Council Implementing Regulation (EU) No 78/2013 of 17 January 2013 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain tube and pipe fittings of iron or steel originating in Russia and Turkey

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THE COUNCIL OF THE EUROPEAN UNION,

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 thereof,

Having regard to the proposal submitted by the European Commission after having consulted the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional measures

(1) On 31 July 2012, the European Commission ('the Commission'), by Regulation (EU) No 699/2012[(2)] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain tube and pipe fittings of iron or steel originating in Russia and Turkey.

(2) The proceeding was initiated by a notice of initiation[(3)] published on 1 November 2011, following a complaint lodged on 20 September 2011 by the Defence committee of the Steel Butt-Welding Fittings Industry of the European Union ('the complainants') on behalf of producers representing more than 40 % of the total Union production of certain tube and pipe fittings of iron or steel.

(3) As set out in recital 15 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2010 to 30 September 2011 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 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 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 analyse all information it deemed necessary for its definitive findings.

3. **Sampling**

(6) In the absence of any comments concerning the sampling of Union producers, unrelated importers and exporting producers, the provisional findings in recitals 5 to 11 of the provisional Regulation are hereby confirmed.

4. **Measures in force in respect of other third countries**

(7) It is reiterated that definitive anti-dumping measures are in force in respect of certain tube and pipe fittings of iron or steel originating in Malaysia, the People's Republic of China, the Republic of Korea and Thailand, and following circumvention practices also in respect of certain tube and pipe fittings of iron or steel originating in the People's Republic of China consigned from Indonesia, Sri Lanka, the Philippines and Taiwan (with certain exceptions)[(4)]. The countries mentioned in the preceding sentence shall hereafter be referred to as 'countries under anti-dumping measures'.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

(8) As set out in recital 17 of the provisional Regulation, the product concerned is tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, currently falling within CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80 ('the product concerned').

(9) In the absence of any comments concerning the product concerned and the like product, the provisional findings in recitals 17 to 20 of the provisional Regulation are hereby confirmed.

C. **DUMPING**

1. **Russia**

1.1. *Normal value*

(10) One Russian exporting producer claimed that only data obtained from Russian companies should have been used in the dumping margin calculations and that it is not accurate to use data from Turkish companies. It should be recalled that in the absence of cooperation by any Russian exporting producer, the normal value for Russia has been established in accordance with Article 18(1) and 18(5) of the basic Regulation on the basis of the facts available, i.e. information obtained from those Turkish exporting producers that use Russian seamless steel pipes and tubes as input for the production of the product concerned. The claim is therefore rejected.

(11) In the absence of any other comments concerning the determination of normal value, the provisional findings in recitals 22 to 25 of the provisional Regulation are hereby confirmed.

1.2. *Export price*

(12) In the absence of any comments concerning the determination of export price, the provisional findings in recitals 26 and 27 of the provisional Regulation are hereby confirmed.

1.3. *Comparison*

(13) In the absence of any comments concerning the comparison of export price and normal value, the provisional findings in recitals 28 and 29 of the provisional Regulation are hereby confirmed.

1.4. *Dumping margin*

(14) One Russian exporting producer claimed that the provisional anti-dumping duty of 23,8 % is not justified in light of the fact that the company only exports steel elbows to the Union and even those in only very small quantities. However, steel elbows are part of the product subject to this investigation and this has not been contested by any interested party. In addition, the criterion to consider imports into the Union as negligible as referred to in Article 5(7) and Article 9(3) of the basic Regulation is only considered on a countrywide level and not individually per company. The claim is therefore rejected.

(15) Another Russian exporting producer claimed it has not been dumping and that this is reflected by the fact that on multiple occasions it has lost tenders to Union competitors for supplying elbows and bends. As mentioned above, it is recalled that no Russian exporting producer cooperated in this investigation and therefore the dumping calculations for Russia were made in accordance with Article 18(1) and Article 18(5) of the basic Regulation on the basis of the facts available. Even if the claim is considered, it should be noted that the loss of tenders to Union competitors does not contradict the finding about dumping by the Russian exporting producer. The claim is therefore rejected.

(16) In the absence of any other comments concerning the dumping margin calculation, the findings in recitals 30 and 31 of the provisional Regulation are hereby confirmed.

(17) The countrywide dumping margin finally determined, expressed as a percentage of the CIF Union frontier price, duty unpaid, is the following:

Company	**Dumping margin**
All companies	23,8 %

2. **Turkey**

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 78/2013. (See end of Document for details)*

2.1. *Normal value*

(18) In the absence of any comments concerning the determination of normal value, the provisional findings in recitals 32 to 40 of the provisional Regulation are hereby confirmed.

