



2023/2605

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COMMISSION IMPLEMENTING REGULATION (EU) 2023/2605

of 22 November 2023

amending Implementation Regulation (EU) 2022/926 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, following a partial interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 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) 2016/1036 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 ⁽¹⁾ ('the basic anti-dumping Regulation'), and in particular Article 11(3) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) By Commission Implementing Regulation (EU) 2016/388 ⁽²⁾ ('the original Regulation'), the European Commission (the 'Commission') imposed 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 ⁽³⁾ ('the original measures'). The investigation that led to the imposition of this anti-dumping duty will hereinafter be referred to as 'the original anti-dumping investigation'.
- (2) By Implementing Regulation (EU) 2016/387 ⁽⁴⁾, the Commission imposed a definitive countervailing duty on imports of the same product originating in India. The investigation that led to the imposition of this countervailing duty will hereinafter be referred to as 'the original anti-subsidy investigation'.
- (3) By Implementing Regulations (EU) 2022/926 ⁽⁵⁾ and (EU) 2022/927 ⁽⁶⁾, the Commission maintained, following an expiry review, the definitive anti-dumping duty and the definitive countervailing duty for another 5 years.
- (4) In the original regulation, the dumping margin established for Electrosteel Castings Ltd ('ECL' or 'the applicant' or 'the company') was determined at 4,1 %. In the separate original anti-subsidy investigation concerning the same product from the same country concerned, the countervailing duty established for ECL was 9 %, out of which 6,04 % was based on export contingent subsidies.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ 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).

⁽³⁾ The original regulation was amended by Commission Implementing Regulation (EU) 2016/1369 of 11 August 2016 amending Implementing Regulation (EU) 2016/388 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 217, 12.8.2016, p. 4).

⁽⁴⁾ 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).

⁽⁵⁾ Commission Implementing Regulation (EU) 2022/926 of 15 June 2022 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 following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 161, 16.6.2022, p. 1).

⁽⁶⁾ 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 (OJ L 161, 16.6.2022, p. 28).

- (5) In line with the basic anti-dumping Regulation and Regulation (EU) 2016/1037 ⁽⁷⁾ ('the basic anti-subsidy Regulation'), the Commission took account of the fact that three of the investigated subsidy schemes were export subsidies which effectively reduced export prices and thus increased the dumping margin accordingly.
- (6) Thus, the Commission reduced the dumping margin by the subsidy amounts found in relation to the export contingent schemes in the original anti-subsidy investigation. Based on this method, the definitive anti-dumping duty for the applicant was reduced to 0 %.

1.2. Request for a partial interim review

- (7) On 22 September 2022, the Commission announced, by a notice in the *Official Journal of the European Union*, the initiation of a partial interim review ('Notice of initiation') of the anti-dumping measures applicable to imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India, pursuant to Article 11(3) of the basic anti-dumping Regulation ⁽⁸⁾.
- (8) The review, limited in scope to the examination of dumping of the exporting producer ECL, was initiated following a request by the applicant. It was requested on grounds of a merger that took place between the applicant and its related company Srialahasthi Pipes Ltd ('SPL'), decided by the Board of Directors in October 2020.
- (9) The merger between ECL and SPL led to the situation where the existing anti-dumping measure was likely either no longer necessary or no longer sufficient to counteract the dumping which is causing injury within the meaning of Article 11(3) of the basic anti-dumping Regulation. This was because the dumping margin calculated in the original anti-dumping investigation did not include the domestic sales of SPL. Moreover, the legal documentation of the merger envisaged 'synergies' which could have an effect on the cost structure, and consequently the dumping margin of the applicant.
- (10) The Commission considered that the request contained sufficient evidence that the circumstances on basis of which the existing measures were imposed have changed and that these changes were of a lasting nature.

1.3. Review investigation period

- (11) The investigation of the level of dumping covered the period from 1 April 2021 to 31 March 2022 (the 'review investigation period' or 'RIP').

1.4. Interested parties, questionnaire, and verification visit

- (12) The Commission officially informed the applicant, the authorities of the exporting country, the other known exporting producers and the Union industry of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the Notice of Initiation. A Union producer, Saint-Gobain PAM Canalisations ('SG PAM'), provided comments upon initiation (see Section 1.8).
- (13) To obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant, who responded within the given deadline. The Commission sought and verified all information it deemed necessary for the purpose of determining the level of dumping. Pursuant to Article 16 of the basic anti-dumping Regulation, the Commission held a verification visit at the premises of the applicant. The Commission also held videoconferences with the related companies to verify the information they submitted.

⁽⁷⁾ 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 (OJ L 176, 30.6.2016, p. 55).

⁽⁸⁾ OJ C 363, 22.9.2022, p. 9.

1.5. Use of ‘facts available’

- (14) By letter of 10 July 2023 (‘Article 18 letter’), the Commission informed the applicant about its doubts with regard to the reliability of the company’s data. In the letter, it provided details on why it considered that ECL may have supplied false or misleading information. The Commission also informed the applicant that it may apply Article 18 of the basic anti-dumping Regulation and about the consequences thereof.
- (15) By letters of 24 July 2023, the Government of India (‘GOI’), ECL and SG PAM provided comments on the Article 18 letter, and on the disclosure.
- (16) The Commission also received comments from European distributors on the Union market of ductile pipes produced by ECL – companies Valdro, Fusion Pipeline Products Limited (‘Fusion Pipelines Products’), CO.ME.CAR SRL, Deschacht, Idrovit SRL, Vodoskop d.d., and WAPPtech Ltd.
- (17) At the request of ECL, a hearing took place on 26 July 2023.

1.6. Disclosure

- (18) On 24 August 2023, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to propose to amend the duty rate applicable to ECL. Interested parties were given the opportunity to comment by 6 September 2023, and to request a hearing with the Commission and/or with the Hearing Officer in trade proceedings.
- (19) The Commission received comments in this regard from GOI, SG PAM, ECL, and from the European companies Deschacht, IBECO AB, VAPPtech Environmental Ltd (‘VAPPtech’) and Vodoskop.
- (20) On 4 September 2023, at the request of the GOI, a hearing took place between the GOI and the Commission services. At the request of ECL, another hearing between ECL and the Commission services took place on 6 September 2023. The Commission considered the comments made by all interested parties.
- (21) On 3 October 2023, the Commission re-disclosed its findings with regard the use of facts available (Section 3.6 below) and invited interested parties to comment. Interested parties were given the opportunity to comment by 6 October 2023. Comments were received from the GOI, ECL and SG PAM. The Commission considered the comments made by all interested parties.
- (22) On 16 October, the Commission re-disclosed its findings with regard the normal value and invited interested parties to comment. Interested parties were given the opportunity to comment by 17 October 2023. Comments were received from the GOI and ECL. The Commission considered the comments made by all interested parties.

1.7. Withdrawal of the review request

- (23) By letter of 28 August 2023, ECL informed the Commission that it wished to withdraw its request for the partial interim review. ECL reiterated the arguments provided in its comments on the general disclosure document that the investigation should be terminated.
- (24) ECL referred to the findings of the Commission in its disclosure document on the use of ‘facts available’. It considered that it had provided significant evidence to convince the Commission about the accuracy of its data, and in particular about the metal weight of each pipe in the RIP and that it could not provide more evidence because the pipes had been already sold. ECL further argued that the method to record the data (on the metal weight) was applied across its accounting records and in the company’s SAP system ⁽⁹⁾. It committed that appropriate steps would be taken in the future to check and appropriately record the metal weight of each pipe produced. Hence, ECL considered that the review was unwarranted and should be terminated.

⁽⁹⁾ Accounting system used the applicant.

- (25) Referring to conclusions detailed in Section 3.2 below on why it considered that the data was misreported, the Commission took note of the commitments of ECL for the future to record the weight of pipes. It considered however that such a commitment could not justify terminating the current review, as it had no bearing on the current findings that related to a period in the past.
- (26) ECL further argued that should the Commission impose the residual duty of 12,9 % as mentioned in the general disclosure document, which would be in addition to the 9 % countervailing duty already applicable to the company, ECL would not be able to continue selling the product concerned on the Union market and would have to close its subsidiaries/offices in France, Spain, Italy and Germany. As a result, the around 60 persons employed directly by ECL would lose their jobs.
- (27) ECL also referred to submissions by various independent distributors from Italy, France, Belgium, Ireland, and Croatia arguing that there was a serious problem of competition on the Union market. It submitted that if ECL could not supply these companies, they would have to – in most cases – close down their businesses, which would result in a loss of thousands of direct and indirect jobs in Member States across the Union. ECL considered that the economic loss in the various Member States would be thus even more significant. Moreover, in its view, the exit of ECL from the Union market would only strengthen the quasi-monopolistic position of SG PAM on this market to the detriment of the broader Union interest.

1.7.1. *Comments by distributors*

- (28) Companies CO.ME.CAR S.r.l., Deschacht, Vodospok d.d. and WAPPtech requested the Commission to terminate the review. The companies stressed the importance of the presence of ECL on the Union market, and they referred to the quasi-monopolistic situation of SG PAM and to what they described as its anti-competitive behaviour.
- (29) All these companies also mentioned that if ECL left the Union market, it would have a significant economic impact on their operations and on the Union market of ductile pipes. Deschacht, for example, mentioned that it would drastically reduce the ductile pipes offer in Belgium, which would be detrimental to the ductile pipe industry. WAPPtech mentioned that a significant part of its annual turnover came from the sales of ductile pipes from ECL in Europe, providing the economic stability of the company. Vodospok further mentioned that, in its view, the imposition of the proposed measures would have significant economic implications, affecting the supply chain and cause loss of jobs.

1.7.2. *Comments by SG PAM*

- (30) SG PAM submitted that it opposed termination of the investigation on the basis of the review request withdrawal by ECL. In its view, the termination would be against the Union interest, particularly in light of the increase in low priced imports of ECL on the Union market. It referred to conclusions of the Commission on the injury to the Union industry in the original case and in the last expiry review.
- (31) SG PAM also recalled that the review was opened at ECL's request and that it was limited to the re-assessment of its dumping margin, and therefore, that it did not allow the Commission to re-assess the Union interest.
- (32) Furthermore, SG PAM defended that no element suggested that ECL would have to leave the Union market if its level of duties would increase. It recalled that anti-dumping measures did not aim at preventing imports but ensuring that imports were at a fair price. It considered that allegations on SG PAM's anti-competitive behaviour were unsupported and that they only aimed at damaging its reputation. Furthermore, alternative sources of supply existed in its view, such as sales of other European producers Duktus-VonRoll and TRM, and through imports from Turkey, UAE, China and Iran, and from the Indian company Jindal.

