

## II

(Non-legislative acts)

## REGULATIONS

## 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 steel pipes, 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<sup>(1)</sup> ('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:

(2) By Regulation (EC) No 812/2008<sup>(2)</sup> 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.

(3) By Implementing Regulation (EU) No 585/2012<sup>(4)</sup> 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. PROCEDURE

## 1.1. Measures in force

(1) By Regulation (EC) No 954/2006<sup>(2)</sup> 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.

## 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')<sup>(5)</sup> 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.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 175, 29.6.2006, p. 4.

<sup>(3)</sup> OJ L 220, 15.8.2008, p. 1.

<sup>(4)</sup> OJ L 174, 4.7.2012, p. 5.

<sup>(5)</sup> OJ C 303, 14.10.2011, p. 11.

### 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

- (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<sup>(1)</sup>, 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 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

<sup>(1)</sup> The CEV is determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

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'. The Explanatory Note to subheadings 7304 39 10 and 7304 59 10 states that they include 'seamless steel tubes usually obtained by piercing and hot-rolling or by piercing and hot drawing; they are usually called "blanks". They are intended to be transformed into tubes of other shapes and wall thickness with more reduced dimensional tolerances. They are presented with the ends roughly cut off and deburred but are otherwise unfinished. Their exterior and interior surfaces are rough and not descaled. They are not oiled, zinc-coated or painted'. After consideration of the

arguments put forward by the TMK Group and ESTA, it is considered that based on the various documents collected during the on-spot verification visits (customer purchase order and specifications, intercompany contracts, invoices issued by related importers, description of the standard ISO 9809-1) these tubes are indeed 'semi-finished' in the sense that they have to correspond to certain requirements and specifications such as 'top quality SS hot finished tubes for cylinders, in steel type 34CrMo4 subject to UNI EN 10083-1 and DIN 1629 "annealed coarse" and "smooth at ends", of the dimensions specified in the purchase order.' Furthermore, other requirements which are listed in the customer purchase order and specifications such as 'ultrasonic testing for feasible defects, thickness control, ovalization and straightness' also point to further processing of these tubes, which is not the case for so-called 'blanks'.

- (28) The TMK Group claimed that the features of 'annealed coarse' and 'smooth at ends' are not among the criteria listed in the text of the relevant CN codes and the Explanatory Note to determine whether a pipe is 'unworked'. In this respect, it must be noted that heading texts and relevant Explanatory notes do not always contain an exhaustive list of all the features of the products covered. In relation to products such as those in question, which partake of the characteristics of different kinds of goods, classification depends on the most important features of the imported goods. Therefore, while noting that these features are not among the criteria listed in the text of the relevant CN codes and the Explanatory Note, they remain important elements in assessing whether or not product types can be considered to be 'unworked' and thus within the scope of CN codes 7304 39 10. and 7304 59 10.
- (29) The TMK group also claimed that these tubes were not annealed as they were not heat treated as indicated in the mill test certificates. In this regard, it should be noted that the purchase specifications of the customer contain contradictory information as they mention heat treatment of the product. Reference to these purchase specifications is made on other documents such as the manufacturer declaration issued by the TMK Group and the specification to the contracts signed by the TMK Group and its unrelated customer.
- (30) It was further noted that in the above-mentioned inter-company contracts provided by the TMK Group during the on-spot verification, these products were initially classified in a different CN code (under measures) and were changed to a CN code not under measures (including during the IP), although, based on the information available, there were no changes to the customer purchase order and product specifications. The TMK Group argued that this change in the CN code was irrelevant as what matters under the applicable customs classification rules are the objective characteristics of the goods at the time of their importation to the Union. While the objective characteristics of the goods at the time of their importation to the Union are an important element, it is not denied by the TMK Group that they classified the product types as falling under measures before changing that classification even without any change in the product specifications. This is considered to be one of the elements that leads to the conclusion that the concerned product types fall within the scope of the investigation.
- (31) It was also noted that the unrelated customer's purchase specifications clearly referred to 'semi finished' products rather than 'blanks' or 'hollows'. On this latter point, TMK argued that it is totally irrelevant for customs classification purposes how the product is described by a purchaser. In reply to this, it must be stated that the description of the product by the purchaser has some value in the sense that the purchaser is obviously aware of the product requirements at the time of order. To say, therefore, that the purchaser's description is 'totally irrelevant' is doubtful.
- (32) In conclusion, the semi-finished seamless steel tubes produced with heat treatment purchased for the purpose of producing such cylinders have to correspond to very detailed technical/quality/dimensional requirements. These features are clearly not corresponding with the notion of 'unworked' as mentioned in the Explanatory Notes to CN 7304 39 10 and 7304 59 10 and therefore, the comments made by the TMK Group regarding the alleged wrong interpretation of the term 'unworked' by the Commission had to be rejected.
- (33) Contrary to several previous statements, the TMK group also argued that these products sold to an unrelated customer were not solely destined for the same application i.e. the production of cylinders, but could also be transformed in so-called 'precision pipes'. The group stated that the unrelated customer first transforms blanks into cold rolled pipes (or precision pipes) which are then processed into gas cylinders. It should be noted that this element is not only contradictory to what was stated by the TMK group in previous submissions and to what was found in the documents collected during the verification visits. Notwithstanding the above, it should be noted that this additional allegation was new, was submitted at a late stage and was not substantiated by evidence. In addition, the group submitted evidence that allegedly showed that the unrelated customer also sold precision pipes. While noting that this evidence was submitted very late in the investigation, it was also noted that the evidence related to a period long after the end of the RIP and that the documents related to possible sales of any types (or sections) of cold rolled products (pipes). These arguments were therefore rejected.

