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

[[X1]COUNCIL IMPLEMENTING REGULATION (EU) No 1269/2012

of 21 December 2012

amending Implementing Regulation (EU) No 585/2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating, inter alia, in Russia, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009**]**

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(4) and Article 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after consulting the Advisory Committee,

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, Romania, Russia and Ukraine. The measures consisted of an *ad valorem* anti-dumping duty of 24,1 % imposed on imports from individually named exporting producers in Russia, with a residual duty rate of 35,8 % on imports from all other companies in Russia. The definitive anti-dumping duty imposed on the group subject to the current review investigation, OAO TMK ('the TMK Group' or 'the applicant') composed of OAO Volzhsky Pipe Plant, OAO Taganrog Metallurgical Works, OAO Sinarsky Pipe Plant and OAO Seversky Tube Works was 35,8 %, i.e. the residual duty.

(2) By Regulation (EC) No 812/2008[(3)] the Council, following the initiation of an interim review requested by the TMK Group pursuant to Article 11(3) of the basic Regulation ('the review investigation'), amended the definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, to 27,2 % for the TMK Group.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1269/2012. (See end of Document for details)*

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

(4) Accordingly, the measures currently in force are those imposed by Implementing Regulation (EU) No 585/2012. The TMK Group composed of OAO Volzhsky Pipe Plant, OAO Taganrog Metallurgical Works, OAO Sinarsky Pipe Plant and OAO Seversky Tube Works is subject to an anti-dumping duty of 27,2 %.

1.2. **Initiation of a partial interim review**

(5) On 14 October 2011, the Commission announced by a notice published in the *Official Journal of the European Union* ('notice of initiation')[5] the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation of the anti-dumping measures applicable to imports of certain seamless pipes and tubes, of iron or steel, originating in Russia.

(6) The review, which is limited in scope to the examination of dumping, was initiated following a substantiated request lodged by the TMK Group. In the request the applicant provided prima facie evidence that the continued imposition of the measures at the current level is no longer necessary to offset injurious dumping.

1.3. **Parties concerned**

(7) 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.

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

(9) 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 ZAO TMK Trade House (Moscow), TMK Warehouse Complex LLC (Lytkaryno), TMK Europe GmbH (Cologne), TMK Italia s.r.l. (Lecco) and TMK Global S.A. (Geneva).

1.4. **Review investigation period**

(10) The investigation of the level of dumping covered the period from 1 October 2010 to 30 September 2011 ('the review investigation period' or 'RIP').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

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(11) The product concerned is the same as that defined in Implementing Regulation (EU) No 585/2012 which imposed the measures currently in force, i.e. seamless pipes and tubes of iron or steel, of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis[6], 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, originating in Russia ('the product concerned' or 'SPT').

2.2. **Like product**

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

3. **DUMPING**

3.1. **Dumping of imports during the RIP**

3.1.1. *Normal value*

(13) Sales on the domestic market were made via the related companies, ZAO TMK Trade House and TMK Warehouse, which resold SPT to independent customers in Russia.

(14) In accordance with Article 2(2) of the basic Regulation it was 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 Union, i.e. whether the total volume of such sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. The examination established that the domestic sales were representative for all exporting producers.

(15) It was further examined whether each product type of the like product sold by the exporting producers on its domestic market were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold by the applicant on the domestic market to independent customers during the RIP represented at least 5 % of its total sales volume of the comparable product type exported to the Union.

(16) 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

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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 concerned during the RIP.

(17) 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 type in question, irrespective of whether those sales were profitable or not.

(18) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, 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 type made during the RIP.

(19) The normal value for the non-representative types (i.e. those of which domestic sales constituted less than 5 % of export sales to the Union or were not sold at all in the domestic market) was calculated on the basis of the cost of manufacturing per product type plus an amount for selling, general and administrative costs and for profits. In case of existing domestic sales, the profit of transactions in the ordinary course of trade on the domestic market per product type for the product types concerned was used. In case of no domestic sales, an average profit was used.

