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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.9.2009
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Proposal for a

COUNCIL REGULATION

**imposing a definitive anti-dumping duty and collecting definitely the provisional duty
imposed on imports of certain seamless pipes and tubes of iron or steel originating in the
People's Republic of China**

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 (the ‘basic Regulation’) in the proceeding concerning imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

There are no existing provisions in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 9 July 2008, the Commission announced by a notice (‘notice of initiation’), published in the *Official Journal of the European Union*, the initiation of an anti-dumping proceeding concerning imports into the Community of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China.

The anti-dumping proceeding was initiated following a complaint lodged on 28 May

2008 by the Defence Committee of the Seamless Steel Tube Industry of the European Union ('the complainant') on behalf of producers representing a major proportion of the total Community production of certain seamless pipes and tubes of iron or steel containing evidence of dumping and of material injury resulting there from.

On 8 April 2009, the Commission imposed, by Regulation (EC) No 289/2009, a provisional anti-dumping duty on imports into the Community of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China ranging from 15,1 % to 24,2 %.

The enclosed Commission proposal for a Council Regulation imposing a definitive anti-dumping duty ranging from 17,7 % to 39,2 % contains the definitive conclusions regarding dumping, injury, causation and Community interest.

Member States were consulted during the Anti-Dumping Committee of 28 July 2009. 12 Member States were in favour of the proposed course of action, 11 opposed and 4 abstained.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* by 7 October 2009 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The above-mentioned basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') and in particular Articles 9 and 10 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional measures

- (1) On 9 July 2008, the Commission published a notice² initiating an anti-dumping proceeding on imports into the Community of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China ('the PRC'). On 8 April 2009, the Commission, by Regulation (EC) No 289/2009³ ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the PRC.
- (2) The proceeding was initiated following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain seamless pipes and tubes of iron or steel.
- (3) As set out in recital (13) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the IP ('period considered').

2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making their views

¹ OJ L 56, 6.3.1996, p. 1.

² OJ C 174, 9.7.2008, p. 7.

³ OJ L 94, 8.4.2009, p. 48.

known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.

- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission sent an additional questionnaire to the sampled Community producers to collect further information concerning the market developments and the evolution of the main injury indicators after the end of the IP. Additional verification visits were carried out after the imposition of the provisional measures at the premises of the following producers of certain seamless pipes and tubes in the EU:

- Vallourec & Mannesmann Deutschland GmbH, Düsseldorf, Germany,
- Vallourec & Mannesmann France, Boulogne-Billancourt, France,
- Tenaris-Dalmine SpA, Dalmine, Italy,
- Tubos Reunidos SA, Amurrio, Spain,
- Productos Tubulares SA, Valle de Trapaga, Spain.

In addition, a verification visit was carried out at the premises of the complainant at Boulogne-Billancourt, France.

- (6) The Commission also conducted a further desk analysis of the questionnaire replies of all four sampled exporting producers, including in particular the verification of the transaction listing provided by the following exporters:

- Hubei Xinyegang Steel Co., Ltd.,
- Hengyang Valin Steel Tube Co., Ltd.,
- Shandong Luxing Steel Pipe Co. Ltd.,
- Tianjin Pipe International Economic & Trading Corporation.

- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

- (8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

3. **Sampling**

- (9) In the absence of any comments concerning the sampling of exporting producers in the PRC and of Community producers, the provisional findings in recitals (11) to (12) of the provisional Regulation are hereby confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (10) The product concerned is certain 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 analysis⁴, originating in the People's Republic of China ('the product concerned') and currently falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93⁵.

- (11) After the publication of the provisional Regulation, a clerical mistake was found in the numbering of the Technical Report mentioned in the footnote of recital (14) of the provisional Regulation for the determination of the Carbon Equivalent Value (CEV). The correct reference is Technical Report, 1967, IIW doc. IX-555-67 published by the International Institute of Welding (IIW).
- (12) After provisional disclosure, the China Iron and Steel Association ('CISA') claimed that the CN codes covering the product concerned were also covering a number of other products which would fall outside the scope of the investigation such as products with an outside diameter exceeding 406,4 mm or with a CEV exceeding 0,86 and, as a consequence, the import figures used in the investigation would be overstated. In this respect, it has to be noted that products with an outside diameter exceeding 406,4 mm or with a CEV exceeding 0,86 according to the IIW formula and chemical analysis are not concerned by these proceedings. Furthermore, no evidence was found at any of the sampled exporting producers that these products are produced in the PRC in significant quantities. Therefore, it has been concluded that there is no credible evidence regarding the import of any significant quantities of such Chinese products into the EC.
- (13) Following the final disclosure, CISA reiterated the claim that oil country tubular goods ('OCTG') should be excluded from the definition of the product concerned and pointed out that other countries, including the USA, treat OCTG as belonging to a separate market for the purpose of anti-dumping investigations. Similar claims were also made by the Chinese government ('MOFCOM').
- (14) The above-mentioned claims have been analysed in detail and it was found that the different types of seamless pipes and tubes, including OCTG, included in the product definition share the same basic physical, chemical and technical characteristics, which means that they belong to the same product category. The fact that these different product types differ to a certain extent in their characteristics, cost and selling prices is normal. Moreover, the fact that other investigating authorities carry out investigations into OCTG products only may well be due to the particularities of such investigations, i.e. the scope of the underlying complaint. Indeed, it was found that the US authorities did not have to investigate whether OCTG share the same basic characteristics as other seamless pipes and tubes. Furthermore, the Community industry provided evidence of the interchangeability between plain-end OCTG and other products subject to the investigation.

⁴ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

⁵ As defined in Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 291, 31.10.2008, 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.

