COMMISSION IMPLEMENTING REGULATION (EU) 2022/927

of 15 June 2022

imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation') ([1]), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EU) 2016/387 ([2]) ('the original Regulation'), the European Commission ('the Commission') imposed a countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.

(2) The countervailing duty imposed ranged from 8,7 % for Jindal Saw Limited to 9 % for Electrosteel Castings Ltd and 'all other companies'.

(3) By Regulation (EU) 2016/388 ([3]), the Commission also imposed a definitive anti-dumping duty on the same product. The anti-dumping duty imposed ranged from 0 % for Electrosteel Castings Ltd to 14,1 % for Jindal Saw Limited and 'all other companies'.

(4) Following the judgments of the General Court in T-300/16 and T-301/16 ([4]), the Commission corrected mistakes found by the General Court when calculating the anti-dumping and countervailing duty for Jindal Saw Limited. By Regulations (EU) 2020/526 ([5]) and (EU) 2020/527 ([6]), the Commission re-imposed a new definitive anti-dumping and countervailing duty for Jindal Saw Limited, at the rates of 3 % and 6 % respectively.

(5) The countervailing duties currently in force are 6 % for Jindal Saw Limited and 9 % for Electrosteel Castings Ltd and 'all other companies'. The anti-dumping duties currently in force are at rates ranging between 0 % for Electrosteel Castings Ltd, 3 % for Jindal and 14,1 % for 'all other companies'.

([1]) OJ L 176, 30.6.2016, p. 55.

([2]) Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ L 73, 18.3.2016, p. 1).

([3]) Commission Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 73, 18.3.2016, p. 53).

([4]) Judgment of the General Court of 10 April 2019, Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission, T-301/16, ECLI:EU:T:2019:234 and T-300/16, ECLI:EU:T:2019:235.

([5]) Commission Implementing Regulation (EU) 2020/526 of 15 April 2020 re-imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-300/16 (OJ L 118, 16.4.2020, p. 1).

([6]) Commission Implementing Regulation (EU) 2020/527 of 15 April 2020 re-imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-301/16 (OJ L 118, 16.4.2020, p. 14).

1.2. **Request for an expiry review**

(6) Following the publication of a notice of impending expiry ([7]), the Commission received a request for a review pursuant to Article 18 of the basic Regulation.

(7) The request for expiry review was lodged on 21 December 2020 by Saint-Gobain PAM, Saint-Gobain PAM Deutschland GmbH and Saint-Gobain PAM España S.A. ('the applicants'), on behalf of Union producers representing more than 50 % of the total Union production of tubes and pipes of ductile cast iron. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of subsidisation and continuation or recurrence of injury to the Union industry.

(8) In accordance with Article 10(7) the basic Regulation, the Commission notified the Government of India ('GOI') prior to the initiation of the proceeding that it had received a properly documented review request. The Commission invited India for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOI accepted the offer of consultations that were subsequently held on 10 March 2021. During the consultations, no mutually agreed solution could be arrived at.

1.3. **Initiation of an expiry review**

(9) Having determined, after consulting the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([8]), that sufficient evidence existed for the initiation of an expiry review the Commission initiated, on 17 March 2021, an expiry review with regard to imports to the Union of tubes and pipes of ductile cast iron originating in India ('the country concerned') on the basis of Article 18(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([9]) ('the Notice of Initiation').

(10) On the same date, the Commission initiated an expiry review of the anti-dumping measures with regards the imports of the same product ([10]).

1.4. **Review investigation period and period considered**

(11) The investigation of continuation or recurrence of subsidisation and injury covered the period from 1 January 2020 to 31 December 2020 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

(12) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed Union producers, known producers in India and the authorities of India, known importers, users as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.

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

([7]) Notice of the impending expiry of certain anti-subsidy measures, OJ C 210, 24.6.2020, p. 28.

([8]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

([9]) Notice of Initiation of an expiry review of the anti-subsidy measures applicable to imports of tubes and pipes of ductile cast iron originating in India (OJ C 90, 17.3.2021, p. 8).

([10]) Notice of Initiation of an expiry review of the anti-dumping measures applicable to imports of tubes and pipes of ductile cast iron originating in India (OJ C 90, 17.3.2021, p. 19).

(a) ***Sampling***

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

Sampling of Union producers

(15) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of three Union producers. These Union producers are part of the same group of companies. The Commission selected the sample on the basis of volume of production and sales of the like product in the Union during the review investigation period, i.e. between 1 January 2020 and 31 December 2020. The definitive sample of Union producers accounted for [70-85] % of estimated total Union production and [70-85] % of estimated total Union sales volume of the like product, and it also ensured a good geographical spread.

(16) In accordance with Article 27(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample, but did not receive any comments. The provisional sample was therefore confirmed and was considered representative of the Union industry.

Sampling of importers

(17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. However, as no unrelated importers came forward, sampling was not necessary.

Sampling of producers in India

(18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Government of India to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(19) As only three producers provided a sampling reply within the time limit provided for, the Commission decided that sampling was not necessary.

(b) ***Questionnaires***

(20) The Commission sent questionnaires to the GOI, the group of the three sampled Union producers and the three exporting producers that had provided a sampling reply. The same questionnaires had also been made available online ([11]) on the day of initiation.

(21) The Commission received questionnaire replies from the three Union producers, the GOI and from only one of the producers in India, Tata Metaliks Limited ('TML'). Though having submitted sampling replies, the other two producers in India subsequently did not submit a questionnaire reply and, hence, did not cooperate with the investigation.

(c) ***Verification***

(22) In view of the outbreak of COVID-19 and the confinement measures put in place by various third countries, the Commission could not carry out verification visits pursuant to Article 26 of the basic Regulation at the premises of the exporting producer and at the premises of the GOI. The Commission instead cross-checked remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([12]). The Commission carried out a remote crosscheck of the following exporting producer:

— Tata Metaliks Limited

([11]) https://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2521&sta=1&en=20&page=1&c_order=date&c_order_dir=Down.

([12]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

(23) The Commission sought and verified all the information deemed necessary for the investigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following Union producers and a related sales entity in Italy:

— Saint-Gobain PAM, Pont-à-Mousson, France

— Saint-Gobain PAM Deutschland GmbH, Saarbrücken, Germany

— Saint-Gobain PAM Italia S.P.A, Milano, Italy

(d) ***Subsequent procedure***

(24) On 18 March 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.

(25) Only Tata Metaliks Limited submitted comments within the deadline. The comments made by Tata Metaliks Limited were considered by the Commission and taken into account, where appropriate. Also the GOI submitted comments, but these were submitted more than 10 days after the deadline for comments had expired.

(26) In order to complete the investigation within the mandatory deadlines, point 7 of the Notice of Initiation stipulates that the Commission will not accept submissions from interested parties after the deadline to provide comments on the final disclosure. Accordingly, the Commission could not take into account the comments of the GOI. It noted nevertheless that its submission did not bring forward any new elements that the Commission had not considered during the investigation. No party requested a hearing.

1.6. **Comments on initiation**

(27) One user, i.e. Hydro Mat Benelux, and one exporting producer, i.e. Tata Metaliks Limited, submitted comments on initiation.

(28) The Commission noted that Tata Metaliks Limited submitted its comments on initiation on 17 February 2022, more than nine months after the deadline of 37 days after the date of publication of the Notice of Initiation as defined in point 5.2 of the Notice of Initiation. Therefore, the Commission did not take into consideration this submission.

(29) The Commission noted that while submitting comments on the initiation, Hydro Mat Benelux did not fully cooperate with the investigation. In particular, the company did not fill in the questionnaire set for users which could have been used for cross-checking some of the statements listed below, i.e. for example the selling prices of the exporting producers or documents related to public procurement.

(30) First, Hydro Mat Benelux claimed that the proceeding should be terminated as the request was not lodged within three months prior to the date of expiry, mentioned in the Notice of impending expiry ([13]).

(31) The Commission clarified that the submission date mentioned in the Notice of Initiation did not correspond to the date on which the request was submitted. As it can be seen in the open version of the request for review, available in the non-confidential file since 17 March 2021 and accessible by all interested parties, the request was duly submitted on 18 December 2020, that is within the time period provided for in Article 18(4) of the basic Regulation. Therefore, the claim was rejected.

(32) Second, Hydro Mat Benelux claimed that there is an excessive use of confidentiality in the request. In particular, the Union industry indexed all the indicators concerning its economic performance. The party referred to Implementing Regulation (EU) 2020/1336 ([14]) where the Commission disclosed the microeconomic data of a single Union producer.

([13]) OJ C 210, 24.6.2020, p. 28.

([14]) Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1), recitals (442) and (460-471).

(33) The Commission noted that in the Implementing Regulation (EU) 2020/1336 all micro indicators (sales prices and volumes, unit cost of production, labour costs, closing stocks, profitability, etc.) were provided in ranges or indexes.

(34) In addition, the Commission considered that the version of the expiry review request that was placed on the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of data marked as confidential in order for interested parties to make meaningful comments and exercise their right of defence throughout the proceeding.

(35) In this respect, the Commission further recalled that Article 29 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. Consequently, these claims were rejected.

(36) Third, Hydro Mat Benelux claimed that the first half of 2020 did not reflect normal economic circumstances and considered that period was not representative for making a forward-looking assessment of the consequences of the expiry of the measures under discussion. Hydro Mat Benelux claimed that the negative performance of the Union industry in the first half of 2020 was caused by the negative economic impacts due to COVID-19 and by the increase in cost of raw materials on world markets which could not be passed on to downstream consumers. Moreover, it claimed that for the period 2017-2019 the main indicators did not demonstrate vulnerability but rather a healthy Union industry, in particular when analysing the production, the production capacity, the inventories, the investments, the sales prices and the profitability.

(37) The Commission recalled that Article 18 of the basic Regulation requires that the expiry review request shall contain sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of injury. In the present case, the specific injury analysis in the expiry review request contained evidence pointing to a significant penetration of the Union market by Indian imports made at prices that substantially undercut and undersell the Union industry's prices. Accordingly, the Commission considered that the expiry review request contained sufficient evidence of continuation of injury and rejected the claim.

(38) Fourth, Hydro Mat Benelux analysed the period 2017-2020 and argued that the available import data did not support the claim of likelihood of recurrence of injury. Moreover, Hydro Mat Benelux claimed that the Indian export prices, the undercutting and underselling margins calculated by the applicant were not reliable as the export prices reflected the transfer price between related parties, i.e. the Indian producers and their related subsidiaries. Finally, Hydro Mat Benelux claimed that the Indian producers have increased their production capacity in order to cope with the growing Indian domestic market and that the main Indian exporting producers did not plan to extend their production capacity.

(39) The Commission considered that none of the allegations disproved the conclusion that there was sufficient evidence for the initiation of an anti-subsidy review investigation. Indeed, the expiry review request contained sufficient evidence that subsidised imports had a materially injurious impact on the state of the Union industry. In particular, the applicants provided not only undercutting calculations at Union border level but also at the level of the delivery to customer premises showing an undercutting of no less than 14,9 %. The specific injury analysis of the expiry review request showed increased penetration of the Union market (both in absolute and relative terms) by imports from India made at prices that substantially undercut the Union industry's prices. This appears to have caused injury to the Union industry, shown for example by decreases in sales and market share and by a deterioration of financial results. Therefore, the claim was rejected.

