

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/251****of 12 February 2019****concerning the definitive anti-dumping duties imposed on imports from Hubei Xinyegang Steel Co., Ltd and amending Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

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> (the 'basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

**BACKGROUND AND COURT JUDGMENTS**

- (1) Council Regulation (EC) No 926/2009 <sup>(2)</sup> imposed definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or steel ('SPT') originating in the People's Republic of China ('PRC').
- (2) In December 2009, Hubei Xinyegang Steel Co., Ltd ('Hubei'), one of the exporting producers of SPT in the PRC, brought an action for annulment of Regulation (EC) No 926/2009, before the General Court. By judgment of 29 January 2014 in Case T-528/09 <sup>(3)</sup>, the General Court annulled Regulation (EC) No 926/2009 to the extent that it imposes anti-dumping duties on exports of SPT produced by Hubei and collects provisional duties imposed on those exports.
- (3) In April 2014, a number of Union producers of SPT appealed that judgment before the Court of Justice of the European Union in cases C-186/14 P and C-193/14 P <sup>(4)</sup>.
- (4) Meanwhile, on 7 December 2015, following a request for an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 <sup>(5)</sup>, the Commission, by Implementing Regulation (EU) 2015/2272 <sup>(6)</sup>, extended the duties on imports of SPT from the PRC, including those applicable to SPT produced by Hubei.
- (5) On 7 April 2016, in its judgment in Joined Cases C-186/14 P and C-193/14 P, the Court of Justice of the European Union dismissed the appeals brought against the judgment of General Court in Case T-528/09, thereby confirming the ruling of the General Court.
- (6) On 3 June 2016, in order to give effect to the abovementioned judgments, the Commission's services removed Hubei's name from the group of companies listed under TARIC additional code A 950 and listed Hubei separately under TARIC additional code C 129 (the so-called 'Commission decision of 3 June 2016'). That modification of the TARIC code reflected the Court's annulment of anti-dumping duties on imports of SPT produced by Hubei.

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

<sup>(2)</sup> Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

<sup>(3)</sup> Judgment of the General Court (Second Chamber) of 29 January 2014 in Case T-528/09, *Hubei Xinyegang Steel Co. Ltd v Council of the European Union*, ECLI:EU:T:2014:35.

<sup>(4)</sup> Judgment of the Court (Second Chamber) of 7 April 2016 in Joined Cases C-186/14 P and C-193/14 P, *ArcelorMittal Tubular Products Ostrava a.s. and Others v Hubei Xinyegang Steel Co. Ltd and Council of the European Union v Hubei Xinyegang Steel Co. Ltd*, ECLI:EU:C:2016:209.

<sup>(5)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

<sup>(6)</sup> Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 322, 8.12.2015, p. 21).

**PROCEEDINGS BEFORE THE GENERAL COURT IN CASE T-364/16**

- (7) On 7 June 2016, a number of Union producers of SPT lodged an application at the General Court for the annulment of the changes made to the TARIC database. By judgment of 18 October 2018, in Case T-364/16 <sup>(7)</sup> the General Court annulled the so-called Commission decision of 3 June 2016 to take Hubei out of the list of companies listed under TARIC additional code A 950 and to list it under TARIC additional code C 129.
- (8) By its judgment in Case T-364/16, the General Court confirmed that the Commission was correct to take the view that compliance with the earlier judgments of 7 April 2016, and of 29 January 2014, in accordance with Article 266 of the Treaty on the Functioning of the European Union, implied that the anti-dumping duties laid down by Implementing Regulation (EU) 2015/2272 were no longer to be collected on the goods produced by Hubei <sup>(8)</sup>.
- (9) Nevertheless, the General Court considered that the annulment of Regulation (EC) No 926/2009, to the extent that it concerns Hubei, cannot automatically entail the elimination from the EU legal order of the provisions of Implementing Regulation (EU) 2015/2272, which were not annulled by the Courts of the European Union <sup>(9)</sup>. Therefore, since Implementing Regulation (EU) 2015/2272 must be presumed to be lawful, the Commission should have amended or repealed it by means of a regulation <sup>(10)</sup>.

