Council Regulation (EC) No 812/2008 of 11 August 2008 amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating, inter alia, in Russia

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 9 and 11(3) thereof,

Having regard to Council Regulation (EC) No 954/2006 of 27 June 2006 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel (SPT) originating, inter alia, in Russia[(2)],

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Existing measures

(1) Following an investigation (the original investigation), the Council, by Regulation (EC) No 954/2006, imposed a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel (SPT) originating, inter alia, in Russia.

2. Special monitoring

(2) After the entry into force of Regulation (EC) No 954/2006 and having informed the Advisory Committee, the Commission monitored with special attention the evolution of SPT imports from all countries concerned by the measures. This monitoring showed that the exports of the Russian exporting producer group OAO TMK (OAO Volzhsky Pipe Plant, OAO Taganrog Metallurgical Works, OAO Sinarsky Pipe Plant, OAO Seversky Tube Works and their related companies) (hereinafter TMK, the company or the group) to the Community during the first six months after the imposition of measures had dropped dramatically. It also indicated that the level of duty as regards TMK should be reexamined. Indeed, the cost and price information provided by TMK in the monitoring questionnaire indicated that the group's dumping margin would be lower than the current 35,8 %.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 812/2008. (See end of Document for details)*

3. Initiation of an interim review

(3) On the initiative of the Commission, a partial interim review of the Regulation above was initiated for TMK, on the basis of evidence that the Commission received from that exporter. The company claimed that the circumstances which had led to the establishment of the measure in force, had changed and that these changes were of a lasting nature. It is recalled that TMK did not cooperate fully in the original investigation and therefore its dumping margin was calculated on the basis of facts available, i.e. the normal value of another producer group in Russia which cooperated with the investigation and Eurostat data. According to TMK, it failed to cooperate during the original investigation mainly because of the significant internal changes which had already begun to take place within the group during the original investigation period. Due to these exceptional circumstances, which had an impact on the corporate governance of the group, as well as its accounting and auditing practices, TMK could not provide adequate evidence of its prices and costs during the original investigation. According to the company, the changes in its organisation since the original investigation have resulted in a simpler corporate structure, improved corporate governance and a switch to IFRS accounting, which would allow it to cooperate. It also provided prima facie evidence to show that a comparison of normal value based on its own domestic prices or costs and export prices to the Community would lead to a reduction of dumping well below the level of the current measure. Therefore it claimed that the continued imposition of the measure at the existing level, which was based on the level of dumping previously established, was no longer necessary to offset dumping.

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission decided on its own initiative to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the level of dumping as far as the exporting producers/members of the TMK group are concerned. The Commission published a notice of initiation on 22 June 2007 in the *Official Journal of the European Union*[(3)] and commenced an investigation.

(5) The Commission officially advised TMK and its related companies, as well as the representatives of the exporting country, of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(6) The Commission also sent questionnaires to TMK and its related companies and received replies within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping and carried out verification visits at the premises of the following companies:

— OAO Volzhsky Pipe Plant, Russia,

— OAO Taganrog Metallurgical Works, Russia,

— OAO Sinarsky Pipe Plant, Russia,

— OAO Seversky Tube Works, Russia,

— ZAO TMK Trade House, Russia,

— TMK Europe GmbH, Germany,

— TMK Global AG, Switzerland,

— TMK Italia s.r.l., Italy.

4. Review investigation period

(7) The investigation of dumping covered the period from 1 April 2006 to 31 March 2007 (the review investigation period or RIP).

B. REVIEW INVESTIGATION

1. Product concerned

(8) The product concerned by the current review is the same as that in the original investigation, i.e. certain 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[(4)] originating in Russia (the product concerned), currently classifiable 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[(5)].

2. Like product

(9) The product produced and sold on the Russian domestic market and that exported to the Community have the same basic physical, technical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. RESULTS OF THE INVESTIGATION

1. Normal value

(10) Sales on the domestic market are made via the related company, ZAO TMK Trade House, which then resells the product concerned to independent customers in Russia.

(11) In accordance with Article 2(2) of the basic Regulation, it was first examined, with regard to the four cooperating exporting producers of the group, whether their domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. The total volume of domestic sales of the like product was found to be representative. The Commission's services subsequently identified those types of the like product sold on the domestic market that were identical to or directly comparable with the types exported to the Community.

(12) For each type sold by the exporting producers on their domestic market and found to be directly comparable with the type of the product concerned exported to the

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Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of the product concerned exported to the Community.

(13) Subsequently, it was examined whether each type of the product concerned sold domestically in representative quantities could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers on the domestic market of the product type in question.

(14) In cases where the sales volume of the relevant product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. In cases 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 cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type. In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(15) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish the normal value, another method had to be applied. In this regard, the Commission used constructed normal value. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the exporting producer's manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. Pursuant to Article 2(6) of the basic Regulation, the percentage for SG&A and profit margin were based on the average SG&A and profit margin of sales in the ordinary course of trade of the like product.

(16) 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.

(17) It was found that the domestic gas price paid by the exporting producers was around one fourth 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.

(18) For those product types where the normal value was constructed, as described above, the construction was done on the basis of the manufacturing costs of the exported types after the adjustment for the gas cost.

2. Export price

(19) All export sales of TMK are made via related companies located either in the Community or in Switzerland. Thus the export price was established on the basis of Article 2(9) of the basic Regulation, i.e. using the resale prices actually paid or payable to the related company by the first independent buyer in the Community in the RIP, adjusted for all costs incurred between importation and resale and for profits.

(20) As for the export prices charged to customers in the Community by the related company in Switzerland, TMK Global AG, TMK claimed that it would be unwarranted to deduct from the export price the profit, SG&A and commissions or agency fees since TMK Global acts as a fully integrated export sales department outside the Community. According to TMK such deductions would only be warranted for companies located in the Community and forming a part of the group's importing network, as provided for in Article 2(9) of the basic Regulation.

(21) The above claim was accepted, as it was found that TMK Global's role after the organisational changes within the group had evolved into that of an export department responsible for exports outside the Community and also the export sales to the Community, albeit that these had dropped to low volumes prior and during the RIP. Indeed, TMK Global acts as a 'sales hub', which simplifies the purchasing and documentation processes for the front offices located directly in the key markets, i.e. TMK North America and TMK Middle East. It also performs other functions of an export department with regard to export sales to its key markets, as well as to the Community, such as management accounting and enforcement of goods tracking standards. In the past, these functions were performed by the local export departments of each mill, but they are now carried out by TMK Global for the sake of centralisation and to ensure consistency.

3. Comparison

(22) The comparison between the weighted normal value and the weighted export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic