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<sup>(1)</sup> Text with EEA relevance

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION REGULATION (EU) 2016/1977

of 11 November 2016

**imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, 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 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 <sup>(1)</sup> ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

## 1. PROCEDURE

## 1.1. Initiation

- (1) On 13 February 2016, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm originating in the People's Republic of China ('the country concerned') on the basis of Article 5 of Council Regulation (EC) No 1225/2009 <sup>(2)</sup>. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(3)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 4 January 2016 by the Defence Committee of the seamless steel tubes industry of the European Union ('the complainants'). The complainants represent more than 25 % of the total Union production of seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

## 1.2. Interested parties

- (3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainants, other known Union producers, the known exporting producers and the People's Republic of China authorities, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) was replaced by Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation') as of 20 July 2016.

<sup>(3)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China (OJ C 58, 13.2.2016, p. 30).

- (4) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (5) In the Notice of Initiation, the Commission informed interested parties that it envisaged Japan, Russia, South Korea and the USA as possible third market economy countries ('analogue countries') within the meaning of Article 2(7)(a) of the basic Regulation. The Commission contacted producers of these countries and also producers in Canada, India, Mexico and Venezuela and invited them to participate.

### 1.3. Sampling

- (6) In the Notice of Initiation, the Commission stated that it might apply sampling in accordance with Article 17 of the basic Regulation.

#### 1.3.1. Sampling of Union producers

- (7) In the Notice of Initiation of the investigation, the Commission stated that it had provisionally selected a sample of Union producers on the basis of the production of the product concerned. This provisional sample consisted of four Union producers. They accounted for 51 % of the total production of the Union industry. The Commission invited interested parties to comment on the provisional sample but no comments were received.
- (8) The investigation has revealed that the economic situation and the structure of the largest sampled company may not be representative of the Union industry. It has a different business model, because it relies for more than 60 % of its sales on the oil and gas business, and because it produces many more tailor-made and high-end products. Furthermore, as explained in recitals 107 to 108, its profitability has deteriorated consistently over the entire period considered, which is another important difference from the other Union producers. Hence, the Commission will investigate further whether the company is representative for the state of the Union industry. If appropriate, the Commission will consider further steps including a weighing of the relevant companies.
- (9) At provisional stage, the Commission has decided to keep this company in the sample, but it will revisit the question in the light of the comments it will receive from interested parties.

#### 1.3.2. Sampling of importers

- (10) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (11) Five unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three importers on the basis of the largest volume of imports into the Union. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comments were made.

#### 1.3.3. Sampling of exporting producers in the People's Republic of China

- (12) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the People's Republic of China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (13) Twelve exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were received from interested parties in this respect.

#### 1.4. Individual examination

- (14) Six exporting producers in the People's Republic of China requested individual examination under Article 17(3) of the basic Regulation. Three of them are included in the sample and hence examined individually. The examination of the remaining three requests during the provisional stage of the investigation would have been unduly burdensome due to the tight deadlines of the investigation, limited resources, and current workload of the Commission services. The Commission will decide whether to grant any individual examination requests, following the provisional stage of the investigation.

#### 1.5. Market economy treatment claim forms

- (15) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent MET claim forms to all the cooperating exporting producers in the People's Republic of China selected to be in the sample, to the known associations of exporting producers, and to the authorities of the People's Republic of China. No MET claim forms were submitted by any of the exporting producers.

#### 1.6. Questionnaire replies and verification visits

- (16) The Commission sent questionnaires to all sampled companies within the deadlines set out in the Notice of Initiation. Questionnaire replies were received from the four sampled cooperating (groups of) exporting producers in the People's Republic of China, the four sampled Union producers, and three unrelated importers. No users came forward.

#### 1.7. Verification visits

- (17) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) *Union producers:*

- ArcelorMittal Tubular products Roman, Romania
- Huta Batory, Poland
- Vallourec Deutschland GmbH, Germany
- Z-Group, Czech Republic

(b) *Exporting producers in the People's Republic of China (PRC):*

- Hubei Xinyegang Group:
  - Hubei Xinyegang Steel Co., Ltd (related exporter in the PRC)
  - Hubei Xinyegang Special Tube Co., Ltd (related producer in the PRC)
- Yangzhou Chengde Steel Pipe Co., Ltd
- Hengyang Valin Group:
  - Hengyang Steel Tube Group International Trading Inc. (related exporter in the PRC)
  - Hengyang Valin MPM Co., Ltd (related producer in the PRC)
- Yangzhou Lontrin Steel Tube Co., Ltd

(c) *Producer in the analogue country:*

— TAMSA, Mexico

### 1.8. Investigation period and period considered

- (18) The investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (19) The product concerned is certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm originating in the People's Republic of China, currently falling within CN codes 7304 19 90, ex 7304 29 90, 7304 39 98 and 7304 59 99 ('the product concerned').
- (20) The product concerned is used in a wide range of applications, for example in the oil & gas industry, in power plants, and in construction.

### 2.2. Like product

- (21) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned;
  - the product produced and sold on the domestic market of Mexico, which served as an analogue country; and
  - the product produced and sold in the Union by the Union industry.
- (22) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

### 2.3. Claims regarding product scope

- (23) No claims regarding the product scope were made.

## 3. DUMPING

### 3.1. Analogue country

- (24) According to Article 2(7)(a) of the basic Regulation normal value was determined on the basis of the price or constructed value in a market economy third country since no sampled exporting producer was granted MET. For this purpose, a market economy third country had to be selected ('the analogue country').
- (25) In the Notice of Initiation, the Commission informed interested parties that it envisaged Japan, Russia, South Korea and the USA as possible appropriate analogue country and invited interested parties to comment. No comments were received.

- (26) The Commission requested thirteen producers of the like product in Canada, India, Japan, Russia, South Korea, Mexico, the USA and Venezuela to provide information. Cooperation was received from only one company located in Mexico. This company responded to the analogue country questionnaire and agreed to the on-spot verification of its reply.
- (27) The domestic market in Mexico has adequate competition and its size is considered suitable and ranges around 20 000 tonnes annually. A customs duty of 5 % is applicable on imports of most seamless pipes and tube products originating in all countries. The cooperating company represents more than 60 % of the market share of the domestic market. Nevertheless imports have also a substantial market share, representing more than 22 % in the Mexican domestic market demonstrating that there is competition in that market.
- (28) The Commission concluded at this stage that Mexico is an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

### 3.2. Normal value

- (29) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value for the exporting producers not granted MET, pursuant to Article 2(7)(a) of the basic Regulation.
- (30) The Commission first examined whether the total volume of domestic sales in the analogue country of the cooperating producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market represented at least 5 % of the total export sales volume to the Union of the product concerned by the exporting producers in the country concerned, during the investigation period. On this basis, the total sales of the cooperating producer of the like product on the domestic market were representative.
- (31) The Commission subsequently identified the product types sold domestically in the analogue country that were identical or comparable with the product types sold for export to the Union by the exporting producers in the country concerned with representative domestic sales.
- (32) The Commission then examined whether the domestic sales of the cooperating producer in the analogue country for each product type identical or comparable to product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. On this basis, the Commission established that domestic sales of some product types in the analogue country accounted for less than 5 % of the total volume of export sales of the identical or comparable product type to the Union, and were therefore not representative.
- (33) The Commission next defined the proportion of profitable sales to independent customers on the domestic market in the analogue country for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (34) The analysis of domestic sales showed that all domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the IP.
- (35) As there were no or insufficient sales of some product types of the like product in the ordinary course of trade in the analogue country, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (36) For the product types not sold in representative quantities on the domestic market in the analogue country, the average selling, general and administrative costs ('SG&A') expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were used. For the product types not sold at all on the domestic market in the analogue country, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were used.

- (37) A significant number of product types exported from the country concerned to the Union could not be directly matched with the product types produced in the analogue country. Therefore, the normal value for the non-matching product types had to be constructed pursuant to Article 2(3) of the basic Regulation on the basis of the analogue country's producer's manufacturing costs plus a reasonable amount for SG&A and for profit. The normal value was thus constructed in line with Article 2(3) and (6) of the basic Regulation by adding to the average cost of manufacturing of the relevant product type the weighted average SG&A expenses <sup>(1)</sup> [1 %-10 %] incurred and the weighted average profit <sup>(1)</sup> [9 %-19 %] realised by the producer in the analogue country on domestic sales, in the ordinary course of trade, during the investigation period.

### 3.3. Export price

- (38) The sampled exporting producers exported to the Union either directly to independent customers or through related exporting companies located in country concerned. No exports were made through related importers located in the Union.
- (39) As exporting producers exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

### 3.4. Comparison

- (40) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (41) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.
- (42) Adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs ranging from 2 % to 12 %, credit costs ranging from 0,01 % to 0,3 %, commissions ranging from 0,1 % to 2 % and bank charges ranging from 0,02 % to 0,3 % where demonstrated to affect price comparability.
- (43) China applies a policy of reimbursing VAT only partially upon export and in this case 8 % VAT is not reimbursed. To ensure that the normal value was expressed at the same level of taxation as the export price, the normal value was adjusted upward by that part of the VAT charged on exports of large diameter seamless pipes and tubes that was not refunded to the Chinese exporting producers <sup>(2)</sup>.

### 3.5. Dumping margins

- (44) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product in the analogue country (see recitals 29 to 37 above) with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (45) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers, disregarding the margins of the exporting producers with zero and *de minimis* dumping margins, as well as margins established in the circumstances referred to in Article 18 of the basic Regulation.
- (46) For all other exporting producers in the country concerned, the Commission established the dumping margins on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as a proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union

<sup>(1)</sup> The precise data constitutes business confidential information.

<sup>(2)</sup> That method was accepted by the General Court in its judgment of 16 December 2011, case T-423/09, *Dashiqiao v Council*, ECLI:EU:T:2011:764, paras 34 to 50.



- (47) The level of cooperation in this case is high because the imports of the cooperating exporting producers constituted around 85 % of the total exports to the Union during the IP. On this basis, the Commission decided to base the residual dumping margin at the level of the sampled company with the highest dumping margin.
- (48) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin (%)
Yangzhou Chengde Steel Pipe Co., Ltd	45,4
Hubei Xinyegang Special Tube Co., Ltd	103,8
Yangzhou Lontrin Steel Tube Co., Ltd	43,5
Hengyang Valin MPM Co., Ltd	94,1
Other cooperating producers	74,7
All other producers	103,8

#### 4. UNION INDUSTRY

##### 4.1. Union industry

- (49) The like product was manufactured by seven producers in the Union during the investigation period. They are deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

##### 4.2. Union production

- (50) All available information concerning the Union industry, such as information provided in the complaint, data collected from Union producers before and after initiation of the investigation and the questionnaire responses of the sampled Union producers, was used in order to establish the total Union production for the investigation period.
- (51) On this basis, the total Union production was estimated to be around 227 000 tonnes during the IP. This figure includes the production of all Union producers, both the sampled producers and an estimation of the production of the non-sampled producers.

##### 4.3. Sampling of Union producers

- (52) As indicated in recital 7, four Union producers were included in the sample, representing 51 % of the estimated total Union production of the like product.

#### 5. INJURY

##### 5.1. Union consumption

- (53) Union consumption was established on the basis of the total sales volume of the Union industry on the Union market and the total imports. Union consumption decreased from 2012 to 2014, and moderately improved in 2015. Union consumption decreased overall by 10 % over the period considered.

	2012	2013	2014	IP (2015)
Consumption (in tonnes)	176 751	171 538	155 031	158 539
Index (2012 = 100)	100	97	88	90

Source: European Commission (Eurostat), complaint and questionnaire replies.

## 5.2. Imports into the Union from the country concerned

### 5.2.1. Volume and market share of the imports concerned

- (54) During the period considered the imports into the Union from the People's Republic of China were found to have developed in terms of volume and market share as follows:

	2012	2013	2014	IP (2015)
Volume (in tonnes)	39 195	35 337	41 590	42 539
<i>Index (2012 = 100)</i>	100	90	106	109
Market share on EU consumption (%)	22,2	20,6	26,8	26,8
<i>Index (2012 = 100)</i>	100	93	121	121

Source: European Commission (Eurostat), complaint and questionnaire replies.

- (55) After a decrease in 2013, the import volumes from China steeply increased in 2014 and remained stable in 2015. Overall, the imports increased by 9 % over the period considered, from 39 000 tonnes to 42 500 tonnes in the IP, in a context of decreasing Union consumption. The market share of imports from China increased from 22,2 % to 26,8 % during the period considered.

### 5.2.2. Prices of imports and price undercutting

- (56) The table below shows the average price of imports from China:

	2012	2013	2014	IP (2015)
Average price in EUR/tonne	913	927	965	910
<i>Index (2012 = 100)</i>	100	102	106	100

Source: European Commission (Eurostat).

- (57) The average import prices were established on the basis of the Eurostat import statistics. The average import prices from China remained fairly stable during the period considered. The import prices were slightly higher in the year 2014 than in the previous years, but in 2015 the prices decreased back to their initial levels.
- (58) However, the average import prices depend on the product mix, in particular of the steel grade, which is not visible in the trade statistics. While the average export sales price of all the Chinese exporting producers was 910 EUR/tonne in the IP, the average export sales price of the sampled Chinese exporting producers was 1 102 EUR/tonne, ranging from 946 EUR/tonne to 1 444 EUR/tonne.
- (59) As can be seen in recital 79, the import prices from China remained significantly below the sales prices of the Union industry during the entire period.
- (60) In order to determine whether there was price undercutting during the IP, and to what extent, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level by deducting the actual delivery costs (43,4 EUR/tonne), commissions (51 EUR/tonne), deferred discounts (132,2 EUR/tonne) and credit cost (3,28 EUR/tonne), were compared to the corresponding weighted average prices per product type of the dumped imports from the sampled Chinese producers to the first independent customer on the Union market, established on a CIF basis after adding post-importation and handling cost (1,82 % of the CIF value).

- (61) In order to make a fair comparison on the same level of trade as the Chinese imports, only the Union sales to traders and distributors were considered. The direct sales to end users were excluded from the analysis, because direct sales to end users typically involved additional tailor-made requirements, leading to higher prices than the sales to traders and distributors where standard requirements are followed. As a result, the average sales price of the Union industry used for the comparison for undercutting purposes was 1 359 EUR/tonne (in the investigation period), whereas the average sales price is 1 584 EUR/tonne when all sales are considered.
- (62) The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed undercutting margins ranging from 15,1 % to 30,2 %.

### 5.3. Economic situation of the Union industry

#### 5.3.1. Preliminary remarks

- (63) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports from China on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (64) As mentioned in recital 7, sampling was used for the examination of the possible injury suffered by the Union industry.
- (65) For the purpose of the injury analysis, the Commission distinguished between macroeconomic and microeconomic injury indicators. As macroeconomic indicators, it used production, production capacity, capacity utilisation, sales volume, market share and growth, employment, productivity, magnitude of the actual dumping margin and recovery from past dumping. It also analysed average unit prices, unit cost, profitability, cash flow, investments, return on investment and ability to raise capital, stocks and labour costs from the sampled Union producers as microeconomic indicators.
- (66) All available information concerning the Union industry including information provided in the complaint, data collected from the Union producers before and after the initiation of the investigation, and the questionnaire responses of the sampled Union producers, was used in order to establish the macroeconomic indicators and in particular the data pertaining to the non-sampled Union producers. The statistical data held by the complainant was verified at the premises of the complainants.
- (67) The microeconomic indicators were established on the basis of verified information provided by the sampled Union producers in their questionnaire replies.

#### 5.3.2. Macroeconomic indicators

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

- (68) The trends for Union production, production capacity and the utilization of the capacity developed as follows during the period considered. The investigation revealed that some of the production lines used for the production of the product concerned were also used for producing other products, namely smaller diameter pipes. Therefore the table lists the total production volume other products included as well as the production volumes of the product concerned.

	2012	2013	2014	IP (2015)
Production volume (tonnes)	300 714	313 941	288 749	227 023
<i>Index (2012 = 100)</i>	100	104	96	75
Production volume all products (tonnes)	404 996	415 552	378 981	321 378
<i>Index (2012 = 100)</i>	100	103	94	79

	2012	2013	2014	IP (2015)
Production capacity all products (tonnes)	644 339	644 339	644 339	644 339
<i>Index (2012 = 100)</i>	100	100	100	100
Capacity utilisation all products (%)	63	64	59	50
<i>Index (2012 = 100)</i>	100	103	94	79

Source: Complaint, questionnaire replies.

- (69) Union production of the product concerned decreased during the period considered. The decrease in production was faster than the decrease in Union consumption.
- (70) Since the same machinery can be used to manufacture both the like product and seamless pipes and tubes of a smaller diameter, production capacity and utilisation was calculated for all types of seamless pipes and tubes. There is no machinery that would be limited only to for seamless pipes and tubes of diameters above 406,4 mm that could be taken into account to calculate capacity and capacity utilisation for the like product only. In any event, it is observed that the decrease in the production volume of all products reflects the decrease in the production volume of the product concerned. Capacity remained constant during the period considered, as there was no new production capacity being added nor closed down. Capacity utilisation decreased, in line with the decreasing sales of the Union producers.

