Commission Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional Measures

(1) On 18 September 2015 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India ('the country concerned') by Commission Implementing Regulation (EU) 2015/1559[(2)] ('the provisional Regulation').

(2) The investigation was initiated on 20 December 2014[(3)] following a complaint lodged on 10 November 2014 by Saint-Gobain PAM Group, ('the complainant') on behalf of producers representing more than 25 % of the total Union production of tubes and pipes of ductile cast iron.

(3) As stated in recital 14 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

(4) On 11 March 2015, the Commission initiated a separate anti-subsidy investigation with regard to imports into the Union of tubes and pipes of ductile cast iron originating in India. It published a Notice of Initiation in the *Official Journal of the European Union*[(4)]. The definitive findings of that investigation are subject to a separate Regulation ('the anti-subsidy Regulation')[(5)].

1.2. Subsequent procedure

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(5) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. In addition another Indian Producer Tata Metaliks DI Pipes Limited ('Tata') made themselves known and provided comments. The parties who so requested were granted an opportunity to be heard.

(6) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. The Commission verified on spot additional information provided by a related company based in Italy of one of the cooperating exporting producer.

(7) Jindal Saw Limited ('Jindal') requested the intervention by the Hearing Officer in trade proceedings ('the Hearing Officer') concerning some aspects of the provisional injury calculations. The Hearing Officer examined the request and responded to the exporting producer directly in writing.

(8) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of tubes and pipes of ductile cast iron originating in India and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the final disclosure.

(9) On 28 January 2016 a hearing with the Hearing Officer was held at the request of Electrosteel Castings Limited ('ECL').

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

1.3. **Product concerned and like product**

(11) As set out in recitals 15 and 16 of the provisional Regulation the product concerned was provisionally defined as tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes') originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90.

(12) Ductile pipes are used for drinking water supply, sewage disposal and irrigation of agricultural land. The transportation of water through ductile pipes may be based on pressure or solely on gravity. The pipes range between 60 mm and 2 000 mm and are 5,5, 6, 7 or 8 meters long. They are normally lined with cement or other materials and externally zinc-coated, painted or tape wrapped. The main final users are public utility companies.

(13) Jindal and the Government of India ('GOI') claimed that ductile pipes, which are not coated, neither internally nor externally ('bare pipes'), should be excluded from the product concerned on the basis that such tubes and pipes are semi-finished products with different physical, technical and chemical characteristics and cannot be used for

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conveying water without further processing. Bare pipes are also not interchangeable with the product concerned and have a different end-use.

(14) The complainant contested this claim and argued that all ductile pipes, whether coated or not, share the same basic physical, technical and chemical characteristics and have the same end-use. The complainant further argued that internal and external coating operations are considered as finishing operations, representing only up to 20 % of the total cost of production of ductile pipes, and do not alter the basic characteristics of a ductile pipe. The complainant further stressed that bare pipes as such have no effective end-market/function or use, other than conveying water and sewage, and are not sold on the Union market but must necessarily be coated before being put on the market and to comply with EU standards. In addition, bare pipes of ductile cast iron fall under the same customs code as coated pipes and their exclusion could therefore lead to circumvention of any anti-dumping measures and undermine the effectiveness of such measures given the Indian exporters' significant capacity to carry out coating in the Union (around 80 000 tonnes annually). In this regard, the complainant further claimed that the Indian imports of bare pipes have increased significantly since 2013 and these imports were almost three times higher in 2015 than in 2013. This trend is likely to continue in the complainant's view.

(15) The investigation has demonstrated that bare pipes do not have any effective market function/use and are not sold as such on the Union market. These pipes must necessarily undergo further processing, i.e. internal and external coating, before becoming marketable and fulfilling EU standards for conveying water and sewage. While compliance with EU standards is not necessarily a decisive factor for determining the product scope, the fact that additional processing must be carried out on a bare pipe before it can be put into its intended end-use, is a factor that cannot be overlooked when analysing whether a bare pipe is a final product or a semi-finished product only. The Commission therefore finds that bare pipes of ductile cast iron should be considered as semi-finished ductile pipes.

(16) Semi-finished goods and finished goods may nevertheless be considered to form a single product if (i) they share the same essential characteristics and, (ii) the additional processing costs are not substantial[(6)]. It is uncontested that the internal and external coating adds to bare pipes a physical characteristic which confers on these pipes an essential and basic characteristic required for their essential use on the Union market, namely the conveyance of water and sewage in accordance with EU standards. Moreover, it is uncontested that the cost for adding internal and external coating to a bare pipe normally accounts for up to 20 % of the total production costs of a ductile pipe. Accordingly, the additional processing must be considered substantial.