(40) Regarding the claim that the increase of the Indian production will be directed only to the Indian market, Hydro Mat Benelux did not provide any evidence. Consequently, the claim was rejected.

(41) Fifth, Hydro Mat Benelux claimed that general competitiveness issues should not justify a finding of continuation or recurrence of injury. Hydro Mat Benelux listed various items such as the fact that Union consumption fell since Eurozone crisis with a decrease of public spending, and thus had a negative impact on the Union industry's competitiveness, the competition of plastic pipes, the difficulty attracting employment, the maintenance of dominant position, the pressure of cheaper Chinese imports on tender process.

(42) This claim is addressed below in recital (256).

(43) After disclosure, Tata Metaliks Limited submitted that the data in the review request relating to the Union industry's data and the imports covered the period of July 2019 to June 2020. However, the Notice of Initiation defined the review investigation period to be January 2020 to December 2020. In the company's view, the applicants should have updated the expiry review request based on the review investigation period defined in the Notice of Initiation, and these data should have been made available to parties. By not circulating such updated review request to the parties, the Commission violated in its view Article 12.1.2 and Article 12.1.3 of the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement').

(44) First, it is the Commission's common practice to base its findings on the most recent available data. Such data may not necessarily correspond to the period defined in the expiry review request since it may not have been available at the time when the request for review was lodged. The SCM Agreement does not contain any provision requiring the Commission to base its findings on the same period as defined in the expiry review request. Second, all the parties had the possibility to comment on the findings and evidence that related to the review investigation period defined in the Notice of Initiation during the investigation. Therefore, the Commission considered that it did not breach any procedural rights or violated the SCM Agreement and rejected the claim.

(45) Tata Metaliks Limited also referred to the fact that the Commission rejected its comments on initiation because they came after the deadline provided for in the Notice of Initiation (see recital (28). In its view the deadline would only apply after reception of the revised data by the applicants that would relate to the review investigation period as defined in the Notice of Initiation. Tata Metaliks Limited also argued that it is 'a settled principle of natural justice' and 'a settled position of law across all jurisdictions' that submissions regarding questions of law can be raised beyond deadlines.

(46) As explained in the recital (44), the review investigation period related to the most recent period for which data was available, and this period does not always correspond to the preliminary assessment of the review request. Furthermore, the deadline in the Notice of Initiation related explicitly to the date of publication of the Notice, and not to any other date such as submission of any information by a party. The deadline in the Notice of Initiation does not distinguish between questions of law and of fact and applies equally to both. The Commission thus rejected the claim.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(47) The product concerned is the same as in in the original investigation namely tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes'), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), originating in India, currently falling under CN codes ex 7303 00 10 (TARIC code 7303 00 10 10) and ex 7303 00 90 (TARIC code 7303 00 90 10) ('the product concerned').

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

2.2. **Like product**

(49) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of country concerned; and

— the product produced and sold in the Union by the Union industry.

(50) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

(51) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of subsidisation.

3.1. Evolution of the imports after the imposition of the measures

(52) In the original investigation period ([15]), India exported to the Union [80 000 – 100 000] tonnes of the product concerned (based on EU27) ([16]). Between 2016 and 2018, after the imposition of the definitive measures in March 2016, imports decreased and fluctuated between 38 000 to 55 000 tonnes yearly. In 2019, the imports from India increased again to [64 000 – 75 000] tonnes.

(53) During the review investigation period, imports of the product concerned decreased to [44 000 – 52 000] tonnes. After the review investigation period, in 2021, the imports increased again to the level of 2019.

(54) Overall, imports of the product concerned from India remained in the review investigation period at important levels and accounted for about [10 – 14] % of the Union market, compared to [15 – 20] % market share the Indian imports represented during the original investigation period.

3.2. Basis for the findings

(55) Only one company, Tata Metaliks Limited, cooperated with the investigation (see Section 1.5). The company benefitted from the three export schemes countervailed in the original investigation, mostly for its export to third countries. However, the company sold in the review investigation period most of its production on the domestic market ([17]). The Indian exporting producers that exported to the Union in significant quantities did not cooperate. Therefore, the Commission decided not to limit itself to use of the information submitted by Tata Metaliks Limited to determine the level of subsidisation of exporting producers of ductile pipes in India, and to rely instead on facts available in accordance with Article 28 of the basic Regulation.

(56) In view of the above, the Commission used for its analysis all facts available to it, and in particular:

— The request for an expiry review pursuant to Article 28 of the basic Regulation;

— Findings of the original investigation;

— Information provided by the GOI;

— Information provided by Tata Metaliks Limited;

— Findings in the Commission Implementing Regulation (EU) 2022/433 ([18]).

3.3. Subsidy schemes examined in the current investigation

(57) The Commission examined whether there was continuation of subsidisation by analysing whether the subsidies countervailed in the original investigation continued to confer benefit to the Indian industry of ductile pipes and tubes. In case of subsidy schemes that ended, the Commission also examined whether these schemes had been replaced by other similar schemes and whether new schemes were created.

([15]) 1 October 2013 to 30 September 2014.
([16]) The figures in the original investigation were shown in ranges or indexes because of confidentiality.
([17]) The exported quantities represented in the review investigation period less than 0,1 % in terms of turnover of the product concerned.
([18]) Commission Implementing Regulation (EU) 2022/433 of 15 March 2022, imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ L 88, 16.3.2022, p. 24), recitals (190)-(205).

(58) The Commission decided that, in view of the findings of this Section, which confirmed the existence of continued subsidisation with respect to the subsidies countervailed in the original investigation, there was no need to investigate all other subsidies alleged to exist by the applicant. Once the Commission establishes that there is evidence of continued subsidisation above *de minimis* pursuant to Article 18 of the basic Regulation, it is not necessary to establish the exact amount of subsidisation in an expiry review investigation.

(59) In the original investigation, the Commission countervailed the following schemes:

(1) Government revenue foregone or not collected that is otherwise due:

— Duty Exemptions and Remission Schemes

(a) Focus Product Scheme, replaced by a scheme named 'Merchandise Exports from India Scheme' ('MEIS') in the period 2015-2020;

(b) Export Promotion of Capital Goods Scheme ('EPCGS');

(c) Duty Drawback Scheme ('DDS')

(2) Provision of goods or services for less than adequate remuneration

— Provision of iron ore for less than adequate remuneration

3.3.1. *Focus Product Scheme ('FPS') replaced by Merchandise Exports from India Scheme in 2015-2020*

3.3.1.1. Findings of the original investigation

(60) In the original investigation, the Commission concluded that the Focus Product Scheme in place during the original investigation period provided for subsidies within the meaning of Article 3(1)(a)(ii) of the basic Regulation. This scheme was based on the Foreign Trade Policy ('FTP') plan for 2009-2014.

(61) The subsidy rates established in the original investigation for the FPS scheme varied from 3,11 % to 4,35 %.

(62) After the original investigation period, the scheme was however ended and it was replaced by a new scheme named 'Merchandise Exports from India Scheme' ('MEIS'). The MEIS replaced a number of pre-existing schemes including the FPS. The MEIS provided for similar conditions as the FPS countervailed in the initial investigation. Hence, in the original investigation, the Commission considered that the findings with regard to FPS would also apply to MEIS.

3.3.1.2. Continuation of the subsidy scheme

(63) The MEIS scheme continued to be in place in the review investigation period. The existence of the scheme was also confirmed by GOI in the questionnaire reply as well as by the cooperating exporting producers Tata Metaliks Limited that also benefitted from the scheme.

(a) ***Legal basis***

(64) The MEIS is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in FTP documents, which are normally issued by the Ministry of Commerce every five years and updated regularly.

(65) The MEIS is described in the five-year Foreign Trade Policy plan for 2015-20 ('FTP 2015-2020'). The procedures governing FTP 2015-2020 are further detailed in a "Handbook of Procedures, 2015-2020" ('HOP 2015-2020').

(66) The detailed description of the MEIS is contained in chapter 3 of FTP 2015-2020 and in chapter 3 of HOP 2015-2020.

(b) ***Eligibility***

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

(c) ***Practical implementation***

(68) Eligible companies can benefit from the MEIS by exporting specific products to specific countries, which are categorised into Group A ('Traditional Markets' including all Union Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are listed in Appendix 3B of the updated HOP.

(69) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export. The MEIS rate in the review investigation period amounted to 3 %.

(70) Pursuant to paragraph 3.06 of the FTP 2015-20, certain types of exports are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.

(71) The duty credits under the MEIS are freely transferable and valid for a period of 18 months from the date of issue while the duty credit scrips issued on or after 1 January 2016 shall be valid for a period of 24 months from the date of issue as per paragraph 3.13 of the updated HOP 2015-2020.

(72) They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods, (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment, (iii) payment of service tax on procurement of services. Scrips can also be sold on the market.

(73) An application for claiming benefits under the MEIS must be filed online on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the online application. The relevant Regional Authority of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the Regional Authority has no discretion over the granting of the duty credits.

(d) ***Financial contribution and benefit***

(74) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI issues a duty credit, which is booked by the exporting producer as an account receivable which can be offset by the exporting producer at any moment. This constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the MEIS as being the sum of the amounts earned on export transactions made under this scheme during the IP.

(e) ***Specificity***

(75) The MEIS is contingent in law upon export performance, and therefore deemed to be specific within the meaning of Article 4(2)(a) and 4(2)(b) of the basic Regulation.

(f) ***Conclusion on the MEIS***

(76) The Commission concluded that the MEIS provided subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The MEIS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties paid on capital goods, thus decreasing the GOI's duty revenue, which would be otherwise due. In addition, the MEIS duty credit confers a benefit upon the exporter who is not subject to the payment of those import duties. For a company, which sells the MEIS scrips on the market the scheme provides for a direct financial contribution.

(77) The Commission noted that the MEIS expired after the review investigation period, on 1 January 2021. However, until the end of 2021, the companies may still apply for the MEIS scrips for the export transactions made in 2020. Furthermore, the companies are still able to use the MEIS scrip obtained in 2021 to balance import duties due, until 15 September 2023. Thus, benefits under this scheme were received during the review investigation period and will continue even after the imposition of measures.

(78) The Commission further noted that in August 2021, the GOI published guidelines of a new scheme named Remission of Duties and Taxes on Exported Products Scheme ('RoDTEP'), which replaces the MEIS. The RoDTEP scheme is mentioned to be a mechanism for reimbursement of taxes/duties/levies, at the central, state and local level, which are currently not being refunded under any other mechanism, but which are incurred in the process of manufacture and distribution of exported products ([19]). The GOI announced reimbursement rates for the different sectors. These rates are subject to revision at any point of time. Although the rates for the iron industry and the product concerned were not announced at the time of the investigation, the sector requested to be included in the scheme, as also confirmed by the cooperating producer, Tata Metaliks Limited, and a rate for the industry was still being discussed. ([20])

3.3.1.3. Conclusion

(79) Given that the legal situation has not substantially changed, the Commission considered that in the review investigation period, the MEIS continued to confer a benefit to the ductile pipes industry. The Commission made the same findings in the Implementing Regulation (EU) 2022/433.

