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Legislation

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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

DECISIONS

RECOMMENDATIONS

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2018/324

of 5 March 2018

implementing Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 ([1]), and in particular Article 47(5) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 30 August 2017 the Council adopted Regulation (EU) 2017/1509.

(2) On 15 February 2018 the United Nations Security Council ('UNSC') Committee established pursuant to UNSC Resolution 1718 (2006) amended the listing of an individual subject to restrictive measures.

(3) Annex XIII to Regulation (EU) 2017/1509 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XIII to Regulation (EU) 2017/1509 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the date 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, 5 March 2018.

For the Council
The President
N. DIMOV

([1]) OJ L 224, 31.8.2017, p. 1.

ANNEX

In Annex XIII to Regulation (EU) 2017/1509, entry 52 under the heading '(a) Natural persons' is replaced by the following:

'52.	Ri Su Yong		DOB: 25.6.1968 Nationality: DPRK Passport No: 654310175 Address: n/a Gender: male Served as Korea Ryonbong General Corporation representative in Cuba	2.6.2017	Official for Korea Ryonbong General Corporation, specialises in acquisition for DPRK's defence industries and support to Pyongyang's military-related sales. Its procurements also probably support the DPRK's chemical weapons programme.'

COUNCIL IMPLEMENTING REGULATION (EU) 2018/325

of 5 March 2018

implementing Article 17(3) of Regulation (EU) No 224/2014 concerning restrictive measures in view of the situation in the Central African Republic

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic ([1]), and in particular Article 17(3) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 10 March 2014, the Council adopted Regulation (EU) No 224/2014.

(2) On 16 February 2018, the United Nations Security Council Committee, established pursuant to United Nations Security Council Resolution 2127 (2013), updated the information relating to one person subject to restrictive measures.

(3) Annex I to Regulation (EU) No 224/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 224/2014 is hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the date 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, 5 March 2018.

For the Council
The President
N. DIMOV

([1]) OJ L 70, 11.3.2014, p. 1.

ANNEX

In Annex I to Regulation (EU) No 224/2014, under the heading 'A. Persons', the entry concerning the person listed below is replaced by the following entry:

'1. **François Yangouvonda BOZIZÉ (*alias*: a) Bozize Yangouvonda; b) Samuel Peter Mudde (born 16 December 1948, in Izo, South Sudan))**

Title: a) Former Head of State Central African Republic; b) Professor

Date of Birth: a) 14 October 1946; b) 16 December 1948

Place of Birth: a) Mouila, Gabon; b) Izo, South Sudan

Nationality: a) Central African Republic; b) South Sudan

Passport no: D00002264, issued on 11 June 2013 (issued by the Minister of Foreign Affairs, in Juba, South Sudan. Expires on 11 June 2017. Diplomatic passport issued under name Samuel Peter Mudde)

National identification no: M4800002143743 (Personal number on passport)

Address: Uganda

Date of UN designation: 9 May 2014

Other information: Mother's name is Martine Kofio. INTERPOL-UN Security Council Special Notice web link: https://www.interpol.int/en/notice/search/un/5802796

Information from the narrative summary of reasons for listing provided by the Sanctions Committee:

Bozize was listed on 9 May 2014 pursuant to paragraph 36 of resolution 2134 (2014) as "engaging in or providing support for acts that undermine the peace, stability or security of CAR".

Additional information

In liaison with his supporters, Bozize encouraged the attack of 5 December 2013 on Bangui. Since then, he has continued trying to run destabilization operations in order to maintain tensions in the capital of CAR. Bozize reportedly created the anti-Balaka militia group before he fled the CAR on March 24, 2013. In a communique, Bozize called on his militia to pursue the atrocities against the current regime and the Islamists. Bozize reportedly provided financial and material support to militiamen who are working to destabilize the ongoing transition and to bring Bozize back to power. The bulk of the anti-Balaka are from the Central African Armed Forces who dispersed into the countryside after the coup d'état and were subsequently reorganized by Bozize. Bozize and his supporters control more than half the anti-Balaka units.

Forces loyal to Bozize were armed with assault rifles, mortars and rocket-launchers and they have become increasingly involved in reprisal attacks against CAR's Muslim population. The situation in CAR deteriorated rapidly after the December 5, 2013, attack in Bangui by anti-Balaka forces that left over 700 people dead.'

COUNCIL IMPLEMENTING REGULATION (EU) 2018/326

of 5 March 2018

implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [1], in particular Article 14(1) thereof,

Having regard to the proposal of the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 5 March 2014, the Council adopted Regulation (EU) No 208/2014.

(2) On the basis of a review by the Council, the entries for two persons should be deleted and the statements of reasons for three persons should be updated.

(3) Annex I to Regulation (EU) No 208/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 208/2014 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the date 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, 5 March 2018.

For the Council
The President
N. DIMOV

[1] OJ L 66, 6.3.2014, p. 1.

ANNEX

I. The persons listed below are deleted from the list set out in Annex I to Regulation (EU) No 208/2014:

4. Olena Leonidivna Lukash

10. Serhii Petrovych Kliuiev

II. The entries for the following persons as set out Annex I to Regulation (EU) No 208/2014 are replaced by the following:

	Name	Identifying information	Statement of Reasons	Date of listing
7.	Oleksandr Viktorovych Yanukovych (Олександр Вікторович Янукович)	Born on 10 July 1973 in Yenakiieve (Donetsk oblast), son of former President, businessman	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014
11.	Mykola Yanovych Azarov (Микола Янович Азаров), Nikolai Yanovich Azarov (Николай Янович Азаров)	Born on 17 December 1947 in Kaluga (Russia), Prime Minister of Ukraine until January 2014	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014
12.	Serhiy Vitalyovych Kurchenko (Сергій Віталійович Курченко)	Born on 21 September 1985 in Kharkiv, businessman	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for the abuse of office in order to procure an unjustified advantage for himself or for a third party and thereby causing a loss to Ukrainian public funds or assets.	6.3.2014

COMMISSION IMPLEMENTING REGULATION (EU) 2018/327

of 5 March 2018

concerning the authorisation of a preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135) as a feed additive for carp (holder of authorisation Huvepharma NV)

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.

(2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of a preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135). That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(3) That application concerns the authorisation of a preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135) as a feed additive for carp, to be classified in the additive category 'zootechnical additives'.

(4) That preparation was already authorised as a feed additive for 10 years by Commission Implementing Regulation (EU) 2015/1043 ([2]) for chickens for fattening, turkeys for fattening, laying hens, minor poultry species for fattening and laying, weaned piglets and pigs for fattening and by Commission Implementing Regulation (EU) 2017/1906 ([3]) for chickens reared for laying and minor poultry species reared for laying.

(5) The European Food Safety Authority ('the Authority') concluded in its opinion of 6 July 2017 ([4]) that, under the proposed conditions of use, the preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135) does not have an adverse effect on animal health, human health or the environment. The Authority concluded that the additive is considered efficacious in improving the zootechnical performance of carp. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

(6) The assessment of a preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

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([1]) OJ L 268, 18.10.2003, p. 29.

([2]) Commission Implementing Regulation (EU) 2015/1043 of 30 June 2015 concerning the authorisation of the preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IM SD 135) as a feed additive for chickens for fattening, turkeys for fattening, laying hens, weaned piglets, pigs for fattening and minor poultry species for fattening and for laying, and amending Regulations (EC) No 2148/2004, (EC) No 828/2007 and (EC) No 322/2009 (holder of authorisation Huvepharma NV) (OJ L 167, 1.7.2015, p. 63).

([3]) Commission Implementing Regulation (EU) 2017/1906 of 18 October 2017 concerning the authorisation of a preparation of endo-1,4-b-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IM SD135) as a feed additive for chickens reared for laying and minor poultry species reared for laying (holder of authorisation Huvepharma NV) (OJ L 269, 19.10.2017, p. 33).

([4]) *EFSA Journal* 2017;15(7):4942.

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'digestibility enhancers', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

Article 2

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, 5 March 2018.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			
Category of zootechnical additives. Functional group: digestibility enhancers									
4a1617	Huvepharma NV	Endo-1,4-beta-xylanase EC 3.2.1.8	*Additive composition:* Preparation of endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135) with a minimum activity of 6 000 EPU (1)/g (solid and liquid form) *Characterisation of the active substance:* endo-1,4-beta-xylanase (EC 3.2.1.8) produced by *Trichoderma citrinoviride* Bisset (IMI SD135) *Analytical method* (2) For characterisation of endo-1,4-beta-xylanase activity: colorimetric method measuring water-soluble dye released by action of endo-1,4-β-xylanase from azurine cross-linked wheat arabinoxylan substrates.	Carp	—	1 050 EPU		1. In the directions for use of the additive and premixtures, the storage conditions and stability to heat treatment shall be indicated. 2. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including skin, eyes and breathing protections.	26.3.2028

(1) 1 EPU is the amount of enzyme which releases 0,0083 µmol of reducing sugars (xylose equivalent) per minute from oat spelt xylan at pH 4,7 and 50 °C.
(2) Details of the analytical methods are available at the following address of the Reference Laboratory: https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports

COMMISSION IMPLEMENTING REGULATION (EU) 2018/328

of 5 March 2018

concerning the authorisation of the preparation of *Bacillus subtilis* DSM 29784 as a feed additive for chickens for fattening and chickens reared for laying (holder of authorisation Adisseo France SAS)

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.

(2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of a preparation of *Bacillus subtilis* DSM 29784. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(3) The application concerns the authorisation of a preparation of *Bacillus subtilis* DSM 29784 as a feed additive for chickens for fattening and chickens reared for laying, to be classified in the additive category 'zootechnical additives'.

(4) The European Food Safety Authority ('the Authority') concluded in its opinion of 4 July 2017 ([2]) that, under the proposed conditions of use, the preparation of *Bacillus subtilis* DSM 29784 does not have an adverse effect on animal health, human health and the environment. The Authority also concluded that the preparation concerned has the potential to improve the zootechnical performance of chickens for fattening. This conclusion can be extended to chickens reared for laying when used at the same dose. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

(5) The assessment of the preparation of *Bacillus subtilis* DSM 29784 shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'gut flora stabilisers', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

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

([1]) OJ L 268, 18.10.2003, p. 29.
([2]) *EFSA Journal* 2017; 15(7):4933.

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

Done at Brussels, 5 March 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
Category of zootechnical additives. Functional group: gut flora stabilisers									
4b1829	Adisseo France SAS	*Bacillus subtilis* DSM 29784	*Additive composition:* Preparation of *Bacillus subtilis* DSM 29784 containing a minimum of 1×10^{10} CFU/g of additive. Solid form *Characterisation of the active substance:* Viable spores of *Bacillus subtilis* DSM 29784 *Analytical method* (1) For the enumeration of *Bacillus subtilis* DSM 29784 in additive, premixtures and feedingstuffs: Spread plate method EN 15784 For the identification *Bacillus subtilis* DSM 29784: Identification: Pulsed Field Gel Electrophoresis (PFGE)	Chickens for fattening Chickens reared for laying	—	1×10^8	—	1. In the directions for use of the additive and premixtures, the storage conditions and stability to heat treatment shall be indicated. 2. The use is permitted in feed containing the following authorised coccidiostats: monensin sodium, narasin/nicarbazin, salinomycin sodium, lasalocid A sodium, diclazuril, narasin, maduramicin ammonium, robenidine hydrochloride or decoquinate. 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment including skin, respiratory and eyes protections.	26.3.2028

(1) Details of the analytical methods are available at the following address of the Reference Laboratory: https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports

COMMISSION IMPLEMENTING REGULATION (EU) 2018/329

of 5 March 2018

designating a European Union Reference Centre for Animal Welfare

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) ([1]), and in particular Article 95(1) thereof,

Whereas:

(1) In accordance with Article 95 of Regulation (EU) 2017/625, the Commission carried out a public call for selection and designation of a European Union Reference Centre for Animal Welfare that should support the activities of the Commission and of the Member States in relation to the application of the rules laying down welfare requirements for animals referred to in point (f) of Article 1(2) of that Regulation.

(2) The evaluation and selection committee appointed for that call concluded that the consortium led by Wageningen Livestock Research and also composed of Aarhus University and Friedrich-Loeffler-Institut complies with the requirements set out in Article 95(3) of Regulation (EU) 2017/625 and could be responsible for the tasks set out in Article 96 of that Regulation.

(3) This consortium should therefore be designated as a European Union Reference Centre for Animal Welfare responsible for supporting tasks insofar as they will be included in the reference centre annual or multiannual work programmes. The programmes should be established in conformity with the objectives and priorities of the relevant work programmes adopted by the Commission in accordance with Article 36 of Regulation (EU) No 652/2014 of the European Parliament and of the Council ([2]).

(4) The designation should be reviewed every 5 years, starting from the day of application of this Regulation.

(5) This Regulation should be applicable from 29 April 2018 in accordance with the date of application provided for in Article 167(3) of Regulation (EU) 2017/625,

HAS ADOPTED THIS REGULATION:

Article 1

The following consortium shall be designated as a European Union Reference Centre for Animal Welfare responsible for supporting horizontal activities of the Commission and of the Member States in the area of welfare requirements for animals:

Name: Consortium led by Wageningen Livestock Research and also composed of Aarhus University and Friedrich-Loeffler-Institut

([1]) OJ L 95, 7.4.2017, p. 1.

([2]) Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC (OJ L 189, 27.6.2014, p. 1).

Address: Drevendaalsesteeg 4
6708 PB Wageningen
NEDERLAND

The designation shall be reviewed every 5 years from the day of application of this Regulation.

Article 2

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

It shall apply from 29 April 2018.

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

Done at Brussels, 5 March 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/330

of 5 March 2018

imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1], and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) Following an anti-dumping investigation ('the original investigation'), by Regulation (EU) No 1331/2011 [2], the Council imposed a definitive anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China ('the PRC' or 'country concerned').

(2) The anti-dumping duties in force range from 48.3 % to 71.9 % for individually named companies, with a residual duty rate of 71.9 %.

1.2. Initiation of an expiry review

(3) Following the publication of a notice of impending expiry [3] of the anti-dumping measures in force on the imports of certain seamless pipes and tubes of stainless steel ('SSSPT') originating in the PRC, the Commission received a request for the initiation of an expiry review under Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation').

(4) The request was lodged by Seamless Stainless Steel Tubes Industry of the European Union ('ESTA' or 'the applicant') representing more than 50 % of the total Union production of SSSPT.

(5) The request was based on the grounds that the expiry of the measures would likely result in recurrence of dumping and recurrence of injury to the Union industry.

(6) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 10 December 2016, by notice published in the *Official Journal of the European Union* [4], the initiation of the expiry review under Article 11(2) of the basic Regulation.

(7) An anti-circumvention investigation on the product concerned originating in the PRC by imports consigned from India was initiated on 17 February 2017 [5]. This investigation did not result in the extension of the measures to imports from India [6].

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[1] OJ L 176, 30.6.2016, p. 21.
[2] OJ L 336, 20.12.2011, p. 6.
[3] OJ C 117, 2.4.2016, p. 10.
[4] Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China, OJ C 461, 10.12.2016, p. 12.
[5] OJ L 40, 17.2.2017, p. 64.
[6] OJ L 299, 16.11.2017, p. 1

1.3. **Interested parties**

(8) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the review investigation. The Commission specifically informed the applicant, known Union producers, users and importers, exporting producers in the People's Republic of China, and the Chinese authorities about the initiation of the expiry review and invited them to cooperate.

