

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION REGULATION (EU) No 627/2011

of 27 June 2011

**imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

## A. PROCEDURE

## 1. Initiation

- (1) On 30 September 2010, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union*<sup>(2)</sup>, the initiation of an anti-dumping proceeding with regard to imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China ('PRC' or the 'country concerned').
- (2) The proceeding was initiated as a result of a complaint lodged on 16 August 2010 by the Defence Committee of the Seamless Stainless Steel Tubes Industry of the European Union ('the Defence Committee') on behalf of two groups of Union producers ('the complainants') representing a major proportion, in this case more than 50 %, of the total Union production of seamless pipes and tubes of stainless steel. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

## 2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant, other known Union producers, the known exporting producers and the representatives of the PRC, known importers, suppliers and users, as well as their associations, of the initiation of the proceeding. The Commission also advised producers in the United States ('the USA') as it was envisaged as a possible analogue country. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In view of the apparent high number of exporting producers, unrelated importers and Union producers, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers, importers and Union producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product under investigation during the investigation period from 1 July 2009 to 30 June 2010. The authorities of the PRC were also consulted.
  - (a) Sampling of Chinese exporting producers
- (6) Out of the 31 Chinese exporting producers or groups of exporting producers which came forward, the Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of exports which could reasonably be investigated within the time available. The sample selected consisted of three (groups of) companies, representing 25 % of the total imports recorded in Eurostat during the IP and over 38 % of the total volume of the

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 265, 30.9.2010, p. 10.

cooperating exporters in the IP. In accordance with Article 17(2) of the basic Regulation, the parties concerned and the Chinese authorities were consulted but raised no objections to the proposed sample.

#### (b) Sampling of Union producers

- (7) Out of the 21 Union producers that the Commission contacted, eleven provided the requested information and agreed to be included in the sample. On the basis of the information received from these cooperating Union producers, the Commission selected a sample of two groups representing five Union producers. The sample was selected on the basis of volumes of sales and production. The sampled Union producers accounted for 48 % of total EU sales of all Union producers, and for 80 % of the producers who came forward.
- (8) From the 62 unrelated importers that the Commission contacted, only five companies replied to the sampling questions within the deadline. Therefore it was considered that no sampling was necessary, and questionnaires were sent to all these companies. Eventually, only two importers replied to the questionnaire and cooperated fully in the investigation.

#### (c) Questionnaire replies and verifications

- (9) In order to allow sampled exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the sampled exporting producers. All groups of exporting producers requested MET pursuant to Article 2 (7) of the basic regulation or IT should the investigation establish that they did not meet the conditions for MET.
- (10) Three (groups of) companies requested individual examination. The examination of these claims at provisional stage was unfeasible within the time framework. A decision whether individual examination will be granted to any of these companies will be taken at definitive stage.
- (11) The Commission officially disclosed the results of the MET findings to the sampled exporting producers concerned in the PRC as well as to the sampled Union producers.
- (12) Questionnaire replies were received from the sampled exporting producers in the PRC, from all sampled Union producers, two unrelated Union importers and one user.
- (13) The Commission sought and verified all the information deemed necessary for the purpose of analysing MET or IT

and for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies.

#### *Exporting producers in the PRC*

- Changshu Walsin Specialty Steel Co., Ltd., Haiyu Town, Changshu City and its related companies: Shanghai Baihe Walsin Lihwa Specialty Steel Products Co., Ltd., Baihe Town, Qingpu District, Shanghai; Yantai Jin Cheng Precision Wire Rod Co., Ltd., ETDZ Yantai City, Shandong Province; Yantai Dazhong Recycling Resource Co., Ltd., ETDZ Yantai City, Shandong Province;
- Shanghai Jinchang Stainless Steel Tube Manufacturing Co., Ltd., Situan Town, Fengxian District, Shanghai and its related companies: Shanghai Jinchang International Trade Co., Ltd., Situan Town, Fengxian District, Shanghai; Shanghai Jinchang international trading Chongqing Co., Ltd., Jieshi Town, Banan District, Chongqing;
- Wenzhou Jiangnan Steel Pipe Manufacturing Co., Ltd., Yongzhong, Longwan district, Wenzhou.

#### *Union producers*

- Salzgitter Mannesmann Stainless Tubes Headquarters; Mülheim an der Ruhr, Germany;
- Salzgitter Mannesmann Stainless Tubes Deutschland; Remscheid, Germany;
- Tubacex Tubos Inoxidables, S.A., Llodio, Spain.

#### *Producers in the analogue country*

- PEXCO, Scranton, Pennsylvania;
- Salem Tube, Greenville, Pennsylvania;
- Salzgitter Mannesmann Stainless Tubes USA, Houston, Texas;
- Sandvik Materials Technology, Scranton, Pennsylvania.

### 3. Investigation period

- (14) The investigation of dumping and injury covered the period from 1 July 2009 to 30 June 2010 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 2006 to the end of the investigation period ('period considered').

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (15) The product concerned as described in the Notice of initiation is certain seamless pipes and tubes of stainless steel, other than with attached fittings suitable for conducting gases or liquids for use in civil aircraft, currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 ('the product concerned'). This includes unfinished 'hollows', hot-finished products and cold-finished products.
- (16) The production process usually uses cylinders ('billets') of stainless steel as raw material. In the first production step, an unfinished 'hollow' is produced using either an extrusion press or a hot piercing process. Subsequently, the hollow can be first processed by a hot-finishing process resulting in a hot-finished pipe and further processed by a cold-finishing process (cold pilger process) or by a cold drawing process, resulting in a cold-finished pipe. All types of products (hollows, hot-finished and cold-finished pipes) share the same basic physical, chemical and technical characteristics and same basic uses.
- (17) Stainless seamless pipes and tubes are mainly used in the following industries: chemical and petrochemical industries, fertiliser production, power generation, civil engineering and construction, pharmacology and medical technologies, biotechnology, water treatment and waste incineration, oil and gas exploration and production, coal and gas processing, food processing.
- (18) One Union producer, which further processes stainless steel tubes, claimed that in case measures were to be imposed the CN code 7304 49 10 should be excluded from their scope because it covered unfinished hollows used only for further processing. However, the investigation showed that both the Union and the Chinese suppliers of that Union producer declared the goods sold to this producer as hot finished or cold finished goods.
- (19) Indeed the declaration of those products as 'unworked hollows for use solely in the manufacture of tubes and pipes with other cross-sections and wall thicknesses' concerns goods which do not necessarily have different physical characteristics, they merely have a different use. It was provisionally concluded that there were no grounds to exclude 'unworked hollows' from the product definition.