(80) Due to the lack of cooperation, it was not possible to calculate the precise level of subsidisation of this scheme during the review investigation period. The Commission resorted to facts available according to Article 28 of the basic Regulation for this purpose. The subsidy rate in the original investigation period with regard to the FPS countervailed in the original investigation and replaced by the MEIS (that was found to confer similar benefits) varied between 3,11 % to 4,35 % (see recital (61).

(81) Since the MEIS rate amounted to 3 % FOB compared to 5 % FOB under the FPS in the original investigation period, the benefit received by ductile pipe industry under the MEIS decreased in the RIP accordingly. In the Implementing Regulation (EU) 2022/433, the benefits found for the stainless steel cold-rolled producers were 1,87 % and 1,92 % for the MEIS rate of 2 %. The Commission considered that benefits to the ductile pipes producers under the MEIS would thus similarly amount to slightly below 3 % and therefore, would not be negligible.

(82) After disclosure, Tata Metaliks Limited submitted that the MEIS provided for reimbursement of (a) indirect taxes linked to the production and distribution of the exported products, and (b) cumulative indirect taxes on inputs consumed in the production of exported products. It argued that under the SCM Agreement, the refund of these categories of taxes are not countervailable. It also claimed that even if the MEIS was found countervailable, this program was terminated on 31 December 2020.

(83) The Commission rejected these claims. As explained in recitals (60)- (81), companies in India are reimbursed a fixed percentage of the FOB value of the exports in form of a duty scrip. The conditions of the scheme do not impose that the value of the duty scrip have to correspond to the amount of taxes that companies paid, nor are those amounts verified. With regard to the likelihood of the continuation of the subsidy scheme, as mentioned in recital (77), companies are still able to use the MEIS scrip obtained in 2021 to balance import duties due, until 15 September 2023. Thus, benefits under this scheme will continue well beyond the review investigation period.

(84) Tata Metaliks Limited also claimed that the RoDTEP did not provide benefits at the time of its submission (on 31 March 2022) and the Commission cannot thus consider the fact that the benefit was being discussed as the likely (future) subsidisation of the product concerned.

([19]) RoDtep Scheme guidelines: https://fieo.org/uploads/files/file/Notification%20No_%2019%20English.pdf and https://commerce.gov.in/press-releases/centre-notifies-rodtep-scheme-guidelines-and-rates/

([20]) https://www.livemint.com/industry/govt-should-include-iron-and-steel-in-rodtep-to-make-exports-competitive-eepc-11640938763351.html

(85) In relation to the RoDTEP scheme, the Commission noted that Tata Metaliks Limited itself considered during the remote cross-check that a new rate for the ductile pipes industry is to be negotiated. The fact that the rate was not decided at the moment of its submission did not put into question the strong likelihood that the new rate will be established and the subsidisation under this new scheme will continue beyond 2023. The Commission thus rejected this claim.

3.3.2. *Export Promotion of Capital Goods Scheme*

3.3.2.1. Findings of the original investigation

(86) In the original investigation, the Commission established that the scheme named Export Promotion of Capital Goods ('EPCGS') provided a countervailable subsidy, and constituted a financial contribution by the GOI. This scheme was still applicable during the review investigation period.

(a) ***Legal basis***

(87) The detailed description of the EPCGS is contained in chapter 5 of the FTP 2015-2020 and in chapter 5 of HOP 2015-2020.

(b) ***Eligibility***

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

(c) ***Practical implementation***

(89) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced duty rate. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of goods deemed for export during a certain period. Under the FTP 2015-2020 the capital goods can be imported with a 0 % duty rate under the EPCGS. The export obligation, which amounts to six times the duty saved, must be fulfilled within a period of maximum six years.

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

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

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

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

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

(94) In the original investigation, the amount of countervailable subsidies was calculated, in accordance with Article 7(3) of the basic Regulation, based on the unpaid customs duty on imported capital goods spread across a period, which reflects the normal depreciation period of such capital goods in the industry concerned. The amount so calculated, which is attributable to the IP, was adjusted by adding interest during this period in order to reflect the full time value of the money. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. In accordance with Article 7(1)(a) of the basic Regulation, fees incurred by the companies to obtain the subsidy were deducted from the total subsidy amount where claimed.

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

(96) The subsidy rate established in the original investigation period with regard to this scheme varied between 0,03 % and 0,38 %.

3.3.2.2. Continuation of the subsidy scheme

(97) In the review request and corresponding annexes, the applicant provided evidence that producers of ductile pipes in India continued to benefit from the scheme. The existence of the scheme was also confirmed by the GOI in the questionnaire reply. Moreover, the Commission established that Tata Metaliks Limited used the scheme to import capital goods used in the manufacturing of the product concerned. The benefit of the scheme could be allocated to the product concerned during the review investigation period.

(98) Accordingly, the Commission concluded that there is sufficient evidence showing that the exporting producers continued benefitting in the review investigation period from the subsidies under the EPCGS scheme.

(99) Due to the lack of cooperation, it was not possible to calculate the precise level of subsidisation of this scheme during the review investigation period. The Commission resorted to facts available according to Article 28 of the basic Regulation for this purpose. The subsidy rate established in the original investigation period with regard to this scheme varied between 0,03 % and 0,38 % (see recital (96)).

(100) Based on the above the Commission concluded that the level of subsidisation conferred by this scheme in the review investigation period was not negligible, and in any event not below the levels found in the original investigation.

(101) Following disclosure, Tata Metaliks Limited argued that the EPCGS scheme constituted a permissible subsidy since it provided for the exemption of taxes of exported products when destined for domestic consumption, and thus could not be countervailed.

(102) As recalled in recital (93), capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (l), of the basic Regulation, because they are not consumed in the production of the exported products. The Commission thus rejected this claim.

3.3.3. *Duty Drawback Scheme*

3.3.3.1. Findings of the original investigation

(103) In the original investigation, the Commission found that exporting producers of the product concerned benefitted from a Duty Drawback Scheme providing for a reimbursement of a certain percentage of a FOB value of exports ('the DDS rate'). The DDS rate for the product concerned in the original investigation period was 1,9 % of the FOB value. The DDS scheme was still applicable during the review investigation period.

(a) ***Legal basis***

(104) The legal basis applicable during the review investigation period was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as amended in 2006 and then replaced by Customs and Central Excise Duties Drawback Rules, 2017 ('the 2017 Rules') which entered into force on 1 October 2017. The method of calculation of this duty drawback scheme is described under Rule 3(2) of the 1995 DDS Rules. Rule 12(1)(a)(ii) of the said DDS Rules governs the Declaration that the exporting producers need to file in order to benefit from the scheme. These Rules have remained identical in the 2017 DDS Rules and correspond to Rule 3(2) and Rule 13(1)(a)(ii) respectively.

(105) In addition, Circular No 24/2001 contains specific instructions how to implement the Rule 3(2) and the Declaration that exporters need to produce under the Rule 12(1)(a)(ii).

(106) The Rule 4 of the 1995 DDS Rules stipulates that the Central Government may revise amount or rates determined under the Rule 3. The GOI has made a number of modifications, the last ones revising the rates being Notification No 95/2018 – CUSTOMS and Notification No 07/2020 – CUSTOMS.

(107) The DDS rate for the product concerned in the original investigation period was 1,9 % of the FOB value.

(b) ***Eligibility***

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

(c) ***Practical implementation***

(109) Under this scheme, any company exporting eligible products is entitled to receive an amount corresponding to a percentage of the declared FOB value of the exported product. Rule 3(2) of Custom & Central Excise Duties Drawback Rules specifies how the amount of the subsidy is to be calculated. The refundable amount is based on industry-wide average values of relevant customs duties paid on imported raw materials and an average industry consumption ratio collected from what the GOI considers as being representative manufacturers of the eligible export products (so called 'All Industry Rate' or the 'AIR'). The GOI then expresses the amount to be refunded as a percentage of the average export value of the eligible exported products.

(110) The GOI uses this percentage to calculate the amount of the duty drawback all eligible exporters are entitled to receive. The rate for this scheme is determined by the GOI on a product-by-product basis.

(111) According to GOI, duty drawback can also be determined based on the actual duty incidence, in case of products, which are not eligible for the "AIR", or in case of companies, which find that the "AIR" rebates less than 80 % of the actual duty/tax incidence.

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

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

(114) The drawback amount can be used for any purpose and, in accordance with Indian accounting standards, the amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

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

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

(116) The rate of duty drawback for exports is determined by the GOI on a product-by-product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Neither does the scheme conform to the rules laid down in Annex I item (I), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The cash payment to the exporter is not necessarily linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials. In addition, there is no system or procedure in place to confirm which inputs are consumed in the production of the exported products and in what amounts. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system (Annex II(5) and Annex III(II)(3) to the basic Regulation).

(117) The payment by the GOI subsequent to exports made by exporters is contingent upon export performance and therefore this scheme is deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.

(118) In view of the above, the Commission concluded that the DDS is countervailable.

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

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

(120) In view of the non-cooperation of the main exporting producers, as mentioned in recital (55), the Commission was unable to verify whether they actually pay import duties for the raw materials used in the production of the product concerned. Had this claim been made and confirmed, despite the absence of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, the Commission would have carried out a verification of the custom duties paid for the calculation of the excess remission in accordance with Annex II (5) to the basic Regulation.

(121) In the light of the above, the Commission considered appropriate to assess the benefit under the DDS as being the sum of the drawback amounts earned on export transactions made under this scheme during the original investigation period.

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

(123) The subsidy rates established with regard to this scheme during the original investigation period varied between 1,37 % and 1,66 %.

3.3.3.2. Continuation of the subsidy scheme

(124) In the review request and corresponding annexes, the applicant provided evidence that the ductile pipe industry continued to benefit from the DDS during the review investigation period. Furthermore, the GOI confirmed the continuation of the DDS in the questionnaire reply. In addition, the cooperating producer, Tata Metaliks Limited also benefitted from the scheme during the review investigation period, mostly for its exports to third countries.

(125) In their questionnaire replies, both Tata Metaliks Limited and GOI submitted that the DDS was not a countervailable subsidy. The GOI further argued that in order to constitute a subsidy, the drawback of indirect taxes or import charges must be in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product. Even in such cases, only the excess drawback could be in the GOI's view countervailed. To support the claim, GOI referred to Panel Report, European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, WT/DS486/R.

(126) The GOI further submitted that the eligibility within the scheme was not contingent upon export performance nor limited to any sector, industry and/or region. In its view, the drawback neutralizes Custom and Central Excise duties paid calculated on average quantities of relevant inputs (imported and domestic), that are observed as ordinarily used in the manufacture of the class of goods exported. The differing manner of sourcing of inputs by individual exporters is factored and evened out in averages. Hence, the GOI considered that the DDS was a tax/duty rebate and not a subsidy.

(127) As detailed in recitals (115)-(118), the Commission considered in the original investigation that the DDS did not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Contrary to the statements of the GOI, benefits received by the companies under the DDS do not have any direct link with duties due on imports of raw materials used by the company in the exported products. An exporting company receives cash payments, which are linked only with the FOB value of its exports. Companies are not required to import any raw materials at all.

(128) Therefore, and as the mechanism of the scheme does not provide for company by company assessment of what are the taxes/charges paid for the consumed production inputs, the Commission cannot consider the entire amount of the duty drawback under the DDS as a mere compensation for duties/charges paid by companies on raw material consumed in the production of the product concerned. Finally, in view of the non-cooperation of the main exporting producers, the Commission was unable to verify case specific links between the benefit under DDS and the potential duties paid on import of raw materials used in the production of the product concerned.