(9) The Commission also stated that it envisaged using the United States of America ('the USA') as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation. Therefore, the Commission informed the producers in the USA about the initiation and invited them to participate.

(10) In addition, the Commission sent letters to all known producers of SSSPT in the Republic of Korea, Ukraine, India, Japan, Norway and Turkey, asking for their cooperation with the review.

(11) All interested parties had the opportunity to comment on the initiation of the review within the time limits set out in the Notice of Initiation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Hearings in the presence of the Hearing Officer were held on 14 December 2017 and on 19 January 2018 at the request of Zhejiang Jiuli Hi-Tech Metals Co. Ltd. A request for a third hearing was received on 30 January 2018 and was accepted by the Hearing Officer. The hearing took place on 5 February 2018.

1.3.1. *Sampling*

(12) In the Notice of Initiation, the Commission stated that it might sample interested parties in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

(13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers and invited interested parties to comment within the set out time limits. The sample was selected on the basis of production and sales volumes of the like product during the review investigation period in the Union whilst ensuring a geographical spread. It was comprised of the largest companies, located in Sweden, France and Spain, from the three largest groups of Union producers.

(14) One of the complainants, Tubacex Group, advised the Commission to sample its second-largest producer, located in Austria, instead of its largest producer located in Spain. The suggestion was made because some of this producer's product types were not imported from the country concerned during the review investigation period.

(15) However, bearing in mind that in line with Article 17 of the basic Regulation the Commission samples the largest volume of production and sales, and because the product types in question were covered by the definition of the like product, it was decided not to accept this request. Furthermore, the Commission considered that the sample as initially selected was fully representative and provided sufficient coverage in terms of product types as explained in recital (13) above.

(16) No further comments on the provisional sample of Union producers were submitted and the sample was therefore confirmed as final.

(b) Sampling of importers

(17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide information specified in the Notice of Initiation.

(18) During the sampling exercise two unrelated importers came forward with the requested information and therefore sampling of unrelated importers was deemed not necessary.

(c) Sampling of exporting producers in the People's Republic of China

(19) Ten exporting producers returned the sampling forms. The Commission first selected a sample of two of them, on the basis of their exports to the Union and production capacity. Following the withdrawal of one of the sampled producers, the Commission established a new sample, replacing the exporting producer that withdrew with the one next in line, so that the sample was again composed of two exporting producers, on the basis of their exports to the Union and production capacity.

1.3.2. *Questionnaires*

(20) The Commission sent questionnaires to the two sampled exporting producers, known producers in potential analogue countries, to the three sampled Union producers and to all known importers and users active on the Union market. Questionnaire replies were received from the two sampled exporting producers, four analogue country producers and the three sampled Union producers. Only one of the unrelated importers mentioned in recital (18) submitted a questionnaire response. However, five additional unrelated importers (four of them also acting as a user) submitted a questionnaire response.

1.3.3. *Verification visits*

(21) The Commission sought and verified all the information it deemed necessary for determining the likelihood of continuation or recurrence of dumping and resulting injury and for assessing whether the imposition of measures would be against the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

— AB Sandvik Materials Technology, Sandviken, Sweden

— Tubacex Tubos Inoxidables S.A.U., Bilbao, Spain

— Salzgitter Mannesmann Stainless Tubes France SAS, Saint-Florentin, France

Union importers and importer/users:

— Arcus Nederland BV, Dordrecht, The Netherlands

— VRV S.p.A., Ornago, Italy

— Mangiarotti S.p.A., Sedegliano, Italy

Exporting producers in the PRC:

— Zhejiang Jiuli Hi-Tech Metals Co. Ltd, Huzhou

— Shanghai Baoluo Stainless Steel Tube Co. Ltd (BSS), Shanghai

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

(22) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 October 2015 to 30 September 2016 (the 'review investigation period' or 'RIP').

(23) The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2013 to the end of the review investigation period (the 'period considered').

1.5. **Disclosure**

(24) The Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to maintain the anti-dumping measures in force. All parties were granted a period within which they could make comments on the disclosure.

(25) The comments made by the interested parties were considered by the Commission and taken into account, where appropriate.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(26) The product concerned is seamless pipes and tubes of stainless steel (excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft), ('the product concerned'), currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 (TARIC codes 7304 41 00 90, 7304 49 93 90, 7304 49 95 90, 7304 49 99 90, and 7304 90 00 91), and originating in the People's Republic of China ('the PRC').

2.2. Like product

(27) The investigation showed that the following products have the same basic physical and technical characteristics, as well as the same basic uses:

— the product concerned,

— the product produced and sold by the exporting producers on the domestic market of the PRC,

— the product produced and sold by the selected producer in the analogue country, and

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

(28) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

(29) One Chinese exporting producer claimed that the product scope wrongly included special products for nuclear and military uses, and that those products should have been excluded from the investigation, or alternatively a product scope review to exclude them should have been launched.

(30) The Commission pointed out that the product scope remained the same as in the original investigation in line with Article 11(9) of the basic Regulation. The product scope included a wide variety of product types which share the same or similar basic technical and physical characteristics. According to case-law ([1]), when determining whether products are alike so that they form part of the same product, it needs to be assessed whether they share the same technical and physical characteristics, and have the same basic end-uses and the same price-quality ratio. In that regard, the interchangeability of, and competition between, those products should also be assessed. The investigation found that all the product types are made from stainless steel, using manufacturing processes required to produce seamless pipes, thus using similar machines, such that producers can switch between different variants of the product, according to demand. Therefore, although all the different product types are not directly interchangeable, producers are competing for orders covering a broad range of product types. Moreover, these product types are produced and sold by both the Union industry and the Chinese exporting producers using a similar production method. Therefore there was no basis to consider that products for nuclear and military uses were not part of the product scope.

(31) A possible product scope review would constitute a separate investigation and was therefore not within the scope of the present investigation. Moreover, the Chinese exporting producer itself did not undertake any initiative for initiating such a product scope review. The claim was therefore rejected.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(32) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.

([1]) Judgment of 18 April 2013, *Steinel Vertrieb*, Case C-595/11, ECLI:EU:C:2013:251, paragraph 44.

3.1. **Dumping**

3.1.1. *Analogue country*

(33) In the Notice of Initiation, the Commission invited all interested parties to comment on its intention to use the USA as a market economy third country for the purpose of establishing normal value in respect of the PRC. The Commission also identified India as a potential analogue country in view of its large number of producers and large exports to the Union. Furthermore, other potential analogue countries mentioned in the Notice of Initiation were Japan, the Republic of Korea, Norway, Turkey and Ukraine.

(34) Requests to cooperate were sent to the known producers in India, Japan, the Republic of Korea, Norway, Turkey, Ukraine and the USA. In countries where no producers were known, information about producers was requested from the national authorities. Questionnaire replies were received from one exporting producer in India and from three exporting producers in the USA.

Choice of the analogue country

(35) As regards the choice between India and the USA, the Commission selected India on the following grounds: there were more than 20 known domestic producers in India, and hence the prices in the Indian market were the result of genuine competition. The Indian producer used the same production method as the one predominantly used by the Chinese industry, and its product range was more comparable with the Chinese exports than the US product range. Moreover, in the original investigation, the USA was specifically not selected, because, as outlined in recital (48) of the provisional regulation of the original investigation ([1]), the US producers relied on imports of basic raw materials and finished products from the EU parent companies, and maintained a limited production activity in the USA, mainly to respond to customized or time-critical orders. The US producers had high processing costs reflecting their particular manufacturing circumstances and those costs translated into high domestic prices in the US market.

(36) The Indian producer provided a questionnaire reply and all the requested additional information. For the reasons set out in recital (45), the data provided was considered accurate.

Comments from interested parties on the choice of the analogue country

(37) The Union industry expressed its preference for the USA to be selected as the analogue country. It argued that the large Chinese exports to India distorted the domestic prices in India, thereby making it an unsuitable analogue country.

(38) The Commission noted that the alleged distortions of the Indian domestic prices were not substantiated. The Commission also observed that in any event the Indian producer used predominantly raw material produced in-house and that its domestic sales were profitable. Therefore, there were no indications that the alleged distortions caused the domestic prices of the Indian producer to be abnormally low.

(39) The Chinese exporting producers claimed that section 15 of the Protocol of Accession of the PRC to the WTO had lapsed after 11 December 2016 and therefore the analogue country methodology was no longer warranted.

(40) The Commission recalled that in line with Article 2(7) of the applicable basic Regulation, normal value was determined on the basis of data from the analogue country. This claim was therefore rejected.

(41) Following definitive disclosure, one Chinese exporting producer questioned the choice of India as the analogue country and argued that the definitive disclosure did not sufficiently justify the choice of India. First, it claimed that India was not an appropriate analogue country because the Indian product range was insufficiently comparable to the Chinese exporting producer's exports to the Union. Second, it alleged that since no verification visit to the Indian producer had been carried out, the Commission could not guarantee that no special products

([1]) OJ L 169, 29.6.2011, p. 6.

for military and nuclear uses were included in the Indian domestic sales. Third, it alleged that iron ore prices in India were distorted, according to the Commission's provisional findings in the anti-dumping investigation concerning castings from China ([1]). As a result of this alleged distortion, the normal values used in the dumping calculation were claimed to be inflated. Fourth, it argued that the Indian normal values were abnormally high, as shown by the fact that the Spanish sales prices in the Union were on average lower than the Indian average prices. It argued that if Spain would have been used as the analogue country, the dumping margin would have been negative.

(42) The Commission noted that the reasons for choosing India as analogue country were set out in detail in recital (35) and that none of those reasons were disputed by the Chinese exporting producer. The Chinese exporting producer also did not claim that a different analogue country should have been chosen. As regards the specific claims, the first argument concerning the comparability of the product range was rejected, since India had the highest number of comparable product types amongst the available potential analogue countries, when compared with the Chinese exports to the Union as a whole, as explained in recital (35). The individual level of comparability with a specific Chinese exporting producer could not invalidate the choice of India as analogue country, since the assessment was made at the level of the entire country. Second, the Commission pointed out that as explained in recital (30), products for nuclear and military uses were part of the product scope, so this point could not invalidate the choice of India as analogue country. The separate issue of the correct comparison between different product types was addressed below in recitals (60) and (66). Third, the claim that an alleged price distortion of iron ore had an impact on the normal value was not substantiated. In any event, iron ore was not used as a direct raw material for the product concerned, nor was any evidence provided of any indirect effect on the Indian domestic prices. Moreover, the Commission investigation to which the Chinese exporting producer referred had, on the contrary, rejected the claim that there would be an iron ore price distortion. The allegation concerning distortion of iron ore was therefore rejected. Fourth, the fact that choosing a different analogue country would have been more favourable to a specific Chinese exporting producer was not a valid basis for the choice or rejection of an analogue country. Moreover, the comparison with Spain put forward by the Chinese exporting producer was based on average prices of broad product categories and did not take into account the specific product types. Therefore the data did not demonstrate that the Indian prices were abnormally high. The argument was therefore rejected. In any event, Spain alone would not have been a possible choice of analogue country, it being a Member State of the Union. The Commission noted that the alternative of choosing the Union as a whole as the analogue country would not have changed the finding that dumping continued. This is because the Chinese prices were shown to undercut the Union prices, as explained in recital (126).

(43) The Commission therefore concluded that none of the claims invalidated the choice of India as analogue country and confirmed that India was an appropriate analogue country.

(44) Following additional clarifications, the Chinese exporting producer repeated its opposition to the use of India as the analogue country and to the use of the analogue country method in general. In addition to its earlier claims, it also alleged that the absence of a verification visit to the Indian producer invalidated the choice of India as analogue country.

(45) The Commission noted that a verification visit was not a pre-condition for the choice of the analogue country and may only be relevant in the assessment of the correctness of the information submitted by the Indian producer. Upon careful assessment, the Commission concluded that the data provided by the Indian producer was coherent and complete, and the Indian producer had a previous track record of providing accurate data to the Commission's investigations. The Indian data was therefore deemed an accurate basis despite the absence of a verification visit. The other claims were already rejected in recitals (40), (42) and (43) and therefore did not alter the Commission's findings.

(46) Following the additional clarifications explained in recital (53), the Chinese exporting producer alleged that the Union had been chosen as an additional analogue country but without a possibility for the interested parties to comment on the choice.

(47) The Commission clarified that the analogue country was India and there was no additional analogue country. As explained in recitals (51) and (53), information from the questionnaire replies of other producers was used to determine normal values only where necessary due to the absence of sales of the product category 'Casing and tubing, of a kind used in drilling for oil and gas' in the analogue country India.

([1]) OJ L 211, 17.8.2017, p. 22

3.1.2. *Normal value*

(48) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales of the like product to independent customers made by the Indian producer was representative in comparison with the total export volume from the PRC to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union.

(49) 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 PRC. The Commission examined whether the domestic sales of each of those product types in the analogue country were representative, in accordance with Article 2(2) of the basic Regulation.

(50) The domestic sales were found to be made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation. The analysis showed that the Indian domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Normal value for each product type was thus based on the actual domestic price, which was calculated as a weighted average price of each product type of all the domestic sales made during the review investigation period.

(51) For those exported product types without corresponding domestic sales in the analogue country, the normal value was determined on the basis of the domestic price of the most closely resembling product type in the analogue country. In order to reflect the differences between product types, the normal value determination took into account the characteristics of the product type as defined by the Product Control Number: product category, external diameter, wall thickness, steel grade, testing, tube extremity, finishing and length. These characteristics were reflected in coefficients that were applied to the Indian domestic price of the most closely resembling product type. Where necessary, the information available in the questionnaire replies of other producers was used for determining (i) the coefficients and (ii) the basis of the normal values of the product category 'Casing and tubing, of a kind used in drilling for oil and gas'. As regards two characteristics (testing and tube extremity) no upward coefficient was applied, thus resulting in a more conservative normal value determination.

(52) Following definitive disclosure, one Chinese exporting producer pointed out that the product range of the Indian producer did not include all the product categories, steel grades and diameters that were included in the exports from China to the Union. It therefore alleged that the normal value determination based on Indian domestic sales was incorrect.

(53) The Commission clarified that whenever there were no domestic sales of a directly corresponding product type in India, data from the questionnaire replies of other producers were used instead. In the absence of domestic sales of the product categories, steel grades and diameters pointed out by the Chinese exporting producer, the Commission based the determination of the normal value of those product types on the most closely resembling product types in the questionnaire replies of the Union producers. These specific product types were disclosed to the Chinese exporting producer and exclusively concerned the product category 'Casing and tubing, of a kind used in drilling for oil and gas'.

(54) Following those additional clarifications, the Chinese exporting producer alleged that the most closely resembling product types in this product category 'Casing and tubing, of a kind used in drilling for oil and gas' had been chosen by the Commission in a way that inflated the dumping margins. Second, it alleged that the Commission should have disclosed which specific Union producer's data had been used. Third, it claimed that the additional clarifications did not make it clear whether the data from the Union industry was used for the determination of all the exported product types in this product category or only some of them. Finally, it requested that all products of the specific steel grade (13 %Cr) should be disregarded from the dumping calculation, on the grounds that the exports of this steel grade were resales of products not manufactured by the Chinese exporting producer itself.

(55) The Commission clarified that the most closely resembling product types were chosen on the basis of the number of matching characteristics that were explained in recital (60). The closest resembling product type used for each exported product type had been disclosed to the Chinese exporting producer. Second, no arguments were given by the Chinese exporting producer in support of its claim. Third, the additional clarifications provided to the Chinese exporting producer had confirmed that there were no Indian domestic sales of the specific product category, steel grade and diameter that were highlighted by the Chinese exporting producer.