- (15) It was also argued that in defining the product concerned undue importance was given to elements such as the wall thickness, external diameter, and CEV threshold, whilst no proper attention had been paid to technical properties such as high pressure and high corrosion resistance and to the existence of special American Petroleum Institute ('API') standards for OCTG.
- (16) First of all, it must be noted that since the wall thickness is not used in the definition of the scope of the investigation, the external diameter and the CEV threshold remain the most appropriate elements to identify the product concerned. The external diameter is also an element used in distinguishing the product for statistical and customs purposes. As regards the CEV threshold, it defines the level at which a product can be welded and the threshold is set at 0,86 in order to separate products which can easily be welded from those which can not. Secondly, information provided by the Community industry shows that OCTG, as other types of tubes, may have both high and low corrosion/pressure resistance. Thus neither the corrosion nor the pressure resistance could be used as a criterion in defining the product concerned. Third, the special American Petroleum Institute standards exist as regards OCTG and line pipes because they are used in the petroleum sector. However, tubes used in other sectors are also subject to similar standards, although issued by other organisations (e.g. ASTM). As a result, the fact that standards are issued by one or the other organisation cannot be an element to define the product scope of an anti-dumping investigation. In conclusion, neither CISA nor MOFCOM have submitted valid alternative elements to better define the product scope, nor have they ever proposed criteria that would be more appropriate to define the product concerned, apart from the high corrosion/pressure resistance mentioned above. In addition, neither party proposed a different CEV level as a more appropriate threshold. Therefore, the claims on the definition of the product concerned are rejected.
- (17) In view of the above, it is definitively concluded that the product concerned incorporates, *inter alia*, OCTG used for drilling, casing and tubing in the oil industry, and recitals (14) to (19) of the provisional Regulation are hereby definitively confirmed.

C. DUMPING

1. Market economy treatment ('MET')

- (18) In the absence of any comments, the content of recitals (20) to (27) of the provisional Regulation concerning MET findings is hereby definitively confirmed.

2. Individual treatment ('IT')

- (19) Further to provisional disclosure, the complainant claimed that one exporting producer provisionally granted IT should not have received IT, as among other things, it was allegedly majority state owned.
- (20) Further investigation showed that the Chinese state did (indirectly) have some stake in the said company, but during the IP the state was a minority shareholder. However, the shareholding changed significantly at the end of 2008 (post-IP) when the Chinese state acquired more shares of the holding company and the state thus became a majority shareholder. Consequently, the Commission considered that the exporting producer in question would not fulfil the requirements of Article 9(5) of the basic Regulation and should not be granted IT.

- (21) Following the final disclosure, the said company reiterated its argument that the increased shareholding of the Chinese state occurred after the IP. Moreover, the company argued that the increase in shareholding was clearly and solely intended to provide financial support to the holding company because of the financial crisis. In particular, the said company claimed that the increased shareholding had no impact on the management structure, the composition of the Board of Directors and the commercial activities. It also claimed that the change in shareholding had no effect on the company's decisions regarding export activities that remain to be made independently from the State. The company also submitted that no evidence has been shown that in this case state influence would be such so as to permit circumvention of measures if the company would be given an individual rate of duty.
- (22) In order to be granted IT, exporting producers must demonstrate that they fulfil all the criteria enumerated in Article 9(5) of the basic Regulation. One of these criteria is that the majority of shares belong to private persons. However, as regards the said company, this criterion has not been met since the end of 2008.
- (23) Consequently, despite the fact that the change of ownership happened only after the IP (but still before the conclusion of the investigation) and considering the prospective nature of the findings with regard to IT, it is concluded that this company should not be granted IT, as it did not fulfil the requirements of Article 9(5) of the basic Regulation.
- (24) In the absence of any other comments concerning IT, the content of recitals (28) to (32) of the provisional Regulation, other than those concerning the company mentioned in recitals (19) to (23) above, is hereby definitively confirmed.

3. **Normal value**

3.1. *Analogue country*

- (25) Following the provisional disclosure, three parties submitted that the USA was not an appropriate analogue country since the market conditions in the USA and in the PRC are significantly different. It was also submitted that the normal value calculation was based on the data of only one producer, related to a producer in the Community, and thus were not representative.
- (26) It is noted that the basic Regulation requires that the analogue country be selected in a not unreasonable manner. The parties mentioned above failed to provide substantiated evidence that the choice of the USA was unreasonable. In particular, they did not question the competitiveness of the US market, the lack of which for example could have an impact on the level of prices established. It is also noted that none of the parties in question suggested any alternative choice for the analogue country.
- (27) In view of the above, it is definitively concluded that the USA is an appropriate analogue country and recitals (33) to (38) of the provisional Regulation are hereby confirmed.

3.2. *Determination of normal value*

- (28) In the absence of any comments concerning the determination of normal value, the provisional findings in recitals (39) to (44) of the provisional Regulation are hereby confirmed.

4. **Export Price**

- (29) In the absence of any comments concerning the determination of export price, the content of recital (45) of the provisional Regulation is hereby confirmed.

5. **Comparison**

- (30) Following provisional disclosure, one exporting producer pointed out that the simplification applied to the product control number (in order to increase the level of comparability between the product concerned and the like product from the analogue country) resulted in an unfair comparison as it treated several types of the seamless pipes and tubes as one product category. Following this comment, it was decided that a different regrouping of the product control numbers that would allow for a similar level of comparability can be applied – namely with regard to pipe diameter and wall thickness.
- (31) Following provisional disclosure, Chinese export prices at ex works level have been revised downwards in order to take into account all transport costs. At the same time, normal value was revised upwards due to some corrections concerning allowances for transport and discounts.
- (32) In the absence of any other comments in respect of comparison, the content of recitals (46) and (47) of the provisional Regulation is hereby confirmed.

6. **Dumping margin**

- (33) In the absence of any comments concerning the dumping margin calculation, and subject to the changes mentioned at recitals (30) and (31), the content of recitals (48) to (51) of the provisional Regulation is hereby confirmed.
- (34) The amount of dumping finally determined, expressed as a percentage of the CIF net free-at-Community-frontier price, before duty, is as follows:

Company	Definitive dumping margin
Shandong Luxing Steel Pipe Co. Ltd	64,8 %
Other cooperating companies	48,6 %
Residual	73,1 %

D. **INJURY**

1. **Community production, Community industry and Community consumption**

- (35) CISA claimed that, according to information released by a specialised agency (Steel Business Briefing), there were at least 40 Community producers in 2007 of the like product in the EU-27 with a production of around 5,8 million tonnes and this would contradict the relevant data contained in the provisional Regulation. CISA also claimed that, according to information released by the World Steel Association, Community consumption was of around 4,6 million tonnes in 2007, i.e. far higher than what was reported in recital (57) of the provisional Regulation. A Chinese exporting producer also made similar claims.

