Council Implementing Regulation (EU) No 795/2012 of 28 August 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 in Russia and Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 795/2012

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

Having regard to the proposal submitted by the European 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, 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 exporter 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 Regulation (EC) No 954/2006, on 10 March 2009 the Court of First Instance of the European Communities annulled Article 1 of that Regulation 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

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 795/2012. (See end of Document for details)*

of the affiliated trader, Sepco SA[3]. On 16 February 2012 the Court of Justice of the European Union upheld the judgment of the Court of First Instance[4].

(3) Following these judgments, the Council amended Regulation (EC) No 954/2006 by means of 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. Accordingly, the anti-dumping duty currently in force for Interpipe is 17,7 %.

(4) By Implementing Regulation (EU) No 585/2012[6] the Council, following an expiry review, 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 ('the expiry review investigation').

(5) Accordingly, the measures currently in force are those established by Implementing Regulation (EU) No 585/2012, i.e. between 24,1 % and 35,8 % for imports from Russia and between 12,3 % and 25,7 % for imports from Ukraine, with Interpipe having an anti-dumping duty of 17,7 %.

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

(6) On 29 July 2011, the Commission announced by a notice published in the *Official Journal of the European Union* the initiation ('Notice of initiation')[7] 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 Ukraine.

(7) The review, which is limited in scope to the examination of dumping, was initiated following a substantiated request lodged by Interpipe. In the request, Interpipe 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. **Investigation**

(8) The investigation of the level of dumping covered the period from 1 April 2010 to 31 March 2011 ('the review investigation period' or 'RIP').

(9) 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.

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

(11) 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 and Interpipe Europe SA.

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2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(12) The product concerned is the same as that defined in Implementing Regulation (EU) No 585/2012 which imposed the measures currently in force, namely 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[8], originating in 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 concerned').

2.2. Like product

(13) As established in the original investigation as well as in the expiry review investigation, the current investigation confirmed that the product produced in Ukraine and exported to the Union, the product produced and sold on the domestic market of Ukraine 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. Preliminary remarks

(14) Interpipe has two fully owned and controlled exporting producers, LLC Interpipe Niko Tube (Niko Tube) and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant (Interpipe NTRP). In line with the Union institutions' standard practice, one common dumping margin was calculated for the two exporting producers. The amount of dumping was first calculated for each individual exporting producer before determining a single weighted average rate of dumping for both companies.

(15) This methodology, however, was different from the methodology applied in the original investigation, where the common dumping margin was calculated by collapsing all data relating to production, profitability and sales in the Union of the two producing entities. The change in circumstances that warrants this change in methodology consists in a marked change in the corporate structure of the group enabling the identification of the relevant production company with respect to sales and production, which was not possible in the original investigation.

(16) Furthermore, in the original investigation, an adjustment pursuant to Article 2(5) of the basic Regulation was made in respect of Interpipe's energy costs in order to reasonably reflect the costs associated with the production and sale of electricity and gas in Ukraine. This adjustment was deemed necessary due to the fact that Ukrainian gas and electricity prices, at the time, were significantly lower than the average price paid in the Union and did not reflect international market prices. The adjustment was

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based on the average prices observed in Romania, which at that time formed part of the investigation.

(17) However, contrary to the original investigation, it is considered that an energy adjustment is not deemed necessary for the purpose of the current interim review. The investigation has shown that the average Ukrainian energy prices have increased steadily since the original investigation, at a much higher rate than the average prices in the European Union, thus gradually bridging the gap between them. The considerable price difference in energy costs that was found during the original investigation and warranted an adjustment is therefore currently not present.

(18) Accordingly, it is not considered appropriate to make an energy adjustment in this interim review.

3.2. Dumping of imports during the RIP

3.2.1. *Normal value*

(19) In accordance with Article 2(2) of the basic Regulation it was first examined whether each 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 both exporting producers.

(20) 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.

(21) 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 concerned during the RIP.

(22) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and for which the weighted average sales price 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.

(23) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or for which the weighted average price was below the unit cost of production, normal value was based on the actual domestic price,