Commission Implementing Regulation (EU) 2019/1295 of 1 August 2019 amending Implementing Regulation (EU) 2018/1469 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1295

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 954/2006[(2)] the Council, following an investigation ('the original investigation'), imposed a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Croatia, Russia and Ukraine. The measures consisted of an *ad valorem* anti-dumping duty ranging between 12,3 % and 25,7 % imposed on imports from individually named exporting producers in Ukraine, with a residual duty rate of 25,7 % on imports from all other companies in Ukraine. The definitive anti-dumping duty imposed on the exporting producer subject to the current review investigation, CJSC Nikopolsky Seamless Tubes Plant Niko Tube and OJSC Nizhnedneprovsky Tube Rolling Plant, now named LLC Interpipe Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant ('the applicant' or 'Interpipe') was 25,1 %.

(2) Following an application by Interpipe for the annulment of Council Regulation (EC) No 954/2006, the General Court of the European Union annuled Article 1 of Council Regulation (EC) No 954/2006 in so far as the anti-dumping duty fixed for Interpipe exceeded that which would have been applicable had the export price not been adjusted for a commission when sales took place through the intermediary of the affiliated trader, Sepco SA[(3)]. On 16 February 2012 the Court of Justice of the European Union upheld the judgment of the General Court[(4)].

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1295. (See end of Document for details)*

(3) Following these judgments, the Council amended Council Regulation (EC) No 954/2006 by Implementing Regulation (EU) No 540/2012[(5)] to correct the anti-dumping duty imposed on Interpipe in so far as it had been erroneously established. As a consequence, the duty applicable to Interpipe was amended to 17,7 %.

(4) By Implementing Regulation (EU) No 585/2012[(6)] the Council, following an expiry review, maintained the measures imposed by Council Regulation (EC) No 954/2006 on imports of seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine.

(5) Following an application by Interpipe pursuant to Article 11(3) of the basic Regulation, the Council, by Implementing Regulation (EU) No 795/2012[(7)] amended the definitive measures imposed by Implementing Regulation (EU) No 585/2012 as far as Interpipe is concerned ('the last interim review'). As a consequence, the duty applicable to Interpipe was amended to 13,8 %.

(6) By Implementing Regulation (EU) 2018/1469[(8)] the Commission, following an expiry review, maintained the measures imposed by Implementing Regulation (EU) No 585/2012 as last amended by Implementing Regulation (EU) No 795/2012 and Council Implementing Regulation (EU) No 1269/2012[(9)] on imports of seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine ('the expiry review investigation').

(7) The anti-dumping duties currently in force range from 35,8 % to 24,1 % for imports originating in Russia, and 25,7 % to 12,3 % for imports originating in Ukraine.

1.2. **Request for a partial interim review**

(8) On 7 May 2018, the Commission announced by a notice published in the *Official Journal of the European Union* the initiation of a partial interim review ('Notice of initiation')[(10)] of the anti-dumping measures applicable to imports of certain seamless pipes and tubes, of iron or steel, originating in Ukraine pursuant to Article 11(3) of the basic Regulation.

(9) The review, which is limited in scope to the examination of dumping of the exporting producer Interpipe, was initiated following a substantiated request lodged by the company. In the request Interpipe provided sufficient evidence that the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature.

1.3. **Investigation**

(10) The investigation of the level of dumping covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period').

(11) The Commission officially informed the applicant, the authorities of the exporting country and the Union industry of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the Notice of initiation.

(12) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant, which responded within the given deadline.

(13) The Commission sought and verified all information it deemed necessary for the purpose of determining the level of dumping. Verification visits were carried out at the premises of the applicant and at its related trading companies LLC Interpipe Ukraine, Interpipe Europe SA and Interpipe Central Trade GmbH.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(14) The product under review is the same as that defined in Implementing Regulation (EU) 2018/1469 of 1 October 2018 which imposed the measures currently in force, *i.e.* seamless pipes and tubes of iron or steel ('SPT'), of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis[(11)], originating in *inter alia* Ukraine, currently falling within CN codes ex 7304 11 00, ex 7304 19 10, ex 7304 19 30, ex 7304 22 00, ex 7304 23 00, ex 7304 24 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 80, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 89, ex 7304 59 92 and ex 7304 59 93 ('the product under review').