### 2. Like product

- (20) The product concerned and certain seamless pipes and tubes of stainless steel sold on the domestic market in the PRC as well as certain seamless pipes and tubes of stainless steel sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and the same basic uses. They are therefore, provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## C. DUMPING

### 1. Market economy treatment

- (21) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet all the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (22) Briefly, and for ease of reference only, these criteria are set out in summarised form below:
1. business decisions and costs are made in response to market conditions and without significant State interference, and costs reflect market values;
  2. firms have one clear set of basic accounting records, which are independently audited, in line with international accounting standards and applied for all purposes;
  3. there are no significant distortions carried over from the former non-market economy system;
  4. legal certainty and stability is provided by bankruptcy and property laws;
  5. currency exchanges are carried out at the market rate.
- (23) In the present investigation, all three sampled exporting (groups of) producers requested market economy treatment ('MET') pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines.
- (24) The investigation established that none of the sampled (groups of) exporting producers in the PRC met the requirements of the criteria set forth in Article 2(7)(c) of the basic Regulation, therefore they cannot be granted MET.

- (25) None of the companies fulfils the requirements of Criterion 1 because of State interference in decisions concerning acquisition of the main raw material (notably stainless steel billets, ingots, round bars). Those raw materials represent well above 50 % of the cost of production of the product concerned (seamless stainless steel pipes and tubes). Consequently, these raw materials are by far the major input in the production of the product concerned.
- (26) The Chinese State has a primary role in the setting of prices of raw materials for seamless stainless steel pipes and tubes and interferes in the market continuously with the following tools: export tax and no VAT rebate. First, the main raw materials to manufacture seamless stainless steel pipes and tubes, are subject to a 15 % export tax since 1 January 2008. Second, the State does not refund the VAT on exports of those raw materials.
- (27) The sampled companies acquire their main raw materials used for the production of seamless stainless steel pipes and tubes on the Chinese domestic market. The investigation established that on average and depending on the steel grade the Chinese prices of the raw materials are around 30 % lower than those on the world markets (USA or EU).
- (28) Given that the PRC has to import the majority of its iron ore at international market prices, it is clear that it does not benefit from any natural comparative advantage, which would explain the low prices of the main raw materials on the Chinese domestic market. At the same time and for several years, various studies point to significant State interference in this sector.<sup>(1)</sup> Those reports indicate that the Chinese government has identified 14 'key' industries and seven 'pillar' industries. Primary downstream consumers of specialty steel are among the seven 'pillar' industries supported by the Chinese government through its industrial policies.<sup>(2)</sup> The negative impact of export taxes and partial VAT rebates has also been underlined in the WTO Trade Policy Reviews of the PRC's trade policies and practices.<sup>(3)</sup>
- (29) As stated in the WTO Trade Policy Reviews, export taxes and VAT rebates are policy tools whose use reduce export volumes of the raw materials in question, divert supplies to the domestic market and leads to a downward pressure on the domestic prices of those products.<sup>(4)</sup> Indeed, the current investigation established a significant price gap between domestic prices and world prices. Such a gap constitutes implicit assistance to domestic downstream industries and, thus, provides them with a competitive advantage. This argument is further reinforced by the fact that there is no export tax levied on exports of the product concerned (seamless stainless steel pipes and tubes), which also benefits from a VAT rebate.
- (30) The current investigation, by establishing the different use of export taxes and VAT rebates on both the upstream and downstream industries demonstrates State interference, which can be concluded from the significant price difference for stainless steel raw materials (notably stainless steel billets, ingots, round bars) on the Chinese and world markets.
- (31) Given the price difference between Chinese domestic and world markets, in the absence of the State interference, the domestic producers of the above mentioned raw materials would be inclined to export their products to markets with higher prices where they could achieve higher profits. Indeed, the Chinese customs statistics confirm that there are virtually no exports of stainless steel billets from the PRC to the rest of the world. In 2009, the exports of stainless steel ingots and other primary forms of stainless steel amounted to less than 2 tons and in 2010 less than 5 tons. This is a further argument demonstrating State interference in the raw materials market.
- (32) These Chinese practices are to be considered as an underlying factor of State interference in decisions of firms regarding raw materials. Indeed, the current Chinese system of high export duties and no VAT reimbursement for export of raw materials has essentially led to a situation where Chinese raw material prices continue to be the result of State intervention, and will, in all likelihood, continue to provide in the future a support to the Chinese producers of seamless stainless steel pipes and tubes.
- <sup>(1)</sup> Recent trends in steel trade and trade-related policy measures, OECD report, 2010, DSTI/SU/SC(2010)15, p. 14; China's Specialty Steel Subsidies: Massive, Pervasive, and Illegal, 2008, report by the Speciality Steel Industry of North America, available at [http://www.ssina.com/news/releases/pdf\\_releases/20081014\\_report.pdf](http://www.ssina.com/news/releases/pdf_releases/20081014_report.pdf); Chinese government subsidies to the stainless steel industry, 2007, report by the Speciality steel industry of North America, available at [http://www.ssina.com/news/releases/pdf\\_releases/chinese\\_govt\\_subsidies0407.pdf](http://www.ssina.com/news/releases/pdf_releases/chinese_govt_subsidies0407.pdf); also The Reform Myth, How China is using state power to create the world's dominant steel industry, The American Iron & Steel Institute, The Steel Manufacturers Association, 2010; [http://www.ustr.gov/webfm\\_send/2694](http://www.ustr.gov/webfm_send/2694).
- <sup>(2)</sup> Reports by Speciality Steel Industry of North America above with reference to the Tenth 5-Year Plan of Industrial Structure Adjustment.
- <sup>(3)</sup> The third WTO Review of China's trade policies and practices and their impact on the functioning of the multilateral trading system, WT/TPR/S/230, available at [http://www.wto.org/english/tratop\\_e/tp\\_r\\_e/tp330\\_e.htm](http://www.wto.org/english/tratop_e/tp_r_e/tp330_e.htm); as well as The second WTO Review of China's trade policies and practices and their impact on the functioning of the multilateral trading system, WT/TPR/S/199, available at [http://www.wto.org/english/tratop\\_e/tp\\_r\\_e/tp299\\_e.htm](http://www.wto.org/english/tratop_e/tp_r_e/tp299_e.htm).
- <sup>(4)</sup> See in particular WT/TPR/S/230, p. 44.