- (36) The examination of the information provided showed that the figures reported refer to all seamless pipes and tubes and not to the like product as defined in the provisional Regulation and in recitals (10) to (17) above, and include other products such as large pipes and tubes (i.e. with a diameter exceeding 406,4 mm) and stainless steel pipes and tubes. This explains the discrepancy between the information mentioned in recital (35) above and that contained in the provisional Regulation. It should also be noted that names and locations of all known Community producers of the product concerned were contained in the non-confidential version of the complaint. If CISA had considered that there were any other producers of the product concerned in the EU, it should have provided in due course sufficient evidence to identify them, so that any such company would also have been considered.
- (37) The claims mentioned above are therefore dismissed and the content of recitals (53) to (58) of the provisional Regulation is hereby confirmed.

2. **Imports from the country concerned**

(a) *Volume, market share of the imports concerned and import prices*

- (38) Following comments submitted by CISA, it is clarified that recital (60) of the provisional Regulation should be intended as meaning that the OCTG and power generation market segments represented each less than 5 % of total imports from the PRC. In the absence of any claims or other comments, recitals (59) to (63) of the provisional Regulation are hereby confirmed.

(b) *Price undercutting*

- (39) An exporting producer, three Community producers and the complainant submitted comments relating to the calculation of the undercutting and injury margins. These comments were analysed and, where appropriate, the calculations were amended.
- (40) One exporting producer claimed that the adjustments made to compare on a fair basis the prices of the Chinese imports and the prices of the corresponding product types sold by the Community industry were not adequate, since they did not include an amount for the SG&A and profit of an independent importer. On the contrary, the complainant claimed that the level of these adjustments was excessively high. As for the claim of the exporting producer, it was found that often Chinese exporting producers and Community producers were selling to the same customers. Thus, a further adjustment to import prices was not justified. After examination of the evidence provided, it was concluded that the claims should be dismissed and the two parties were informed of the reasons thereof.
- (41) The complainant claimed that the calculation of the differences in level of trade was incorrect since Chinese exporting producers also directly sold to users and that for such sales no level of trade adjustment is warranted. This claim was found to be correct for some Chinese exporting producers and the level of trade adjustment was accordingly revised. Furthermore, the exporting producer mentioned in recital (40) above argued that, because of significant differences in sales volumes between its own imports and the sales of the Community industry, the difference in level of trade should not be established by simply comparing the respective percentage of sales to users and suggested another formula for the calculation of the revised level of trade adjustment. However, the suggested formula was not considered appropriate since it would distort the result. Therefore, the claim was rejected.

- (42) On the basis of the above, the methodology described in recital (64) of the provisional Regulation is hereby confirmed and the undercutting margin calculated as explained in recital (65) of the provisional Regulation is established at 29 %.

3. Situation of the Community industry

- (43) CISA claimed that a number of sampled Community producers had not submitted completed replies, so that the representativeness of the sample would be impaired because of the low level of cooperation. It should be pointed out that, apart from the company indicated at point ii) of recital (66) of the provisional Regulation, which only submitted partial information, all other companies in the sample have provided by the definitive stage of the investigation all the information requested. Even when excluding the sole company that had only provided partial information, the representativeness of the sample would in any case remain at about 60 % of the total Community production. The claim was therefore rejected.
- (44) CISA also claimed that, contrary to what is stated at recital (86) of the provisional Regulation, one major Community producer group had made, after the IP, substantial investments in expanding its production capacity for tubes in the nuclear power sector. This information was verified and it was found that the above-mentioned investments were made in order to increase the production capacity for other products (stainless steel or welded pipes and tubes) than the like product. The claim was therefore rejected.
- (45) CISA and a Chinese exporting producer claimed that recital (87) of the provisional Regulation was incorrect in saying that the Community industry was still recovering from the past effect of dumping since there were at least three Romanian companies supporting the complaint, which were until mid 2006 themselves subject to anti-dumping measures. However, the statements in recital (87) clearly refer to the Community industry considered as a whole and not to individual companies. It is therefore normal that the situation of individual companies may differ one from another, without the general finding for the Community industry being put in question. The claim was therefore rejected.
- (46) In the absence of any other claims or comments, recitals (66) to (87) of the provisional Regulation are hereby confirmed.

4. Conclusion on injury

- (47) MOFCOM, CISA and two Chinese exporting producers claimed that the Community industry was not in a vulnerable state at the end of the investigation period, particularly in view of its recent high levels of profit. The reasons why the Community industry was considered to be in a vulnerable situation at the end of the IP are detailed in recital (89) of the provisional Regulation. It was recognised therein that the injury suffered during the IP was not material, but it was also explained that, given the important share of dumped imports in the Community market, the Community industry was exposed to the injurious effects of such dumped imports, in case of significant changes in the overall market situation. In this respect, it should be borne in mind that the Community industry could benefit only partially from the substantial increase in consumption and that its market share had declined by 5 percentage points during the period considered, as indicated in recital (88) of the provisional Regulation. Moreover, the fact that an industry experiences good levels of profit during an exceptionally favourable period of very high market demand does not necessarily imply that it is structurally in a solid economic and financial situation, particularly if

during previous periods the same industry was posting extremely low profits or even losses. As already mentioned at recital (86) of the provisional Regulation, the past poor economic performance caused by the existence of dumping practices had made it impossible to maintain the level of investments appropriate to ensure the viability of the Community industry in the long term in such a highly capital intensive manufacturing sector. Finally, the EC market was again characterised at the end of the IP by the presence of a significant proportion of very low-priced dumped imports. This market situation was potentially very dangerous since already in past years, at times when the level of demand was at normal levels, a similar market situation (which was analysed in Council Regulation (EC) No 954/2006) had caused significant injury to the Community industry. The claim is therefore rejected.

- (48) One Chinese exporting producer also claimed that recital (89) of the provisional Regulation did not show that the change in market situations referred therein was 'clearly foreseen and imminent', as requested by the WTO Anti-dumping Agreement ('ADA'). A change in the market situation was foreseeable because consumption cannot normally remain at exceptionally high levels for a long period. The analysis carried out in recitals (90) to (126) of the provisional Regulation shows a clear deterioration which in fact took place over a certain period of time. The fact that a certain period of time is necessary for a number of elements and indicators to evolve from positive to negative values is not inconsistent with the fact that, in the light of existing trends, such negative effects are already clearly foreseeable. At the end of the IP, the threat of injury was clearly foreseeable, and the starting of the negative trends which would lead to an injurious picture was imminent, since a certain slow down in demand had already taken place in the last months of the IP. The claim was therefore rejected.
- (49) In the absence of any other claim or comments, the conclusion on injury laid down in recitals (88) and (89) of the provisional Regulation is confirmed.

