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⁽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.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2018/1467

of 27 July 2018

amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding Pakistan to the table in point I of the Annex*(Text with EEA relevance)*

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union has to ensure an effective protection of the integrity and proper functioning of its financial system and the internal market from money laundering and terrorist financing. Hence Directive (EU) 2015/849 provides that the Commission should identify high-risk third countries which present strategic deficiencies in their regimes on anti-money laundering and countering terrorist financing that pose significant threats to the financial system of the Union.
- (2) The Commission should review the list of high risk third countries listed in Delegated Regulation (EU) 2016/1675 ⁽²⁾ at appropriate times in light of the progress made by those high risk third countries in removing the strategic deficiencies in their regime on anti-money laundering and countering terrorist financing ('AML/CFT'). The Commission should take account in its assessments of new information from international organisations and standard setters, such as those issued by the Financial Action Task Force (FATF). In light of this information, the Commission should also identify additional high-risk third countries presenting strategic deficiencies in their AML/CFT regime.
- (3) In line with the criteria set out in Directive (EU) 2015/849, the Commission took into account the recent available information, in particular recent FATF Public Statements, FATF document 'Improving Global AML/CFT Compliance: ongoing process', and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries in line with Article 9(4) of Directive (EU) 2015/849.
- (4) The FATF identified Pakistan as having strategic deficiencies in its anti-money laundering and counter-terrorist financing ('AML/CFT') regime that pose a risk to the international financial system, for which it has developed an action plan with the FATF.

⁽¹⁾ OJ L 141, 5.6.2015, p. 73.

⁽²⁾ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

- (5) The AML/CFT framework in force in Pakistan and the manner in which that framework is applied reveal strategic deficiencies. The deficiencies include the supervision and enforcement of AML/CFT controls by financial institutions, including money service businesses; insufficient measures to prevent illicit cross-border transportation of currency; no robust track record of terrorist financing investigations and prosecutions, including the lack of necessary coordination between various authorities; insufficient implementation of targeted financial sanctions and of United Nations Security Council Resolutions 1267 (1999) and 1373 (2001); insufficient enforcement of prohibition of funds and financial services.
- (6) Considering the high level of integration of the international financial system, the close connection of market operators, the high volume of cross border transactions to or from the Union, as well as the degree of market opening, the Commission considers that any AML/CFT threat posed to the international financial system also represents a threat for the Union financial system.
- (7) In accordance with the latest relevant information, the Commission's analysis has concluded that Pakistan should be considered as a third-country jurisdiction which has strategic deficiencies in its AML/CFT regime that pose significant threats to the financial system of the Union in accordance with the criteria set out in Article 9 of Directive (EU) 2015/849. However, this country has provided a written high-level political commitment to address the identified deficiencies and has developed an action plan with the FATF, which would allow the requirements laid down in Directive (EU) 2015/849 to be met. The Commission will reassess this country's status in the light of the implementation of that commitment.
- (8) Delegated Regulation (EU) 2016/1675 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Delegated Regulation (EU) 2016/1675, in the table in point I the following line is added:

'14	Pakistan'
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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, 27 July 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1468**of 1 October 2018****amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation') prior to its amendment by Regulation (EU) 2017/2321 of the European Parliament and of the Council ⁽²⁾, and in particular Article 19 thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) By Regulation (EC) No 2603/2000 ⁽³⁾, the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate ('PET') originating, inter alia, in India ('the original investigation').
- (2) By Regulation (EC) No 1645/2005 ⁽⁴⁾, the Council amended the level of countervailing measures in force against imports of PET from India, following an accelerated review pursuant to Article 20 of the basic Regulation.
- (3) By Regulation (EC) No 193/2007 ⁽⁵⁾, the Council imposed a definitive countervailing duty for a further period of five years, following an expiry review pursuant to Article 18 of the basic Regulation.
- (4) By Regulation (EC) No 1286/2008 ⁽⁶⁾ and Implementing Regulation (EU) No 906/2011 ⁽⁷⁾, the Council subsequently amended the countervailing measures, following partial interim reviews pursuant to Article 19 of the basic Regulation.
- (5) In 2012, another partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012 ⁽⁸⁾.
- (6) By Implementing Regulation (EU) No 461/2013 ⁽⁹⁾, the Council imposed a definitive countervailing duty for a further period of five years, following a second expiry review pursuant to Article 18 of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 338, 19.12.2017, p. 1).

⁽³⁾ Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan (OJ L 301, 30.11.2000, p. 1).

⁽⁴⁾ Council Regulation (EC) No 1645/2005 of 6 October 2005 amending Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate originating, inter alia, in India (OJ L 266, 11.10.2005, p. 1).

⁽⁵⁾ Council Regulation (EC) No 193/2007 of 22 February 2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 (OJ L 59, 27.2.2007, p. 34).

⁽⁶⁾ Council Regulation (EC) No 1286/2008 of 16 December 2008 amending Regulation (EC) No 193/2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate, originating in, inter alia, India (OJ L 340, 19.12.2008, p. 1).

⁽⁷⁾ Council Implementing Regulation (EU) No 906/2011 of 2 September 2011 amending Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate originating in India, and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in, inter alia, India (OJ L 232, 9.9.2011, p. 19).

⁽⁸⁾ Council Implementing Regulation (EU) No 559/2012 of 26 June 2012 terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India (OJ L 168, 28.6.2012, p. 6).

⁽⁹⁾ Council Implementing Regulation (EU) No 461/2013 of 21 May 2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 137, 23.5.2013, p. 1).

- (7) By Implementing Regulation (EU) 2015/1350 ⁽¹⁾, the Commission amended the countervailing measures, following two partial interim reviews pursuant to Article 19 of the basic Regulation.
- (8) By Decision 2000/745/EC ⁽²⁾, the Commission accepted a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU ⁽³⁾, the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.
- (9) The measures currently in force are a definitive countervailing duty imposed by Regulation (EU) No 461/2013, as amended by Implementing Regulation (EU) 2015/1350 ('measures in force'). They consist of a specific countervailing duty, ranging between 0 and EUR 74,6 per tonne for individually named Indian producers, with a residual rate of EUR 69,4 per tonne imposed on imports from all other producers.

1.2. Initiation of two partial interim reviews

- (10) In September 2016, an Indian exporting producer, Dhunseri Petrochem Limited ('DPL') requested the Commission to amend the Regulation imposing the measures in force based on a change of the name of the company. The request however showed that DPL had entered into a joint venture partnership with Indorama Ventures Public Company Limited ('IVL'), resulting in the following structure:
 - (a) Indorama Ventures Global Services Limited, a subsidiary of IVL, acquired a 50 % stake in the PET resin business of DPL, through the establishment of a new company called IVL Dhunseri Petrochem Industries Limited ('IVDPIL');
 - (b) DPL acquired a 50 % stake in Micro Polypet Pvt. Ltd ('MPPL'), an Indian manufacturer of PET which had never exported to the EU and did not have an individual countervailing duty.
- (11) In light of the above, the Commission considered that there was sufficient evidence that the circumstances with regard to subsidisation of DPL and its related companies had changed significantly and were of a lasting nature and that the measures should therefore be reviewed.
- (12) On that basis, the Commission announced, by notice on 6 July 2017 ⁽⁴⁾ the decision to initiate on its own initiative a partial interim review investigation pursuant to Article 19 of the basic Regulation limited in scope to the examination of subsidisation for DPL and its related companies in India. The purpose of the review is to establish the rate of subsidisation for the company's new structure.
- (13) Another Indian exporting producer, Reliance Industries Limited ('Reliance') lodged a request for a partial interim review pursuant Article 19 of the basic Regulation. The request was limited to the examination of the subsidisation of Reliance.
- (14) Reliance provided sufficient evidence that the continued application of the measures at their current level was no longer necessary to offset the countervailable subsidisation. The company alleged in particular that the overall subsidy level was reduced due to the termination of applicability of the Focus Product Scheme and the Focus Market Scheme and the reduction of amounts availed by the applicant with regard to other schemes, like the Advanced Authorisation Scheme and the Duty Drawback Scheme.
- (15) Having determined that the request contained sufficient evidence, the Commission announced, on 6 July 2017 ⁽⁵⁾, the initiation of a partial interim review pursuant to Article 19 of the basic Regulation limited in scope to the examination of subsidisation for Reliance.
- (16) In both Notices of initiation, the Commission announced that the investigations would also assess the appropriateness to amend the rate of duty imposed on imports of certain polyethylene terephthalate (PET) originating in India by 'all other companies' in India.

⁽¹⁾ Commission Implementing Regulation (EU) 2015/1350 of 3 August 2015 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India (OJ L 208, 5.8.2015, p. 10).

⁽²⁾ Commission Decision 2000/745/EC of 29 November 2000 accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ L 301, 30.11.2000, p. 88).

⁽³⁾ Commission Implementing Decision 2014/109/EU of 4 February 2014 repealing Decision 2000/745/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating, inter alia, in India (OJ L 59, 28.2.2014, p. 35).

⁽⁴⁾ Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate (PET) originating in India (2017/C 216/05) (OJ C 216, 6.7.2017, p. 30).

⁽⁵⁾ Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate (PET) originating in India (2017/C 216/04) (OJ C 216, 6.7.2017, p. 26).

- (17) Given that both interim reviews cover the same product under review, the same country of origin and the same investigation period, and as both measures are subject to the same proceeding, it was considered appropriate to conclude both reviews in the same legal act.

1.3. Parties concerned by the investigation

- (18) The Commission officially informed Dhunseri, its related companies and Reliance ('the concerned exporting producers'), the association of Union producers, importers and users in the Union known to be concerned and the representatives of the exporting country of the initiation of the partial interim reviews. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notices of initiation.
- (19) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the concerned exporting producers and the Government of India ('GOI') and received replies within the deadlines set for that purpose.
- (20) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of IVDPIL in Kolkata, at MPPL's headquarters in Delhi, at MPPL's factory in Karnal, at Reliance in Mumbai as well as at the premises of the GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce).

1.4. Review investigation period

- (21) The investigation of subsidisation covered the period from 1 April 2016 to 31 March 2017 ('the review investigation period').

1.5. Disclosure

- (22) On 25 July 2018 the GOI and the other interested parties were informed of the essential facts and considerations upon which the Commission intended to propose to amend the duty rates applicable to the Dhunseri and Reliance. They were also given reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.
- (23) Reliance noted that the disclosure was made more than 12 months after initiation of the investigation and referred to Article 11.11 of the WTO Agreement on Subsidies and Countervailing Measures ('the ASCM') which provides that investigations 'shall' be concluded within one year 'except in special circumstances' and to Article 22(1) of the basic Regulation which provides that reviews shall be carried out 'expeditiously' and 'shall normally' be concluded within 12 months of the date of initiation. On this basis Reliance claimed that in the absence of special circumstances or justification from the Commission the investigation should be 'terminated without protective measures'.
- (24) However, as far as deadlines are concerned, the Commission observes that the present review investigation is subject to Article 21.4 of the ASCM which provides that reviews of countervailing duties 'shall normally be concluded within 12 months of the date of initiation of the review' and does not refer to any special circumstances needed to justify an investigation duration longer than 12 months. Likewise, Article 22(1) of the basic Regulation does not refer to special circumstances needed to justify an investigation duration longer than 12 months. The current reviews are conducted within the 15-month deadline set out in Article 22(1) of the basic Regulation. Therefore, the claim was rejected.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (25) The product subject to this review is polyethylene terephthalate (PET) having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 61 00 and originating in India ('the product under review').

2.2. Like product

- (26) The investigation revealed that the product under review is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Re-organisation of DPL and its related companies

- (27) The investigation confirmed that DPL entered into a joint venture partnership with IVL. Under this partnership, DPL transferred its entire PET production facility to a new company, IVDPIL on 1 April 2016 and acquired 50 % share of that company, while the remaining 50 % were acquired by Indorama Ventures Global Services Limited, a subsidiary of IVL. DPL thus ceased to be an exporting producer of the product under review with effect from that date.
- (28) The investigation also confirmed that DPL acquired 50 % of stake in MPPL, an Indian manufacturer of PET which previously did not export the product under review to the Union and has thus not been attributed an individual countervailing duty in previous investigations concerning PET originating in India. The remaining 50 % stake in MPPL belongs to Indorama Ventures Global Services Limited.
- (29) Subsequently, on 12 May 2017, IVDPIL changed its name to IVL Dhunseri Petrochem Industries Private Limited ('IDIPL'), and MPPL transferred all its assets, debts, liabilities, and staff to IDIPL. On 4 December 2017, the High Court of Kolkata sanctioned this transfer.
- (30) DPL, IDIPL (formerly IVDPIL), and MPPL are hereafter referred to as the 'Dhunseri group'. The purpose of the partial interim review was therefore to establish the rate of subsidisation applicable to the Dhunseri group. To that end the data regarding IDIPL and MPPL (which was still operating as a distinct exporting producer of the product under review during the review investigation period) were aggregated to calculate the subsidisation rate for the Dhunseri group as a whole since this rate is applicable to the final structure of the group where MPPL's plant is incorporated in IDIPL.

3.2. Subsidisation

- (31) On the basis of the subsidies investigated in the previous reviews, the information submitted by the GOI and the concerned exporting producers, as well as the replies to the Commission's questionnaire, the following measures were investigated:

Nationwide subsidy programmes:

- (a) Advance Authorisation Scheme (AAS)
- (b) 'Duty Drawback Scheme' under Rule 3(2) (DDS)
- (c) Duty Entitlement Passbook Scheme (DEPBS)
- (d) Duty Free Import Authorisation Scheme (DFIA)
- (e) Export Credit Scheme (ECS)
- (f) Export Oriented Units (EOU) and Special Economic Zones (SEZ) Scheme
- (g) Export Promotion Capital Goods Scheme (EPCGS)
- (h) Focus Market Scheme (FMS)
- (i) Focus Product Scheme (FPS)
- (j) Incremental Exports Incentivisation Scheme (IEIS)
- (k) Interest Equalisation Scheme (IES)
- (l) Income Tax Incentive for Research and Development (ITIRAD)
- (m) Merchandise Exports from India Scheme (MEIS)
- (n) Status Holders Incentive Scrip (SHIS).

Regional subsidy programmes:

- (o) Capital Investment Incentive Scheme of the Government of Gujarat (CIIS)
- (p) Enterprise Promotion Policy of the Government of Haryana (EPP/GOH)
- (q) Gujarat Electricity Duty Exemption Scheme (GEDES)
- (r) Package Scheme of Incentives of the Government of Maharashtra (PSI/GOM)
- (s) West Bengal Incentive Scheme (WBIS).

- (32) The subsidies specified in the recital above are based on the following policy documents and legislation.
- (33) The AAS, DEPBS, DFIA, EOU/SEZ, EPCGS, FMS, FPS, IEIS, MEIS, and SHIS schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly.
- (34) AAS, DFIA, EOU/SEZ, EPCGS, and MEIS are based on the Foreign Trade Policy 2015-2020 ('FTP 2015-20') which is relevant to the review investigation period. In addition, the GOI also sets out the procedures governing FTP 2015-20 in a 'Handbook of Procedures, Volume I' ('HOP I 2015-20'). The Handbook of Procedures is updated on a regular basis.
- (35) DEPBS, FMS, FPS, IEIS, and SHIS, which were based on the previous Foreign Trade Policy document relevant to the period 2009-2014 ('FTP 2009-14'), have not been renewed under the FTP 2015-20 mentioned in recital (34).
- (36) The DDS scheme is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994, and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis.
- (37) The ECS scheme is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.
- (38) The ITIRAD scheme is based on the Income Tax Act of 1961 ('ITA'), which is amended by the yearly Finance Act.
- (39) The IES scheme is based on Master Circular DBR.Dir.BC.No 62/04.02.001/2015-16 dated 4 December 2015 regarding 'Interest Equalisation Scheme on Pre- and Post-Shipment Rupee Export Credit'.
- (40) The CIIS scheme is administered by the Government of Gujarat and is based on Gujarat's industrial policy 2015.
- (41) The EPP/GOH is administered by the Government of Haryana and set out in the Enterprises Promotion Policy — 2015 notified by the Industry & Commerce Department of the Government of Haryana.
- (42) The GEDES scheme is based on Gujarat Electricity Duty Act, 1958 ('Electricity Act') under Section 3(2) (vii) and (viii) as amended from time to time in Gujarat Government Gazette.
- (43) The PSI/GOM scheme is based on Resolution No. PSI-2013/(CR-54)/IND-8 of the Government of Maharashtra.
- (44) The WBIS scheme is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 309 — CI/O/ADN/GEN-INC/512 of 12 September 2014.
- (45) The investigation revealed that the following schemes have been either terminated or were not availed of by the two exporting producers concerned: DEPBS, DFIA, ECS, EOU/SEZ, FMS, FPS, ITIRAD, IEIS, IES, SHIS, CIIS, EPP/GOH, PSI/GOM and WBIS.