(129) Therefore, the Commission concluded that in the review investigation period, the DDS continued to provide benefit to the exporting producers of ductile pipes in India. Furthermore, in the absence of cooperation of an exporting producer with a representative volume of export to the Union in the review investigation period, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period would be calculated. However, for the finding of the continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. Moreover, although since the original investigation period the duty drawback rate for the product concerned slightly decreased (from 1,9 % to 1,8 % and then to 1,6 % in the review investigation period), the DDS's rules have remained unchanged. Even if the decrease (of 16 %) of the DDS rate translated into a proportional decrease of the levels of subsidisation compared to the levels found in the original investigation (of 1,37 % to 1,66 %), the Commission considered that this level of subsidisation under the scheme was still non-negligible.

(130) Therefore, the Commission concluded that in the review investigation period, the DDS scheme continued to provide subsidies to ductile pipes producers.

(131) After disclosure, Tata Metaliks Limited argued that there is an adequate linkage between the drawback rates and the duties paid on materials consumed in the production of the product concerned. It mentioned in particular that in order to receive the duty drawback, exporters must submit the shipping bill, mentioning the duty drawback claim applicable to the product. It is only after verification that the Indian Customs generate a shipping bill mentioning the drawback amount. Therefore, in its view, the duty drawback did not constitute an excess remission.

(132) As already explained in detail in recital (109), the Commission considered that the duty drawback claim relates to a fix percentage of an amount to be refunded. It noted that such an amount did not necessarily correspond to an amount of duties that a company would pay for inputs consumed in the production. Furthermore, as noted in recital (128), non-cooperation of the exporting producers made it impossible to verify whether they actually pay import duties for the raw materials used in the production of the product concerned. The Commission therefore rejected the claim.

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

3.3.4.1. Findings of the original investigation

(133) In the original investigation, the Commission considered that by a set of measures, the GOI entrusted the iron ore mining companies to provide iron ore at less than adequate remuneration. This provision of goods constituted a financial benefit for the recipients and was found specific, and thus, countervailable ([21]).

(134) First, as of March 2007 the GOI imposed export taxes on iron ore, initially at a rate of 300 INR per tonne (corresponding to a percentage between 12 % and 15 %). In March 2011 the rate was increased to 20 %, and in December 2011 it was further increased to 30 %. Such export restraint through export taxes aimed at protecting and promoting downstream industries by providing domestic downstream industries with cheap raw materials and inputs.

(135) Second, in May 2008 the Ministry of Railways introduced a "Dual-Freight Policy" ('DFP'), a freight charge difference between the transportation of iron ore for domestic consumption and for export. Knowing that the railway freights accounts for a very significant part of the total cost of the iron ore, the average difference between the transportation of iron ore for domestic consumption and for export was threefold.

(136) Those two measures, therefore, aimed at discouraging exports of iron ore, thereby constituting a system of "targeted export restrains", was basically established in 2007/2008 and further expanded in March and December 2011 with the increases in the rate of the export tax on iron ore.

(137) In order to determine whether the first element was met, i.e. whether there was entrustment or direction to the iron ore mining companies by the GOI, the Commission analysed whether the GOI's support to the ductile pipes industry (in particular through the price distortions found on iron ore) was effectively an "objective" of a government policy (as opposed to merely a "side-effect" of the exercise of general regulatory powers). The Commission noted that a number of documents supported its conclusion that the GOI explicitly pursued as a policy objective the support of the ductile pipes industry. In particular, the 2005 Dang Report explicitly contained the policy objective of benefiting Indian steel producers ("*assured access to indigenous iron ore supplies at a discount to world prices*") as well as the indication that this advantage had to be preserved and encouraged. The Commission observed that, pursuant to the policy objectives set out in that Report, the GOI took certain measures to support its ductile pipes industry specifically.

(138) Various official documents showed the link between the policy objectives to support the ductile pipes industry and the related measures successfully taken by the GOI to achieve those objectives, such as in particular, the report of the Working Group on Steel Industry for the 12th five-year plan, issued in November 2011.

(139) The Commission thus found that, by imposing such targeted export restraints (in particular through export taxes and the dual freight policy), the GOI put Indian iron ore mining companies into an economically irrational situation, which induced them into selling their goods for a lower price than they could obtain in the absence of this policy. Indeed, the measures taken by the GOI restricted the freedom of action of the iron ore mining companies by limiting in practice their business decision as to where to sell their product and at what price, thereby directing them to provide iron ore domestically for less than adequate remuneration.

([21]) The original regulation, recitals (131) – (278).

(140) The Commission also found that the GOI "expected" the iron ore mining companies not to dramatically reduce domestic output (in view of the export restrictive measures in place) but to maintain a stable supply of domestic iron ore. Indeed, the Commission observed that it was easy to foresee *ex-ante* that the iron ore mining companies would not frustrate significant initial investments and high fixed costs by lowering the production output just in order to avoid oversupply and subsequent downward pressure on domestic prices pursuant to the GOI's measures. In other words, when applying the target export restraints, the GOI knew how the iron ore producers will respond to the measures and what consequences will result from them. In view of their business operations and cost structure, while these producers may lower their domestic production a bit to respond to the export restraint, they would not shut it down or adapt it to a very low level and, indeed, the data showed those intended effects. In the period 2012-2013 the export sales decreased by more than 60 % compared with 2011-2012 and continued to decrease significantly, reaching a drop by 84 % in 2014-2015 in comparison with 2011-2012. At the same time production decreased only by 24 % between 2011-2012 and 2014-2015. In this sense, the Commission found that the input producers were entrusted or directed by the government to provide goods to the domestic users of iron ore, i.e. steel manufacturers, including the ductile pipes producers, for less than adequate remuneration. The iron ore mining companies were given the responsibility to create an artificial, compartmentalised, low-priced domestic market in India and, in this respect, they acted as a proxy for the GOI to carry out its policy of providing iron ore for less than adequate remuneration to the ductile pipes industry.

(141) Finally, the Commission also found evidence showing that the GOI itself acknowledged the success of its targeted export restraints policy, showing that the result was intended and not merely a side effect of regulatory measures.

(142) In conclusion, the Commission found that the GOI had entrusted the mining companies to carry out its policy to create a compartmentalised domestic market and to provide iron ore to the domestic iron and steel industry for less than adequate remuneration. Far from a simple measure to increase revenue, the export tax and the DFP clearly amounted to the affirmative actions taken by the GOI to induce iron ore mining companies to carry out the stated policy objective to support the iron and steel industries, and in particular, the ductile pipes industry.

(143) The Commission then assessed the second element, i.e. whether the iron ore mining companies in India are "private bodies" entrusted by the GOI within the meaning of Article 3(1)(a)(iv) of the Basic CVD Regulation. In this respect, the Commission found that the two Indian exporting producers were purchasing the overwhelming majority of the iron ore from private undertakings, except for a small quantity of iron ore purchased from the National Mineral Development Corporation ('NMDC'), a State-owned company. Regardless of the publicly-owned nature of the NMDC (and its potential characterisation as a "public body"), the Commission considered all those suppliers as "private bodies" entrusted or directed by the GOI within the meaning of Article 3(1)(a)(iv) of the Basic CVD Regulation to provide iron ore for less than adequate remuneration.

(144) In the next step, the Commission verified the third element, i.e. whether the iron ore mining companies had actually carried out the above-mentioned governmental policy to provide iron ore for less than adequate remuneration. In this respect, the Commission noted that the targeted export restraints achieved the goal pursued by the GOI of discouraging exports and keeping iron ore available for the domestic downstream industry at lower prices. Notwithstanding a reduction in production of iron ore due to the closedown of some mines in view of environmental reasons, the Indian market showed a constant and irrational overcapacity compared to the sum of domestic consumption and exports minus imports. This led to an excess supply of iron ore on the domestic market as acknowledged and sought by the GOI, in view of the natural impossibilities for the mining companies to quickly adapt their production to the export restraints.

(145) The Commission further analysed the impact of the excess supply of iron ore due to the GOI's export restraints on the domestic price of iron ore in India. Taking the import price of iron ore in China (China being the biggest imported of iron ore) as well as an adjusted FOB Australian price (to remove the costs of international freight) as the closest possible proxies for an undistorted Indian domestic price, the Commission found that the GOI's interventions on iron ore (which led to a drastic reduction of exports of iron ore and to an excess supply in India) also had an impact on the domestic prices of iron ore. First, since 2008 domestic prices of iron ore in India were constantly lower than international prices, and second, while international prices showed a significant increase over the years 2008 to 2011, corresponding to the two points in time when the export restraints were introduced (2007/2008) and enhanced (2011), the trend of domestic prices of iron ore in India was rather flat, as if it was separated and unaffected by the situation in the rest of the world. Hence, according to the Commission, the GOI's targeted export

restraints achieved the objective of making iron ore available to domestic industries at lower prices by keeping the domestic Indian price stable, although the iron ore prices were increasing significantly on the world market. The Commission concluded that there was no reason why the Indian prices should not have followed the trends of international prices, but for the system of targeted export restraints set up by the GOI. Indian producers of iron ore would have benefited from more profitable sales at the higher international prices absent the targeted export restraints. Instead, they were induced to continue production and provide iron ore locally at lower prices in order to implement the GOI's policy objectives.

(146) Finally, the Commission examined the last two elements, i.e. whether the function of proving iron ore for less than adequate remuneration would normally be vested in the GOI, and whether such a practice, in no real sense, differed from practices normally followed by the GOI. The Commission found that the provision of iron ore located in Indian soil to the Indian steel industry was a function that is normally vested in the GOI, since the GOI decided through its regulations how to provide raw materials located within India in the exercise of its sovereignty over its natural resources. As regards the "in no real sense differs" criterion, the Commission noted that this criterion requires an affirmative finding that the provision of goods by the entrusted private bodies does not, in any real sense, differ from the hypothesis that the government had provided such goods itself. In this respect, the Commission found that there was no difference, in any real sense, between directly intervening in the market with providing iron ore under a system of constantly changing government prices or by entrusting the responsibility to provide iron ore for less than adequate remuneration to iron ore mining companies.

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

3.3.4.2. Continuation of the subsidy scheme

(148) Both Tata Metaliks Limited and GOI submitted that one of the two targeted export restraints identified by the Commission in the original investigation, the DFP, was discontinued on 10 May 2016. They submitted that since that date, the transport of iron ore both for domestic consumption and for export are subject to the same conditions and costs.

(149) The Commission assessed all the evidence contained in the review request and the corresponding annexes on the continuation of the measure, as well as the evidence found during the investigation. The investigation revealed that, despite the discontinuation of the DFP in May 2016, through entrustment of the iron ore mining companies, in the review investigation period, the GOI continued providing iron ore for less than adequate remuneration to the Indian producers of the product concerned.

(150) First, in the review investigation period, the export tax of 30 % on high-grade iron ore was still in force. The GOI confirmed that the last change in export taxes was done via a notification No 15/2016-Customs dated 1 March 2016 by which low grade iron ores (having iron content below 58 %) were exempted from export duty (the low grade iron ore is not used by the ductile pipes companies).

