

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/1295****of 1 August 2019****amending Implementing Regulation (EU) 2018/1469 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 (EU) 2016/1036**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

**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, 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 exporting producer 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 Council Regulation (EC) No 954/2006, the General Court of the European Union annulled Article 1 of Council Regulation (EC) No 954/2006 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 of the affiliated trader, Sepco SA <sup>(3)</sup>. On 16 February 2012 the Court of Justice of the European Union upheld the judgment of the General Court <sup>(4)</sup>.
- (3) Following these judgments, the Council amended Council Regulation (EC) No 954/2006 by Implementing Regulation (EU) No 540/2012 <sup>(5)</sup> to correct the anti-dumping duty imposed on Interpipe in so far as it had been erroneously established. As a consequence, the duty applicable to Interpipe was amended to 17,7 %.
- (4) By Implementing Regulation (EU) No 585/2012 <sup>(6)</sup> the Council, following an expiry review, maintained the measures imposed by Council Regulation (EC) No 954/2006 on imports of seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ L 175, 29.6.2006, p. 4).

<sup>(3)</sup> Judgment of 10 March 2009 in case T-249/06, *Interpipe Niko Tube and Interpipe NTRP v Council*, EU:T:2009:62.

<sup>(4)</sup> Judgment of 16 February 2012 in joined cases C-191/09 P and C-200/09 P, *Council and Commission v Interpipe Niko Tube and Interpipe NTRP*, EU:C:2012:78.

<sup>(5)</sup> Council Implementing Regulation (EU) No 540/2012 of 21 June 2012 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 in Croatia, Romania, Russia and Ukraine (OJ L 165, 26.6.2012, p. 1).

<sup>(6)</sup> Council Implementing Regulation (EU) No 585/2012 of 26 June 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 an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, and terminating the expiry review proceeding concerning imports of certain seamless pipes and tubes, of iron or steel, originating in Croatia (OJ L 174, 4.7.2012, p. 5).

- (5) Following an application by Interpipe pursuant to Article 11(3) of the basic Regulation, the Council, by Implementing Regulation (EU) No 795/2012 <sup>(7)</sup> amended the definitive measures imposed by Implementing Regulation (EU) No 585/2012 as far as Interpipe is concerned ('the last interim review'). As a consequence, the duty applicable to Interpipe was amended to 13,8 %.
- (6) By Implementing Regulation (EU) 2018/1469 <sup>(8)</sup> the Commission, following an expiry review, maintained the measures imposed by Implementing Regulation (EU) No 585/2012 as last amended by Implementing Regulation (EU) No 795/2012 and Council Implementing Regulation (EU) No 1269/2012 <sup>(9)</sup> on imports of seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine ('the expiry review investigation').
- (7) The anti-dumping duties currently in force range from 35,8 % to 24,1 % for imports originating in Russia, and 25,7 % to 12,3 % for imports originating in Ukraine.

### 1.2. Request for a partial interim review

- (8) On 7 May 2018, the Commission announced by a notice published in the *Official Journal of the European Union* the initiation of a partial interim review ('Notice of initiation') <sup>(10)</sup> of the anti-dumping measures applicable to imports of certain seamless pipes and tubes, of iron or steel, originating in Ukraine pursuant to Article 11(3) of the basic Regulation.
- (9) The review, which is limited in scope to the examination of dumping of the exporting producer Interpipe, was initiated following a substantiated request lodged by the company. In the request Interpipe provided sufficient evidence that the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature.

### 1.3. Investigation

- (10) The investigation of the level of dumping covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period').
- (11) 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.
- (12) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant, which responded within the given deadline.
- (13) 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, Interpipe Europe SA and Interpipe Central Trade GmbH.

## 2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

### 2.1. Product under review

- (14) The product under review is the same as that defined in Implementing Regulation (EU) 2018/1469 of 1 October 2018 which imposed the measures currently in force, *i.e.* seamless pipes and tubes of iron or steel ('SPT'),

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<sup>(7)</sup> 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 (OJ L 238, 4.9.2012, p. 1).

<sup>(8)</sup> Commission Implementing Regulation (EU) 2018/1469 of 1 October 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 246, 2.10.2018, p. 20).

<sup>(9)</sup> 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 (OJ L 357, 28.12.2012, p. 1).

<sup>(10)</sup> OJ C 159, 7.5.2018, p. 18.

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>, originating in *inter alia* 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 under review').