- (33) SG PAM further argued that the market for ductile pipes was 'multi-material' because ductile pipes could be substituted by other types of pipes which were a suitable alternative. It referred to conclusions by national authorities and by the Commission in the framework of different analysis related to the competition on this market. SG PAM also pointed out that in some of the Member States, the market share of ECL was important, and that according to its own claims, ECL had a market share of 30 % in France and of 50 % in Spain. Therefore, ECL had, in its view, a considerable market power.
- (34) SG PAM referred to the submissions of the different distributors. It considered that the share of the business activities of the distributors within the scope of ductile pipes for water transportation was low, on average between 3-10 % not exceeding 20 %. Therefore, in its view, even if these distributors could not source from ECL, the impact of this would not be disastrous for them. Also, SG PAM found that there was no indication that their situation was representative for the market for ductile pipes.
- (35) Furthermore, SG PAM submitted after disclosure that in its view, any commitments for the future by ECL did not have a bearing on the findings of the current investigation, and that termination of the investigation would go against the principle of good administration, since it lasted over 1 year and included on-site and remote verifications. It also considered that the investigation could not be terminated in view of the Commission's findings on false and misleading information provided by ECL.

1.7.3. Assessment of the withdrawal request by the Commission

- (36) At the outset, the Commission noted that the wording of Article 9(1) of the basic anti-dumping Regulation, concerning the withdrawal of the complaint, employs the verb 'may' and, thus, the Commission is not placed under an obligation to terminate the proceeding, but merely has the possibility to do so, unless such termination would not be in the Union interest. In other words, the Commission is only required to examine whether termination is not in the Union interest if it considers such a termination. In this case, the Commission does not consider that there are reasons to terminate the investigation.
- (37) Indeed, the Commission recalled that the review was initiated on the basis of the fact that ECL merged with its related company. The merger, as detailed in Section 3.1 below, constituted a change of circumstances of a lasting nature that, in line with Article 11(3) of the basic anti-dumping Regulation, which required a recalculation of the dumping margin established in the original investigation.
- (38) In addition, the Commission considered that in view of the need to eliminate the trade distorting effects and to restore effective competition, an appropriate dumping margin needs to be established, in particular in this situation where misleading information was provided.
- (39) Therefore, the Commission concluded that terminating the review, and thus disregarding the findings of this investigation, was not appropriate in this case and decided to continue the investigation.

1.8. Comments upon initiation

- (40) After initiation, the Union producer SG PAM submitted that it was, for the past 10 years, negatively affected by ECL's unfair practices and increased level of dumping.
- (41) SG PAM also submitted that the request did not contain any information supporting the alleged reduction in dumping or of the link between the merger and the variation of the level of dumping. It argued that the relationship between ECL and SPL was already accounted for in the original investigation and that the figures of both companies were used for the determination of the dumping margin of ECL. It also considered that the review would most likely result in the increase of the dumping margin.
- (42) In response to this, ECL submitted that SG PAM's arguments were not supported by facts. In its view, the market share of SG PAM increased since the original investigation, while ECL's total sales volume on the Union market declined. ECL also argued that, at the same time, its sales prices increased above the level of the measures imposed on its exports to the Union. In its view, the financial results, new investments, and the increased level of sales proved an excellent performance of SG PAM.

- (43) Moreover, ECL pointed out that a previous interim review against ECL on request of SG PAM was terminated after the request was withdrawn by the latter. This meant, according to ECL, that SG PAM was of the opinion that ECL's dumping had decreased. In ECL's view, SG PAM benefitted from excessively high anti-dumping and countervailing measures against the Indian exporting producers of the product under review. ECL also argued that the decision to initiate the current interim review was not based on their own but on the Commission's assessment that the merger affected the cost structure of the company.
- (44) In the context of these claims, the Commission noted that the purpose of the review was to determine the new level of dumping of ECL in light of the changed circumstances. It also clarified that the data of the related company SPL was not used in the original dumping calculations. Moreover, the fact that the data of SPL was not used in the original anti-dumping investigation was not the only factor to consider when initiating the review. In the Commission's view, the fact that the merger resulted in synergies which alleviated certain costs that had an effect on the operation and costs of the company was also considered. Therefore, the review was justified, and the claim was rejected.
- (45) SG PAM also argued that the request did not meet the standards for the treatment of non-confidential information, and that the applicant had not provided non-confidential summaries in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, to meet the requirements set out in Article 19 of the basic anti-dumping Regulation.
- (46) The Commission observed that the entire request was non-confidential. Moreover, it noted that SG PAM did not specify concretely what information in the open file was in its view missing. It therefore rejected the claim.
- (47) SG PAM further submitted that the Commission should extend the investigation period to account for the alleged change in circumstances. ECL's merger with its related company SPL became effective as from 1 January 2022. However, the review investigation period chosen by the Commission was set to run from 1 April 2021 to 31 March 2022, to align with the traditional Indian financial reporting year. According to SG PAM, this meant that three quarters of the review investigation period (April 2021 to December 2021) covered a period prior to the alleged change in circumstances and the data of the three previous quarters would in any event not be representative of any change resulting from the merger.
- (48) With regard to the claim of inappropriateness of the review investigation period, the Commission clarified that it was established that operationally, administratively and from an accounting point of view, the merger took effect, retroactively ⁽¹⁰⁾, from 1 October 2020. It could therefore assess the effect of the merger during the entire review investigation period. The claim was thus rejected.
- (49) According to SG PAM, the Commission should also have verified the differences in the characteristics between the pipes and tubes sold in India and in the Union. These differences mainly related, in its view, to pressure and thickness classes, weight, lengths, and coating. Furthermore, SG PAM pointed out that ECL sold pipes that were heavier and that the same pipes may have a different use in India than in the Union. It gave an example of a 'K9' ⁽¹¹⁾ class pipe which, according to them, is commonly used in India for water, while in the Union, 'K7' class pipes were used for the same purpose. In SG PAM's view, these differences may justify adjustments to allow a fair comparison between products sold on the Indian domestic market and the Union market. ECL disagreed and provided details on the technical characteristics of its products and the alleged differences.
- (50) The Commission's practise is to calculate a dumping margin by comparing the normal value of a product type with the export price of a similar product type. The differences pointed out by SG PAM were thus taken into consideration as the different pressure classes were considered as different product types. The Commission considered that SG PAM's concerns were fully addressed.

⁽¹⁰⁾ See note 61 on page 271 of ECL's annual report of financial year 2020/2021.

⁽¹¹⁾ 'K' indicates a pressure class based on the Indian domestic standards applicable to the product under review and, the higher the number, the higher the pressure it can resist.

- (51) SG PAM also argued that the new organisation of the corporate group of ECL created significant opportunities for cross-compensation, internal sales at non-market values, non-reported services and/or other items that may significantly affect the assessment of costs and the comparison of domestic and EU sales of the company. Therefore, in its view, the Commission should pay attention when assessing transactions between the related entities. To that end, SG PAM provided a summary description of ECL Group's corporate structure, as well as factors that should, in its view, be considered by the Commission in the dumping calculation. SG PAM referred to the provision of coke produced by one of the factories of ECL in Haldia, and to imports of coal from Australia where some related parties of ECL may have been involved. The same was valid according to SG PAM concerning the Union market, where ECL sells through several related parties. SG PAM referred to discounts mentioned in annual reports of two of the related parties, Electrosteel Trading S.A. and Electrosteel Europe S.A., end-of-year bonuses, sales at 'zero values', and other market practices. SG PAM also pointed out potential transactions that are mentioned in ECL's entities annual accounts between ECL and Electrosteel Algeria SPA, Electrosteel Castings Gulf FZE (UAE), Electrosteel Bahrain Holding WLL (Bahrain), and Electrosteel Doha for Trading LLC (Qatar), that the Commission should look at to verify a possible involvement of these entities in the sales of the product concerned on the Union market.
- (52) The Commission considered these elements in its assessment, it reviewed the structure of the corporate group and organisation of the related parties to the extent to which the relationship was relevant to determine a new dumping margin for ECL. To that end, it considered the fact that the product under review was sold on the Union market through related parties.
- (53) SG PAM argued that since the market for iron ore was distorted in India and these distortions were established in the original regulation imposing a countervailing duty on the exporting producers in India, the Commission should adjust the costs when constructing the normal value based on Article 2(5) of the basic anti-dumping Regulation.
- (54) The Union industry made the same claim in the original investigation. The Commission considered at the time that the distortion was investigated and addressed in the separate anti-subsidy investigation and that there was no need to address this distortion further, as to do so would amount to double-counting of the effects of the subsidy. The Commission maintained this view.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (55) The product subject to this review is 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') ('the product under review').

2.2. Product concerned

- (56) The product concerned by this investigation is the product under review originating in India, currently falling under CN codes ex 7303 00 10 and ex 7303 00 90 (TARIC codes 7303 00 10 10, 7303 00 90 10). The CN and TARIC codes are given for information only without prejudice to a subsequent change in the tariff classification.

2.3. Like product

- (57) As established in the original investigation, this interim 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 when exported to the Union;
 - the product under review produced and sold on the domestic market of India; and
 - the product under review produced and sold in the Union by the Union industry.
- (58) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic anti-dumping Regulation.

3. FINDINGS

- (59) In accordance with Article 11(3) of the basic anti-dumping Regulation, the Commission examined whether the circumstances on the basis of which the current dumping margin was established have changed and whether such change was of a lasting nature.

3.1. Significant and lasting change of circumstances

- (60) The investigation confirmed that pursuant to the approval of the Scheme of Amalgamation of SPL with ECL by the relevant authorities in India on 31 December 2021, SPL officially merged with ECL. ECL subsumed SPL and therefore, the two companies were operating as one entity from 1 January 2022 onwards. On the latter date, SPL ceased to exist. The shares of ECL and SPL were merged and allotted on 20 January 2022 and the allotment process was completed in April 2022. However, the merger took retroactively place as from 1 October 2020 as explained in recital (48).
- (61) Based on the above, the Commission concluded that pursuant to Article 11(3) of the basic anti-dumping Regulation, the basis on which the existing measures were imposed had changed and these changes justified the review of the dumping margin for the applicant.
- (62) After disclosure, ECL argued that the Commission did not make an assessment of the synergies from the merger, and that therefore, the investigation should be terminated.
- (63) The Commission disagreed with this assumption since, as mentioned in Section 1.7 and disclosed to the interested parties, it had concluded that the merger resulted in synergies which alleviated certain costs that had an effect on the operation and costs of the company. The conclusion on the need for the partial interim review was also repeated in recital (113) of the general disclosure document of 24 August 2023.
- (64) After disclosure, the GOI echoed the arguments of ECL and defended that the interim review was not necessary. While the GOI agreed that it had been a consistent practice of the Commission to conduct a partial interim review in case of mergers, it considered that the case of ECL was different because both ECL and SPL were part of the original investigation, and because the decision not to use the data of SPL in the original anti-dumping investigation was a choice made by the Commission. Therefore, in its view, there was no need to re-investigate them. Additionally, it was, in its view, the Commission who officially requested ECL to submit the request for an interim review.
- (65) To establish the costs of the merged entity, the Commission was obliged to use, if the data of ECL was not rejected, the consolidated costs of the merged entities, and consolidated general, administrative and selling costs.
- (66) Also, the Commission considered that whether ECL would have lodged the request at its own initiative, or whether it was advised by the Commission, was not relevant, since the Commission established, based on Article 11(3), that the merger represented 'changed circumstances of a lasting nature' which required establishing a new dumping margin (see Section 3.1). The Commission thus rejected the claim.
- (67) The GOI also argued that an interim review request was submitted with regard to both countervailing and anti-dumping measures, and that it was unfair that the Commission only conducted the anti-dumping review, because certain subsidy schemes were no longer in place.
- (68) The Commission recalled that only a request for the review of the anti-dumping measures was lodged by ECL. The claim was thus unjustified.