E. THREAT OF INJURY

1. **Likely developments of Community consumption, imports from the country concerned and the situation of the Community industry after the investigation period**
 - 1.1. *Analysis carried out after provisional measures*

(50) As mentioned in recital (5) above, an additional questionnaire was sent to sampled Community producers and to the complainant in order to obtain further information on the market developments and the evolution of the main injury indicators until March 2009. Latest import data available from Eurostat have also been carefully analyzed. For the sake of completeness the figures relating to the period between the end of the IP and March 2009 ('the post-IP period') are reported below. Since these figures relate to a period of nine months only, no index is given for volumes.

(51) After the IP, the Community consumption started to decrease substantially and at a faster pace than what was indicated in recital (91) of the provisional Regulation. In fact, the Community market has already contracted by almost 30 %⁶ in the period between the end of the IP and March 2009.

⁶ On the basis of a comparison carried out between monthly average volumes

	2005	2006	2007	IP	Post-IP period
Community Consumption	2 565 285	2 706 560	3 150 729	3 172 866	1 720 968

- (52) At the same time, imports from the PRC also decreased significantly but, given the steeper decrease of Community consumption, the market share of these imports has increased to around 18 %. The prices of Chinese imports increased in line with what was indicated in recital (98) of the provisional Regulation.

PRC	2005	2006	2007	IP	Post-IP period
Imports Volume	26 396	136 850	470 413	542 840	306 866
Market Share	1,0 %	5,1 %	14,9 %	17,1 %	17,8 %
<i>Index (2005=100)</i>	<i>100</i>	<i>491</i>	<i>1 451</i>	<i>1 663</i>	<i>1 733</i>
Export Price	766,48	699,90	699,10	715,09	966,63
<i>Index (2005=100)</i>	<i>100</i>	<i>91</i>	<i>91</i>	<i>93</i>	<i>138</i>

- (53) In the same period, the production of the Community industry decreased significantly, so that the capacity utilisation of the sampled companies dropped to 60 % in March 2009. Sales of the Community industry on the Community market decreased substantially and in line with the decrease of Community consumption, so that the market share of the Community industry remained stable. As for prices, after having increased in the second half of 2008, they decreased in the first quarter of 2009, though remaining at values higher than during the IP.

Sampled Community producers	2005	2006	2007	IP	Post-IP period
Production	2 022 596	2 197 964	2 213 956	2 158 096	1 477 198
Capacity	2 451 187	2 469 365	2 446 462	2 398 283	1 889 180
Capacity Utilisation	83 %	89 %	90 %	90 %	78 %
<i>Index (2005=100)</i>	<i>100</i>	<i>108</i>	<i>110</i>	<i>109</i>	<i>88</i>

Community Industry	2005	2006	2007	IP	Post-IP period
EC sales Volume	1 766 197	1 907 126	2 061 033	2 017 525	1 093 175
Market Share	68,8 %	70,5 %	65,4 %	63,6 %	63,5 %
<i>Index (2005=100)</i>	<i>100</i>	<i>102</i>	<i>95</i>	<i>92</i>	<i>90</i>

Sampled Community Producers	2005	2006	2007	IP	Post-IP period
EC Sales Price	983	1 047	1 188	1 192	1 415
<i>Index (2005=100)</i>	<i>100</i>	<i>106</i>	<i>121</i>	<i>121</i>	<i>135</i>

- (54) Finally, the profitability of the Community industry has decreased substantially and at a quicker pace than indicated in recital (110) of the provisional Regulation, so that it was negative (-0,8 %) in the first quarter of 2009.

Sampled Community Producers	2005	2006	2007	IP	Post-IP period
Profitability	12,1 %	17,3 %	17,9 %	15,4 %	3,5 %
<i>Index (2005=100)</i>	<i>100</i>	<i>143</i>	<i>147</i>	<i>127</i>	<i>20</i>

- (55) In conclusion, the information additionally collected and verified at the definitive stage of the investigation confirms the analysis carried out in recitals (90) to (112) of the provisional Regulation.

1.2. *Comments submitted by parties*

- (56) One exporting producer claimed that the investigation of injury, contrary to that of dumping, had been extended beyond the IP, by basing the analysis also on information and data for the period after June 2008.
- (57) It is first of all recalled that the IP and the period considered are the basis on which the assessment of threat of injury was made in the provisional Regulation. However, in a threat of injury case, the injury found in the investigation period cannot – by definition – be material, otherwise that investigation would qualify as an investigation based on actual material injury. The investigating authority therefore needs to ascertain whether, although the injury was not material during the IP, the factors referred to at Article 3(9) of the basic Regulation lead to the conclusion that there is a threat of material injury. Therefore, the investigating authority is entitled to verify that the events taking place after the end of the IP do confirm the findings of threat of injury reached at provisional stage.