#### 5.3.2.2. Sales volume, market share and growth

- (71) The sales of the Union producers included a small part of sales to related companies. The related sales represented 3 % of the Union consumption. Sales volume, market share and growth were therefore assessed separately for related sales and free market (unrelated sales).
- (72) The trends concerning sales volumes, market share and growth developed as follows during the period considered:

	2012	2013	2014	IP (2015)
Sales volume (tonnes)	132 241	119 894	95 054	100 975
<i>Index (2012 = 100)</i>	100	91	72	76
Market share on EU consumption (%)	75	70	61	64
<i>Index (2012 = 100)</i>	100	93	82	85
Sales volume related sales (tonnes)	11 505	5 689	7 171	4 971
<i>Index (2012 = 100)</i>	100	49	62	43
Market share of the related sales (%)	7	3	5	3
<i>Index (2012 = 100)</i>	100	51	71	48

Source: European Commission (Eurostat), complaint, questionnaire replies.

- (73) In the context of a decreasing Union consumption, the sales volumes decreased from 2012 to 2014, and narrowly improved in 2015. Overall, the Union sales decreased by 24 % during the period considered. As a result, the market share of the Union industry decreased from 75 % to 64 %.
- (74) The related sales decreased by more than half, from 11 000 tonnes to less than 5 000 tonnes. The overall share of related sales was small, 3 % of the Union consumption in the IP. The related sales took place in the context of trading activity. The products were subsequently resold and were not used captively by the related companies.

#### 5.3.2.3. Employment and productivity

- (75) Employment decreased from 3 256 in 2012 to 2 824 in the IP (2015). The employment in the Union industry was calculated by considering the number of employees working directly with the product concerned, when available, or by allocating total employment of the producers proportionally to the share of output of the product concerned. Productivity, measured as output in tonnes per person employed per year, first improved in 2013 when the Union production increased, but it then decreased again in line with the decreasing Union production. The decrease in the production caused the Union industry to reduce the number of shifts per worker, meaning that the number of employees decreased less drastically than the Union production.

	2012	2013	2014	IP (2015)
Number of employees	3 256	2 851	3 192	2 824
<i>Index (2012 = 100)</i>	100	88	98	87
Productivity (MT/employee)	92	110	90	80
<i>Index (2012 = 100)</i>	100	119	98	87

Source: Complaint, questionnaire replies.

#### 5.3.2.4. Magnitude of the actual dumping margin and recovery from past dumping

- (76) The dumping margins of the sampled Chinese exporting producers are considerable (see recital 48). Given the volume, market share and prices of the dumped imports from China discussed above, the impact on the Union industry of the actual dumping margin cannot be considered to be negligible.
- (77) No dumping was found to have taken place previously.

#### 5.3.3. Microeconomic indicators

##### 5.3.3.1. Average unit selling prices on the Union market and unit cost of production

- (78) The average sales prices of the sampled Union producers to unrelated customers in the Union decreased by 14 % from 2012 to the IP.
- (79) In the same period, the costs of the Union industry increased by 8 %. This was mainly due the increasing overheads per tonne. The sales volumes decreased, and as a consequence the overheads were carried by smaller sales volumes, thereby increasing the average overhead per tonne. This resulted in the industry becoming loss-making from 2013 onwards.

	2012	2013	2014	IP (2015)
Average unit selling price in the Union to unrelated customers	1 839	1 679	1 773	1 584
<i>Index (2012 = 100)</i>	100	91	96	86

	2012	2013	2014	IP (2015)
Unit cost of goods sold (EUR/tonne)	1 733	1 713	1 942	1 873
<i>Index (2012 = 100)</i>	100	99	112	108

Source: Questionnaire replies.

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

- (80) During the period considered the Union producers' cash flow, investment, return on investment and their ability to raise capital developed as follows:

	2012	2013	2014	IP (2015)
Profitability of sales in the Union to unrelated customers (% of sales turnover)	+ 5,7	- 2,0	- 9,5	- 18,3
Cash flow (EUR)	9 480 887	8 224 523	14 894	3 814 661
Investments (EUR)	2 522 406	5 241 449	2 642 167	2 465 992
<i>Index (2012 = 100)</i>	100	208	105	98
Return on investment (%)	16,6	- 6,2	- 27,7	- 53,6

Source: Questionnaire replies.

- (81) Profitability was expressed as the pre-tax net profit of the sales of the like product to customers in the Union as a percentage of the turnover of those sales.
- (82) The sampled Union producers were profitable in 2012 (5,7 %), but became loss-making from 2013 onwards.
- (83) Cash flow, which is the ability of the industry to self-finance its activities, has remained positive in the period considered but at a significantly weakened level.
- (84) The evolution of profitability and cash flow during the period considered limited the ability of the sampled Union producers to invest in their activities and undermined their development. However, due to the nature of the industry, investments made are used to manufacture various sizes of seamless pipes and tubes, including products outside the scope of the investigation. For this reason it was not possible to directly establish investments and return on investment specifically for the product under investigation. Instead, the overall investments of the industry were presumed to be allocated to the product concerned in line with its share of total turnover.
- (85) In light of the above, it can be concluded that the financial performance of the sampled Union producers remained negative during the IP.

## 5.3.3.3. Stocks

- (86) The level of stocks of the sampled Union producers increased by 65 % during the period considered. However, the production is typically made based on orders, so the stock levels were overall small, corresponding to 3 % of the production in the IP.

	2012	2013	2014	IP (2015)
Closing stocks (tonnes)	4 129	5 619	10 107	6 821
<i>Index (2012 = 100)</i>	100	136	245	165

Source: Questionnaire replies.

## 5.3.3.4. Labour costs

- (87) The average labour costs of the sampled Union producers increased modestly in 2013, when the production increased, and then decreased in 2014-2015 to 8 % below the 2012 level, following the decrease in production. The Union producers adjusted the number of shifts in line with the demand.

	2012	2013	2014	IP
Average labour costs per employee (EUR)	53 499	54 868	48 770	49 057
<i>Index (2012 = 100)</i>	100	103	91	92

Source: Questionnaire replies.

## 5.4. Conclusion on injury

- (88) As shown above, during the period considered the production of the Union industry, and consequently the employment, has decreased. The Union industry has lost sales volumes and market share, while the imports from China have undercut the Union prices, thereby putting a pressure on the prices. As a result, the sales prices have decreased. Most importantly, the industry has become loss-making: profitability has deteriorated during the period considered, reaching the worst result in the IP with an 18,3 % loss.
- (89) In light of the foregoing, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## 6. CAUSATION

## 6.1. Introduction

- (90) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports from China had caused injury to the Union industry to a degree sufficient to be considered as material. Known factors other than the dumped imports, which could at the same time be injuring the Union industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

## 6.2. Effect of the dumped imports

- (91) The investigation showed that the volume of imports originating in China increased, while the Union consumption decreased. As explained in recitals 54 and 72, the imports from China increased from 39 195 tonnes in 2012 to 42 539 tonnes in the IP. The Union industry's sales dropped from 132 241 tonnes in 2012 to 100 975 tonnes in the IP.

- (92) With regard to the price pressure prevailing on the Union market during the period considered, it was found that the average import prices from China remained constantly lower than the average sales prices of the Union industry. By undercutting the Union industry, Chinese imports increased their market share from 22,2 % to 26,8 %, while the market share of the Union industry decreased.
- (93) Due to the price pressure exerted by the increasing volumes of dumped Chinese imports, the Union industry was not able to cover its costs. The Union industry became loss-making in 2013.
- (94) The Commission observed that the development of the imports from China and the development of the injury suffered by the Union industry did not fully correlate on a year-by-year basis between 2012 and 2015. However, in 2014, the Chinese market share increased significantly while at the same time the injury indicators showed a clear negative trend which persisted in 2015. As of 2014, the Union became unable to overcome the signs of weakness that had started to show in 2013.
- (95) Based on the above, it is provisionally concluded that the increase of dumped imports from China at prices constantly undercutting those of the Union industry caused material injury to the Union industry.

### 6.3. Effect of other factors

#### 6.3.1. Export performance of the Union industry

- (96) The exports to third countries, both related and unrelated exports, decreased during the period considered. Because the Union sales also decreased in the same period at a similar rate, the share of exports still remained high, decreasing from 59 % of all sales in 2012 to 56 % of all sales in the IP. Some of the export sales took place through related companies in the export countries. The products were subsequently resold and were not used captively by the related companies.
- (97) The high share of exports indicates that the Union industry is competitive and can sell its products in other markets.
- (98) The decrease of export sales has contributed to the injury to the Union industry. According to the Union industry <sup>(1)</sup>, this decrease in exports has taken place in the context of a general slowdown in the world markets. The Commission invites interested parties to provide further information in order to assess whether the Union industry has performed in line with the world market, or worse than the world market. In any event, at provisional stage, the Commission concludes that the development of exports cannot explain the sharp increase in Chinese market share as of 2014 and the injury resulting therefrom. Therefore the decrease of export sales did not break the causal link between Chinese imports and the material injury suffered by the Union industry.