3.3. Advance Authorisation Scheme (AAS)

- (46) The Commission found that only one of the exporting producers subject to the current reviews availed itself of this measure during the review investigation period for a very small number of export transactions. Indeed, the same company used the 'Duty Drawback Scheme' (DDS), covered below in section 3.4, for the vast majority of its export transactions. Since AAS and DDS cannot be used concurrently for the same export transactions, the Commission found that AAS was barely used during the review investigation period and decided not to quantify the benefit obtained under AAS in the reviews at hand.

3.4. 'Duty Drawback Scheme' under Rule 3(2) (DDS)

- (47) The Commission established that the concerned exporting producers used DDS during the review investigation period.

3.4.1. Legal Basis

- (48) The legal basis applicable during the RIP was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as last amended in 2006 ⁽¹⁾. After the RIP this legal basis was replaced by Customs and Central Excise Duties Drawback Rules, 2017 ⁽²⁾ ('the 2017 Rules') which entered into force on 1 October 2017. Rule 3(2) of the 1995 DDS Rules governs the method of calculation of this duty drawback scheme. Rule 12(1)(a)(ii) of the said DDS Rules governs the Declaration that needs to be filed by exporters in order to benefit from the scheme. These Rules have remained identical in the 2017 DDS Rules and correspond to Rule 3(2) and Rule 13(1)(a)(ii) respectively.
- (49) In addition, Circular No 24/2001 ⁽³⁾ contains specific instructions how to implement Rule 3(2) and the Declaration that exporters need to produce under Rule 12(1)(a)(ii).
- (50) Rule 4 of the 1995 DDS Rules stipulates that the Central Government may revise amount or rates determined under rule 3. The Government has made a number of modifications, the last ones which revised the rates are Notifications No 110/2015 — CUSTOMS (N.T.) of 16 November 2015 ⁽⁴⁾ and Notifications No 131/2016 — CUSTOMS (N.T.) of 31 October 2016 ⁽⁵⁾. As a result, for the product under review during the review investigation period the rate was 1,9 % of the FOB value until 14 November 2016 and 1,5 % thereafter.

3.4.2. Eligibility

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

3.4.3. Practical implementation

- (52) Under this scheme, any company exporting eligible products is entitled to receive an amount in cash corresponding to a percentage of the declared FOB value of the exported materials. Rule 3(2) of Custom & Central Excise Duties Drawback Rules specifies how the amount of the subsidy is to be calculated:

'(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to:

- (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;*
- (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;*
- (c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;*

⁽¹⁾ <http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/cs-rulee> (accessed on 13 July 2018).

⁽²⁾ [To be published in the Gazette of India, extraordinary, part ii, section 3, sub-section (i)] Government of India Ministry of Finance (Department of Revenue) Notification No 88/2017-CUSTOMS (N.T.) New Delhi, 21 September 2017. See <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2017/cs-nt2017/csnt88-2017.pdf> (access on 13 July 2018).

⁽³⁾ Circular No 24/2001-Cus. 20 April 2001 F.NO.605/47/2001-DBK, Government of India, Ministry of Finance, Department of Revenue, Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback. See in particular Sections 2 and 3 of the Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback; available at: <http://www.cbic.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2001/24-2001-cus>, accessed on 7 June 2018.

⁽⁴⁾ GOI's Notification No 110/2015 — CUSTOMS (N.T.) of 16 November 2015 determines that the DDS rate applicable on the FOB value of exports of PET (classified under tariff item 390701) is 1,9 % with effect from 23 November 2015. See <http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt110-2015> and Annex with schedule <http://www.cbic.gov.in/resources/htdocs-cbec/customs/dbk-schedule/dbk-sch2015.pdf> (accessed on 13 July 2018).

⁽⁵⁾ GOI's Notification No 131/2016 — CUSTOMS (N.T.) of 31 October 2016 determines that the DDS rate applicable on the FOB value of exports of PET (classified under tariff item 3907) is 1,5 % with effect from 15 November 2016. See <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt131-u-2016.pdf> and Annex with schedule <http://www.cbic.gov.in/resources/htdocs-cbec/customs/dbk-schedule/dbk-sch2016.pdf> (accessed on 13 July 2018).

(d) *the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:*

Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

(e) *the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;*

(f) *any other information which the Central Government may consider relevant or useful for the purpose.'*

- (53) In other words, the GOI based the refundable amount on industry-wide average values of relevant customs duties paid on imported raw materials and an average industry consumption ratio collected from what the GOI considers as being representative manufacturers of the eligible export products. The GOI then expresses the amount to be refunded as a percentage of the average export value of the eligible exported products.
- (54) The GOI uses this percentage to calculate the amount of cash to which all eligible exporters are entitled. The rate for this scheme is determined by the GOI on a product by product basis. For the product under review during the review investigation period the rate was 1,9 % of the FOB value until 14 November 2016 and 1,5 % thereafter as explained in recital (50).
- (55) To be eligible to benefit from this scheme, a company must export. At the moment when shipment details are entered in the Customs server, it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest and the customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.
- (56) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate ('BRC'). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.
- (57) The drawback amount can be used for any purpose and, in accordance with Indian accounting standards, the amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.
- (58) Relevant legislation and administrative instructions stipulates that the Indian customs administration should require no evidence that the exporter requesting the duty drawback must have incurred or will incur a customs duty liability for imports of the raw materials needed for the manufacture of the exported product ⁽¹⁾. In addition, during the verification visit at the GOI, the GOI confirmed that companies that would source domestically all the raw materials incorporated in the exported PET would still benefit from the full rate calculated under Rule 3(2) mentioned above. This investigation has also shown that in practice this has been the case for one cooperating exporter, which did avail itself of the benefits under the DDS despite not having imported one single unit of the main raw materials (PTA and MEG) used for the production of the product under review.

3.4.4. Conclusion on DDS

- (59) The DDS provides a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of revenue foregone (i.e. the alleged import duties collected by the GOI which are refunded or remitted). There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity by the excess amounts of import duties refunded or remitted by the GOI.

⁽¹⁾ This feature is highlighted by the relevant body of legislation and rules applicable to the scheme, such as in the Circular No 24/2001 Cus. 20 April 2001 F.NO.605/47/2001-DBK, Government of India, Ministry of Finance, Department of Revenue, Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback. C; available at: <http://www.cbic.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2001/24-2001-cus>, accessed on 7 June 2018; in particular Sections 2 and 3 of the Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback.

- (60) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation; nor does the scheme conform to the rules laid down in Annex I item (I), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The cash payment to the exporter is not necessarily linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials. In addition, there is no system or procedure in place to confirm which inputs are consumed in the production of the exported products and in what amounts.
- (61) The payment by the GOI subsequent to exports made by exporters is contingent upon export performance and is therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.
- (62) In view of the above, it is concluded that DDS is countervailable.

3.4.5. Calculation of the subsidy amount

- (63) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of subsidisation in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period. In this regard, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the cash amount, which constitutes a financial contribution within the meaning of Article 3(1)(a) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the DDS with respect to the sum of the amounts earned on export transactions made under this programme during the review investigation period.
- (64) The Dhunseri group noted that the benefit under DDS was reduced from 1,9 % to 1,5 % during the review investigation period and argued that this reduction was of lasting nature by referring to the decreasing trend of the DDS rate, which was reduced from 5,5 % in 2011 to 1,5 % during the review investigation period. For that reason, the company claimed that DDS, if countervailed, should be countervailed only on the basis of the rate of 1,5 %.
- (65) The Commission however noted that according to Article 5 of the basic Regulation 'the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation'. As mentioned before, during the review investigation period the rate was 1,9 % of the FOB value until 14 November 2016 and 1,5 % thereafter. The Commission therefore considers that the actual rates during the review investigation period should be used. Therefore, this argument was rejected.
- (66) Reliance argued that the benefit calculated on the basis of DDS should be restricted to the excess benefits as DDS should be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation but did not provide further elements to substantiate the claim. As explained in recital (60), the Commission concluded that the DDS does not amount to a permissible duty drawback. Moreover, with respect to Reliance, the Commission concluded during the on-the-spot verification that Reliance had benefited from the DDS even if it had not imported any of the two relevant raw materials (MEG and PTA) during the review investigation period. Therefore, the claim was rejected since, on the basis of the information available, the total amount granted to Reliance represents the excess.
- (67) MPPL explained that it used purified terephthalic acid (PTA) and monoethylene glycol (MEG) to manufacture PET and that both raw materials were sourced from a single domestic supplier who, pursuant to the purchase contract, was charging MPPL a so-called 'deemed content of customs duty element'. On that basis MPPL claimed that it was paying import duties on raw material incorporated in the exported product and that the calculation of DDS should hence be restricted to excess benefits. The Commission noted in this respect that MPPL failed to provide any evidence that the 'deemed content of customs duty' corresponded to any actual payment of import duties. Therefore, the claim was rejected.

- (68) IDIPL submitted that MEG, one of the two main raw materials used by the company to manufacture PET, was entirely imported and that import duties were paid on these imports. On the basis of the amount of duties paid on MEG incorporated in PET exported during the review investigation period, IDIPL further provided a calculation of an alleged excess remission and claimed that the level of subsidisation should be established on that excess remission alone. Despite the absence of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, the Commission carried out a verification of the claim in accordance with Annex II (5) of the basic Regulation. The verification confirmed that all MEG consumed in the production of PET was imported and that the amount of import duties reported in the claim was actually paid on MEG incorporated in PET exported during the review investigation period. On that basis the Commission accepted the claim and calculated the level of subsidisation on the excess remission alone.
- (69) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts over the total export turnover of the product under review during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (70) The Commission thus established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,38 % for the Dhunseri group and 1,67 % for Reliance.

3.4.6. *Comments on disclosure*

Reliance

- (71) Reliance submitted that the Commission made an error by identifying DDS as a subsidy and as scheme falling under Articles 3(1)(a)(i) and submitted that, in addition the Commission has acted in contradiction with this determination by verifying the excess remission of another exporter. Reliance claimed that the Commission treated the different parties differently when calculating the amount of excess remission and, in the particular case of Reliance, countervailed the full DDS benefit instead of restricting countervailing to excess remission only.
- (72) This claim is unfounded. Indeed, as explained above although the subsidy is referred to as a duty drawback, the scheme does not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation; nor does the scheme conform to the rules laid down in Annex I item (i), Annex II and Annex III of the basic Regulation as the cash payment to the exporter is not linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials. Moreover, the same approach and rules were applied to all companies (Reliance and Dhunseri group) as the Commission sought to understand whether the companies actually imported or not any of the relevant raw materials during the review investigation period and paid import duties on such imports. Then, on the basis of the information available, the Commission calculated the excess remission for the two companies. The respective situation of both companies is as follows. IDIPL (part of Dhunseri group) claimed and provided evidence that one of the two main raw materials used to manufacture PET was entirely imported and import duties were paid. The Commission carried out a verification and it showed the correctness of the claim. On this factual basis the Commission calculated the level of subsidisation on the excess remission. Reliance was invited to bring the same evidence as IDIPL, but failed to do so. For Reliance, the excess remission consisted therefore in the full amount received from the GOI. Therefore, since the difference between the two exporting producers is justified on the basis of the difference in the facts available, the claim was rejected.
- (73) Reliance further claimed that the burden of proof was wrongly applied by allegedly imposing upon the exporting producer the burden of determining the quantity of an excess remission.
- (74) The Commission disagrees. It is reminded that the process of investigation is based on questionnaires replies and verification visits. The information related to the level of import duties actually paid (or not) by a given company is a factual point and is to be reported by the company. Reliance did not submit this information in its reply to the questionnaire referred to in recital (19) where interested parties are invited to provide all relevant information as regard the calculation of the subsidisation rate. Faced with this absence of information, the Commission proactively gathered information enabling to determine the potential excess remission during the on-spot verification of Reliance in December 2017. It was first established that Reliance did not pay import duties on the two main raw materials incorporated in exported PET, namely PTA and MEG. The Commission further examined whether import duties were paid on raw materials used to produce PTA, MEG or any upstream raw material used to produce PTA or MEG. It however appeared that Reliance, being an integrated petrochemical company,

was importing crude oil and manufactured internally all intermediate products leading to the production of PET. The Commission then obtained the import duty rate applicable to crude oil which turned out to be 0 % as demonstrated by an exhibit provided by Reliance during the verification visit. Based on this information it appeared that the entire DDS amount was an excess remission. Reliance did not provide any verifiable quantified submission that would have pointed otherwise during the rest of the investigation. Reliance did not provide any information that would allow the calculation of an excess remission despite being invited to do so at several occasions. In short the Commission proactively collected information necessary to calculate the level of DDS subsidisation and despite numerous invitations Reliance failed to provide factual information that the company has in its possession and that would have justified the calculation of an excess remission lower than the total DDS amount. Therefore the claim was rejected.

- (75) Reliance claimed that the only invitation by the Commission to provide information enabling to determine the level of the excess remission was made at the time of disclosure. However, the Commission observes that Reliance was invited to reply to a questionnaire and to provide information regarding excess remission during the verification visit, as explained in recital (74). Thus, this claim was also rejected.
- (76) Reliance noted that the Commission has not made available a verification report and claimed that the absence of this report prevented it to defend its interests properly regarding DDS considering that the Commission reversed the burden of proof in the quantification of the DDS benefit amount.
- (77) As explained before, the Commission considers that the burden of showing that import duties were paid on raw materials incorporated into exported products upon which the GOI refunded those import duties allegedly paid lies upon the exporting producer. The Commission has the burden of calculating the amount of subsidisation on the basis of the information available. In this respect, the Commission notes that relevant elements used to establish the DDS subsidisation rate according to the method explained in recital (69) were verified on the basis of Reliance's questionnaire reply. The verification of DDS was carried out in parallel with the verification of MEIS as the two schemes are very similar. Several export invoices and their related documents were verified. This information is also available to Reliance in the form of mission exhibits. During the verification visit, the Commission found that there was a discrepancy between the value of the export goods submitted by Reliance under the DDS as compared to the value of export goods under MEIS. This discrepancy was explained by Reliance in one of the mission exhibits. Nevertheless, this discrepancy did not affect the calculation of the amount of subsidisation. No other discrepancy was spotted during the verification related to the documents submitted by Reliance in relation with DDS. Accordingly, all information necessary to exercise interested parties' rights of defence was communicated to interested parties, including to Reliance, at an early stage of the investigation. Therefore, the Commission considers that Reliance's rights of defence were properly respected during the underlying investigation. Recital (74) also demonstrates that the Commission did not reverse the burden of proof and on the contrary proactively gathered the information needed to calculate the DDS benefit amount. Therefore, the claim is rejected.

