounted for 95% of the total production in the Community of the product concerned. They were deemed to constitute the Community industry within the meaning of Article 4(1) of the basic Regulation.

(222) The sampled Community producers in the investigation accounted for around 67% of the production of the like product of the Community industry during the investigation period.

## 2. Community consumption

(223) The consumption of the product concerned on the Community market was established on the basis of the volume of sales on the Community market of all producers within the Community plus imports from the countries concerned as well as third countries.

(224) In respect of the Community producers, the sales volumes were ascertained by using the information from the responses of the Community industry together with the information available in the complaint for the Community sales of the two non-cooperating producers.

(225) As to the volumes of imports from countries concerned and third countries, the following sources of information were examined:

- Full CN code data from Eurostat.
- Other statistical information of a confidential nature available to the Commission.
- Information on imports available from interested parties.

(226) In addition, according to the complaint, no deduction should be made to the CN Code data, to cover products which were not the product concerned because no significant quantities of other products have been imported under these CN codes

(227) On this basis, it was concluded that, for the purposes of establishing volume and price trends for the whole period under consideration, full CN Codes were the most adequate source.

(228) The following comments are useful in this context. For Belarus, in the absence of other information regarding prices and covering the full period under consideration and after analysing the price levels emanating from Eurostat and those from the German operator mentioned above, it is considered that Eurostat statistics are the most accurate source for the *trends* in prices.

(229) For China the investigation established that imports to the EU market from the cooperating exporting producers were higher than the import statistics as mentioned in table 2 (below). Given that price levels were similar between the two sets of data, and in order to ensure that the figures are not overstated, it was decided that official statistics would be used, not least because this approach had no material impact on the analysis of injury and causation, when compared to using the data obtained from the cooperating exporting producers.

(230) Considering that Turkish imports from the co-operating exporters were higher than shown by Eurostat data, a similar reasoning applies to Turkey. Again, this approach had no material impact on the analysis of injury and causation, when compared to using the data obtained from the cooperating exporting producers.

(231) The consumption established as outlined above ('Community consumption') increased by 9% during the period under consideration, i.e. from 1.234KT tonnes in 2004 to 1.342KT tonnes during the IP. More specifically, the Community consumption shows a decrease by 12% in 2005 before increasing again in 2006 and during the IP. The drop in consumption for the year 2005 is attributable to destocking (and therefore decreased purchasing) by the stockists in 2005 after increased purchases in 2004.

Table 1

	2004	2005	2006	IP
EU Consumption (Tonnes)	1 234 037	1 082 125	1 282 737	1 342 657
<i>Index</i>	<i>100</i>	<i>88</i>	<i>104</i>	<i>109</i>

3. Imports from the countries concerned and from the third countries.

(232) For the anti-dumping investigation countries i.e., Belarus, the People's Republic of China and Russia it was examined whether the conditions were such so as to allow for an analysis of all imports to be cumulated. With below de minimis dumping, exports from Bosnia\_Herzegovina were instead considered under other exports in section 3.4 as well as under other causes below in section 4. The imports from the expiry review countries and from Turkey (in the context of the Turkey interim review) were analysed separately. In this context it is recalled that dumping levels for Turkey were below the de minimis threshold and that the imports volumes as concern Thailand and Ukraine together and separately also were de minimis. However, for the latter two countries a likelihood of recurrence of injurious dumping has been found, as is set out in section F below.

3.1. Cumulation

(233) The Commission examined whether dumped imports of the product concerned originating in Belarus, the People's Republic of China and Russia, should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(234) This Article provides that the effects of imports from two or more countries simultaneously subject to the same investigation shall be cumulatively assessed when (i) the margin of dumping established in relation to the imports of each country is more than de minimis as defined in Article 9(3) of the basic Regulation; (ii) the volume of imports of each country is not negligible; and (iii) the conditions of competition between the imported products and the condition of competition between the imported products and the like products in the Community makes such an assessment appropriate.

3.1.1. Margin of dumping

(235) All imports from the PRC, Russia and Belarus meet requirement (i) mentioned in recital (234) above.

3.1.2. Volume of dumped imports

(236) The volumes of imports from the PRC, Russia and Belarus are more than *de minimis* and therefore not negligible (as can be seen in table 2 below).

3.1.3. Conditions of competition

(237) As regards the conditions of competition, the investigation showed that the product concerned imported at dumped prices from the countries concerned and the product produced and sold by the Community industry were alike in all their essential physical and technical characteristics. The same applies for a comparison of the dumped imported products from the various countries concerned.

(238) Furthermore, on that basis, these products are interchangeable and were marketed in the Community during the period under consideration through comparable sales channels, e.g. stockists and traders.

(239) In addition, the investigation established that competition took place throughout the various Member States of the Community and across all the various types of the product concerned including galvanised products, black products and tubes with other outer finishing. Therefore, the imports of the welded tubes were considered to compete with each other and with the ones produced in the Community.

(240) The pricing behaviour of the various cumulated countries was also examined. This analysis showed that these countries were undercutting and underselling the prices of the Community industry and, as shown at recital (244), the prices followed similar trends.

(241) Certain parties argued that imports originating in Russia should be decumulated from the investigation as imports from this country show a diverging trend in import volumes and market share in a market where demand is increasing. In this respect, it should be noted that the volumes of imports into the Community market remained substantial at all times throughout the period under consideration. In addition, dumped imports from all three countries (Belarus, the People's Republic of China and Russia) increased significantly in the last two years which were analysed, and general price levels followed the same trends and were in the same order of magnitude, particularly in the IP as shown by individual company data. Furthermore all of the cumulated imports undercut the prices of the Community industry in the IP.

(242) On the basis of the above, it was concluded that all conditions justifying cumulation as described in Article 3(4) of the basic Regulation were met. It has therefore been decided that imports of welded tubes originating in Belarus, the People's Republic of China and Russia should be assessed cumulatively. These countries will be jointly referred to as the 'cumulated countries' and the imports from these countries will be jointly referred to as 'cumulated imports'.