- (33) Further, in relation to criterion 1, one of the companies failed to include in its sampling information and the MET claim two related suppliers of raw materials. The company claimed that those suppliers supply small quantities and thus the fact that they were not reported could not and would not have any substantial impact on the outcome of the investigation. It is noted that that first of all the Commission has to obtain a full picture of all companies in a group involved in the production or sales of the product concerned, regardless of the size of those companies or the size of their sales. It is further noted that the supplies of raw materials are rather fragmented, dispersed among several small suppliers. It was concluded that the company, set aside the distortion of main inputs described above, failed to demonstrate that its business decisions were made in response to market signals, without significant State interference, and costs reflected market values.
- (34) Apart from criterion 1, certain companies also failed to demonstrate that they fulfilled criterion 2 and 3. Two companies could not demonstrate that they had a clear set of accounting records that was independently audited and in line with international accounting standards. For one company, discrepancies in the financial records were not reflected in the auditor's report. Another company could not present financial statements for some years of its operation.
- (35) Finally, one company received loans from State owned banks at preferential rates, significantly lower than market rates. This demonstrates that production costs and the financial situation are subject to significant distortions carried over from the non-market economy system.
- (36) Following disclosure of the MET findings, comments were received from the Union industry and three sampled exporting (groups of) producers concerned.
- (37) One company claimed that the Commission's decision to reject MET was influenced and hence biased by the calculation of the dumping margin. In this regard it has to be noted that the MET determination precedes any dumping calculation and any verification which took place related solely to the data related to MET determination. The claim is thus unfounded.
- (38) One company claimed that it was not required to submit MET claims for related raw material suppliers. This argument has to be rejected. The notice of initiation stated clearly that the names and the precise activities of all related companies involved in the production and/or sales (export and/or domestic) of the product under investigation have to be provided to the Commission.
- (39) Further, that company claimed that the distortions on the raw materials market were not significant because 17,5 % of the raw material is imported from unrelated international suppliers and the rest is mainly purchased from related companies. The information at the Commission's disposal demonstrates that around 30 % of raw materials are purchased locally and the rest is mainly imported from related suppliers. In this context, it has to be noted that transfer prices from related suppliers are normally not considered as reliable information. Further, overall the raw material purchase prices of the company from independent suppliers are significantly lower than prices in the EU or in the US like for the other investigated exporting producers. The claim is thus rejected.
- (40) One company contested Commission's calculation of the price difference between raw materials prices on the Chinese domestic and world markets. Following the verification, the Commission confirms this calculation. In particular the company did not take into account the surcharges for alloy applied by the US and EU suppliers. The claim thus has to be rejected.
- (41) One company further claimed that the discrepancies between the income tax declaration and the financial statement were normal, not significant and therefore there was no obligation for explanations in the notes to the financial statement. Consequently, this should thus not have had an impact on the Commission's determination. It is noted that the discrepancies regarding annual profit are close to 30 million RMB and thus should have been considered as important and therefore to be explained in the notes to the financial statement.
- (42) Another claim related to an alleged breach of the WTO Agreement on Subsidies and Countervailing Measures and the EU basic Anti-Subsidy Regulation.<sup>(1)</sup> The company stated that rejecting the MET claim on the grounds that companies may be receiving subsidies has the effect of penalising exporter for subsidies deemed illegal without any substantiation. This argument has to be rejected. The MET claims have not been rejected on the basis of possible subsidies but on specific grounds set out in the recitals above as well as in the detailed MET disclosure documents sent to parties. The main reason for the rejection of the MET was distortions established on the raw materials market. Further it should be underlined that for example companies obtained loans from state owned banks at preferential rates significantly lower than market rates, clearly demonstrates the carry over from the previous non-market economy.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

- (43) In conclusion, none of the comments received was such as to alter the findings with regard to MET determination.

## 2. Individual treatment

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

- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
- export prices and quantities, and conditions and terms of sale are freely determined;
- the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
- exchange rate conversions are carried out at the market rate; and
- State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

- (45) The three above mentioned sampled (groups of) companies, which were denied MET, also claimed individual treatment ('IT'). It was provisionally found that all these three sampled (groups of) companies met the conditions of Article 9 (5) of the basic Regulation and could thus be granted IT.

## 3. Normal value

### (a) Analogue country

- (46) In accordance with Article 2(7) of the basic Regulation, normal value for exporting producers not granted MET shall be established on the basis of domestic prices or constructed normal value in an analogue country.
- (47) In the Notice of initiation, the Commission indicated that it envisaged using the USA as analogue country for the purpose of establishing normal value for the PRC. One party claimed that India was a better analogue market because of similar level of development to the PRC. The

Commission obtained no cooperation from the Indian producers. The USA seemed initially appropriate given its openness to import competition (customs tariffs of 0 % as opposed to 10 % in India) and a fairly good level of competition on the domestic market with 15 to 20 USA producers.

- (48) However, the questionnaire replies and the verification visit revealed that the USA is not an appropriate analogue country market. All the co-operating USA producers rely on imports of basic raw materials and finished products from their EU parent companies and maintain a limited production activity in the USA, mainly to respond to customized or time critical orders. In fact, the production volume of the co-operating USA producers is a fraction of their European parent producers. Most importantly, however, the USA co-operating producers have high processing costs reflecting their particular manufacturing circumstances. Those costs translate into high domestic prices on the USA market.

### (b) Determination of normal value

- (49) In accordance with Article 2(7)(a) of the basic Regulation the normal value shall be determined on the basis of the price or constructed normal value in a market economy third country or the export prices from such country to other countries, including the EU. Given that the normal value could not be established on the basis of prices or constructed values in the USA for the reasons set out in the previous recital, the second method was explored. However, for the reasons set out below this method is also not suitable for the present case. Just as the USA domestic sales prices, the USA export prices will also be tainted by the high production costs and the fact that export volumes would be limited, i.e. less than 2 % of the Chinese exports to the EU). It would also appear that some of those exports are made to related companies and are thus unreliable for the purposes of normal value determination.

- (50) As an alternative to the above mentioned two methods Article 2(7)(a) of the basic Regulation stipulates that normal value can be determined on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit. This method has been provisionally used in the present case given that the investigation established at this stage that the USA is not an appropriate analogue country.

- (51) For the product types exported by the sampled Chinese (groups of) exporting producers for which no sales were made by the sampled Union producers, the Commission provisionally used prices actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit, of the closest resembling product types having the same diameter, steel grade and product type (e.g. cold or hot drawn).

#### 4. Export price

- (52) In all cases the product concerned was exported to independent customers in the Union, and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

#### 5. Comparison

- (53) The dumping margins were established by comparing the individual ex-works export prices of the sampled exporters to the domestic sales prices of the sampled Union producers established as set out in recital (50) above.
- (54) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence. In particular, an adjustment was granted for indirect taxes, ocean freight and insurance, freight in the exporting country, warranty expenses, commissions, credit costs, bank charges, level of trade and as elaborated in recital (70) below, quality perception.

#### 6. Dumping margins

- (55) The provisional dumping margins were expressed as a percentage of the CIF Union frontier price, duty unpaid.