Dhunseri group

- (78) As explained above, all involved economic operators have been treated according to the same rules after a careful assessment of their concrete factual situation was performed. IDIPL reiterated the claim that MPPL was charged and paid, during the RIP, a 'deemed customs duty' to their domestic supplier of PTA and MEG in accordance with their contractual arrangements. IDIPL claimed that the amount of 'deemed customs duty' should be deducted from the total DDS benefit. IDIPL further submitted that the 'deemed customs duty' mechanism is 'enacting a policy decision to pass downstream an import duty levied on the supplier of raw materials'.
- (79) Regarding this claim, the Commission can confirm that the commercial contract between MPPL and its supplier mentions a 'deemed customs duty' component in the formula used to calculate the price of the raw materials. This however does not constitute in itself a proof that a customs duty was actually paid by the domestic supplier since this formula is the result of a commercial negotiation that does not necessarily take into account whether customs duties are actually paid. In this respect IDIPL did not provide any evidence that the raw materials they purchased were imported by their supplier and, in case they were imported, that customs duty was paid. For that reason the claim was rejected.

Government of India

- (80) The GOI submitted that a DDS as contemplated in the ASCM need not necessarily provide remission/exemption/deferral on import charges paid on import inputs but may also provide remission on indirect taxes. On that basis the GOI claimed that the Commission had committed a fundamental error by characterising DDS as an impermissible duty drawback system based on the fact that it can be availed of even in the absence of payment of import duties.
- (81) In this respect, the Commission noted that while the GOI makes a legal reasoning regarding remission of indirect taxes it does not provide any evidence that such indirect taxes were actually paid or payable on raw materials used in the production of exported PET by any interested party and that, in case they were paid, they were not refunded by another tax mechanism unrelated to DDS. In the course of the investigation, no interested party provided information involving indirect taxes in connection with DDS that would affect the level of excess remission although they were prompted to provide information enabling the calculation excess DDS remission on multiple occasions. Therefore the claim was rejected.
- (82) The GOI further claims that DDS provides for a verification mechanism to monitor the consumption of inputs in the production of the exported product.
- (83) In support of its claim the GOI refers to some provisions of the Drawback Rules and the Customs Manual according to which audits and verifications are conducted but it fails to demonstrate that the DDS scheme imposes a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts within the meaning of Annex II(4). Therefore the claim was rejected.
- (84) It is also added that the absence of a verification system or procedure within the meaning of Annex II(4) had no bearing on the determination of the subsidy amounts as set out in recital (70) since the Commission calculated the excess remission on the basis of the information available from the investigated companies. The GOI claimed that the Commission had an obligation to be proactive for the calculation of the excess remission.
- (85) Recital (74) demonstrates that the Commission was proactive in seeking information allowing determining whether part of the DDS amount was not excess remission. Moreover, even if invited to do so, the GOI failed to conduct a further examination on the basis of the actual transactions of the exporting producers concerned. Therefore the claim is irrelevant.

3.5. Export Promotion Capital Goods Scheme (EPCGS)

- (86) The Commission established that the concerned exporting producers received concessions under the EPCGS, which could be allocated to the product under review in the review investigation period.

3.5.1. Legal basis

- (87) The detailed description of EPCGS is contained in chapter 5 of FTP 2015-20 as well as in chapter 5 HOP I 2015-20.

3.5.2. Eligibility

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

3.5.3. Practical implementation

- (89) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced duty rate. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of goods deemed for export during a certain period. Under the FTP 2015-20 the capital goods can be imported with a 0 % duty rate under the EPCGS. The export obligation which amounts to six times the duty saved must be fulfilled within a period of maximum six years.

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

3.5.4. *Conclusion on EPCGS*

- (91) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, it confers a benefit upon the exporter equal to the amount of the duty reduction.
- (92) Furthermore, EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (93) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (i), of the basic Regulation, because they are not consumed in the production of the exported products.

3.5.5. *Calculation of the subsidy amount*

- (94) The Commission calculated the subsidy amount in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The subsidy amount for the review investigation period was then calculated by dividing the total amount of the unpaid customs duty with the depreciation period. The amount so calculated, which is attributable to the review investigation period, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose.
- (95) None of the Indian exporting producers claimed deduction of fees incurred to obtain the subsidy from the total subsidy amount as they are entitled to in accordance with Article 7(1)(a).
- (96) In accordance with Article 7(2) and 7(3) of the basic Regulation, the Commission allocated this subsidy amount over the export turnover of the product under review during the review investigation period as the denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported, or transported.
- (97) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,11 % for the Dhunseri group and 0,45 % for Reliance.

3.5.6. *Comments on disclosure*

- (98) IDIPL argued that the plant and machines imported under EPCGS were used for production of both domestic and export sales of PET and therefore claimed that the denominator in recital (96) should be the total sales of the company instead of the export turnover of PET.
- (99) In this respect, the Commission observes that, even if this unsupported assertion were to be correct, since EPCGS is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported, or transported, Article 7(2) is applicable and the denominator selected in recital (96) is justified. Therefore the claim was rejected.

3.6. **Merchandise Export from India Scheme (MEIS)**

- (100) It was found that both concerned exporting producers received benefits under MEIS during the review investigation period.

3.6.1. *Legal basis*

- (101) The detailed description of MEIS is contained in chapter 3 of FTP 2015-20 and in chapter 3 of HOP I 2015-20.
- (102) MEIS came into force on 1 April 2015.

3.6.2. *Eligibility*

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

3.6.3. *Practical implementation*

- (104) Eligible companies can benefit from MEIS by exporting specific products to specific countries which are categorised into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are specified in Table 1 and Table 2 respectively of Appendix 3B of FTP 2015-20.
- (105) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export.
- (106) At the time MEIS came into force in April 2015 the product under review was not included in Appendix 3B and was thus not eligible to MEIS benefits. On 29 October 2015 however, by Public Notice No 44/2015-2020, PET exports to Group A and B countries became eligible to a MEIS benefit amounting to 2 % of the FOB value of exports. By Public Notice No 06/2015-2020, exports to Group C countries became eligible to the same 2 % benefit on 4 May 2016.
- (107) Certain types of exports are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.
- (108) The duty credits under MEIS are freely transferable and valid for a period of 18 months from the date of issue. They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods; (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment; (iii) payment of service tax on procurement of services.
- (109) An application for claiming benefits under MEIS must be filed online on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the online application. The relevant Regional Authority ('RA') of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the RA has no discretion over the granting of the duty credits.

3.6.4. *Conclusion on MEIS*

- (110) MEIS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. MEIS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties paid on capital goods, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, MEIS duty credit confers a benefit upon the exporter who is not subject to the payment of those import duties.
- (111) Furthermore, MEIS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

3.6.5. *Calculation of the subsidy amount*

- (112) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period. In this regard, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI issues a duty credit which is booked by the exporting producer as an account receivable which can be offset by the exporting producer at any moment. This constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill, the GOI has

no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the MEIS as being the sum of the amounts earned on export transactions made under this scheme during the review investigation period.

- (113) In accordance with Article 7(2) and (3) of the basic Regulation, the Commission allocated this subsidy amount (numerator) over the export turnover of the product under review during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance, and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (114) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to respectively 1,90 % for the Dhunseri group and 1,93 % for Reliance.

3.6.6. Comments on disclosure

- (115) The GOI claimed that MEIS is not countervailable for the following two reasons: (1) the scheme is in line with provisions of paragraph (g) and (h) of Annex I read with provisions of Annex II of the ASCM and (2) duty scrips are 'credit notes' that provide a benefit to the holder only at the time the scrip is used to offset import duties.
- (116) As far as the first reason is concerned, the GOI did not put forward any evidence. the mere allegation that the basic objective of the MEIS is to provide assistance to exporters to offset infrastructural inefficiencies and associated costs/taxes involved and to provide level playing field is not sufficient to show that the MEIS is in line with provisions of paragraph (g) and (h) of Annex I read with provisions of Annex II of the ASCM. In respect of the second reason it is recalled that, as explained in recital (108), from the moment the GOI delivers a duty scrip to the MEIS beneficiary this duty scrip can be used at any moment to offset certain duties or taxes or resold to another operator since duty scrips are freely transferable. It is therefore considered that the GOI provides a benefit to the MEIS beneficiary at the moment the duty scrip is delivered. This also appears to be the interpretation adopted by the Indian accounting standards since the financial value of the scrips is booked as account receivable as soon as the scrips are delivered by the GOI, as explained in recital (112), and not at the time it is actually used to offset a duty or tax. Therefore the claim was rejected.

3.7. Gujarat Electricity Duty Exemption Scheme (GEDES)

- (117) The Commission found that one company availed itself of this measure during the review investigation period. However, the investigation established that the benefit obtained was negligible, and this measure was thus not analysed further.

4. AMOUNT OF COUNTERVAILABLE SUBSIDIES

- (118) The Commission recalls that the amount of subsidisation established for DPL and Reliance by Implementing Regulation (EU) 2015/1350 were respectively 3,2 % and 6,2 %, which translated into countervailing duties of respectively 35,69 EUR/tonne and 69,39 EUR/tonne.
- (119) During the current partial interim reviews the Commission found the amount of countervailing subsidies, expressed *ad valorem*, to be 2,3 % for the Dhunseri group and 4 % for Reliance. As explained in recitals (27) to (30), the subsidy rates of the Dhunseri group reported in the table below were established by aggregating the data of IDIPL and MPPL, the two exporting producers of PET of the group during the review investigation period.

Table

Rates for the individual countervailed subsidies

	DDS	EPCGS	MEIS	Total
Dhunseri group:				
— Dhunseri Petrochem Limited	0,38 %	0,11 %	1,90 %	2,3 %
— IVL Dhunseri Petrochem Industries Private Limited				
— Micro Polypet Pvt. Ltd				
Reliance	1,67 %	0,45 %	1,93 %	4,0 %

- (120) The countervailing measures currently in force take the form of a specific duty. Consequently, on the basis of the subsidy rates described in the table above, the Commission established the following specific countervailing duties: 18,73 EUR/tonne for Dhunseri group and 29,21 EUR/tonne for Reliance.
- (121) In line with recital (16) above the Commission assessed the need to amend the rate of duty applicable to 'all other companies' in India which is 69,40 EUR/tonne. In this respect it is recalled that the highest duty in force against Indian exporting producers, amounting to 74,60 EUR/tonne, is imposed against Pearl Engineering Polymers Ltd, a producer which was not subject to the present reviews. As the highest duty is not amended in the present reviews, no amendment of the rate of duty applicable to 'all other companies' in India was warranted.

5. LASTING NATURE OF CHANGED CIRCUMSTANCES WITH REGARD TO SUBSIDISATION

- (122) In accordance with Article 19(4) of the basic Regulation, it was examined whether circumstances with regard to subsidisation changed significantly during the review investigation period and whether the changed circumstances were of a lasting nature.
- (123) The Commission established that, during the review investigation period, the exporting producers concerned continued to benefit from countervailable subsidisation by the GOI, albeit at different rates.
- (124) As far as Reliance is concerned, the most important subsidies in terms of subsidisation rates during the review investigation period were DDS and MEIS. There is no indication that these subsidies will cease to exist in the foreseeable future. Both subsidies provide a benefit calculated as a fixed percentage of the FOB value of exports and there is no indication that the respective subsidy rates will be modified in the near future either.
- (125) As far as DDS is concerned the subsidisation rate was reduced several times by the GOI over the last seven years: from 5,5 % of the FOB value in 2011 it went down to 3,9 % in 2012, 3,0 % in 2013, 2,4 % 2014, 1,9 % in 2015 and finally 1,5 % during the review investigation period. According to the website of the Central Board of Excise and Customs ⁽¹⁾ the rate was not modified since then.
- (126) As far as MEIS is concerned the rate of 2 % of the FOB value that became applicable to PET in October 2015 as explained in recital (106) has remained unchanged since then according to the website of the Directorate-General of Foreign Trade ⁽²⁾.
- (127) Regarding EPCGS no significant change of subsidisation rate is expected after the review investigation period either because (a) there were no indications of important planned imports of capital goods; and (b) any benefit conferred under this subsidy is spread over a large number of years corresponding to the depreciation period of the capital goods (between 18 to 25 years in India).
- (128) The AAS was Reliance's largest contributor of subsidisation during the last interim review mentioned in recital (7), as was concluded by Implementing Regulation (EU) 2015/1350. As described in recital (46) above, during the review investigation period of the current review the AAS was barely used as most exports benefitted from DDS, which is mutually exclusive with AAS. The AAS scheme remains available and it cannot be excluded that Reliance starts using AAS again in the future but this would automatically reduce the benefits obtained through DDS since any given export transaction can benefit from only one of the two subsidies.
- (129) As set out in recitals (125) to (128) no evidence was found that the countervailed schemes will be discontinued or that their subsidisation levels will be either increased or decreased in the future. On this basis, is the Commission concluded that the circumstances that led to Reliance's new subsidisation rate are of a lasting nature.
- (130) During the review investigation period of the current interim review Reliance benefitted from less subsidisation than during the last interim review mentioned in recital (7), as was concluded by Implementing Regulation (EU) 2015/1350, as the subsidy rates found decreased from 6,2 % to 4 %. On the basis of recital (129), it is also likely

⁽¹⁾ The DDS rates are available at <http://www.cbic.gov.in/htdocs-cbec/customs/dbk-schedule/dbk-idx> (consulted on 4 June 2018).

⁽²⁾ The MEIS rates are available at <http://dgftcom.nic.in/licasp/MEIS/meisitemdetail2016.asp> under ITC code 3907 (consulted on 4 June 2018).

that Reliance will continue to receive subsidies of an amount less than determined in Implementing Regulation (EU) 2015/1350. The Commission therefore concluded that the continuation of the existing measures would result in a level of duty higher than the countervailable subsidy causing injury. Consequently, the level of the measures in force should be amended to reflect the new situation.

- (131) As far as the Dhunseri group is concerned, the investigation established in recitals (27) to (30) that the structure of the group changed significantly. Most importantly the group owned two PET plants during the review investigation period as compared to a single one during the previous interim review. The re-organisation which was conducted in the context of an alliance with partner IVL involved several legal steps over a period of almost two years and, in all likelihood, reached its completion when it was sanctioned by the High Court of Kolkata in December 2017. The Commission hence considered that the change of structure was of a lasting nature. It was therefore concluded that the measures in force should be amended to reflect the new situation also in view of the previous conclusions on the current (and lower) level of subsidisation found in these reviews.

6. FORM OF THE MEASURES

- (132) As explained in recital (120) the amended measures take the form of specific duties. The specific duty rates are calculated on the basis of data pertaining to the review investigation period and remain therefore at the same level regardless of the development of the export price.
- (133) However, by contrast to the subsidies conferring the biggest amounts of subsidisation during the original investigation, the two main subsidy schemes (DDS and MEIS) during the review investigation period confer financial benefits that are directly proportional to the export price. Those two subsidies represented respectively 97 % and 89 % of the total subsidisation of the Dhunseri group and Reliance during the review investigation period. This implies that the amount of countervailable subsidies increases automatically in line with an increase in the export price. Therefore, specific duties do not seem to adequately offset the actual level of subsidisation that the two exporting producers benefited from.
- (134) On this basis, the Commission considered that, in contrast to the original investigation, specific duties may no longer be the most appropriate form of measures considering these circumstances. A change in the form of the measures can however not be envisaged in the context of the current interim reviews because such a change would have to apply to all Indian exporting producers while the current interim reviews are limited in scope to the determination of the level of subsidisation of only two exporting producers. Therefore, the Commission decided to maintain the current form of the measures.