Table 2

Imports volumes (tonnes)	2004	2005	2006	IP
China	21 781	54 120	110 922	184 887
Russia	42 036	30 124	34 148	36 057
Belarus	12 827	22 056	28 191	29 615
Total cumulated imports	76.644	106.300	173.261	250.559
Ukraine	25 173	17 210	4 501	2 753
Thailand	90	0	0	0
Other imports	222.096	162.177	238.150	238.441
Of which Bosnia – Herzegovina	6 836	11 011	30 032	33 095
Of which Turkey	95.049	85.018	99.843	110.994
<b>TOTAL IMPORTS</b>	<b>324 003</b>	<b>285 687</b>	<b>415 912</b>	<b>491 753</b>

Table 3

Market Share (%)	2004	2005	2006	IP
Belarus	1,0%	2,0%	2,2%	2,2%
China	1,8%	5,0%	8,6%	13,8%
Russia	3,4%	2,8%	2,7%	2,7%
Cumulated imports	6,2%	9,8%	13,5%	18,7%
Ukraine	2,0%	1,6%	0,4%	0,2%
Thailand	0,0%	0,0%	0,0%	0,0%
Other imports	18,0%	15,0%	18,6%	17,8%
Of which Bosnia – Herzegovina	0,6%	1,0%	2,3%	2,5%

Of which Turkey	7,7%	7,9%	7,8%	8,3%
TOTAL IMPORTS	26,3%	26,4%	32,4%	36,6%

### 3.2. Cumulated volume and market share

(243) The cumulated imports have increased from 76.644 tonnes in 2004 to 250.559 tonnes during the IP, i.e. by more than 200%. Since the consumption of the product concerned during the period under consideration has increased by 9%, the market share held by cumulated imports of the product concerned increased from 6,2% in 2004 to 18,7% in the IP. The developments of imports and market shares of the product concerned during the period under consideration are shown in tables 2 and 3 above.

### 3.3. Prices and Undercutting

#### 3.3.1. Evolution of prices for anti-dumping investigation countries

(244) The weighted average price of imports from the countries concerned developed as follows over the period under consideration:

Table 4

Import prices (EUR/T)	2004	2005	2006	IP
China	460	537	520	557
Russia	481	543	551	603
Belarus	456	495	503	549

(245) Table 4 was sourced from the Comext database at full CN Code level. The general trend of the import prices into the Community shows an increase in line with the general increase of prices for all operators on the EU market.

#### 3.3.2. Price undercutting for the anti-dumping investigation countries

(246) For the determination of the price undercutting, the Commission based its analysis on the information submitted at a detailed product type level in the course of the investigation by the sampled exporting producers for China. For Russia, the data of the cooperating exporting producer was used. For Belarus, data from the cooperating German operator was used.

(247) This export price data was compared to a weighted average price of the sampled Community producers at the same detailed product type level in order to ensure a fair comparison at the same level of trade. In all cases this analysis took into account actual export prices of the exporting producers at CIF Community frontier level. For the Community industry side, the relevant sales prices were those to independent customers, adjusted when necessary to ex-works level. During the IP, based on the

different product types defined in the questionnaire, the average undercutting margins were as follows:

Table 5

Undercutting	IP
China	43%
TMK Russia	12%
OMK Russia	15%
Belarus	22%

### 3.3.3. Evolution of prices and price undercutting for the expiry review

(248) For Ukraine and Thailand, it is recalled that the volumes of imports were below de minimis and it was thus considered that the prices, and hence the price evolution and the undercutting calculations, would not be reliable and meaningful.

### 3.4. Imports from other third countries

#### 3.4.1. Import volume and market share in the review

(249) As shown in tables 2 and 3, imports from third countries including those from Bosnia-Herzegovina and from Turkey slightly increased from 222.096 tonnes in 2004 to 238.441 tonnes during the IP. The market share held by these imports remained at around 18% over this period.

### 4. Situation of the Community Industry

(250) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry. This analysis was carried out for the nine sampled companies as mentioned in recital (20) which had completed full questionnaires. The factors examined for the sampled companies included prices, employment and wages, investments, profitability, return on investment, cash flow and ability to raise capital. However, for some indicators (analysed below as macro indicators) information was available and used for all 17 companies (including the nine sampled companies) of the Community industry. These macro indicators were market share, sales volume in the, Community production and production capacity.

#### 4.1. Macro indicators

##### 4.1.1. Production, production capacity and capacity utilisation

(251) The production of the Community industry decreased by 10% from 2004 to the IP. The production capacity was calculated according to a standard methodology applied to the whole Community industry. This methodology took into account the actual capacity over the long term by allowing for normal production stoppages such as

maintenance and it was also the methodology normally employed within the Community industry. The production capacity for the product concerned decreased moderately during the period under consideration, from 2.218.597 tonnes in 2004 to 2.132.322 (or by 4%) during the IP.

(252) The capacity utilisation also declined, mirroring a decline in production, from around 44% to 41% over the period under consideration. In this respect it should however be noted that this factor is not the most relevant injury indicator in this sector, as plants and production equipment are also used to manufacture other tubes and other products that are not subject to this investigation.

Table 6

Community Industry	2004	2005	2006	IP
Production capacity (tonnes)	2 218 597	2 211 597	2 136 747	2 132 322
Production volume (tonnes)	970 080	832 973	914 663	875 477
<i>Index of production volume (%)</i>	100	85,9	94,3	90,2
Capacity utilisation (%)	43,7	37,7	42,8	41,1

#### 4.1.2. Sales volume and market share

(253) The data in table 7 show a clear decrease in sales volume for the Community industry on the Community market. This situation is further emphasised by the fact that the overall consumption, as shown in Table 1, increased by 9 % over the same period. After a certain degree of stability was maintained in 2004 and 2005, the market share of the Community industry dropped significantly in 2006 and the IP. This is in contrast to constant or increasing market shares (see recital (243)) for dumped imports from the PRC, Belarus and Russia individually and an increasing market share of the cumulated countries throughout the period under consideration.

Table 7

Community Industry	2004	2005	2006	IP
Sales (tonnes)	901 934	788 338	858 725	842 804
Market share (%)	73,1	72,9	66,9	62,8

#### 4.2. Micro indicators

##### 4.2.1. Stocks

(254) The stock level of the sampled Community producers dropped by 23% between 2004 and 2005 and then was constant thereafter. A calculation of the stock rotation through the period under consideration showed that the stock level remained at around 30 days of sales. The investigation has confirmed that the level of stocks is not considered as a significant indicator in this respect as the Community industry usually works on a production to order basis and thereby holds relatively little stock.