##### (a) For the cooperating sampled exporting producers granted IT

- (56) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margins for the sampled cooperating exporting producers granted IT were established on the basis of a comparison of a weighted average normal value established on the basis of prices actually paid or payable in the Union for the like product, duly adjusted to include a reasonable profit as detailed in recitals (50) and (51) above with each company's weighted average export price of the product concerned to the Union as established above.
- (57) On this basis, the provisional dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Sampled companies	Provisional dumping margins
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	83,2 %
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	62,5 %
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	66,5 %

##### (b) For all other cooperating exporting producers

- (58) The dumping margin for other cooperating exporting producers in the PRC, not included in the sample, was calculated as a weighted average of the sampled exporting producers' dumping margins, in accordance with Article 9(6) of the basic Regulation.

- (59) On this basis, the provisional dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, is 71,1 %.

##### (c) All other (non-cooperating) exporting producers

- (60) Given the high level of co-operation in the investigation (the co-operating companies represent around 64 % of the total imports recorded in Eurostat during the IP) the country wide margin for non-cooperating exporting producers, was established by using the highest of the margins found for the sampled (groups of) companies.
- (61) On this basis the provisional country-wide level of dumping as a percentage of the CIF Union frontier price, duty unpaid is 83,2 %.

### D. INJURY

#### 1. Union production and Union industry

- (62) During the IP, the like product was manufactured by 21 producers in the Union. Within the meaning of Article 4(1) and Article 5(4) of the basic Regulation, all 21 existing Union producers constitute the Union industry and they will therefore be hereafter referred to as the 'Union industry'.
- (63) As indicated under recital (7) above, two groups of Union producers, comprised of five Union producers were selected in the sample, representing more than 50 %, of the total Union production of the like product. Of the remaining cooperating Union producers, the company that requested a limitation of the product scope (see recitals (16) and (17) above – did not agree with the selection of the sample. Notably, the producer criticized that the sample includes only companies that are present both on the 'market of finished products' and that of 'pre-material', and also the fact that the sample is comprised of only complainant companies. It is reiterated that the company in question purchases pre-material from both the PRC and the Union industry. However, the producer failed to prove that indeed such two separate markets exist. In addition, the producer represented less than 2 % of total Union production during the IP, whilst the two company groups were selected on the basis of the objective criteria as described in recitals (7) and (8) above.

## 2. Union consumption

- (64) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market based on the information obtained from the defence committee representing the complainants (see recital (2) above) and the import volumes data for the Union market obtained from Eurostat. The latter data had to be slightly adjusted with regard to imports from South Africa and Japan for certain periods given that those data included some distortions resulting from incorrect reporting of information.
- (65) Union consumption dropped strongly by 35 % between 2006 and the IP. The consumption had however slightly increased between 2006 and 2007, peaked in 2007 and then continuously decreased year by year until the IP.

Table 1

Union consumption					
	2006	2007	2008	2009	IP
Units (tonnes)	131 965	153 630	133 711	102 865	85 629
<i>Indexed</i>	100	116	101	78	65

- (66) Indeed the period considered covers considerable fluctuations on the market, mainly due to huge volatilities in demand for stainless steel tubes. The year 2007 and also the first three quarters of 2008 can be characterised as a robustly booming market. Eventually, the economic crisis had a large impact on the demand. This impact started to become visible in the last quarter of 2008, became graver throughout 2009 and continued even in the first half of 2010 thus affecting also the whole of the IP. All this is well reflected in the trend of Union consumption which was at its peak in 2007 after which it shrank year by year.

## 3. Imports from the country concerned

### 3.1. Volume of dumped imports

- (67) The volume of imports of the product concerned from the PRC into the Union market has increased over the period considered. Overall during the period considered, imports from the PRC increased by 14 %. In fact, between 2006 and 2007, imports from the PRC have almost doubled, while they decreased year by year between 2007 and the IP, largely due to the fall in consumption (as market share remained stable between 2008 and the IP – see recital (68) below).

Table 2

Imports from the PRC (volumes)					
	2006	2007	2008	2009	IP
Units (tonnes)	13 804	26 790	25 186	17 043	15 757
<i>Indexed</i>	100	194	182	123	114

### 3.2. Market share of dumped imports

- (68) The market share of dumped imports from the PRC has almost doubled over the period considered, increasing by 76 % or 7,9 percentage points. This market share growth mainly took place between 2006 and 2007, subsequently maintaining its high level.



Table 3

<b>Imports from the PRC (market share)</b>					
	2006	2007	2008	2009	IP
Market share (%)	10,5 %	17,4 %	18,8 %	16,6 %	18,4 %
<i>Indexed</i>	100	167	180	158	176

### 3.3. Prices

#### (a) Price evolution

- (69) The table below shows the average price of dumped imports from the PRC, at the European border duty unpaid, as reported by Eurostat. During the period considered the average price of imports from the PRC increased until 2008 and then fell between 2008 and the IP.

Table 4

<b>Imports from the PRC (prices)</b>					
	2006	2007	2008	2009	IP
Average price per tonne (EUR)	4 354	5 129	5 506	4 348	3 954
<i>Indexed</i>	100	118	126	100	91

#### (b) Price undercutting

- (70) A type-to-type price comparison was made between the selling prices of the Chinese exporting producers and the sampled Union producers' selling prices in the Union. To this end, the sampled Union producers' prices to unrelated customers have been compared with the prices of sampled exporting producers of the country concerned. Adjustments were applied where necessary to take account of differences in the market perception of product quality, the level of trade and post-importation costs.
- (71) The comparison showed that, during the IP, imports of the product concerned originating in the PRC were sold in the Union at prices which undercut the Union industry prices, when expressed as a percentage of the latter, by 21 % to 32 %.

## 4. Economic situation of the Union industry

### 4.1. Preliminary remarks

- (72) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indicators having a bearing on the state of the Union industry. The data presented below relate to all Union producers for sales and market shares, and to the sampled Union producers for all the remaining indicators. As concerns the indicators based on the sampled producers, given that the sample was comprised of only two groups of producers, for confidentiality reasons the actual aggregate data could not be disclosed in the related tables below; instead, only the indices are presented in order to show the trend of those indicators.

### 4.2. Production

- (73) The Union production volumes increased between 2006 and 2008, but they fell sharply between 2008 and the IP. This substantial decrease of production was caused by both the market contraction and the increasing pressure of dumped imports.

Table 5

<b>Production</b>					
sampled producers	2006	2007	2008	2009	IP
Production ( <i>indexed</i> )	100	107	121	84	66

#### 4.3. Production capacity and capacity utilisation

- (74) The production capacity of the Union industry remained relatively stable throughout the period considered: However, the rate of capacity utilization decreased by 35 % between 2006 and the IP. In the IP, the level of capacity utilization dropped to little more than half of the level reached in 2008.