(151) Second, the Commission noted that on 15 January 2021, the GOI adopted a new policy on iron ore traffic ([22]). The policy (called 'Iron Ore Policy, 2021') sets up prioritisation related to loading and unloading of the iron ore based on different customer categories where the domestic transport of the iron ore has priority over the transport for export. As explicitly mentioned, the purpose of the new policy is to "*promote of domestic manufacture of steel*". Therefore, similar to the previous DFP, this new policy also clearly constitutes an additional measure in favour of the domestic steel industry implemented by GOI showing its deliberate objective a lower iron ore price for its benefit.

([22]) Website of Indian Railways, https://indianrailways.gov.in/railwayboard/uploads/directorate/traffic_tran/downloads/2021/Policy-Iron-Ore-Traffic-220121.pdf.

(152) Third, in addition to this new Iron Ore Policy 2021, a number of other policy papers demonstrated in the Commission's view that the GOI continued the efforts to provide the domestic industry with cheaper raw material since the original investigation and in the review investigation period.

(153) For instance, the policy objective to support the domestic steel industry was confirmed by the 2017 National Steel Policy, which still applies today ([23]). This Policy stresses the importance of domestically available iron ore at competitive prices:

"Availability of raw materials at competitive rates is imperative for the growth of the steel industry" ([24]).

"India's *competitive advantage in steel production is driven, to a large extent, from* the *indigenous availability of high grade iron ore and non-coking coal – the two critical inputs of steel production*" ([25]).

"Mission: *(…) Cost-efficient production and domestic availability of iron ore, coking coal and natural gas*" ([26]).

"(…) Availability *of raw materials will be ensured by facilitating auction of non-coking coal exclusively for steel/sponge iron sector and increasing the iron ore availability in the domestic market*" ([27]).

(154) The 2015-2020 Foreign Trade Policy Statement confirms India's policy of ensuring cheap downstream iron ore domestically in order to export cheap upstream products:

> *"The recent lifting of the ban on iron ore mining in some States will unshackle iron ore mining activity. At the same time India is embarking upon a programme of manufacturing for which iron ore would be required at home*" ([28]).

(155) The 2019 National Minerals Policy also recognises the importance of having cheap minerals for downstream industries: *"Securing access to sufficient, reliable, affordable, and sustainable supplies of minerals is increasingly becoming an important factor for functioning of downstream industries and the overall economy*" ([29]).

(156) Therefore, the facts available to the Commission and the new elements on file showed that the findings of the original investigation are still valid, and that by a set of measures, including a system of export restraints the GOI continued in the review investigation period entrusting the iron ore mining companies to provide iron ore at less than adequate remuneration. The Commission thus concluded that in the review investigation period, the GOI continued to provide an indirect financial contribution within the meaning of Article 3(1)(a)(iv) and (iii) of the basic Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) and (iii) of the SCM Agreement.

(157) Due to the lack of cooperation, it was not possible to calculate the precise level of subsidisation of this scheme during the review investigation period, and the Commission resorted to facts available according to Article 28 of the basic Regulation, and in particular the review request containing evidence that prices of iron ore in India remained in the review investigation period below the international prices.

(158) On this basis, the Commission concluded that the level of subsidisation conferred by this scheme in the review investigation period was not negligible, and in any event not below the levels found in the original investigation.

(159) After disclosure, Tata Metaliks Limited submitted that under WTO law, export taxes cannot not be countervailed. Furthermore, it considered that the objective of the new Iron Ore Policy 2020 was only to facilitate the speedy and efficient transport of iron ore across the country, and that this policy did not provide for any financial benefit. It therefore considered that the Commission's conclusions with regard to the scheme were incorrect.

([23]) See National Steel Policy 2017, Annex 9 of the Review request.
([24]) See National Steel Policy 2017, Annex 9 of the Review request, p. 24.
([25]) See National Steel Policy 2017, Annex 9 of the Review request, p. 20.
([26]) See National Steel Policy 2017, Annex 9 of the Review request, p. 22.
([27]) See National Steel Policy 2017, Annex 9 of the Review request, p. 29.
([28]) See Foreign Trade Policy 2015-2020, p. 43-44, Annex 9 of the Review request.
([29]) See 2019 National Mineral Policy, p. 9, Annex 9 of the Review Request.

(160) The Commission reiterated that, as referred to in recital (151), the new policy on iron ore had the objective to promote of domestic manufacture of steel. In its view, the new policy clearly constituted an additional measure in favour of the domestic steel industry implemented by GOI. Although the measure did not provide for a direct financial subsidy, the fact that the domestic transport of the iron ore has priority over the transport for export clearly showed that there was a deliberate objective to benefit the Indian ductile pipes industry.

(161) In view of the findings detailed above in recitals (148)-(158), the Commission maintained that despite the discontinuation of the DFP in May 2016, the export taxes together with new iron ore policy constituted a system of "targeted export restrains" by which the GOI continued to provide an indirect financial contribution within the meaning of Article 3(1)(a)(iv) and (iii) of the basic Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) and (iii) of the SCM Agreement.

3.4. **Conclusion on the continuation of subsidisation**

(162) In light of the above considerations, the Commission concluded that the industry of ductile pipes and tubes producers in India continued to benefit from countervailable subsidies during the review investigation period. Despite the decrease of the MEIS and the DDS rates, the investigation did not reveal any indication that the level of subsidisation has substantially decreased as compared to the original investigation. The evidence in the review request and provided by the cooperating Indian producer rather confirmed that the benefits under those subsidies would still be significant, in any event substantially above *de minimis*.

(163) The Commission therefore concluded that during the review investigation period, the Indian exporting producers continued to export the product concerned to the Union at subsidised prices.

3.5. **Likelihood of continuation of subsidisation should the measures lapse**

(164) Further to the finding of the existence of continued subsidisation during the review investigation period, in accordance with Article 18 of the basic Regulation, the Commission investigated the likelihood of continuation of subsidisation, should the measures lapse.

(165) As set out in recital (162), it was established that during the review investigation period Indian exporters of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities.

(166) The subsidy programmes give recurring benefits and there is no indication that these benefits will be phased out in the foreseeable future, even if the schemes themselves change slightly. Moreover, each exporter is eligible to several of the subsidies.

(167) It was also examined whether exports to the Union would be made in significant volumes should the measures be lifted. The Commission analysed in particular the following elements: the production capacity and spare capacity in India, prices from India to third countries and attractiveness of the Union market in terms of the size of the market and prices.

3.5.1. *Production capacity, spare capacity in India and prices from India to third countries*

(168) In the review investigation period, the total estimated production of the Indian producers of the product concerned was around 2 million tonnes yearly. The estimated production capacity amounted to around 2,5 million tonnes. Hence the spare capacity represented around 500 000 tonnes yearly, which exceeds the consumption of the product concerned on the Union market in the review investigation period, which amounted to [388 000 to 454 000] tonnes.

(169) Based on the evidence submitted by the applicant and confirmed by the information from the cooperating producer, Tata Metaliks Limited, a number of the Indian producers including Tata Metaliks Limited ([30]) plan to invest in further capacity increases ([31]). The total additional capacities to be installed in next few years are estimated at around 1,5 million of tonnes.

(170) The expected growth in capacities correspond to the estimated growth of the demand on the Indian market. However, the major known producers also plan to focus on the export markets ([32]). For instance, the company ESL Steel Limited (part of the Vedanta Group) explicitly mentioned, in a feasibility study, that its new facility was located near to a port, which enhances its export chance. The report mentioned in particular a big potential of exports to Eastern Europe ([33]). Plans to expand to the Union market in the future were also mentioned by the cooperating company, Tata Metaliks Limited during the remote cross-check of its questionnaire reply.

(171) Moreover, according to one of the major players, the company Srikalahasthi Pipes Limited, in the medium and long term (7 to 10 years), because the wastewater and water projects will be finalized, there will be an excess of the supply over demand on the Indian market. Consequently, this will represent further incentive of the Indian producers to focus more and more on export markets.

(172) Based on the above, the Commission concluded that the Indian exporting producers have significant spare capacity, which they could use to produce the product concerned to export to the Union market if measures were allowed to lapse, and that this spare capacity is expected to further grow.

(173) Concerning the prices from India to third countries, the Commission examined those on the basis of the export statistics in Global Trade Atlas ('GTA') at the level of CN code, i.e. 7303 00 30. Based on these statistics, the Commission established that Union market remains attractive in terms of its size and prices as it is by far the most important export market for Indian producers of ductile pipes, accounting for 40 % of their total exports. Moreover, exports to the Union are 25 times higher than exports to India's second largest export market, which is Qatar. The latter accounts only for 2 % of the total Indian exports. Finally, import prices of the Indian exporting producers to the Union market were slightly higher than those to other countries during the review investigation period. Consequently, should the measures be allowed to lapse, the exporting producers would have an incentive to increase their exports to the Union even further.

3.5.2. *Attractiveness of the Union market and prices on the Union market*

(174) The market of ductile pipes in the Union is important [388 000 to 454 000] tonnes, see recital (168). The applicants expect the market to be further growing within the next five years ([34]).

(175) In the review investigation period, the average price per tonne on the Union market was EUR [1 020 – 1 200]. In the same period, the price on the Indian domestic market was EUR 595 per tonne (ex-works). Therefore, the prices on the Union market were around two times higher compared to the prices of the imports from India.

(176) Therefore, in terms of the size and prices, the Union market remained an attractive market for the Indian exporting producers. This is further supported by the fact that during the review investigation period, the market share of the Indian exporting producers in the review investigation period remained important (see Table 2), and that, as explained in recital (173) above, the Union market constituted 40 % of the total exports from India of the product concerned.

([30]) The relevant circular is published on the website of Indian Railways, https://indianrailways.gov.in/railwayboard/uploads/directorate/traffic_comm/Freight_Rate_2016/RC_16_16.pdf.
https://www.tatametaliks.com/tata-metalik-ir-20-21/focus-on-downstream.html#:~:text=Tata%20Metaliks%20had%20foreseen%20the,in%20H1%20FY%202022%2D23.

([31]) The intention to invest in capacity increase were made public by the major producers of the product concerned in India such as Vedanda.

([32]) Review request, Annex 17.

([33]) Review request, Annex 17.

([34]) Review request, Section 5.1.6.

3.6. **Overall conclusion on the likelihood of continuation of subsidisation**

(177) The investigation showed that the Indian imports continued to enter the Union market at subsidised prices during the review investigation period.

(178) The Commission also found evidence that subsidisation will likely continue should the measures lapse. The spare capacity in India was significant in comparison with the Union consumption during the review investigation period. Moreover, the attractiveness of the Union market in terms of size and prices supported the likelihood that Indian exports and spare capacity would be directed towards the Union market, should the measures be allowed to lapse. Consequently, the Commission concluded that there was a strong likelihood that the expiry of the countervailing measures would likely result in a redirection of subsidised imports of the product concerned to the Union market. In the light of the above, the Commission concluded that the expiry of the countervailing measures would be likely to lead to a continuation of subsidisation.

4. **INJURY**

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

(179) Within the Union, five companies produce the product concerned. Three of these companies are part of the same group. Based on the available information from the request, there are no other Union producers of the product concerned in the Union. Therefore, they constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

(180) As the data relating to the injury assessment was primarily derived from the same group of producers, as mentioned in recital (15), the figures for the injury analysis are given in ranges or in an indexed form for reasons of confidentiality.