7. PRICE UNDERTAKING OFFERS

- (135) Following the disclosure IDIPL submitted a price undertaking offer. The offer was rejected as the nature of subsidisation creates a situation where application of minimum import price undertaking would have led to increased subsidisation. This is because the level of subsidisation under DDS and MEIS, which jointly represent 95 % of the subsidisation, depends on the FOB value of products exported under these schemes. Furthermore the structure of the group to which IDIPL belongs would have made the effective monitoring of an undertaking impracticable.
- (136) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

The relevant row in the table concerning Dhunseri Petrochem Limited in Article 1 of Implementing Regulation (EU) No 461/2013 shall be replaced by the following:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Dhunseri Petrochem Limited	18,73	A585
India	IVL Dhunseri Petrochem Industries Private Limited	18,73	C380
India	Micro Polypet Pvt. Ltd	18,73	C381'

Article 2

The relevant row in the table concerning Reliance Industries Limited in Article 1(2) of Council Implementing Regulation (EU) No 461/2013 shall be replaced by the following:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Limited	29,21	A181'

Article 3

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, 1 October 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1469**of 1 October 2018****imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, 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⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and existing measures**

- (1) By Regulation (EC) No 2320/1997 ⁽²⁾ the Council imposed anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel, originating in, inter alia, Russia. By Commission Decision 2000/70/EC ⁽³⁾, an undertaking was accepted from an exporter in Russia. By Regulation (EC) No 348/2000 ⁽⁴⁾ the Council imposed anti-dumping duties on imports of certain seamless pipes and tubes, of iron or steel, originating in Croatia and Ukraine. By Council Regulation (EC) No 1322/2004 ⁽⁵⁾, it was decided to no longer apply the measures in force on imports from, inter alia, Russia as a matter of prudence in connection with an anti-competitive behaviour of certain Union producers in the past (see recital (9) of that Regulation).
- (2) Following a review investigation carried out in accordance with Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 258/2005 ⁽⁶⁾, amended the definitive measures imposed by Regulation (EC) No 348/2000, repealed the possibility of exemption from the duties provided for in Article 2 of the same Regulation and imposed an anti-dumping duty of 38,8 % on imports from Croatia and an anti-dumping duty of 64,1 % on imports from Ukraine with the exception of imports from Dnepropetrovsk Tube Works, which were subject to an anti-dumping duty of 51,9 %.
- (3) By Decision 2005/133/EC ⁽⁷⁾, the Commission partially suspended the definitive measures regarding Croatia and Ukraine for a period of nine months, with effect from 18 February 2005. The partial extension was extended for a further period of one year by Council Regulation (EC) No 1866/2005 ⁽⁸⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ L 322, 25.11.1997, p. 1).

⁽³⁾ Commission Decision of 22 December 1999 accepting an undertaking offered in connection with the interim review of the anti-dumping duty applicable to imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia (OJ L 23, 28.1.2000, p. 78).

⁽⁴⁾ Council Regulation (EC) No 348/2000 of 14 February 2000 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine and collecting definitively the provisional duty imposed (OJ L 45, 17.2.2000, p. 1).

⁽⁵⁾ Council Regulation (EC) No 1322/2004 of 16 July 2004 amending Regulation (EC) No 2320/97 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in, inter alia, Russia and Romania (OJ L 246, 20.7.2004, p. 10).

⁽⁶⁾ Council Regulation (EC) No 258/2005 of 14 February 2005 amending the anti-dumping measures imposed by Regulation (EC) No 348/2000 on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine (OJ L 46, 17.2.2005, p. 7).

⁽⁷⁾ Commission Decision of 16 February 2005 partially suspending the definitive anti-dumping duties imposed by Regulation (EC) No 258/2005 on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine (OJ L 46, 17.2.2005, p. 46).

⁽⁸⁾ Council Regulation (EC) No 1866/2005 of 8 November 2005 extending the partial suspension of the definitive anti-dumping duties imposed by Regulation (EC) No 258/2005 on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine (OJ L 300, 17.11.2005, p. 1).

- (4) By Regulation (EC) No 954/2006 ⁽⁹⁾ the Council imposed definitive anti-dumping duties on imports of certain seamless pipes and tubes originating in, inter alia, Croatia, Russia and Ukraine, repealed Regulations (EC) No 2320/97 and (EC) No 348/2000, terminated the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and terminated the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in, inter alia, Croatia, Russia and Ukraine.
- (5) By its judgment of 16 February 2012 in Joined Cases C-191/09 and C-200/09 P *Council and Commission v Interpipe Niko Tube and Interpipe NTRP*, the Court of Justice dismissed the Council's appeal ⁽¹⁰⁾ of the Court of First Instance's judgment of 10 March 2009, annulling Article 1 of Regulation (EC) No 954/2006 insofar as it concerned the part of the anti-dumping duty fixed for products manufactured by Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (together the 'Interpipe Group') which exceeded that which would have been applicable had the export price not been adjusted for a commission when sales took place through the intermediary of the affiliated trader, Sepco SA ⁽¹¹⁾. In accordance with Article 266 of the Treaty on the Functioning of the European Union, the Commission took the measures necessary to comply with the judgments and re-calculated the anti-dumping duty rate for the Interpipe Group in line with the directions of the Court of First Instance and the Court of Justice. Council Implementing Regulation (EU) No 540/2012 ⁽¹²⁾ corrected the aspects of the Regulation (EC) No 954/2006 found to be inconsistent with the basic Regulation, and which thus led to the annulment of parts of that Regulation. That Regulation left all other findings made in Regulation (EC) No 954/2006 remain valid. After re-calculation, the anti-dumping duty currently in force for the Interpipe Group for the product concerned was thus established to be 17,7 %.
- (6) By Regulation (EU) No 585/2012 ⁽¹³⁾ the Council, following an expiry review, imposed definitive anti-dumping duties on imports of certain seamless pipes and tubes originating in Russia and Ukraine and terminated on the anti-dumping measures against imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia ('the previous expiry review').
- (7) Following partial interim review investigations in accordance with Article 11(3) of the basic Regulation, the Council, by Regulation (EU) No 795/2012 ⁽¹⁴⁾ and Regulation (EU) No 1269/2012 ⁽¹⁵⁾ respectively, amended the definitive measures imposed by Regulation (EU) No 585/2012 with regard to a number of Russian and Ukrainian exporting producers.
- (8) The anti-dumping duties currently in force are 35,8 % for imports originating in Russia, with the exception of the Joint Stock Company Chelyabinsk Tube Rolling Plant and Joint Stock Company Pervouralsky Novotrubny Works (24,1 %), OAO Volzhsky Pipe Plant, OAO Taganrog Metallurgical Works, OAO Sinarsky Pipe Plant and OAO Seversky Tube Works (28,7 %), and 25,7 % for imports originating in Ukraine, with the exception of OJSC Dnepropetrovsk Tube Works (12,3 %), LLC Interpipe Niko Tube and OJSC Nizhnedneprovsky Tube Rolling Plant (13,8 %).

⁽⁹⁾ Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ L 175, 29.6.2006, p. 4).

⁽¹⁰⁾ C-191/09 P — Council and Commission v Interpipe Niko Tube and Interpipe NTRP.

⁽¹¹⁾ T-249/06 — Interpipe Niko Tube and Interpipe NTRP v Council.

⁽¹²⁾ Council Implementing Regulation (EU) No 540/2012 of 21 June 2012 amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine (OJ L 165, 26.6.2012, p. 1).

⁽¹³⁾ Council Implementing Regulation (EU) No 585/2012 of 26 June 2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, and terminating the expiry review proceeding concerning imports of certain seamless pipes and tubes, of iron or steel, originating in Croatia (OJ L 174, 4.7.2012, p. 5).

⁽¹⁴⁾ Council Implementing Regulation (EU) No 795/2012 of 28 August 2012 amending Implementing Regulation (EU) No 585/2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 238, 4.9.2012, p. 1).

⁽¹⁵⁾ Council Implementing Regulation (EU) No 1269/2012 of 21 December 2012 amending Implementing Regulation (EU) No 585/2012 imposing a definitive anti-dumping duty on imports of certain seamless steel pipes, of iron or steel, originating, inter alia, in Russia, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 357, 28.12.2012, p. 1).

1.2. Initiation of an expiry review

- (9) On 4 July 2017, the Commission announced the initiation of an expiry review of the anti-dumping measures applicable to imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine pursuant to Article 11(2) of the basic Regulation by a notice published in the *Official Journal of the European Union* ('Notice of initiation') ⁽¹⁶⁾.
- (10) The review was initiated following a substantiated request lodged on 30 March 2017 by the Defence Committee of the Seamless Steel Tubes Industry of the European Union ('the applicant') on behalf of Union producers representing more than 25 %, of the total Union production of certain seamless pipes and tubes. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping for Ukraine and recurrence of dumping for Russia and recurrence of injury to the Union industry.

1.3. Parallel partial interim review

- (11) On 7 May 2018, the Commission initiated a partial interim review concerning imports of certain seamless pipes and tubes, of iron or steel, originating, inter alia, in Ukraine pursuant to Article 11(3) of the basic Regulation ⁽¹⁷⁾. That partial interim review was requested by one group of exporting producers in Ukraine, the Interpipe Group, and it is limited in scope to the examination of dumping as far as the applicant is concerned.

1.4. Investigation

Review investigation period and period considered

- (12) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 July 2016 to 30 June 2017 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2014 up to the end of the RIP ('period considered').

Parties concerned

- (13) The Commission officially informed the exporting producers, importers, known users, the representatives of the exporting countries, the applicant and the Union producers mentioned in the request of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice of initiation.

Sampling

- (14) In view of the large number of exporting producers in Russia and Ukraine and the large number of importers, sampling for exporting producers and importers was initially envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be indeed necessary and, if so, to select a sample, the above parties were requested to make themselves known within 15 days of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation.
- (15) Only two Russian exporting producers (TMK Group and ChTPZ Group, 'the two groups of Russian exporting producers') and one Ukrainian exporting producer ('Interpipe Group') came forward and made themselves known within the deadline. Therefore it was decided not to apply sampling in the case of the exporting producers.
- (16) No importer provided the information requested in the notice of initiation and expressed its willingness to cooperate with the Commission. However, four importers sent submissions upon the initiation of the procedure. Therefore, the Commission decided not to apply sampling.

⁽¹⁶⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain seamless pipes and tubes of iron or steel originating in Russia and Ukraine (OJ C 214, 4.7.2017, p. 9).

⁽¹⁷⁾ Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of certain seamless tubes and pipes originating, inter alia, in Ukraine (OJ C 159, 7.5.2018, p. 18).

- (17) In the Notice of Initiation, the Commission had also stated that it had provisionally selected a sample of Union producers, in accordance with Article 17(1) of the basic Regulation. Prior to the initiation, twelve Union producers had provided the information requested for the selection of the sample and expressed their willingness to cooperate with the Commission. On that basis, the Commission had provisionally selected a sample of three producers, which were found to be representative of the Union industry in terms of volume of production and sales of the like product in the Union.
- (18) Following insufficient cooperation of one of the sampled Union producers and application of the provision of Article 18 of the basic Regulation with regard to this company, the Commission replaced the provisionally selected producer in question by two other Union producers. Therefore, the final sample of the Union producers consists of Arcelor Mittal Tubular Products, Benteler Steel Tube GmbH, Dalmine SpA, and Zeleziarne Podbrezova a.s.

Questionnaires

- (19) Questionnaires were therefore sent to the five sampled Union producers (total of the original and of final sample), to four importers, to the two groups of Russian exporting producers and to Interpipe Group.
- (20) Neither of the two groups of Russian exporting producers replied to the questionnaire. The Russian authorities were informed of the non-cooperation and the intention of the Commission to apply Article 18 of the basic Regulation.
- (21) Both producers nevertheless sent comments disputing the accuracy of the request and opposing the continuation of the measures.
- (22) Replies to the questionnaires were received from the five Union producers and the sole cooperating Ukrainian exporting producer. No reply to the questionnaires was further received from the four Union importers.

Verification visits

- (23) The Commission sought and verified all information it deemed necessary for the purpose of determining the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

Union producers

- Arcelor Mittal Tubular Products, Ostrava, Czech Republic,
- Benteler Steel Tube GmbH, Paderborn, Germany
- Dalmine SpA., Bergamo, Italy,
- Zeleziarne Podbrezova a.s., Podbrezova, Slovakia and its related traders Pipex Italia SpA., Arona, Italy and Slavrur Sp. z o.o., Stalowa Wola, Poland,
- Vallourec Deutschland GmbH, Boulogne Billancourt, France.

Exporting producer in Ukraine

- The Interpipe Group (OJSC Interpipe NTRP, Dnepropetrovsk, Ukraine, LLC Interpipe Niko Tube, Nikopol, Ukraine) and their related trading companies LLC Interpipe Ukraine, Dnepropetrovsk, Ukraine, Interpipe Europe SA, Lugano, Switzerland and Interpipe Central Trade GmbH, Frankfurt, Germany).

Subsequent procedure

- (24) On 13 July 2018, the Commission disclosed the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or non-alloy steel, originating in Russia and Ukraine.
- (25) Comments were received from the two groups of Russian exporting producers, from Interpipe Group, from the Mission of Ukraine before the European Union and from the Permanent Mission of the Russian Federation to the European Union. On 8 August 2018 a hearing took place between the two groups of Russian exporting producers and the Permanent Mission of the Russian Federation to the European Union and the Commission services. On the same day, a hearing took place between Interpipe Group and the Commission services. In view of the comments made by Interpipe Group, the company was provided with two additional disclosures regarding the analysis with regard to Ukraine and certain company specific issues.

- (26) The comments submitted by the interested parties were considered and taken into account where appropriate.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (27) The product concerned is the same as that in the last investigation which led to the imposition of measures currently in force, i.e. certain seamless pipes and tubes of iron or steel ('SPT'), of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis ⁽¹⁸⁾, originating in Russia and Ukraine ('the product concerned'), currently falling within CN codes ex 7304 11 00, ex 7304 19 10, ex 7304 19 30, ex 7304 22 00, ex 7304 23 00, ex 7304 24 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 80, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 89, ex 7304 59 92 and ex 7304 59 93 ⁽¹⁹⁾ (TARIC codes 7304 11 00 10, 7304 19 10 20, 7304 19 30 20, 7304 22 00 20, 7304 23 00 20, 7304 24 00 20, 7304 29 10 20, 7304 29 30 20, 7304 31 80 30, 7304 39 58 30, 7304 39 92 30, 7304 39 93 20, 7304 51 89 30, 7304 59 92 30 and 7304 59 93 20)
- (28) The product concerned is used in a wide variety of applications, like line pipes to transport liquids, in the construction business for piling, for mechanical uses, gas tubes, boiler tubes and oil and country tubular goods ('OCTG') for drilling, casing and tubing for the oil industry.
- (29) SPT take very different forms at the time of their delivery to the users. They can be e.g. galvanised, threaded, delivered as green tubes (i.e. without any heat treatment), with special ends, different cross-sections, cut to size or not. There are no generalised standard sizes for the tubes, which explains why most of the SPT are made upon customers' order. SPT are normally connected by welding. However, in particular cases they can be connected by their thread or be used alone, although they remain weldable. The investigation showed that all SPT share the same basic physical, chemical and technical characteristics and the same basic uses.

2.2. Like product

- (30) As established in previous as well as in the latest investigation, this expiry review investigation confirmed that the product exported to the Union from Russia and Ukraine, the product produced and sold on the domestic markets of Russia and Ukraine, and the product produced and sold in the Union by the Union producers have the same basic physical and technical characteristics and end uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (31) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether dumping was likely to continue or recur upon an expiry of the measures in force.

3.1. Russia

3.1.1. Dumping during the review investigation period

3.1.1.1. Preliminary remarks

- (32) In accordance with Article 11(2) of the basic Regulation, the Commission first examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from Russia.
- (33) In the absence of cooperation by any Russian exporting producer, as indicated in recital (20), the Commission based its overall analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.