Table 6

<b>Production capacity</b>					
sampled producers	2006	2007	2008	2009	IP
Capacity ( <i>indexed</i> )	100	98	101	102	101
Capacity utilisation ( <i>indexed</i> )	100	109	120	82	65

#### 4.4. Stocks

- (75) The table below shows that the closing stocks first increased until 2008, when Union production was at its peak, but then they started decreasing due to the reduced levels of manufacturing activity.

Table 7

<b>Stocks</b>					
sampled producers	2006	2007	2008	2009	IP
Stocks ( <i>indexed</i> )	100	124	168	138	118

#### 4.5. Union sales volumes (total Union industry)

- (76) The sales volume of all Union producers on the EU market decreased on the whole by 39 %, while Chinese exports increased by 14 % at the same time, as stated in recital (68) above. The Union sales volumes of Union industry developed as follows:

Table 8

<b>Union sales (volumes)</b>					
all EU producers	2006	2007	2008	2009	IP
Union sales (tonnes)	82 743	91 043	79 418	63 223	50 569
<i>Indexed</i>	100	110	96	76	61

#### 4.6. Market share (total Union industry)

- (77) The market share of the Union industry decreased by 3,4 percentage points between 2006 and 2007 and remained relatively stable during the rest of the period considered, with a small temporary increase in 2009. Overall, the Union industry lost 3,6 percentage points of market share, whereby as shown in Table 3 above, the market share of dumped imports from the PRC has almost doubled over the period considered.

Table 9

Union market share					
all EU producers	2006	2007	2008	2009	IP
Market share (%)	62,7 %	59,3 %	59,4 %	61,5 %	59,1 %
<i>Indexed</i>	100	95	95	98	94

#### 4.7. Sales prices

- (78) As concerns average sales prices, the table below shows that in 2007 the Union industry increased its sales prices and then gradually reduced them year by year until the IP, reaching price levels which are below those of 2006. The evolution and the high volatility of their sales prices were partly due to serious fluctuations of raw material costs.

Table 10

Union sales (average prices)					
sampled producers	2006	2007	2008	2009	IP
Average price per tonne ( <i>indexed</i> )	100	135	126	100	92

#### 4.8. Employment

- (79) The employment level largely followed the development of the production volumes (see Table 5 above), which indicates that the Union industry has attempted to rationalise manufacturing costs when it was necessary. The Union industry tried to adapt their workforce to the worsening market circumstances by reducing working hours rather than reducing their headcount. Therefore, the table below shows the employment level in full-time equivalents (FTE). FTE employment of the Union producers increased by 11 percentage points between 2006 and 2008, followed by a drop of 19 percentage points from 2008 to the IP. On the whole, the number of FTE's decreased by 8 % over the period considered.

Table 11

Employment					
sampled producers	2006	2007	2008	2009	IP
Employment in full-time equivalents ( <i>indexed</i> )	100	106	111	95	92

#### 4.9. Productivity

- (80) Despite the above attempts of the Union industry, the output per FTE of the Union producers fell considerably, overall by 29 %. The serious impacts of dumped imports from the PRC in the period of a collapsing market demand prevented the Union industry from maintaining its productivity levels.

Table 12

<b>Productivity</b>					
sampled producers	2006	2007	2008	2009	IP
Production volume per FTE (indexed)	100	102	109	88	71

## 4.10. Labour Costs

- (81) During the period considered, the Union industry has managed to control the development of labour costs. Indeed, the table below shows that the average annual labour cost slightly increased in 2007 and 2008, but they decreased in 2009 and the IP. Over the whole period, unit labour costs went down by 2 %. This decrease would have been more pronounced had the amounts of severance payments been excluded from the above trend.

Table 13

<b>Labour costs</b>					
sampled producers	2006	2007	2008	2009	IP
Annual labour cost per employee (indexed)	100	103	109	100	98

## 4.11. Profitability and return on investments (ROI)

- (82) Profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product on the EU market to unrelated customers as a percentage of the turnover of these sales. As a result, the profitability margins of the Union industry developed as follows during the period considered:

Table 14

<b>Profitability &amp; return on investments (ROI)</b>					
sampled producers	2006	2007	2008	2009	IP
Net profit (indexed)	100	202	89	- 147	- 188
ROI (indexed)	100	289	215	- 107	- 153

- (83) As the above table shows, the profitability of the Union industry peaked in 2007 due to the extraordinary market conditions from which all market players could benefit. The average profitability significantly deteriorated starting from 2007 and profits have turned into a significant loss during 2009 and the IP.
- (84) As concerns the return on investments ('ROI'), expressed as the profit in percent of the net book value of investments, this indicator appears to have followed the profitability trend.

## 4.12. Cash flow and ability to raise capital

- (85) The net cash flow from operating activities developed as follows (given the negative amount in 2006, exceptionally for this table, 2007 was considered as the year of reference for indicating the cash flow development):

Table 15

Cash flow					
sampled producers	2006	2007	2008	2009	IP
Cash flow ( <i>indexed</i> )	<i>negative</i>	100	685	175	53

- (86) The above table shows that the cash flow of the Union industry peaked in 2008 and that subsequently it decreased until the end of the period considered, reaching a rather low level in the IP.

#### 4.13. Investments

- (87) During the period considered, the investments of the sampled Union producers developed as follows:

Table 16

Investments					
sampled producers	2006	2007	2008	2009	IP
Net investments ( <i>indexed</i> )	100	192	406	286	183

- (88) As the above table shows, the Union producers decided to continue to invest despite their above fragile financial situation in 2009 and the IP. The reasons for this are that (i) this type of industry normally requires certain multi-annual investments which had to be completed irrespective of the market situation, and that (ii) in this sector frequent machinery upgrades are a prerequisite to allow production of larger quantities of higher-end products (as an effort to maintain competitiveness vis-à-vis other manufacturers).

#### 4.14. Magnitude of the actual dumping margin

- (89) The dumping margins for imports from the PRC, as specified above in recital (57) above, are very high. Given the volume, market share and prices of the dumped imports, the impact of the margins of dumping can be considered substantial.