#### 6.3.2. Sales to related parties

- (99) As explained in recitals 72 to 74, the related-party sales within the Union accounted for 4 971 tonnes in the IP, corresponding to 2 % of all sales and 5 % of the sales in the Union market. The related sales took place in the context of trading activity. The products were subsequently resold and were not used captively by the related companies.
- (100) Due to their small volume, the related sales in the Union cannot be a potential cause of the injury.

#### 6.3.3. Imports from third countries

- (101) The dumped imports from China constituted 74 % of all imports into the Union market during the IP. There were other sources of imports, including Japan, that were examined in the context of the causal link.
- (102) The imports from countries other than China, taken together, increased from 5 313 tonnes to 15 024 tonnes in the period considered. Their market share increased from 3,0 % to 9,5 %. The average price of these imports remained significantly above the import prices from China and above the Union sales prices of the Union industry.

<sup>(1)</sup> See e.g. Annual Report 2015 of Tenaris (p. 6) ([http://files.shareholder.com/downloads/ABEA-2RJSJD/2778630340x0x883802/F04AA233-024A-46AA-AC58-C420E4BADFCB/TS\\_Annual\\_Report\\_2015.pdf](http://files.shareholder.com/downloads/ABEA-2RJSJD/2778630340x0x883802/F04AA233-024A-46AA-AC58-C420E4BADFCB/TS_Annual_Report_2015.pdf)).



- (103) Japan was the largest source of imports after China. The market share of Japanese imports varied between 1,3 % and 5,2 % of the Union consumption. During the IP, the Japanese imports represented 3,6 % of the Union consumption. The average sales prices of Japanese exporting producers remained above the sales prices of the Chinese exporting producers.
- (104) The imports from other countries were even smaller than the imports from Japan, with the next-largest sources of imports (USA, Korea, and Russia) each representing 1-2 % of Union consumption. The import volumes from these countries were thus not significant enough to cause injury to the Union industry.
- (105) On the basis of above, it is concluded that the impact of these imports is not such as to break the causal link between Chinese imports and the injury suffered by the Union industry.

Country		2012	2013	2014	IP (2015)
The PRC	Volume (tonnes)	39 195	35 337	41 590	42 539
	<i>Index (2012 = 100)</i>	100	90	106	109
	Market share on EU consumption (%)	22,2	20,6	26,8	26,8
	<i>Index (2012 = 100)</i>	100	93	121	121
	Av. Price (EUR/tonne)	913	927	965	910
	<i>Index (2012 = 100)</i>	100	102	106	100
Japan	Volume (tonnes)	2 222	8 922	3 690	5 757
	<i>Index (2012 = 100)</i>	100	402	166	259
	Market share on EU consumption (%)	1,3	5,2	2,4	3,6
	<i>Index (2012 = 100)</i>	100	414	166	259
	Av. Price (EUR/tonne)	2 146	1 700	2 779	1 143
	<i>Index (2012 = 100)</i>	100	79	130	53
Total of all third countries except China	Volume (tonnes)	5 313	16 308	18 387	15 024
	<i>Index (2012 = 100)</i>	100	307	346	283
	Market share on EU consumption (%)	3,0	9,5	11,9	9,5
	<i>Index (2012 = 100)</i>	100	316	394	315
	Av. Price (EUR/tonne)	2 717	2 060	2 889	4 073
	<i>Index (2012 = 100)</i>	100	76	106	150

Source: European Commission (Eurostat).

#### 6.3.4. *Decreasing consumption due to the crisis in the oil and gas sector*

- (106) The decreasing oil prices have led to a slowdown in investments in the oil and gas sector. This has had a negative impact on the demand for the large-diameter pipes for casing and drilling sold by the Union industry. It has thus contributed to the injury suffered by the Union industry. However, this cannot explain the sharp increase in Chinese market share as of 2014 and the injury resulting therefrom. Therefore the crisis in oil and gas sector did not break the causal link between Chinese imports and the material injury suffered by the Union industry.

#### 6.4. **Differences found in costs and profitability margins within the Union industry**

- (107) The Commission found that the costs of one of the sampled Union producers, were significantly higher than the costs of the other three sampled Union producers. Its product range is wider and includes product categories and customer types that are not present with the other Union producers. Its profitability has deteriorated consistently, even when the imports from China have been decreasing or remained stable.
- (108) The reasons for this situation have not yet been fully established.
- (109) The Commission will further examine this point as a potential factor breaking the causal link. In that regard, it has to be observed that as the largest company in the sample it has a strong influence on the injury picture.
- (110) If further analysis shows that (i) the injury caused to Vallourec Deutschland GmbH is not causally linked to the dumped imports, but has other reasons, and (ii) that absent the inclusion of Vallourec Deutschland GmbH into the injury analysis, the finding of injury cannot be sustained, the Commission may consider the impact on the causal link also when compared to the situation of the entire Union industry.
- (111) The Commission invites interested parties to comment on this point.

#### 6.5. **Conclusion on causation**

- (112) There was an increase in the volume (from 39 195 tonnes in 2012 to 42 539 tonnes in 2015) and in market share (from 22,2 % in 2012 to 26,8 % in 2015) of the dumped imports originating in China in the period considered. In addition, these imports were undercutting the prices charged by the Union industry on the Union market. During the IP undercutting ranged from 15,1 % to 30,2 % on the basis of comparable product types.
- (113) This increase in volume and market share of the dumped imports from China coincided with the deterioration of the financial situation of the Union industry. The Union industry was unable to increase its sales and prices, and consequently financial indicators such as profitability have become negative.
- (114) The examination of the other known factors, such as sales to related parties, imports from other third countries and the decreasing consumption, which could have caused injury to the Union industry revealed that these factors were not such as to break the causal link established between the dumped imports from China and the injury suffered by the Union industry. However, the Commission will further investigate the reasons that lead to the significant decrease in the profitability of the Union industry.
- (115) Based on the above analysis, which has distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it is provisionally concluded that the dumped imports from China have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

### 7. UNION INTEREST

#### 7.1. **General considerations**

- (116) In accordance with Article 21 of the basic Regulation it has been examined whether, despite the provisional finding of injurious dumping, compelling reasons exist for concluding that it is not in the Union interest to adopt measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

### 7.2. Interest of the Union industry

- (117) The Union industry is composed of seven known producers representing all of the Union production of the like product. The producers are located in different Member States of the Union, employing directly 2 800 people in relation to the like product during the IP. Four Union producers, representing 51 % of production, came forward and cooperated with the investigation.
- (118) The Union industry suffered material injury caused by the dumped imports from China. It is recalled that the Union industry lost sales volume and market share, and the financial situation of the Union industry remained fragile.
- (119) It is expected that the imposition of anti-dumping duties will restore fair trade conditions on the Union market, allowing the Union industry to align its prices of the like product to the costs of production.
- (120) It can also be expected that the imposition of measures will enable the Union industry to regain at least part of the market share lost during the period considered, with a positive impact on its profitability and overall financial situation.
- (121) Should measures not be imposed, further losses in market share could be expected and the Union industry's profitability would deteriorate.
- (122) It is, therefore, provisionally concluded that the imposition of anti-dumping measures on imports originating in China would be in the interest of the Union industry.

### 7.3. Interest of users

- (123) No users came forward to cooperate with the investigation. The direct customers of the Union industry are most often traders and distributors, so the end customer is not always in direct contact with the producer. For larger construction projects, such as power plants, the end users may be in contact directly with the producers. However, it seems that the Chinese imports are not competing for such contracts, as their sales take place through traders.
- (124) The users will continue to have several alternative sources of supply, both within the Union producers and in other exporting countries, even if the proposed provisional measures against Chinese imports are imposed. There was also no evidence showing that the impact of the proposed provisional measures on the users would be particularly serious. It was therefore provisionally concluded that the proposed provisional measures are unlikely to have a large impact on the users.

### 7.4. Interest of importers

- (125) Five importers provided sampling information. A sample comprising the three largest importers was selected, representing in total 10 % of the total imports from China.
- (126) The sampled importers have provided a questionnaire reply but the verification visits have not been carried out yet.
- (127) Based on unverified replies of the three sampled importers, their profit margins range typically between 2 % and 4 %. The proposed provisional measures may therefore cause losses to the importers, in particular if they will not be able to pass the price increases over to their customers.
- (128) However, any negative impact on the importers is mitigated by the following factors. The product concerned represents a minority share of the total sales of the importers, ranging between 1 % and 3 % for two of the importers, and up to 17 % for the third importer. There are other sources of supply available both within the Union and in other exporting countries, so the importers will be able continue their activity by switching to other sources of supply.