**AMENDMENT OF THE ANTI-DUMPING MEASURES**

- (10) In view of the General Court's findings in Case T-364/16, and in accordance with the rule of equivalence of form, Implementing Regulation (EU) 2015/2272 should be amended so as to remove Hubei from the scope of the anti-dumping measures applicable to imports of SPT from the PRC with retroactive effect to the date of entry into force of the said regulation.
- (11) Repayment or remission should be requested from national customs authorities in accordance with applicable customs legislation.
- (12) In view of the recent case-law of the Court of Justice <sup>(11)</sup>, it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties. That is because the relevant provisions in force concerning customs duties do not provide for such an interest rate and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.
- (13) On 13 December 2018, the Commission disclosed its intention to amend Implementing Regulation (EU) 2015/2272 to remove Hubei from the list of companies on whose products anti-dumping duties are imposed and the reasoning underlying that amendment to the interested parties. No comments were received.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The definitive anti-dumping duties incurred on imports from Hubei Xinyegang Steel Co., Ltd to the Union of the product concerned pursuant to Implementing Regulation (EU) 2015/2272, shall be repaid or remitted. The repayment or remission shall be requested from national customs authorities in accordance with applicable customs legislation.
2. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by one percentage point.

<sup>(7)</sup> Judgment of the General Court (Seventh Chamber) of 18 October 2018 in Case T-364/16, *ArcelorMittal Tubular Products Ostrava a.s. and Others v European Commission*, ECLI:EU:T:2018:696.

<sup>(8)</sup> Case T-364/16, §67.

<sup>(9)</sup> Case T-364/16, §65.

<sup>(10)</sup> Case T-364/16, §68.

<sup>(11)</sup> Judgment of the Court (Third Chamber) of 18 January 2017, *Wortmann v Hauptzollamt Bielefeld*, EU:C:2017:19, paragraphs 35 to 39.

## Article 2

Implementing Regulation (EU) 2015/2272 is amended as follows:

(1) Article 1(2) is replaced by the following:

‘2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1, and manufactured by the companies listed below shall be as follows:

| Company   | AD duty rate (%) | TARIC additional code |
|---|------------------|-----------------------|
| Shandong Luxing Steel Pipe Co., Ltd, Qingzhou City, the PRC | 17,7             | A949                  |
| Other cooperating companies listed in the Annex             | 27,2             | A950                  |
| All other companies   | 39,2             | A999                  |

For products described in paragraph 1 and manufactured by Hubei Xinyegang Steel Co., Ltd, no anti-dumping duty shall apply. The TARIC additional code established for Hubei Xinyegang Steel Co., Ltd is C129.’

(2) The table in the Annex is replaced by the following:

| ‘Company Name  | City          |
|--|---------------|
| Hebei Hongling Seamless Steel Pipes Manufacturing Co., Ltd | Handan        |
| Hengyang Valin MPM Co., Ltd                                | Hengyang      |
| Hengyang Valin Steel Tube Co., Ltd                         | Hengyang      |
| Jiangsu Huacheng Industry Group Co., Ltd                   | Zhangjiagang  |
| Jiangyin City Seamless Steel Tube Factory                  | Jiangyin      |
| Jiangyin Metal Tube Making Factory                         | Jiangyin      |
| Pangang Group Chengdu Iron & Steel Co., Ltd                | Chengdu       |
| Shenyang Xinda Co., Ltd                                    | Shenyang      |
| Suzhou Seamless Steel Tube Works                           | Suzhou        |
| Tianjin Pipe (Group) Corporation (TPCO)                    | Tianjin       |
| Wuxi Dexin Steel Tube Co., Ltd                             | Wuxi          |
| Wuxi Dongwu Pipe Industry Co., Ltd                         | Wuxi          |
| Wuxi Seamless Oil Pipe Co., Ltd                            | Wuxi          |
| Zhangjiagang City Yiyang Pipe Producing Co., Ltd           | Zhangjiagang  |
| Zhangjiagang Yichen Steel Tube Co., Ltd                    | Zhangjiagang’ |

## Article 3

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

Article 2 shall apply from 9 December 2015.

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

Done at Brussels, 12 February 2019.

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

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