



EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the implementation of the Court of Justice of the European Union judgment in joined cases C-191/09 P and C-200/09 P, Council of the European Union versus Interpipe Nikopolsky Seamless Tube Plant Niko Tube ZAT and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT ('Interpipe'). By the judgment the Court of Justice upheld the General Court's judgment in case T-249/06, by which Article 1 of Council Regulation (EC) No 954/2006 was annulled, insofar as the anti-dumping duty fixed for exports to the European Union by Interpipe had been established on the basis of export prices that had been adjusted for commissions for sales via an affiliated trader.

General context

This proposal is made in the context of Article 266 of the Treaty on the Functioning of the European Union according to which the institutions of the European Union whose act has been declared void shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

Existing provisions in the area of the proposal

Council Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine.

Consistency with the other policies and objectives of the Union

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the implementation have already had the possibility to defend their interests during disclosure, in line with the provisions of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (the basic Regulation).

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the judgment of the Court of Justice of the European Union in joined case C-191/09P and C-200/09 P concerning the interpretation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The Council, by Regulation (EC) No 954/2006, imposed definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine.

The applicants, the Interpipe group, contested Regulation (EC) No 954/2006, *inter alia*, with regard to the calculation of their individual duty rate before the Court of First Instance (CFI). By its judgment of 10 March 2009 CFI annulled Article 1 of Regulation (EC) No 954/2006 in so far as the anti-dumping duty fixed for exports by the applicants exceeds that which would have been applicable had the export price not been adjusted for a commission when sales took place through Sepco (a sales company related to the applicants). Following the appeals by the Council and the Commission and the cross-appeal by the applicants, the Court of Justice of the European Union has given its final ruling in its judgment of 16 February 2012 ('the Judgment') by rejecting both the appeals and the cross-appeal and hence confirming the judgment of the CFI (now the General Court).

In order to implement the Judgment, the duty rate for the Interpipe group was recalculated which resulted in a different anti-dumping duty rate.

It is therefore proposed that the Council adopt the attached proposal for a Regulation amending Regulation (EC) No 954/2006.

Legal basis

Article 266 of the Treaty on the Functioning of the European Union.

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the aforementioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s):

The aforementioned basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has implications for the Union budget. The amended anti-dumping duty will be applicable retroactively resulting in the refund of the difference in duties collected based on the original duty rate and the amended duty rate. The final impact on the budget has been estimated at 3.5 million EUR, see attached legislative financial statement.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 266 thereof,

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 Community¹ ('the basic Regulation'), and in particular Article 9(4) thereof,

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

Whereas:

A. PROCEDURE

- (1) In March 2005, the Commission initiated an investigation² with regards to imports of certain seamless pipes and tubes ('SPT') originating, inter alia, in Ukraine ('original investigation'). In June 2006 definitive anti-dumping duties were imposed by Council Regulation (EC) No 954/2006³, as last amended by Council Regulation (EC) No 812/2008⁴. In addition, on 30 November 2007, the Commission published a Notice in the Official Journal of the European Union, reflecting a name change of two Ukrainian exporting producers.⁵
- (2) On 8 September 2006, Interpipe Nikopolsky Seamless Tubes Plant Niko Tube and Interpipe Nizhnedneprovsky Tube Rolling Plant ('Interpipe group' or 'the applicants') lodged a request⁶ before the Court of First Instance of the European Communities ('CFI') to annul Council Regulation (EC) No 954/2006 as far as it affects them.
- (3) With regard to CJSC Nikopolosky Seamless Tubes Plant Niko Tube and OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP) it is recalled that their company names

¹ OJ L 343, 22.12.2009, p. 51.

² OJ C 77, 31.3.2005, p. 2.

³ OJ L 175, 29.6.2006, p. 4.

⁴ OJ L 220, 15.8.2008, p. 1.

⁵ OJ C 288, 30.11.2007, p. 34.

⁶ OJ C 261, 28.10.2006, p. 28.

changed in February 2007 to CJSC Interpipe Nikopolsky Seamless Tubes Plant Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant, respectively.⁷ Subsequently, CJSC Interpipe Nikopolsky Seamless Tubes Plant Niko Tube has been discontinued as a legal entity and all its property and non-property rights and liabilities was taken over by LLC Interpipe Niko Tube, which was established in December 2007.

- (4) By its judgment of 10 March 2009⁸, the CFI annulled Article 1 of Council Regulation (EC) No 954/2006 in so far as the anti-dumping duty fixed for exports by the applicants exceeds that which would have been applicable had the export price not been adjusted for a commission when sales took place through the related trading company.
- (5) The Council of the European Union and the Commission, as well as the applicants, lodged appeals requesting the Court of Justice of the European Union ('ECJ') to set aside the CFI judgment of 10 March 2009. On 16 February 2012, the ECJ dismissed both the appeals and the cross-appeal ('the Judgment')⁹ and thus confirmed the CFI (now the General Court) judgment of 10 March 2009.
- (6) Article 1 of Council Regulation (EC) No 954/2006 was consequently annulled to the extent to which the anti-dumping duty imposed on exports into the European Union of goods produced and exported by the Interpipe group exceeded that which would be applicable if export price not been adjusted for a commission when sales took place through the related trading company.
- (7) It is recognised by the Courts¹⁰ that, in cases where a proceeding consists of several steps, the annulment of one of these steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of parts of the definitive anti-dumping Regulation does not imply the annulment of the entire procedure prior to the adoption of the Regulation in question. On the other hand, according to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to comply with the Judgment of the Courts of the European Union. Accordingly, the Union Institutions, in so complying with the Judgment, have the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the Judgment¹¹.
- (8) This Regulation seeks to correct the aspects of the Council Regulation (EC) No 954/2006 found to be inconsistent with the basic Regulation, and which thus led to the annulment of parts of that Regulation. All other findings made in Council Regulation (EC) No 954/2006 remain valid.
- (9) Therefore, in accordance with Article 266 of the Treaty on the Functioning of the European Union, the anti-dumping duty rate for the Interpipe group was re-calculated on the basis of the Judgment .