Hence the data from other producers was used for all the sales of those product types. The normal value range that had been provided to the Chinese exporting producer applied to all of the most closely resembling product types for this product category. Finally, the Commission was legally obliged to determine a normal value for all the exports to the Union and therefore the product category could not be excluded from the dumping calculation. In any event, even if the exports of this product category would have been disregarded in the dumping calculation, it would not have changed the outcome that dumping continued in the RIP. The claims were therefore rejected.

3.1.3. *Export price*

(56) The export price was established in accordance with Article 2(8) of the basic Regulation on the basis of export prices actually paid or payable to the first independent customer.

3.1.4. *Comparison and dumping margins*

(57) The Commission compared the normal value and the export prices of the sampled exporting producers. As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal value of each type of the like product in the analogue country was compared with the weighted average export price of the corresponding type of the product concerned.

(58) As dumping was found when comparing the normal values to the export prices, it was concluded that applying adjustments to those export prices that were expressed on an FOB basis would not have affected the finding that there was dumping, as lowering the export prices by means of further downward adjustments would have only increased the dumping margin.

(59) One Chinese exporting producer claimed that the price comparison might be distorted, because the Indian sales may have included high-quality products for nuclear and military uses that were compared with regular Chinese products. It criticised the Product Code Number (PCN) structure, alleging that the PCN did not properly reflect such differences, thereby leading to unfair comparisons. It requested the Commission to re-issue the questionnaires to all parties with a revised PCN structure. It made the same claims concerning the Union sales (see recital (125)).

(60) The Commission took account of the differences among the product types and ensured a fair comparison. A unique product control number (PCN) was allocated to each product type, produced and sold by the Chinese exporting producers, analogue country producer and the Union industry. The PCN depended on the main characteristics of the product, in this case, product category, external diameter, wall thickness, steel grade, testing, tube extremity, finishing, and length. The PCN structure therefore took into account in a detailed manner the specifications of each product type, thus allowing for a fair comparison. It was thus not necessary to change the PCN structure and to issue new questionnaires. Furthermore, as explained in recital (42), the products for nuclear or military uses were part of the product scope and there was therefore no basis exclude them. There was no indication that any Indian products for nuclear or military uses would have been unduly compared with the Chinese exports. The product types highlighted by the Chinese exporting producer where allegedly a confusion was possible as to the steel grades used for standard tubes as opposed to nuclear tubes, were not actually exported by the Chinese exporting producer. As there was no possibility for a distorted comparison on this basis, the claim was rejected.

(61) On this basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was in the range of [25 % to 35 %] for the two sampled producers. It was therefore concluded that dumping continued during the review investigation period.

(62) Following definitive disclosure, one Chinese exporting producer requested, first, clarifications on the calculation of its dumping margin, in particular on how the PCNs of the analogue country producer and the coefficients were used to calculate the normal values. Second, it requested more information on the Indian domestic prices, claiming that that the disclosed range of normal values and dumping margins did not allow it to verify the accuracy of the calculations, and alleging that the higher values were the result of distorted findings. Third, it also requested more clarification on the product types sold on the Indian domestic market, in particular how the Commission had ensured that special products for military and nuclear uses were not unfairly compared with the Chinese exports to the Union.

(63) Following the Commission's reply, the Chinese exporting producer made additional requests and claims. Fourth, it requested a full list of PCNs of the Union industry and the US producers, where the determination of the coefficients should be identified. Fifth, it claimed that the questionnaire replies of US producers should not be used to determine the coefficients, on the basis of the fact that the USA had not been considered a suitable analogue country, for the reasons explained in recital (35), and claimed that the coefficients based on US prices might be inflated. Sixth, it claimed that one of its export transactions had been wrongly included in the calculation of its export price. Seventh, it argued that the Commission should have provided more information on the normal values and dumping margins of each PCN, instead of a range. Eight, it claimed that the exported product types for which no corresponding domestic sales existed in the analogue country should have been excluded from the calculation and determined as non-dumped products, in order to avoid a 'presumption of guilt'. Finally, the Chinese exporting producer also requested an extension of the deadline for disclosure comments.

(64) First, the Commission provided to the Chinese exporting producer a list of the PCNs that were the basis for the normal value determination, including a list of the PCNs that were directly corresponding to its exports to the Union and, where there were no directly corresponding PCNs, information on which PCNs had been the basis for the normal value determination with application of coefficients. The list of PCNs showed that the Indian domestic sales used for the determination of normal value did not include special steel grades, typically used for nuclear and military uses. The Commission also provided a detailed list of each of the coefficients used.

(65) Second, the Commission provided to the Chinese exporting producer with ranges of normal values and dumping margins for each of the exported product types. The detailed figures of the producer could not be provided without disclosing their confidential data, so the data was presented in ranges. In response to the specific concerns on the highest dumping margins, the Commission noted that both the highest and lowest dumping margins only concerned limited quantities (less than 7 % of the exports) and therefore were not sufficient to remove the overall dumping margin of the Chinese exporting producer. Thus, even if those values would have been disregarded, it would not have changed the finding that dumping continued during the RIP.

(66) Third, as regards fair comparison of product types, the Commission clarified that the determination of the dumping margin for each product type exported by a Chinese exporting producer was based on a comparison of the export price and the normal value of the same product type, or, in the absence of a corresponding product type, of the most closely resembling product type to which coefficients were applied to reflect the characteristics defined by the PCN. Hence, the export prices of regular product types were not compared with special product types. Specifically, the comparable Indian domestic sales did not include special steel grades typically used for special military or nuclear products. The Commission therefore concluded that there was no risk of an unfair comparison as alleged by the Chinese exporting producer. In any event, even though the Commission is legally obliged to determine normal value for each product type exported to the Union, dumping was found also when only the directly corresponding product types were considered. This demonstrated that the choice of the most closely resembling product types or the determinations of the coefficients were not the reason for the overall finding of dumping.

(67) Fourth, in addition to a detailed list of the coefficients, the Commission provided further explanation on how the coefficients were applied to determine normal values on the basis of a closely resembling product type in the case of product types without a directly corresponding product type in the analogue country. The full list of the PCNs in the USA and in the Union and the calculations of the coefficients could not be provided because their disclosure would have required revealing sensitive business information of the producers in the USA and in the Union.

(68) Fifth, the Commission clarified that the coefficients were established as percentages which reflected the relative differences between the product types, not the absolute price levels in the USA. Hence the claim that the absolute price level in the USA had inflated the normal value determination was rejected.

(69) Sixth, the Commission noted that the highlighted export transaction only represented a small volume (less than 3 % of the exports) and therefore even if this transaction would have been removed, it would not have changed the finding that dumping continued during the review investigation period.

(70) Seventh, as explained in recital (65), the Commission provided, for each exported PCN, ranges of the normal value and the dumping margin. The detailed figures of the producer could not be provided without disclosing their confidential data, so the data was presented in ranges.

(71) Eight, the Commission pointed out that it was required to establish a normal value and make a dumping determination for each exported product type. There was no 'presumption of guilt' because dumping was established only if the export price was lower than the normal value and any negative dumping amounts were fully taken into account when calculating the overall dumping margin.

(72) Finally, an extension was given to react to the new clarifications outlined in recitals (64) to (70) which were provided to the Chinese exporting producer.

(73) Following the additional clarifications, the Chinese exporting producer continued to contest specific aspects of the comparison, dumping determination and repeated some of its earlier claims.

(74) First, it claimed that adjustments should have been made to the analogue country prices on the basis of economies of scale, level of trade, lower productivity, sales expenses, yield rate, profitability, and the cost of raw material. Second, it claimed that the clarifications provided still did not allow it to understand how the normal values had been determined. Third, it repeated its request to obtain the cost data of each PCN of the producers in the USA and in the Union, at least their ranges. In addition it requested information on the source of each coefficient, and requested a disclosure of the product characteristics. Fourth, it alleged that the coefficients were distorted by the presence of nuclear or military products in the USA and in the Union. Fifth, it alleged that the coefficients applied by the Commission were incorrect. It submitted alternative coefficients, the use of which allegedly showed that no dumping occurred in its exports to the Union. Alternatively, it requested the Commission to make adjustments to the coefficients on the basis of production method used, related purchases or the type of raw material used. Sixth, it argued that even if only the directly corresponding product types were observed, the dumping finding did not take into account the generally lower prices in India, the adjustments for the analogue country prices it had claimed, and the specific situation of the analogue country producer.

(75) The Commission examined the additional claims in detail.

(76) First, as explained in recital (35), the domestic prices in India were the result of genuine competition and were therefore considered reliable. The claims concerning distortions of the Indian domestic prices were already addressed in recital (42). The new claims for adjustments to the Indian domestic prices were not substantiated by the Chinese exporting producer and were therefore rejected.

(77) Second, the Commission provided detailed additional information on the coefficients, their sources and the calculation method, as explained in recitals (64) to (71), and subsequently replied to a series of technical questions regarding the calculation method [1]. As set out in recital (83), the Commission also provided an example of how a coefficient was calculated from the cost data. In the example, the actual cost data was expressed in ranges in order to protect its confidentiality according to article 19 of the basic Regulation. It was therefore concluded that the Chinese exporting producer had obtained sufficient information allowing it to trace the method of determining the normal values.

(78) Third, the request for access to the additional data of the producers in the USA and in the Union had already been rejected for the reasons explained in recital (67). Providing the source of each coefficient would have revealed information about the product types produced by each of the producers. Providing all the data in the form of ranges would also have been unreasonably burdensome, given the large volume of company-specific cost data (over 2 000 rows and over 50 columns). Moreover, it was noted that the requested data concerned the cost level of each PCN. The cost level in itself had no impact on the determination of the normal values, because the coefficients were applied as proportions (percentages), not as absolute values. In other words, the level of the costs per PCN had no bearing on the outcome. Finally, the degree of precision necessary for the calculation of

[1] Correspondence with the legal representatives of the Chinese exporting producer on 27 and 29 December 2017.

the coefficients could not be meaningfully reflected by using ranges. This is because the cross-multiplication of values expressed in ranges would have given a resulting range too wide to be meaningful. While the underlying cost data was not disclosed for these reasons, the resulting actual coefficients were disclosed in full. Finally, the Indian domestic sales prices were provided in ranges. This is because differently from the cost data used for determining the coefficients, the Indian prices determined the basis level of the normal values. It was therefore justified to give access to the Chinese exporting producer to verify that data.

(79) Fourth, as explained in recital (30), the military and nuclear product types were part of the product scope and there was no basis to redefine the product scope. The product characteristics were reflected in the PCN structure, which assured a fair comparison between product types, for the reasons explained in recitals (60) and (66). There was no substantiation of any actual distortions. There was also no indication that any alleged distortion could have been sufficient to alter the overall finding that dumping continued in the review investigation period. Hence the claims concerning nuclear and military product types were rejected.

(80) Fifth, in the light of the comments, the coefficients used for Outside diameter and Steel grade were reviewed and modified. The revised coefficients were disclosed, as well as the resulting changes to the individual dumping margins. While the modifications lowered the dumping margin of one Chinese exporting producer, they were not sufficient to change the overall finding that dumping continued in the RIP. By contrast, the alternative coefficients submitted by the Chinese exporting producer were not accepted, because they were based on standard price lists of a Union producer, from a time period outside of the review investigation period. Actual company-specific data, from the review investigation period, constituted a more reliable basis for the normal value determination. The claims to adjust the coefficients for production method, type of raw material and related purchases were unsubstantiated and unspecific, because none of the elements highlighted by the Chinese exporting producer influenced the determination of the coefficients, and were therefore rejected.

(81) Sixth, the claimed adjustments were not substantiated and there was no indication that they were significant enough to reverse the dumping finding. The general price level of Indian exports to the Union was not relevant, since the normal value determination was based on domestic prices, not export prices, and in any event the PCN-by-PCN comparison was more accurate than a comparison of average prices because of the wide range of product types and the substantial price differences amongst them, which may not be reflected in average prices. As a consequence, the claims were rejected.

(82) At a very late stage of the investigation, a Chinese exporting producer requested a second hearing with the Hearing Officer as it claimed its rights of defence were breached as it believed that it had not received sufficient explanation of the methodology followed by the Commission for its dumping determination, more specifically how coefficients were established and applied to establish normal values. It also requested that other interested parties, i.e. the Union producers, the analogue country producer from India and the cooperating US producers, would attend this meeting. However, none of these interested parties accepted the invitation.

(83) Following the hearing, the Hearing Officer made certain recommendations instructing the Commission to further explain the methodology followed, supplementing the additional disclosures and explanations made earlier in the proceeding. As a consequence, the Commission made a supplementary disclosure limited to the points identified by the Hearing Officer as possibly interfering with the rights of defence and invited the exporting producer to comment on those points. The content of this supplementary disclosure is set out in recitals (53), (77), (78) and (80). The adjustment provided as a consequence of the exporting producer's comments, furthermore, resulted in a lower average dumping margin of the Chinese exporting producers: the dumping margin was reduced to the range of [25 % to 35 %], as set out in recital (61), slightly less than the range of [30 % to 40 %] initially calculated at the stage of the defitive disclosure. The exact level of the dumping margin had no impact on the exporting producers, since the level of the measures was not affected by an expiry review, as shown in recital (195).

(84) The Commission gave the Chinese exporting producers sufficient time to comment on the additional elements disclosed to them.

(85) In its submission, however, one Chinese exporting producer did not limit itself to making comments on the points raised by the Hearing Officer for which the Commission provided additional explanations. Instead, it once

more questioned the methodology followed by the Commission by contesting the explanations already provided earlier in the procedure, as outlined in recitals (59) to (83). Moreover, late on the Friday afternoon 26 January 2018 before its deadline for comments on Monday 29 January 2018, it put forward a number of new questions and demands, not previously raised either during the procedure or before the Hearing Officer, and claimed that the absence of answer to and disclosure on those questions would infringe its rights of defence.

(86) In reply thereto, the Commission first recalled that the legal and procedural steps and the deadlines for concluding a review investigation did not allow it to accept continuing arguments, demands, and questions submitted at a late stage of the procedure as this would jeopardise the timely conclusion of the investigation especially where there had been ample opportunity and time for the parties to comment earlier. This was all the more true in the present case where the methodology was explained at length during several hearings and in multiple disclosure documents to interested parties. It is for those reasons that the Commission, explicitly, in its post-hearing clarifications requested the Chinese exporting producer to limit its comments to the specific matters for which it claimed a violation of its rights of defence before the Hearing Officer, and pursuant to which it received further clarifications. The Chinese exporting producer did not demonstrate how its rights of defense were infringed, nor did it substantiate how the points raised could have affected the overall findings of the investigation.

(87) In addition to contesting the methodology for normal value determination, the Chinese exporting producer continued to claim that its dumping margin has been inflated by a comparison between pipes for military and nuclear use and pipes for common use. However, as explained in recital (79), no such comparison was made and no normal value was determined for such specific product types.

(88) Moreover, the exporting producer, for the first time at this late stage of the proceeding, claimed an adjustment for fair price comparison based on the allegation that its productivity was 2.5 times that of the Indian analogue producer. It also highlighted the profit margin of the Indian producer and requested a downward adjustment of the normal value determination on the grounds that the domestic sales in India in the RIP were more profitable than the target profit established for the Union industry in the original investigation. Both claims together amounted to a downward adjustment of the normal values by 28 %, thereby creating an alleged negative dumping margin.