(34) The majority of exports of the product concerned by the exporting producers to the Union were made to independent customers in the Union through two related trading companies, i.e. TMK Europe GmbH located in Germany and TMK Italia s.r.l. located in Italy. The export price for the above-mentioned exports was established on the basis of export prices actually paid or payable in accordance with 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 Union in the RIP, adjusted for all costs incurred between importation and resale and for profits.

(35) Some limited quantities were exported directly to independent customers in the Union. The export price for these quantities was established on the basis of export prices actually paid or payable in accordance with Article 2(8) of the basic Regulation.

### 3.1.3. Comparison

(36) The normal value and the export price of the exporting producers were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments were made in respect of packaging, transport costs, credit costs and anti-dumping duties.

(37) The TMK Group requested that certain characteristics pertaining to steel grade, threading type and coating of SPT be taken into account in order to ensure a fair comparison between SPT sold domestically and for export.

(38) The Defence Committee of the Seamless Steel Tube Industry of the European Union ('ESTA') claimed that any request to change the product definition or the methodology used in the original investigation or subsequent review was in breach of Article 11(9) of the basic Regulation and should be disregarded.

(39) In this regard, the investigation revealed that the request made by the TMK Group did not affect the product definition but rather allowed the identification of additional characteristics which ensure a fair comparison of SPT sharing the same features. Further, it was found that these additional characteristics affected prices and price comparability.

(40) On the basis of the above, it was considered that the request was warranted and the above mentioned characteristics were therefore taken into account.

(41) The TMK Group claimed that, in accordance with Article 11(10) of the basic Regulation, the duties paid on DDP ('delivered duty paid') transactions should not be deducted in order to construct export price. It

claims that, in comparison with the last full 12-month period prior to the imposition of anti-dumping duties on TMK's exports of SPT to the Union (1 July 2005-30 June 2006 or 'reference period'), the duty was duly reflected in the prices charged in the RIP and the subsequent selling prices in the Union.

(42) In this regard, it was found that the DDP prices charged to the first unrelated customers did not cover costs let alone the anti-dumping duties; i.e. these transactions were overall loss making. It is further noted that, even though prices for similar products increased by ca. 30 % since the reference period, the price of raw materials which account on average for more than 50 % of the cost of manufacturing increased by more than 70 % over the same period. On the basis of the above, it is considered that no conclusive evidence was provided to show that the duty is duly reflected in the prices charged.

(43) It is also noted that, even if one were to accept that the duty is reflected in the subsequent selling prices (*quod non*), Article 11(10) of the basic Regulation requires that resale prices and subsequent selling prices both reflect the duty.