⁷ OJ C 288, 30.11.2007, p. 34.

⁸ Case T-249/06 - Interpipe Niko Tube and Interpipe NTRP v Council [2009] II-00383

⁹ OJ C 98, 31.03.2012, p. 2.

¹⁰ Case T-2/95 Industrie des poudres sphériques (IPS) v Council [1998] ECR II-3939.

¹¹ Case C-458/98 P IPS v Council [2000] ECR I-08147.

B. NEW ASSESSMENT OF THE FINDINGS BASED ON THE JUDGMENT OF THE COURT OF JUSTICE

- (10) In this Regulation, the aspect of the Judgment that is addressed is the calculation of the dumping margin, more specifically the calculation of the adjustment made to the export price for differences in commissions in accordance with Article 2(10)(i) of the basic Regulation.
- (11) As outlined in recitals (131) and (134) of the Council Regulation (EC) No 954/2006, the export price was adjusted for commissions pursuant to Article 2(10)(i) of the basic Regulation for sales made via the related trading company.
- (12) The CFI in its Judgment found, and the ECJ later confirmed, that the Union Institutions in comparing the normal value and the export price, should not have made an adjustment for commissions in this particular case.
- (13) Therefore, the dumping margin was re-calculated without adjusting the export price for differences in commissions.
- (14) The comparison of the thus re-calculated weighted average export price with the weighted average normal value as found during the original investigation by product type on an ex-factory basis showed the existence of dumping. The dumping margin established, expressed as a percentage of the CIF import price at the Union frontier, duty unpaid is 17,7%.

C. DISCLOSURE

- (15) All interested parties concerned by the implementation of the Judgment were informed of the proposal to revise the rates of anti-dumping duty applicable to the Interpipe group. They were also granted a period within which they could make representations subsequent to this disclosure in accordance with the provisions of the basic Regulation.

D. CONCLUSION

- (16) On the basis of the above the duty rate applicable to the Interpipe group should be amended accordingly. The amended rate should also apply retroactively from the date that Regulation (EC) No 954/2006 came into effect, in the following sense: repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation. For instance, if that repayment or remission is asked on the basis of article 236(2) of Council Regulation (EEC) 2913/92 establishing the Community Customs Code it must, in principle, only be granted if the request was made by a submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor. (For example, if the duty was collected shortly after the entry into force of Regulation (EC) No 954/2006, and the request for reimbursement was made within three years from the date on which the amount of duties was communicated to the debtor, normally, the request should be granted, provided that it also fulfills all other requirements).

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning CJSC Interpipe Nikopolsky Seamless Tubes Plant Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant, in the table in Article 1 of Regulation (EC) No 954/2006, shall be replaced by the following:

Company	Anti-dumping duty	TARIC additional code
LLC Interpipe Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant (Interpipe NTRP)	17,7%	A743

Article 2

On the basis of the above the duty rate applicable to the Interpipe group should be amended accordingly. Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

Article 3

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President
[...]

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

Council Regulation amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine.

2. BUDGET LINES:

Chapter and Article: 120

Amount budgeted for the year concerned: 19.171.200.000 EUR

3. FINANCIAL IMPACT

Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€million to one decimal place)

Budget line	Revenue ¹²	2012	2013
Article 120	<i>Impact on own resources</i>	-2.6	0

4. ANTI-FRAUD MEASURES

Not applicable

5. OTHER REMARKS

The Court of First Instance partially annulled Article 1 of Council Regulation (EC) No 954/2006 insofar as it concerned the Interpipe group ("the applicants", i.e. CJSC Interpipe Nikopolsky Seamless Tubes Plant Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant). Following the appeal by the Council and the Commission and the cross-appeal by the applicants, the European Court of Justice has given its final ruling in its judgment of 16 February 2012 by rejecting both the appeals and the cross-appeal and hence confirming the judgment of the CFI (now the General Court). As a result, the definitive anti-dumping duty for the applicants decreases from 25,1% to 17,7%. The new duty rates should, in line with the court

¹² Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

judgment, be applied retroactively from the date of entry into force of the anti-dumping duty, i.e. 30 June 2006.

The amount of duties that were paid since the imposition of the anti-dumping measures until the end of February 2012 have been estimated on the basis of information extracted from imports statistics database.

It appears, therefore, that the amounts eligible for reimbursement would be approximately 3.5 million EUR. The reimbursement should be requested from national customs authorities in accordance with the applicable Union customs legislation thus the actual amount will be dependent on the amounts claimed by importers.

Based on the above, the final impact on the revenue side of the budget is 2.6 million EUR, i.e. the eligible amount minus the 25% collection costs.