- (58) MOFCOM, CISA and one Chinese exporting producer considered that the source of the information used was not made clear in recital (91) of the provisional Regulation and that the forecasts and other information submitted by Community producers or the complainant and referred to in recitals (99), (101) and (108) of the provisional Regulation were not from an objective source of information. MOFCOM also claimed that by using such information, the investigating authority had not displayed the 'special care' requested by the WTO ADA in threat of injury investigations.
- (59) It is confirmed that the detailed evidence relating to the various sources of the public information mentioned in recital (91) of the provisional Regulation was made available in the files open to consultation by interested parties well before the publication of the provisional Regulation. As for the forecasts and other information submitted by the Community industry, these were verified and were taken into account only when, and to the extent that, such information was considered reliable and accurate. The fact that the information submitted had been verified was already specifically mentioned in recital (100) of the provisional Regulation, and additional verification visits were carried out after the imposition of provisional measures, as indicated in recital (5) above.
- (60) The claims referred to in recitals (56) and (58) above are therefore rejected.
- (61) CISA claimed that in assessing the developments of the Chinese imports after the IP, account should have been taken not of the actual imports but of the level of orders intake, since actual imports take place normally after 3-4 months from the order. Given the time lag, any variation in the level of the EC market demand would be reflected in the actual imports only some months afterwards and this would explain why Chinese imports were still high in November and December 2008, notwithstanding the fact that the level of the demand in the EU market had already started to decrease. Similar comments were also made by a Chinese exporting producer.
- (62) Actual imports are usually taken as the basis to assess the volumes and average prices of imports from a given country. Information relating to order intakes may be taken into account in order to support other information, but can rarely be backed up by sufficiently verifiable evidence. In any case, the analysis of the claim has showed that Community consumption had already started to decrease during the 3rd quarter of 2008. Thus, this fact should have already been reflected, in case of a 3-4 months gap, in the level of the Chinese imports for the 4th quarter 2008, which was instead relatively high. Moreover, should the above-mentioned 3-4 months gap be considered, the strong decrease in Chinese imports taking place in the first quarter 2009 could be in anticipation of anti-dumping measures rather than due to the slowdown in demand. In fact, importers might have been less and less willing to place orders for goods which might have arrived at a moment when anti-dumping measures could possibly have already been imposed. In conclusion, it is considered that an analysis based on order intakes rather than on actual imports would have only added elements of uncertainty to the investigation without leading to any significantly different conclusion. Therefore, the claim made by CISA in this respect is rejected.
- (63) MOFCOM, CISA and a Chinese exporting producer claimed that, according to various press releases and/or financial statements published by a number of Community producers groups, 2008 remained a strong year in terms of their performance and this would therefore contradict the findings of threat of injury contained in the provisional Regulation, in particular recital (110) thereof.

- (64) In examining this claim it was found that the information CISA was referring to did not specifically relate to the European entities involved in the production of the product concerned. As already mentioned at recital (44) above, a major group of companies is composed by various entities often manufacturing very different products. The general financial information relating to a company group as such may therefore not be representative of the economic situation relating to the specific entities producing the like product and selling it in the Community market. Finally, it is recalled that the information relating to the companies manufacturing the like product used during the investigation had been duly verified. The claim is therefore rejected.
- (65) In the absence of any other claim specifically concerning recitals (90) to (112) of the provisional Regulation, the findings contained therein are confirmed.

2. Threat of injury

2.1. *Development of volumes of dumped imports*

- (66) CISA claimed that the increase in Chinese imports mentioned under recital (114) of the provisional Regulation was the consequence of an increase in demand in the EU market. Similar comments were also submitted by MOFCOM and a Chinese exporting producer. CISA also rejected the assessment that the development of Chinese imports could be the result of a market penetration strategy and underlined that, since Chinese exports were made by a large number of Chinese producers, it was impossible to think of them as elaborating a coordinated strategy.
- (67) If it were true that the development of Chinese imports was correlated to the increase in demand in the EC market as claimed by CISA, the market share of such imports would have remained substantially stable, and would not have increased from 1 % to 17 % during the period considered. The substantial increase in the market share of the Chinese imports and its completely different evolution from the evolution of the market shares of the Community industry and any other import source, clearly point to the fact that other elements have underpinned the increase in Chinese imports. This conclusion is further supported by the fact that Chinese imports have consistently taken place at very low dumped prices, as it had been explained in recitals (63) to (65) of the provisional Regulation. Moreover, there is no need for exporters to coordinate a strategy in order to converge towards a similar behaviour. Once it becomes clear that to penetrate a market a certain very low level of prices is successful, a convergence towards such successful market strategy would probably take place without any need for exporters to coordinate. Therefore, the claims in recital (66) above are rejected and the findings in recital (114) of the provisional Regulation are confirmed.
- (68) CISA also claimed that, contrary to the assessment made in recitals (115) and (116) of the provisional Regulation, imports from the PRC decreased significantly in the period after the IP. It is indeed true that, as indicated in recital (52) above, imports from the PRC decreased significantly during the Post-IP period. However, the wording of recital (116) of the provisional Regulation makes it clear that what matters is not the absolute volume of such imports, but their relative importance in relation to consumption, in other words, their market share in the total Community market. As also indicated in recital (52) above, notwithstanding their decrease in absolute volume, Chinese imports of the product concerned have slightly increased their market share during the Post-IP period. Therefore, considering the fact i) that the assessment at the basis of the reasoning in recitals (115) and (116) of the provisional Regulation was made on the most recent reliable information concerning imports available at the time

of the provisional findings, i.e. imports data for November and December 2008, ii) that this data was coherent with the evolution of the Chinese imports until that moment, and iii) that the reasoning was based on relative and not absolute volumes, it is concluded that the assessment in recitals (115) and (116) of the provisional Regulation is not in contradiction with the findings mentioned in recital (52) above. It is in any case worth noting that, for the reasons mentioned in recital (134) of the provisional Regulation, the level of Chinese imports might be considered as an element of threat of injury even in the case that volumes would start to decrease proportionally more than the decrease in consumption, since the presence itself of substantial volumes of low priced Chinese goods in a context of decreasing consumption will exert an important downward pressure on the general level of prices in the market. In any case, no single factor mentioned in Article 3(9) of the basic Regulation can necessarily give decisive guidance on the existence of a threat of injury. Rather, all the factors must be considered in their totality. The claim is therefore rejected and the findings in recital (115) of the provisional Regulation are confirmed.

2.2. *Availability of free capacity of the exporters*

- (69) CISA claimed that the analysis in recital (118) of the provisional Regulation was based on data from the sampled exporters, which were the most export-oriented companies, so that their data would not reflect correctly the overall situation concerning exports from the PRC. Instead, it is claimed that the share of Chinese exports to the EC out of the total Chinese exports indicated in recital (119) of the provisional Regulation changed trend in 2008, decreasing from 15 % to 11 %. Finally, the analysis in recitals (117) to (119) of the provisional Regulation ignored the evolution in demand for the Chinese domestic market, which was forecast to absorb a significant part of the output generated by the existing overcapacity. In this respect, reference was made to a number of projects and plans by the Chinese government to sustain internal demand. MOFCOM also claimed that the development of the demand in the Chinese domestic market had not been examined in the provisional Regulation.
- (70) The findings relating to the sampled companies in recital (118) of the provisional Regulation are clearly confirmed by the trends in the general export data referred to in recital (119) of the provisional Regulation, which showed a even more significant increase in the trend of exports to the EC for the period considered. As for the supposed reversal of the increasing trend in exports to the EC as regards the total Chinese exports of the product concerned in 2008, CISA failed to submit any decisive supporting evidence of its claim. In this respect, it should be noted that the data resulting from Chinese statistics clearly refer to a product scope significantly different from the product concerned; this clearly appears from the fact that exports to Europe, as shown in these statistics, are not only much more than the imports registered in Eurostat for the product concerned, but their evolution also shows a completely different trend. The evidence provided could therefore not be accepted. As for the projected actions by the Chinese government to stimulate internal demand, the evidence submitted cannot alter the analysis since the effects on demand cannot be established reliably. Moreover, it is unclear for most of the projects mentioned that they will be completed. Finally, some large pipeline projects referred to by CISA seem to be projects built with large welded pipes and not with the seamless pipes that are the subject of the present proceeding. The claims in recital (69) above are therefore rejected.