(181) The total Union production during the review investigation period was established at [372 000 – 436 000] tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as macro data provided by the applicants and data collected from the sampled Union producers during the investigation.

4.2. **Union consumption**

(182) The Commission established the Union consumption on the basis of the volume of the total Union industry's sales in the Union, the captive production on the basis of the data collected from the sampled Union producers and estimates for the remaining Union producers provided by the applicants, plus the total of imports from all countries to the Union as reported by Eurostat (Comext database).

(183) Union consumption developed as follows:

Table 1

Union consumption (in 1 000 tonnes)

	2017	2018	2019	Review Investigation Period
Total Union Consumption	[376 – 440]	[389 – 455]	[420 – 492]	[388 – 454]
Index (2017=100)	*100*	*103*	*111*	*103*
Captive market	[15 – 17]	[13 – 16]	[10 – 12]	[2 – 3]
Index	*100*	*91*	*68*	*18*
Free market	[361 – 423]	[375 – 439]	[410 – 479]	[385 – 450]
Index (2017=100)	*100*	*103*	*113*	*106*

Source: Eurostat Comext

(184) The Union consumption fluctuated during the period considered. Overall, it increased slightly by 3 % in 2018, increased by 8 % in 2019 and decreased by 8 % in 2020. As a result, the consumption increased by 3 % during the period considered.

(185) The use of ductile iron pipes is by nature linked to infrastructure investment with regard to water treatment, the water supply and water treatment companies, whether public or privately-owned, account for most of the demand for the ductile iron pipes in the Union. Ductile pipes are mainly used in large infrastructure projects. Moreover, the evolution of the Union consumption did not show a major impact due to the COVID-19 pandemic as the improvement of water networks have a constant priority for the public authorities. Therefore, the evolution of the Union consumption reflects the evolution of the infrastructure investment.

(186) The Union industry reported captive use of the product concerned which represented less than 5 % of total Union consumption in 2017 and decreased over the period considered to representing less than 1 % in the review investigation period. Therefore, the Commission considered that the captive use did not have any meaningful impact on the injury analysis.

4.3. **Imports from India**

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

(187) The Commission established the volume of imports on the basis of Eurostat (Comext database). The market share of the imports was established on the Union consumption, as set out in recital (182).

(188) Imports of the product concerned into the Union from India concerned developed as follows:

Table 2

Import volume (in 1 000 tonnes) and market share

	2017	2018	2019	Review Investigation Period
Volume of imports from India	[45 – 52]	[38 – 45]	[64 – 75]	[44 – 52]
Index (2017=100)	*100*	*86*	*143*	*98*
Market share (in %)	[11 – 15]	[9 – 13]	[14 – 18]	[10 – 14]
Index (2017=100)	*100*	*83*	*128*	*95*

Source: Eurostat Comext

(189) During the period considered, the Indian import volumes and the market share fluctuated significantly: in 2018, the volume of imports decreased by 14 %, in 2019 increased by 68 % and finally during the review investigation period decreased by 31 %.

4.3.2. *Prices of the imports from India*

(190) The Commission established the weighted average prices of imports on the basis of Eurostat Comext statistics.

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

Table 3

Import prices (EUR/tonne)

	2017	2018	2019	Review Investigation Period
India	553	562	586	585
Index (2017=100)	*100*	*101*	*105*	*105*

Source: Eurostat Comext

(192) In 2017-2018, the import prices were rather stable. As from, in 2019 the import prices increased by 5 % and remained stable during the review investigation period.

4.3.3. *Price undercutting*

(193) As mentioned in recital (55), only one Indian producer cooperated with the investigation. This producer declared a negligible quantity exported to the Union, which corresponded to less than 1 % of the total import volumes of the product concerned from India to the Union. Therefore, the Commission considered that this export volume was not representative of the exports of the product concerned to the Union and decided to establish the price undercutting based on facts available.

(194) The Commission compared the weighted average CIF Indian import prices, adjusted for post importation costs, to the weighted average price of the Union industry. The Indian import prices undercut the prices of the Union industry by around [30 – 45] % during the review investigation period.

4.3.4. *Imports from third countries other than India*

(195) During the review investigation period, the volume and the market share of imports from third countries other than India amounted respectively to [8 700 – 20 200] tonnes and [2 – 4] % of the Union consumption. Over the period considered, the weighted average price of imports from third countries was at comparable levels to prices of the sampled Union producers in 2017-2018, and around 25 % lower for the period 2019-2020 (see Table 8). While the volume of imports from third countries slightly increased, i.e. by 2 %, the origin of the imported ductile pipes was not stable over the period considered. For example, in 2017, the main imports from third countries came from China, Russia and Switzerland, while in the review investigation period the main importers were Turkey and United Arab Emirates.

(196) The aggregated volume of imports into the Union as well as the market share and price trends for imports of tubes and pipes of ductile cast iron from other third countries developed as follows:

Table 4

Import volume and market share from other third countries

Country		2017	2018	2019	Review Investigation Period
China	Volume (tonne)	[2 900 – 3 400]	[1 400 – 1 700]	[3 900 – 4 600]	[200 – 400]
	Index	*100*	*50*	*133*	*10*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 2]	[0 – 1]

	Index (2017=100)	*100*	*48*	*119*	*9*
	Average price (EUR/tonne)	701	933	738	833
	Index (2017=100)	*100*	*133*	*105*	*118*
Russia	Volume (tonne)	[2 000 – 2 500]	[1 400 – 1 600]	[2 900 – 3 600]	[1 200 – 1 600]
	Index (2017=100)	*100*	*67*	*147*	*63*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017=100)	*100*	*65*	*132*	*61*
	Average price (EUR/tonne)	568	697	735	698
	Index (2017=100)	*100*	*122*	*129*	*122*
Switzerland	Volume (tonne)	[3 400 – 4 400]	[1 800 – 2 200]	[1 600 – 2 000]	[800 – 1 000]
	Index (2017=100)	*100*	*52*	*47*	*23*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017=100)	*100*	*51*	*42*	*23*
	Average price (EUR/tonne)	1 604	1 656	1 714	1 817
	Index (2017=100)	*100*	*103*	*106*	*113*
Turkey	Volume (tonne)	[10 – 20]	[10 – 20]	[3 100 – 3 650]	[4 200 – 5 000]
	Index (2017=100)	*100*	*115*	*25 750*	*35 070*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[1 – 2]
	Index (2017=100)	*100*	*111*	*23 065*	*34 035*
	Average price (EUR/tonne)	1 136	1 750	838	1 007
	Index (2017=100)	*100*	*153*	*73*	*88*
UAE	Volume (tonne)	[460 – 590]	[3 700 – 4 400]	[4 800 – 5 600]	[6 400 – 7 600]
	Index (2017=100)	*100*	*766*	*988*	*1 322*
	Market share (in %)	[0- 1]	[0 – 1]	[1 – 2]	[1 – 2]
	Index (2017=100)	*100*	*741*	*884*	*1 282*
	Average price (EUR/tonne)	712	786	722	705
	Index (2017=100)	*100*	*110*	*101*	*99*

Other third countries	Volume (tonne)	[10 -20]	[150 – 200]	[10 -50]	[150 – 300]
	Index (2017=100)	*100*	*994*	*200*	*1 457*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017=100)	*100*	*962*	*179*	*1 414*
	Average price	508	1 422	1 980	897
	Index (2017=100)	*100*	*279*	*389*	*176*
Total of all third countries excl. India	Volume (tonne)	[8 700 – 11 200]	[8 800 – 10 500]	[16 000 – 19 600]	[13 500 – 15 800]
	Index (2017=100)	*100*	*94*	*180*	*145*
	Market share (in %)	[1 – 3]	[1 – 3]	[3 – 5]	[3 – 5]
	Index (2017=100)	*100*	*91*	*161*	*141*
	Average price (EUR/tonne)	1 033	1 004	856	879
	Index (2017=100)	*100*	*97*	*82*	*85*

Source: Eurostat Comext database

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

4.4.1. *General remarks*

(197) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(198) As mentioned in recital (15), sampling was used for the assessment of the economic situation of the Union industry.

(199) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data related to all Union producers, contained in the expiry review request. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

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

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

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation Period
Production volume (in 1 000 tonnes)	[408 – 478]	[452 – 530]	[436 – 510]	[372 – 436]
Index (2017=100)	*100*	*110*	*106*	*91*
Production capacity (in 1 000 tonnes)	[824 – 965]	[824 – 965]	[824 – 965]	[743 – 870]
Index (2017=100)	*100*	*100*	*100*	*90*
Capacity utilisation (in %)	[47 – 51]	[52 – 56]	[50 – 54]	[48 – 51]
Index (2017=100)	*100*	*110*	*106*	*101*

Source: data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(203) The Union production decreased by 9 % over the period considered after an increase of 10 % in 2018.

(204) The production capacity followed a similar trend as it decreased by 10 % over the period considered.

(205) The capacity utilisation remained stable as the decrease of the production capacity followed the decrease of the Union production.

(206) Following final disclosure, Tata Metaliks Limited claimed that the imports from India could not have been a reason for the Union industry to reduce its production capacity but rather the decline in demand as compared to 2019.

(207) The Union industry's decision to reduce its production capacity was made before the COVID-19 crisis and thus the decision had no link with the decrease of the consumption between 2019 and the review investigation period. Therefore, the claim was rejected.

4.4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share of Union producers

	2017	2018	2019	Review Investigation Period
Sales volume on the Union market (in 1 000 tonnes)	[321 -376]	[341 – 399]	[338 – 396]	[329 – 386]
Index	*100*	*106*	*105*	*102*
Market share (in %)	[82- 88]	[84 – 90]	[77 – 83]	[81 – 87]
Index	*100*	*102*	*94*	*99*

Captive market sales in 1 000 tonnes)	[15 – 17]	[13 – 16]	[10 – 12]	[2 – 3]
Index	*100*	*91*	*68*	*18*
Market share of captive market sales (in %)	[3 – 4]	[3 – 4]	[2 – 3]	[0 – 1]
Index	*100*	*88*	*61*	*18*

Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(209) The sales volume of the like product by the Union industry over the period considered and the market share did not follow the increase of the Union consumption. In particular, in 2019 the Union industry did not benefit from the increase in consumption, contrary to the imports from India.

(210) Following final disclosure, Tata Metaliks Limited claimed that the market share of the Union industry remained high at around 85 % and increased in the review investigation period in comparison with previous years. The volume of the Union sales was also consistently above the year 2017. The volume in the review investigation period could have been higher without the impact of the COVID-19 crisis. The party considered that the Commission's conclusion did not reflect the factual situation.

(211) The Commission concluded that the Union industry did not benefit from a high market share. As explained in recital (234), the sampled Union producers were lossmaking during the entire period considered, due to the substantial price pressure from the Indian imports (see recital (245)). Also, as explained in recital (209) the Union market share did not follow the increase of the Union consumption and, unlike imports from India, Union sales did not benefit from the increase in the consumption in 2019. Therefore, the claim was rejected.

4.4.2.3. Growth

(212) During the period considered, the Union consumption increased by 3 % whereas the volume of sales to unrelated customers in the Union increased by 2 %. Consequently, despite the increase in consumption, the market share of the Union industry slightly decreased over the period considered.

