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COUNCIL REGULATION (EC) NO 348/2000

of 14 February 2000

imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine and collecting definitively the provisional duty imposed

(OJ L 45, 17.2.2000, p. 1)

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imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine and collecting definitively the provisional duty imposed

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], and in particular Articles 9(4) and 10(2) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Regulation (EC) No 1802/1999 [2] (hereinafter referred to as the 'provisional Regulation') the Commission imposed a provisional anti-dumping duty on imports into the Community of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of a provisional anti-dumping duty, the interested parties which so requested were granted an opportunity to be heard. Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection, at the level of this duty, of amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to this disclosure.

(3) The oral and written comments submitted by the interested parties were considered and, where appropriate, the definitive findings have been changed accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(4) It is to be recalled that recital 7 of the provisional Regulation described the product concerned as seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm; seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled; other tubes of circular cross-section, of iron or non-alloy steel, of an external diameter not exceeding 406,4 mm, hereinafter referred to as 'seamless tubes'.

(5) The claim has been repeated that seamless tubes should be divided into two separate products concerned, i.e, commercial steel grade tubes and steel line pipes for oil/gas applications and that any injury suffered by the Community industry should be analysed separately for each product.

(6) The alleged distinction is based on the ground that commercial tubes and line pipes are not interchangeable, given the specific

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

[2] OJ L 218, 18.8.1999, p. 3.

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certification required for oil/gas applications. It has also been argued that the higher costs of producing line pipes preclude their sale for non-oil/gas applications. Furthermore, it has been alleged that commercial tubes are used in building and infrastructural applications whereas line pipes are used in the oil and gas industries and that both products are sold through different sales channels, with line pipes being sold directly to end-users rather than to traders.

(7) It was found that all seamless tubes have the same basic physical and technical characteristics. Although there is a wide range of different types, varying according to external diameter, wall thickness, steel grade and technical specifications, no clear dividing line was found to exist between them.

(8) Furthermore, the investigation showed that all types of seamless tube were sold to both traders and end-users. A clear distinction between sales channels, although per se not relevant, could therefore not be established.

(9) Finally, all seamless tubes were found to have essentially the same use. Although they are used in many different industries such as the construction, automobile, oil and petroleum industries, power plant and boiler construction, pneumatics and hydraulics, and engineering and although it is accepted that not every user is able to use every type of seamless tube, they are all considered to have the same basic application.

(10) While certain types of seamless tube are clearly intended for specific applications (e.g. oil pipelines), such pipes can also be used in less specific applications. Furthermore, it was found that commercial tubes could also be used in a wide range of applications. All this shows the existence of a large degree of competition and interchangeability between all product types.

(11) In conclusion, the provisional finding that all seamless tubes, whether commercial tubes or line pipes form one single product is confirmed.

2. **Like product**

(12) It is to be recalled that in recitals 11 and 12 of the provisional Regulation, the Commission found that the seamless tubes imported from the countries concerned, the seamless tubes produced and sold in the Community by the Community industry and those domestically sold on the Croatian market were alike in their basic physical and technical characteristics and were found to have essentially the same uses.

(13) It has been claimed that Community produced seamless tubes were different from those imported from the Ukraine, since the latter were manufactured to different standards from those used by the Community industry, and that the specific testing requirements applied to Community produced seamless tubes meant that the production processes were different.

(14) The investigation has shown that both the Community industry and the Ukrainian exporters produce to the same or similar national and international standards. Information provided by the Ukrainian exporters shows that seamless tubes exported to the Community, whether commercial tubes or line pipes, conform to industry standards such as DIN, API and ASTM, as do those produced by the Community industry.

(15) In view of the above, the provisional findings that seamless tubes imported from the countries concerned, the seamless tubes produced and sold in the Community by the Community industry and those domestically sold on the Croatian market are like products within the meaning of Article 1(4) of Regulation (EC) No 384/1996 (hereinafter referred to as the ‘basic Regulation’) are confirmed.

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D. **DUMPING**

1. **Croatia**

(16) Since the adoption of the provisional measures, no arguments have been submitted concerning the calculation of normal value, the determination of the export price, the comparison of the normal value with the export price, or the establishment of the dumping margin. The findings as set out in recitals 13 to 19 of the provisional Regulation are therefore confirmed. The dumping margin, and the residual margin, therefore remain at the same level, i.e. 40,8 %.

2. **Ukraine**

a) *Normal value*

(17) After the publication of the provisional Regulation, an importer objected to the selection of Croatia as an appropriate market economy third country for the purpose of establishing normal value for Ukraine. This importer argued that the cost of energy and other inputs in Croatia was much higher than in Ukraine, that the Croatian domestic market was monopolised, or at least dominated, by the sole producer, and that insufficient evidence had been put forward to justify the representativeness of Croatian domestic sales.

(18) It is considered that the argument concerning the higher Croatian costs is not relevant in that Ukraine is a non-market economy and any comparison is, by its nature, unreliable. What is relevant in this context is whether Ukrainian producers had any absolute or comparative advantage as compared to Croatia, such as a more efficient use of energy. However, this was not the case. Moreover, the selection of Croatia was not unreasonable in that one of the alternatives, Brazil, had been rejected on the grounds that prices on the Brazilian market were indeed too high due to the domination of one producer. Croatia, however, was importing the product concerned as well as exporting it, so there was an element of competition on its domestic market. In addition, domestic sales were representative and amounted to more than 5 % of total Ukrainian exports to the Community by volume. Finally, even though every effort had been made to investigate other alternatives to Brazil such as the United States of America and the Czech Republic, no cooperation had been forthcoming from either country.