3.2. Cooperation and use of 'facts available'

- (69) In the original investigation, the dumping margin of ECL (and other cooperating exporting producers) was established on basis of the net metal weight of the product concerned. This means that it was established on the weight of the pipe without cement lining and not on its total weight. Accordingly, ECL had based its reply to the anti-dumping questionnaire reply only on net metal weight.

3.2.1. Importance of the reported net metal weight for the dumping margin

- (70) The product under review is a steel pipe with an inner cement layer to prevent the pipe from corrosion. In addition, the steel pipe has on the outside a very thin protection layer of a few millimetres, commonly referred to as the 'coating'. The weight of a pipe with cement lining is defined as a cement lining weight ('CML').
- (71) The products sold on the Indian domestic market have a different coating ⁽¹²⁾ as compared to the ones exported to the Union. This results in a lack of matching of product types for the purpose of the dumping margin calculation. Despite the fact that the coating has no significant effect on the cost of production or on the price, due to the lack of matching, the normal value had to be constructed based on the costs of production. To construct the normal value, for each product type the total weight of the particular pipe sold to the Union had to be multiplied by the average cost of manufacturing per kilogram of that product type.
- (72) The total weight of a pipe includes the weight of the metal, the cement and the coating. For most of the types exported to the Union and following the nominal (theoretical) standards ⁽¹³⁾, the average weight of the metal within the pipe represents around 85 %, whereas the cement weight represents on average 15 % of the total weight of the pipe ⁽¹⁴⁾. The weight of the coating is between 0,3-1 % of the total weight of the pipe. The metal represents the major proportion of the cost, thus its cost defines the sales price of the final pipe.
- (73) Only the metal part of the pipe is used to be multiplied by the average cost of manufacturing. Therefore, the weight of the metal and its proportion within the weight of a pipe has a direct impact on the calculation of the normal value, and thus, directly affects the dumping margin. Underreporting the metal weight automatically leads to a lower constructed normal value and consequently a lower dumping margin ⁽¹⁵⁾. Similarly, underreporting the metal weight for the sales to the Union leads to a higher average export price ⁽¹⁶⁾. Therefore, the accurateness of the metal weight reported plays a crucial role in the determination of the dumping margin. In other words, the correctness of the reported metal weight is necessary to calculate an accurate dumping margin. Moreover, it affects the accuracy of both the established normal value and the established export price.

3.2.2. Metal weight reported by ECL in the current investigation

- (74) According to the information provided by ECL during the on-the-spot verification, pipes produced by the company were not systematically weighed individually. Instead, a whole container or a truck fully loaded with the pipes was weighed on a weighbridge before leaving the premises of ECL. This container/truck contained a number of pipes of different diameters with the CML and coating and may have included other products such as gaskets, lubricants, fittings, or other, and also included pieces of wood or other packing material. ECL argued that the net metal weight of the pipes that were produced was recorded in the accounting system based on the weighing of a sampled pipe of each product type from every order. According to ECL, the metal weight of the sampled pipes was then recorded in their SAP system and was continuously adjusted according to the results of each sample testing outcome. ECL argued that this data, which was reported in its questionnaire reply and then used for the dumping calculation purpose, thus reflected the actual metal weight of the pipes.

⁽¹²⁾ The type of coating depends on the soil corrosivity. The most common types are metallic zinc alloy or metallic zinc-aluminium alloy. The thickness of the coating on the Indian domestic market varied between 130 to 200 grams/m² whereas for exports to the Union it varied between 200 to 400 grams/m².

⁽¹³⁾ The nominal weight is a standard theoretical weight of a pipe, calculated based on its dimensions and share of the cement and metal.

⁽¹⁴⁾ Depending on the diameter of the pipe, the proportion of the incorporated steel varies between 80-90 % of the total weight of the pipe whereas the proportion of cement varies between 10-20 % of the total weight of the pipe.

⁽¹⁵⁾ For example, when the average cost is calculated based on its metal content, a difference of a 10 % share of the metal content within a sold pipe translates in a difference in 12,5 % of the normal value.

⁽¹⁶⁾ Consider, for example, a pipe sold for a value 100 EUR. Different average export prices derive depending on what metal content quantity you use as denominator. If the 100 EUR value is divided by 50 kg, a 2 EUR/kg is obtained. If the metal content is 60 kg, the average export price is 1,81 EUR/kg.

- (75) To verify the correctness of the net metal weight entered in SAP by ECL, the Commission asked the company to provide additional information on (total) 'gross weight' of the pipes (including CML and coating), and production and sales data expressed in meters.
- (76) The gross weight, called 'Kanta' weight for domestic sales is the weight of the pipes including the CML and coating. The company kept records of the gross weight of a loaded truck or container on the weighbridge, which included packaging. By asking this additional information, the Commission sought to crosscheck the correctness of the net metal weight reported by the company.
- (77) After comparing the additional information submitted by ECL, the Commission found discrepancies between the gross weight of the product under investigation sold on the export market compared to the product under investigation sold on the domestic market. The difference concerned in particular the weight of the CML in products sold on the domestic market compared to its weight in the products sold on the Union market.
- (78) By using the information provided by ECL on the basis of the length of the pipes (meters), the Commission, in the absence ⁽¹⁷⁾ of a CML weight on the domestic market, made a comparison between the average Kanta weight per meter of pipes sold on the domestic market with the CML weight of the pipes sold for export. It found that, the reported gross weight of pipes per meter was on average more than [5-15 %] % higher for export sales, compared to domestic sales ⁽¹⁸⁾. Since the reported data on the domestic market included packaging while the packaging was not included in the reported weight for sales to the Union, the Commission concluded that the actual difference would be even higher.
- (79) In order to be as accurate as possible, the Commission narrowed down the comparison to nearly identical product types sold both on the Indian domestic and on the Union market. When comparing nearly identical product types ⁽¹⁹⁾ (only differing in external coating), the Commission observed that the reported net metal weight was identical while the weight of the CML weight was always significantly higher for the export sales. The Commission found that the total (gross) weight of a pipe was on average [5-15 %] higher when exported. For some product types, the difference was as high as [5-15 %]. This meant that the weight of a pipe per meter was on average [10-20 %] higher when sold for export compared to the nearly identical pipe sold domestically. The Commission also noted that these discrepancies were always going in one direction – underestimating the weight of the exported product. Such underestimation, as explained in recital (72), had the effect of lowering the dumping margin of ECL.
- (80) In view of the above, the Commission considered these discrepancies as evidence of misreporting of weight information concerning sales. As noted above in recital (40), the correct reporting of weight information is critical in order to reach an accurate dumping margin. Specifically, the misreporting of weight information can lead to the reduction of the real dumping margin. Against this background, on 29 June 2023, the Commission asked ECL to provide explanations for these discrepancies.
- (81) ECL responded that the comparison of the export and domestic sales was influenced by differences in product mix of sales on both markets, and that the differences found for pipes up to 300 mm in diameter were caused by different norms with regard to the thickness of the CML applicable in the Union and Indian domestic markets. Also, in the applicant's view, some differences existed because of different types of coating used on the domestic and export market, and differences in packaging for transport.
- (82) The Commission considered that while some differences could indeed be influenced by a different product mix, the magnitude of the differences found when comparing nearly identical product types ⁽²⁰⁾ could not be sufficiently explained by the reasons given by ECL.

⁽¹⁷⁾ The CML weight for domestic sales was provided by ECL after the Commission's analysis of the weight differences.

⁽¹⁸⁾ The % difference is expressed on the proportion of the net metal weight.

⁽¹⁹⁾ When referring to nearly identical product types, the Commission means a pipe of the same external/internal diameter and produced according to the same norm. The only difference concerned coating.

⁽²⁰⁾ Except for coating, the pipes were identical.

- (83) In addition, during the on-the-spot verification visit, the Commission established that for the pipes of the same diameter, the thickness of the CML for the domestic and export market was identical. Also, ECL's own production coding system used identical product codes for both the domestic and the Union market. Furthermore, the same production lines and the same method of production were used. If pipes for export were to have a different cement thickness, a different product code would have existed for these products, which was not the case.
- (84) Moreover, ECL's argument that there are different norms for cement thickness on the Indian and the Union market only concerned pipes up to a diameter of 300 mm. The Commission, however, also found discrepancies for pipes with a diameter larger than 300 mm, for which the requirements for the thickness of the CML in the norms for both markets were identical. The Commission calculated that, based on the net metal weight as reported by ECL, the CML for some product types would have to be double for the export market compared to the domestic market.
- (85) As confirmed by ECL its own submission, the (different) type of coating for the export market had a minimal impact on the total weight of a pipe, representing only around [0-3 %] of the total weight. Therefore, a difference in coating could not be responsible for a weight difference going up to almost [10-20 %]. With regard to the transport packaging, the Commission received information on spot, confirming that the gross weight reported for domestic sales include packaging and other products (lubricants and gaskets). However, even if packaging and others would have been excluded, it was established during the on-spot verification of the factory that the share of the domestic and export packaging in the overall weight was in the order of [0-3 %], and therefore, negligible compared to the overall weight of the pipes.
- (86) The Commission thus concluded that the differences for pipes up to a diameter of 300 mm could only partially ⁽²¹⁾ be explained by the argument that the difference was caused by different norms with regard to the thickness of CML applicable in the Union and Indian market. For pipes larger than 300 mm, the difference could not be justified by a different norm for CML, a different type of coating, or a difference in transport packaging.
- (87) Based on the information on file that contradicted each element of the applicant's explanation for the weight differences, it appeared that the only explanation was that the applicant misreported in its accounting system the weight, or the length of the product concerned with the effect of reducing its dumping margin. By doing so, the applicant provided false or misleading information within the meaning of Article 18(1) of the basic anti-dumping Regulation, thereby significantly impeding the investigation.