⁽¹⁸⁾ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

⁽¹⁹⁾ As currently defined in Commission Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).

- (34) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with other sources of information such as information collected on the basis of Article 14(6) of the basic Regulation, information contained in the written submissions received including, inter alia, Russian export statistics of the Russian Federal Customs Service ('RFCs') ⁽²⁰⁾, and statistical data from the specialist website Metal Expert ⁽²¹⁾.
- (35) The Russian non-cooperation made it impossible for the Commission to compare the normal value with the export price on a product type by product type basis. Therefore, both the normal value and the export price were established by using average values, in accordance with Article 18 of the basic Regulation.

3.1.1.2. Normal value

- (36) In order to establish normal value, the Commission used the same methodology as the one applied by the applicant in the request. This methodology is based on the Russian domestic price data available on Metal Expert. The Commission thus used average domestic prices in Russia, ex-works stated in Metal Expert for the 12 months from July 2016 to June 2017.

3.1.1.3. Export price

- (37) Export prices to the Union were established on the basis of the Commission's 14(6) database.

3.1.1.4. Comparison

- (38) The normal value and the export price were compared on an ex-works basis. Normal value was adjusted upwards following the methodology provided by the applicant ⁽²²⁾ and on the basis of the information available on the Metal Expert. The export price was adjusted downwards to an ex-works level. To this end, delivery costs, insurance and commission were deducted on the basis of information available in the request.

3.1.1.5. Dumping

- (39) On the basis of the above, the Commission calculated a dumping margin for Russian exports to the Union of around 33 %. The level of imports during the review investigation period was, however, relatively limited, representing 0,6 % of Union consumption.

3.1.1.6. Comments after final disclosure

- (40) After disclosure, the two groups of Russian exporting producers jointly submitted comments to the Commission's General Disclosure Document.
- (41) Both companies contested the legality of the existing measures. First, they claimed that the the original measures were illegal since the Commission had applied a cost adjustment to the normal value based on Article 2(5) of the basic Regulation, which would, allegedly, be illegal under the WTO Appellate Body jurisprudence ⁽²³⁾. Secondly, they claimed that the Commission's approach in expiry reviews, whereby the Commission does not make company-specific findings ⁽²⁴⁾, is contrary to the letter and spirit of the basic Regulation and the WTO Anti-dumping Agreement.
- (42) The first claim was rejected since it refers to the calculation of the original duty which falls outside the scope of the current procedure. For the purpose of this expiry review, in the absence of cooperation of the Russian exporting producers, the provisions of Article 18 had to be used. On the second claim, the two groups of Russian exporting producers failed to substantiate the reasons as to why country-wide determinations in the context of expiry reviews would be illegal. This claim was therefore also rejected.
- (43) With regard to the specific aspects of the investigation, the two groups of Russian exporting producers first contested the Commission's application of Article 18 of the basic Regulation, and claimed that the Commission had disregarded information submitted by them in the course of the investigation.

⁽²⁰⁾ Federal Customs Services Data Base on External Trade <http://stat.customs.ru/apex/> (publicly available data provided by the Russian exporting producers. Annex 2 of the submissions of 21 August 2017 and of 30 July 2018).

⁽²¹⁾ Metal Expert LLC: www.metalexpert-group.com

⁽²²⁾ Available in the open version of the request.

⁽²³⁾ *European Union — Anti-dumping measures on Biodiesel from Argentina*, WT/DS473/AB.

⁽²⁴⁾ E.g. a determination that may allow for termination of the investigation for an exporting producer even if the measures were to be maintained at a country-wide level.

- (44) With regard to the application of Article 18 of the basic Regulation, all known Russian exporting producers were encouraged to fill in the questionnaire intended for exporting producers following initiation ⁽²⁵⁾. In addition, the Permanent Mission of Russia before the EU received the blank questionnaires and was encouraged to contact (or make the Commission learn about) other Russian producers that may not have been known to the Commission on the day of initiation, so that they would be given the opportunity to take part in the investigation.
- (45) The two groups of Russian exporting producers that came forward informed the Commission, on 21 August 2017, that they had decided not to fully cooperate with the investigation, specifying that they had decided not to reply to the questionnaire and voluntarily limit their participation to submitting only certain data (such as production and capacity, as well as export prices to third markets) and comments on some aspects of the investigation. The two groups of Russian exporting producers were nevertheless provided with a questionnaire and invited to complete it. In the letter accompanying this invitation, the Russian exporting producers were unequivocally informed that absent a reply to the questionnaire, the Commission would apply Article 18 of the basic Regulation. No questionnaire reply was received from either of them.
- (46) In view of this, the Commission informed the Russian authorities of its intention to apply Article 18 of the basic Regulation on 22 March 2018.
- (47) The Commission however underlined, during the hearing of 8 August 2018, that it had not disregarded the data submitted by the two groups of Russian exporting producers, as wrongly claimed by them. In fact, the Commission explained that it had cross-checked the data provided by the two groups of Russian exporting producers regarding capacity and production with publicly available data, namely Metal Expert. The Commission also used the data from the Russian Exports Statistics received from the exporting producers, as explained in recital (34). Therefore, the claim that the Commission had disregarded the information submitted by the two groups of exporting producers was rejected.
- (48) The two groups of Russian exporting producers also noted that they had invited the Commission to carry out verification visits on the limited data that they had provided and that no verification visit had taken place.
- (49) According to Article 16 of the basic Regulation, verification visits should be carried out where the Commission considers it appropriate and, in the absence of a proper and timely reply, the Commission may choose not to carry out such a verification visit. On that basis, and given the absence of a proper questionnaire reply in this case, the Commission considered that no verification visit should take place.

3.1.2. *Likelihood of continuation or recurrence of dumping should measures be repealed*

- (50) As established above, Russia was found to continue dumping in the review investigation period, but the level of imports during the review investigation period was relatively limited. Therefore, the Commission analysed whether dumping was likely to continue or recur if the current anti-dumping measures would be allowed to expire. When doing so, it looked into production and spare capacity in Russia, the attractiveness of the Union market and the behaviour of Russian exporters in other markets.

3.1.2.1. Spare capacity

- (51) After final disclosure, the two groups of Russian exporting producers contested the findings made by the Commission on the spare capacity available in Russia. In particular, the two groups of Russian exporting producers claimed that the Commission had overestimated the spare capacity available in Russia. This spare capacity was based on market intelligence data (Metal Expert) and it was estimated at more than 550 000 tonnes.
- (52) During the hearing of 8 August 2018, the Commission explained the data it had used to calculate the figure reported in the General Disclosure Document, i.e., the data publicly available (as included on the file) at the time of the drafting of the General Disclosure Document. Following the comments received and the discussions held at the hearing, the Commission invited the two groups of Russian exporting producers to submit the most updated and detailed data on production and capacity available to them. The two groups of Russian exporting producers supplied this information (sourced from Metal Expert) to the Commission on 10 August 2018. Therefore, for the calculation of the production capacity the Commission used the updated data from Metal Expert as provided by the two groups of Russian exporting producers in the submission of 10 August 2018.

⁽²⁵⁾ In the communication of 27 July 2018, the Russian exporting producers were unequivocally informed that, absent a reply to the questionnaire, the Commission would apply Article 18 of the basic Regulation.

- (53) The updated spare capacity figures thus obtained pointed at a spare capacity in Russia, during the review investigation period, of 350 000-380 000 tonnes. This significant overcapacity represents more than 25 % of Union consumption.

3.1.2.2. Attractiveness of the Union market

- (54) The investigation has confirmed that the Union market is attractive for Russian producers for the following reasons:
- (55) Firstly, in terms of size, the Union market (over 1,3 million tonnes consumption in the review investigation period and 1,5 million tonnes in 2014) can be regarded as one of the largest markets of SPT worldwide.
- (56) Secondly, after the imposition of the US Section 232 measures of 25 % on steel products ⁽²⁶⁾, which cover also the product concerned, Russian exports to one of its main export markets may be, at least, partially restricted. This would in turn make the Union market more attractive, thus creating the risk that certain trade diversion to the Union may take place.
- (57) In terms of prices, the level of undercutting in the review investigation period (see recital (137) below) shows that the average price level of Russian imports on the Union market is below that of the Union producers, and therefore exports are likely to continue to increase should measures be repealed.
- (58) Given the relatively low level of imports to the Union during the review investigation period (8 663 tons), the Commission also analysed the export prices from Russia to other third markets during the review investigation period, as reported in the official Russian export statistics from the RFCS, and it compared these price levels with the import prices into the Union. That analysis showed that Russia was selling in several of its main export markets at prices similar to or sometimes even lower than the prices of exports dumped into the Union market.
- (59) In view of the findings established in recitals (50) to (58) the Commission concluded that there is a strong likelihood that if measures were allowed to lapse, dumped imports from Russia would recur in significant volumes.

3.1.2.3. Comments after final disclosure

- (60) After final disclosure, the groups of Russian exporting producers submitted that there is no likelihood of continuation of dumping should the measures be repealed. They highlighted the performance of the Russian SPT domestic market and the situation of other export markets as the main elements to contest the Commission findings. In addition, the Russian exporting producers claimed that the Commission had disregarded the (publicly available) data supplied by them pertaining to price levels to other third country markets.
- (61) This claim is factually wrong. The Commission informed the Russian exporting producers, at the hearing of 8 August 2018, that it had taken into account for its analysis the data publicly available from the Russian export statistics submitted by the two groups of Russian exporting producers ⁽²⁷⁾. Based on these data, the Commission confirmed that the price levels to several of Russia's main export markets, constituting a relevant share of Russia's total exports of SPT, were made at prices below its export prices to the Union during the review investigation period ⁽²⁸⁾. Therefore the claim was dismissed.
- (62) The two groups of Russian exporting producers claimed that the Commission's conclusion on the size of the Union market, as mentioned in (55) above, was 'largely overestimated'. In addition, they also claimed that there are other markets more attractive than the Union market.
- (63) Firstly, the importance of the Union market was specifically raised at the hearing of 8 August 2018, where the representatives of the largest Russian producer acknowledged that the Union market was indeed one of the main markets for the product concerned. It is to be underlined that the Commission did not take any position as to

⁽²⁶⁾ See: Presidential Proclamations on Adjusting Imports of Steel and Aluminium into the United States, Federal Register, 83 FR 11619 and 83 FR 11625, 15 March 2018; the 22 March 2018 Presidential Proclamations on Adjusting Imports of Steel and Aluminium into the United States. 83 FR 13355 and 83 FR 13361, 28 March 2018; and the 30 April 2018 Proclamations on Adjusting Imports of Steel and Aluminium into the United States. 83 FR 20683 and 83 FR 20677, 7 May 2018; and the 31 May 2018, Proclamations on Adjusting Imports of Steel and Aluminum into the United States.

⁽²⁷⁾ Originally submitted on 21 August 2017, Annex 2. The same data with small variations was also submitted in its comments to the GDD and in its post-hearing submissions of 10 August 2018

⁽²⁸⁾ Annex 2 of the submission of 30 July 2018 and Annex 2 of the submission of 21 August 2017. These data show that the price levels when exporting SPT to several third countries, including top export destinations (accounting for more than 50 % of its total SPT exports) are even lower than the dumped export prices to the Union. For instance, export prices to the USA (number 1), Turkey (number 4), India and UEA (numbers 5 and 6) are lower than export prices to the Union.

whether there could be other markets more attractive than the Union market. Rather, the Commission established that the Union market was attractive for Russian exporting producers for the reasons set out in recitals (55) to (58).

- (64) In this respect the Commission also observed inconsistencies between the narrative part of the submissions received from the Russian exporting producers and the actual data contained in these submissions. In particular, the Russian exporting producers highlighted that the prices to certain countries, such as India, Turkey and the UAE are made at 'prices exceeding export prices to the Union' ⁽²⁹⁾. This claim is factually incorrect and contradicts the actual figures submitted by the same parties ⁽³⁰⁾, which clearly showed that during the review investigation period, prices to the Union were actually higher ⁽³¹⁾. Therefore this claim was dismissed.
- (65) The two groups of Russian exporting producers also contested the Commission's conclusions that following the application of the US Section 232 measures there would be a risk a trade diversion and also referred to the preliminary findings made by the Commission on the ongoing EU Safeguard investigation on certain steel products, whereby SPT was provisionally excluded from the application of the measures ⁽³²⁾.
- (66) With regard to the EU Steel Safeguard investigation, the proceeding is still ongoing and SPT were provisionally excluded from the measures. However, this provisional exclusion of SPT from the provisional safeguard measures was not based on lack of trade diversion (as wrongly argued by the Russian exporting producers), but it was based on a lack of increase in imports ⁽³³⁾.
- (67) Regarding the potential effect of the US 232 measures, the Commission maintains that the risk of trade diversion cannot be excluded and that such risk would definitely become more likely if the measures in place were allowed to lapse. It has to be noted that a 25 % duty in the USA as opposed to a 0 % in the Union, if the duties lapsed, would clearly make the Union market more attractive for Russian exporting producers than under the current circumstances, i.e. duty in place in both markets. Therefore the import trends in the USA so far are not indicative given that the Union measures remain in place and the incentive to switch markets may not be as relevant as it would be in the absence of measures in the Union.
- (68) The two groups of Russian exporting producers also claimed that certain exemptions from the US 232 measures for certain Russian exporting producers were very likely to take place. The Commission noted that from the evidence ⁽³⁴⁾ made available to it in this respect, it could not be inferred that a particular Russian producer was likely to be excluded from the measures. Therefore, in the absence of any solid evidence in this respect, the Commission rejected this claim.
- (69) Lastly, the two groups of Russian exporting producers claimed that, in view of the limited quantities exported in the review investigation period, it was unlikely that the repeal of the measures would lead to a continuation or recurrence of dumping.
- (70) The Commission referred to its findings on the likelihood of continuation or recurrence of dumping as set out in recitals (50) to (68), and emphasised that the analysis of likelihood of continuation or recurrence of dumping is of a prospective nature. This claim was thus rejected.

3.2. Ukraine

3.2.1. *Dumping during the review investigation period*

3.2.1.1. Preliminary remarks

- (71) There are three known producers of SPT in Ukraine. One of them, Interpipe Group, cooperated with the investigation. Interpipe Group is by far the largest producer in Ukraine. According to trade statistics, its exports of SPT to the Union during the review investigation period represented around 87 % of the total imports from Ukraine in that period ⁽³⁵⁾, amounting to 80 711 tonnes or 6 % of Union consumption during the review investigation period. The data submitted by Interpipe Group were verified on-spot in Ukraine as well as at the premises of

⁽²⁹⁾ Paragraph 32 of submission of 21 August 2017, as well as paragraph 25 of the submission of 30 July 2018.

⁽³⁰⁾ Annex 2 of the above submissions.

⁽³¹⁾ To be noted that, for instance, in the case of Turkey, the prices to the Union had always been higher irrespective of the year of the period considered taken into account (it is not specified in the submission which period it is referred to).

⁽³²⁾ Commission Implementing Regulation (EU) 2018/2013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products (OJ L 181, 18.7.2018, p. 39).

⁽³³⁾ Ibid at 24.

⁽³⁴⁾ Annex 3 of submission of 30 July 2018.

⁽³⁵⁾ Source: Article 14(6) database.

their related trader in Switzerland and its related importer in Germany. After verification, the Commission corrected certain data originally supplied by Interpipe Group, mainly with respect to SG&A and CIF values.

- (72) Interpipe Group has two fully owned and controlled exporting producers, LLC Interpipe Niko Tube ('Niko Tube') and OJSC Interpipe NTRP ('NTRP'). In line with the Commission's standard practice, one common dumping margin was calculated for the two exporting producers. The amount of dumping was first calculated for each individual exporting producer and then a weighted average of the individual dumping margins was established at the level of the Interpipe group.
- (73) In view of the significant exports to the Union by Interpipe Group during the review investigation period, the analysis of continuation of dumping during that period was primarily based on the verified data provided by Interpipe Group.