Table 8

	2004	2005	2006	IP
Stocks (tonnes)	63 632	49 074	48 716	49 008
<i>Index (%)</i>	100	77,1	76,6	77,0
Stock rotation (days)	35	31	29	30

#### 4.2.2. Sales prices

(255) The average unit selling price to unrelated customers in the Community increased by 14,8% during the period under consideration. This increasing trend must however be seen in the context of a significant increase of the cost of production during the same period. The increase in the cost of production was mainly due to a substantial increase in the purchase price of the major raw materials i.e. coils, zinc, and energy - as explained in recital (287). In general terms, there was no substantial change in the product mix over the period under consideration which would distort the trend in sales prices shown below in table 9.

Table 9

	2004	2005	2006	IP
Sales prices in EUR/MT	660	691	711	758
<i>Index (%)</i>	100	104,7	107,7	114,8

(256) The increase of the cost of production during the period under consideration was not matched by a corresponding increase of the sales price; this was mainly the result of strong pressure by imports from the countries concerned. Under these circumstances the Community industry was unable to pass on the increase in price of the raw material to its customers.

(257) The Community industry prices were thus suppressed, even if prices saw an increase in absolute terms. In other words, the price increase would have been much greater in the absence of the dumped imports.

(258) Moreover, the sales prices on the Community market were undercut by between around 12% and 43% as explained in recital (246) and subsequent.

#### 4.2.3. Profitability

(259) The overall profitability of the sampled producers in respect of the product concerned is based on the weighted average profitability on net turnover of the product concerned sold to unrelated customers on the EU market. During the period under consideration the profitability level deteriorated, reaching -1.0% during the IP. In addition, the level of profitability was clearly insufficient throughout the period under consideration and, bearing in mind that this situation has continued over many years, it evidently jeopardizes the very existence of at least part of this industry.

(260) The profitability level never reached the target profit of 5% mentioned in recital (352) and subsequent.

Table 10

Profitability (%)	2004	2005	2006	IP
Profit / Net turnover	0,9	-2,6	-1,9	-1,0

4.2.4. Employment, productivity and wages

(261) Employment of the sampled Community producers decreased by 23,5% during the period under consideration from 2.772 workers in 2004 to 2.123 during the IP.

(262) The wages calculated by taking the average cost per employee have increased from 15 668 EUR in 2004 to 21 558 EUR during the IP. One major reason for this increase in wages per employee is explained by the strong salary increase in the Community industry companies situated in the 10 countries which became members of the EC in 2004.

(263) This increase is however more than compensated by the combined effect of the aforementioned decrease in labour and the significant increase (17%) in productivity. This underlines the continuing efforts by Community industry to increase efficiency.

Table 11

Employment	2004	2005	2006	IP
Number of employees	2 772	2 350	2 179	2 123
<i>Index (%)</i>	100	84,7	78,6	76,5
Wage cost per employee (EUR)	15 668	17 836	20 945	21 558
<i>Index (%)</i>	100	113,8	133,7	137,6
Production per employee	238	238	283	278
<i>Index (%)</i>	100	100	119	117

#### 4.2.5. Investments, return on investment

(264) The investigation confirmed that no important capital expenditure in relation to the companies' overall activity was undertaken by the sampled Community producers in the business involving the product concerned. No investments were done to increase the production capacity as demonstrated in recitals (251) and (252). Under the current market conditions, the Community industry did not invest in an increase in capacity but instead took steps to maintain and enhance the efficiency of its existing production equipment. Some investments in the welded tubes-related activity were also made with regard to environmental and health and safety matters.

(265) The level of the return on investment expressed as the relation between the net profit of the sampled Community producers and the gross book value of its fixed assets mirrors the profitability trend as explained in recital (259). Its level is very low and remains negative as from the year 2005.

Table 12

	2004	2005	2006	IP
Investment	14.880.328	14.939.859	11.600.607	10.548.216
Return on Investment (%)	1,4%	-3,5%	-2,7%	-1,8%

#### 4.2.6. Cash flow and ability to raise capital

(266) The development of the cash flow generated by the sampled Community producers in relation to sales of the product concerned on the EU market mirrored the development of the profitability. It is worth noting that while the cash flow is low, it remained positive during the period under consideration with the exception of the year 2005 where it was only just negative.

(267) The investigation has not detected that the Community industry was experiencing difficulties in its ability to raise capital. It should, however, be noted that the ability to raise capital may be considered a less meaningful indicator for this investigation. This is because most of the producers of the product concerned of the Community industry are part of large corporate groups. Therefore, the ability to raise capital is closely linked to the performance of the group as a whole rather than the individual performance of the product concerned. However the fact that none of these large groups made decisions to invest in new production facilities shows that in recent years the return on such investments has not been adequate

Table 13

	2004	2005	2006	IP
Cash flow (% of turnover)	5,5%	-0,4%	1,0%	1,6%

#### 4.2.7. Growth

(268) As explained in recital (253), it has to be noted that the market share of the Community industry fell by 10.3 percentage points while the level of the Community consumption increased by 9%. This indicates clearly that the Community producers have not been able to grow sufficiently in the market conditions observed in the period under consideration.

#### 4.2.8. Magnitude of the dumping margin in the context of the anti-dumping investigation

(269) As concerns the substantial margin of dumping found during the IP for imports from the PRC, for Russia and for Belarus and given the volume and prices on imports involved, the impact of the magnitude of dumping margin cannot be considered as negligible.

#### 4.2.9. Magnitude of the dumping margin in the context of the expiry review

(270) For Ukraine and Thailand it is recalled that the exports in the IP were below de minimis and were thus not considered a reliable and meaningful basis for establishing a dumping margin. It is therefore considered appropriate to base the assessment on the likelihood of recurrence of injurious dumping, as set out in section F below.