4.4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2017	2018	2019	Review Investigation Period
Number of employees	[1 820 – 2 540]	[1 820 – 2 540]	[1 810 – 2 530]	[1 700 – 2 390]
Index	*100*	*100*	*99*	*93*
Productivity (tonne/employee)	[162 – 226]	[179 – 250]	[173 – 242]	[157 – 220]
Index	*100*	*110*	*107*	*97*

Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(214) The number of employees of the Union industry engaged in the production of the product concerned remained stable during the period 2017-2018 and decreased by around 6 % during the period 2019-2020.

(215) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, increased by 10 % over the period 2017-2018 and decreased by 13 % during the period 2018-2020. This can be explained as the combined effect of:

— A production stoppage at the production site of one main Union producer, leading to the lower production from December 2019 to February 2020, and;

— Less production by the Union producers during the second quarter of 2020, as a result of the COVID-19 pandemic which was not matched with the number of employees that were laid off.

4.4.2.5. Magnitude of the amount of subsidisation and recovery from past subsidy

(216) As explained in recital (193), there was limited cooperation from exporting producers from India.

(217) The injury indicators show that, notwithstanding the anti-subsidy measures in force since 2016, which resulted in some relief and improved performance initially, the economic situation of the Union industry remained injurious. Thus, no recovery from the past subsidization could be established.

(218) The amount of subsidisation was significantly above the de minimis level. The impact of the magnitude of the actual amount of subsidisation on the Union industry was substantial, given the volume and prices of imports from India.

(219) Continuous unfair pricing by exporters from India made it also impossible for the Union industry to recover from the past subsidised practices.

(220) Following final disclosure, Tata Metaliks Limited claimed that there is no absolute increase in the volume of Indian imports and these imports had only around 15 % market share. Moreover, the interested party pointed out that the Union industry's economic performance improved after the imposition of the initial measures and decreased thereafter. Therefore, the Indian imports did not cause injury to the Union industry.

(221) The Commission observed that the interested party did not substantiate its claim that the Union industry's economic performance improved after the imposition of the initial measures. As mentioned in recital (234), the profitability of the sampled Union producers was negative during the entire period considered. Therefore, the claim was rejected.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

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

Table 8

Sales prices in the Union and unit cost

	2017	2018	2019	Review Investigation Period
Average unit sales price in the Union on the total market (EUR/tonne)	[950 – 1 110]	[960 – 1 130]	[1 020 – 1 190]	[1 020 – 1 200]
Index	*100*	*101*	*107*	*107*
Unit cost of production (EUR/tonne)	[1 000 – 1 100]	[900 – 1 100]	[1 000 – 1 100]	[1 000 – 1 200]
Index	*100*	*97*	*101*	*105*

Source: verified questionnaire replies of the sampled Union producers

(223) The Union industry's average unit selling price to unrelated customers in the Union increased by 7 % over the period considered reflecting the increase of the unit cost of production (5 %).

(224) Following final disclosure, Tata Metaliks Limited claimed that the alleged decrease in the landed prices showed that the imports are not causing any price suppression or depression.

(225) The Commission observed that the interested party did not substantiate its claim how the landed prices, which have undercut the Union prices by around 40 %, during the period considered did not cause any price suppression or depression to the Union producers. Therefore, the claim was rejected.

4.4.3.2. Labour costs

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

Table 9

Average labour costs per employee (EUR/employee)

	2017	2018	2019	Review Investigation Period
Average labour costs per employee	[56 000 – 66 000]	[57 000 – 66 000]	[57 000 – 67 000]	[53 000 – 62 000]
Index (2017=100)	*100*	*100*	*101*	*94*

Source: verified questionnaire replies of the sampled Union producers

(227) The average labour costs per employee remained stable until 2019 and dropped by 6 % over the period considered. Within the review investigation period, the average labour costs per employee decreased as the French State financed the unemployment due to COVID-19 shut-down.

(228) Following final disclosure, Tata Metaliks Limited noted that there is no injury to the Union industry under this parameter.

(229) The Commission recalled that as explained in recital (227) above the decrease in average labour costs per employee was due to extraordinary funding received from the French State in the review investigation period. Consequently, this claim was rejected.

4.4.3.3. Inventories

(230) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Review Investigation Period
Closing stocks (in 1 000 tonnes)	[87 – 102]	[77 – 90]	[84 – 98]	[68 – 79]
Index (2017=100)	*100*	*88*	*95*	*77*
Closing stocks as a percentage of production in %)	[20 – 25]	[15 – 17]	[18 – 20]	[18 – 20]
Index (2017=100)	*100*	*79*	*89*	*85*

(231) The level of closing stocks of the sampled Union producers remained stable in relation with the production.

(232) Following final disclosure, Tata Metaliks Limited claimed that the inventory decreased significantly during the review investigation period, showing that the Union industry focussed on reducing its production. The interested party claimed that the inventory should have increased instead in case of being impacted by imports from India.

(233) As seen in recital (203), the decrease in the inventory observed during the review investigation period by the party was accompanied by the decrease in the Union production. Moreover, the Commission did not find any correlation between the decrease in the inventory observed mainly during the review investigation period and the imports from India as the impact of the imports from India was observed not only during the review investigation period but through the entire period considered. Therefore, the claim was rejected.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation Period
Profitability of sales in the Union to unrelated customers (in % of sales)	[- 5 – - 9]	[- 1 – - 5]	[- 1 – - 5]	[- 3 – - 7]
Index (2017=100)	*- 100*	*- 33*	*- 36*	*- 69*
Cash flow (million EUR)	[- 31 – - 37]	[- 46 – - 54]	[- 73 – - 85]	[- 43 – - 51]
Index (2017=100)	*- 100*	*- 145*	*- 231*	*- 138*
Investment (million EUR)	[20 – 24]	[30 – 36]	[33 – 39]	[15 – 18]
Index (2017=100)	*100*	*149*	*161*	*73*
Return on investments (in %)	[- 6 – - 8]	[- 7 —- 9]	[- 10 —- 12]	[- 5 – - 7]
Index (2017=100)	*- 100*	*- 131*	*- 194*	*- 106*

Source: verified questionnaire replies of the sampled Union producers

(235) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the sampled producers was negative during the period considered, going from around [-5 – -9] % in 2017 to [-3 – -7] % in the review investigation period.

(236) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed remained negative over the entire period considered with the exception of 2018.

(237) The investments (mainly focused on upgrades of the production equipment, increase of quality, productivity and flexibility in the production process) increased in over the period 2017-2019 and decreased to its lowest in 2020.

(238) The return on investments is the profit in percentage of the net book value of investments. It developed a similar trend as profitability, sharply decreased in 2019 and then improved marginally in 2020. It remained negative and deteriorated by 53 % during the period considered.

4.5. **Conclusion on injury**

(239) Despite the countervailing measures in force, Indian imports of ductile pipes remained substantial with stable market shares between around [9 – 18 %] % during the period considered. During the review investigation period, the market share was [10 – 14] %. At the same time, the import prices showed a decreasing trend and undercut the Union prices on average by [30 – 45] % during the review investigation period, despite the existence of the countervailing and anti-dumping measures.

(240) The development of the macroeconomic indicators, in particular production and sales volume, employment and productivity, showed stable or slightly decreasing trends. The market share of the Union industry decreased in the review investigation period reaching a similar level than in 2017. The increase of market share in 2018, despite relatively stable sales volumes, was due to the decreasing consumption during the same period. Although the Union industry largely managed to maintain its sales volume and market share, this was at the expense of its profitability and other financial indicators as explained in the following recital.

(241) Even though the average unit sales price of the Union producers increased by 7 % during the period considered, which was higher than the increase by 5 % of the cost of production, the Union industry still did not manage to achieve sustainable profit margins. Due to the price pressure of the Indian imports, the Union industry could not increase its sales prices to cover the average cost of production and was therefore loss making throughout the period considered (with the exception of 2018 where it was close to breakeven). Thus, the Indian imports also exercised significant price suppression on the Union producers' sales during the review investigation period. Other financial indicators (cash flow, return on investment) followed a similar trend as the profitability, and showed negative or low values during the period considered. Investments, though showing some increase in 2017 and 2018, were at generally low levels as well.

(242) Given the above, the Commission concluded that the Union industry suffered material injury.

5. **CAUSATION**

(243) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from India of the product concerned caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from India of the product concerned was not attributed to the subsidised imports.

5.1. **Effects of the subsidised imports**

(244) First, the Commission examined whether there was a causal link between the subsidized imports and the injury suffered by the Union industry.

(245) Indian imports of ductile pipes remained substantial with market shares above 10 % during the entire period considered and at low price levels during the review investigation period, despite the countervailing and anti-dumping measures in force. Due to the substantial price pressure from the Indian imports, the Union industry could not pass on to their clients their costs of production which led to losses during the entire period considered. The Commission therefore concluded that the volume and price levels of the imports under investigation caused material injury.

(246) Following final disclosure, Tata Metaliks Limited claimed that the decline in the Union industry's financial performance was due to factors other than allegedly subsidised imports.

(247) The Commission observed that the party did not bring forward new elements which could revert its conclusion. Therefore, the claim was rejected.

(248) Tata Metaliks Limited also claimed that there was no correlation between the evolution of the imports and the level of losses reported by the Union industry, and thus there was no causal link between the imports and the Union industry's financial performance.

(249) As mentioned in recital (194), the Commission found that the import prices from India undercut significantly the Union industry prices. Moreover, the Commission observed that the party did not bring forward any evidence demonstrating that other factors impacted the Union industry. Therefore, the claim was rejected.

(250) Furthermore, Tata Metaliks Limited claimed that it was not able to examine the correlation between the price undercutting and the economic performance of the Union industry as the Commission did not disclose price undercutting calculations for the period considered.

(251) The Commission noted that the information necessary to establish the existence of a price undercutting was provided to the party. Regarding the review investigation period, the findings with regard to price undercutting were set out in recitals (193) and (194) above. For the years 2017, 2018 and 2019, recital (191) provided the unit prices for Indian imports and recital (222) the weighted average unit sales prices of the sampled Union producers to unrelated customers. Therefore, the party had all the information, on the basis of which the Commission concluded the existence of undercutting. Therefore, the claim was rejected.

(252) Finally, the party claimed that the import volumes decreased between 2019 and the review investigation period. Therefore, the party concluded that there was no volume effect.

(253) The Commission observed that the imports from India in the review investigation period moved back to the levels of 2017. Moreover, the main impact of the imports from India was found at the level of the low prices, which resulted in significant pressure on the Union market prices. Therefore, the claim was rejected.

5.2. **Effects of other factors**

(254) The volumes imported from other third countries represented only between 2 %- 4 % of the market share in the review investigation period. As shown in the table 4, during the review investigation period, the average import price from third countries was 50 % higher than the average import price from India.

(255) As indicated in recital (42), one party claimed that general competitiveness issues should justify a finding of discontinuation or non-recurrence of injury. The party listed various factors, such as the decrease of the Union consumption of ductile pipes that fell since the Euro crisis which resulted in a decrease of public spending, difficulties in attracting staff, the maintenance of the dominant position, the pressure of cheaper Chinese imports on the bidding process for public procurement. Moreover, the party claimed that the plastic pipes are the first competitor of the Union industry as they are less expensive and thus attract a significant part of public tenders.