#### 5. Conclusion on injury

- (90) The injury indicators developed negatively during the period considered. This is particularly noticeable for the indicators concerning profitability, production volumes, capacity utilisation, sales volumes and market share that have all showed a clearly deteriorating trend.
- (91) At the same time, stainless steel tube imports from the PRC were undercutting Union industry prices by up to 32 % during the IP (see recital (71) above).
- (92) In the light of the foregoing, it is provisionally concluded that the Union industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

#### E. CAUSATION

##### 1. Introduction

- (93) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, the Commission examined whether the dumped imports have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

##### 2. Effect of the dumped imports

- (94) Between 2006 and the IP, the volume of the dumped imports of the product concerned increased in terms of volume by 14 % in a market contracting by 35 %, which resulted in an increase of Union market share by 76 %, from 10,5 % to 18,4 %.
- (95) The increase in dumped imports of the product concerned from the PRC over the period considered coincided with a downward trend in most injury indicators of the Union industry. The Union industry lost 3,6 percentage points of market share and its sales prices decreased by 8 % due to the price pressure exerted by low-priced dumped imports on the Union market. The significant price undercutting prevented the Union industry from passing on the increased production costs in the sales prices to an acceptable extent, which resulted in negative profitability levels during the IP.

- (96) Based on the above it is provisionally concluded that the low-priced dumped imports from the PRC, which entered the Union market in large and overall increasing volumes and which significantly undercut the Union industry prices throughout the period considered, are causing material injury to the Union industry.

### 3. Effect of other factors

#### 3.1. Imports from other third countries

- (97) During the period considered, there were limited imports from other third countries. The total market share of imports from countries other than the PRC has decreased by 4,3 percentage points, from 26,8 % to 22,5 %.
- (98) The next largest sources of imports during the IP were Japan and Ukraine. They both held a market share of 5,2 % each. India had a market share of 3,0 % while imports from the USA had a market share of 2,7 % during the IP. The following table shows the development of import volumes, prices and market shares of the four largest import source countries following the PRC and those of the remaining other third country imports, all based on Eurostat data. As already mentioned in recital (64) above, Eurostat data for Japanese imports required slight adjustments to exclude distortions resulting from incorrect reporting of transactions.

Table 17

Imports from other countries						
Country		2006	2007	2008	2009	IP
Japan	Volumes(tonnes)	5 801	7 211	6 955	6 753	4 445
	Market share (%)	4,4 %	4,7 %	5,2 %	6,6 %	5,2 %
	Av. price (EUR)	7 981	7 396	8 591	11 634	9 596
Ukraine	Volumes(tonnes)	7 820	8 536	7 904	4 659	4 431
	Market share (%)	5,9 %	5,6 %	5,9 %	4,5 %	5,2 %
	Av. price (EUR)	6 775	9 212	8 100	6 336	6 031
India	Volumes(tonnes)	3 664	4 323	3 461	3 265	2 540
	Market share (%)	2,8 %	2,8 %	2,6 %	3,2 %	3,0 %
	Av. price (EUR)	5 519	6 874	6 789	3 929	4 111
USA	Volumes(tonnes)	3 739	6 019	2 724	2 740	2 344
	Market share (%)	2,8 %	3,9 %	2,0 %	2,7 %	2,7 %
	Av. price (EUR)	16 235	5 597	12 892	11 175	11 054
Other countries	Volumes(tonnes)	14 394	9 709	8 063	5 183	5 542
	Market share (%)	10,9 %	6,3 %	6,0 %	5,0 %	6,5 %
	Av. price (EUR)	6 643	7 880	8 553	6 695	6 497
Total of all third countries except the PRC	Volumes(tonnes)	35 418	35 797	29 107	22 600	19 303
	Market share (%)	26,8 %	23,3 %	21,8 %	22,0 %	22,5 %
	Av. price (EUR)	5 586	7 540	8 453	8 392	7 484

- (99) As indicated in the table above, during the period considered Japan moderately increased its market share by 0,8 percentage points from 4,4 % to 5,2 %. However, prices of Japanese imports appear to be much more comparable to the Union prices than prices of imports from the PRC. Most importantly, in the IP, Japanese import prices were significantly higher than those of the Union industry.
- (100) Imports from the USA were made at prices considerably higher than those of the Union industry during the period considered (except for the year of 2007). As concerns imports from Ukraine and India, although average prices from these countries were overall lower than Union prices, both maintained a relatively stable market share on the Union market: the market share of Ukraine decreased from 5,9 % to 5,2 % while that of India grew from 2,8 % to 3,0 % during the period considered.
- (101) In conclusion, the market share of imports from all third countries except the PRC decreased by 4,3 percentage points (from 26,8 % to 22,5 %) during the period considered. Overall, the average import price from all third countries other than the PRC increased by 34 % during the period considered (from EUR 5 586 to EUR 7 484 per tonne) which is in sharp contrast with the 9 % reduction in the already very low Chinese import prices and the 8 % drop of average Union sales prices.
- (102) On the basis of the above it can be concluded that imports from third countries other than the PRC do not appear to have contributed to the injury suffered by the Union industry during the IP.
- half of 2010 i.e. the whole of the IP. All this is reflected in the Union consumption trends, which was at its peak in 2007 after which it shrank year by year (see Table 1 above).
- (104) Undoubtedly, the above drop in consumption resulting from the economic downturn had also an impact on the situation of the Union industry. It must be noted, however, that this negative effect was seriously exacerbated by the dumped imports from the PRC, which significantly undercut the prices of the Union industry. Therefore, even if the economic downturn could be considered as a factor contributing to the injury during the IP, by no means could this diminish the injurious effects of low priced dumped imports from the PRC on the Union market. In the absence of such unfair competition from the PRC and the volume and price pressure that it exerted on the Union producers, it would have been possible for the latter to maintain the level of their sales prices and profitability at relatively acceptable levels even in a situation of decreasing demand.
- (105) Actually, the impact of dumped imports from the PRC that largely undercut the Union sales prices during the IP can be considered as even more injurious in a period of economic crisis when sales volumes and prices are in any event already under pressure by the lower consumption.
- (106) Given the above circumstances, the economic downturn cannot be considered as a possible factor that would break the causal link between the injury suffered by the Union industry and the dumped imports from the PRC.

### 3.2. Impacts of market fluctuations and the economic crisis

- (103) Whilst 2007 and the first three quarters of 2008 can be characterised as a robustly booming market for stainless steel tubes, eventually, the financial and economic crisis had a large impact also on this sector. The economic downturn started in the last quarter of 2008, continued throughout 2009 and affected even the first

### 3.3. Export performance of the Union industry

- (107) As concerns the development of export sales of the Union industry, exports decreased less than domestic sales, irrespective of whether all Union producers or only sampled producers are examined. As concerns the development of export sales volumes, the following trend could be established for the Union industry during the period considered:

Table 18

Union industry – export sales (tonnes) to unrelated customers					
all EU producers	2006	2007	2008	2009	IP
<i>Indexed</i>	100	99	108	88	64

- (108) It should be pointed out that the export sales of the Union industry shrank at a slower pace than its sales did on the Union market. This may imply that the pressure of dumped imports from the PRC is particularly strong in the Union market. Given this indication as well as the substantial share of exports in total sales made by the Union industry (constantly between 39 % and 45 % during the period considered), any lack of competitiveness of the Union producers on the world market can certainly be excluded.