#### 4.2.10. Recovery from the effects of past dumping

(271) The expected recovery of the Community industry from the effects of past dumping has not entirely materialised as shown by the low profitability and certain of the inability to significantly raise sales volumes, together with a significant loss of market share. The industry has in recent years been faced with substantial volumes of dumped imports from the PRC, Russia, and Belarus, which has hampered its expected recovery.

### 4.3. Conclusion on injury

(272) Both individually and taken together, import volumes from the cumulated countries (as defined in recital (242)) have maintained a significant presence in the Community market throughout the period under consideration. Since 2005, they have even increased considerably both in absolute and relative terms. Together, their market share increased from around 6% in the year 2004 to around 10% in 2005 and from that level to around 19% in the IP as explained in recital (243). Moreover the dumped imports from these countries show individually a significant level of price undercutting. Underselling margins are substantial, reflecting the fact that the Community industry is incurring losses.

(273) Community industry indicators have shown an overall negative evolution during the period under consideration and have demonstrated that material injury has taken place. In this context seemingly positive developments, such as the increase in sales prices, must be compared to the more significant increase of the costs of the major raw materials / components which have outweighed such positive trends.

(274) Based on the foregoing analysis, it appears that the Community industry is in a difficult economic and financial situation and has suffered material injury within the meaning of the Article 3 of the basic Regulation. This conclusion can be applied to the Community industry as a whole, given the high level of representativeness of the

sampled Community producers and the fact that the macro indicators were analysed for all the companies of the Community industry as explained in recital (250) above.

## 5. Causation

### 5.1. Introduction

(275) In accordance with Article 3(6) and (7) of the basic Regulation it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. Furthermore, known factors other than the dumped imports, which might have injured the Community industry were examined to ensure that any injury caused by those factors was not attributed to the dumped imports.

### 5.2. Effect of the dumped imports from the cumulated countries

(276) As explained above, imports from the cumulated countries have increased by more than 200% during the period under consideration. In terms of market share; the share of cumulated countries has increased from 6,2% to 18,7%. In addition, there is a clear coincidence in time between the deterioration of the situation of the Community industry and the important increase of dumped imports from the cumulated countries. Although Table 4 shows that prices of imports originating in the cumulated countries have increased over the period under consideration, this should be viewed in the context of the equivalent general price increase on the Community market as explained in recital (255).

Table 14

Imports volume	2004	2005	2006	IP
Cumulated countries (Tonnes)	76.644	106.300	173.261	250.559
Market share	6,2%	9,8%	13,5%	18,7%

(277) Imports from the cumulated countries have increased their penetration of the EU market and have taken over significant market shares previously held by countries that are subject to the expiry review (with the exception of Turkey) as well as those from third countries not subject to the investigation and the Community industry. In fact the Community industry lost over 10 percentage points of market share over the period under consideration. It was during this same period that imports from the cumulated countries gained over 10 percentage points as shown at Table 14 above.

(278) This penetration was possible because these imports were made at very low prices. Imports from cumulated countries have undercut those of the Community producers by substantial amount as shown in recital (247).

(279) The impact of the dumped imports from the cumulated countries is the injurious situation described above at section 4 whereby a downward pressure on prices has resulted in the Community industry not achieving adequate levels of profitability and

even losses. In addition, negative trends were identified for many other injury factors such as production, employment and market share. As seen above in recital 273 there was also a clear coincidence in time between the increase in imports from the cumulated countries and the negative trends seen in the injury indicators.

### 5.3. Effect of imports from other sources

#### 5.3.1. Bosnia-Herzegovina

(280) Imports from Bosnia-Herzegovina totalled around 33 000 tonnes or 2.5% of the Community consumption on the Community market. The average import price was 576 EUR per tonne giving an indication that they have undercut the prices of the Community industry. Nevertheless, bearing in mind the volumes involved, it was concluded that only a small part of the injury can be attributed to these imports, and that this does not break the causal link between the injury suffered by the Community industry and the dumped imports from the cumulated countries.

#### 5.3.2. Turkey

(281) These imports totalled around 111.000 tonnes or 8,3% of the Community consumption on the Community market during the IP. The average import price was 620 EUR per tonne which undercut the prices of the Community industry. Nevertheless, as can be seen from Table 4, the Turkish prices were higher than those of the three cumulated countries. The difference in price becomes even further pronounced when taking into account the fact that Turkish producers exported mainly black tubes to the Community market (i.e. those with a low cost) whereas imports from the cumulated countries were mainly galvanised tubes (i.e. those with a high cost). Furthermore, the volumes of imports from the cumulated countries are 125% higher than those from Turkey.

(282) Bearing in mind the volumes and the undercutting involved it is concluded that a not insignificant part of the injury suffered can be attributed to the imports from Turkey. However when compared with the impact of the cumulated imports, as detailed above, a much greater part of the injury can be attributed to imports from the cumulated countries. It is therefore concluded that the injury caused by the imports from Turkey is not such as to break the causal link between the injury suffered by the Community industry and the dumped imports from the cumulated countries.

#### 5.3.3. Ukraine, Thailand

(283) Imports from Ukraine and Thailand were negligible and are thus not considered to have caused material injury to the Community industry.

#### 5.3.4. Effect of imports from other third countries

(284) In 2004, imports from other third countries (excluding Bosnia, Turkey, Ukraine and Thailand) totalled around 127.000 tonnes or 10,3% of the Community consumption on the Community market. During the period under consideration this import level fluctuated but by the IP returned to the same level of the Community consumption. The average import price in the IP was 735 EUR per tonne in comparison with 586 EUR for 2004. Bearing in mind that the exact type of these imports was not known, it was difficult to perform price comparisons. Nevertheless, it appears that the prices from other third countries are much higher than those of the cumulated countries and

the other countries concerned. This would suggest that imports from other third countries are (at most) undercutting the Community industry prices to a lesser degree than dumped imports, or that they would not undercut at all. It can not therefore be concluded that they contribute substantially to the injury suffered by the Community industry or that they break the causal link.

#### 5.4. Effect of other factors

##### 5.4.1. Performance on export markets

(285) The sampled Community producers experienced a fall in export sales volume from around 60.000 tonnes to around 20.000 tonnes over the period under consideration. It was assessed whether this decrease had contributed to the injury suffered by the Community industry. The volume of sales on third markets never exceeded 10% of the total sales volume over the period under consideration, and such sales constituted a limited amount (ca. 5%) of the total of production which indicates that export sales were not a substantial contributor to the performance of the Community industry.