(256) Contrary to the party's claim, the Union consumption and the market share of the Union industry increased, while employment remained stable during the period considered. Moreover, there is no evidence that the plastic pipes gained market shares during the period considered against ductile pipes. It should be also noted that plastic pipes are not in competition for the large pipe diameters. Consequently, these factors did not contribute to the injury found. In addition, Chinese imports were made at significantly higher prices than Indian imports, and in far lower volumes. Finally, the party failed to specify how the dominant position, if any, could have caused injury. Therefore, these claims were rejected.

(257) Regarding the export performance of the Union industry, the volumes of exports developed over the period considered as follows:

Table 12

Export performance of the Union industry

	2017	2018	2019	Review Investigation Period
Export volume (in 1 000 tonnes)	[119 – 140]	[147 – 172]	[102 – 119]	[66 – 77]
Index (2017=100)	*100*	*122*	*85*	*55*
Average price (EUR/tonne)	[760 – 890]	[750 – 880]	[840 – 980]	[890 – 1 040]
Index (2017=100)	*100*	*99*	*110*	*117*

Source: the applicant for volume and verified questionnaire replies for values

(258) During the period considered, the volumes dropped by half. Although the prices of the exports increased by 17 %, this was not sufficient to cover the costs of production over the entire period considered as illustrated in table 8 above. Therefore, the exports did not attenuate the causal link between the exports subsidized from India and the injury found.

(259) Possible other factors, such as the COVID-19 crisis, were also examined, but none of them could attenuate the causal link between the subsidised imports and the material injury suffered by the Union industry. The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports.

(260) Following final disclosure, Tata Metaliks Limited claimed that the COVID-19 crisis impacted negatively the economic situation of the Union industry in the first semester of 2020. The party stated that the initial lockdowns imposed for public health measures forced many construction projects to a halt.

(261) As described above, the Union market for ductile pipes during the review investigation period was not significantly impacted by the lockdowns due to COVID-19 crisis. The total Union consumption of that year was similar to the year 2018. Therefore, the claim was rejected.

(262) In light of the above considerations, the Commission concluded that the subsidised imports from India caused material injury to the Union industry and that other factors, considered individually or collectively, did not attenuate the causal link between the subsidised imports and the material injury. The injury is clear in particular in the evolution of production, capacity utilisation, sales volume in the Union market, market share, productivity, profitability and return on investments.

6. LIKELIHOOD OF CONTINUATION OF INJURY IF THE MEASURES WERE REPEALED

(263) The Commission concluded in recital (242) that the Union industry suffered material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 18(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by the subsidized imports from India if the measures were allowed to lapse.

(264) In this respect the following elements were analysed by the Commission: the production capacity and spare capacity in India, relationship between prices in the Union and the Indian prices; the attractiveness of the Union market and the impact of potential imports from India on the Union industry's situation should the measures lapse.

6.1. **The production capacity, spare capacity in India and the attractiveness of the Union market**

(265) As already described in recitals (168) to (172), the spare capacity available in India represented around 500 000 tonnes yearly, which exceeds the consumption of the product concerned on the Union market, which amounted in the review investigation period to [388 000 to 454 000] tonnes. Moreover, Indian producers planned to invest in new production capacity. Thus, for the next years there will be an excess of the supply over demand on the Indian market. Consequently, this will represent further incentive of the Indian producers to focus more and more on export markets.

(266) The available and future spare capacity of the Indian exporting producers could be used to produce the product concerned to export to the Union market if measures were allowed to lapse.

(267) Following final disclosure, Tata Metaliks Limited claimed that there was no evidence that the alleged spare production capacity in India will be necessarily used for production of ductile pipes and exported as a result of excess of supply over demand in India. Moreover, the Commission did not examine the attractiveness of other export markets and did not analyse any post review investigation period data. Finally, the party claimed that the any determination regarding likelihood of continuation of subsidy and injury has to be based on positive evidence ([35]). Therefore, the party concluded that the conclusion on likelihood was incorrect.

(268) The Commission observed that the party confirmed the existence of spare capacity in India. In addition, as explained in recitals (168) to (172) above, the Commission established the spare capacity in question specifically for the product concerned. Also, as explained in the same recitals, the Commission established that in the long run the demand on the Indian market will subside while the party itself acknowledged that it had plans to expand its sales to the Union market. Furthermore, as described below in Section 6.2, the Union market was considered attractive for Indian producers, and it could, therefore, be concluded that available spare capacities in India would, at least partially, be used to increase exports to the Union market. Therefore, the claim was rejected.

(269) Regarding the positive evidence required under the case-law mentioned, the Commission considered that it complied with all requirements of the existing jurisprudence and its assessment and conclusion of the likelihood of continuation of subsidisation and injury were based on positive evidence, collected during the investigation. Consequently, the claim was rejected.

(270) In view of the above, the Commission concluded that the expiry of the measures would in all likelihood result in a significant increase of subsidized imports from India at prices undercutting the Union industry prices, and therefore further aggravating the injury suffered by the Union industry. As a consequence, the viability of the Union industry would be at serious risk.

6.2. **Attractiveness of the Union market**

(271) The Union market is attractive in terms of its size and prices. As mentioned in recital (176), it is by far the most important export market for Indian producers of ductile pipes, accounting for 40 % of their total exports. Exports to the Union are 25 times higher than exports to its second largest export market, which is Qatar accounting for 2 % of Indian exports of ductile pipes. Also, Indian import prices to the Union market were slightly higher than those other countries during the review investigation period.

(272) Despite the existing measures, Indian exporting producers sold to the Union a substantial volume of ductile pipes during the period considered and still had considerable market share during the review investigation period ([10 – 14] %). These were sold at a price which, even including the countervailing duties, significantly undercut the Union industry sales prices on the Union market.

([35]) United States – Sunset reviews of Anti-dumping Measures on Oil Country Tubular Goods From Argentina (WT/DS/268/AB/R).

(273) The Union market is hence considered attractive for Indian producers, and it can be concluded that available spare capacities in India would, at least partially, be used to increase exports to the Union market. In this respect, it is recalled that the market share of India imports was at high levels [17 – 19] % in the investigation period of the original investigation, i.e. prior to the imposition of countervailing duties.

6.3. **Conclusion on likelihood of a continuation and/or recurrence of injury**

(274) On this basis, and noting the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of subsidized imports from India of the product concerned at injurious prices, leading to even higher losses for the Union producers. Therefore, the Commission concluded that, should the measures be allowed to lapse, this would in all likelihood result in a significant increase of subsidised imports from India at injurious prices and material injury would be likely to continue.

7. **UNION INTEREST**

(275) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing anti-subsidy measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and the public policy interests with respect to the product concerned as embodied in the Directive 2009/125/EC of the European Parliament and of the Council ([36]) ('EcoDesign Directive') and its product-specific Regulations. In line with the third sentence of Article 31(1) of the basic Regulation, special consideration was given to the need to protect the industry from the negative effects of injurious subsidization.

(276) All interested parties were given the opportunity to make their view known pursuant to Article 31(2) of the basic Regulation.

7.1. **Interest of the Union industry**

(277) The Union industry is located in three Member States (France, Germany and Spain), and employs directly over 2 200 employees in relation to the product concerned.

(278) The anti-subsidy measures in force did not prevent subsidised imports from India from entering the Union market and the Union industry suffered material injury during the review investigation period.

(279) On the basis of the above, the Commission established that there is a strong likelihood of continuation of injury caused by imports from this country should the measures expire. The influx of substantial volumes of subsidized imports from India would cause further injury to the Union industry.

(280) Following final disclosure, Tata Metaliks Limited claimed the Union industry has been protected for over six years while having a market share of 85 %. Thus, it is unlikely for the Union industry to be impacted if the existing measures are repealed. In the event the Union it is, it may request the Commission to start a new investigation.

([36]) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of Ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10). The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all Union countries. The EcoDesign Regulation covers the new EcoDesign requirements with regard to small, medium and large power transformers. Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2 on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1. Although the full effects cannot yet be assessed on such a short period of time since the entry into force of Tier 2, it is generally believed that these Tier 2 requirements will require the highest quality types of GOES to design and manufacture transformers in a cost-efficient manner and within the required space limitations.

(281) Contrary to the claim made by the interested party, the Commission established that the Union industry is still suffering from material injury caused by the subsidised imports from India, based on the analysis of all relevant injury indicators including the development of Union Industry's market share. The Commission concluded that the injury is likely to continue and deteriorate should the measures be allowed to lapse. Consequently, the claim was rejected.

(282) The Commission thus concluded that the maintenance of the anti-subsidy measures against India is in the interest of the Union industry.

7.2. **Interest of unrelated importers, traders and users**

(283) The Commission contacted all known unrelated importers, traders and users. None of them replied to the Commission's questionnaire.

(284) The Commission did not receive any comments indicating that the maintenance of the measures would have a significant negative impact on the importers and users, outweighing the positive impact of the measures on the Union industry.

7.3. **Conclusion on Union interest**

(285) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of the product concerned originating in India.

8. **ANTI-SUBSIDY MEASURES**

(286) On the basis of the conclusions reached by the Commission on continuation of subsidy, continuation of injury and Union interest, the anti-subsidy measures on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) from India should be maintained.

(287) After disclosure, Tata Metaliks Limited argued that a continuation of the measures should be considered as an exception and not the norm. It referred in particular to Article 18(1) of the basic Regulation and Article 21.3 of the ASCM Agreement, which state that a measure shall only remain in force as long as it is necessary and shall expire upon five years from its imposition. Since the duties have been extended pending this review, it argued that by the time this review would likely conclude, the duties would already have been in force for more than seven years. For this reason, it requested the Commission to terminate the investigation.

(288) The Commission recalled that the decision to continue the measures was based on a thorough assessment of all the facts found during the expiry review investigation in accordance with Article 18(2) of the basic Regulation. Therefore the continuation of the measures was neither automatic nor constituted a 'norm'. It thus rejected the claim that the measures should be terminated.

(289) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.

(290) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(291) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a countrywide duty.

(292) The individual company countervailing duty rates specified in this Regulation are exclusively applicable to imports of the product concerned originating in India and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.

(293) After disclosure, Tata Metaliks Limited requested the Commission to assign it an individual countervailing margin. In the alternative, it considered the Commission should at least consider extending the individual countervailing rates assigned to the other cooperative producers of the product concerned from India in the original investigation to it in light of its cooperation with the Commission in this expiry review investigation.

(294) The Commission recalled that the objective of an expiry review investigation under Article 18(2) of the basic Regulation is solely to determine whether the existing measures are still necessary and does not allow for establishing individual duty rates for companies that did not cooperate in the original investigation. Such claims can only be addressed under review investigations pursuant to Article 19(3) or 19(4) of the basic Regulation. The request was therefore rejected.

(295) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([37]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(296) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([38]) when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(297) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

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

([37]) European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

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

2. The rates of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Countervailing duty	TARIC additional code
Jindal Saw Limited	6,0 %	C054
Electrosteel Castings Ltd	9,0 %	C055
All other companies	9,0 %	C999

3. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: *'I, the undersigned, certify that the (volume) of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in India. I declare that the information provided in this invoice is complete and correct.'* If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

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

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

Done at Brussels, 15 June 2022.

For the Commission
The President
Ursula VON DER LEYEN