3.3. Comments of the Government of India on the use of facts available

- (88) The GOI commented that the investigation was opened at the initiative of the Commission and that it was in its view unnecessary. It submitted that since there were no differences with regard to the net metal weight reported on the domestic and the Union market, the data of ECL should be accepted. It noted that ECL for its reporting had used the same methodology as in the original case (based on the net metal weight) and that this (same) methodology was accepted by the Commission in all the previous investigations. In the GOI's view, since the methodology was not changed and the company had not changed its way of reporting the data, the data/information supplied by ECL could not be disregarded.
- (89) The GOI also commented on the findings with regard to the discrepancies identified by the Commission in the Article 18 letter between net metal weight, CML weight and 'Kanta Weight'. In this context, it submitted that the purpose and basis of all three weights were different and hence could not be used for any comparative analysis.
- (90) The GOI submitted in particular that the net metal weight was used by the industry for all internal and statutory recording purposes. The CML was not considered as an essential criterion either by the producer of product concerned or by the Commission until now for any purpose, including the product control numbers ('PCNs') ⁽²²⁾.

⁽²¹⁾ By a maximum of [0-10] percentage points for certain product types.

⁽²²⁾ Alphanumerical codes assigned at the beginning of the investigation to each product type of the product concerned.

This approach was, in its view, also in line with the fact that even the company SG PAM never included cement as a relevant criterion while giving the product characteristics, and that the Commission too accepted the PCNs without including cement as a separate criterion in all the investigations carried out so far. The GOI argued that deviating from the established methodology in a partial interim review did not seem to be desirable nor justified. Therefore, the Commission's proposition to apply facts available based on difference in cement weight would not only be harsh but also unjustified on ECL, who was fully cooperating in all the investigations over the years.

- (91) The GOI also added that the Kanta weight included not only the weight of bare pipe (net metal weight) but also that of cement, internal and external coating, packing material and other items like spacer ring, lubricants, etc. Since Kanta weight included weights of items other than that of the product concerned, it varied on consignment-to-consignment basis and therefore, it should not be used for any calculation or analysis.
- (92) The Commission first noted that, as explained in recital (8), the investigation was initiated following the request of the applicants. Whilst that request may have been based on informal discussions with the Commission on the effects of the merger with SPL, this does not change the fact that it is the applicant that decided to request the review.
- (93) Moreover, the Commission took note of the explanations for the different units of measurement used by the industry. It confirmed that in line with what was requested by the Commission in this investigation, and in line with the method used in the previous investigations, ECL reported data based on the net metal weight. However, for the purpose of verifying the accuracy of the provided data based on the net metal weight, and in the absence of information regarding the metal weight of individual pipes, the Commission focused during the verification process on establishing the accuracy of the information provided by ECL, and crosschecked the information against different units of measurements, such as the gross weight and meters. The Commission also looked at data reported for the domestic and the export market. When crosschecking the accuracy of the information, the Commission found discrepancies pointing to inaccuracy of data submitted based on net metal weight. Therefore, the Commission's intention was not to use a different methodology than used in the original anti-dumping investigation but rather to verify whether ECL had reported its data correctly.
- (94) The GOI also considered that since the products sold on the domestic market were not the same as the products sold in the Union market, the consistent practice of the Commission in such cases was to construct the normal value based on cost of production. Therefore, the GOI submitted that differences between the weights of the products sold in the domestic market and the EU market did not have any bearing on the present investigation.
- (95) To conclude, GOI considered that the proposition to resort to 'facts available' was not justified, and that the Commission should accept the information provided by the cooperating exporter and make the determinations accordingly.
- (96) The Commission confirmed that in line with the original method, since no directly comparable products were sold on the Union and export market, it intended to construct the normal value based on the costs of production. As explained in recital (72), the accurateness of the metal weight reported plays a crucial role in the determination of the dumping margin. Accordingly, the Commission concluded that accurate data on weight was also needed in case the normal value was to be constructed. Therefore, in case the data were found to be unreliable, they could not be used as such to determine the normal value.

3.4. Comments of ECL on the use of 'facts available'

- (97) In its reply to the Article 18 letter, ECL considered that the application of facts available was unjustified and lacked factual basis because it was based on a comparison of weights of incomparable products and ignored several variables. Also, it considered that the calculations by the Commission in the Article 18 letter were not accurate.

3.4.1.1. Data related to weight were based on ECL's records and audited financial accounts

- (98) ECL argued that metal weight reported was correct, and that ECL had not provided any false or misleading data, including for the metal weight. In its view, all the weights reported by ECL in the course of the investigation were based on the company's SAP system and/or were also noted on invoices issued to customers in the Union and on the export documentation.
- (99) With regard the metal weight, ECL argued that the data was based on the SAP system of ECL, and its accuracy was verified by the Commission during the on-the-spot verification. The data was based on the metal production and consumption, and it matched ECL's annual report and the stock amount of metal recorded in SAP, all verified by the Commission. It further submitted that the metal weight was also mentioned in the annexes to the export packing list (along with the net and gross weights), and that these weights corresponded to weights reported by ECL in the questionnaire reply.
- (100) ECL also argued that SAP data was audited every quarter by external auditors, and, as verified by the Commission, reconciled with the annual accounts of the company. The invoices and export documentation issued in the past (during the review investigation period) to related and unrelated customers were the basis for customs declarations, transportation of the goods, and other regulatory compliance requirements and were automatically generated by SAP based on the actual weighbridge data being fed in the system at the factory by dozens of ECL's employees. Thus, the authenticity and accuracy of SAP and invoices could not be questioned, in ECL's view.
- (101) ECL also submitted that the different weights it recorded and reported to the Commission corresponded to export data to third countries. It argued that the net metal weights and the CML weight of the different product types when exported to third countries were comparable with the same product types when exported to the Union.
- (102) Furthermore, ECL argued that the company was audited and inspected by international standards' authorities which controlled the accuracy of its records. ECL submitted in particular an inspection report issued by an independent inspection company which was commissioned by ECL's third country customer. The report mentioned the average weight of pipes and proved, in ECL's view, that the weight per meter of the product types sold on the Union market were similar or close to the CML weight reported by ECL and indicated also that the cement lining thickness varied.
- (103) ECL recalled that it controlled and focused on the metal weight as the metal was the key cost driver, and that it was continuously monitored during the production process whereas the CML accounted for only around [0-3 %] of the total cost. The Kanta and CML weights were checked and relevant mainly for transportation cost calculation purposes.
- (104) Therefore, ECL argued that depending on the practice of a company, the weight of pipes can be expressed on net metal weight basis or CML weight basis, which was also confirmed by SG PAM in its comments. The nominal metal and CML weight per the respective standards were derived therefrom. The nominal weight was a weight a producer would aim for, but it was according to ECL not the immutable standard. Therefore, in ECL's view, higher cement values and ratios were permitted and routinely existed.
- (105) The Commission took note of the different explanations of the applicant with regard to the different weight, and the fact that the data it reported was based on its SAP system, that it was subject to audit by external auditors to approve its financial accounts, and was subject to inspection on whether its products are in line with the different international standards. The Commission also agreed that it could verify and link the overall consumption of the net metal reported by ECL for the RIP with the SAP system, and with its annual accounts.
- (106) However, parameters such as weight of metal, cement or length of individual pipes for the different products and markets and how they were allocated between the products, were variables that were entered into the system by the company.
- (107) First, based on the information provided by ECL, the Commission observed that the weight of individual pipes was not systematically recorded, contrary to what ECL claimed.

- (108) The Commission noted that the reported net metal weight for the same product types was in general close to the nominal weight, which did not support, in the Commission's view, ECL's argument that it was being adjusted based on the actual weight. It was also found that similar net metal weights were reported for different orders. Using the actual net metal weight for each order should have resulted in a different net metal weight per order, which was not the case.
- (109) The fact that in reality the net metal weight was not always equal to the nominal weight was evidenced by inspection reports of an independent inspection company that ECL submitted to demonstrate that there were variances in thickness of the CML. The same document clearly showed that for the pipes tested, the net metal weight exceeded the nominal weight by more than [0-10 %]. This further demonstrated, in the Commission's view, that it was unlikely that the net metal weight reported by ECL reflected the reality.
- (110) Second, other parameters such as for instance the Commission's PCNs were entered into SAP by the company, to produce reports at any moment in time and even outside the investigation period.
- (111) Therefore, the Commission noted that although the total metal consumption corresponded to annual accounts, certain key parameters for individual production and sales transactions such as weight per meter were solely based on the input into SAP by ECL, and that the correctness of this information at individual transaction level could neither be verified nor crosschecked by reference to supporting documents and other internal or external evidence. These circumstances corroborated the findings that the data reported at individual transaction level were not correct. The Commission thus disagreed that the sole fact that a situation where overall data matched with the SAP system represented the decisive evidence that the data at individual transaction level was automatically correct.
- (112) The Commission also noted that, according to ECL, the data on net metal weight only appeared on packing documents for export, while no packing lists allegedly existed for the domestic market. The data could thus not be verified on both sides. Additionally, as the Commission noted, the information on the net metal weight on the export documentation could not be verified by the transporter (nor by the customer) since the transported pipe included the CML and coating, while transport was determined based on the total (gross) weight. At the same time, the orders and invoices for the customer mentioned meters. The information on the net metal weight could thus not be verified by a third party. The Commission thus did not consider that the fact that the net metal weight appeared on the transport documents was additional evidence that the information was correct.
- (113) Following the methodology of the original anti-dumping investigation, ECL initially reported the net metal weight for each transaction of its sales on the domestic market and the Union market. Unlike the invoices for the Union market, the net metal weight was not mentioned on the domestic sales invoices. And, since it also did not appear for instance on domestic transportation documents or packing lists, the correctness of the net metal weight could not be verified by the Commission.
- (114) It was only after the Commission received the information enabling it to compare the Kanta weight on the domestic market with the CML weight on the Union market that the discrepancy was first discovered.
- (115) The Commission also took note that ECL (as well as other producers) would, in general, closely monitor the metal weight consumption. It also took note of the explanations with regard the net metal weight, the nominal weight, and the fact that it was not a strict standard, and that higher cement values and ratios were permitted and routinely existed. However, these explanations did not, in the Commission's view, allow to conclude that ECL reported the net metal weight in an accurate way. In particular, the explanations provided by ECL did not address, in the Commission's view, why products were consistently reported as heavier on the export sales side, compared to the nearly identical products sold on the domestic market, and certainly not for products for which the same norm on the thickness of cement lining applied.