(89) The first claim was made at a stage where verification had become impossible. In any case, even if the first claim had been made at an earlier stage of the proceeding, it was uncorroborated by evidence and therefore did not satisfy the requirements set out by Article 6(8) of the basic Regulation. The second claim was unfounded, as the normal value was based on the actual domestic sales prices of the analogue country producer, as set out in recitals (48) to (51), and not constructed on the basis of costs and profits. The profitability of the analogue country producer's domestic sales was taken into account in the determination that the domestic sales were made in the ordinary course of trade, as explained in recital (50). By contrast, the target profit of the Union industry reflected the profit that could have been achieved in the absence of dumped imports. As such, the domestic profitability and the Union industry's target profit were not comparable. Both claims were therefore rejected. As a result of the rejection of the 28 % adjustment, also the Chinese exporting producer's alternative dumping calculation, even if otherwise accepted, would not have changed the finding that dumping continued in the RIP.

(90) At the hearing of 5 February 2018, the same Chinese exporting producer repetitively referred to the ruling of the WTO Appellate Body concerning imports of Fasteners from China (case DS397). It alleged that based on that ruling, the Commission should have communicated all cost, prices and normal values of each product type of the Indian analogue country producer, the cooperating US producers and the Union industry, and alleged that otherwise it rights of defence were breached.

(91) However, the Commission noted that the ruling instructed the disclosure of the methodology of normal value determination only for the product types exported by the Chinese producer, thereby ensuring full coverage of the exports. By contrast, the ruling did not imply that confidential company data on the entire activity of all parties should become available to the exporting producer. The claim was therefore rejected.

(92) At the hearing of 5 February 2018, the same Chinese exporting producer continued to allege that also the revised coefficients established by the Commission were wrong. It contested the revised steel grade coefficients and the coefficients for the smallest diameters. It claimed that any coefficients determined on the basis of data of the US exporting producers should have been based on standard costing. It submitted an alternative dumping calculation using the alternative coefficients, which showed a negative dumping due to the 28 % adjustment explained in recitals (88) to (89).

(93) The Commission continued to reject the alternative coefficients, because they were based on standard price lists, from a different time period than the RIP, as explained in recital (80). The Commission confirmed that in anti-dumping investigations actual costs should mandatorily be used, meaning standard costs adjusted by quantity and price variances. Furthermore, the revised coefficients were broadly in line with the alternative coefficients submitted by the Chinese exporting producer. In any event, the alternative coefficients on their own, even if accepted, were not sufficient to change the finding that dumping continued in the RIP.

3.2. **Likelihood of continuation of dumping from the PRC**

(94) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated the likelihood of continuation of dumping, should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC, pricing behaviour of producers in the PRC to other markets and the attractiveness of the Union market.

3.2.1. *Production capacity and spare capacity in the PRC*

(95) The capacity utilisation rate of the two sampled Chinese producers was found to be in the range of [40 % to 60 %]. The spare capacity was found to be in the range of [40 000 to 50 000 tonnes] for the two sampled producers. This is equivalent to [30 % to 50 %] of the Union consumption. Furthermore, it was found that there were plans to construct additional capacity.

(96) The total capacity of all producers in the PRC was estimated by the applicant to be above 1 million tonnes. Based on the capacity utilisation rate of the sampled producers, the total spare capacity in the PRC was thus estimated to be approximately 500 000 tonnes, over four times the Union consumption. Even if the capacity utilisation rates of the other exporting producers would have been higher than those of the sampled producers, the total Chinese spare capacity would still be significant and equivalent to more than the total Union consumption.

(97) The applicant estimated the total domestic consumption in the PRC to be 310 000 tonnes on the basis of the Chinese domestic production, imports and exports. As the spare capacity corresponded to over 150 % of the estimated Chinese domestic consumption, it was considered unlikely that the domestic consumption in the PRC could increase by 150 % and absorb the large spare capacity.

(98) It was therefore concluded that there was very significant spare capacity that could be directed to the Union market at least in part, should the measures against the PRC be allowed to lapse.

3.2.2. *Pricing behaviour of the PRC to other markets*

(99) Anti-dumping measures on imports of the product concerned from the PRC were in force in the Eurasian Economic Union (Belarus, Kazakhstan and Russia) and Ukraine. These measures demonstrated the existence of dumping practices of the Chinese industry as a whole with respect to the product concerned on other markets.

(100) Furthermore, the Chinese exports to all third countries were found to be made generally at lower prices than the exports to the Union. On the basis of the Chinese export statistics, the average Chinese export prices to third countries were 23 % lower than the export prices to the Union.

(101) The Commission concluded that, if the current measures were to be repealed, it was likely that the Chinese exporting producers would redirect exports towards the Union at dumped prices.

3.2.3. *Attractiveness of the Union market*

(102) The Union market size was over 100 000 tonnes, estimated to be the second-largest in the world after the PRC, and larger than the USA. Thus the Union market was already by its size an attractive market for Chinese exporters.

(103) Second, the average Chinese export prices to the Union were found to be significantly higher than the average Chinese export prices to other markets, which was a further demonstration of the attractiveness of the Union market. As outlined in recital (100) the Chinese export prices to third countries were 23 % lower than the export prices to the Union.

(104) Third, the anti-dumping measures in force in other markets like Russia and Ukraine restricted the range of other markets available for Chinese exports. Therefore, it is likely that should the measures lapse the Chinese exports would be again directed towards the Union market and likely to reach a market share closer to the share they had before the imposition of the measures, which was 18 %.

(105) In conclusion, the Commission found that the Union market would likely be a very attractive destination for Chinese exports, should the measures be lifted.

3.3. **Conclusion on the likelihood of continuation of dumping**

(106) The investigation showed that Chinese imports continued to enter the Union market at dumped prices during the review investigation period. It also demonstrated that the spare capacity in the PRC was very significant in comparison with the Union consumption during the review investigation period. This spare capacity is likely to be directed at least in part to the Union market, should the measures be allowed to lapse.

(107) In addition, other markets had in place anti-dumping measures applicable to imports of the product concerned from the PRC, and Chinese export prices to other markets were lower than the prices to the Union. This pricing behaviour of the Chinese exports in third markets supports the likelihood of continuation of dumping to the Union, should the measures be allowed to lapse.

(108) Finally, the attractiveness of the Union market in terms of size and prices, and the fact that other markets remain closed due to anti-dumping measures, indicated that it is likely that Chinese exports would be directed towards the Union market, should the measures be allowed to lapse.

(109) Given the above, the Commission concluded that there was a strong likelihood that the repeal of the anti-dumping measures would result in significant dumped imports from the PRC to the Union.

4. **SITUATION ON THE UNION MARKET**

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

(110) The like product was manufactured by 23 known producers, some of them related to one another, in the Union during the review investigation period. They constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.

(111) The total Union production during the review investigation period was established at around 117 000 tonnes on the basis of data provided by the applicant.

(112) The sampled companies in the investigation account for 54 % of Union production and 55 % of Union sales. The data of the sample is considered representative for the situation of the Union industry.

4.2. **Union consumption**

(113) The Commission established the Union consumption on the basis of (i) the volume of sales of the Union industry on the Union market based on the data provided by the applicant and (ii) imports from third countries based on the Eurostat database. This database provided the most accurate data as, in addition to imports in the normal regime, it also included imports in the inward processing regime.

(114) Union consumption developed as follows:

Table 1

Union consumption (metric tonnes)

	2013	2014	2015	RIP
Total Union consumption	108 152	116 718	111 324	104 677
Index (2013 = 100)	*100*	*108*	*103*	*97*

Source: Questionnaire replies, applicant's data and the Eurostat database.

(115) Although the Union consumption increased by 8 % in 2014, it then decreased by 11 % between 2014 and the review investigation period. This decline was mainly due to a reduction in investment in the oil and gas industry, which is one of the major user industries.

4.3. **Imports from the country concerned**

4.3.1. *Volume and market share of the imports from the country concerned*

(116) The Commission established the volume of imports on the basis of information from the Eurostat database (10 digit level). However, it was clear from a breakdown of the origin countries of the imports in the Eurostat database that some countries included were not manufacturers of SSSPT. Therefore, imports from such countries were excluded for the purposes of this investigation because clearly they do not relate to the product concerned. Relevant details were made available for inspection to interested parties in the file open. The data pertaining to the PRC, India, Ukraine and other SSSPT manufacturing countries did not need to be corrected.

(117) The market share of imports was also established on the basis of the corrected Eurostat data.

(118) Imports to the Union from the PRC developed as follows:

Table 2

Import volume (metric tonnes) and market share

	2013	2014	2015	RIP
Volume of total imports from the PRC (tonnes)	2 437	1 804	1 951	2 317
Index (2013 = 100)	*100*	*74*	*80*	*95*
Market share	2.3 %	1.5 %	1.8 %	2.2 %
Volume of imports from the PRC excluding inward processing	1 173	1 120	1 014	820

	2013	2014	2015	RIP
Index (2013 = 100)	*100*	*95*	*86*	*70*
Market share	1.1 %	1 %	0.9 %	0.8 %

Source: Questionnaire replies, applicant's data and the Eurostat database.

(119) During the period considered the volume of imports from the PRC was low. Total imports from the PRC accounted for a market share of around 2 % throughout the period considered. They accounted for a market share of around 1 % throughout the period considered if inward processing is not taken into account. The volumes imported under the inward processing regime were re-exported in finished products such as heat exchangers.

(120) The imports have been at this low level since the imposition of the original measures in 2011 and can thus be assumed to be the result of the anti-dumping measures in force.

4.3.2. *Prices of the imports from the country concerned and price undercutting*

(121) As a preliminary remark, it is noted that average prices for the product concerned may not be representative per product type due to their wide range and the substantial price difference amongst them. Nevertheless, they are presented below.

Table 3

Average import prices from PRC

	2013	2014	2015	RIP
Average price of imports from the PRC (EUR/tonne)	5,288	6,911	6,604	4,615
Index	*100*	*131*	*125*	*87*
Normal regime (EUR/tonne)	5,711	6,146	6,442	5,420
Index	*100*	*108*	*113*	*95*
Inward processing regime (EUR/tonne)	4,895	8,162	6,780	4,174
Index	*100*	*167*	*138*	*85*

Source: TARIC database.

(122) Average prices from the PRC in the period considered declined by 13 %.

(123) The cooperating exporting producers accounted for 56 % of the imports from China and held a market share of around 1 % in the review investigation period.

(124) The Commission assessed the price undercutting during the review investigation period by comparing the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and the corresponding weighted average prices at CIF Union frontier level per product type of the imports from the sampled producers to the first independent customer on the Union market, with appropriate adjustments for post-importation costs. The price comparison was made on a type-by-type basis for transactions, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producers' turnover during the review investigation period.

(125) One Chinese exporting producer claimed that the price comparison might be distorted, because the Union sales included high-quality products for nuclear and military uses that were compared with regular Chinese products. It criticised the product type structure, alleging that it did not properly reflect such differences. However, the product type system ensured that these special product types manufactured by the Union industry were not compared to the product types imported by the Chinese exporting producers. This is because these special products manufactured by the Union industry would be given a different code in the steel grade field.

(126) On the basis of the above methodology the imports undercut the Union industry prices by an average of 44 %. Even with the anti-dumping duties added (this is not the case if it concerns imports under the inward processing regime), the average price of these Chinese imports undercut the Union industry prices by 32 %.

(127) One Chinese exporting producer claimed that one of its sales transactions had been incorrectly identified as an inward processing transaction when it was not. As the transaction in question (one of over 100 transactions in total) concerned less than 3 % of its sales volume to the Union it did not have a significant impact on the margins quoted in recital (126) above.

4.3.3. *Imports from third countries*

(128) The following table shows the development of imports to the Union from other third countries during the period considered in terms of volume and market share, as well as the average price of these imports. The comment on the usefulness of average prices made at recital (121) also applies here.

Table 4

Imports from third countries

Country		2013	2014	2015	RIP
India	Volume in tonnes	13 531	17 230	18 911	19 845
	Index	*100*	*127*	*140*	*147*
	Market share	12.5 %	14.8 %	17.0 %	19.0 %
	Average price (EUR/tonne)	5,315	4,790	5,217	4,519
	Index	*100*	*90*	*98*	*85*
Ukraine	Volume in tonnes	10 170	12 535	12 201	11 870
	Index	*100*	*123*	*120*	*117*
	Market share	9.4 %	10.7 %	11.0 %	11.3 %
	Average price (EUR/tonne)	7,276	6,984	6,706	6,069
	Index	*100*	*96*	*92*	*83*
Republic of Korea	Volume in tonnes	3 731	3 526	3 481	3 166
	Index	*100*	*95*	*93*	*85*
	Market share	3.4 %	3 %	3.1 %	3 %

Country		2013	2014	2015	RIP
	Average price (EUR/tonne)	6,614	6,124	6,537	6,599
	Index	*100*	*93*	*99*	*100*
USA	Volume in tonnes	3 062	4 647	3 280	3 113
	Index	*100*	*152*	*107*	*102*
	Market share	2.8 %	4 %	2.9 %	3 %
	Average price (EUR/tonne)	15,442	12,181	14,801	15,503
	Index	*100*	*79*	*96*	*100*
Japan	Volume in tonnes	3 605	4 980	4 602	3 052
	Index	*100*	*138*	*128*	*85*
	Market share	3.3 %	4.3 %	4.1 %	2.9 %
	Average price (EUR/tonne)	7,762	5,477	6,359	8,021
	Index	*100*	*71*	*82*	*103*
Other third countries	Volume in tonnes	7 267	10 257	8 740	4 019
	Index	*100*	*141*	*120*	*55*
	Market share	6.7 %	8.8 %	7.9 %	3.8 %
	Average price (EUR/tonne)	6,614	6,124	6,537	6,599
	Index	*100*	*93*	*99*	*100*
Total of all third countries except the country concerned	Volume in tonnes	41 366	53 175	51 215	45 065
	Index	*100*	*129*	*124*	*109*
	Market share	38.2 %	45.6 %	46.0 %	43.1 %
	Average price (EUR/tonne)	7,434	6,616	6,570	6,454
	Index	*100*	*89*	*88*	*87*

Source: TARIC database

(129) The market share of imports from third countries other than the country concerned reached 43.1 % of total Union consumption in the review investigation period. The biggest market share is represented by imports from India (19 % of total Union consumption). Other substantial imports in the review investigation period came from Ukraine (11.3 % market share).

(130) The average prices at which these imports entered the Union were relatively low in comparison to the average Union industry prices. The imports from India had a particularly low average selling price per unit of 4,519 EUR per tonne in the review investigation period.

(131) Two Chinese exporting producers commented that the average import price of Indian producers was lower than Chinese import prices. As explained at recital (121) above average prices do not necessarily form a fair or meaningful basis for price comparisons. The Commission's undercutting analysis of Chinese imports (at recital (126)) was performed on a type for type basis. No type for type data was available to the investigation on Indian imports to the Union.

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

4.4.1. *General remarks*

(132) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports 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.

(133) For the injury analysis, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data supplied by ESTA. The data relate to all known Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers which have been verified. Both sets of data have been found to be representative of the economic situation of the Union industry.

(134) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, inventories, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

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

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2013	2014	2015	RIP
Production volume (in tonnes)	146 346	164 008	132 541	117 034
Index	*100*	*112*	*91*	*80*
Production capacity (in tonnes)	242 821	249 029	247 420	248 575
Index	*100*	*103*	*102*	*102*
Capacity utilisation	60 %	66 %	54 %	47 %
Index	*100*	*109*	*89*	*78*

Source: Questionnaire reply of ESTA covering all Union producers.

(137) The production volume decreased by 20 % during the period considered with the largest fall in 2015.