3.2.1.2. Normal value

- (74) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represents at least 5 % of total export sales volume of the product concerned to the Union during the review investigation period. On this basis, the examination established that the sales of the like product on the domestic market were representative for both exporting producers.
- (75) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export by Interpipe Group.
- (76) The Commission then examined whether the domestic sales of Interpipe Group for each product type that is identical or comparable with a product type sold for export were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the review investigation period constituted at least 5 % of the total volume of export sales of the identical or comparable product type. The Commission established that for the majority of product types domestic sales were made in representative quantities.
- (77) The Commission subsequently defined the proportion of profitable sales to independent customers on the domestic market for each product type during the review investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (78) The normal value was based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

In the case at hand, the normal value is the weighted average of the prices of all domestic sales of that product type during the review investigation period.

- (79) The normal value was based on the actual domestic price per product type of only the profitable domestic sales of the product types during the review investigation period, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (80) When there were no sales of a product type of the like product in the ordinary course of trade, or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (81) Normal value was constructed by adding the following to the average cost of production of the like product of each cooperating exporting producer during the review investigation period:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by each cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period, and

- (b) the weighted average profit realised by each cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period.
- (82) Following final disclosure, Interpipe Group contested some of the elements used by the Commission in the calculation of the normal value. The claims pertained to the following issues: (i) calculation of SG&A between related companies; (ii) use of financial costs stemming from [confidential] ⁽³⁶⁾; (iii) foreign exchange gains/losses stemming from [confidential]; (iv) certain credit costs should be taken into account.
- (83) With regard to the first element, the Commission informed Interpipe Group, in the second additional disclosure, of what would be the impact on the dumping margin and the subsequent findings if the claim was accepted. The Commission also provided a provisional calculation to this effect, following the same approach as in the previous expiry review. Following the analysis of all the elements, the Commission accepted the claim of Interpipe Group regarding this item and hence the dumping margin was reduced accordingly (see recital (90) below). The Commission rejected the arguments (ii) and (iii). Due to the confidential nature of the data involved in the analysis, the Commission provided Interpipe with an individual explanation on the day of publication of this Regulation.
- (84) With regard to the claim that credit costs should have been taken into account in the dumping calculation, the Commission maintained (as it explained in the specific disclosure of 13 July 2018) that the company had failed to provide the Commission with the requested evidence in support of their claim. Therefore this claim was rejected.

3.2.1.3. Export price

- (85) The exporting producers exported the product concerned to independent customers in the Union through a number of related companies acting as traders and/or importers.
- (86) When the exporting producer exported the product concerned to independent customers in the Union through a related company acting as a trader (Interpipe Europe SA), the export price was established on the basis of prices actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (87) When the exporting producers exported the product concerned to the Union through a related company acting as an importer (Interpipe Central Trade GmbH), the export price was constructed on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. Adjustments to the export price pursuant to Article 2(9) of the basic Regulation were carried out on the transactions concerning the related importer in Germany. The sales price by the related importer to unrelated customers was adjusted backwards to an ex-works price by deducting the SG&A of the related importer, a reasonable amount of profit and other allowances whenever applicable.
- (88) Following final disclosure Interpipe Group claimed that the CIF price of Interpipe Europe should be reviewed due to a discrepancy between the calculation and the narrative explanation in the company specific final disclosure.

Indeed, the Commission observed that the narrative part of the specific disclosure was not properly reflecting the way that the CIF calculation had been actually carried out. The Commission therefore corrected the narrative of the specific disclosure and confirmed that the calculation had been done on the basis of the findings as discussed with the company during the verification visit.

3.2.1.4. Comparison

- (89) Interpipe Group's export prices to the Union were compared with the normal value of its domestic sales at ex-works level. In order to ensure a fair comparison, account was taken of differences which affect price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, allowances for transport costs and commissions affecting normal value and export price were deducted.

3.2.1.5. Dumping

- (90) On the basis of the above, the dumping margin found for the Interpipe Group during the review investigation period amounted to 21,6 %. Given that Interpipe Group is the largest Ukrainian producer and that it represented most of the imports from Ukraine in the review investigation period, as explained in recital (71), the Commission concluded that the dumping found for Interpipe Group was representative for Ukraine at a country-wide level.

⁽³⁶⁾ Any references to company confidential data are labelled as [confidential] in this Regulation.

- (91) The Commission thus established that dumping from Ukraine had continued in the review investigation period.

3.2.2. Likelihood of continuation of dumping should measures be repealed

- (92) As established above, Ukraine was found to continue dumping in the review investigation period. Imports from Ukraine reached 80 711 tonnes in the review investigation period, representing 6 % market share in the Union market ⁽³⁷⁾. Further to these findings, the Commission analysed whether dumping from Ukraine was likely to continue if the anti-dumping measures in place were allowed to lapse. When doing so, it looked into production and spare capacity in Ukraine, the attractiveness of the Union market and the behaviour of Ukrainian exporters in other markets.

3.2.2.1. Spare capacity

- (93) Spare capacity was calculated as follows. As concerns Interpipe Group, the spare capacity could be established on the basis of the reported and duly verified data. The other two producers of the product concerned in Ukraine did not reply to the questionnaire. They only provided certain information on their production and production capacity in written submissions. That information was analysed and compared with market intelligence sources, in particular Metal Expert. Accordingly, for Ukraine, the spare capacity available was estimated to be, at least, around 500 000 tonnes, which represents around 40 % of Union consumption ⁽³⁸⁾.
- (94) Following final disclosure, Interpipe Group contested the Commission's spare capacity figure mentioned above, initially claiming that it should amount to [80 000-100 000 tonnes]. Following the comments received, the Commission provided detailed explanations and clarifications in its first additional disclosure to the Interpipe Group, at the hearing with the company and also in the second additional disclosure to the Interpipe Group. In its comments to the first additional disclosure and at the hearing, the Interpipe Group confirmed that it agreed with the spare capacity calculated by the Commission as far as the Interpipe Group was concerned, which was a significantly higher figure than the figure mentioned in its comments to the final disclosure. Nevertheless, the Interpipe Group continued to contest the capacity calculation with regard to the other two Ukrainian producers.
- (95) In this respect, the Commission reminded the Interpipe Group of the fact that none of the two companies had fully cooperated with the Commission as they had only submitted certain information pertaining to production and/or production capacity. It was also recalled that the information provided by these parties was nevertheless, and contrary to what the Interpipe Group claimed, taken into consideration by the Commission in its analysis. In fact, the Commission cross-checked the information provided in these submissions with publicly available data from Metal Expert.
- (96) For one of these parties, Metal Expert data could be reconciled with the company's claim that there had been a massive reduction in the production capacity over the period considered. For calculating its spare capacity, the Commission thus relied on the reduced production capacity as reported in Metal Expert. Nevertheless, after this additional disclosure, the Interpipe Group continued to contest the spare capacity figure thus established. The Commission rejected this claim for the following reasons:
- (97) The company concerned, in its own submission, did not provide any figure regarding production capacity. It only noted that 'employment went down (reduction of between 60 % and 75 % in the workforce) and that the production amounted to [4 000-10 000] MT per year. In addition, in its comments after the additional disclosure, Interpipe Group did not provide any estimation whatsoever of the production capacity of the company concerned.
- (98) Therefore, it follows from the submissions of Interpipe Group as well as of the company concerned that the Commission was not even given a starting point to assess the production and spare capacity for this company. The Commission nevertheless concluded that the claim of the company concerned was corroborated by publicly available data as the reduced production capacity was reflected in the Metal Expert production capacity figure for it. The Commission hence decided to calculate its spare capacity on the basis of the production data provided by the company concerned and the production capacity data reported in Metal Expert.
- (99) Therefore, the claim that the company had massively reduced its production capacity was accepted by the Commission. Interpipe Group's claim is thus unfounded.

⁽³⁷⁾ Source: Article 14(6) database and Interpipe Group's verified information.

⁽³⁸⁾ Source: Interpipe Group's verified data and Metal Expert for the two other producers in Ukraine.

- (100) As concerns the third producer, the Commission observed significant discrepancies between the data provided by it and data publicly available. The Commission thus relied on the production capacity as reported in Metal Expert for calculating its spare capacity. The Interpipe Group claimed that the Commission should make assumptions on the basis of an alleged verification of that company performed in the framework of another anti-dumping investigation which was carried out more than 10 years ago. The Commission considers that using recent figures constitutes a more appropriate and reliable way of obtaining production and spare capacity information in the framework of this investigation.
- (101) In this respect, the Commission notes that the producer in question confirmed in its several submissions to the Commission ⁽³⁹⁾ that the number of production lines in place had not changed in the last years (although, allegedly, some of them are currently not in use). Therefore and in the absence of a questionnaire reply, the Commission could not verify whether the allegations of the company would have warranted the acceptance of its claim on reduced production capacity.
- (102) Following the specific additional disclosure, Interpipe Group submitted a document which, it considered, invalidated this calculation with regard to the other two Ukrainian producers. However, the document contradicted market intelligence data available to the Commission, which actually confirmed the Commission's calculation. This market intelligence data showed that the production capacity of the other two Ukrainian exporting producers was significantly higher than the data in the document provided by the Interpipe Group.
- (103) Therefore, the Commission confirms its determination with regard to spare capacity in Ukraine, as set out in recital (93).

3.2.2.2. Attractiveness of the Union market

- (104) The investigation has confirmed that the Union market is also attractive for the Ukrainian exporting producers for the following reasons:
- (105) Firstly, in terms of size, the Union market (over 1,3 million tonnes consumption in the review investigation period and 1,5 million tonnes in 2014) can be regarded as one of the largest markets of SPT worldwide.
- (106) Secondly, in terms of prices, the level of undercutting in the review investigation period (see recital (136) below) shows that the average price level of Ukrainian imports on the Union market is below that of the Union producers, and therefore exports are likely to continue to increase should measures be repealed.
- (107) Third, despite the anti-dumping duty in place, Ukraine has steadily increased its level of imports in the last years (from less than 2 % market share in 2012 to 6 % in the review investigation period), which confirms that the Union market remains an attractive market despite the duties in place.
- (108) Fourth, after the imposition of the US Section 232 measures of 25 % on steel products ⁽⁴⁰⁾, which cover also the product concerned, Ukrainian exports to one of its main export markets may be, at least, partially restricted. This would in turn make the Union market more attractive, thus creating the risk that certain trade diversion to the Union may take place. This is to be viewed in addition to other existing trade barriers in third markets (see recital (116) below).
- (109) Following final disclosure, the Interpipe Group contested the findings of the Commission with regard to the attractiveness of the Union market.
- (110) In particular, the Interpipe Group challenged the Commission assessment with regard to the potential impact of the US 232 measures and the increasing imports from Ukraine during the period considered.

⁽³⁹⁾ Submissions of 27 July 2017 (t17.009159), 8 August 2017 (t17.009653), 1 February 2018 (t18.000894) and 31 May (t18.006325) and 1 June 2018 (t18.006324)

⁽⁴⁰⁾ See: Presidential Proclamations on Adjusting Imports of Steel and Aluminium into the United States, Federal Register, 83 FR 11619 and 83 FR 11625, 15 March 2018; the 22 March 2018 Presidential Proclamations on Adjusting Imports of Steel and Aluminium into the United States, 83 FR 13355 and 83 FR 13361, 28 March 2018; and the 30 April 2018 Proclamations on Adjusting Imports of Steel and Aluminium into the United States, 83 FR 20683 and 83 FR 20677, 7 May 2018; and the 31 May 2018, Proclamations on Adjusting Imports of Steel and Aluminium into the United States.

- (111) With regard to the first point, the Interpipe Group contested the Commission analysis regarding the potential impact that the US Section 232 measures would have in the market. In particular, the Interpipe Group considered that there was no risk of trade diversion into the Union market. The Interpipe Group also pointed to the Commission's provisional measures in the context of the safeguard investigation into steel products, as far SPT is concerned.
- (112) First, as stated in recital (66) in the provisional measures imposed in the context of the safeguard investigation, it was indeed decided to exclude SPT from the scope of the provisional measures. However this provisional exclusion was not done on the basis of a lack of a risk of trade diversion, but rather on the grounds that the level of imports of this product had overall not shown an increase over the relevant period.
- (113) Second, the Interpipe Group acknowledged that some of its exports to the USA concern OCTG types but also general-use and line pipes, which is the product type it mainly exports to the Union. The Interpipe Group also claimed that, until May 2018 (included), the level of exports into the USA had increased.
- (114) The Commission maintains that there is a risk that, at least, some of the quantities currently exported to the USA from Ukraine could be directed to the Union should the measures lapse. This risk concerns in particular standard SPT. It has to be noted that a 25 % duty in the USA on the 'standard SPT', as opposed to a 0 % in the Union, if the duties lapsed, would clearly make the Union market more attractive for Ukrainian exporting producers than under the current circumstances, i.e. duty in place in both markets. Therefore, the trends so far are not indicative given that the Union measures remain in place and the incentive to switch markets may not be as relevant as in the absence of measures in the Union. In addition, the fact that under the US 232 measures some countries and/or specific companies have already been subject to exemptions would make it more difficult for Ukrainian producers to compete in the US market ⁽⁴¹⁾.
- (115) Moreover, the Commission considers that the risk of trade diversion cannot be excluded and that such risk would definitely become more likely if the measures in place were allowed to lapse.
- (116) Lastly, the US 232 measures should also be seen in a wider context as far as Ukraine is concerned, namely, the numerous trade barriers that Ukrainian SPT producers are currently subject to in some third markets, namely anti-dumping measures in Brazil, Canada, Mexico, and Russia.
- (117) Therefore, in view of all the above, the Commission maintains that the Union market would become even more attractive without an anti-dumping duty and hence, would likely receive an increase of dumped imports from Ukraine.

3.2.2.3. Other comments after final disclosure

- (118) The Interpipe Group made several claims linked to the developments in the consumption in the Ukrainian market and the diversification of its export markets. First, the Interpipe Group claimed that its export level and market share evolution followed or were otherwise in line with the development of the consumption in the Union, and that the development of imports and their market share cannot create any risk to the Union industry. Second, the Interpipe Group claimed that in view of the unprecedented growth in the Ukrainian market it could not increase the sales of SPT to the Union. The Interpipe Group concluded that the growth in the domestic demand would be capable of absorbing any excess production in Ukraine. In the same vein, the Interpipe Group also pointed at a more diversified export portfolio to contest the Commission's finding on the likelihood of continuation of dumping. The Commission addressed these claims in the second additional disclosure to the Interpipe Group.
- (119) The Commission considered these claims but contested them. The first limb of this claim is factually wrong and the second is at odds with the facts as established by this investigation.
- (120) On the first limb, by way of example, in the year 2015, Ukraine increased its exports by 20 % while consumption in the Union decreased by 9 %. Moreover, in overall terms during the period considered, Ukraine increased its market share in the Union by 27 % (its market share increased by 1,3 percentage points) while consumption in the Union in the same period decreased by 10 %.

⁽⁴¹⁾ Neither the Ukrainian authorities, nor the Interpipe Group individually informed the Commission of any exemption granted to them under the US 232 measures.