3.4.1.2. Alleged discrepancies identified in the Article 18 letter

- (116) ECL further argued that the calculations in the Article 18 letter were not correct because the calculation of the [5-15 %] difference overlooked the product mix and the divergent pipe standards applicable in the Union and the domestic markets. The comparison would only be correct if identical products were sold in the same proportions on both markets. In its view, the difference relied mainly in the difference of the Indian and Union standards for the cement lining thickness. The differences could not be the basis for assuming that ECL's data was false or misleading.
- (117) As the Commission already noted above in Section 3.2.2, it took into account the fact that the comparison it made based on total export and total domestic sales was indeed based on the different product mix, which could influence the result. It made this comparison however, to demonstrate that there was a systematic difference in weight per meter of products sold on the export market compared to the domestic market, before narrowing it down to a comparison of nearly identical product types (which confirmed that the difference existed as well for nearly identical types). The Commission noted at the same time that apart from a general claim that thinner pipes mostly sold on the export market contained allegedly more cement, ECL did not provide further evidence on why the types of pipes sold on the export market were systematically heavier than the types of pipes sold on the domestic market. The explanations with regard the difference in cement lining norms on different products only applied to pipes of low diameters (below 300 mm), and therefore, it was not valid for all the other product types that the Commission compared and where the norms in terms of CML were identical.
- (118) Furthermore, in ECL's view, the Commission's conclusion that the CML was identical between nearly identical products sold on the Union and domestic market was incorrect and the difference in CML thickness should be taken into account. It calculated that the weight differences between nearly identical products was [0-5 %] and not [5-15 %] as calculated by the Commission. It reiterated that the thickness of the CML was similar only with respect to diameters above 300 mm, but it did not apply to pipes of diameter between 80 and 300 mm diameters. In particular, for pipes with diameter between 80 and 300 mm, under EN 545:2006 which was the K-class standard for pipes exported to the Union, the nominal thickness of the cement lining had to be 4 mm. In contrast, according to IS 8329 which was the standard for K-class pipes for the Indian market, the nominal thickness of the CML was 3 mm. ECL thus submitted that the Commission's calculations needed to be adjusted by the difference in the cement lining between the domestic and export market and for diameters between 80 and 300 mm, this difference was [25-35 %].
- (119) ECL also did not agree that its internal product codes reflected the product specifications. It argued that ECL's internal product codes captured the diameter and the class of the pipe and the elements that concern the metal weight, but not the multiple variants including the standards, zinc coating, CML, colour, etc. These variants were mentioned in the SAP order and a document called the 'production load release' which was the basis of the production and sales where the relevant standard was indicated ⁽²³⁾. ECL could thus not have sold K-class pipes based on the Indian standards on the Union market. Additionally, the annexes of invoices for the Union sales submitted to the Commission mentioned the standard. Therefore, the Commission's assumption/understanding could not be factually correct.
- (120) ECL also argued that the Commission should have taken into consideration the fact that zinc coating was heavier on the export side and that there could be differences between the calibration of the weighbridge used for trucks for export and weighbridges used for domestic sales.
- (121) In ECL's view, the comparable product types identified in the Article 18 letter only represented [0-5 %] of the export in the RIP and therefore, the Commission could not rely on such a comparison. The Commission could not thus reject all the information, especially when a party submitted information in due time, when the information was verifiable, and when the party acted to the best of its ability. According to ECL, an imprecise and manifestly incorrect calculation of the weight did not provide an objective basis to apply facts available as regard the reported metal weight, and it did not make ECL's entire metal weight data unusable or unreliable.

⁽²³⁾ According to ECL, the production load release is a document which sets out the production volume and details based on which the production takes place.

- (122) The Commission made a new analysis of the newly submitted information, and arguments presented by ECL.
- (123) It recalculated the difference of the gross weight reported for the domestic and export market based on the weighted average, as suggested by ECL. The difference in gross weight between the domestic and export market remained still significant ([5-15 %]). In addition, it remained up to [10-20 %] for certain product types. This difference could not be explained by the applicant.
- (124) Furthermore, as mentioned in recital (82), the fact that there were certain types that had to be produced with lower CML contradicted, in the Commission's view, the information received during the on-the-spot verification. In addition, in the catalogue of ECL for the domestic market, the thickness of pipes with diameters lower than 300 was shown to be 3,5 mm. Therefore, ECL produced these diameters according to the catalogue with a thickness of 3,5 mm, and not 3 mm as it argued. Given the allowed tolerance in thickness on both markets, the pipes of 3,5 mm to 4 mm would comply to norms on both markets.
- (125) Nevertheless, the Commission made a new comparison by adding the alleged difference in the CML, as well as the difference in the zinc coating, as submitted by ECL. Even when adjusting for these differences, the difference in gross weight between the domestic and export market remained still significant, i.e. [0-10 %] on average with differences for certain product types up to [5-20 %]. In terms of cement lining, the analysis showed that for some product types, if assumed to be correctly reported, the CML for pipes sold for export would contain on average [30-75 %] more cement, with differences for certain product types up to [20-100 %].
- (126) The Commission further clarified that the nearly identical products (including the ones that the Commission adjusted for the allegedly thicker lining), represented [10-30 %] of the sales to the Union and not [0-3 %] as argued by ECL.
- (127) However, as explained above in recital (125), all the products exported to the Union were reported as heavier on average. For the products that were not sold on the domestic market, the Commission compared the types sold on the export market with the nominal (theoretical) weight. Also, for these types, the difference in weight was similar to the nearly identical one. The outcome of the calculations for the products that were not sold on the domestic market was in line with the comparison made for the products that were sold on the domestic market, and showed an unexplained difference in weight, that if correctly reported, would have resulted in a pipe with a much thicker CML on the export side (an average [30-75 %] more cement with differences up to [100-150 %]).

3.4.1.3. Differences between the nominal and actual thickness on export and domestic market

- (128) ECL also commented on calculations by the Commission of the nominal thickness of the cement lining and its weight. It submitted that calculations of nominal CML and the weight in the Article 18 letter were not correct in case of several diameters and because of the moisture content that needed to be adjusted for. The moisture content remained in the CML and therefore, added to the weight. If the moisture content was taken into account, the difference between the nominal and ECL's reported cement lining weight was allegedly much lower.
- (129) Additionally, ECL argued that the CML for pipes exported to the Union was, in general, thicker than the nominal CML, and thicker for pipes to be exported to other third countries, to avoid rejection. In its view, this fact was also shown in the inspection reports of an independent inspection company. ECL submitted additionally as evidence a letter from an expert from ECL's related company, who is also a representative in the standard setting bodies, confirming that the CML would be thicker on the export market.
- (130) The Commission took note of the fact that there may be remaining moisture in the sold pipes. That would however be only valid in case of shipments that leave the factory shortly after pipes were produced. The Commission noted that the moisture content indeed diminished with the time but that after 3 days the moisture level would be stable. Also, ECL did not submit evidence or quantify how the moisture content impacted the weight of the CML and the total weight of the pipe. These conclusions were, in the Commission's view, theoretical as ECL could not establish the exact time lapse between the moment the products were produced and exported.

- (131) The Commission also noted in this respect that when it compared the nominal (theoretical) CML weight with the reported CML weight, in case of the domestic market, the weighted average variance was at a minimum, around [0-3 %]. For the export market, the variance was much higher. On average the variance was [0-10 %], up to [15-30 %] in some cases. This further demonstrated, in the Commission's view, that the data with regard to the weight as reported by ECL was not correct.
- (132) Furthermore, the report of an independent inspection company showed that there can be variances in terms of the thickness (and therefore the weight) of the cement lining. However, it showed at the same time that similar variances existed in case of the net metal weight which was consistently reported by ECL as being very close to the nominal (theoretical) weight. In any event, the report did not explain why the deviations from the nominal weight only appeared on the side of the export market, and why they would be close to the nominal value on the domestic market.
- (133) With regard the general claim that pipes for export would be thicker than the ones ECL produced for the domestic market, the Commission reiterated that this information was never mentioned during the on-the-spot verification. On the contrary, it noted that pipes of the same diameters would always have similar CML. Also, in its view, the letter of the expert from ECL's related company did not confirm that pipes for the Union market must all have in general a thicker CML. The letter only summarized the different norms, and confirmed that for diameters below 300 mm, the standard required 4 mm of CML. While it indeed mentioned that there was a stricter requirement according to the EU norm with regard the cement mortar cracks, this did not, in the Commission's view, justify that the CML would have to be thicker than what was stipulated in the EU norm. Also, no evidence on the record was provided that putting a thicker CML would lead to less cracks. Following ECL's product brochure for instance, the formation of cracks, irrespective of the thickness, is unavoidable. The cracks, together with other isolated cracks, which may develop during transportation, are acceptable and these cracks will heal when the pipe comes in contact with water during its use.

3.4.1.4. Legal requirements related to use of facts available

- (134) ECL submitted that the application of facts available should be consistent with the legal standard set by Article 18 of the basic anti-dumping Regulation, that needs to be applied in light of the WTO Anti-dumping Agreement ('ADA'). ECL argued that the use of facts available should be limited to fill in gaps in the necessary information. It should also be limited to reasonably replacing the missing 'necessary information', to arrive at an accurate determination. Furthermore, facts available must not be used in a punitive manner, and must take into account all the substantiated facts provided by an interested party, even if those facts may not constitute the complete information requested.
- (135) ECL submitted that the investigating authorities had to endeavour to make maximum use of the data communicated to them by the parties. Pursuant to Article 18(3) of the basic anti-dumping Regulation, even if the information submitted by an interested party was not ideal in all respects, the Commission should not disregard it, provided that any deficiencies were not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information was appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.
- (136) The Commission considered that based on the above arguments it could not deem the data of ECL as leading to reasonably accurate findings. To the opposite, the divergent information and discrepancies in the data showed that it was not correctly reported. Furthermore, the Commission concluded that several pieces of evidence showed that the data was presented in a way to underestimate the net metal weight on the export market, in order to show a more favourable outcome for the applicant. The fact that the information was provided in time and without delay was not considered relevant to redeem the other serious deficiencies.

3.4.1.5. Alternative use of data

- (137) ECL argued that if the Commission had doubts on the reliability of the metal weight reported by ECL (which ECL disagrees with), it should nevertheless use the domestic and Union sales data reported in terms of the CML weights (based on appropriately adjusted Kanta weights) or meters. It argued that the data in CML weights and meters was timely and appropriately submitted on a transaction specific basis, and that it was also verified by the Commission, and that it therefore could be used without undue difficulties.
- (138) ECL considered that it fully cooperated to the best of its ability with the Commission. Since 2014, it was subject to multiple investigations, and in each investigation, it provided all information in a timely manner and cooperated to the best of its ability. The Commission never found problems with ECL's data.
- (139) With regard to the current investigation, ECL informed the Commission of the impending ECL-SPL merger in a spirit of transparency and complete disclosure to avoid any allegations that ECL did not provide complete information. However, according to ECL, this interim review was unnecessary.
- (140) As explained above in recitals (74) to (136), the Commission could not rely on information with regard to the net metal weight reported by ECL. The incorrect reporting of the weights across the submitted information had as a consequence that the data could neither be used nor corrected. In particular, the Commission could not establish what information was correct and could thus be used as a basis for correction or adjustment.
- (141) In relation to the gross metal weight, the information ⁽²⁴⁾ submitted by ECL showed that the CML weight for domestic sales exceeded the total Kanta weight by [0-10 %], which in addition included the packaging. No plausible explanation was provided for the difference, which puts in doubt the credibility of the gross weight reported on the domestic market.
- (142) The difference established by the Commission was linked to two parameters – net/gross metal weight, and length. The discrepancies it found had to be caused by misreporting of – at least – one of these two parameters. The misreporting of the weight could also be caused by misreporting the length that was exported, because the weight is expressed as kg/meter. Therefore, the Commission could not conclude that ECL had reported the length correctly.
- (143) The Commission thus concluded that alternative calculations based on the different unit of measurements could not be carried out, and in addition, that such information submitted after the verification process could not be verified.
- (144) Furthermore, the fact that ECL cooperated in several investigations since 2014 and that ECL's data was always accepted does not guarantee that the data submitted in the present investigation is automatically reliable.
- (145) In relation to the argument that the present partial interim review was unnecessary, the Commission refers to the explanations provided in Sections 1.2 and 3.1 above. The ECL-SPL merger affected sales and cost data relevant for the calculation of the dumping margin and constituted a change on a lasting basis. The Commission thus considered that the ECL-SPL merger met the legal conditions of Article 11(3) of the basic anti-dumping Regulation.