(138) The production capacity during the review investigation period has slightly increased, by 2 %, over the period considered. This increase was due to investments in plant and equipment which led to small improvements in efficiency.

(139) The capacity utilisation decreased during the period considered. The decrease by 22 % of capacity utilisation reflects the decrease of the production volume in the period considered.

4.4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2013	2014	2015	RIP
Sales volume on the Union market (tonnes)	64 349	61 739	58 157	57 295
Index	*100*	*96*	*90*	*89*
Market share	59.5 %	52.9 %	52.2 %	54.7 %
Index	*100*	*89*	*88*	*92*
Export volumes (tonnes)	63 641	78 164	53 884	49 691
Index	*100*	*123*	*85*	*78*

Source: Questionnaire reply of ESTA covering all Union producers.

(141) The sales volumes on the Union market decreased to 57 295 tonnes in the review investigation period representing a decrease of 11 % over the period considered. The market share of the Union industry decreased by 8 % during the same period, whereas the export volumes of the Union industry fell by 22 %.

4.4.2.3. Growth

(142) As can be seen from Table 6 above the Union industry did not grow and even contracted in terms of market share over the period considered.

4.4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2013	2014	2015	RIP
Number of employees	4 825	4 859	4 451	4 462
Index	*100*	*101*	*92*	*92*
Productivity (tonnes/employee)	30	34	30	26
Index	*100*	*111*	*98*	*86*

Source: Questionnaire reply of ESTA covering all Union producers.

(144) During the period considered the number of employees decreased by 8 %. The productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, decreased by 14 % over the period considered.

4.4.2.5. Inventories

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

Table 8

Inventories

	2013	2014	2015	RIP
Closing stocks (tonnes)	8 065	8 906	8 294	6 470
Index	*100*	*110*	*103*	*80*
Closing stocks as a percentage of production	5.5 %	5.4 %	6.3 %	5.5 %
Index	*100*	*99*	*114*	*100*

Source: Questionnaire reply of ESTA covering all Union producers.

(146) The closing stock decreased by 20 % in the review investigation period compared to 2013. Compared to the level of production, the closing stock remained stable over this period.

4.4.2.6. Magnitude of the dumping margin and recovery from past dumping

(147) Dumping continued during the review investigation period, as explained under section 3 above. The significant dumping practised by the Chinese producers had a negative effect on the Union industry's performance, as these prices severely undercut Union industry's sales prices.

(148) During the period considered, the volume of the dumped imports from the PRC was however substantially lower than during the original investigation period. On that basis, it can be concluded that the impact of the magnitude of the dumping margin on the Union industry was also less pronounced.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

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

Table 9

Sales prices in the Union

	2013	2014	2015	RIP
Average selling prices to unrelated parties (EUR/ tonnes)	9,601	9,013	9,256	8,668
Index	*100*	*94*	*96*	*90*
Unit cost of production (EUR/ tonnes)	9,065	8,155	9,106	8,425
Index	*100*	*90*	*100*	*93*

Source: Data of the sampled Union producers

(150) In the period considered the sales prices in the Union decreased by 10 %. The unit cost of production fell by 7 % as raw material prices, and in particular the price of nickel, declined. The unit costs increase in 2015 can be explained by the fall in production and sales volume in that year (Tables 5 and 6 above).

(151) It should be stated that the average prices and average unit costs reported above include a range of high quality products sold to certain industries which are not in competition with Chinese imports. These products were, therefore, not used in price comparisons between imports and the Union sales of the Union industry (see recital (124)).

4.4.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2013	2014	2015	RIP
Average wages per employee (EUR)	63,156	64,353	64,117	61,394
Index	*100*	*102*	*102*	*97*

Source: Data of the sampled Union producers.

(153) The average labour costs per employee had a relatively stable trend in the period considered. Between 2013 and the review investigation period the average labour costs per employee decreased by 3 %.

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

(154) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The net cash flow is the ability of the Union producers to self-finance their activities. The return on investments is the profit in percentage of the net book value of investments.

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

Table 11

Profitability, cash flow, investments and return on investments

	2013	2014	2015	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	5.6 %	6.8 %	0.8 %	0.3 %
Index	*100*	*123*	*14*	*5*
Cash flow (EUR) *(index, 2013 = 100)*	*100*	*73*	*60*	*38*
Investments (EUR) *(index, 2013 = 100)*	*100*	*76*	*99*	*102*
Return on investments	35.9 %	35.6 %	6.8 %	3.0 %
Index	*100*	*99*	*19*	*8*

Source: Data of the sampled Union producers.

(156) During the period considered the Union industry's profits declined. In 2014 the industry registered an increase from 2013 of 23 %. Between 2014 and the 2015 the profit decreased by 88 % and in the review investigation period the industry hardly broke even, with profits declining further to 0.3 %.

(157) The net cash flow and the return on investment developed in a similar trend to profitability.

(158) The investments of the sampled companies were maintained at stable levels over the period considered. The investments were mainly intended to improving the efficiency of the existing production lines and for health and safety and environmental improvements.

4.5. **Conclusion on injury**

(159) At the beginning of the period considered certain economic indicators of the Union industry presented a positive situation, showing strong signs of recovery from the injury established in the original investigation. In particular, the Union industry achieved profit levels above its target profit in the years 2013 and 2014. The Union industry was also able to substantially improve its production and capacity utilisation levels, and its export sales volume.

(160) However, as from 2015 most economic indicators experienced a pronounced deterioration. Most notably the Union industry suffered a sharp decline in its profitability levels (down to 0.3 % in the review investigation period), and a significant reduction in production and capacity utilisation levels, as well as in unit sales prices and employment. Overall, the trends of almost every economic indicator worsened over the period considered.

(161) The negative trends can be explained by the cumulative effect of a series of factors that, acting altogether, further deteriorated the state of the Union industry which was still in a fragile situation: the continued presence of Chinese dumped imports, albeit in limited volumes as compared to the original investigation, at levels significantly undercutting Union producers' prices; a substantial decline in investment in the worldwide oil and gas industry, which is the largest market for the product concerned; and a surge of low priced imports from third countries (most notably India, but also Ukraine), which put a strong downwards price and volume pressure on the Union industry.

(162) After disclosure, two Chinese exporting producers claimed that more detail should have been provided on the three causation factors mentioned in recital (161). However, these factors are properly explained and no interested parties have suggested that any other factor played a significant role. Therefore in terms of completeness the Commission was satisfied that its analysis was adequate.

(163) Indeed, the conclusion that imports from China had a material impact on the state of the Union industry, as required under Article 3(6) of the basic Regulation, derives from the substantial levels of undercutting as specified in section 4.3.2 above. The claim made after disclosure by one exporting producer that the market share of Chinese imports reached 1 % only is incorrect, as in establishing the Chinese market share account should also be taken of sales, in the Union, under the inward processing regime. This is because imports under inward processing are part of consumption of the product under review and compete with other sales on the Union market including those of the Union industry. In recital (115) above it is further explained that a 3 % drop in consumption occurred during the period considered, and that this drop was mainly due to the decline in investment in the oil and gas industry, which is the most important user industry for the product concerned, since 2015. The weak demand from that user sector in the latter part of the period considered was confirmed by ESTA in an uncontested submission made available to all interested parties. Therefore, this factor, causing a drop in demand, also had a bearing on the state of the Union industry for the latter part of the period considered. Finally, increases in imports from India and other third countries have been addressed extensively in chapter 4.3.3 above, and Table 4 provides full details of the magnitude of the increases, price developments and market share increases. Whilst average Indian import prices suggest that these imports undercut the Union industry prices, this cannot be concluded with certainty as for valid price comparisons more precise data should be used and also the relevant future developments should be considered (see recitals (176)-(180)). In any case, the Commission notes that Article 11(2) of the basic Regulation does not require the performance of a separate causality analysis as a condition for extending duties in case of likelihood of recurrence of dumping and

continuation of injury, as is established in the present Regulation. Based on all these elements, it cannot be concluded that imports from India or other third countries are the only factor causing injury to the Union industry during the review investigation period. The existence and importance of the three factors results from an assessment of the information on file which has been available to all interested parties. Therefore, the claim that there was inadequate disclosure of causation is rejected.

(164) The Commission thus concluded that the Union industry has benefitted from the original measures, as it showed some improvements throughout the period considered (in particular in 2013 and 2014) in comparison to the situation found during the original investigation period (2010). However, the Union industry is recovering at a slow pace and continues to be in a fragile and vulnerable situation, on account of the abovementioned factors. Accordingly, in the review investigation period, the Union industry was found suffering material injury within the meaning of Article 3(5) of the basic Regulation.

5. LIKELIHOOD OF CONTINUATION OF INJURY IF MEASURES ARE REPEALED

(165) The investigation concluded in recital (164) that the Union industry suffered injury. Therefore, the Commission assessed whether there would be a likelihood of continuation of injury caused by the Chinese dumped imports if the measures against the PRC were allowed to lapse, in accordance with Article 11(2) of the basic Regulation.

(166) In this respect the following elements were analysed by the Commission: spare capacity in the PRC, attractiveness of the Union market, likely price levels from Chinese imports in the absence of anti-dumping measures, and their impact on the Union industry.

5.1. **Spare capacities in the PRC and attractiveness of the Union market**

(167) The Commission established that in the review investigating period Chinese imports into the Union market were made at dumped prices significantly undercutting Union producers. The Commission accordingly concluded (in recital (109) above) that there was a likelihood of continuation of dumping should the measures be allowed to lapse.

(168) The Commission confirmed in recitals (95)-(98) the existence of large spare capacities in the PRC, which are estimated to amount to over four times the total consumption in the Union market. In this respect, the investigation has also confirmed (see recital (102)) that the Union market of SSSPT is, excluding the PRC, the largest market in the world in terms of consumption levels.

(169) In addition, the investigation has revealed that Chinese exporting producers have also dumped when exporting into other markets. This has resulted in the imposition of anti-dumping measures against Chinese exporting producers in several countries, and therefore restricting the range of markets available for Chinese exports.

(170) Therefore, the Commission concluded that at least part of the large spare capacity available in the PRC would likely be directed to the Union market if measures were allowed to lapse.

5.2. **Impact of the projected volume of imports and price effects in case of repeal of measures**

(171) Based on the elements described in section 5.1, the investigation confirmed that in the absence of anti-dumping measures, Chinese exporting producers would have a strong incentive to significantly increase their volume of imports into the Union market. The Commission also found that there was a strong likelihood of continuation of dumping should the measures be allowed to lapse (recitals (106)-(109) above).

(172) To have an indication of the price levels of Chinese imports in the absence of measures, the Commission conducted an assessment of the following elements: (i) a price comparison between Chinese import prices into the Union without the anti-dumping duty (i.e. imports made under an inward processing arrangement) and Union industry prices in the review investigation period; and (ii) pricing behaviour of Chinese exporting producers on third markets (with no anti-dumping measures in place).

(173) These price comparisons showed that Chinese import prices to the Union market, without the anti-dumping duty, were on average 44 % lower than the Union industry's prices. In addition, an analysis of Chinese producers' export behaviour showed that Chinese exports to other third markets were made generally at slightly lower prices than the exports to the Union. Therefore, the Commission confirmed that Chinese exporting producers followed a consistent pattern of very low priced exports across all markets.

(174) As a result of the above elements, it is very likely that Chinese dumped imports would enter the Union market in significant volumes at prices significantly undercutting Union producers' prices. This would have a negative impact on the Union industry as these significant added volumes of imports would depress the sales prices that the Union industry can achieve, reduce the Union industry's volume of sales and also its capacity utilisation, as a result of which its production costs would increase. The expected increase of low priced dumped imports would thus cause a further and strong deterioration of the financial results of the Union industry, in particular profitability.

(175) One Chinese exporting producer questioned whether the Chinese imports of the product concerned would re-enter the Union market in large volumes, thereby aggravating the injury to the Union industry, bearing in mind the current presence of large volumes of Indian imports. In this respect, the party argued that the Indian imports had replaced the Chinese imports and that it was unlikely that Chinese imports would regain these sales volumes as Indian prices were consistently below Chinese prices. Whereas Chinese prices to third markets were only *slightly* lower than Chinese prices to the Union, Indian prices to the Union were *substantially* lower than Chinese prices to the Union.

(176) Several arguments should be advanced in reply thereto.

(177) First, this investigation is, as per the requirements of Article 11(2) of the basic Regulation, limited to assessing whether there is a likelihood of recurrence of dumping and injury from injuriously-priced Chinese imports of the product concerned if the duties at issue were removed. The fact that Chinese imports currently enter the Union market in much lower numbers than before the imposition of measures shows that the duties were successful to re-establish undistorted competitive conditions between Chinese exporters of the product concerned and the Union industry. That Indian imports undercut those from China does not undermine the Commission's obligations to remain within the framework of the present investigation. Indeed, as the case law of the General Court shows, it is apparent from Article 11(2) of the basic Regulation that the Commission merely needs to confirm the claim that there is a likelihood of recurrence or continuation of injury caused by dumped Chinese imports, should the measures be allowed to lapse. [1] As set out in recital (183), on the basis of its assessment performed in the present Regulation, that likelihood has been proven to exist.

(178) Second, it should be recalled, as recalled in recital (121) above, that care should be taken in the use of average prices in respect of the product concerned because there is a large range of prices per tonne and that wherever possible price comparisons should be made on a type for type basis. However, in establishing the likelihood of continuation of injury, the Commission has not compared Chinese sales prices and volumes with Indian sales prices and volumes but rather compared it with the Union industry's sales volumes and prices. Indeed, the Commission does not argue that the Chinese imports would replace imports from India. Such development would not per se aggravate the injury to the Union industry. However, because of the large undercutting margin established with regard to Chinese imports (see recital (173) above) and the large spare capacities available it is considered that the Chinese imports would increase substantially and as a result, they would cause further injury to the Union industry should the measures be repealed. These imports would therefore have a devastating effect on the sales volumes and profitability of the Union industry.

(179) Third, as regards the comparison between Chinese import prices and Indian import prices, an analysis of the data of the sampled Chinese exporting producers clearly indicates that imports during the period considered consisted of specialist products (such as precision tubes) or they relate to imports made under the inward processing

[1] Judgment of 30 April 2015, *VTZ and Others v Council*, Case T-432/12, EU:T:2015:248, at paragraph 74.

arrangements. Clearly if measures are repealed a much wider range of imports would become possible and imports would increase in the more standard product types (those with the highest volume for the Union industry). The Chinese import volumes are likely to increase whether Indian competition exists or not.

(180) The same Chinese exporting producer also used average price data of Indian imports to the Union to explain why Chinese export prices to third countries would not support the finding of a likelihood of continuation of injury. Again the use of average prices means that this analysis could not be accepted by the Commission. The Commission's use of Chinese export data to third countries was based on meaningful comparisons on a product type basis.

(181) The Chinese exporter made references to the Indian circumvention case mentioned at recital (7). However, again this claim cannot be accepted because accurate conclusions can only be drawn on price comparisons when they are made on a type to type basis. References to average import prices even if they are low are not meaningful in the context of the current expiry review investigation.

(182) For all the above reasons, the Commission therefore rejects the claim that it did not give sufficient explanation of continuation of injury.

5.3. **Conclusion on the likelihood of continuation of injury**

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

6. **UNION INTEREST**

(184) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures on the PRC would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, wholesalers, and users. Their analysis allows the assessment of any undue negative impact on the parties concerned by the anti-dumping measures in place.

(185) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(186) On this basis it was examined whether there were compelling reasons for concluding that it was not in the Union interest to maintain the existing measures.