- (121) Therefore the Commission confirmed that, during the period considered, Ukraine significantly increased its volume of imports to the Union (reaching a market share of 6 %) in the context of a decrease in consumption, and despite the measures in place. As established in the likelihood of continuation of dumping analysis above, it is likely that in the absence of measures the share of dumped imports from Ukraine will increase further. Interpipe Group's claim was therefore rejected.
- (122) With regard to the second limb in recital (118), the Commission maintained that the facts unequivocally showed a different evolution in the export behaviour of Ukrainian exporting producers in the Union market, as compared to the projections made by the Interpipe Group. The Commission did not contest the trends on domestic consumption and other export destinations described by the Interpipe Group. Rather, the Commission pointed out that the conclusions/predictions drawn from such trends by the Interpipe Group (with respect to how they would affect the Ukrainian producers' approach towards the Union market) were at odds with the facts, *i.e.* an increase of imports to the Union even with an anti-dumping duty in place. Lastly, in the context of the claim of export diversification, the Commission refers to recital (116) above, whereby it was shown that there were several trade restrictions currently in place against Ukraine in some relevant third markets. Therefore, the alleged increase of export destinations should be seen together with the above mentioned trade restrictions in other markets.
- (123) Consequently, in view of the findings established regarding attractiveness of the Union market, spare capacity and certain trade restrictions in some third markets, this claim was dismissed.
- (124) The Interpipe Group finally contested the Commission's analysis with regard to an upcoming joint venture agreement with one of the 'key EU producers'. The Commission explained its assessment with regard to this issue in the second additional disclosure to the company. First, according to the information available to the Commission the upcoming joint venture has not been cleared by all the competition authorities concerned. Therefore, it cannot be concluded at this stage what effect, if any, this joint venture could have on the exports of SPT from the Interpipe Group to the Union. Second, Interpipe confirmed that the joint venture has not yet been established. Third, the Commission refers to its assessment in the second additional disclosure to the company, where it also highlighted the fact that, despite several requests, it was refused access to the details of the joint venture agreement in question, so that no effects deriving from *e.g.* potential future production could be assessed. Accordingly, no conclusions could yet be drawn on the effects of that joint venture at the present point in time. Nevertheless, the Commission further adds that the claims with regard to the potential impact of the joint venture in the Union market and the Interpipe Group's claims on the likelihood of continuation of dumping are in stark contradiction with each other as far as Interpipe's capability (or lack thereof) to increase its exports to the Union is concerned ⁽⁴²⁾.

3.3. Conclusion on the likelihood of continuation or recurrence of dumping should measures be repealed

- (125) In view of: (i) the continuation of dumping practices in the review investigation period from both countries; (ii) the significant spare capacities available (combining for more than 800 000 tonnes); and (iii) the attractiveness of the Union market, the Commission concluded that there is a strong likelihood that if measures were allowed to lapse, dumped imports from Ukraine and Russia would respectively continue to increase and recur in significant volumes.

4. UNION PRODUCTION AND UNION INDUSTRY

- (126) In the period considered, the like product was manufactured by 18 producers in the Union. They are deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereafter be referred to as the 'Union industry'.
- (127) All available information concerning the Union industry, such as information provided in the request, data collected from Union producers and the applicant before and after initiation of the procedure and the questionnaire responses of the sampled Union producers, were used in order to establish the total Union production for the review investigation period.

⁽⁴²⁾ Due to the confidential nature of this information, the full Commission analysis has not been included in the Regulation. A more detailed explanation was provided to the Interpipe Group in a separate document on the day of the publication of this Regulation.

- (128) On this basis, the total Union production was estimated to be around 2,25 million tonnes during the review investigation period. This figure includes the production of all Union producers, both the sampled producers and non-sampled producers, calculated on the basis of verified data submitted by the applicant.
- (129) As indicated under recitals (17) and (18), a final sample consisting of four producers was selected out of the 12 Union producers which submitted the information requested for the selection of the sample at the pre-initiation stage.
- (130) The four sampled Union producers accounted for 30 % of the total estimated Union production during the review investigation period and 37 % of total Union industry sales on the Union market. Therefore, the final sample is considered to be representative of the entire Union industry.

5. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

5.1. Union consumption

- (131) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market and the total imports. Union consumption decreased overall by 10 % over the period considered. The lowest point was reached in the year 2016, a 14 % decrease in comparison with the year 2014. In the review investigation period, a moderate increase of consumption was noted.

	2014	2015	2016	RIP
Consumption (in tonnes)	1 493 525	1 360 682	1 283 739	1 344 610
<i>Index</i>	100	91	86	90

Source: Article 14(6) of the basic Regulation data basis, request, questionnaire replies.

5.2. Imports from the countries concerned

5.2.1. Volume and market share of the imports concerned

- (132) During the period considered, the imports into the Union from Russia and Ukraine were found to have developed in terms of volume and market share as follows:

	2014	2015	2016	RIP
Russia				
Volume (tonnes)	10 073	6 450	8 178	8 663
<i>Index</i>	100	64	81	86
Market share on Union consumption (%)	0,7	0,5	0,6	0,6
<i>Index</i>	100	70	94	96
Ukraine				
Volume (tonnes)	70 608	77 314	77 550	80 711
<i>Index</i>	100	109	110	114
Market share on Union consumption (%)	4,7	5,7	6,0	6,0
<i>Index</i>	100	120	128	127

	2014	2015	2016	RIP
Both countries concerned				
Volume (tonnes)	80 681	83 764	85 729	89 373
<i>Index</i>	100	104	106	111
Market share on Union consumption (%)	5,4	6,2	6,7	6,6
<i>Index</i>	100	114	124	123

Source: Article 14(6) of the basic Regulation data basis, request, questionnaire replies.

- (133) Import volumes from both countries concerned increased by 11 % in the period considered despite anti-dumping measures in force. The increase was made up solely of imports from Ukraine, that increased by 14 % in the period considered, while imports from Russia decreased by -14 %. In the same period, their joint market share increased by 23 %, again due to the increase of imports from Ukraine, whose market share increased by 27 % during the period considered to reach 6 % of Union consumption in the review investigation period, while the market share of Russia decreased by 4 % and represented 0,6 % of Union consumption in the review investigation period. This has to be seen against a background of decreasing consumption.

5.2.2. Prices of imports and price undercutting

- (134) The table below shows the average price of imports from Russia and Ukraine. It should be underlined that sales prices of imports from both countries concerned were not only below the sales prices of the Union industry throughout the period considered but also showed a sharp downwards trend in this period.

	2014	2015	2016	RIP
Average price in EUR/tonne of Russian imports	758	692	631	633
<i>Index</i>	100	91	83	83
Average price in EUR/tonne of Ukrainian imports	731	679	607	618
<i>Index</i>	100	93	83	85

Source: Article 14(6) of the basic Regulation data basis.

- (135) In view of the absence of cooperation by the Russian exporting producers, price undercutting regarding imports from Russia had to be established on import statistics at TARIC level using information collected on the basis of Article 14(6) of the basic Regulation. Price undercutting regarding imports from Ukraine was established using the export prices of the cooperating Ukrainian exporting producer, not including the anti-dumping duty. Import CIF prices were adjusted upward for post-importation costs. The adjustment amounted to EUR 2 per tonne following the findings of the previous expiry review. Due to lack of cooperation of unrelated importers in the current procedure there were no basis to re-estimate the level of this adjustment. The sales prices of the Union industry were those of the sampled companies to their independent customers, adjusted downwards for the delivery costs, discounts and commissions to an ex-works level.
- (136) In the review investigation period, the undercutting margin for imports of SPT for the sole cooperating Ukrainian exporting producer (representing around 90 % of the Ukrainian export volume to the Union) accounted for 28,9 %.
- (137) With regard to Russia, an undercutting margin of 20,3 % was established on the basis of average prices comparison. In addition, the analysis of Russian export prices to other third markets showed that Russia was selling in some of its main export markets at prices similar to or sometimes even lower than those to the Union, thus reinforcing the conclusion that the current level of Russian prices would undercut the sales prices of the Union industry in the Union market.

- (138) Following final disclosure, the two Russian exporting producers claimed this undercutting margin to be not representative as their exports to the Union allegedly consisted of low-end products while the Union industry domestic sales had a substantial share of high-end products, namely OCTG. According to the companies, the undercutting calculation would have resulted in a completely different margin should the prices of similar product types be compared.
- (139) In this regard, it is noted that the Commission could not make a price comparison on a product type by product type basis as the Russian exporting producers in question decided not to cooperate in the investigation and did not provide a questionnaire reply which would allow the Commission to perform undercutting calculations taking into account alleged different product mix of the Russian exports and Union industry domestic sales.

5.3. Other country concerned by anti-dumping measures

- (140) According to Eurostat data, the volume of imports of SPT originating in the People's Republic of China as defined in Article 1(1) of Council Regulation (EC) No 926/2009 ⁽⁴³⁾ decreased by 34 % during the period considered.
- (141) The market share of Chinese imports decreased from 5,7 % in 2014 to 4,2 % in the RIP.

5.4. Economic situation of the Union industry

5.4.1. Preliminary remarks

- (142) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.
- (143) As mentioned in recital (129), sampling was used for the examination of the possible injury suffered by the Union industry.
- (144) For the purpose of the injury analysis, the Commission distinguished between macroeconomic and microeconomic injury indicators. In this regard, the economic situation of the Union industry is assessed on the basis of (a) macroeconomic indicators, namely production, production capacity, capacity utilisation, sales volume, market share and growth, employment, productivity, magnitude of the actual dumping margin and recovery from past dumping, for which the data were collected at the level of the total Union industry; and on the basis of (b) microeconomic indicators, namely average unit prices, unit cost, profitability, cash flow, investments, return on investment and ability to raise capital, stocks and labour costs, for which the data were collected at the level of the sampled Union producers.
- (145) All available information concerning the Union industry, including information provided in the request, data collected from the Union producers before and after the initiation of the investigation, and the questionnaire responses of the sampled Union producers, was used in order to establish the macroeconomic indicators and in particular the data pertaining to the non-sampled Union producers.
- (146) The microeconomic indicators were established on the basis of information provided by the sampled Union producers in their questionnaire replies.

5.4.2. Macroeconomic indicators

(a) Production, production capacity and capacity utilisation

- (147) The trends for Union production, production capacity and the utilisation of the capacity developed as follows during the period considered:

	2014	2015	2016	RIP
Production volume (tonnes)	2 925 290	2 125 668	1 921 743	2 247 474
<i>Index</i>	<i>100</i>	<i>73</i>	<i>66</i>	<i>77</i>

⁽⁴³⁾ Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

	2014	2015	2016	RIP
Production capacity (tonnes)	4 658 456	4 658 456	4 540 036	4 541 932
<i>Index</i>	100	100	97	97
Capacity utilisation (%)	63	46	42	49
<i>Index</i>	100	73	67	79

Source: Article 14(6) of the basic Regulation data basis, request, questionnaire replies.

- (148) The Union production volume decreased 23 % during the period considered. Taking into account that production capacity remained almost constant (slight reduction by 3 %) during that period, the decrease in output resulted in a significant reduction of the capacity utilisation by 14 percentage points from 63 % in 2014 to 49 % in the review investigation period. Capacity utilisation reached record lows in 2015 and 2016 (46 % and 42 % respectively). In the review investigation period, production and thus capacity utilisation rate increased but the latter still remains below 50 %.

(b) Sales volume, market share and growth

- (149) The sales of the Union producers included sales via related trading companies. The sales via related companies represented, over the period considered, around 17 % of the Union consumption. However, to the extent that these sales volumes are later re-sold to independent customers on the Union market, they are still considered part of the sales for the purpose of establishing trends in sales volumes, market share and growth of the Union industry.
- (150) The trends concerning sales volumes, market share and growth developed as follows during the period considered:

	2014	2015	2016	RIP
Sales volume (tonnes)	1 213 764	1 096 745	1 038 252	1 095 231
<i>Index</i>	100	90	86	90
Market share (%)	81,3	80,6	80,9	81,5
<i>Index</i>	100	99	100	100

Source: Article 14(6) of the basic Regulation data basis, request, questionnaire replies.

- (151) The Union industry sales volume decreased by 10 % over the period considered. This trend followed the trend in the consumption so the Union industry managed to keep its market share of around 81 % throughout the whole period under consideration. That was however achieved by serious reduction of sales prices and led to the deterioration of the financial indicators as explained below.

(c) Employment and productivity

- (152) In line with the decline in production and sales, it was observed that the level of the Union industry's employment also decreased by 18 % between 2014 and the review investigation period. However, this reduction of employment did not lead to an increase in productivity, measured as output per person employed per year, as the drop in production volume in the period considered was more pronounced than the reduction in employment. The productivity indicator improved only in the review investigation period which was linked with an increase of production output compared to the year 2016 while the level of employment, after its reduction from 2015, remained stable.

	2014	2015	2016	RIP
Number of employees	15 830	14 209	12 928	12 941
<i>Index</i>	100	90	82	82
Productivity (tonnes/employee)	184,8	149,6	148,6	173,7
<i>Index</i>	100	81	80	94

Source: request, questionnaire replies.

(d) Magnitude of the actual dumping margin and recovery from past dumping

- (153) The dumping margin found for imports from Ukraine is considerable (see recital (90) above). Given the volume, market share and prices of the dumped imports from Ukraine, discussed above, the impact on the Union industry of the actual dumping margin cannot be considered to be negligible. Continuous unfair pricing by Ukrainian exporters made it also impossible for the Union industry to recover from the past dumping practices.

5.4.3. Microeconomic indicators

(a) Average unit selling prices on the Union market and unit cost of production

- (154) The average sales prices of the sampled Union producers to unrelated customers in the Union decreased by 19 % from 2014 to the review investigation period. The price decrease reflects a general lowering trend in the cost of the main raw materials as well as attempts of cost restructuring leading to cost reduction by the Union producers. However, due to the further price depression exerted in the period considered by the Russian and Ukrainian exporters who were constantly undercutting the Union industry prices, the Union producers could not benefit from the reduction of costs as in order to keep their market share they had to lower the sales prices to a greater extent than the reduction of costs allowed.
- (155) In the period considered the costs of the Union industry decreased by 9 %, which was much less than the decrease in prices. As a result, over the period considered, the profitability of the Union industry deteriorated substantially.

	2014	2015	2016	RIP
Average unit selling price in the Union to unrelated customers (EUR/tonne)	1 024	977	844	832
<i>Index</i>	100	95	82	81
Unit cost of goods sold (EUR/tonne)	944	1 037	932	858
<i>Index</i>	100	110	99	91

Source: questionnaire replies.

(b) Profitability, cash flow, investments, return on investments and ability to raise capital

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

	2014	2015	2016	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	6,2	– 4,0	– 8,2	– 6,0
Cash flow (EUR)	33 622 691	20 584 055	– 5 190 651	– 5 153 970
<i>Index</i>	100	61	– 15	– 15
Investments (EUR)	70 668 341	49 594 481	31 073 864	25 325 867
<i>Index</i>	100	70	44	36
Return on investments (%)	5,5	– 2,9	– 5,3	– 4,1

Source: questionnaire replies.

- (157) The profitability of the sampled Union producers is expressed as 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. As explained in recital (155), the sampled Union producers were profitable in 2014, but became loss-making from 2015 onwards. Over the whole period considered, the profitability of the sampled Union producers drops from 6 % profit to 6 % loss.

- (158) Cash flow, which is the ability of the industry to self-finance its activities, was positive in the years 2014-2015 but then following the decreasing trend in profitability it became negative in 2016 and the review investigation period.
- (159) The Union producers were still able to invest over the whole period considered but the evolution of profitability and cash flow adversely affected also the level of investments, which decreased by 64 % over the period considered. Furthermore, the return on investments is negative from 2015 onwards, following the trend in profitability.
- (160) In light of the above, it can be concluded that the financial performance of the sampled Union producers was negative during the review investigation period.

(c) Stocks

- (161) The level of stocks of the sampled Union producers decreased by 21 % during the period considered. However, the ratio of stocks to the production volume remains stable in the period considered (around 3 %). The trend in level of stocks follows the trend in production output. In this case however, this indicator is not considered of big relevance to assess the economic situation of the Union producers as, normally, SPT are produced to order.

	2014	2015	2016	RIP
Closing stocks (tonnes)	87 502	51 661	53 858	68 982
<i>Index</i>	100	59	62	79

Source: questionnaire replies.