3.4.1.6. Manner of applying facts available

- (146) ECL also complained about the manner of the application of the facts available. It summarized the steps and dates of the different requests by the Commission, and it pointed out that it received the Article 18 letter only on 11 July 2023. It also considered that it was not informed 'forthwith' (within the meaning of paragraph 6 of Annex II to the ADA) of the reasons for the possible rejection of its metal weight data and was not provided the opportunity to present further explanations during the verification process. It also considered that it had not enough time to comment on Article 18 findings and that the extension of 3 days to provide comments did not suffice.

⁽²⁴⁾ The CML weight for domestic sales was provided after the analysis of the weight difference made by the Commission.

- (147) The Commission considered that data relating to determination of weight were extensively discussed during the verification visit, where the Commission collected a considerable amount of evidence. Indeed, it was only after the on-the-spot verification visit of the exporting producer, when it received from ECL the complete set of data with regard the alternative units of measurement, that the Commission was able to make an analysis and to establish the seriousness and the impact of the inconsistency, since the original submission of ECL mainly contained data based on net metal weight.
- (148) The Commission further considered that it granted enough time to ECL to provide explanations, to submit additional data, and to comment on its findings. The Commission requested the explanations already on 29 June 2023. Additionally, it informed ECL about its doubts with regard the reliability of the data on 5 July 2023, the last date of the remote verification with the related company to which the representative of the exporting producer based in Kolkata assisted. Subsequently, considering the extension to provide the reply, ECL had 14 days to comment on the Article 18 letter sent on 10 July 2023. In addition, on 26 July 2023, the Commission held an extensive hearing with ECL. Lastly, an additional opportunity to provide comments was provided at the moment of disclosure of the preliminary findings.

3.4.1.7. Conclusion

- (149) In view of the substantive evidence detailed above in Section 3, the Commission considered that ECL provided misleading or false information to underestimate the net metal weight used to calculate its dumping margin, in order to lower it.

3.5. Comments submitted after disclosure

3.5.1. Comments by ECL

- (150) After disclosure, ECL submitted that the application of facts available by the Commission was based on a manifest error of the appraisal of the facts, and on assumptions and deductive reasoning in the absence of factual evidence.
- (151) ECL contested that there was an intentional misreporting of the net metal weight to lower the dumping margin. It emphasised that there was no attempt whatsoever to provide false, incorrect or misleading information, and that ECL had a reputation in the Indian, Union, and the global market that it would not put at risk.
- (152) It reiterated that the Commission verified the information related to costs and that it reconciled it with the trial balance and accounts of the company. Therefore, in its view, the production costs were satisfactorily verified.
- (153) Both ECL and the GOI argued that the Commission made erroneous calculations and that underreporting the net metal weight would not change the dumping margin. They provided calculations showing that if the net metal weight was underreported to determine both the export price and the normal value, the resulting dumping margin remained unchanged. On that basis, both ECL and the GOI considered that the statements about the misreporting by ECL to reduce the dumping margin were not correct.
- (154) The Commission referred to the findings disclosed to parties in the Article 18 letter and in Section 3.2 above. It pointed out that its findings concerned the data provided to establish the export price. It was not established that the same underreporting of the net metal weight 'error' occurred on both sides, i.e. on the side of the export price and of the normal value, in which case the impact would be offset. On the contrary, by underreporting the net metal weight on one of the two sides of the calculation, ECL would unduly underestimate the dumping margin, as explained in recital (39) of the general disclosure document.
- (155) The Commission pointed out nevertheless that its assessment, and in particular the discrepancies found between the total weight of the domestically sold and the exported products, aimed at demonstrating that the submitted data could not be correct. However, based on the information at its disposal, the Commission could not conclude whether the discrepancies found were caused by the incorrect reporting of the net metal weight, of the gross weight or of the length of the pipes.

3.5.1.1. Lack of objectivity and absence of evidence, alternative methods to establish the dumping margin

- (156) After disclosure, ECL referred to the method of the Commission to conclude on the inaccuracy of the data provided by the company. It pointed out that the Commission had used the CML weight to establish the difference in weights between the products sold on the export and domestic market. ECL argued that in its conclusions on the possible use of alternative data, the Commission considered that the CML weight may not have been correct. Because of this conclusion, ECL considered that the Commission could not use the CML weight to conclude on the inaccuracy of the net metal weight. Therefore, in its view, the Commission had no basis to insist that the reported net metal weight was incorrect.
- (157) The Commission disagreed with the argument that, because the CML weight was used to demonstrate the discrepancies in ECL's data, and because the Commission had at the same time doubts about its correctness, this meant that there was no basis to establish that the data (the net metal weight) was not reported correctly. The comparison made by the Commission was only to demonstrate, as explained at length in Section 3.2, that the data submitted by ECL could not be correct.
- (158) The Commission considered that the fact that it had doubts on any of the reported weight but could not conclude which of the data was correct or incorrect, did not put in question its conclusion, but that it rather showed that in the absence of reliable data, no alternative method to calculate the dumping margin existed. Since it had justified doubts that the net metal weight, gross weight, and/or length were correctly reported, it could not use any of them as a basis for calculations.
- (159) ECL further submitted that the Commission did not consider using as an alternative the nominal (theoretical) weight of the pipes or the length. It also considered that the reported length could not be wrong.
- (160) The Commission reiterated that its analysis was based on a weight per meter basis. The difference established by the Commission was thus linked to two parameters – net or gross metal weight, and the length. The discrepancies it found had to be caused by misreporting one of these two parameters. The misreporting of the weight could also have been caused by misreporting the lengths that were exported, because the weight was expressed in kg/meter. Therefore, if the nominal weight was to be used, it would have to be expressed in meters. Since the Commission could not conclude that ECL had reported the lengths correctly, using the nominal weight would not guarantee a correct determination of the export price.
- (161) The Commission thus reiterated its conclusion that alternative calculations based on the different unit of measurement could not be carried out, and in addition, that a new information submitted after the verification process could not be verified.

3.5.1.2. Actual cement lining versus nominal cement lining on the export market

- (162) ECL also considered that the Commission did not provide empirical evidence to show that a higher cement lining for export sales was not scientifically possible, and that it did not exist. In support to this claim ECL submitted reports by a Baillif proving that the cement lining was thicker than the nominal thickness for pipes that were delivered, in the RIP, to its French and Italian subsidiaries. In addition, ECL also made test reports available for pipes produced by SG PAM.
- (163) The reports for the French and Italian subsidiaries showed that for pipes of several diameters that have nominal thickness of 4 mm, the actual thickness varied, was up to [80-100 %] higher than the nominal thickness. Based on the reports, ECL argued that the actual cement lining thickness could be routinely higher than the nominal cement lining thickness, and that therefore, there was no reason to conclude that the [35-70 %] higher cement lining mentioned by the Commission in recital (95) of the general disclosure document was not plausible.

- (164) The Commission took note of the reports submitted by ECL. The reports indeed demonstrated that the actual thickness deviated from the nominal cement lining thickness for the pipes examined, and that it was higher than the nominal thickness. However, the Commission considered that a comparison should have been made for both domestic and export sales, while, as detailed in recital (95) and (99) of the general disclosure document, on the domestic market, the weighted average variance between actual and nominal weight was around [0-3 %], compared to in average [0-10 %] (and up to [15-30 %] in some cases) in case of exports. As explained in recitals (96) to (104) of the general disclosure document, the Commission considered this difference unfounded.

3.5.1.3. Manifest error in the appraisal of the facts and misapplication of Article 18(1) of the basic anti-dumping Regulation

- (165) ECL also considered that the Commission made a manifest error in the appraisal of the facts as regards the net metal weight and that it misapplied Article 18(1) of the basic anti-dumping Regulation.
- (166) First, it argued that the Commission misunderstood that ECL sampled pipes from every order and that the sampled pipes were weighed (recital (40) of the general disclosure document). ECL mentioned that pipes were only tested for thickness. It also mentioned that the production was recorded in metres, and that the SAP accounting system automatically converted the meters into metal weight. It argued that there was no human intervention of any kind. ECL also mentioned that the weight which is then used is a standard weight, and that this practice of using the standard weight was common in the industry.
- (167) In the Commission's view, the argument that ECL did not weigh sampled pipes contradicted the information it received during the verification visit. The information that the sampled pipes were weighed was also mentioned in the mission report that was sent to ECL to check its accuracy. ECL commented on a number of issues, but it did not submit any comment with regard to the understanding of the Commission regarding the weighing of the pipes.
- (168) The Commission also found that it was the first time that ECL submitted that the production was actually reported in metres and that the SAP system converted the length of pipes into weight. This allegedly, divergent information submitted only after the verification process, together with the fact that pipes were actually not weighed throughout the production process, only strengthened the Commission's doubts that ECL reported the weights correctly.

3.5.1.4. The Commission made erroneous comparisons and calculations

- (169) ECL reiterated that the comparison between all pipes sold on the domestic market and all pipes sold on the export market was based on a different product mix and that it was therefore irrelevant.
- (170) The Commission recalled that the comparison made for all the products was indeed based on a different product mix but the result confirmed findings for the nearly identical (as well as for the not directly comparable) products.
- (171) For the not directly comparable products, ECL found that the method of the Commission to calculate the difference of weight of the cement lining for the domestically sold and exported products was not correct. With regard the nearly identical products, ECL referred to its comments and calculations submitted in reaction to the Article 18 letter and summarised in Section 3.4 above. It argued additionally that the differences should be expressed on the CML weight and that therefore, they were lower. ECL also argued that for some specific product types, the difference that the Commission had found was minimal, or that it represented a small portion of the exports. It also argued that the differences for some specific product types were low or that they only concerned a small volume of exports.
- (172) ECL also did not agree with the Commission's conclusion on moisture. It provided new calculations that, in its view, took into account the presence of moisture in the domestically sold pipes, that should be taken into account when making the comparison with the export market.