6.1. **Interest of the Union industry**

(187) Although the anti-dumping measures in force prevented dumped imports from entering the Union market to a large extent, the Union industry remains in a fragile situation, as confirmed by the negative trends of certain injury indicators.

(188) Should the measures be allowed to lapse, it is likely that the likely influx of substantial volumes of dumped imports from the country concerned would cause further injury to the Union industry. This influx would likely cause, amongst others, loss of market share, decrease in sales prices, decrease in capacity utilisation and in general a serious deterioration of the Union industry's financial situation.

(189) The Commission thus concluded that the maintenance of anti-dumping measures against the PRC is in the interest of the Union industry.

6.2. **Interest of unrelated importers and users**

(190) In the original investigation it was found that the imposition of measures was not likely to have a serious negative effect on the situation of importers and users in the Union. Six importers (four of which were also users of the product concerned) cooperated in this investigation by submitting questionnaire responses and only one of these recorded its opposition to the measures.

(191) The investigation showed that most imports were made under inward processing arrangements (whereby no anti-dumping duty was payable). In addition, these importers often had large business segments which did not involve the product concerned at all. Further, these importers explained that they had many other sources of supply for the product concerned. In addition, an examination of the users' costs showed that the product concerned accounted for less than 10 % (on average) of their full cost of production of the finished products.

(192) From the recital above, it was confirmed that the importers and users had not been substantially affected by the measures and therefore the Commission concluded that the continuation of measures would not negatively affect the Union importers and users to any significant extent.

(193) One interested party had switched a large proportion of its sourcing of imports from Chinese to Indian exporting producers and argued that the Union industry did not benefit from the measures. However, as explained at section 4.5, when looking at the entire situation of the Union industry it had demonstrated its ability to benefit from the measures in the absence of large volumes of imports from the PRC.

6.3. **Conclusion on Union interest**

(194) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the current anti-dumping measures on imports of the product concerned originating in the People's Republic of China.

7. **DEFINITIVE ANTI-DUMPING MEASURES**

(195) In view of the conclusions reached with regard to the likelihood of continuation of dumping and injury, it follows that, in accordance with Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain seamless pipes and tubes of stainless steel originating in the PRC, imposed by Implementing Regulation (EU) No 1331/2011, should be maintained.

(196) In view of the recent case-law of the Court of Justice [1], it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties, because the relevant provisions in force concerning customs duties do not provide for such an interest rate, and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of seamless pipes and tubes of stainless steel (excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft), currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 (TARIC codes 7304 41 00 90, 7304 49 93 90, 7304 49 95 90, 7304 49 99 90 and 7304 90 00 91), and originating in the People's Republic of China.

[1] Judgment in *Wortmann*, C-365/15, EU:C:2017:19, paragraphs 35 to 39.

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

Company/companies	Definitive anti-dumping duty rate	TARIC additional code
Changshu Walsin Specialty Steel, Co. Ltd, Haiyu	71.9 %	B120
Shanghai Jinchang Stainless Steel Tube Manufacturing, Co. Ltd, Situan	48.3 %	B118
Wenzhou Jiangnan Steel Pipe Manufacuring, Co. Ltd, Yongzhong	48.6 %	B119
Companies listed in Annex I	56.9 %	
All other companies	71.9 %	B999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by one percentage point.

4. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that: (a) it did not export to the Union the product described in paragraph 1 in the period between 1 July 2009 and 30 June 2010 (original investigation period), (b) it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation, (c) it has actually exported to the Union the product concerned or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period, the Commission may amend the Annex I by adding the new exporting producer to the cooperating companies not included in the sample of the original investigation and thus subject to the weighted average duty of not exceeding 56.9 %.

5. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, 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 seamless pipes and tubes of stainless steel sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the (country concerned). I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

Article 2

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

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

Done at Brussels, 5 March 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

PRC COOPERATING EXPORTING PRODUCERS NOT SAMPLED IN THE ORIGINAL INVESTIGATION

Name	TARIC additional code
Baofeng Steel Group, Co. Ltd, Lishui,	B 236
Changzhou City Lianyi Special Stainless Steel Tube, Co. Ltd, Changzhou,	B 237
Huadi Steel Group, Co. Ltd, Wenzhou,	B 238
Huzhou Fengtai Stainless Steel Pipes, Co. Ltd, Huzhou,	B 239
Huzhou Gaolin Stainless Steel Tube Manufacture, Co. Ltd, Huzhou,	B 240
Huzhou Zhongli Stainless Steel Pipe, Co. Ltd, Huzhou,	B 241
Jiangsu Wujin Stainless Steel Pipe Group, Co. Ltd, Beijing,	B 242
Jiangyin Huachang Stainless Steel Pipe, Co. Ltd, Jiangyin	B 243
Lixue Group, Co. Ltd, Ruian,	B 244
Shanghai Crystal Palace Pipe, Co. Ltd, Shanghai,	B 245
Shanghai Baoluo Stainless Steel Tube, Co. Ltd, Shanghai,	B 246
Shanghai Shangshang Stainless Steel Pipe, Co. Ltd, Shanghai,	B 247
Shanghai Tianbao Stainless Steel, Co. Ltd, Shanghai,	B 248
Shanghai Tianyang Steel Tube, Co. Ltd, Shanghai,	B 249
Wenzhou Xindeda Stainless Steel Material, Co. Ltd, Wenzhou,	B 250
Wenzhou Baorui Steel, Co. Ltd, Wenzhou,	B 251
Zhejiang Conform Stainless Steel Tube, Co. Ltd, Jixing,	B 252
Zhejiang Easter Steel Pipe, Co. Ltd, Jiaxing,	B 253
Zhejiang Five — Star Steel Tube Manufacturing, Co. Ltd, Wenzhou,	B 254
Zhejiang Guobang Steel, Co. Ltd, Lishui,	B 255
Zhejiang Hengyuan Steel, Co. Ltd, Lishui,	B 256
Zhejiang Jiashang Stainless Steel, Co. Ltd, Jiaxing City,	B 257
Zhejiang Jinxin Stainless Steel Manufacture, Co. Ltd, Xiping Town,	B 258
Zhejiang Jiuli Hi-Tech Metals, Co. Ltd, Huzhou,	B 259
Zhejiang Kanglong Steel, Co. Ltd, Lishui,	B 260
Zhejiang Qiangli Stainless Steel Manufacture, Co. Ltd, Xiping Town,	B 261
Zhejiang Tianbao Industrial, Co. Ltd, Wenzhou,	B 262
Zhejiang Tsingshan Steel Pipe, Co. Ltd, Lishui,	B 263
Zhejiang Yida Special Steel, Co. Ltd, Xiping Town.	B 264

DECISIONS

COUNCIL IMPLEMENTING DECISION (CFSP) 2018/331

of 5 March 2018

implementing Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Having regard to Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP ([1]), and in particular Article 33(1) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 27 May 2016 the Council adopted Decision (CFSP) 2016/849.

(2) On 15 February 2018 the United Nations Security Council ('UNSC') Committee established pursuant to UNSC Resolution 1718 (2006) amended the listing of an individual subject to restrictive measures.

(3) Annex I to Decision (CFSP) 2016/849 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision (CFSP) 2016/849 is amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 5 March 2018.

For the Council
The President
N. DIMOV

([1]) OJ L 141, 28.5.2016, p. 79.

ANNEX

In Annex I to Decision (CFSP) 2016/849, entry 52 under the heading 'A. Persons' is replaced by the following:

'52.	Ri Su Yong		DOB: 25.6.1968 Nationality: DPRK Passport No: 654310175 Address: n/a Gender: male Served as Korea Ryonbong General Corporation representative in Cuba	2.6.2017	Official for Korea Ryonbong General Corporation, specialises in acquisition for DPRK's defence industries and support to Pyongyang's military-related sales. Its procurements also probably support the DPRK's chemical weapons programme.'

COUNCIL IMPLEMENTING DECISION (CFSP) 2018/332

of 5 March 2018

implementing Decision 2013/798/CFSP concerning restrictive measures against the Central African Republic

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Having regard to Council Decision 2013/798/CFSP of 23 December 2013 concerning restrictive measures against the Central African Republic [1], and in particular Article 2c thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 23 December 2013, the Council adopted Decision 2013/798/CFSP.

(2) On 16 February 2018, the United Nations Security Council Committee, established pursuant to United Nations Security Council Resolution 2127 (2013), updated the information relating to one person subject to restrictive measures.

(3) The Annex to Decision 2013/798/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2013/798/CFSP is hereby amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 5 March 2018.

For the Council
The President
N. DIMOV

[1] OJ L 352, 24.12.2013, p. 51.

ANNEX

In the Annex to Decision 2013/798/CFSP, under the heading 'A. Persons', the entry concerning the person listed below is replaced by the following entry:

'1. **François Yangouvonda BOZIZÉ (*alias*: a) Bozize Yangouvonda; b) Samuel Peter Mudde (born 16 December 1948, in Izo, South Sudan))**

Title: a) Former Head of State Central African Republic; b) Professor

Date of Birth: a) 14 October 1946; b) 16 December 1948

Place of Birth: a) Mouila, Gabon; b) Izo, South Sudan

Nationality: a) Central African Republic; b) South Sudan

Passport no: D00002264, issued on 11 June 2013 (issued by the Minister of Foreign Affairs, in Juba, South Sudan. Expires on 11 June 2017. Diplomatic passport issued under name Samuel Peter Mudde)

National identification no: M4800002143743 (Personal number on passport)

Address: Uganda

Date of UN designation: 9 May 2014

Other information: Mother's name is Martine Kofio. INTERPOL-UN Security Council Special Notice web link: https://www.interpol.int/en/notice/search/un/5802796

Information from the narrative summary of reasons for listing provided by the Sanctions Committee:

Bozize was listed on 9 May 2014 pursuant to paragraph 36 of resolution 2134 (2014) as "engaging in or providing support for acts that undermine the peace, stability or security of CAR".

Additional information

In liaison with his supporters, Bozize encouraged the attack of 5 December 2013 on Bangui. Since then, he has continued trying to run destabilization operations in order to maintain tensions in the capital of CAR. Bozize reportedly created the anti-Balaka militia group before he fled the CAR on March 24, 2013. In a communique, Bozize called on his militia to pursue the atrocities against the current regime and the Islamists. Bozize reportedly provided financial and material support to militiamen who are working to destabilize the ongoing transition and to bring Bozize back to power. The bulk of the anti-Balaka are from the Central African Armed Forces who dispersed into the countryside after the coup d'état and were subsequently reorganized by Bozize. Bozize and his supporters control more than half the anti-Balaka units.

Forces loyal to Bozize were armed with assault rifles, mortars and rocket-launchers and they have become increasingly involved in reprisal attacks against CAR's Muslim population. The situation in CAR deteriorated rapidly after the December 5, 2013, attack in Bangui by anti-Balaka forces that left over 700 people dead.'

COUNCIL DECISION (CFSP) 2018/333

of 5 March 2018

amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 5 March 2014, the Council adopted Decision 2014/119/CFSP ([1]).

(2) On the basis of a review of that Decision, the application of the restrictive measures should be extended until 6 March 2019, the entries for two persons should be deleted and the statements of reasons for three persons should be updated.

(3) Decision 2014/119/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/119/CFSP is amended as follows:

(1) in Article 5, the second paragraph is replaced by the following:

'This Decision shall apply until 6 March 2019.';

(2) the Annex is amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 5 March 2018.

For the Council
The President
N. DIMOV

([1]) Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ L 66, 6.3.2014, p. 26).

ANNEX

I. The entries for the following persons are deleted from the list set out in the Annex to Decision 2014/119/CFSP:

4. Olena Leonidivna Lukash

10. Serhii Petrovych Kliuiev

II. The entries for the following persons set out in the Annex to Decision 2014/119/CFSP are replaced by the following:

	Name	Identifying information	Statement of Reasons	Date of listing
7.	Oleksandr Viktorovych Yanukovych (Олександр Вікторович Янукович)	Born on 10 July 1973 in Yenakiieve (Donetsk oblast), son of former President, businessman	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014
11.	Mykola Yanovych Azarov (Микола Янович Азаров), Nikolai Yanovich Azarov (Николай Янович Азаров)	Born on 17 December 1947 in Kaluga (Russia), Prime Minister of Ukraine until January 2014	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014
12.	Serhiy Vitalyovych Kurchenko (Сергій Віталійович Курченко)	Born on 21 September 1985 in Kharkiv, businessman	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for the abuse of office in order to procure an unjustified advantage for himself or for a third party and thereby causing a loss to Ukrainian public funds or assets.	6.3.2014

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2018/334

of 1 March 2018

on measures to effectively tackle illegal content online

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) Internet and service providers active on the internet contribute significantly to innovation, economic growth and job creation in the Union. Many of those service providers play an essential role in the digital economy by connecting business and citizens and by facilitating public debate and the distribution and reception of factual information, opinions and ideas. However, their services are in certain cases abused by third parties to carry out illegal activities online, for instance disseminating certain information relating to terrorism, child sexual abuse, illegal hate speech or infringements of consumer protection laws, which can undermine the trust of their users and damage their business models. In certain cases the service providers concerned might even gain some advantages from such activities, for instance as a consequence of the availability of copyright protected content without authorisation of the right holders.

(2) The presence of illegal content online has serious negative consequences for users, for other affected citizens and companies and for society at large. In the light of their central role and the technological means and capabilities associated with the services that they provide, online service providers have particular societal responsibilities to help tackle illegal content disseminated through the use of their services.

(3) Given that fast removal of or disabling of access to illegal content is often essential in order to limit wider dissemination and harm, those responsibilities imply inter alia that the service providers concerned should be able to take swift decisions as regards possible actions with respect to illegal content online. Those responsibilities also imply that they should put in place effective and appropriate safeguards, in particular with a view to ensuring that they act in a diligent and proportionate manner and to preventing the unintended removal of content which is not illegal.

(4) Many online service providers have acknowledged and acted upon those responsibilities. At the collective level, important progress has been made through voluntary arrangements of various kinds, including the EU Internet Forum on terrorist content online, the Code of Conduct on Countering Illegal Hate Speech Online and the Memorandum of Understanding on the Sale of Counterfeit Goods. However, notwithstanding this commitment and progress, illegal content online remains a serious problem within the Union.

(5) Concerned by a series of terrorist attacks in the EU and the proliferation of terrorist propaganda online, the European Council of 22-23 June 2017 stated that it 'expects industry to … develop new technology and tools to improve the automatic detection and removal of content that incites to terrorist acts. …' The European Parliament, in its resolution of 15 June 2017, urged those online platforms 'to strengthen measures to tackle illegal and harmful content'. The call for the companies to take a more proactive approach in protecting their users from terrorist content has been reiterated by Ministers of the Member States within the EU Internet Forum. As for intellectual property rights, in its Conclusions of 4 December 2014 on the enforcement of such rights, the Council called on the Commission to consider the use of tools available to identify intellectual property rights infringers and the role of intermediaries in assisting the fight against intellectual property rights infringements.

(6) On 28 September 2017, the Commission adopted a Communication with guidance on the responsibilities of online service providers in respect of illegal content online ([1]). In that Communication the Commission explained that it would assess whether additional measures were needed, inter alia by monitoring progress on the basis of voluntary arrangements. This Recommendation follows-up on that Communication, reflecting the level of ambition set out therein and giving effect thereto, while taking due account of and building on the important progress made through those voluntary arrangements.