(286) Furthermore it should be noted that the profitability quoted in recital (259) relates only to sales on the EU market and is therefore not affected by the above fall in export sales volume. Also, the investigation showed that the profitability of sales on the Community market and on third markets were comparable in each year of the period under consideration. This shows that there was no real difference between performance on the EU and export markets. It was therefore concluded that, if any, only a negligible part of the injury suffered by the Community industry could eventually be attributed to this factor, and that it was thus not such as to break the causal link.

##### 5.4.2. Fluctuation of raw material prices

(287) The cost of raw material is a major proportion of the total cost of production of the product concerned (over 75% of the total cost of production if energy is included). As a result, welded tubes prices are highly dependant on the influence of raw material costs. The most important raw materials were coils, zinc and energy. These components increased by more than 20%, 200% and 50% respectively over the period under consideration.

(288) As explained in recitals (255) and (256), sales prices have also increased over the same period. However these prices have not increased to the extent necessary to reflect cost increases because of the pressure on the sales prices of competitors on the market and in particular due to the pressure of unfair trade of the dumped imports. Therefore the investigation concluded that raw material prices in themselves were not a cause of injury because in the absence of dumped imports it would have been possible for the Community industry to pass on these cost increases – or at least a substantial part of them - to its customers.

(289) In addition, it is underlined that such input cost increases are not limited to the Community and that given the nature of the inputs, their level and development would be expected to be similar in the countries concerned.

##### 5.4.3. Competitiveness and capacity utilisation of the Community industry

- (290) It was examined whether the injury suffered by the Community industry resulted from a lack of competitiveness by the Community industry and/or by low capacity utilisation rates. In order to examine this, the cost structure of the Community industry was compared with that of the exporting producers. Indeed, some differences in manufacturing costs were identified such as wage rates, energy costs, environmental and health and safety costs.
- (291) In respect of capacity utilisation, it is recalled that this indicator should not be overestimated as Community industry was able to produce other products on the same equipment. Furthermore, it would be more probable that problems in terms of capacity utilisation would be linked to the loss of market share of Community industry which was caused by dumped imports.
- (292) Some parties have argued that increasing operating costs have affected the competitiveness of the Community industry and caused the injury described above at section 4. In this respect it must be underlined that these extra operating costs are not substantial enough to have caused the material injury identified by this investigation.
- (293) It should be remembered that the cost of the raw materials and energy represented more than 75% of the total cost of production of the finished tubes. Therefore the potential impact of any increases in other operating costs could in any event only have an effect on 25% of the total cost of production. Such increases have been modest, so that their impact would not be material.
- (294) During the investigation, no structural inefficiency was detected which would make the Community industry uncompetitive. On the contrary, as stated in table 11, the Community industry improved its productivity by 17% during the period under consideration.
- (295) Furthermore, the investigation revealed that the EU market was very competitive not least as a consequence of the very large number of companies operating on the market. In addition to the 19 Community producers, dozens of importers from around the world also contributed to the strong competition on the EU market. Therefore as explained in the recitals above, it was concluded that the Community industry was in general very competitive and that any lack of competitiveness did not cause the injury suffered by the Community industry.

#### 5.4.4. Currency fluctuation

- (296) Some interested parties alleged that the injury suffered by the Community industry was caused by currency fluctuations which had the effect of encouraging imports to the EU.
- (297) It is recalled that the investigation has to examine whether the dumped imports (in terms of prices and volumes) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, with regard to prices, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports causes injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

- (298) Notwithstanding the above for many of the exporting countries concerned by this investigation sales are usually made in USD. However the fluctuation of the USD to the EUR over the period under consideration was limited to only 6%. The more important depreciation of the USD occurred after the end of the IP. From July 2007 to April 2008, the USD depreciated by 16% compared to the EUR.
- (299) It was therefore concluded that currency fluctuations have not caused material injury to the Community producers.

#### 5.4.5. Strikes

- (300) Some interested parties made a general allegation (without naming companies or time periods involved) that the injury suffered by Community industry was self-inflicted and resulted from problems with industrial action and strikes relating to some of the producers in the new Member States. In this respect it should be recalled that no substantiated evidence was put forward in support of this claim. Furthermore, the accusation only related to part of the Community industry. However similar injurious trends were found for producers in both the old and the new Member States. It can therefore be concluded that even in the event that some Community industry producers were affected by strikes and industrial action this fact would not have been strong enough to break the causal link between dumping and injury.

#### 5.4.6. Heavy investments

- (301) It was alleged that heavy investments by the Community industry contributed to the injury suffered. As stated at recital (264), the investigation showed that no such heavy investment was made over the period under consideration. It should also be borne in mind that, even if the allegation was substantiated, the relatively low proportion of depreciation in terms of total costs would in any event limit the impact of this allegation, and therefore it was concluded that heavy investments have not contributed to the injury suffered by the Community industry.

#### 5.4.7. Cyclical nature of the steel industry

- (302) It was alleged that the cyclical nature of the steel industry contributed to the injury suffered i.e. it is alleged that the IP fell at the low point of the cycle. First, it is underlined that injurious dumping can very well occur at all points in the economic cycle. In addition, as shown by the analysis of consumption at recital (231), the investigation does not support this argument. Indeed, consumption in the IP was buoyant and was clearly not at the low point of the cycle. The claim was therefore rejected.

#### 5.5. Conclusion on causation

- (303) The coincidence in time between, on the one hand, the increase of dumped imports from the cumulated countries, their increase in market share, the undercutting and underselling found, and on the other hand, the deterioration of the situation of the Community industry leads to the conclusion that the dumped imports are a cause of the material injury suffered by the Community industry.
- (304) After analysing the known, salient other factors together with allegations made by interested parties as detailed in recital (285) and subsequent, it is concluded that they

are not such as to break the causal link between the dumped imports from the countries concerned and the material injury suffered by the Community industry.