(17) It follows that semi-finished bare tubes and pipes of ductile cast iron cannot be considered forming a single product with the finished (coated internally and externally) ductile pipes and should therefore be excluded from the product concerned.

(18) Moreover, the Commission did not find that there is a considerable risk of circumvention should bare pipes be excluded from the product scope. The bare pipes

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are only imported by one related company of Jindal which, contrary to the claim by the complainant, has limited coating capacity in the Union. According to the Commission's verified data the actual capacity is around 15 000 tonnes annually. Moreover, although the imports of bare pipes from India appear to be increasing after the investigation period, the volumes are still modest (less than 10 000 tonnes in 2015) according to information from the complainant. Given the limited coating capacity by the related company in the Union and its current business plan for the forthcoming years in respect of bare pipes, between 15 000 tonnes-21 000 tonnes by 2017, it is unlikely that this production site would be turned into an entry gate for a massive influx of bare pipes with the sole objective to coat them in order to avoid duties for finished pipes in the Union, which could potentially raise an issue under Article 13 of the basic Regulation.

(19) Jindal requested after provisional disclosure that flanged pipes of ductile cast iron should be excluded from the product scope. It repeated the request after definitive disclosure.

(20) Contrary to bare pipes, flanged pipes are pipes of ductile cast iron finally processed with internal and external coating. Flanged pipes are therefore suitable for the conveyance of water and sewage without further processing. Essentially, they are cut in length from full length iron ductile pipes and fitted with flanges to be connected with bolts and nuts while other pipes of ductile iron are connected via a socket. The processing costs for cutting the length and adding flanges cannot be considered to change the basic characteristics of a ductile iron pipe, which is the conveyance of water and sewage or incurring substantive processing costs. Therefore, although some additional processing is required to manufacture flanged pipes from pipes of ductile iron pipes, the Commission considered them to form a single product and the exclusion request is rejected.

(21) In view of the above considerations, the product concerned is definitively defined as tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) (‘ductile pipes’), with the exclusion of ductile pipes without internal and external coating (‘bare pipes’), originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90.

(22) The investigation showed that the product concerned, as defined above, manufactured and sold in India as well as the product manufactured and sold in the Union, have the same basic physical, chemical and technical characteristics and are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2. DUMPING

2.1. Normal value

(23) After provisional disclosure, ECL submitted that certain costs reported in the selling, general and administrative expenses (SG&A) for the domestic sales had already been reported as costs of manufacturing, which resulted in double counting, and that accordingly these costs should be corrected. In addition, it requested the correction of certain costs taken into account for the construction of the normal value

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and the deduction of certain allowances when constructing the normal value. Based on the verified evidence at its disposal, the Commission accepted that certain costs were reported twice and corrected this by deducting these from the SG&A costs. The Commission also made corrections for certain costs and allowances for the construction of the normal value, where necessary.

(24) After definitive disclosure, the Commission established that for the same exporting producer certain price related costs mainly finance costs were erroneously deducted in cases where the normal value was constructed. This was corrected and the company concerned was informed accordingly.

(25) Both exporting producers claimed that the Commission should have deducted average credit costs when constructing the normal value, rather than excluding them altogether, as the Commission did at provisional stage.

(26) This claim was rejected as average credit costs are considered only to be relevant when establishing normal value on the basis of domestic prices, whereas they are irrelevant when the normal value is constructed on the basis of the cost of production, as was the case for the product types concerned. The reason for this is that credit costs are not related to the cost of production, but are, normally, a factor taken into account in the determination of the prices.

(27) After provisional disclosure, Jindal also argued that for non-representative sales[7] the Commission should not use the actual profit margin achieved for those sales as it was too high but rather the company weighted average profit margin. The exporting producer reiterated its claim after definitive disclosure, but did not provide any new evidence.

(28) The Commission rejected this claim as the normal value for such non-representative sales was based on the actual profit realised by the exporting producer on those sales as provided for in Article 2(6) of the basic Regulation.

(29) After provisional disclosure, the same exporting producer also claimed that freight costs should have been deducted in the adjustments made to construct the normal value. This was done, however, as the Commission deducted freight costs in order to arrive at an ex-works level in the construction of the normal value already at provisional stage.

(30) After definitive disclosure, the same exporting producer argued that there was a clerical error and, as a result, the packing costs were not deducted in the adjustments made to construct the normal value. The claim was found to be justified and the error was corrected accordingly.

(31) After provisional disclosure, the Union industry reiterated its claim that the Commission should make an adjustment to the normal value taking into account the Indian export tax on iron ore. The Commission established in the parallel anti-subsidy investigation that iron ore prices in India were distorted through the various export restraints in India. In these circumstances, there is no need to address this distortion