- (129) On this basis, it is provisionally concluded that the imposition of the proposed provisional anti-dumping measures will not have substantially negative effects on the interest of importers.

#### 7.5. Conclusion on Union interest

- (130) In view of the above, there are no compelling reasons against the imposition of the proposed provisional measures on imports of the product concerned from China.
- (131) Any negative effects on the unrelated users are mitigated by the availability of alternative sources of supply.
- (132) Moreover, when considering the overall impact of the anti-dumping measures on the Union market, the positive effects, in particular on the Union industry, appear to outweigh the potential negative impacts on the other interest groups.

### 8. PROVISIONAL ANTI-DUMPING MEASURES

- (133) On the basis of the conclusions reached on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

#### 8.1. Injury elimination level

- (134) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (135) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.
- (136) In order to determine the target profit, the Commission considered the profits made in the unrelated sales which are used for the purpose of determining the injury elimination level.
- (137) The target profit margin was provisionally set at 5,7 %, in line with the 2012 profits from unrelated sales in the Union. It is considered that the 2012 level of profits reflects what could be reasonably achieved under normal conditions of competition because the Union industry was at that point still able to continue operating under relatively normal conditions and achieve a reasonable profit. This benchmark, if anything, is conservative considering that low priced Chinese imports were already present. By contrast, the year 2013 cannot be considered to be a suitable reference year. Both the sales volumes and average sales prices of the Union industry decreased by almost 10 %, while its costs remained stable. As a result, the Union industry became loss-making from 2013 onwards. The situation further worsened in 2014 and 2015. Therefore the profit actually achieved in 2012, 5,7 % has been provisionally used as the benchmark for target profit. The Commission may revisit this point if it emerges that Vallourec Deutschland GmbH has to be excluded from the sample or the injury analysis, and this finding does not hold true for the other three sampled companies.
- (138) In order to reach a fair comparison, only the prices of the sales at the comparable level of trade were considered, as explained in the recital 61.
- (139) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by subtracting from the Union sales prices the actual profit margin achieved during the investigation period and replacing it by the abovementioned profit margin of 5,7 %.

- (140) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in China, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (141) The injury elimination level for ‘other cooperating producers’ and for ‘all other producers’ was defined in the same manner as the dumping margins in recitals 45 to 47.

## 8.2. Provisional measures

- (142) Provisional anti-dumping measures should be imposed on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm, originating in the People’s Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (143) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Injury margin (%)	Dumping margin (%)	Provisional anti-dumping duty rate (%)
Yangzhou Chengde Steel Pipe Co., Ltd	48,6	45,4	45,4
Hubei Xinyegang Special Tube Co., Ltd	79,0	103,8	79,0
Yangzhou Lontrin Steel Tube Co., Ltd	81,1	43,5	43,5
Hengyang Valin MPM Co., Ltd	73,3	94,1	73,3
Other cooperating producers	71,8	74,7	71,8
All other producers	81,1	103,8	81,1

- (144) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to ‘all other companies’. They should not be subject to any of the individual anti-dumping duty rates.
- (145) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission<sup>(1)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (146) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

## 9. FINAL PROVISIONS

- (147) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (148) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is imposed on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm, currently falling within CN codes 7304 19 90, ex 7304 29 90, 7304 39 98 and 7304 59 99 (TARIC code 7304 29 90 90) and originating in the People's Republic of China.

2. The rates of the provisional 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	Provisional anti-dumping duty rate (%)	TARIC additional code
Yangzhou Chengde Steel Pipe Co., Ltd	45,4	C171
Hubei Xinyegang Special Tube Co., Ltd	79,0	C172
Yangzhou Lontrin Steel Tube Co., Ltd	43,5	C173
Hengyang Valin MPM Co., Ltd	73,3	C174
Other cooperating producers	71,8	C998
All other producers	81,1	C999

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

4. 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 deposit equivalent to the amount of the provisional duty.

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

### Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:
- Request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
  - Submit their written comments to the Commission; and
  - Request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EU) 2016/1036 may comment on the application of the provisional measures.

*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 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, 11 November 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

The People's Republic of China cooperating exporting producers not sampled:

Company	TARIC additional code
Zhejiang Gross Seamless Steel Tube Co., Ltd	C998
Tianjin Pipe Manufacturing Co., Ltd	C998
Shandong Luxing Steel Pipe Co., Ltd	C998
Inner Mongolia Baotou Steel Union Co., Ltd	C998
Wuxi SP. Steel Tube Manufacturing Co., Ltd	C998
Zhangjiagang Tubes China Co., Ltd	C998
TianJin TianGang Special Petroleum Pipe Manufacture Co., Ltd	C998
Shandong Zhongzheng Steel Pipe Manufacturing Co., Ltd	C998



**COMMISSION IMPLEMENTING REGULATION (EU) 2016/1978****of 11 November 2016****approving the basic substance sunflower oil in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC <sup>(1)</sup>, and in particular Article 23(5) in conjunction with Article 13(2) thereof,

Whereas:

- (1) In accordance with Article 23(3) of Regulation (EC) No 1107/2009, the Commission received on 4 September 2015 an application from the Institut Technique de l'Agriculture Biologique (ITAB) for the approval of sunflower oil as a basic substance. That application was accompanied by the information required by the second subparagraph of Article 23(3).
- (2) The Commission asked the European Food Safety Authority (hereinafter 'the Authority') for scientific assistance. The Authority presented to the Commission a Technical Report on sunflower oil on 11 April 2016 <sup>(2)</sup>. The Commission presented the review report <sup>(3)</sup> and a draft of this Regulation to the Standing Committee on Plants, Animals, Food and Feed on 12 July 2016 and finalised them for the meeting of that Committee on 7 October 2016.
- (3) The documentation provided by the applicant shows that sunflower oil fulfils the criteria of a foodstuff as defined in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council <sup>(4)</sup>. Moreover, it is not predominantly used for plant protection purposes but nevertheless is useful in plant protection in a product consisting of the substance and water. Consequently, it is to be considered as a basic substance.
- (4) It has appeared from the examinations made that sunflower oil may be expected to satisfy, in general, the requirements laid down in Article 23 of Regulation (EC) No 1107/2009, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve sunflower oil as a basic substance.
- (5) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions for the approval which are detailed in Annex I to this Regulation.
- (6) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 <sup>(5)</sup> should be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

<sup>(1)</sup> OJ L 309, 24.11.2009, p. 1.

<sup>(2)</sup> European Food Safety Authority, 2016. Technical report on the outcome of the consultation with Member States and EFSA on the basic substance application for sunflower oil for use in plant protection as insecticide on fruit trees, grapevine, potato, vegetables and post-harvest treatment on stored grains and as fungicide on vegetables and grapevine. EFSA supporting publication 2016:EN-1023. 51 pp.

<sup>(3)</sup> <http://ec.europa.eu/food/plant/pesticides/eu-pesticides-database/public/?event=activesubstance.selection&language=EN>

<sup>(4)</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>(5)</sup> Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

HAS ADOPTED THIS REGULATION:

*Article 1*

**Approval of a basic substance**

The substance sunflower oil as specified in Annex I is approved as a basic substance subject to the conditions laid down in that Annex.

*Article 2*

**Amendments to Implementing Regulation (EU) No 540/2011**

Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

*Article 3*

**Entry into force**

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

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

Done at Brussels, 11 November 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity <sup>(1)</sup>	Date of approval	Specific provisions
Sunflower oil CAS No: 8001-21-6	Sunflower oil	Food grade	2 December 2016	Sunflower oil shall be used in accordance with the specific conditions included in the conclusions of the review report on sunflower oil (SANTE/10875/2016) and in particular Appendices I and II thereof.

<sup>(1)</sup> Further details on identity, specification and manner of use of the basic substance are provided in the review report.

## ANNEX II

In Part C of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity <sup>(1)</sup>	Date of approval	Specific provisions
'12	Sunflower oil CAS No: 8001-21-6	Sunflower oil	Food grade	2 December 2016	Sunflower oil shall be used in accordance with the specific conditions included in the conclusions of the review report on sunflower oil (SANTE/10875/2016) and in particular Appendices I and II thereof.'

<sup>(1)</sup> Further details on identity, specification and manner of use of the basic substance are provided in the review report.

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/1979****of 11 November 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 <sup>(1)</sup>,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors <sup>(2)</sup>, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

*Article 2*

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

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

Done at Brussels, 11 November 2016.

For the Commission,  
On behalf of the President,  
Jerzy PLEWA

*Director-General for Agriculture and Rural Development*

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<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

<sup>(2)</sup> OJ L 157, 15.6.2011, p. 1.