- (71) CISA also considered that the re-direction scenario indicated in recital (119) of the provisional Regulation was misplaced because the Chinese exports to the USA would mainly consist of products (OCTG) not widely imported in the EC. CISA also claimed that prices to the EC were not necessarily lower than in other countries but, on the contrary, the EC has been an attractive market for Chinese exports so far. As regards this claim, it must be stated that the analysis carried out in recital (119) of the provisional Regulation was based on statistical data which does not contain detailed reference to specific product types. In any case, it should be noted that the production equipment necessary to manufacture the product concerned can, to a very large extent, be used for the production of various product types of seamless pipes and tubes. Therefore, even if a specific type of tubes like OCTG is not extensively imported in the EC, this fact is not relevant for the consideration of potentially available free capacities since the equipment used for manufacturing this type of tubes can easily be switched to produce other types of the product concerned, which are imported in much more substantial quantities into the EC market. Therefore, the claims in recital (66) above are rejected and the findings in recitals (117) to (119) of the provisional Regulation are confirmed.

2.3. *Prices of the imports from the PRC*

- (72) CISA claimed that, after the IP, prices of Chinese imports have increased substantially whilst prices of the Community industry have not followed the same trend, so that the undercutting existing during the IP would have been substantially reduced or even eliminated in the period after the IP.
- (73) As already indicated in recitals (98) and (122) of the provisional Regulation, it is confirmed that after the IP, the prices of imports from various sources, including from the PRC, increased substantially, as did the prices of the Community industry. An analysis of the price lists of Community industry after the IP and of the prices of comparable products imported from the PRC has been carried out, and has shown that there has been a parallelism in price movements. In conclusion, no evidence was found to support the allegation that the undercutting found during the IP would have been substantially reduced or even be eliminated. The findings in recitals (120) to (123) of the provisional Regulation are therefore confirmed.

2.4. *Level of inventories*

- (74) In the absence of any comments on this point, the findings in recital (124) of the provisional Regulation are hereby confirmed.

2.5. *Other elements*

- (75) CISA claimed that the possible intervention of the Chinese government referred to in recital (125) of the provisional Regulation was a pure conjecture. However, the investigation has shown that the individual treatment granted to one Chinese exporting producer at the provisional stage had to be withdrawn subsequently, as indicated in recitals (19) to (23) above, because of the increased level of state intervention, which was prompted by the worsening economic situation after the IP. This fact clearly supports the finding in recital (125) of the provisional Regulation and the claim is therefore rejected.

2.6. *Conclusions*

- (76) It is first of all noted that the finding of threat of injury has been made after taking into consideration, *inter alia*, the totality of the various factors referred to in Article 3(5) and 3(9) of the basic Regulation.
- (77) CISA claimed that the findings in the provisional Regulation had not complied with the standards required by the WTO for this type of investigation, i.e., that the findings should be supported by evidence and not be the result of allegation, conjecture or remote possibility; that the projections and assumptions should show a high degree of likelihood and that alternative explanations in arriving to a given conclusion should be examined.
- (78) The provisional Regulation indicates clearly on which basis the findings relating to the various elements of the investigation have been established. This was supported by the evidence indicated, such as: statistical data sourced from Eurostat, questionnaire replies by cooperating companies, information on non sampled companies provided by the complainant, information contained in submissions made by interested parties, other information found in the internet in the course of the investigation. All this information, where non-confidential, has been open to consultation by interested parties.
- (79) The elements relating to the threat of injury examination have been considered separately and in detail in the provisional Regulation and the degree of materialization of the assumptions and forecasts made at the provisional stage was re-examined and verified – to the extent possible – at the definitive stage of the investigation, as set out in the findings in this Regulation. No facts, evidence or indication was found that would contradict the findings contained in the provisional Regulation. Therefore, the projections and assumptions contained in the provisional Regulation were not conjectures or allegation, but the result of a thorough analysis of the situation.
- (80) As for the alternative explanations and interpretations referred to in recital (78) above, including those presented by interested parties in their submissions, they have been duly examined during the investigation and addressed in this Regulation as well as in the provisional Regulation.
- (81) In conclusion, the examination of the facts taking place after the end of the IP as well as the analysis of the comments and observations made by the interested parties on the provisional Regulation and on the disclosure of the final findings have not revealed any evidence that would put in doubt the conclusion that the threat of material injury existed as of the end of the IP. Therefore, the claim made by CISA in recital (77) above is rejected and the findings in recital (126) of the provisional Regulation are hereby confirmed.

F. CAUSATION

1. **Effect of the dumped imports**

- (82) In the absence of any specific comments, recitals (128) to (135) of the provisional Regulation are hereby confirmed.

2. **Effect of other factors**

(a) *Import and export activity of the Community industry*

- (83) CISA claimed that the fact that Community industry imported the product concerned from the PRC and other countries demonstrated they did not have the capacity to meet

the demand in the Community market. This was because the Community industry had not invested in new production capacity and concentrated heavily on the higher value segments of the market. In this respect, it should be recalled that it was explained in recital (136) of the provisional Regulation that such imports were estimated to be less than 2 % of the total imports from the PRC, and no evidence was provided to prove that this amount was higher.