(44) After disclosure, the TMK Group continued to object to the deduction of the duties from the export prices and further argued that the gas cost adjustment made resulted in losses, which in its view, were certainly of a lower magnitude, without providing however any further evidence. The TMK Group maintained its view that the fact that ex-works export prices should be above the costs of production was legally flawed and reiterated that the criteria to be examined was only whether anti-dumping duties paid were duly reflected in the resale price charged by its unrelated customers which purchased on a DDP basis. However, since the DDP prices charged to the first unrelated customers did not cover the costs, let alone the anti-dumping duties, even without the gas adjustment and since the price of raw materials which account on average for more than 50 % of the cost of manufacturing increased by more than 70 % over the same period as mentioned in recital (42) above, it is considered that the TMK Group has not provided conclusive evidence showing that the duty was duly reflected in the prices charged or subsequent selling prices.

(45) On the basis of the above, this claim had to be rejected.

### 3.1.4. Dumping margin

(46) Pursuant to Article 2(11) and (12) of the basic Regulation, the weighted average normal value was compared with the weighted average export price per product type on an ex-work basis separately for each of the exporting producers. One common dumping margin is established for the TMK Group by calculating a single weighted average rate of dumping for the exporting producers within the TMK Group.

- (47) On this basis the dumping margin, expressed as an percentage of the CIF Union frontier price, duty unpaid, was 29,6 %. Following disclosure, the TMK group pointed to some clerical errors in the dumping calculations for two of its production entities. These clerical errors were corrected and the weighted average dumping margin found for the TMK Group is 28,7 % instead of 29,6 %.
- (48) It is noted that this dumping margin is, contrary to the prima facie evidence provided in the review request, higher than the existing duty applicable to imports from the TMK Group. The increase results from a number of factors: firstly, the evidence provided in the review request only related to certain transactions of one of the three exporting producers. Some of these transactions were found not to relate to the product concerned. Secondly, during the course of the investigation, as mentioned in recital (23) above, some export transactions of the product concerned had not been reported by the group. Finally, the group's claim in regard to duty as a cost (see recitals (41) to (45)) was rejected. The combination of these elements, together with other elements verified during the course of the investigation, resulted in an increase in the dumping margin.

#### 4. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (49) In accordance with Article 11(3) of the basic Regulation, it was examined whether the changed circumstances regarding dumping could reasonably be considered to be of a lasting nature.
- (50) TMK Group indicated in its review request that there were changed circumstances of a lasting nature as it had made significant changes in its internal structure and substantial improvements to its production equipment which had a direct impact on its cost structure.
- (51) The investigation revealed that the TMK Group had indeed made significant investments that lead to efficiency gains and increased capacity. However, given the increase in raw material prices and the evolution of the product mix towards more added-value products, a decrease of production cost could not be ascertained. The improvements referred to in recital (50) were found to be of structural nature and to be unlikely to change in the near future.
- (52) In addition, the development of export prices to non-EU countries in the RIP and to the EU after the RIP was also

considered. It was found that exports to non-EU countries of identical products were made at comparable price levels as the export sales to the EU in the same period. As far as the period after the RIP is concerned, it was found they were made at slightly higher prices than in the RIP, which is in line with international price level evolution. There was thus no indication that the export prices would fluctuate considerably in the foreseeable future.

#### 5. AMENDMENT OF THE ANTI-DUMPING MEASURES

- (53) In the light of the results of the investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from the TMK Group to 28,7 %. The amended anti-dumping duty should be set at the level of the dumping margin found, as it is lower than the injury margin established in the original investigation.
- (54) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Implementing Regulation (EU) No 585/2012 and were given an opportunity to comment,

HAS ADOPTED THIS REGULATION:

#### Article 1

The entry concerning OAO Volzhsky Pipe Plant, OAO Taganrog Metallurgical Works,

OAO Sinarsky Pipe Plant and OAO Seversky Tube Works in the table of Article 1(2) of Implementing Regulation (EU) No 585/2012 is hereby replaced by the following:

'OAO Volzhsky Pipe Plant, OAO Taganrog Metallurgical Works, OAO Sinarsky Pipe Plant and OAO Seversky Tube Works	28,7 %	A859'
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#### Article 2

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, 21 December 2012.

For the Council  
The President  
A. D. MAVROYIANNIS