## **F. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY (EXPIRY REVIEW AND TURKEY INTERIM REVIEW)**

- (305) In accordance with Article 11(2) of the basic Regulation, imports from countries currently being reviewed were assessed in order to establish if there was a likelihood of continuation or recurrence of injury.
- (306) With regard to the likely effect on the Community industry of the expiry of the measures in force, the following factors were considered in line with the elements summarised above in respect of the likelihood of continuation or recurrence of dumping.
- (307) As explained above in recitals (223) and subsequent, while consumption increased by 9%, the forecast of world consumption of the product concerned, although potentially subject to a certain cyclical trend, is not expected to change to a major degree in the foreseeable future. Alternative products such as plastic piping have not been able to replace, to a large degree, welded tubes and thus decrease their consumption.

### 1. Ukraine

- (308) Since the imposition of the measures, imports from Ukraine have fallen to de minimis quantities. However, as mentioned in recitals (172) (and subsequent), there are clear indications that in the absence of measures significant imports from Ukraine would re-enter the Community market at dumped prices. Such prices would also be likely to undercut significantly those of the Community industry, given the fact that such prices would in all likelihood mirror those set by the lowest bidder in the Community.

### 2. Thailand

- (309) Recitals (119) (and subsequent) concluded that significant volumes would in all likelihood be exported from Thailand to the Community at dumped prices. These prices would also be likely to undercut significantly those of the Community industry, given the fact that such prices would in all likelihood mirror those set by the lowest bidder in the Community.

### 3. Turkey

- (310) Bearing in mind that above it is concluded that there is no likelihood of continuation or recurrence of dumping, no further analysis is required here on the likelihood of continuation or recurrence of injury.
- (311) In respect of injury issues relating to the interim review (article 11(3) of the basic Regulation) no analysis is required here because the review concluded that there was no dumping or likelihood of recurrence of dumping for this country.

### 4. Conclusion on the continuation/recurrence of injury

- (312) The likely consequence of the lifting of measures would therefore be a large increase in imports from both Ukraine and Thailand at prices which undercut those of the

Community industry. Such imports would most likely have significant detrimental effects on the Community industry. Under such circumstances the Community industry would either have to follow the decrease in prices in order to maintain market share, or maintain sales prices at current levels and instead lose customers and eventually sales. In the former case, Community industry would have to operate at a loss and in the latter case the loss of sales as such would eventually lead to increased costs followed by losses.

- (313) Moreover, the Community industry has suffered the effects of dumped imports for many years and is currently in a precarious economic situation. If this injurious situation continues/recurs the very existence of this industry would be jeopardized.
- (314) Therefore the investigation has revealed that there is, for imports from both Ukraine and Thailand, a clear likelihood of recurrence and continuation of injury to a Community industry that has been suffering the consequences of injurious dumping for many years. In respect of imports from Turkey, injurious dumping is not expected to continue or recur.

## **G. COMMUNITY INTEREST**

### **1. Introduction**

- (315) Pursuant to Article 21 of the basic Regulation, it has been examined whether despite the conclusions on dumping, injury and causal link, compelling reasons exist that would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures on imports from the countries concerned or to extend the measures in force.
- (316) In order to assess the likely impact of the imposition or non-imposition of measures and of the extension or expiry of the measures in force, the Commission requested information from all known interested parties. On this basis, the Commission sent questionnaires to 116 importers, stockists and users. No other interested party made itself known within the deadlines.
- (317) Thirty-two of the contacted unrelated importers replied. Out of them, 16 declared that they were not importing from the concerned countries and three that they are no longer active in this area of business. Of the remaining 13 unrelated importers only two submitted a complete questionnaire response. Therefore, it was not necessary to apply sampling.

### **2. Community Industry**

- (318) It is recalled that it was concluded that the Community industry has suffered material injury, as set out in recitals (250) to (274).
- (319) The imposition of anti-dumping measures is likely to allow the Community Industry to increase its sales, its market share and its sales prices. The Community industry would then be able to reach the levels of profitability which it would achieve in the absence of dumped imports, and to take advantage of growth in the Community market: this would encourage investments and the overall competitiveness of the industry.

- (320) The continuation of the measures in force will allow the Community Industry to continue operating in the framework of fair competition vis-à-vis imports originating from Thailand and the Ukraine. As a result, the positive effects deriving from the imposition of the new anti-dumping measures will not be thwarted by unfair competition.
- (321) If fair market conditions were to be restored, the Community industry is likely to regain competitiveness and increase its profit margin to more adequate levels. The Community industry has actually proven to be structurally viable through its economic results in the last decade: despite recurring unfair competition from the imports of dumped products, it has been able to slow down its loss of market shares. Moreover, as set out in recital (295), the Community Industry is competitive and able to increase its productivity.
- (322) On the other hand, should existing anti-dumping measures be repealed and new anti-dumping measures not be imposed, there will be further trade distortion which would lead to a progressive retreat of the Community industry from the market. The repeal of current measures and the important production capacity from the countries concerned, especially the PRC, would likely lead to an increasing amount of dumped imports to the Community market. In these conditions, it would become more and more difficult for the Community industry to recover and to defend its market share. Moreover the lack of investments in the Community industry may eventually jeopardize its long-term survival.

### 3. Unrelated importers/stockists

- (323) It is recalled that the cooperating unrelated importers represented less than 5% of the total import volume of the product concerned to the Community during the IP.
- (324) A number of exporters did however argue that the impact of measures on importers/traders would be substantial as they would face increasing costs for their imports from the countries concerned.
- (325) Should anti-dumping measures be imposed, the level of imports originating in the countries concerned would likely decrease. Furthermore, a moderate increase in the sale price of the product concerned in the Community may indeed occur, thus affecting the economic situation of importers/stockists, especially those sourcing from the countries under investigation. This would be because the resale prices they could offer to their customers would be more comparable to those competitors which also sourced from the Community industry.
- (326) However, this impact on the situation of importers and traders is likely to be moderate, since the product concerned represents a small part of their overall commercial activities. On the basis of the information provided by those importers/stockists which sent valid responses, it is clear that they also sell many other steel products. It was found that the product concerned represented on average less than 4% of the total turnover. Moreover, given the relatively low impact of the product concerned in users' costs, importers/stockists would likely be able to pass on increases in price to their customers.