### 3.4. Competitiveness of dumped imports from the PRC and cost of production of the Union industry

- (109) The high volatility of the alloy prices as well as the general developments in market demand resulted in considerable fluctuations of the costs of the main raw material for manufacturing the product under investigation. The average unit cost of production of the Union industry developed as follows during the period considered:

Table 19

Union industry – cost of production (EUR per tonne)					
sampled producers	2006	2007	2008	2009	IP
<i>Indexed</i>	100	120	119	124	118

- (110) As already stated in recital (78) above, the PRC market for the main raw materials is highly distorted. Due to this distortion, exporting producers in the PRC appear to have the possibility to make export sales of the product concerned to the Union market with a pricing that is likely to be less elastic to raw material prices and which results in prices largely undercutting those on the Union market. In other words, due to the distortion on the Chinese raw material market, the stainless steel tubes manufacturers in the PRC have an unfair competitive advantage when compared to the Union industry. These distortions would have contributed to allowing the Chinese producers to keep the low price level of the dumped imports from the PRC.

#### 4. Conclusion on causation

- (111) In conclusion, the above analysis has demonstrated that imports from the PRC have increased in terms of quantities and gained substantial market share over the period considered. Moreover, these increased quantities which entered the Union market at dumped prices severely undercut the Union industry prices. Though for a certain period the Union industry had been able to offset the negative effects of this pressure thanks to the exceptionally positive market conditions in the years of 2007 and 2008, this was no longer possible when the economic crisis substantially reduced the level of demand.
- (112) Other factors which could have caused injury to the Union industry have also been analysed. In this respect, it was found that imports from other third countries, the impact of the economic crisis, the export performance of the Union industry and other factors including those related to distortions on the PRC raw material market, do not appear to be such as to break the causal link established between the dumped imports and the injury suffered by the Union industry during the IP.
- (113) Based on the above analysis, which has properly distinguished and separated the effects of all known factors

having an effect on the situation of the Union industry from the injurious effect of the dumped imports, it is provisionally concluded that the imports from the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

#### F. UNION INTEREST

- (114) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusions on dumping, injury and causation, reasons existed which would lead the Commission to clearly conclude that it is not in the Union interest to adopt measures in this particular case. For this purpose and pursuant to Article 21(1) of the basic Regulation, the Commission considered the likely impact of possible measures on all parties involved as well as the likely consequences of not taking measures.
- (115) The Commission sent questionnaires to independent importers and users. Eventually, two importers and one user submitted questionnaire replies within the time limits set.

##### 1. Interest of the Union industry

- (116) One Union producer opposed the imposition of anti-dumping measures as the company partly sources unworked stainless steel hollows from the PRC in order to further process them into finished tubes. However, the producer represents less than 2% of total Union production.
- (117) It is recalled that the injury indicators showed an overall negative trend and that in particular the injury indicators related to production and sales volumes and market share as well as the financial performance of the Union industry such as profitability and return on investment, were seriously affected.



- (118) If measures are imposed, it is expected that the price depression and loss of market share will be mitigated and that the sales prices of the Union industry will start to recover, resulting in a significant improvement of the Union industry's financial situation.
- (119) On the other hand, should anti-dumping measures not be imposed, it would be likely that the deterioration of the Union industry's market and financial situation would continue. In such a scenario, the Union industry would lose further market share, as it is not able to follow the market prices set by dumped imports from the PRC. The likely effects would entail further cuts in manufacturing and the closure of production facilities in the Union, resulting in substantial job losses.
- (120) Taking into account all the above factors, it is provisionally concluded that the imposition of anti-dumping measures would be in the interest of the Union industry.

## 2. Interest of unrelated importers in the Union

- (121) As indicated above, sampling was not applied for unrelated importers as only two unrelated importers fully cooperated in this investigation by submitting a questionnaire reply. Only a small part of the turnover of these two importers was related to re-sales of the product concerned from the PRC.
- (122) The imports declared by these two importers however represented a relatively small proportion of all imports from the PRC in the IP (much less than 10 %). Considering the high margins that the importers achieved on the re-sales of the product concerned in the IP, it can be assumed that the imposition of anti-dumping duties could result for them in lower profitability levels. However, neither of the importers put forward arguments according to which the imposition of anti-dumping duties would be against their interest. In addition, as they both re-sell stainless steel tubes of non-Chinese origin (including tubes of Union origin), they may as well decide to shift purchases to non-Chinese suppliers, which are not affected by the duties.
- (123) No other importers have cooperated by submitting a questionnaire reply or substantiated comments. On that basis, it is provisionally concluded that the imposition of provisional measures will not have substantially negative effects on the interest of the Union importers.

## 3. Interest of the users

- (124) Seamless pipes and tubes of stainless steel subject to this proceeding are used for a large number of applications (see recital (17) above). Despite this, cooperation was

obtained from only one user which uses stainless steel tubes for manufacturing air fin coolers and air cooled condensers, accounting for less than 1 % of total Chinese imports during the IP. However, it can provisionally be concluded that the very limited cooperation of users appears to indicate that in general the impact on the user industry's profitability and economic situation will be rather limited.

- (125) From the questionnaire reply of this user it appears that the company will not be seriously affected by anti-dumping measures, not even with regard to its division using the stainless tubes. When comparing the value of imports of the product concerned with the turnover of the division using the imported goods, the effect can be considered insignificant.
- (126) In view of the data of this user, it can however not be excluded that certain user companies that use more substantial quantities of stainless tubes imported from the PRC could be negatively affected by the anti-dumping measures.
- (127) From the information submitted by the sole cooperating user it is impossible to estimate the total employment of the whole user industry within the Union, given its limited representativeness and the wide variety of applications.
- (128) It should also be noted that the level of measures is unlikely to prevent Chinese imports from continuing to supply the Union market, albeit at increased non-injurious prices. In addition, the idle production capacity of the Union industry as well as the alternative sources of imports from various other third countries indicate that there is no risk of security of supply for the stainless steel tubes on the Union market.
- (129) Besides, despite the recent difficulties of the Union industry, it continues to be the largest supplier of the user industry in the Union. Without the imposition of measures, in case of further deterioration of the financial situation of the Union industry, the existence of the Union industry would be jeopardised which would bring about a risk of supply also for the users within the Union.