(7) This Recommendation acknowledges that due account should be taken of the particularities of tackling different types of illegal content online and the specific responses that might be required, including through dedicated legislative measures. For instance, acknowledging the need for such specific legislative measures, on 25 May 2016 the Commission adopted a proposal for the amendment of Directive 2010/13/EU of the European Parliament and of the Council ([2]) in view of changing market realities. On 14 September 2016, it also adopted a proposal for a Directive on copyright in the Digital Single Market ([3]), which provides for an obligation for certain service providers to take, in cooperation with right holders, measures to ensure the functioning of agreements with right holders for the use of their works or other subject matter or to prevent the availability on their services of works or other subject matter identified by the rights holders through the cooperation with the service providers. This Recommendation leaves such legislative measures and proposals unaffected.

(8) Directive 2000/31/EC of the European Parliament and of the Council ([4]) contains liability exemptions which are, subject to certain conditions, available to certain online service providers, including providers of 'hosting' services within the meaning of its Article 14. In order to benefit from that liability exemption, hosting service providers are to act expeditiously to remove or disable access to illegal information that they store upon obtaining actual knowledge thereof and, as regards claims for damages, awareness of facts or circumstances from which the illegal activity or information is apparent. They can obtain such knowledge and awareness, inter alia, through notices submitted to them. As such, Directive 2000/31/EC constitutes the basis for the development of procedures for removing and disabling access to illegal information. That Directive also allows for the possibility for Member States of requiring the service providers concerned to apply a duty of care in respect of illegal content which they might store.

(9) When taking measures in respect of illegal content online, Member States are to respect the country of origin principle laid down in Directive 2000/31/EC. Accordingly, they may not, for reasons falling within the coordinated field as specified in that Directive, restrict the freedom to provide information society services by providers established in another Member State, subject however to the possibility of derogations under certain conditions set out in that Directive.

(10) In addition, several other acts of Union law provide for a legal framework in respect of certain particular types of illegal content that are available and disseminated online. In particular, Directive 2011/93/EU of the European Parliament and of the Council ([5]) requires Member States to take measures to remove web pages containing or disseminating child pornography and allows them to block access to such web pages, subject to certain safeguards. Directive (EU) 2017/541 of the European Parliament and of the Council ([6]), which is to be transposed into national law by 8 September 2018, contains similar provisions in respect of online content constituting public provocation to commit a terrorist offence. Directive (EU) 2017/541 also establishes minimum rules on the definition of criminal offences in the area of terrorist offences, offences related to a terrorist group and offences

([1]) COM(2017) 555 final of 28 September 2017.
([2]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1). COM(2016) 287 final.
([3]) COM(2016) 593 final of 14 September 2016.
([4]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).
([5]) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).
([6]) Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

related to terrorist activities. Pursuant to Directive 2004/48/EC of the European Parliament and of the Council ([1]), it is possible for competent judicial authorities to issue injunctions against intermediaries whose services are being used by a third party to infringe an intellectual property right.

(11) In particular against this background, in addition to the voluntary measures taken by certain online services providers, some Member States have adopted rules on 'notice-and-action' mechanisms since the adoption of Directive 2000/31/EC. Other Member States are considering adopting such rules. Those mechanisms generally seek to facilitate the notification of content which the notifying party considers to be illegal to the hosting service provider concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). There are increasing differences between such national rules. As a consequence, the service providers concerned can be subject to a range of legal requirements which are diverging as to their content and scope.

(12) In the interest of the internal market and the effectiveness of tackling illegal content online, and in order to safeguard the balanced approach that Directive 2000/31/EC seeks to ensure, it is necessary to set out certain main principles that should guide the activities of the Member States and of the service providers concerned in this regard.

(13) Those principles should be set out and applied in full respect for the fundamental rights protected in the Union's legal order and notably those guaranteed in the Charter of Fundamental Rights of the European Union ('the Charter'). Illegal content online should be tackled with proper and robust safeguards to ensure protection of the different fundamental rights at stake of all parties concerned. Those rights include, as the case may be, the freedom of expression, including the freedom to receive and impart information, the rights to respect for a person's private life and to the protection of personal data as well as the right to effective judicial protection of the users of the services concerned. They may also include the freedom to conduct a business, including the freedom of contract, of hosting service providers, as well as the rights of the child and the rights to protection of property, including intellectual property, to human dignity and to non-discrimination of certain other affected parties. In particular, decisions taken by hosting service providers to remove or disable access to content which they store should take due account of the fundamental rights and the legitimate interests of their users as well as of the central role which those providers tend to play in facilitating public debate and the distribution and reception of facts, opinions and ideas in accordance with the law.

(14) In accordance with the horizontal approach underlying the liability exemption laid down in Article 14 of Directive 2000/31/EC, this Recommendation should be applied to any type of content which is not in compliance with Union law or with the law of Member States, irrespective of the precise subject matter or nature of those laws. It is sufficient to take account of laws of Member States which are concerned by the service provision at issue, notably those of Member States the territory of which is that in which the hosting service provider is established or that in which the services are provided. In addition, when giving effect to this Recommendation, due account should be taken of the seriousness of, and any type of potential harm caused by, the illegal content, which can be closely related to the swiftness of any action taken, and of what can be reasonably expected from hosting services providers, considering where relevant the state of development and possible use of technologies. Due account should also be taken of the relevant differences that might exist between various types of illegal content and the actions to be taken to tackle them.

(15) Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of their users and give other users access thereto, often on a large scale. This Recommendation therefore primarily relates to the activities and responsibilities of those providers. However, where appropriate, the recommendations made can also be applied, *mutatis mutandis*, in relation to other affected online services providers. As the purpose of this Recommendation is to address risks related to illegal content online affecting consumers in the Union, it relates to the activities of all hosting service providers, irrespective of whether they are established in the Union or in a third country, provided that they direct their activities to consumers residing in the Union.

(16) Mechanisms for submitting notices to hosting service providers regarding content which is considered to be illegal content are an important means to tackle illegal content online. Such mechanisms should facilitate the

([1]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

notification by all individuals or entities which wish to do so. Therefore, those mechanisms should be easy to access and use for all users. However, hosting service providers should remain flexible, for instance as regards the reporting format or technology to be used, so as to allow for efficient solutions and to avoid disproportionate burdens on those providers.

(17) In accordance with the case law of the Court of Justice relating to Article 14 of Directive 2000/31/EC, notices should be sufficiently precise and adequately substantiated so as to allow the hosting service provider receiving them to take an informed and diligent decision as regards the effect to be given to the notice. It should therefore be ensured, as much as possible, that that standard is met. However, whether or not a given notice leads to knowledge or awareness within the meaning of Article 14 of that Directive is to be to be assessed in light of the specificities of the individual case at hand, bearing in mind that such knowledge or awareness can also be obtained in other manners than through notices.

(18) Possessing the contact details of the notice provider is generally not necessary for the hosting service provider to be able to take an informed and diligent decision on the follow-up to be given to the notice received. Making the provision of contact details a prerequisite for the submission of a notice would entail an obstacle to notification. However, the inclusion of the contact details is necessary for the hosting service provider to be able to provide feedback. Including his or her contact details should therefore be a possibility for the notice provider, without this being required.

(19) In order to enhance transparency and the accuracy of notice-and-action mechanisms and to allow for redress where needed, hosting service providers should, where they possess the contact details of notice providers and/or content providers, timely and adequately inform those persons of the steps taken in the context of the said mechanisms, in particular as regards their decisions on the requested removal or disabling of access to the content concerned. The information to be provided should be proportionate, in that it should correspond to the submissions made by the persons concerned in their notices or counter-notices, while allowing for appropriate and differentiated solutions and without leading to an excessive burden on the providers.

(20) In order to ensure transparency and fairness and to avoid the unintended removal of content which is not illegal content, content providers should, as a matter of principle, be informed of the decision to remove or disable access to the content stored at their request and be given the possibility to contest the decision through a counter-notice, with a view to having that decision reversed where appropriate, regardless of whether that decision was taken on the basis of a notice or a referral or pursuant to proactive measures by the hosting service provider.

(21) However, given the nature of the content at issue, the aim of such a counter-notice procedure and the additional burden it entails for hosting service providers, there is no justification for recommending to provide such information about that decision and that possibility to contest the decision where it is manifest that the content in question is illegal content and relates to serious criminal offences involving a threat to the life or safety of persons, such as offences specified in Directive (EU) 2017/541 and Directive 2011/93/EU. In addition, in certain cases, reasons of public policy and public security, and in particular reasons related to the prevention, investigation, detection and prosecution of criminal offences, may justify not directly providing that information to the content provider concerned. Therefore, hosting service providers should not do so where a competent authority has made a request to that effect, based on reasons of public policy and public security, for as long as that authority requested in light of those reasons. Insofar as this entails a restriction of the right to be informed in respect of the processing of personal data, the relevant conditions set out in Regulation (EU) 2016/679 of the European Parliament and of the Council ([1]) should be complied with.

(22) Notice-and-action mechanisms should in no way affect the rights of the parties involved to initiate legal proceedings, in accordance with the applicable law, in respect of any content which is considered to be illegal content or of any measures taken in this regard by hosting service providers. Mechanisms for the out-of-court settlement of disputes arising in this connection can be an important complement to judicial proceedings, especially where they allow for the effective, affordable and swift resolution of such disputes. Out-of-court settlements should therefore be encouraged, provided that the relevant mechanisms meet certain standards, notably in terms of procedural fairness, that the parties' access to court remains unaffected and that abuse is avoided.

([1]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(23) In order to better assess the effectiveness of notice-and-action mechanisms and other activities of hosting service providers in respect of content considered to be illegal content and to ensure accountability, there should be transparency vis-à-vis the general public. Hosting service providers should therefore regularly publish reports about those mechanisms and other activities, which should be sufficiently complete and detailed to allow for an adequate insight. They should also provide for clarity *ex ante*, in their terms of service, on their policies on the removal or disabling of access to any content that they store, including illegal content.

(24) In addition to notice-and-action mechanisms, proportionate and specific proactive measures taken voluntarily by hosting service providers, including by using automated means in certain cases, can also be an important element in tackling illegal content online, without prejudice to Article 15(1) of Directive 2000/31/EC. In connection to such proactive measures, account should be taken of the situation of hosting service providers which, because of their size or the scale on which they operate, have only limited resources and expertise and of the need for effective and appropriate safeguards accompanying such measures.

(25) It can, in particular, be appropriate to take such proactive measures where the illegal character of the content has already been established or where the type of content is such that contextualisation is not essential. It can also depend on the nature, scale and purpose of the envisaged measures, the type of content at issue, on whether the content has been notified by law enforcement authorities or Europol and on whether action had already been taken in respect of the content because it is considered to be illegal content. With regard to child sexual abuse material in particular, hosting service providers should take proactive measures to detect and prevent the dissemination of such material, in line with the commitments undertaken in the context of the Global Alliance against Child Sexual Abuse Online.

(26) In this context, in its Communication of 28 September 2017 on tackling illegal content online, the Commission has set out its view that taking such voluntary proactive measures does not automatically lead to the hosting service provider concerned losing the benefit of the liability exemption provided for in Article 14 of Directive 2000/31/EC.

(27) It is essential that any measures to tackle illegal content online are subject to effective and appropriate safeguards aimed at ensuring that hosting service providers act in a diligent and proportionate manner when setting and enforcing their policies in respect of any content that they store, including illegal content, so as to ensure, in particular, that users can freely receive and impart information online in compliance with the applicable law. In addition to any safeguards laid down in the applicable law, for instance regarding the protection of personal data, particular safeguards, notably human oversight and verifications, should be provided for and applied where appropriate in relation to the use of automated means, so as to avoid any unintended and erroneous decisions.

(28) Smooth, effective and appropriate cooperation between competent authorities and hosting service providers when tackling illegal content online should be ensured. Such cooperation could benefit from the assistance of Europol where appropriate, for instance when combating terrorism and sexual abuse and sexual exploitation of children, child pornography and solicitation of children. In order to facilitate such cooperation, Member States and hosting service providers should designate points of contacts, and procedures should be established for the processing of notices submitted by those authorities as a matter of priority and with an appropriate degree of confidence as regards their accuracy, taking account of the particular expertise and responsibilities of those authorities. In order to effectively tackle certain particularly serious criminal offences, such as offences specified in Directive (EU) 2017/541 and Directive 2011/93/EU, which might come to the attention of hosting service providers when carrying out their activities, Member States should be encouraged to make use of the possibility set out in Article 15(2) of Directive 2000/31/EC to establish in law reporting obligations, in compliance with the applicable law, in particular Regulation (EU) 2016/679.

(29) In addition to competent authorities, certain individuals or entities, including non-governmental organisations and trade associations, might also have particular expertise and wish to take on, on a voluntary basis, certain responsibilities related to tackling illegal content online. In light of their added-value and the sometimes high numbers of notices involved, cooperation between such trusted flaggers and hosting service providers should be encouraged, in particular by treating the notices that they submit also as a matter of priority and with an appropriate degree of confidence as regards their accuracy. However, in accordance with their particular status,

that cooperation should only be open to individuals and entities which respect the values on which the Union is founded as set out in Article 2 of the Treaty on European Union and meet certain appropriate conditions, which should moreover be clear and objective and be made publicly available.

(30) Combating illegal content online requires a holistic approach, as such content often migrates easily from one hosting service provider to another and tends to exploit the weakest links in the chain. Cooperation, consisting in particular of the sharing on a voluntary basis of experiences, technological solutions and best practices, is therefore essential. Such cooperation is particularly important in respect of hosting service providers which, because of their size or the scale on which they operate, have only limited resources and expertise.

(31) Terrorism involves the unlawful and indiscriminate use of violence and intimidation against citizens. Terrorists have become increasingly reliant on the internet to disseminate terrorist propaganda, often deploying sophisticated methods to ensure swift and broad dissemination. Whilst progress has been made, especially in the context of the EU Internet Forum, there remains an urgent need for a swifter and more effective response to terrorist content online, in addition to the need for hosting service providers participating in the EU Internet Forum to fully live up to their commitments concerning effective and comprehensive reporting.

(32) In light of the particularities related to tackling terrorist content online, the recommendations relating to tackling illegal content generally should be complemented by certain recommendations which specifically relate to tackling terrorist content online, building on and consolidating efforts undertaken in the framework of the EU Internet Forum.

(33) Considering the particularly grave risks associated with terrorist content and hosting service providers' central role in the dissemination of such content, hosting service providers should take all reasonable measures so that to they do not allow terrorist content and if possible prevent hosting it, subject to their possibility to set and enforce their terms of service and the need for effective and appropriate safeguards and without prejudice to Article 14 of Directive 2000/31/EC.

(34) Those measures should, in particular, consist of cooperating with competent authorities and Europol in relation to referrals, which are a specific means for notifying hosting services providers which is adapted to the particularities of tackling terrorist content. Competent authorities and Europol, when submitting referrals, should be able to request the removal or disabling of access to content which they consider to be terrorist content either with reference to the relevant applicable laws or to the terms of service of the hosting service provider concerned. Those referral mechanisms should exist in addition to the mechanisms for submitting notices, including by trusted flaggers, which may also be used for notifying content considered to be terrorist content.

(35) Given that terrorist content is typically most harmful in the first hour of its appearance online and given the specific expertise and responsibilities of competent authorities and Europol, referrals should be assessed and, where appropriate, acted upon within one hour, as a general rule.

(36) Those measures to tackle terrorist content should also consist of proportionate and specific proactive measures, including by using automated means, in order to detect, identify and expeditiously remove or disable access to terrorist content and to ensure that terrorist content does not reappear, without prejudice to Article 15(1) of Directive 2000/31/EC. In this regard account should be taken of the need for adequate and effective safeguards accompanying such measures, in particular those recommended in Chapter II of this Recommendation.