(327) On this basis, it has been concluded that the imposition of anti-dumping measures and the continuation of the measures in force is not likely to have a serious negative impact on the situation of importers/stockists in the Community.

4. User industry

(328) The main user of the product concerned in the Community is the construction industry. The demand for the product concerned is therefore dependent upon the situation of this industry.

(329) As set out in recital (316), neither interested users nor their representative associations have made themselves known during the investigation.

(330) A number of other exporters did however assert that the impact on users/consumers would be substantial should measures be imposed. In particular it was claimed that measure would be detrimental to competition and lead to an increase in costs for users/consumers.

(331) As set out in recital (302) it cannot be excluded that the price of the product concerned in the Community would increase moderately. Nevertheless, the negative impact of increased costs on users/ consumers would likely be low, since the effect of the price of the product concerned in the users/consumers' total costs is moderate.

(332) As to the claim made by several exporters that imposition of measures to the group of countries covered by the new investigation would effectively prevent competition in the Community, the imposition of anti-dumping measures and the maintain of measures in force will improve the condition of the Community Industry and thus, together with suppliers from third countries not concerned by the measures as well as non-dumping exporters from the countries concerned, ensure the presence of a wide range of suppliers on the Community market.

(333) Taking into account the above, it is concluded that the imposition of any anti-dumping measure is not likely to cause a considerable damage to the economic situation of the users of the product concerned.

5. Upstream industry

(334) The main raw material used in the production of the product concerned is hot rolled coils ("HRC").

(335) As set out in recital (316), neither interested upstream producers of HRC nor their representative associations have made themselves known during the investigation.

(336) Should the measures not be imposed, the Community producers of HRC would likely face a reduction in demand, as a consequence of the reduced activity of the Community producers of the product concerned.

(337) On this basis, it has been concluded that the imposition of anti-dumping measures is in the interest of producers of the main raw material used in the production of the product concerned in the Community.

6. Conclusion on Community interest

- (338) The continuation of the measures on imports of the product concerned from Thailand and the Ukraine and the imposition of anti-dumping measures on imports originating in Belarus, the People's Republic of China and Russia are likely to allow the Community industry to stop losing market shares, regain lost sales and a return to adequate profitability. If, however, measures in force were repealed and anti-dumping measures were not imposed, the Community industry would likely face a growing unfair competition problem which would drive certain Community producers out of the market; an additional cost would be the shutting down or the reconversion of machineries.
- (339) Some negative effects of the imposition of anti-dumping measures would be a decrease in the volume imported and moderate costs increases for importers/stockists and users/consumers, due to a higher sales price of the product concerned in the Community.
- (340) The level of increase in sales prices would nevertheless not be considerable since competition would remain amongst Community producers, imports originating in the countries concerned made at non-dumped or non-injurious prices and imports originating in other third countries.
- (341) Finally, it has been argued by one interested party that, according to economic literature, anti-dumping measures entail 'severe welfare costs for the importing countries'. No evidence was provided in this regard in the context of the product and economic operators concerned by this case. The present investigation has to consider the case on its own merits: according to this approach, importers/stockists and users/consumers of the product concerned are unlikely to suffer serious consequences, given the very low impact of the price of certain welded tubes on the final costs for their products or purchases.
- (342) The upstream industry is likely to benefit from the continuation of measures in force and from the imposition of anti-dumping measures, in the form of a wider demand of HRC in the Community market.
- (343) Taking into account all of the above factors, it is concluded that there are no compelling reasons to repeal the existing measures and not to impose new anti-dumping duties.

## **H. TERMINATION OF THE PROCEEDING IN RESPECT OF BOSNIA AND HERZEGOVINA AND OF TURKEY**

- (344) In view of the findings set out in recitals (52) and respectively (170) onwards, it has been concluded that the proceeding should be terminated in respect of Bosnia and Herzegovina and of Turkey.

## **I. UNDERTAKINGS**

- (345) Two exporting producers in Russia and the sole in Belarus offered price undertakings in accordance with Article 8(1) of the basic Regulation
- (346) Those offers were examined. The investigation showed that most of the findings and considerations laid down in Regulation 1697/2002 (see recitals 77 and 78) which led

to the rejection of all undertaking offers during that investigation are still valid. Namely, the investigation confirmed that:

- the product concerned is a commodity product with a considerable volatility in prices even in the very short term, and therefore not very suitable for a fixed price undertaking, the volatility is due to the variation in prices of raw materials, namely hot rolled coils and zinc, which constitute major but variant components of the cost of production. Not only do raw material prices as such fluctuate significantly, such fluctuations are often exacerbated by fluctuations of the EUR/USD exchange rate. It is noted that in particular zinc is commonly traded on a USD basis. A monthly revision of prices would be necessary. If the minimum prices were indexed to the price of hot rolled coils and zinc, different indexing formulae would have to be established by sub-product group, since the energy and manpower per tonne vary between sizes. For this reason, should a review formula system be implemented, it would be necessary to establish between 3 and 4 sub-formulae for each category of product according to the size range.

(347) In addition, the product concerned is characterised by a considerable number of product types with some characteristics not easily discernible upon importation. This makes it virtually impossible to establish minimum import prices for each product type which would be meaningful and could be properly monitored by the Commission and by the customs authorities of the Member States upon importation.

(348) It is also noted that additionally to those product related reasons, there are company specific reasons to reject the undertaking offers. With regard to the Belarusian producer, it is firstly recalled that Belarus is non-market economy country as stipulated in Article 2(7)(a) of the basic Regulation and that the company did not apply for individual treatment (IT) as laid down in Article 9(5) of the basic Regulation. In addition, its co-operation in this investigation was only partial as mentioned in recitals (101) to (104) and therefore the acceptance of a price undertaking was also considered to be inappropriate for general policy reasons. With regard to one Russian exporting producer, it is noted that it also sells other products than the product concerned to the same customers in the EU. On this basis, this risk of cross-compensation is considered to be too high. With regard to the second Russian exporting producer, the company had difficulties to report accurate and reliable data which was mainly due to weaknesses in its accounting system. In these circumstances, the Commission considered that the company does not have the necessary infrastructure to implement an undertaking and to allow for an effective monitoring.