## ANNEX

## Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	MA	84,7
	ZZ	84,7
0707 00 05	TR	146,7
	ZZ	146,7
0709 93 10	MA	70,5
	TR	142,4
	ZZ	106,5
0805 20 10	MA	88,2
	ZZ	88,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	PE	122,6
	TR	70,2
	ZZ	96,4
0805 50 10	AR	67,2
	CL	69,9
	TR	93,6
	UY	38,4
	ZZ	67,3
0806 10 10	BR	298,0
	IN	164,3
	PE	343,2
	TR	138,3
	US	336,6
	ZA	345,1
	ZZ	270,9
0808 10 80	CL	174,1
	NZ	142,8
	ZA	117,8
	ZZ	144,9
0808 30 90	CN	109,8
	TR	168,6
	ZZ	139,2

<sup>(1)</sup> Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

# DECISIONS

## COUNCIL DECISION (EU) 2016/1980

of 8 November 2016

### appointing a member, proposed by the Italian Republic of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Italian Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 <sup>(1)</sup>, (EU) 2015/190 <sup>(2)</sup> and (EU) 2015/994 <sup>(3)</sup> appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Alessandro PASTACCI,

HAS ADOPTED THIS DECISION:

#### Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Mr Giuseppe RINALDI, *Presidente della Provincia di Rieti*.

#### Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 8 November 2016.

For the Council  
The President  
P. KAŽIMÍR

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<sup>(1)</sup> Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

<sup>(2)</sup> Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

<sup>(3)</sup> Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

**COUNCIL DECISION (EU) 2016/1981****of 8 November 2016****appointing an alternate member, proposed by the Kingdom of Sweden, of the Committee of the Regions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Swedish Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 <sup>(1)</sup>, (EU) 2015/190 <sup>(2)</sup> and (EU) 2015/994 <sup>(3)</sup> appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020. On 20 July 2015, by Council Decision (EU) 2015/1203 <sup>(4)</sup>, Mr Kenth LÖVGREN was replaced by Ms Ingeborg WIKSTEN as an alternate member.
- (2) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Ms Ingeborg WIKSTEN,

HAS ADOPTED THIS DECISION:

*Article 1*

The following is hereby appointed as an alternate member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Mr Mohamad HASSAN, *Ledamot i kommunfullmäktige, Uppsala kommun.*

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 8 November 2016.

*For the Council*

*The President*

P. KAŽIMÍR

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<sup>(1)</sup> Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

<sup>(2)</sup> Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

<sup>(3)</sup> Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

<sup>(4)</sup> Council Decision (EU) 2015/1203 of 20 July 2015 appointing three Swedish members and six Swedish alternate members of the Committee of the Regions (OJ L 195, 23.7.2015, p. 44).

**COUNCIL IMPLEMENTING DECISION (EU) 2016/1982****of 8 November 2016****amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>, and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By virtue of Council Decision 2007/441/EC <sup>(2)</sup>, Italy was authorised, until 31 December 2010, to limit the right to deduct VAT charged on expenditure on certain motorised road vehicles not wholly used for business purposes to 40 %. That Decision also provides that the use for private purposes of such vehicles is not to be considered as a supply for a consideration. In addition, certain categories of vehicles and expenditure are excluded from the scope of that Decision.
- (2) Decision 2007/441/EC was subsequently amended by Council Implementing Decision 2010/748/EU <sup>(3)</sup> and by Council Implementing Decision 2013/679/EU <sup>(4)</sup>, which extended the expiry date of those measures (the 'derogating measures') to 31 December 2016.
- (3) By letter registered with the Commission on 31 March 2016, Italy requested authorisation to extend the derogating measures.
- (4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 22 June 2016, of the request made by Italy. By letter dated 23 June 2016, the Commission notified Italy that it had all the information necessary to consider the request.
- (5) In accordance with Article 6 of Decision 2007/441/EC, Italy submitted a report to the Commission covering the application of the Decision, including a review of the percentage limitation. The information provided by Italy shows that a restriction of the right of deduction to 40 % still reflects current circumstances as regards the ratio of business to non-business use of the vehicles concerned.
- (6) Italy should therefore be authorised to continue to apply the derogating measures for a further limited period, until 31 December 2019.
- (7) In the event that Italy requires a further extension beyond 2019, a report should be submitted to the Commission together with the extension request by no later than 1 April 2019.
- (8) The extension of the derogating measures has no impact on the Union's own resources accruing from VAT.
- (9) Decision 2007/441/EC should therefore be amended accordingly,

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

<sup>(2)</sup> Council Decision 2007/441/EC of 18 June 2007 authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 165, 27.6.2007, p. 33).

<sup>(3)</sup> Council Implementing Decision 2010/748/EU of 29 November 2010 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 318, 4.12.2010, p. 45).

<sup>(4)</sup> Council Implementing Decision 2013/679/EU of 15 November 2013 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 37).



HAS ADOPTED THIS DECISION:

*Article 1*

Articles 6 and 7 of Decision 2007/441/EC are replaced by the following:

*Article 6*

Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 1 April 2019.

Any request for the extension of those measures shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT charged on expenditure on motorised road vehicles not wholly used for business purposes.

*Article 7*

This Decision shall expire on 31 December 2019:.

*Article 2*

This Decision shall apply from 1 January 2017.

*Article 3*

This Decision is addressed to the Italian Republic.

Done at Brussels, 8 November 2016.

*For the Council*  
*The President*  
P. KAŽIMÍR

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**COMMISSION DECISION (EU) 2016/1983****of 26 May 2014****on the measure SA.33063 (2012/C, ex 2012/NN) regarding Trentino NGN srl following the withdrawal of Italy from the project***(notified under document C(2014) 3159)***(Only the Italian text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called upon interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup>,

Whereas:

**1. PROCEDURE**

- (1) On 24 May 2011 the Commission received a complaint by the three main alternative telecommunications operators active in Italy (Wind, Fastweb and Vodafone). In their detailed submission, it was alleged that a project launched by the Italian Autonomous Province of Trento ('the Province') for the deployment of a next-generation access infrastructure throughout the territory of the Province constituted de facto State aid to Telecom Italia, granted in violation of the competition rules as stated in the Broadband Guidelines <sup>(2)</sup>. In particular, the complainants alleged that they were not properly informed or consulted by the Province regarding its plans and objectives, that the beneficiary was predetermined before the start, and that the chosen infrastructure would not allow real competition after it had been deployed.
- (2) Following a request for information sent on 22 June 2011, the Italian authorities replied on 20 July 2011, contending that their intention was to follow the market economy investor principle, and that their intervention did not constitute State aid and thus did not need to fulfil the compatibility conditions of the Broadband Guidelines. On 4 November 2011, having removed the confidential information, the Commission forwarded the reply by the Italian authorities to the complainants, who submitted additional observations and documentation on 29 November and 7 and 16 December 2011. The Italian authorities submitted various detailed items of additional information between January and May 2012. Between February and May 2012 the complainants also submitted additional information. Throughout this period various meetings and phone conferences were held with each of the parties involved.
- (3) By decision of 25 July 2012 ('the opening decision'), the Commission informed Italy that it had initiated the formal investigation procedure set forth in Article 108(2) of the Treaty on the Functioning of the European Union with respect to the project. Having removed the confidential information, the Commission published the opening decision in the *Official Journal of the European Union* <sup>(3)</sup>, inviting interested parties to submit their comments.
- (4) The Commission received comments on the opening decision from Italy by letters of 22 and 23 November 2012. The Commission also received observations from interested parties: the representatives of Telecom Italia

<sup>(1)</sup> OJ C 323, 24.10.2012, p. 6.

<sup>(2)</sup> Communication from the Commission — Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ C 235, 30.9.2009, p. 7), revised in 2013: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (OJ C 25, 26.1.2013, p. 1).

<sup>(3)</sup> See footnote 1.

on 3 December 2012 and the representatives of Wind, Fastweb and Vodafone on 7 December 2012. By letter of 29 January 2013, the Commission forwarded the above-mentioned observations, having removed all confidential information, to the Italian authorities, which submitted their comments on the third parties' observations on 5 March 2013. Between March and December 2013 intensive discussions and exchanges took place with all the parties concerned (the Italian authorities, Telecom Italia, Wind, Fastweb and Vodafone) and various meetings and phone conferences were held with each of them.

- (5) By letter of 31 January 2014 the Italian authorities informed the Commission of the Province's intention to withdraw from the project. On 14 and 20 March 2014, the Italian authorities provided additional information concerning the Province's effective withdrawal from the Trentino NGN joint venture, in particular concerning the sale of the Province's shares to Telecom Italia effected on 28 February 2014.