(37) Cooperation, both among hosting service providers and between them and competent authorities, is of the utmost importance when seeking to tackle terrorist content online. In particular, technological tools that allow for automated content detection, such as the Database of Hashes, can help achieve the objective of preventing the dissemination of terrorist content across different hosting services. Such cooperation and the development, operation and sharing of such technological tools should be encouraged, making use of Europol's expertise where appropriate. Those cooperative efforts are particularly important to help enabling hosting service providers which, because of their size or the scale on which they operate, have limited resources and expertise to respond effectively and urgently to referrals and to take proactive measures, as recommended.

(38) As many relevant hosting service providers as possible should join those cooperative efforts and all participating hosting service providers should help optimise and maximise the use of those tools. The conclusion of working arrangements between all relevant parties, including where appropriate Europol, should also be encouraged, given that such arrangements can help ensuring a consistent and effective approach and allow for the exchange of relevant experiences and expertise.

(39) In order to ensure respect for the fundamental right to the protection of natural persons in relation to the processing of personal data, as well as the free movement of personal data, the processing of personal data in the context of any measures taken to give effect to this Recommendation should be in full compliance with the rules on data protection, in particular with Regulation (EU) 2016/679 and Directive (EU) 2016/680 of the European Parliament and of the Council ([1]), and should be monitored by the competent supervisory authorities.

(40) This Recommendation respects the fundamental rights and observes the principles recognised in particular by the Charter. In particular, this Recommendation seeks to ensure full respect for Articles 1, 7, 8, 10, 11, 16, 17, 21, 24 and 47 of the Charter.

(41) The Commission intends to closely monitor any actions taken in response to this Recommendation. Member States and hosting service providers should therefore be prepared to submit to the Commission, upon its request, all relevant information which they can reasonably be expected to provide in order to allow such monitoring. On the basis of the information thus obtained and all other available information, including reporting on the basis of the various voluntary arrangements, the Commission will assess the effects given to this Recommendation and determine whether additional steps, including proposing binding acts of Union law, are required. Given the particularities and urgency of tackling terrorist content online, that monitoring and assessment should be carried out based on detailed information and particularly quickly, within three months from the date of publication of this Recommendation, whereas for other illegal content it is appropriate to do so six months after the publication,

HAS ADOPTED THIS RECOMMENDATION:

CHAPTER I

Purpose and terminology

1. Member States and hosting service providers, in respect of content provided by content providers which they store at the request of those content providers, are encouraged to take effective, appropriate and proportionate measures to tackle illegal content online, in accordance with the principles set out in this Recommendation and in full compliance with the Charter, in particular the right to freedom of expression and information, and other applicable provisions of Union law, in particular as regards the protection of personal data, competition and electronic commerce.

2. This Recommendation builds on and consolidates the progress made in the framework of voluntary arrangements agreed between hosting service providers and other affected service providers regarding different types of illegal content. In the area of terrorism, it builds on and consolidates the progress made in the framework of the EU Internet Forum.

3. This Recommendation is without prejudice to the rights and obligations of Member States to take measures in respect of illegal content online in accordance with Union law, including the possibility for courts or administrative authorities of Member States, in accordance with their legal systems, of requiring hosting service providers to remove or disable access to illegal content. This Recommendation is also without prejudice to the position of hosting service providers under Directive 2000/31/EC and their possibility to set and enforce their terms of service in accordance with Union law and the laws of the Member States.

([1]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

4. For the purpose of this Recommendation, the following terms are used:

(a) 'hosting service provider' means a provider of information society services consisting of the storage of information provided by the recipient of the service at his or her request, within the meaning of Article 14 of Directive 2000/31/EC, irrespective of its place of establishment, which directs its activities to consumers residing in the Union;

(b) 'illegal content' means any information which is not in compliance with Union law or the law of a Member State concerned;

(c) 'user' means any natural or legal person who is the recipient of the services provided by a hosting service provider;

(d) 'content provider' means a user who has submitted information that is, or that has been, stored at his or her request by a hosting service provider;

(e) 'notice' means any communication addressed to a hosting service provider submitted by a notice provider in respect of content stored by that hosting service provider which the notice provider considers to be illegal content, requesting the removal of or the disabling of access to that content by that hosting service provider on a voluntary basis;

(f) 'notice provider' means an individual or entity which has submitted a notice to a hosting service provider;

(g) 'trusted flagger' means an individual or entity which is considered by a hosting service provider to have particular expertise and responsibilities for the purposes of tackling illegal content online;

(h) 'terrorist content' means any information the dissemination of which amounts to offences specified in Directive (EU) 2017/541 or terrorist offences specified in the law of a Member State concerned, including the dissemination of relevant information produced by or attributable to terrorist groups or entities included in the relevant lists established by the Union or by the United Nations;

(i) 'law enforcement authorities' means the competent authorities designated by the Member States in accordance with their national law to carry out law enforcement tasks for the purposes of the prevention, investigation, detection or prosecution of criminal offences in connection to illegal content online;

(j) 'competent authorities' means the competent authorities designated by the Member States in accordance with their national law to carry out tasks which include tackling illegal content online, including law enforcement authorities and administrative authorities charged with enforcing law, irrespective of the nature or specific subject matter of that law, applicable in certain particular fields;

(k) 'referral' means any communication addressed to a hosting service provider submitted by a competent authority or by Europol in respect of content stored by that hosting service provider which that authority or Europol considers to be terrorist content, requesting the removal of or the disabling of access to that content by that hosting service provider on a voluntary basis.

CHAPTER II

General recommendations relating to all types of illegal content

Submitting and processing notices

5. Provision should be made for mechanisms to submit notices. Those mechanisms should be easy to access, user-friendly and allow for the submission of notices by electronic means.

6. Those mechanisms should allow for and encourage the submission of notices which are sufficiently precise and adequately substantiated to enable the hosting provider concerned to take an informed and diligent decision in respect of the content to which the notice relates, in particular whether or not that content is to be considered illegal content and is be removed or access thereto is be disabled. Those mechanisms should be such as to facilitate the provision of notices that contain an explanation of the reasons why the notice provider considers that content to be illegal content and a clear indication of the location of that content.

7. Notice providers should have the possibility, but not be required, to include their contact details in a notice. Where they decide to do so, their anonymity should be ensured towards the content provider.

8. Where the contact details of the notice provider are known to the hosting service provider, the hosting service provider should send a confirmation of receipt to the notice provider and should, without undue delay, inform the latter in a proportionate manner of its decision in respect of the content to which the notice relates.

Informing content providers and counter-notices

9. Where a hosting service provider decides to remove or disable access to any content that it stores because it considers the content to be illegal content, irrespective of the means used for detecting, identifying or removing or disabling of access to that content, and where the contact details of the content provider are known to the hosting service provider, the content provider should, without undue delay, be informed in a proportionate manner of that decision and of reasons for taking it, as well as of the possibility to contest that decision referred to in point 11.

10. However, point 9 should not apply where it is manifest that the content concerned is illegal content and relates to serious criminal offences involving a threat to the life, or safety of persons. In addition, hosting service providers should not provide the information referred to in that point where, and for as long as, a competent authority so requests for reasons of public policy and public security and in particular the prevention, investigation, detection and prosecution of criminal offences.

11. Content providers should be given the possibility to contest the decision by the hosting service provider referred to in point 9 within a reasonable time period, through the submission of a counter-notice to that hosting service provider. The mechanism to submit such counter-notices should be user-friendly and allow for submission by electronic means.

12. It should be ensured that hosting service providers take due account of any counter-notice that they receive. Where the counter-notice contains grounds for the hosting service provider to consider that the content to which the counter-notice relates is not to be considered illegal content, it should reverse its decision to remove or disable access to that content without undue delay, without prejudice to its possibility to set and enforce its terms of service in accordance with Union law and the laws of the Member States.

13. The content provider who submitted a counter-notice, as well as the notice provider concerned, should, where their contact details are known to the hosting service provider concerned, be informed, without undue delay, of the decision that the hosting service provider has taken in respect of the content concerned.

Out-of-court dispute settlement

14. Member States are encouraged to facilitate, where appropriate, out-of-court settlements to resolve disputes related to the removal of or disabling of access to illegal content. Any mechanisms for such out-of-court dispute settlement should be easily accessible, effective, transparent and impartial and should ensure that the settlements are fair and in compliance with the applicable law. Attempts to settle such disputes out-of-court should not affect the access to court of the parties concerned.

15. Where available in the Member State concerned, hosting service providers are encouraged to allow the use of out-of-court dispute settlement mechanisms.

Transparency

16. Hosting service providers should be encouraged to publish clear, easily understandable and sufficiently detailed explanations of their policy in respect of the removal or disabling of access to the content that they store, including content considered to be illegal content.

17. Hosting service providers should be encouraged to publish at regular intervals, preferably at least annually, reports on their activities relating to the removal and the disabling of content considered to be illegal content. Those reports should include, in particular, information on the amount and type of content removed, on the number of notices and counter-notices received and the time needed for taking action.

Proactive measures

18. Hosting service providers should be encouraged to take, where appropriate, proportionate and specific proactive measures in respect of illegal content. Such proactive measures could involve the use of automated means for the detection of illegal content only where appropriate and proportionate and subject to effective and appropriate safeguards, in particular the safeguards referred to in points 19 and 20.

Safeguards

19. In order to avoid removal of content which is not illegal content, without prejudice to the possibility for hosting service providers to set and enforce their terms of service in accordance with Union law and the laws of the Member States, there should be effective and appropriate safeguards to ensure that hosting service providers act in a diligent and proportionate manner in respect of content that they store, in particular when processing notices and counter-notices and when deciding on the possible removal of or disabling of access to content considered to be illegal content.

20. Where hosting service providers use automated means in respect of content that they store, effective and appropriate safeguards should be provided to ensure that decisions taken concerning that content, in particular decisions to remove or disable access to content considered to be illegal content, are accurate and well-founded. Such safeguards should consist, in particular, of human oversight and verifications, where appropriate and, in any event, where a detailed assessment of the relevant context is required in order to determine whether or not the content is to be considered illegal content.

Protection against abusive behaviour

21. Effective and appropriate measures should be taken to prevent the submission of, or the taking of action upon, notices or counter-notices that are submitted in bad faith and other forms of abusive behaviour related to the recommended measures to tackle illegal content online set out in this Recommendation.

Cooperation between hosting services providers and Member States

22. Member States and hosting service providers should designate points of contact for matters relating to illegal content online.

23. Fast-track procedures should be provided to process notices submitted by competent authorities.

24. Member States are encouraged to establish legal obligations for hosting service providers to promptly inform law enforcement authorities, for the purposes of the prevention, investigation, detection or prosecution of criminal offences, of any evidence of alleged serious criminal offences involving a threat to the life or safety of persons obtained in the context of their activities for the removal or disabling of access to illegal content, in compliance with the applicable legal requirements, in particular regarding the protection of personal data protection, including Regulation (EU) 2016/679.

Cooperation between hosting services providers and trusted flaggers

25. Cooperation between hosting service providers and trusted flaggers should be encouraged. In particular, fast-track procedures should be provided to process notices submitted by trusted flaggers.

26. Hosting service providers should be encouraged to publish clear and objective conditions for determining which individuals or entities they consider as trusted flaggers.

27. Those conditions should aim to ensure that the individuals or entities concerned have the necessary expertise and carry out their activities as trusted flaggers in a diligent and objective manner, based on respect for the values on which the Union is founded.

Cooperation between hosting service providers

28. Hosting service providers should, where appropriate, share experiences, technological solutions and best practices to tackle illegal content online among each other and in particular with hosting service providers which, because of their size or the scale on which they operate, have limited resources and expertise, including in the context of ongoing cooperation between hosting service providers through codes of conduct, memoranda of understanding and other voluntary arrangements.

CHAPTER III

Specific recommendations relating to terrorist content

General

29. The specific recommendations relating to terrorist content set out in this Chapter apply in addition to the general recommendations set out in Chapter II.

30. Hosting service providers should expressly set out in their terms of service that they will not store terrorist content.

31. Hosting service providers should take measures so that they do not store terrorist content, in particular as regards referrals, proactive measures and cooperation in accordance with points 32 to 40.

Submitting and processing referrals

32. Member States should ensure that their competent authorities have the capability and sufficient resources to effectively detect and identify terrorist content and to submit referrals to the hosting service providers concerned, in particular through national internet referral units and in cooperation with the EU Internet Referral Unit at Europol.

33. Provision should be made for mechanisms allowing for the submission of referrals. Fast-track procedures should be provided to process referrals, in particular referrals submitted by national internet referral units and by the EU Internet Referral Unit at Europol.

34. Hosting service providers should, without undue delay, send confirmations of receipt of referrals and inform the competent authority or Europol of their decisions in respect of the content to which the referrals relate, indicating, as the case may be, when the content was removed or access thereto was disabled or why they decided not to remove or to disable access to the content.

35. Hosting service providers should assess and, where appropriate, remove or disable access to content identified in referrals, as a general rule, within one hour from the moment at which they received the referral.

Proactive measures

36. Hosting service providers should take proportionate and specific proactive measures, including by using automated means, in order to detect, identify and expeditiously remove or disable access to terrorist content.

37. Hosting service providers should take proportionate and specific proactive measures, including by using automated means, in order to immediately prevent content providers from re-submitting content which has already been removed or to which access has already been disabled because it is considered to be terrorist content.

Cooperation

38. In order to prevent the dissemination of terrorist content across different hosting services, hosting service providers should be encouraged to cooperate through the sharing and optimisation of effective, appropriate and proportionate technological tools, including such tools that allow for automated content detection. Where technologically possible, all relevant formats through which terrorist content is disseminated should be captured. Such cooperation should include, in particular, hosting service providers which, because of their size or the scale on which they operate, have limited resources and expertise.

39. Hosting service providers should be encouraged to take the necessary measures for the proper functioning and improvement of the tools referred to in point 38, in particular by providing identifiers relating to all content considered to be terrorist content and by fully exploiting the possibilities of those tools.

40. Competent authorities and hosting service providers should conclude working arrangements, where appropriate also with Europol, on matters relating to terrorist content online, including for enhancing the understanding of terrorist activities online, improving referral mechanisms, preventing unnecessary duplication of efforts and facilitating requests by law enforcement authorities for the purposes of criminal investigations in relation to terrorism.

CHAPTER IV

Provision of information

41. Member States should, at regular intervals and preferably every three months, report to the Commission on the referrals submitted by their competent authorities and the decisions taken by hosting service providers upon those referrals, as well as on their cooperation with hosting service providers relating to tackling terrorist content.

42. In order to allow for the monitoring of the effects given to this Recommendation as regards terrorist content at the latest three months from the date of its publication, hosting service providers should submit to the Commission, upon its request, all relevant information to allow for such monitoring. That information may include in particular, information on the amount of content which has been removed or to which access has been disabled, either pursuant to referrals or notices or pursuant to the taking of proactive measures and the use of automated means. It may also include the number of referrals received and the time needed for taking action, as well as the amount of content prevented from being submitted or re-submitted through the use of automated content detection and other technological tools.

43. In order to allow for the monitoring of the effects given to this Recommendation as regards illegal content, other than terrorist content, at the latest six months from the date of its publication Member States and hosting service providers should submit to the Commission, upon its request, all relevant information to allow for such monitoring.

Done at Brussels, 1 March 2018.

For the Commission
Andrus ANSIP
Vice-President

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