- (84) CISA also questioned the exact reasons why the company group mentioned in recital (138) of the provisional Regulation had to carry out the mentioned imports. The issue was further examined and it is confirmed that for reasons of cost efficiency, the production of certain product types had been carried out by other non European entities of the group. As already mentioned in recital (138) of the provisional Regulation however, it was verified that such imports had not been at prices undercutting the Community price for the same product types.
- (85) CISA finally pointed at an apparent inconsistency between the relatively positive estimation of the Community industry concerning their future export sales and the general economic trends for third country markets, which were instead forecasted to decline. In this respect, it is to be noted that the analysis of the export activity of the Community industry does not have any effect on the determinations relating to injury or threat of injury, which exclusively concern the activity of the Community industry for the like product in the EC market. If some of the Community producers have optimistic views about their export activities this may only have resulted in the overstatement of their forecasted general economic performance but not on their performance in the domestic market, which is kept separate in the analysis.
- (86) Therefore, the claims referred to in recitals (83) to (85) above are rejected and the findings contained in recitals (136) to (141) of the provisional Regulation are hereby confirmed.

(b) *Imports from third countries*

- (87) Moreover, CISA claimed that it is not sufficient to examine the average price of imports from other non-EU third countries, but that the exact nature of these products should also be considered. It is confirmed that a detailed analysis has been carried out in all instances where sufficiently detailed information on prices was made available by importers. Unfortunately, trade statistics are not very detailed and, given the relatively low cooperation of importers in this investigation, little detailed information was available on prices on a product by product basis for imports from other countries. However, no substantiated information which would point to a conclusion different from what indicated in recitals (142) to (145) of the provisional Regulation was provided by any party, so that the findings contained in those recitals of the provisional Regulation are hereby confirmed.

(c) *Competition from other Community producers*

- (88) In the absence of any specific comments on this point, recital (146) of the provisional Regulation is hereby confirmed.

(d) *Cost of Production/Raw Material Costs*

- (89) CISA claimed that the Community industry had modified its product mix in order to concentrate on product types having a higher selling price, in order to contain the effects of an increase in cost of production. This would show that the Community

industry had sufficient means to reflect any increase in costs by increasing selling prices, contrary to what was indicated in recital (149) of the provisional Regulation.

- (90) There is no doubt that the Community industry has over time tried to maximise the profit by reflecting increases in costs by increasing selling prices. This is however not an ever ending process, and there is a moment when such adjustments are no longer possible given the competition existing in the market. In a market where similar goods are sold at substantially lower prices, the margin to operate such mark up becomes smaller the higher the market share of such low priced goods is. The comments made by CISA therefore do not contradict the findings in recitals (147) to (149) of the provisional Regulation which are therefore confirmed.

(e) *Shrinking of the Community market of seamless pipes and tubes due to economic downturn*

- (91) MOFCOM, CISA and a Chinese exporting producer claimed that the global economic downturn is at the basis of the economic problems suffered by the Community industry and concluded that it has broken the causal link between Chinese imports and any alleged injury or threat of injury. In this respect, it should be noted that CISA itself has recognised that the market consumption prevailing between 2005 and the IP was at exceptional levels and that the decrease in demand experienced after the IP may – to a very large extent – just be attributed to the market for this product coming back to its normal conditions. It is not clear therefore whether the global economic downturn can be considered as a cause of injury, since the information available only shows that the level of EC market consumption in the Post-IP period has come back to levels already considered as normal in the past. This would also suggest that it was the existence of exceptional levels of Community consumption during the period considered that had allowed the Community industry not to suffer material injury despite the significant market share and the substantial undercutting of dumped Chinese imports. In any case, recital (150) of the provisional Regulation does not exclude that the general economic downturn may have played a role in the injurious situation of the Community industry after the IP. However, it cannot be argued that the Community industry has only been negatively affected by the effects of the general economic crisis and that the dumped imports had no effect, when it is clear that the latter held a very substantial market share and significantly undercut the Community industry's prices. The claim that the economic downturn has broken the causal link referred to in recitals (128) to (135) of the provisional Regulation is therefore rejected, while the issue that the changed economic environment in comparison to the IP may have an effect on the determination of the level of the measures is addressed in recital (104) below.

- (92) The claims were, therefore, rejected and recital (150) of the provisional Regulation is hereby confirmed.

(f) *Other factors*

- (93) CISA commented that some Community producers have concluded framework contracts with customers at pre-agreed prices so that for them prices would have remained stable. At the same time they would have concluded similar fix-price agreements with suppliers of iron ore and other major inputs so that they would not be able to profit from the very sharp decrease in costs that these raw material have been having since immediately after the IP.
- (94) It is first of all noted that the fixed prices agreements with customers was a practice limited in number of contracts and, given the periods covered, it cannot be considered

as having had significant effects. This conclusion is confirmed by the fact that Community industry prices also have increased substantially. As for the fixed price agreements concerning major raw materials, this appears to be a world-wide spread practice which should therefore not put the Community producers at either advantage or disadvantage in respect to any other producer of the like product in the world market. Therefore, this cannot be seen as a cause breaking the causal link either. The claims in recital (93) above are therefore rejected.

3. Conclusion on causation

- (95) In the absence of any further comments on this point, recitals (151) to (153) of the provisional Regulation are hereby confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

- (96) The complainant, as well as a number of Community producers reiterated that the existence of anti-dumping measures was an essential element for them to continue as a going concern, given the injurious dumping practiced. In the absence of any further comment, recital (155) of the provisional Regulation is hereby confirmed.

2. Interest of the other Community producers

- (97) In the absence of any specific comment on this point, recital (156) of the provisional Regulation is hereby confirmed.

3. Interest of unrelated importers in the Community

- (98) A user of the product concerned, which is also an importer, came forward to point out that the CN codes of the product it was importing had not been mentioned in the Notice of initiation and it only became aware that the investigation was also covering these product types after the imposition of provisional measures. It claimed that it had to pay unforeseen anti-dumping duties for that reason. This importer was informed that the Notice of initiation contained a clear description of the product under investigation and that the CN codes were mentioned therein for information only. The correct customs classification of the product concerned is indeed one of the elements under investigation and it is therefore perfectly possible that the CN codes mentioned in the provisional Regulation differ to a certain extent from those indicated in the notice of initiation of the proceeding.
- (99) In the absence of any further comments on this point recital (157) of the provisional Regulation is hereby confirmed.