(349) Therefore, these price undertaking offers were rejected.

#### **J. ANTI-DUMPING MEASURES**

(350) In view of the conclusions reached above, the measures in place applicable to imports of the product concerned originating in Thailand and Ukraine should be maintained as in the previous regulation except for OJSC Interpipe whose margin is indicated below

<b>Country</b>	<b>Company</b>	<b>Anti-dumping</b>

		duty
Thailand	Saha Thai Steel Pipe Co. Ltd	21,7%
	All other companies	35,2%
Ukraine	OJSC Interpipe Nihnedeneprovsky Tube Rolling Plant and OJSC Interpipe Novomoskovsk Pipe Production Plant	10,7%
	All other companies	44,1%

(351) In addition, definitive measures on imports of the product concerned originating in the PRC, Russia, and Belarus should be imposed as described below.

1. Injury Elimination Level

(352) The level of the definitive anti-dumping measures should be sufficient to eliminate the material injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the materially injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(353) It was alleged by the complainant during the investigation that a 10,8% normal profit should be used in this investigation based on the return on turnover achieved in 2004 for the product concerned. This claim was based on 5 selected Community producers and 2004 was chosen as being representative because the anti-dumping measures in force were partially effective in offsetting the effect of the dumped imports.

(354) However the investigation showed that the profitability rate achieved by even these 5 selected Community producers was much lower than the 10,8% claimed. Furthermore, 2004 was not considered to be an appropriate period for this assessment because injurious dumping was taking place at that time.

(355) In the previous investigation, it was considered that a profit margin of 5% of turnover could be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping based on data from 1997 and 1998. As this information was not recent, other sources were used to find out if it was still appropriate. Firstly, welded tubes are a very mature product, the production processes for which have hardly changed since 1997. Secondly, recent data available from the BACH database for a wide range of metal manufacturing companies gives profitability levels of around 5%.

(356) It was therefore concluded that a 5% profitability level remains appropriate for this product.

(357) The non-injurious price was obtained by adding the normal profit as calculated above to the cost of production of each product type. Any difference between this non injurious price and the export price of the same product type was then expressed as a percentage of the total CIF import value.

(358) For the Chinese cooperating exporting companies, it should be recalled that none were granted MET nor IT and therefore a country-wide injury margin was calculated. The calculation was based on the co-operating exporting producers. The data for one Chinese exporter was excluded from this calculation since sufficiently complete PCN data were not reported to the Commission.

(359) As far as Belarus is concerned, a country-wide duty was also calculated based on the import prices of the German importer as mentioned at recital (95) in the absence of sufficient co-operation.

(360) In respect of Russia the co-operating exporting producers were granted individual injury margins. For non co-operators, bearing in mind that the cooperation level was above 80%, the country-wide injury margin was set at the level of the highest co-operator.

(361) In view of the conclusions reached above, the following injury margins were calculated:

Country	Company	Injury margin
The PRC	All companies	90,6%
Russia	TMK Group (Seversky Pipe Plant Open Joint Stock Company and Joint Stock Company Taganrog Metallurgical Works)	16,8%
	OMK Group (Open Joint Stock Company Vyksa Steel Works and Joint Stock Company Almetjvesk Pipe Plant )	20,5%
	All other companies	20,5%
Belarus	All companies	38,1%

## 2. Definitive duties

(362) In light of the foregoing, and in accordance with Article 9(4) of the basic Regulation, it is considered that definitive anti-dumping measures should be imposed on imports originating in the PRC, Russia and Belarus at the level of the lowest of the dumping and injury margins, in accordance with the lesser duty rule.

(363) On the basis of the above, the proposed definitive duties are as follows:

Country	Company	Anti-dumping duty
The PRC	All companies	90,6%
Russia	(364) TMK Group (Seversky Pipe Plant Open Joint Stock Company and Joint Stock Company Taganrog Metallurgical Works)	16,8%
	OMK Group (Open Joint Stock Company Vyksa Steel Works and Joint Stock Company Almetjvesk Pipe Plant )	10,1%
	All other companies	20,5%
Belarus	All companies	38,1%

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of welded tubes and pipes, of iron or non-alloy steel, of circular cross-section and of an external diameter not exceeding 168,3 mm, excluding line pipe of a kind used for oil or gas pipelines, casing and tubing of a kind used in drilling for oil or gas, precision tubes and tubes and pipes with attached fittings suitable for conducting gases or liquids for use in civil aircraft, falling within CN codes ex 7306 30 41, ex 7306 30 49, ex 7306 30 72 and ex 7306 30 77 (TARIC codes 7306 30 41 20, 7306 30 49 20, 7306 30 72 80 and 7306 30 77 80) and originating in Belarus, the People's Republic of China, Russia, Thailand and Ukraine.
2. The rate of the definitive antidumping duty applicable to the net free-at-Community-frontier price, before duty, for the products described in paragraph 1 and produced by the companies below shall be as follows:

Country	Company	Anti-dumping duty	TARIC additional code
Thailand	Saha Thai Steel Pipe Co. Ltd	21,7%	A405

	All other companies	35,2%	A999
Ukraine	OJSC Interpipe Nihnedeneprovsky Tube Rolling Plant and OJSC Interpipe Novomoskovsk Pipe Production Plant	10,7%	A345
	All other companies	44,1%	A999
The PRC	All companies	90,6%	-
Russia	(365) TMK Group (Seversky Pipe Plant Open Joint Stock Company and Joint Stock Company Taganrog Metallurgical Works)	16,8%	A892
	OMK Group (Open Joint Stock Company Vyksa Steel Works and Joint Stock Company Almetjvesk Pipe Plant )	10,1%	A893
	All other companies	20,5%	A999
Belarus	All companies	38,1%	-

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

#### *Article 2*

The anti-dumping proceeding concerning imports of the product concerned originating in Bosnia and Herzegovina is hereby terminated

#### *Article 3*

The anti-dumping proceeding concerning imports of the product concerned originating in Turkey is hereby terminated

#### *Article 4*

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

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

Done at Brussels, [...]

*For the Council  
The President  
[...]*