2.2. *Export price*

(19) One exporting producer claimed that the profit margin achieved on the ocean freight, i.e. the difference between the freight charged to its customers and the freight paid by the exporting producer to the shipping company, should be included in the export price. However, pursuant to Article 2(8) of the basic Regulation the export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Union. A profit margin achieved on the transport of the product to the customer cannot be considered as part of the export price of the product itself. The claim is therefore rejected.

(20) In the absence of any other comments concerning the determination of export price, the provisional findings in recitals 41 to 43 of the provisional Regulation are hereby confirmed.

2.3. *Comparison*

(21) The Turkish Steel Exporters' Association (ÇIB) claimed that the significant price differences between seamless and welded pipe fittings have not been properly taken into account in the comparison between export price and normal value. However, all cooperating companies have submitted information on a transaction-to-transaction basis with regard to sales of seamless and welded fittings. That information has been explicitly used for the comparison between export price and normal value. In other words, seamless fittings have only been compared with seamless fittings and welded fittings have only been compared with welded fittings. Therefore, the claim is rejected.

(22) In the absence of any other comments in respect of comparison, the findings in recital 44 of the provisional Regulation are hereby confirmed.

2.4. *Dumping margins*

(a) *Dumping margin for companies investigated*

(23) It is recalled that the individual dumping margin provisionally established for one of the three cooperating exporting producers was determined on the basis of a comparison of a weighted average normal value with the company's weighted average export price of the product concerned to the Union. In the absence of any comments concerning the determination of that company's dumping margin, the provisional findings in recital 46 of the provisional Regulation are hereby confirmed.

(24) The dumping calculations in respect of the two other cooperating companies showed that they conducted targeted dumping in terms of a given time period as well as in respect of given customers and regions. Indeed, there was a clear pattern of

their export prices which differed significantly among different purchasers and regions, as well as time periods (up to 30 % for identical models of the product concerned). Furthermore, the dumping calculation based on the comparison of a weighted average normal value to a weighted average of export prices in accordance with the method provided in Article 2(11) first part of the first sentence of the basic Regulation did not reflect the full degree of dumping being practised by the two producers concerned, as demonstrated in recital 27 of this Regulation. The dumping margin could also not be established by a comparison of individual normal values and individual export prices to the Union on a transaction-to-transaction basis in accordance with Article 2(11) second part of the first sentence of the basic Regulation, given the lack of sufficient domestic transactions for normal value corresponding to the export transactions as demonstrated in recital 28.

(25) Therefore, in order to reflect the full amount of dumping being practised by the two companies concerned, in accordance with Article 2(11) of the basic Regulation, the normal value established on a weighted average basis was compared in their case to prices of all individual export transactions to the Union. Given that such method of comparison is an exception to the two first methods provided for in Article 2(11) of the basic Regulation, the Commission carefully checked whether the conditions to resort to it were clearly met in this case. The detailed dumping calculations, including the established export price patterns, have been disclosed. None of the Turkish exporting producers contested the underlying data.

(26) However, both cooperating companies, the ÇIB and the Turkish Government claimed that insufficient explanation had been provided as to the targeted dumping established for the two Turkish exporting producers and that in any event, any pattern of export prices was unintended. In a hearing with the Hearing Officer, requested by the two Turkish exporters, detailed explanations were provided to the two companies with regard to the establishment of targeted dumping and the underlying dumping margin calculations. The Commission also clarified that even if unintentional[(5)], their practices had the effect of targeted dumping. It is noted that the basic regulation does not require the investigating authority to identify potential reasons for targeted dumping, such as currency fluctuations, different regional pricing policies, etc. The mere establishment of patterns of export prices differing significantly among different purchasers, regions or time periods, is sufficient[(6)]. Further to the hearing, company-specific explanations have also been disclosed to the two companies. Moreover, a Note Verbale has been sent to the Permanent Delegation of Turkey to the Union with clarifications on the establishment of targeted dumping and the methodology applied for the dumping margin calculation. Furthermore, in another hearing with the Hearing Officer, requested by the ÇIB, detailed explanations have been provided to the ÇIB with regard to the establishment of targeted dumping and the underlying dumping margin calculations.

(27) The investigation has established for each of the two exporting producers three clear patterns of export prices covering the vast majority of their export sales to the Union, i.e. export prices differed significantly among different purchasers and regions, as well as time periods, as was demonstrated by the underlying data disclosed to the