4. Interest of users

- (100) The user mentioned at recital (98) above also claimed that, should definitive measures be imposed on the product concerned, this would create serious problems of supply for its company, given the fact that EC producers are reluctant to supply it. This claim was examined and it was found that the problems encountered by this party in sourcing the product from Community producers related to past periods when, in the context of very high market demand, the supply of very limited quantities of such products was not considered as economically viable by certain Community producers. However, in periods of normal market demand this constraint should disappear, particularly when considering the fact that other users or importers of the same types of products may increase the level of Community demand for such products, given the imposition of measures. On the basis of these considerations, and also of the fact that the uses in

question only represented a very limited fraction of the total consumption of the product concerned, it is concluded that the availability of sources of supply should not be an issue for the product concerned.

- (101) One other user, who is buying the like product exclusively from the Community industry, reiterated its support for the imposition of measures. No other users came forward to comment on the provisional findings. In the absence of any further comment, recital (158) of the provisional Regulation is hereby confirmed.

5. Conclusion on Community interest

- (102) In the absence of any specific comment, recital (159) of the provisional Regulation is definitively confirmed.

H. DEFINITIVE MEASURES

1. Injury elimination level

- (103) The complainant and a number of Community producers part of the Community industry claimed that the 3 % profit margin provisionally used for the calculation of the injury elimination level referred to in recitals (161) to (163) of the provisional Regulation was excessively low, when considering that this is a capital intensive industry with high fixed costs, and that the average profit margins achieved by the Community industry during the period considered were well above 3 %.
- (104) It is recognised that the like product requires a highly capital intensive production. However it is considered that the current market situation is not such as to allow to make a clear assessment about the capacity utilisation rates for the near future and in particular for the years during which the measures will be in force, and this may have an impact on the determination of the margin of profit which should normally be achieved in a given market in the absence of dumping practices. Under these circumstances, and considering the fact that there is always the possibility for the Community industry to request a review of the measures in case of a change in circumstances, it was concluded that the moderate 3 % profit margin established at the provisional stage and in a previous investigation concerning the same product should be maintained. It is however noted that, should the market circumstances change significantly, such 3 % profit margin may need to be revised.
- (105) The methodology for the calculation of the injury elimination level indicated in recitals (164) and (165) of the provisional Regulation was applied, subject to the small adjustment referred to in recital (41) above. The countrywide injury elimination level was calculated as the weighted average of the injury margins found for the most representative product types sold by an exporting producer not granted IT.
- (106) The injury margins thus established were lower than the dumping margins found.

2. Definitive measures

- (107) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, it is considered that a definitive anti-dumping duty should be imposed on imports of the product concerned originating in the PRC at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule, which is in all cases the injury margin.

- (108) On the basis of the above, the definitive duties should be as follows:

Exporting producer	Anti-dumping duty
Shandong Luxing Steel Pipe Co., Ltd	17,7 %
Other cooperating companies	27,2 %
All other companies	39,2 %

- (109) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to ‘all other companies’) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to ‘all other companies’.
- (110) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁷ forthwith with all relevant information, in particular any modification in the company’s activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (111) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered and, where appropriate, the findings have been modified accordingly.
- (112) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in the Annex to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as Article 11(4) does not apply where sampling has been used.

3. Undertakings

- (113) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, a number of non-sampled exporting producers in the PRC indicated their wish to offer a price undertaking in accordance with Article 8(1) of the basic Regulation. However, despite the fact that all necessary conditions were explained, no formal undertaking

⁷ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, BELGIUM.

offer was submitted within the time limit set for this purpose by Article 8(2) of the basic Regulation and no extension of this time limit was requested. Under these circumstances, it is not necessary to further consider the issue of undertakings in the framework of this investigation.

J. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (114) Since the investigation has shown that the threat of injury was imminent at the end of the IP as indicated in recital (126) of the provisional Regulation, taking into account the findings in recital (50) to (55) above which confirm a negative evolution of several injury indicators after the IP, and in view of the magnitude of the dumping margin found, it is concluded that injury would have occurred in the absence of provisional measures. It is therefore considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation be definitively collected,

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 analysis⁸, currently falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93⁹ (TARIC codes 7304 19 10 20, 7304 19 30 20, 7304 23 00 20, 7304 29 10 20, 7304 29 30 20, 7304 31 20 20, 7304 31 80 30, 7304 39 10 10, 7304 39 52 20, 7304 39 58 30, 7304 39 92 30, 7304 39 93 20, 7304 51 81 20, 7304 51 89 30, 7304 59 10 10, 7304 59 92 30 and 7304 59 93 20) and originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

⁸ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

⁹ As defined in Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 291, 31.10.2008, 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.

Company	Anti-Dumping duty (%)	TARIC Additional Code
Shandong Luxing Steel Pipe Co., Ltd, Qingzhou City, PRC	17,7	A949
Other cooperating companies listed in the Annex	27,2	A950
All other companies	39,2	A999

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

Article 2

The amounts secured by way of provisional anti-dumping duty pursuant to Commission Regulation (EC) No 289/2009 on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China shall be definitively collected at the rate of the provisional duty.

Article 3

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Community the product described in Article 1(1) during the investigation period (1 July 2007 to 30 June 2008),
- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,
- it has actually exported to the Community the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 27,2 %.

Article 4

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, [...]

For the Council
The President
[...]

ANNEX

List of cooperating producers referred to in Article 1(2) under TARIC additional code A950

Company Name	City
Handan Precise Seamless Steel Pipes Co., Ltd.	Handan
Hengyang Valin MPM Co., Ltd.	Hengyang
Hengyang Valin Steel Tube Co., Ltd.	Hengyang
Hubei Xinyegang Steel Co., Ltd.	Huangshi
Jiangsu Huacheng Industry Group Co., Ltd.	Zhangjiagang
Jiangyin City Seamless Steel Tube Factory	Jiangyin
Jiangyin Metal Tube Making Factory	Jiangyin
Pangang Group Chengdu Iron & Steel Co., Ltd.	Chengdu
Shenyang Xinda Co., Ltd.	Shenyang
Suzhou Seamless Steel Tube Works	Suzhou
Tianjin Pipe (Group) Corporation (TPCO)	Tianjin
Wuxi Dexin Steel Tube Co., Ltd.	Wuxi
Wuxi Dongwu Pipe Industry Co., Ltd.	Wuxi
Wuxi Seamless Oil Pipe Co., Ltd.	Wuxi
Zhangjiagang City Yiyang Pipe Producing Co., Ltd.	Zhangjiagang
Zhangjiagang Yichen Steel Tube Co., Ltd.	Zhangjiagang