- (173) For both the nearly identical and the non-comparable products, the Commission observed that ECL did not bring any additional evidence demonstrating that the Commission's calculations were not correct.
- (174) The Commission also considered that its method to express the percentage difference on the proportion of the net metal weight was correct, and that there was no rational to express the difference on basis of the CML. The net metal weight was similar on both the export and the domestic sides, and therefore, the percentage comparison was to demonstrate that the CML weight was different for export as compared to the domestic sales.
- (175) With regard the comparison made for the specific product types, the Commission agreed that indeed there were product types where the difference was low, or the export volume was low. However, on a weighted average basis, the difference was still [0-10 %].
- (176) With regard the moisture content, the Commission took note of the arguments of ECL. It disagreed that the moisture content influenced the weight of the domestically sold pipes. Even if it did, the differences would, according to ECL's own calculations remain significant.

3.5.1.5. Data based on the SAP system and independent inspection company reports

- (177) ECL further reiterated its arguments related to the fact that data came from the SAP system, and that it was therefore correct. It repeated that the net metal weight was mentioned on the export packing list, and that it was the case even before the 2014 case started.
- (178) With regard to tests of the metal weight by an independent inspection company, ECL argued now that they appeared not to be correct because the total weight of the tested pipes recorded by the independent inspection company exceeded the calculated metal thickness converted into weight, plus the cement lining weight. According to ECL, this was because the metal thickness was likely measured at the extremities of the pipes where they are thicker. Therefore, it was not correct.
- (179) ECL repeatedly claimed that the cement lining was different for the export and domestic market, and that the SAP system differentiated between the pipes depending on their specifications.
- (180) The Commission referred to its conclusions in Section 3.4. It considered that ECL did not bring additional evidence that would support its claim that the data was correctly reported. With regard the report of an independent inspection company, which was, according to ECL, incorrect in terms of the metal weight, the Commission considered that indeed the same (erroneous) measurement could have been done for the cement lining. It therefore considered that it could not be used by ECL to make any conclusive argument with regard the cement lining weight either.

3.5.1.6. The facts available should not be punitive and most appropriate facts should be used

- (181) ECL argued that even if the net metal weight data contained certain deficiencies according to the Commission, those were not in any event of such a nature or magnitude as to have created an undue difficulty for the Commission to reach reasonably accurate conclusions regarding the normal value and export prices. It further argued that the Commission did not find inconsistencies in the sales value data, the production costs, and all other financial data of the company. ECL considered that (a) the refusal to use the three alternatives proposed by the company for the volume quantification which was the most appropriate and fitting information to replace the net metal weight, and (b) the complete rejection of ECL's data for the dumping margin calculation and subjecting it to the residual dumping margin of 19 %, calculated for Jindal Saw in the investigation in 2015, for an almost 8 to 9-year old investigation period, were punitive, disproportional and discriminatory, insufficiently reasoned and in breach of several provisions of Article 18 of the basic anti-dumping Regulation and Annex II to the ADA, as discussed below.

- (182) ECL reiterated that an alternative method to make calculations could be used, and that the Commission should not reject all the information provided by ECL but that it should use the facts available that could reasonably replace the incorrect information. ECL repeated that the Commission could use the length, the gross/Kanta weight or the CML weight, or nominal metal weight.
- (183) ECL considered that the rejection of ECL's entire data and the use of the 19 % dumping margin were highly punitive. They considered that ECL cooperated to the best of its ability and its cooperation far exceeded what was normally requested from and provided in a standard anti-dumping investigation. Therefore, the Commission infringed, in their view, the principle of proportionality. It gave examples of investigations where the Commission did not reject the entire data but replaced the information, or used the data provided by the exporting producer.
- (184) The Commission considered that the submission by ECL did not contain additional evidence that could lead to a change in its conclusion. The issues argued by ECL were already extensively addressed by the Commission during the investigation and in the general disclosure document. The claim regarding the use of the appropriate 'facts available' is addressed under Section 4 below.

3.5.1.7. Procedural issues

- (185) ECL considered that it was not informed forthwith of the Commission's decision and the reasons to reject the entirety of its data. By failing to inform it forthwith of the rejection of all of its data and not only the volume quantification in net metal weight, and by not granting ECL an opportunity to provide further explanations in this regard, the Commission made a manifest error in the application of Article 18 and violated 18(4) of the anti-dumping Regulation and paragraph 6 of Annex II to the ADA. ECL considered that it was only through the general disclosure document that ECL became aware of the Commission's decision to reject all its data and even then, the general disclosure document did not explain why all of the data was being rejected.
- (186) ECL referred to the Article 18 letter where the Commission, in its view, only intended to reject the volume quantification. Additionally, it referred to a Panel Report in Mexico – Steel Pipes and Tubes mentioning that the use of facts available required not 'a general statement of the possibility that facts available could be used [...], but rather an affirmative and direct notification to the party concerned that in the particular case a decision has been made to reject its information, along with a statement of the reasons for that decision' ⁽²⁵⁾.
- (187) The Commission disagreed. It considered that in accordance with Article 18(4) of the basic anti-dumping Regulation, it informed ECL in details about its findings, and it granted it an opportunity to provide further explanations. As explained in Section 3.4, the Commission found these explanations unsatisfactory, and it also provided the reasons in detail.
- (188) The Commission also disagreed that the information it provided in the Article 18 letter was a general statement, to the opposite, the Commission had informed the applicant of the inconsistencies it found even before sending the Article 18 letter, which was also accompanied by very detailed calculations and justifications. The Article 18 letter clearly stated that 'the discrepancies in question put in doubt the reliability of the data provided by ECL', and that consequently, the Commission intended to reject the information relating to the quantification in volume of the entire product under review produced and sold by ECL. The word 'intended' was used since ECL and other parties were still given the possibility to comment, after which the Commission would decide on the rejection.
- (189) As explained in detail in Section 3.2 above, the quantification (value per unit) is used both to establish the export price and the normal value. The Commission thus disagreed that the Article 18 letter did not clearly mention that all data could be rejected.

⁽²⁵⁾ Panel Report, Mexico – Steel Pipes and Tubes, para. 7.188.

3.5.2. Comments by the GOI

- (190) Apart from the comments supporting ECL's request for withdrawal, the GOI referred to findings of the Commission in the general disclosure document. It defended that ECL provided correct information, that the information recorded in the company's SAP system was correct, and that it should not be subject to the residual duty of 19 %.
- (191) The Commission took note of the comment. It considered that the issues raised by the GOI were already addressed in the general disclosure document.

3.5.3. Comments by SG PAM

- (192) SG PAM considered that ECL had a long story of failing to adequately cooperate in trade defence investigations, and it referred to investigations in 2020 and 2021 that were terminated.
- (193) In SG PAM's view, the inability of ECL to provide substantiated information on the actual thickness of cement mortar lining of the pipes meant that the differences (between export and domestic market) did not exist. In its view, there was no reason that would require ECL to differentiate the internal cement mortar lining of its pipes depending on the market. It argued that the minimum cement mortar lining thickness according to the applicable EU norms was 2,5 mm (4 mm with a negative tolerance of 1,5 mm). Therefore, it agreed with the Commission conclusions that the 3,5 mm thickness reported by ECL in its Indian catalogue fell within the tolerance in thickness for both the Union and Indian standards.
- (194) In addition, it had doubts that the production process was differentiated according to the market of destination of the product, regardless of the existence of different standards. In its view, ECL could simply relabel and sell on the Union market pipes produced under the Indian norms within the tolerances of the EU norms.
- (195) SG PAM also considered the ECL's claim that it did not monitor systematically the metal weight of its products and relied on estimates as unconvincing. Metal is the main cost driver for pipes, and it is a key factor for performance and pricing of producers of ductile iron pipes. It considered that the inability to control precisely metal weight was even more surprising because on the Union market, where ECL operates, it is particularly exposed to considerations of resource and energy efficiency as actors strive to minimise the environmental footprint of public-funded projects in line the European green deal. In SG PAM's view, the use of standard unverified values in ECL's financial records further reinforced the existing doubts on the faithfulness of the dataset used to complete ECL's questionnaire.
- (196) SG PAM further submitted that in view of the current findings, the Commission should verify the previous responses of ECL, since the Commission used the same methodology as in the current investigation and since ECL could also have manipulated data in the previous investigations.
- (197) The Commission disagreed that the findings in the current investigation justified verifying data of ECL or of other parties and that the current findings could be retroactively extended to other investigation periods. The conclusions it made in this investigation were based to the data submitted in the current expiry review and related to the review investigation period. It thus rejected the claim.
- (198) After disclosure, SG PAM requested the Commission to register the imports of ECL to retroactively collect the duties, since it considered that ECL was likely to increase its shipments to constitute substantial stock. It considered that such a registration was in line with the Commission's recent practice.
- (199) The Commission examined the request. It considered that no element in the file showed that imports would significantly increase and that there was a significant risk of sudden inflow of imports. It therefore rejected the request.

3.5.4. *Comments by distributors*

- (200) The Commission also received comments from distributors on the Union market of ductile pipes produced by ECL – companies Valdro, Fusion Pipeline Products Limited ('Fusion Pipelines Products'), CO.ME.CAR SRL, Deschacht, Idrovit SRL, Vodoskop d.d., and WAPPtech Ltd.
- (201) All the companies underlined the importance of a presence of ECL on the Union market and their economic dependence on its business.
- (202) Valdro considered that without ECL in the market, there would be no competition and that ECL did not engage in market distorting practices. It further mentioned that its main business activity was sales of ductile pipes, which accounted for the majority of the company's earnings, and should the business be shut down, it would result in job losses.
- (203) Fusion Pipeline Products also mentioned that a significant part of its business depended on ECL, and that the Commission should take a decision that would preserve the competition on the Union market and avoid monopolies.
- (204) Deschacht argued, inter alia, that SG PAM imposed exclusive purchasing requirements and refused to sell to them. It stressed the importance of a competitive alternative source of supply on the Belgian market. In its view, SG PAM had no competitors, it increased prices to an extent that distributors could not sell and the contractors and water companies were held hostage and had to pay unreasonably high prices which affected projects and penalised Belgian and European consumers and the economical actors on the market. Therefore, in its view, the current duty level applied to ECL should not be increased.
- (205) IBECO AB mentioned that it was, in its view, important that ECL remained on the Union market. It mentioned that the market in Scandinavia was controlled by Saint Gobain, from production to wholesales through its distributor.
- (206) The Commission also received comments from ANCO Sardegna, the regional branch of the National Association of the Italian Construction Enterprises. It considered that there would be a serious problem of competition on the EU market in the sector of ductile iron pipes if this Indian producer is unable to sell in the EU as result of the review, and this would negatively impact many companies.
- (207) Though the comments made by the distributors were not substantiated, they were considered by the Commission.

3.5.5. *Conclusion*

- (208) The Commission reviewed in detail all the arguments of the parties and evidence in the file. It maintained its view that ECL provided misleading or false information to underestimate the net metal weight to be used to calculate its dumping margin, in order to lower it, within the meaning of with Article 18(1), second subparagraph of the basic anti-dumping Regulation. Therefore, the data could not be used as a basis to calculate a new dumping margin for the company. As explained in Section 3, the alternative data that ECL proposed could not be used either.
- (209) In view of above the Commission had no other option than to disregard the information provided by ECL in its totality and to resort to facts available to make its final findings on dumping as regards ECL.