## 2. DESCRIPTION OF THE MEASURE

- (6) In September 2010, the Province drew up a strategy to achieve its connectivity objective of 100 % coverage of its territory by an ultra-broadband fibre network by 2018. The strategy provided for two types of action, for 'medium-profitability' areas (\*) and for 'low-profitability' areas in the Province: high-profitability areas were excluded. For the medium-profitability areas, the Province intended to set up a new company to be named Trentino NGN and to open it up to private partners. For the low-profitability areas, the Province planned to take an ad hoc State aid measure which would be developed and notified at a later stage, probably under the supervision of the Province's publicly owned company Trentino Network, a company distinct from Trentino NGN which was in charge of other initiatives falling within the Province's general broadband strategy.
- (7) In the following months, separate contacts between the Province and several private operators took place, and on 8 February 2011 the Province signed a memorandum of understanding with Telecom Italia for the setting up of the joint venture Trentino NGN to deploy a fibre-to-the-home infrastructure in the medium-profitability areas. Pursuant to this initial agreement, the Province committed itself to a cash contribution of up to EUR 60 million to the capital of Trentino NGN, while Telecom Italia was only to make contributions in kind, including (1) its existing passive infrastructure (ducts and poles) immediately; and (2) the switch-off of the existing copper network following the entry into service of the fibre-to-the-home network. Later in 2011, two other minor private shareholders signed the memorandum of understanding: a financial institution, Finanziaria Trentina, and a smaller internet service provider, McLink, each of which was to make a smaller financial contribution to the company.
- (8) By December 2011, the business plan was finalised and a due diligence report was prepared at the Province's request by Analysys Mason. At the same time, the shareholders' respective rights and obligations were finally established and the contributions in kind by Telecom Italia to Trentino NGN were more precisely defined. Further amendments to the shareholders' agreements were introduced after discussions with the Commission and completion of an expert report on the project by Analysys Mason. By March 2012, the required expert report on Telecom Italia's initial contribution in kind was prepared by Reconta Ernst & Young, which led to a further adjustment.
- (9) To begin with the Province set up Trentino NGN single-handedly, with a minimal capital contribution of less than EUR 100 000. The company was expected to reach its final capital structure through an increase in the equity to be implemented after finalisation of the agreements with the private shareholders. It was planned that the equity capital of Trentino NGN would be increased as follows: the Province would contribute EUR 50 million (corresponding to a stake of 52,2 %), Finanziaria Trentina would contribute EUR 5 million (a 5,2 % stake), McLink EUR 1,5 million (a 1,56 % stake) (‡) and Telecom Italia the lease, by means of indefeasible rights of use, of its passive infrastructure (ducts and poles) in the whole of the Province, for use in the construction of the new fibre network ('the initial contribution'). Telecom Italia's initial contribution was originally valued at EUR 39,8 million, but the report by Ernst & Young on the value of this contribution indicated a slightly lower amount of EUR 39,3 million, which led to an update to the agreement (the final estimation was EUR 39,448 million).
- (10) On 18 May 2012, the joint venture Trentino NGN was set up and the initial contributions of each of the parties were made as follows: the Province paid up only part of the planned cash contribution, i.e. EUR 14,845 million

(\*) The medium-profitability areas identified were municipalities in which the cost of deploying the fibre-to-the-home infrastructure would remain around EUR 1 000 per household, i.e. 42 municipalities and 150 000 households, corresponding to 60 % of the population of the Province.

(‡) The opening decision said that MC-link would contribute EUR 1 million, corresponding to a stake of 1,6 %, but during the investigation the Italian authorities indicated that the correct figure was EUR 1,5 million, corresponding to a stake of 1,56 %.

instead of EUR 50 million; similarly, Finanziaria Trentino contributed only EUR 1,25 million of EUR 5 million, and McLink contributed only EUR 0,375 million of EUR 1,5 million. Telecom Italia contributed the indefeasible rights of use of its passive infrastructure, estimated finally at EUR 39,448 million. This resulted in the following shareholding structure: Province 52,16 %; Telecom Italia 41,07 %; McLink 1,56 %; Finanziaria Trentino 5,21 %. The resulting situation of Trentino NGN's shareholders and their respective shareholdings was as follows (during the 18 May 2012-28 February 2014 period).

Shareholder	Capital held %	Subscribed capital (EUR)	Paid-up capital (EUR)
Province	52,16	50 095 000	14 845 000
Telecom Italia	41,07	39 448 000	39 448 000
McLink	1,56	1 500 000	375 000
Finanziaria Trentina	5,21	5 000 000	1 250 000
<b>Total</b>	<b>100,00</b>	<b>96 043 000</b>	<b>55 918 000</b>

- (11) The shareholders' agreement provided that at the end of the third year from the initial contribution, or upon the activation of at least 16 % of the new fibre connections, Telecom Italia and the Province could decide to initiate the 'second contribution' by Telecom Italia, i.e. the transfer to Trentino NGN (1) of the ownership (as opposed to the indefeasible rights of use already conferred) of the passive infrastructure existing in the medium-profitability areas identified by Trentino NGN; and (2) the ownership of the copper network, with a view to switching it off and migrating all customers onto the new fibre network. The preliminary estimate of the value of the contribution was EUR 520 per active copper line, including both Telecom Italia's retail lines and lines operated on behalf of the operators who had unbundled access to the local loop. This value was estimated to be boosted by EUR 2 million corresponding to the value of converting the indefeasible rights of use of the duct space (i.e. the initial contribution) into ownership. In this second phase, and on account of its second contribution, Telecom Italia would acquire the majority stake and control of Trentino NGN, if necessary by way of an additional capital injection by Telecom Italia.
- (12) Finally, the shareholders' agreement also provided that after three more years, or after reaching the objective of 43 % active and connected lines, Telecom Italia would have the right to exercise a call option vis-à-vis the Province and McLink to acquire their shares of Trentino NGN. In return for the concession of this right to Telecom Italia, and if it was eventually exercised, Telecom Italia would pay EUR 6,5 million to the Province, half of it within 1 year and the other half within 2 years. The purchase price for the shares would be equal to the value of the contribution increased by an annual 7,75 % net of the distributed dividends <sup>(6)</sup>. The other two shareholders, McLink and Finanziaria Trentina, were granted a put option whereby they could decide to sell their shares in Trentino NGN to Telecom Italia at a price corresponding to the value of their contributions increased by respectively 5,5 % and 7 % per year.
- (13) In addition, through specific shareholders' agreements, Telecom Italia was also appointed the supplier of Trentino NGN for the construction, management and operation of the network. The type of network to be deployed was what is known as the point-to-multipoint model. No unbundling or access obligations were envisaged. The chosen architecture provided only for the rollout of three parallel GPON networks <sup>(7)</sup>, two of which would be available for concession to other operators.

### 3. OPENING OF THE FORMAL INVESTIGATION

- (14) The Commission opened the formal investigation because it had serious doubts as to the compliance of the measure with the market economy investor principle, and in order to determine whether, if it was shown to contain elements of State aid, it could be deemed compatible with the internal market.

<sup>(6)</sup> These figures are those resulting from the third amendment to the shareholders' agreement, signed on 11 May 2012. The original figures were EUR 4,7 million as a cash contribution and the annual rate established was 7,5 %.

<sup>(7)</sup> A technology allowing provision of internet services on a point-to-multipoint basis. Operators interested in providing services would have to activate the full network using the GPON technology.

(15) In the opening decision, the Commission expressed its concern that the Province's involvement in Trentino NGN had several features which made it doubtful whether it complied with the market economy investor principle and whether the Province's participation was indeed equivalent to that of its private partners. The Commission's doubts related in particular to the following:

- The timing of the project. The Commission doubted that the Province had acted since the beginning as a market economy investor, guided not by public policy objectives but by economic and profitability considerations. It appeared that the Province had initiated the project in the public interest, and then designed it as a joint venture with the incumbent Telecom Italia, and had attempted to render the project compliant with the market economy investor principle only *ex post*, making changes, inter alia, following discussions with the Commission, while keeping the structure of the initiative unaltered.
- The participation of private parties. The participation of McLink and Finanziaria Trentina was negligible, while Telecom Italia's was significant, but spread over time.
- Concomitance of the investment. The Province was to act immediately, while Telecom Italia's contribution was spread over time and conditional upon certain events and decision-making processes.
- Same terms and conditions. It was not clear that the terms and conditions on which the Province was investing in the joint venture were the same as those of the private partners, and more specifically Telecom Italia. The Commission noted several discrepancies regarding the timing and conditionality of Telecom Italia's contributions, and the possibility for Telecom Italia to acquire the Province's shares and gain full control of Trentino NGN via the call option.
- Telecom Italia's initial contribution <sup>(8)</sup>. The value of Telecom Italia's initial contribution appeared to be calculated on the basis of documents, assumptions, forecasts and financial analyses made by the parties which had not been verified by an independent expert. It was doubtful whether a private investor would be prepared to accept a significant equity participation in a joint venture in return for access to a regulated asset which could be obtained by contractual means at regulated prices. It was not clear that a market economy investor would accept that a lease of infrastructure, to be acquired outright at a later date, was adequate participation in the equity. The Commission doubted whether a market economy investor would acquire infrastructure that was not necessary, since the indefeasible rights of use would apply to Telecom Italia's ducts and poles throughout the Province and not just in the areas in which Trentino NGN was to deploy its network.
- Telecom Italia's second contribution <sup>(9)</sup>. There were doubts regarding the future valuation of Telecom Italia's second contribution, which at the time was based on a negotiated methodology, without an expert opinion. It was not clear that the preliminary valuation of the conversion to ownership of the indefeasible rights of use was in line with market terms, and in particular that there was no overlap between the valuation of the initial contribution (a lease) and the second one (ownership), given that, for the most part, the rights conferred covered the same infrastructure. The Commission had doubts about the appropriateness of the methodology for the evaluation of the transfer of ownership of all the components of the copper network <sup>(10)</sup>, given its high maintenance costs, given that the main objective was to switch it off once the fibre network had become operational, and given the potential alternatives to the methodology proposed.
- The business plan and the parties' levels of risk. There were significant differences between the risk profiles of the public authority and the private investors, given the different nature and timing of their contributions, the different rights and obligations of the parties — *prima facie* low risks for Telecom Italia, low opportunity costs for Telecom Italia, low risks to existing business as Telecom Italia would retain control over the copper network even after contributing it to the joint venture by simultaneously acquiring control of the joint venture, and acquisition of full control and internalisation of profits through exercise of the call option if the joint venture were to prove profitable; whereas the Province seemed to be acting as a financial investor in an infrastructure upgrade project, expecting at most a return of 7,75 % and EUR 6,5 million if the call option

<sup>(8)</sup> The initial contribution consisted of the transfer of the indefeasible rights of use.

<sup>(9)</sup> The second contribution consisted of two parts: (1) the conversion into ownership of the indefeasible rights of use (which formed the initial contribution) over Telecom Italia's ducts space only in the areas of medium profitability in the Province (i.e. the target areas of Trentino NGN); and (2) the transfer of the ownership of all the components of the copper network, with a view to switching it off after migrating all customers onto the new fibre network.

<sup>(10)</sup> The methodology used to establish such a value at the time was based on the average theoretical network replacement value, on the basis of the BU-LRIC model used by the Italian National Regulatory Authority AGCOM to determine ULL fees (unbundled access to the local loop), a value taken to be the average value across the whole country and not calculated specifically for the Province.

was exercised <sup>(11)</sup>. The calculations in the business plan might not have been entirely accurate, owing to optimistic assumptions regarding actual demand by end-users and revenues from alternative operators activating all the GPON lines available <sup>(12)</sup>. There were other similar risks: Telecom Italia might decide to postpone the switch-off of the legacy copper network, in the absence of any contractual provision obliging it to do so, and this might delay the breakeven point for Trentino NGN. There was uncertainty regarding the total financial resources necessary to complete the network rollout, quantified at EUR 150 million.

- Other concerns. The choice of Telecom Italia without public tender, and its remuneration as a provider of services to Trentino NGN; Telecom Italia's dual position as shareholder and supplier.

#### 4. THE PROVINCE'S DECISION TO WITHDRAW FROM THE PROJECT

- (16) On 31 January 2014 the Italian authorities informed the Commission that the Province had decided to withdraw from the Trentino NGN project and not to pursue it, in agreement with all the other parties: Telecom Italia, McLink and Finanziaria Trentina.
- (17) On 14 March 2014 the Italian authorities informed the Commission that the Province had sold its participation in Trentino NGN to Telecom Italia for a payment of EUR 15 852 435, corresponding to the value of Province's partial cash contribution to Trentino NGN in the amount of EUR 14,845 million, plus compound interest at 3,75 %. According to the Italian authorities, Trentino NGN was now controlled by Telecom Italia, while Finanziaria Trentina and McLink remained as minority shareholders.
- (18) The Italian authorities explained that, although Trentino NGN was set up and partial contributions to its capital were made on 18 May 2012, on 20 August 2012 (after the opening decision) the Province and other parties to Trentino NGN modified the shareholders' agreement, and all the activities of NGN were suspended pending the conclusion of the Commission's ongoing formal investigation. Thus, the full payment of the contributions was suspended (only partial payments were made) for all the parties concerned. All the other subsequent steps called for in the shareholders' agreement were also suspended. Trentino NGN never started to roll out its planned fibre-to-the-home network (or any other network).
- (19) The activities of Trentino NGN were restricted exclusively to providing access to third parties to the indefeasible rights of use of infrastructure in order to comply with regulatory obligations. In relation to this last aspect, the Italian authorities explained that because Telecom Italia remained subject to regulatory access obligations towards other licensed operators, after Telecom Italia transferred the rights of use of the passive infrastructure to Trentino NGN, in May 2012, some operators requested access to that passive infrastructure and access was granted. Consequently, Telecom Italia made several payments to Trentino NGN as remuneration for purchasing access to the passive infrastructure from Trentino NGN in order to meet the other licensed operators' access requests. These payments amounted to less than EUR 15 000, and constituted the entire revenue generated by Trentino NGN after its incorporation.
- (20) The Italian authorities also indicated that the Province had not and would not pay any penalty for withdrawing from Trentino NGN. The shareholders' agreement of 16 December 2011 and subsequent amendments contained provisions concerning termination which enable the Province to leave Trentino NGN without any penalty, even in the event that the project had not been implemented even in part.

#### 5. ASSESSMENT

- (21) Although some preparatory steps were taken by Italy to implement the Trentino NGN project, notably through the various agreements and acts leading to the setting up of the joint venture, and the above-mentioned partial payment of the contribution in cash by the Province (along with the partial contributions in cash by other parties and the contribution in kind by Telecom Italia), the project did not progress beyond that stage.

<sup>(11)</sup> Maximum remuneration capped at a return on equity of 10,5 % in the initial calculations made by the Province.

<sup>(12)</sup> Three parallel GPON networks were to be rolled out, two of them beyond the requirements of Trentino NGN and in theory to be leased for operation by alternative providers.

- (22) In relation to the partial payment made by the Province into the capital of Trentino NGN, the Italian authorities have explained that Trentino NGN deposited all the amounts received as cash contributions from its shareholders (i.e. the financial contributions from the Province, McLink and Finanziaria Trentina, minus costs and taxes) in a bank account on which it received interest at a rate of 2,71 % in 2012, 1,509 % until 1 February 2013 and 1,524 % after 1 February 2013. The partial payments (including the Province's) have remained inactive in Trentino NGN's bank account. According to the Italian authorities, on 28 February 2014 the Province recovered its partial cash contribution plus 3,75 % compound interest. The Italian authorities have explained that the 3,75 % compound interest was the result of a negotiated settlement between the parties and represents approximately double the rate for 2- to 3-year Italian government bonds, and is similar to the rate for 10-year bonds.
- (23) The partial payment of the cash contribution by the Province to Trentino NGN involved a transfer of State resources. However, on the basis of the information available, since the deployment of the Trentino NGN project was suspended on 20 August 2012 and the Province effectively withdrew from the project and recovered its initial payment in full, plus reasonable interest, on 28 February 2014, the Commission is willing to accept that this partial payment did not give rise to an economic advantage for Trentino NGN or its shareholders.
- (24) As for the minimal activity engaged in by Trentino NGN, i.e. the transactions concerning the sale of rights of use (see recital 19), these activities were performed in order to comply with regulatory obligations which remain incumbent upon Telecom Italia and do not appear to have caused an economic advantage for Trentino NGN or its shareholders, including Telecom Italia. Under these circumstances, the transactions concerned do not call into question the assessment made above.
- (25) The Commission accordingly accepts that the Trentino NGN project was never implemented, so that following the Province's withdrawal from the project the present investigation no longer serves any purpose.

## 6. CONCLUSION

- (26) In the light of the above, the Commission has decided to close the proceedings under Article 108(2) TFEU, since following the withdrawal of the Italian authorities (the Province) from the Trentino NGN project the proceedings no longer serve any purpose,

HAS ADOPTED THIS DECISION:

### *Article 1*

Following the withdrawal of the Italian authorities from the Trentino NGN project, the present proceedings no longer serve any purpose. The Commission has therefore decided to close the proceedings initiated under Article 108(2) of the Treaty.

### *Article 2*

This Decision is addressed to Italian Republic.

Done at Brussels, 26 May 2014.

*For the Commission*  
Joaquín ALMUNIA  
Vice-President











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