(20) With regard to manufacturing costs, and in particular energy costs, as far as gas is concerned, it was examined whether the gas prices paid by the exporting producers reasonably reflected the costs associated with the production and distribution of gas.

(21) It was found that the domestic gas price paid by the exporting producers was around one third of the export price of natural gas from Russia. In this regard, all available data indicates that domestic gas prices in Russia are regulated prices, which are far below market prices paid in unregulated markets for natural gas. Therefore, since gas costs were not reasonably reflected in the exporting producers' records as provided for in Article 2(5) of the basic Regulation, they had to be adjusted accordingly. In the absence of any sufficiently representative, undistorted gas prices relating to the Russian domestic market, it was considered appropriate to base the adjustment, in accordance with Article 2(5), on the basis of information from other representative markets. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), adjusted for local distribution costs. Waidhaus, being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market within the meaning of Article 2(5) of the basic Regulation.

(22) After disclosure, the TMK Group argued that the gas price adjustment was contrary to Article 2(5) of the Basic Regulation and 2.2.1.1 of the WTO AD Agreement. As mentioned in recital (21), it was found that the domestic gas price paid by the TMK Group was around one third of the export price of natural gas from Russia. Therefore, since gas costs were not reasonably reflected in the exporting producers' records as

provided for in Article 2(5) of the basic Regulation, they had to be adjusted accordingly. The claim made by the TMK Group was considered to be unsubstantiated and in the absence of any evidence, it was rejected.

3.1.2. *Export price*

(23) It should be noted that some export quantities of the product concerned had not been reported by the TMK Group as they considered that these SPT did not fall within the scope of the investigation. Samples in the form of cross-sections cuts of the product allegedly falling outside the product scope before and after further processing were shown to the Commission services during the on spot verification visits which however cannot be regarded as conclusive evidence.

(24) Having examined the issue, it was considered that these SPT fall within the product scope. The corresponding export transactions were therefore taken into account in the dumping calculation.

(25) During a hearing chaired by the Hearing Officer on November 9, 2012, the TMK group stated that it wished to address mainly the classification issue, raised in the disclosure document, which in their view resulted in an increase of their dumping margin from circa 13-14 %. The TMK group expressed some surprise regarding the fact that these products were considered as falling within the scope of the investigation and reiterated that these exported quantities had not been reported on the grounds that these products were 'blanks' (also named 'hollows') and not pipes, and thus, in their opinion, did not fall within the product scope. They further indicated that in fact, this matter had been addressed very concisely by the Commission services in the course of the verification visit. In this regard, it should be noted that the TMK Group itself indicated in one submission dated 31 August 2012, that 'the question of whether or not "hollows" falling under CN code 7304 59 10 should be included within the scope of the investigation has been extensively addressed in the course of the investigation'. In fact, both the European Steel Tube Association ('ESTA') and the TMK group have had ample opportunity to comment on this issue on several occasions. Furthermore, it should be noted that the Commission services requested TMK's related importers to fill in the Annex to the questionnaire and verified the information received during an on-spot verification visit in order to collect all relevant information. The statement that this matter was very 'concisely' addressed by the Commission services during the investigation and these products had been considered to be part of the product scope was incorrect and was therefore rejected.

(26) The TMK Group further indicated that the inclusion of these export quantities was illegal and unjustified as the Commission services failed to demonstrate that the pipes were not 'unworked' and the conclusions that these 'blanks' were 'semi-finished' (or partially worked) products were ill-founded.

(27) First it is recalled that the products covered by CN codes 7304 39 10 and 7304 59 10 are 'Tubes, pipes and hollow profiles' seamless, of iron (other than cast iron) or steel, 'Unworked, straight and of uniform wall thickness, for use solely in the manufacture of tubes and pipes with other cross-sections and wall thicknesses'.