- (130) All in all, when considering the overall impact of the anti-dumping measures, the positive effects on the Union industry appear to clearly outweigh the potential negative impacts on the other interest groups. Therefore it is provisionally concluded that the anti-dumping duties are not against the Union interest.

#### 4. Conclusion on Union interest

- (131) It can be concluded that the imposition of measures on dumped imports of the product concerned from the PRC is expected to provide an opportunity for the Union industry to improve its situation through increased sales volumes, sales prices and market share. While some negative effects may occur in the form of cost increases for certain users, they are likely to be outweighed by the expected benefits for the producers and their suppliers.
- (132) In the light of the above, it is provisionally concluded that on balance, no compelling reasons exist against the imposition of provisional measures on imports of the product concerned originating in the PRC.

#### G. PROVISIONAL ANTI-DUMPING MEASURES

- (133) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional measures should be imposed on imports of the product concerned originating in the People's Republic of China in order to prevent further injury to the Union industry by the dumped imports.

##### 1. Injury elimination level

- (134) The provisional measures on imports originating in the PRC should be imposed at a level sufficient to eliminate dumping, without exceeding the injury caused to the Union industry by the dumped imports. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it is considered that any measures should allow the Union industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.
- (135) The Union industry has claimed that for the determination of the injury elimination level a target profit of 12 % should be used. However, the evidence provided so far has not shown that this profitability can be achieved in a normal market situation. Not even in the exceptional year of 2007 could the Union industry achieve such high level of profitability. Based on the data collected during the investigation it has provisionally been considered that a 5 % profit is appropriate for determining the injury elimination level.
- (136) On this basis, a non-injurious price was calculated for the Union industry of the like product. The non-injurious price has been established by deducting the actual profit margin from the ex-works price and adding to the thus calculated break even price the above-mentioned target profit margin.

- (137) As a result, the following injury elimination levels have provisionally been established:

Company/companies	Injury elimination level
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	71,5 %
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	48,2 %
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	48,0 %
Companies listed in Annex I	56,6 %
All other companies	71,5 %

##### 2. Provisional measures

- (138) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed on imports of the product concerned originating in the PRC at the level of the lower of the dumping margin and injury elimination level found, in accordance with the lesser duty rule, which is in all cases the injury margin.
- (139) Given the high rate of co-operation of Chinese exporting producers, the all other companies rate is set at the rate of the co-operating company in the sample with the highest rate. For the co-operating non-sampled companies listed in the Annex the provisional duty rate is set at the weighted average of the rates of the sampled companies. On the basis of the above, the proposed duty rates are:

Company/companies	Provisional duty
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	71,5 %
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	48,2 %
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	48,0 %
Companies listed in Annex I	56,6 %
All other companies	71,5 %

- (140) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These

duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (141) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (142) In order to ensure a proper enforcement of the anti-dumping duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Union during the IP.

#### H. FINAL PROVISION

- (143) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of certain seamless pipes and tubes of stainless steel, other than with attached fittings suitable for conducting gases or liquids for use in civil aircraft, currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 (TARIC codes 7304 41 00 90,

7304 49 93 90, 7304 49 95 90, 7304 49 99 90 and 7304 90 00 91), and originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below, shall be as follows:

Company/companies	Provisional duty	TARIC Additional Code
Changshu Walsin Specialty Steel, Co. Ltd., Haiyu	71,5 %	B120
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd., Situan	48,2 %	B118
Wenzhou Jiangnan Steel Pipe Manufacturing, Co. Ltd., Yongzhong	48,0 %	B119
Companies listed in Annex I	56,6 %	B121
All other companies	71,5 %	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex II. If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

#### Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, interested parties may request disclosure of the details underlying the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

<sup>(1)</sup> European Commission  
Directorate-General for Trade  
Direction H  
Office Nerv 105  
B-1049 Brussels.

Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 27 June 2011.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX I

- (1) Baofeng Steel Group Co.Ltd., Lishui,
  - (2) Changzhou City Lianyi Special Stainless Steel Tube Co.Ltd., Changzhou,
  - (3) Huadi Steel Group Co.Ltd., Wenzhou,
  - (4) Huzhou Fengtai Stainless Steel Pipes Co.Ltd, Huzhou,
  - (5) Huzhou Gaolin Stainless Steel Tube Manufacture Co.Ltd., Huzhou,
  - (6) Huzhou Zhongli Stainless Steel Pipe Co.Ltd., Huzhou,
  - (7) Jiangsu Wujin Stainless Steel Pipe Group Co.Ltd., Beijing,
  - (8) Jiangyin Huachang Stainless Steel Pipe Co.Ltd., Jiangyin
  - (9) Lixue Group Co.Ltd., Ruian,
  - (10) Shanghai Crystal Palace Pipe Co.Ltd., Shanghai,
  - (11) Shanghai Baoluo Stainless Steel Tube Co., Ltd., Shanghai,
  - (12) Shanghai Shangshang Stainless Steel Pipe Co.Ltd., Shanghai,
  - (13) Shanghai Tianbao Stainless Steel Co.Ltd., Shanghai,
  - (14) Shanghai Tianyang Steel Tube Co.Ltd, Shanghai,
  - (15) Wen zZhou Xindeda Stainless Steel Material Co.Ltd., Wenzhou,
  - (16) Wenzhou Baorui Steel Co.Ltd., Wenzhou,
  - (17) Zhejiang Conform Stainless Steel Tube Co.Ltd., Jixing,
  - (18) Zhejiang Easter Steel Pipe Co.Ltd., Jiaxing,
  - (19) Zhejiang Five - Star Steel Tube Manufacturing Co.Ltd., Wenzhou,
  - (20) Zhejiang Guobang Steel Co.Ltd., Lishui,
  - (21) Zhejiang Hengyuan Steel Co.Ltd., Lishui,
  - (22) Zhejiang Jiashang Stainless Steel Co.Ltd., Jiaxing City,
  - (23) Zhejiang Jinxin Stainless Steel Manufacture Co.Ltd., Xiping Town,
  - (24) Zhejiang Jiuli Hi-Tech Metals Co.Ltd., Huzhou,
  - (25) Zhejiang Kanglong Steel Co.Ltd., Lishui,
  - (26) Zhejiang Qiangli Stainless Steel Manufacture Co.Ltd., Xiping Town,
  - (27) Zhejiang Tianbao Industrial Co.Ltd., Wenzhou,
  - (28) Zhejiang Tsingshan Steel Pipe Co.Ltd., Lishui,
  - (29) Zhejiang Yida Special Steel Co.Ltd., Xiping Town.
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*ANNEX II*

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

- (1) the name and function of the official of the entity issuing the commercial invoice;
- (2) the following declaration:

'I, the undersigned, certify that the (volume) of seamless pipes and tubes of stainless steel sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

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