## 2.2. Like product

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

## 3. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (16) In accordance with Article 11(3) of the basic Regulation, it was examined whether the changed circumstances regarding dumping could be considered to be of a lasting nature.
- (17) During the original antidumping investigation in 2006, as well as in the most recent interim review investigation of Interpipe in 2012, covering the review investigation period from 1 October 2010 to 30 September 2011, the main raw material for the production of the product under review, i.e. round steel billets, was procured by Interpipe from independent suppliers.
- (18) In its request for a partial interim review, the applicant claimed that the vertical integration of LLC Metallurgical Plant 'Dneprosteel' in 2013 has led to in-house production of the key raw material (steel billets) leading to a significant cost reduction and change in product portfolio. The applicant also claimed that, in comparison with the product types produced and exported in the review investigation period of the last interim review investigation, i.e. 'standard' steel grade, it has now added new and more sophisticated products ('high-alloy', 'line pipe and mechanical pipe' grades) to its product portfolio, which represented an important share of the total exports to the EU during the current review investigation period from 1 April 2017 to 31 March 2018.
- (19) The investigation confirmed that the key raw material was produced in-house by the applicant and that this change resulted in a significant change in costs and in product portfolio. The investigation confirmed that the product types exported by Interpipe to the EU were to a very large extent different from those exported during the review investigation period of the last interim review investigation. On this basis and given the structural nature of these changes, it was concluded that the changes described in recital (17) were of a lasting nature and unlikely to change in the near future. Consequently, it was considered that the application of the existing measures at their current level should be reassessed.
- (20) A further change claimed by the applicant after the initiation of this review, i.e. the existence / setting up of a joint venture between Interpipe and Vallourec Tubes, was not taken into account since it took place after the initiation of the present interim review.

## 4. DUMPING

### 4.1.1. Company structure and methodology used for calculating dumping

- (21) During the review investigation period, Interpipe had two fully-owned and controlled exporting producers ('the manufacturing entities'), LLC Interpipe Niko Tube ('NIKO') and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant ('NTRP').

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

- (22) In the original investigation, as the accounting system of the applicant did not allow the identification of the relevant production company with respect to sales, a common dumping margin was calculated by aggregating all data relating to production, profitability and sales in the EU of the two producing entities.
- (23) As of the last interim review, following a marked change in the corporate structure of the group enabling the identification of the relevant production company with respect to sales and production and in accordance with Article 2(11) and (12) of the basic regulation, the Commission no longer aggregated the data for the production companies, but used the standard methodology. This standard methodology consisted in calculating one common dumping margin for the two exporting producers by first calculating the amount of dumping for each individual exporting producer before determining a single weighted average rate of dumping for both companies.
- (24) In the current investigation it was also possible to identify the relevant production company with respect to sales. Thus, in accordance with Article 2(11) and (12) of the basic regulation and in line with the Union institutions' consistent practice, the same methodology as in the last interim review was applied.

#### 4.1.2. Normal value

- (25) In accordance with Article 2(2) of the basic Regulation, the Commission 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 EU, i.e. whether the total volume of such sales represented at least 5 % of the total volume of export sales of the product under review to the EU. The examination established that the domestic sales were representative for both exporting producers.
- (26) The Commission then examined whether the domestic sales of Interpipe on its domestic market for the product type that is identical or comparable with the product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the domestic sales of the product type identical or comparable with the product type sold for export to the Union were to a large extent representative during the investigation period as 60 to 80 % <sup>(12)</sup> of the exported models were found to be sold in representative quantities on the domestic market.
- (27) 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 under review during the review investigation period.
- (28) 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 product type in question, irrespective of whether those sales were profitable or not.
- (29) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that product type, or where the weighted average price of that product type was below the unit cost of production, the 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 product type made during the review investigation period.
- (30) The analysis of domestic sales showed that 35 to 55 % <sup>(13)</sup> of all domestic sales of the product type that were identical or comparable with the product type sold for export to the Union were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.

<sup>(12)</sup> The exact figure is not provided as this is the company specific data.

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- (31) The normal value for the non-representative product types (i.e. those of which domestic sales constituted less than 5 % of export sales to the EU 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 <sup>(14)</sup>.
- (32) Following the final disclosure, the Interpipe Group contested some of the elements used by the Commission in the calculation of the normal value. The claims pertained to the following issues: (i) calculation of SG&A; (ii) the alleged exclusion of other operating costs; (iii) use of financial costs; (iv) double counting in respect of the adjustments of SG&A costs.
- (33) After reviewing the elements on the file, the Commission decided to accept the above claims (ii) and (iv) and reject the above claims (i) and (iii). Due to the confidential nature of business information contained in Interpipe Group's claims and the Commission's analysis of these arguments, the Commission provided Interpipe Group with an additional disclosure on the adoption date of this regulation, containing a detailed reasoning.
- (34) Having accepted claims (ii) and (iv), the Commission revised Interpipe's dumping margin. The company was provided with an additional disclosure describing the impact on the dumping margin and was invited to comment. The Commission also informed the EU industry of the changes in the company's dumping margin.
- (35) Following the additional disclosure, Interpipe maintained the claims which the Commission had rejected, without adding any new elements which could change the Commission's conclusions disclosed to the company.