2.2. Like product

(15) As established in the original investigation as well as in the subsequent reviews, the current investigation confirmed that the product produced in Ukraine and exported to the EU, the product produced and sold on the domestic market of Ukraine, and the product produced and sold in the EU by the Union producers have the same basic physical and technical characteristics and end uses. These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LASTING NATURE OF CHANGED CIRCUMSTANCES

(16) In accordance with Article 11(3) of the basic Regulation, it was examined whether the changed circumstances regarding dumping could be considered to be of a lasting nature.

(17) During the original antidumping investigation in 2006, as well as in the most recent interim review investigation of Interpipe in 2012, covering the review investigation period from 1 October 2010 to 30 September 2011, the main raw material for the production of the product under review, i.e. round steel billets, was procured by Interpipe from independent suppliers.

(18) In its request for a partial interim review, the applicant claimed that the vertical integration of LLC Metallurgical Plant 'Dneprosteel' in 2013 has led to in-house production of the key raw material (steel billets) leading to a significant cost reduction

and change in product portfolio. The applicant also claimed that, in comparison with the product types produced and exported in the review investigation period of the last interim review investigation, i.e. 'standard' steel grade, it has now added new and more sophisticated products ('high-alloy', 'line pipe and mechanical pipe' grades) to its product portfolio, which represented an important share of the total exports to the EU during the current review investigation period from 1 April 2017 to 31 March 2018.

(19) The investigation confirmed that the key raw material was produced in-house by the applicant and that this change resulted in a significant change in costs and in product portfolio. The investigation confirmed that the product types exported by Interpipe to the EU were to a very large extent different from those exported during the review investigation period of the last interim review investigation. On this basis and given the structural nature of these changes, it was concluded that the changes described in recital (17) were of a lasting nature and unlikely to change in the near future. Consequently, it was considered that the application of the existing measures at their current level should be reassessed.

(20) A further change claimed by the applicant after the initiation of this review, i.e. the existence / setting up of a joint venture between Interpipe and Vallourec Tubes, was not taken into account since it took place after the initiation of the present interim review.

4. DUMPING

4.1.1. *Company structure and methodology used for calculating dumping*

(21) During the review investigation period, Interpipe had two fully-owned and controlled exporting producers ('the manufacturing entities'), LLC Interpipe Niko Tube ('NIKO') and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant ('NTRP').

(22) In the original investigation, as the accounting system of the applicant did not allow the identification of the relevant production company with respect to sales, a common dumping margin was calculated by aggregating all data relating to production, profitability and sales in the EU of the two producing entities.

(23) As of the last interim review, following a marked change in the corporate structure of the group enabling the identification of the relevant production company with respect to sales and production and in accordance with Article 2(11) and (12) of the basic regulation, the Commission no longer aggregated the data for the production companies, but used the standard methodology. This standard methodology consisted in calculating one common dumping margin for the two exporting producers by first calculating the amount of dumping for each individual exporting producer before determining a single weighted average rate of dumping for both companies.

(24) In the current investigation it was also possible to identify the relevant production company with respect to sales. Thus, in accordance with Article 2(11) and (12) of the basic regulation and in line with the Union institutions' consistent practice, the same methodology as in the last interim review was applied.

4.1.2. *Normal value*

(25) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether each of the exporting producers' total volume of domestic sales of the like product to independent customers was representative in comparison with its total volume of export sales to the EU, i.e. whether the total volume of such sales represented at least 5 % of the total volume of export sales of the product under review to the EU. The examination established that the domestic sales were representative for both exporting producers.

(26) The Commission then examined whether the domestic sales of Interpipe on its domestic market for the product type that is identical or comparable with the product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the domestic sales of the product type identical or comparable with the product type sold for export to the Union were to a large extent representative during the investigation period as 60 to 80 %[(12)] of the exported models were found to be sold in representative quantities on the domestic market.

(27) In accordance with Article 2(4) of the basic Regulation, it was subsequently examined whether the domestic sales of each product type that had been sold in representative quantities could be regarded as being made in the ordinary course of trade. This was done by establishing the proportion of profitable domestic sales to independent customers on the domestic market for each exported type of the product under review during thereview investigation period.

(28) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the product type in question, irrespective of whether those sales were profitable or not.

(29) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that product type, or where the weighted average price of that product type was below the unit cost of production, the normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that product type made during the review investigation period.

(30) The analysis of domestic sales showed that 35 to 55 %[(13)] of all domestic sales of the product type that were identical or comparable with the product type sold for export to the Union were profitable and that the weighted average sales price was higher