(d) Labour costs

- (162) The average labour costs of the sampled Union producers decreased slightly during the period considered, which is part of the attempt of the Union industry to restructure its costs. This indicator is especially important as labour costs account for more than 25 % of the costs of production of SPT.

	2014	2015	2016	RIP
Average labour costs per employee (EUR)	53 628	58 653	51 161	50 437
<i>Index</i>	100	109	95	94

Source: questionnaire replies.

5.5. Conclusion on likelihood of continuation or recurrence of injury

- (163) In view of recitals (131) to (162), it is concluded that the Union producers were in a less favourable situation during the review investigation period compared to 2014 and that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (164) The investigation showed that the majority of the injury indicators deteriorated during the period considered. Sales volume decreased by 10 %, production volume by 23 % and the capacity utilisation rate dropped from 63 % to 49 %. Even if the Union industry managed to maintain its level of market share around 81 %, this was at the expense of its profitability; indeed, Union sales prices decreased significantly (-19 %). Despite efforts to reduce costs of production (9 % reduction), the Union industry became loss making as from 2015. Between 2014 (6,2 % profit) and the review investigation period (6,0 % loss) profitability dropped by 12,2 percentage points. The financial indicators such as cash flow and return on investment also changed from positive in 2014 to negative in the following years and the review investigation period. Over the same period investments dropped by 64 %.
- (165) The continuation of injury results from several factors such as the decrease of the Union consumption and the drop in export sales. But in addition to this, Union prices were depressed by dumped imports. Indeed, Ukraine increased its export volume to the Union by 14 %, at low and dumped prices, and gained market share over the period considered by 27 %. The sole Ukrainian exporter undercut Union prices by almost 30 %. In this highly capital intensive industry, a decrease in production volume combined with price depression had negative effects on profitability.

- (166) Following final disclosure, the Government of Ukraine and two Russian exporting producers listed several factors that should have been taken into account as other factors in the analysis of the causal link between the injurious situation of the Union industry and imports from the countries concerned. Such factors allegedly were the decreasing Union consumption, domestic competition amongst Union producers, unsatisfactory export performance of the Union producers, overcapacity and high fixed costs of the Union companies and imports from Belarus.
- (167) As recognised in recital (165), the continuation of injury results from several factors. In addition to the decrease in consumption, the drop in export sales and the dumped imports, other factors did not play a significant role. Indeed, the low rate of capacity utilisation rather reflects a decrease in production rather than a situation of overcapacity, and imports from other third country overall decreased. The Union industry market shares also remained relatively stable during the review investigation period. The claim concerning competition between Union producers was not substantiated. It merely relies on the grounds that the sample of Union producers accounted for only 30 % of the EU production and that therefore the competition between the sampled and non sampled producers should be examined. This claim should be rejected since it contradicts the rationale of using sampling. The Commission indeed examined the situation of all the Union producers but — given the large number of producers — limited its examination of certain factors to a sample which is representative of the overall Union Industry. There is therefore no need to examine the effect of the non-sampled producers on those companies selected in the sample.
- (168) In any event, as explained below, the conclusion on injury in this case especially focuses on the likely situation of the Union industry in case measures were repealed.
- (169) Following final disclosure, the Government of Ukraine and one of the Ukrainian exporting producers raised the point that the market share of Ukrainian exports in the Union consumption amounted to 6 % only and is not likely to increase in the future due to domestic consumption in Ukraine and significant diversification of Ukrainian exports which gained new markets.
- (170) In response to this point, it should be underlined that the current 6 % market share is already a cause of injury to the Union industry, especially taking into account the significant price undercutting. It should be also noted that the increase of Ukrainian imports in volume terms over the period under consideration took place despite the anti-dumping duties in force.
- (171) One of the Ukrainian exporting producers, supported also partially in the submission of the Government of Ukraine, claimed additionally that the Commission should have taken into account in its recurrence of injury analysis the joint venture agreement signed between the Ukrainian exporting producer in question and one of the biggest Union producers of the product concerned. According to the Ukrainian producer, the condition of this joint venture agreement will have a significant influence on the volume of future exports of the company to the EU, distribution channels and price setting.
- (172) The Commission refers to its rebuttal in recital (124) above.
- (173) Russia only exported a small volume to the EU, but its prices were also found to undercut Union prices. A prospective analysis of the likely export volumes from this country, should measures be repealed, was performed as described in recitals (50) to (68). It revealed that imports from Russia would likely increase to levels significantly above those reached in the review investigation period.
- (174) As explained in recitals (53) and (93) above, both countries have substantial spare capacity, and are likely to increase low priced imports in case measures are repealed, given the attractiveness of the Union market in terms of volume and prices. The attractiveness of the Union market, as explained in recitals (56) and (108), is likely to increase due to the 25 % duty imposed in March 2018 by the USA on imports of steel products, including SPT. The USA are one of the main export markets for Russia and Ukraine, and the Union market is a likely target for at least part of the quantities that may no longer be sold in the USA.
- (175) The Union industry is still in a vulnerable position, and its situation would become even more difficult should the measures be repealed. Low priced Ukrainian dumped imports would continue to increase and Russian dumped imports would likely recur in significant quantities, causing further price depression and lost sales on the Union market.

6. UNION INTEREST

6.1. Introduction

- (176) In compliance with Article 21 of the basic Regulation, it was examined whether maintenance of the existing anti-dumping measures against Russia and Ukraine 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. It should be recalled that, in the previous investigations, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (177) On this basis, it was examined whether, despite the conclusions on the likelihood of continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures against imports originating in Russia and Ukraine in this particular case.

6.2. Interest of the Union industry

- (178) With regard to the Union interest, it is clear that, should the measures be repealed, the already fragile economic situation of the Union industry, which currently provides 13 000 jobs in the steel sector with regard to the product concerned, would deteriorate further.

6.3. Interest of importers and users

- (179) There was no cooperation from importers and users, although all known importers and users (more than 70 companies) were informed about the initiation of the procedure and the possibility to cooperate as an interested party.
- (180) According to the findings of the previous expiry review, the importers source from various suppliers from many different countries and thus the impact of a continuation of measures on imports from Russia and the Ukraine is limited. It was also found at that time that, even though measures have been in force for several years, the importers managed to remain profitable.
- (181) With regard to users, on the basis of the findings from the previous expiry review, and information available, it would appear that the share of SPT in their costs of production is quite low. SPT are in general part of larger projects (boilers, pipelines, construction), of which they form only a limited part. Thus the possible impact of a continuation of measures on users is not expected to be significant.
- (182) Due to lack of cooperation of the companies in question there are no verifiable data and information showing that the overall situation has changed.

6.4. Conclusion on Union interest

- (183) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.
- (184) Following the final disclosure, two Russian exporting producers claimed that the continued imposition of measures would negatively impact a number of Union consumers (users) and would limit competition within the Union. Therefore, the interested parties in question invited the Commission to consider extending the measures for a period no longer than two years.
- (185) The Commission examined the proposal of limited extension of the measures in the Union interest. In this regard, it is recalled that the examination of the Union interest for the purposes of anti-dumping investigations constitutes a strict procedural operation which requires a balancing of the interests concerned, including the interests of the Union industry and users and consumers, and the assessment of complex legal, economic, and political factors⁽⁴⁴⁾. The Commission recalled that the Union interest assessment as regards the Union industry showed that, should the measures be repealed, the already fragile economic situation of the Union industry would deteriorate further. It also recalled that there was no cooperation from importers and users indicating that they would be adversely affected by the extension of the current measures in force. Accordingly, there is no evidence on record that would show that a limitation of the application of the measures to two years would serve the Union interest to a greater extent than the application of the measures for the full five year period contemplated in Article 11(2) of the basic Regulation. On that basis, the Commission rejected the argument presented by the two Russian exporting producers.

⁽⁴⁴⁾ Judgment of the Court of 15 June 2017 in Case C-349/16 *T.KUP*, ECLI:EU:C:2017:469, at paragraph 44. See also judgment of the General Court of 8 July 2003 in Case T-132/01 *Euroalliage and Others v Commission*, ECLI:EU:T:2003:189, paragraph 40.)

7. ANTI-DUMPING MEASURES

- (186) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of SPT originating in Russia and Ukraine should be maintained.
- (187) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to impose the anti-dumping measures in question and were given the opportunity to comment. The comments received were not of a nature to change the above conclusions.
- (188) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of seamless pipes and tubes of iron or steel, of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis ⁽⁴⁵⁾, currently falling within CN codes ex 7304 11 00, ex 7304 19 10, ex 7304 19 30, ex 7304 22 00, ex 7304 23 00, ex 7304 24 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 80, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 89, ex 7304 59 92 and ex 7304 59 93 ⁽⁴⁶⁾ (TARIC codes 7304 11 00 10, 7304 19 10 20, 7304 19 30 20, 7304 22 00 20, 7304 23 00 20, 7304 24 00 20, 7304 29 10 20, 7304 29 30 20, 7304 31 80 30, 7304 39 58 30, 7304 39 92 30, 7304 39 93 20, 7304 51 89 30, 7304 59 92 30 and 7304 59 93 20) and originating in Russia and Ukraine.

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

Country	Company	Anti-dumping duty (%)	TARIC additional code
Russia	Joint Stock Company Chelyabinsk Tube Rolling Plant and Joint Stock Company Pervouralsky Novotrubny Works	24,1	A741
	OAo Volzhsky Pipe Plant, OAo Taganrog Metallurgical Works, OAo Sinarsky Pipe Plant and OAo Seversky Tube Works	28,7	A859
	All other companies	35,8	A999
Ukraine	OJSC Dnepropetrovsk Tube Works	12,3	A742
	LLC Interpipe Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant (Interpipe NTRP)	13,8	A743
	CJSC Nikopol Steel Pipe Plant Yutist	25,7	A744
	All other companies	25,7	A999

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

⁽⁴⁵⁾ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

⁽⁴⁶⁾ As currently defined in Commission Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

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, 1 October 2018.

For the Commission

The President

Jean-Claude JUNKER

DECISIONS

COUNCIL DECISION (EU, Euratom) 2018/1470

of 28 September 2018

appointing a member, proposed by the Federal Republic of Germany, of the European Economic and Social Committee

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal of the German Government,

Having regard to the opinion of the European Commission,

Whereas:

- (1) On 18 September 2015 and 1 October 2015, the Council adopted Decisions (EU, Euratom) 2015/1600 ⁽¹⁾ and (EU, Euratom) 2015/1790 ⁽²⁾ appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020.
- (2) A member's seat on the European Economic and Social Committee has become vacant following the end of the mandate of Mr Stefan KÖRZELL,

HAS ADOPTED THIS DECISION:

Article 1

Mr Florian MORITZ, *Head of Department Economic, Finance and Fiscal Policy, German Confederation of Trade Unions (DGB) Executive Board*, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2020.

Article 2

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

Done at Brussels, 28 September 2018.

For the Council

The President

M. SCHRAMBÖCK

⁽¹⁾ Council Decision (EU, Euratom) 2015/1600 of 18 September 2015 appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020 (OJ L 248, 24.9.2015, p. 53).

⁽²⁾ Council Decision (EU, Euratom) 2015/1790 of 1 October 2015 appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020 (OJ L 260, 7.10.2015, p. 23).

COMMISSION DECISION (EU) 2018/1471**of 19 September 2018****on the proposed citizens' initiative entitled 'STOP FRAUD and abuse of EU FUNDS — by better control of decisions, implementation and penalties'***(notified under document C(2018) 6077)***(Only the English text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative ⁽¹⁾, and in particular Article 4 thereof,

Whereas:

- (1) The subject-matter of the proposed citizens' initiative entitled 'STOP FRAUD and abuse of EU FUNDS — by better control of decisions, implementation and penalties' refers to the following: 'European Institutions should be entitled to apply enhanced (including *ex-ante*) control and stricter sanctions in those Member States of the EU which are not members of the European Prosecutor's Office.'
- (2) The objectives of the proposed citizens' initiative refer to the following: 'To prevent and penalise fraud and abuse of EU funds the European Institutions should be entitled to apply enhanced control in Member States which are not part of the European Prosecutor's Office cooperation. This would include *ex-ante* control of funding and procurement decisions in risky areas. We propose that such deepened control should cover complete exploration of all circumstances and also publication of fraudulent activities and other offences harming the financial interests of the EU.'
- (3) The citizens' committee has been formed and the contact persons have been designated in accordance with Article 3(2) of the Regulation and the proposed citizens' initiative is neither manifestly abusive, frivolous or vexatious nor manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union (TEU).
- (4) Legal acts of the Union for the purpose of implementing the Treaties can be adopted
 - (a) in order to define the tasks, priority objectives and the organisation of the Structural Funds which may involve grouping the Funds, in accordance with Article 177 of the Treaty on the Functioning of the European Union (TFEU);
 - (b) for the adoption of a multiannual framework programme setting out all the activities of the Union in the field of research and technological development; the specific programmes developed within each activity of the multiannual framework programme; and the implementation of the multiannual framework programme, in accordance with Articles 182 and 183 TFEU;
 - (c) on the financial rules which determine in particular, inter alia, the procedures for implementing the budget of the Union, in accordance with Article 322 TFEU;
 - (d) in the fields of the prevention of and the fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies, in accordance with Article 325 TFEU.
- (5) Deciding on whether or not to participate in an enhanced cooperation, such as the enhanced cooperation that established the European Public Prosecutor's Office, is a voluntary choice for each Member State. Therefore, legal acts of the Union for the purpose of implementing the Treaties should not, as a matter of principle, differentiate between Member States solely according to their participation or non-participation in an enhanced cooperation. Nevertheless, the implementation of legal acts of the Union may differentiate between Member States when this is objectively justified, for example when, all relevant elements taken into account, there would exist, in practice, a different level of protection of the financial interests of the Union between Member States.

⁽¹⁾ OJ L 65, 11.3.2011, p. 1.

- (6) The TEU reinforces citizenship of the Union and enhances further the democratic functioning of the Union by providing, inter alia, that every citizen is to have the right to participate in the democratic life of the Union by way of a European citizens' initiative.
- (7) To this end, the procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible.
- (8) For those reasons, the proposed citizens' initiative entitled 'STOP FRAUD and abuse of EU FUNDS — by better control of decisions, implementation and penalties' does not fall manifestly outside of the framework of the Commission's powers to submit a legal acts of the Union for the purpose of implementing the Treaties in accordance with Article 4(2)(b) and should therefore be registered. Statements of support for this proposed citizens' initiative should be collected inasmuch as it aims at proposals from the Commission for legal acts of the Union for the purpose of implementing the Treaties which — while enhancing the protection of the financial interests of the Union — do not differentiate between Member States solely according to their participation or non-participation in the enhanced cooperation on the establishment of the European Public Prosecutor's Office.

HAS ADOPTED THIS DECISION:

Article 1

1. The proposed citizens' initiative entitled 'STOP FRAUD and abuse of EU FUNDS — by better control of decisions, implementation and penalties' is hereby registered.
2. Statements of support for this proposed citizens' initiative may be collected, based on the understanding that it aims at proposals from the Commission for legal acts of the Union for the purpose of implementing the Treaties which — while enhancing the protection of the financial interests of the Union — do not differentiate between Member States solely according to their participation or non-participation in the enhanced cooperation on the establishment of the European Public Prosecutor's Office.

Article 2

This Decision shall enter into force on 27 September 2018.

Article 3

This Decision is addressed to the organisers (members of the citizens' committee) of the proposed citizens' initiative entitled 'STOP FRAUD and abuse of EU FUNDS — by better control of decisions, implementation and penalties', represented by Mr Zoltán KERESZTÉNY and Mr Balázs FEHÉR acting as contact persons.

Done at Brussels, 19 September 2018.

For the Commission
Frans TIMMERMANS
First Vice-President