#### 4.1.3. Export price

- (36) Export sales of the product under review to the EU involved various entities within the Interpipe group; i.e. the plants, a coordination company based in Ukraine ('Interpipe Ukraine' or 'IPU'), a related importer based in Germany ('Interpipe Central Trade GmbH' or 'IPCT') and an affiliated trader based in Switzerland ('Interpipe Europe SA' or 'IPE').
- (37) The export price was established in accordance with Article 2(8) of the basic Regulation, except for transactions through the related company acting as an importer, IPCT. In this case, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the EU in accordance with Article 2(9) of the basic Regulation. Thus, adjustments to the price were made for all costs incurred between importation and resale as well as for a reasonable profit. These adjustments were calculated on the basis of the selling, general and administrative costs of IPE and a notional profit as achieved by an unrelated importer (2,5 % of turnover).

#### 4.1.4. Comparison

- (38) The normal value and the export price of the two exporting producers were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the 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 transport, insurance, handling, loading and ancillary costs, import charges, customs duties, commissions and credit costs.
- (39) During the review investigation period, Interpipe exported the product under review to the EU through two different sales channels; i.e. through the same affiliated trader located in Switzerland as in the last interim review (IPE) and through an related importer company located in the EU (IPCT), established in 2014. The latter channel of distribution did not exist in the last interim review. Due to the confidential nature of business information contained in the Commission's analysis, the Commission provided Interpipe Group with an additional disclosure on the adoption date of this regulation, containing a detailed reasoning.

<sup>(14)</sup> This change in methodology is due to the fact that following the original investigation, a WTO Panel issued, and the WTO Dispute Settlement Body adopted, the report in case *European Communities — Anti-dumping Measure on Farmed Salmon from Norway*, which provides that the actual profit margin established for the transactions in the ordinary course of trade of the relevant product types for which normal value has to be constructed cannot be disregarded. See WT/DS337/R of 16 November 2007 — adopted by the Dispute Settlement Body on 15 January 2008, para 7.289 to 7.319.

- (40) Consequently, the Commission considered that an adjustment under Article 2(10)(i) of the basic Regulation was warranted. This adjustment was calculated by deducting the selling, general and administrative costs of the affiliated trader, which were not reported as allowances, and a notional profit as achieved by an unrelated trader (2,5 % of turnover) from the selling price to the first unrelated customer.
- (41) Following the final disclosure, the Interpipe Group contested the Commission's conclusion not to treat IPE as part of a single economic entity together with the other entities NIKO, NTRP and IPU. After reviewing the elements on the file, the Commission decided to reject the this claim. As mentioned in recital (34) the company was provided with an additional disclosure describing the impact on the dumping margin and was invited to comment. In its response Interpipe maintained the claims which the Commission had rejected. No further comments were received in this regard.
- (42) Due to the confidential nature of business information contained in Interpipe Group's claim and the Commissions analysis of these arguments, the Commission provided Interpipe Group with an additional disclosure on the adoption date of this regulation, containing a detailed reasoning.

#### 4.1.5. Dumping margin

- (43) 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 two exporting producers. One common dumping margin was subsequently established for Interpipe by calculating a single weighted average rate of dumping for both exporting producers within Interpipe.
- (44) On this basis the dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 8,1 %.
- (45) Following the additional disclosure, ESTA submitted that the reduction of the dumping margin of Interpipe would create additional injury to the seamless steel tube industry in the EU. The Commission notes that, in accordance with Article 9(4) of the basic Regulation, the amount of anti-dumping duty cannot exceed the margin of dumping, which in this case was established at 8,1 %.
- (46) The Committee established by Article 15(1) of the basic regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

#### Article 1

The entry concerning LLC Interpipe Niko Tube and OJSC Interpipe Nizhnedneprovsky Tube Rolling Plant (Interpipe NTRP) in the table of Article 1(2) of Implementing Regulation (EU) No 585/2012 shall be replaced by the following:

|  |       |              |
|--|-------|--------------|
| LLC Interpipe Niko Tube and OJSC Interpipe Nizhnedneprovsky<br>Tube Rolling Plant (Interpipe NTRP) | 8,1 % | <b>A743'</b> |
|--|-------|--------------|

#### 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, 1 August 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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