3.6. **Facts available**

- (210) In the absence of available record data for the calculation of the dumping margin, the Commission sought to identify the most appropriate information available in the case at hand. In this respect, the Commission considered that the use of the highest dumping margin of 19 % established in the original investigation could be appropriate, because it was calculated in the original investigation period based on the data of a cooperating exporting producer which exported significant quantities of similar product types to the Union as ECL.

- (211) After disclosure, ECL submitted that the application of a 19 % dumping margin was punitive, and that it was inconsistent with Article 18(5) of the basic anti-dumping Regulation. It considered that the facts available should be the 'most fitting' or the 'most appropriate' available in the case at hand, which required a comparative assessment and that there must be a 'logical relationship' between the replacement facts and the facts on the record.
- (212) On this basis, ECL argued that the application of a 19 % dumping margin calculated almost 8 years ago for another exporting producer was certainly not the most fitting or appropriate fact in the present context and that it had no logical relationship to ECL's situation. It pointed out that in the original investigation, while the 19 % dumping margin was calculated for Jindal Saw, ECL's dumping margin was only 4,1 %.
- (213) ECL argued additionally that in the present case, the data submitted and verified by the Commission showed that compared to ECL's cost of production/domestic sales, the sales prices in the Union were significantly higher. ECL argued that it monitored its prices and costs to ensure that there was no dumping. Thus, any dumping margin calculation made on the basis of ECL's own data using any of the volume quantification alternatives suggested by ECL could never result in a 19 % dumping margin.
- (214) Hence, ECL indicated that using the 19 % dumping margin of Jindal Saw was manifestly inappropriate and punitive. ECL further submitted that if the Commission did not accept the request for withdrawal or arguments on the facts available, it could use determinations of the expiry review concluded in 2020, which was more recent than the original investigation data and where the Commission calculated a dumping margin of 12 %.
- (215) The Commission reassessed its proposal to use as facts available the residual dumping margin of the original investigation. It considered that the request of ECL to base its findings on a more recent facts available was justified – the original investigation period was 1 October 2013 to 30 September 2014 and therefore the data was more than 8 years old.
- (216) In addition, the Commission considered that the margin established in the expiry review was only indicative, and that it was mainly used to determine whether in the expiry review RIP, the exporting producers continued to export at dumped prices in the context of full non-cooperation by the latter. Additionally, the statistical export prices did not necessarily constitute prices to independent customers as the large majority of non-cooperating exporting producers sold via related importers in the Union.
- (217) In view of the above, the Commission decided to use as facts available the statistics reflecting exactly the RIP of the investigation at hand. Consequently, the Commission used the export price reported in the 14(6) database ⁽²⁶⁾, concerning solely of sales of ECL during the current RIP. The Commission then brought the price to an ex-works level and adjusted for the fact that the prices were mostly between related parties.
- (218) Furthermore, in the absence of any other more recent and reliable data, the Commission determined the normal value based on data provided by the Union industry in the expiry review request. It was determined based on prices offered, agreed and paid for multiple quantities, diameters and types of the product concerned in several different States and municipalities. Since the normal value was based on 2020 data, the Commission adjusted the normal value determined by the industry in the expiry review for the inflation between the expiry review and the current partial interim review investigation period.
- (219) The Commission made the comparison between the export price determined based on the statistical data in the RIP, adjusted as described above, with the normal value determined in the expiry review determined by the Union industry, adjusted by inflation.
- (220) On this basis, the Commission established the dumping margin at 12,89 %.
- (221) After the second disclosure of the findings with regard the use of facts available (Section 3.6), ECL commented on the method used by the Commission to adjust the normal value for inflation. It argued that the Commission should base its calculation of the inflation on the Consumer Price Index ('CPI'), rather than on a percentage increase of inflation as suggested by the Commission.

⁽²⁶⁾ Of the basic anti-dumping Regulation.

- (222) The Commission reviewed the calculations. It agreed that using the CPI index was a more correct method to be used. However, the normal value for 2020 in the expiry review was based on the prices between December 2019 and March 2020, and not on the entire year 2020, as used by ECL in its calculation. On this basis, the new dumping margin for ECL was 13,14 %.
- (223) The GOI submitted that the time to submit comments on the new basis for the facts available was too short. It also found that its comments made after the first disclosure of the findings were not addressed. Additionally, it also submitted that the adjustment for inflation had no legal backing and that it gave a misleading result.
- (224) The Commission considered the deadline (of 2 days) provided to submit comments on the new basis for the facts available sufficient, insofar as it was limited to the use of facts available, described in Section 3.6. The Commission thus rejected the claim.
- (225) The Commission also clarified that it addressed all the comments made by the parties including the comments by the GOI. However, since the Commission only disclosed the part of its conclusion that had changed, the new disclosure did not contain the assessment of comments that were already addressed, nor of comments not related to the facts available ultimately used.
- (226) Regarding the claim on inflation, the Commission noted that the GOI did not substantiate why the adjustment for inflation was legally unwarranted, nor why it gave a misleading result. To the contrary, adjusting the normal value, which was originally established in 2020, for inflation, lead to coherent and thereby accurate findings for the review investigation period. The Commission thus found the claim unjustified.
- (227) After the second disclosure of the new basis for the facts available, SG PAM disagreed with the Commission's choice of facts available. It found that the Commission made an extremely and unduly restrictive assessment of what may or may not be used as facts available, which went beyond any existing requirement and led to discrimination between exporters. It referred in particular to the wording used in Article 18(1) and (6) of the basic anti-dumping Regulation that stipulate that the facts available 'may be less favourable' to the party which did not cooperate, or which provided misleading information. The 'less favourable' outcome was in SG PAM's view the direct and normal consequence of that party's own non-cooperation, and it would not represent any punitive intent, even if such would be clearly justified in the event a party deliberately manipulated the data. SG PAM further considered that the basic anti-dumping Regulation did not set requirements on how 'less favourable' the results could or could not be, nor on what such 'facts available' should be. It therefore considered that the Commission had a discretion in the choice of the facts available which should not result in a more favourable outcome for the non-cooperating party. Doing otherwise would undermine the effect of the Union's trade defence measures. Therefore, SG PAM considered that the Commission should not provide any preferential treatment to ECL compared to other non-cooperating companies and argued that the use of the residual margin of the original investigation was justified. Also, even if the dumping margin set for other cooperating and non-cooperating exporters was based on data that were now 8 years old, the Commission could have used it, since it was also used for non-cooperating exporting producers.
- (228) The Commission reviewed the comments of SG PAM on the use of the facts available. As explained in recital (215) above, the original investigation period was 1 October 2013 to 30 September 2014. Therefore, the Commission considered it appropriate to base its findings on a more recent facts available than those which were already 8 years old. Moreover, the Commission noted that the premise of the comment is misguided for two reasons. First, the purpose of Article 18(6) of the basic anti-dumping Regulation is not to punish non-cooperation but to point out that it 'may' lead to a less favourable outcome than full cooperation. Second, it cannot be determined whether the facts available used led to an outcome that is less or more favourable to ECL, had it fully cooperated. ECL did not fully cooperate with the investigation and therefore there is no benchmark allowing for such determination. The claim was therefore rejected.
- (229) SG PAM also argued that in the original investigation, the normal value was based on profitable sales only or constructed normal value. In such cases, the normal value or constructed normal value used for the comparison was typically higher than the domestic sales prices. However, in its updated dumping calculation, the Commission relied on prices as reported on the market, and nothing guarantee that these prices are profitable. In the absence of

any reliable information from ECL on costs, the Commission must assume that the situation where there are also non profitable sales persists on the domestic Indian market. Therefore, instead of using a normal value based on the average selling price of Indian producers, as reported in the request, it should only account for the higher selling prices reported as they are less likely to be non-profitable and therefore unsuitable for a dumping calculation.

- (230) The Commission recalled that the normal value was determined by the Union industry itself in the expiry review request. The normal value was based, according to the industry, on numerous price offers and it represented therefore an average of the prices within the investigation period. Basing itself on the highest prices, on the assumption that the (relatively) lower prices were likely to be non-profitable, would be purely speculative. Moreover, the range of prices was considered appropriate to establish the normal value in the expiry investigation period, and the Commission also did not have any basis to select only some of them. It thus found the claim unjustified.
- (231) SG PAM further argued that the dumping margin should not be reduced by the level of the export subsidy margin of the original investigation, since the Commission itself established in the expiry review that the level of export subsidies in India decreased. SG PAM found that while the deduction was justified if the Commission was to use the residual duty of the original investigation, it was not justified in its new approach since findings related to a period when ECL received less subsidies. SG PAM referred to refund investigations concerning ECL where the Commission decided to reimburse parties for the difference in the countervailing margin established in the original investigation and the level of subsidies in the investigating periods, proving that ECL received less subsidies than established in the original investigation. Therefore, and in the absence of any reliable information on the level of export subsidies, SG PAM considered that the Commission must abstain from reducing the dumping margin by any export subsidy margin, or at the very least, must ensure that the margin reduction is not higher than the actual export subsidies received.
- (232) The Commission disagreed with the claim. Since the current review was limited to reassessing the level of dumping, it had no basis to establish a new level of export subsidies in the review investigation period. In addition, even if in the expiry review and in the refund investigations it was established that the level of export subsidies decreased, ECL still remained subject a countervailing duty of 9 %. Therefore, if the Commission was to deduct none or less export subsidies from the anti-dumping margin, the (corresponding) level of countervailing margin (from the 9 % of the countervailing duty) was not to be imposed on the company either. Therefore, the impact on the combined margin for ECL would be null. The method (to deduct the export subsidies) was also in line with the method the Commission used in the refund investigation. The Commission thus rejected the claim.

4. ANTI-DUMPING MEASURES

- (233) As established under Section 3, the Commission determined a new dumping margin for ECL at the level of 13,1 %. As explained in recital (4), the Commission imposed a countervailing duty of 9 % for ECL following a separate anti-subsidy investigation, out of which 6,04 % was based on export contingent subsidies. Consistently with the approach adopted in the original investigation, the Commission reduced the dumping margin by the subsidy amounts found in relation to the export contingent schemes in the separate anti-subsidy investigation. On the basis of the above, the rate at which such duties will be imposed are set as follows:

Name of company	Export subsidies	Dumping margin	Countervailing duty	Anti-dumping duty	Total duties
Electrosteel Casting Ltd.	6,04 %	13,1 %	9,0 %	7 %	16 %

- (234) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.
- (235) 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

Paragraph 2 of Article 1 of Implementing Regulation (EU) 2022/926 is replaced by the following:

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

Company	Definitive anti-dumping duty (%)	TARIC additional code
Jindal Saw Limited	3,0	C054
Electrosteel Castings Ltd	7	C055
All other companies	14,1	C999’

Article 2

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

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

Done at Brussels, 22 November 2023.

For the Commission
The President
Ursula VON DER LEYEN