(19) As no other arguments have been put forward either concerning the methodology or the calculation of normal value, the findings as set out in recitals 20 to 26 of the provisional Regulation are therefore confirmed.

b) *Export price*

(20) One exporting producer objected to the fact that in establishing the export price the Commission had not taken into account its sales to its related importer in the Community on the grounds that the information submitted had been found to be unreliable. Since no new evidence was submitted to contradict this, the findings set out in recitals 27 and 28 of the provisional Regulation are confirmed.

c) *Comparison*

(21) The exporting producers reiterated their claim for an adjustment for differences in physical characteristics because of the lower standards used by the Ukrainian tube industry as compared to the Community industry. This claim had been rejected at the provisional stage because it was insufficiently substantiated. The exporting producers, however, failed again to back up their arguments and, in the absence of new information, the findings

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set out in recitals 29 to 31 of the provisional Regulation are confirmed.

d) *Dumping margin*

(22) The provisional findings on the dumping margins are therefore confirmed at 123,7 % for Ukraine.

E. **INJURY**

1. **Definition of the Community industry**

(23) In the absence of any new information the provisional findings as regards the definition of the Community industry, described in recitals 34 to 38 of the provisional Regulation are confirmed.

2. **Imports into the Community from the countries concerned**

a) *Cumulation*

(24) The Croatian exporting producer has argued that imports from Croatia should not be cumulatively assessed with those originating in the Ukraine. In this respect it was claimed that the volume of imports from Croatia in the investigation period (hereinafter referred to as 'IP') was substantially lower than that from Ukraine, while the prices of these imports were higher. It was also claimed that Croatian exports have followed the prices set by the Ukrainian imports in the Community market.

(25) The dumping margins have been found to be substantial for both countries. The volume of imports for both countries was increasing during the period examined reaching significant levels which, in both cases, were found to be well above *de minimis* levels. As regards the prices of the imports, it was found that the prices of seamless tubes from both countries have significantly undercut the prices of the Community industry during the IP. Furthermore, seamless tubes from both countries are sold through the same sales channels and under comparable sales conditions, thus competing with each other and with the tubes sold by the Community industry.

(26) The provisional findings regarding the appropriateness of the cumulative assessment of imports from Croatia and Ukraine are therefore confirmed.

b) *Prices of the dumped imports*

(27) Price undercutting margins for Croatia and Ukraine were recalculated in the light of the evidence submitted by interested parties as regards prices of certain product categories and the grouping of seamless tubes for the purpose of price comparisons.

(28) As regards Croatia, the revised weighted average price undercutting expressed as a percentage of the Community industry's prices amounts to 14,4 %.

(29) As regards Ukraine, the revised weighted average price undercutting expressed as a percentage of the Community industry's prices amounts to 24 %.

3. **Situation of the Community industry**

a) *Preliminary remark*

(30) Following the publication of the provisional Regulation, the Commission on 8 December 1999 found that certain Community producers being part of the Community industry in the present proceeding had infringed Article 81 of the EC Treaty by engaging in anti-competitive practices. It was concluded that between 1990 and 1995 Dalmine, Mannesmannröhren-Werke and Vallourec participated in an agreement providing for the

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observance of their respective domestic markets for certain seamless tubes, notably oil country tubular goods and certain line pipes.

(31) The decision has been examined in order to determine whether the injury found to have been suffered by the Community industry derived from the dumped imports or whether it was caused by the conduct of certain Community producers themselves.

(32) It should be noted that the period on which the findings of this investigation were based (1 January 1997 to 31 October 1998) is outside the period during which the anti-competitive practices have been found to take place. In view of the fact that these practices took place in a period prior to that considered in this proceeding and given that the increase in the volume of imports from Croatia and Ukraine at dumped prices has coincided with a deterioration of the situation of the Community industry, it cannot be concluded that the anti-competitive conduct of certain Community producers contributed to the injury suffered by the Community industry in the current proceeding to an extent that would break the causal link between the injury suffered by the Community industry and the imports concerned, within the meaning of Article 3(6) of the basic Regulation.

b) *Arguments raised by interested parties on the provisional findings*

(33) The Ukrainian exporting producers have argued that the Community industry has not suffered material injury within the meaning of Article 3 of the basic Regulation, since between 1997 and the IP indicators concerning productivity and capacity utilisation improved and market share remained stable. Furthermore, they questioned the provisional findings on the profitability of the Community industry. This claim was supported by certain press articles quoting the improved financial results of Community seamless tubes producers.

(34) It should be mentioned that, according to Article 3(5) of the basic Regulation, none of the factors listed in this provision can give decisive guidance on whether the Community industry has suffered injury within the meaning of Article 3 of the basic Regulation.

(35) As regards the improvement in the situation of the Community industry between 1997 and the IP, especially concerning productivity and capacity utilisation, this should be seen in the light of the anti-dumping measures imposed in 1997 against imports of seamless tubes from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic by Regulation (EC) No 2320/97 ([1]) Indeed, the intended effect of those anti-dumping measures was to remove the injury found to be suffered by the Community industry.

(36) It should also be noted that, between 1997 and the IP, the profitability achieved by the Community industry remained at a level lower than what the industry could expect under normal conditions of competition, in the absence of dumped imports. With respect to the reliability of the profitability figures, it should be noted that they correspond to the information provided by the Community industry in the course of the investigation and verified on-the-spot. In terms of the profitability figures submitted by the Ukrainian exporting producers, it should be noted that they include products not covered by the investigation and relate to a period outside the period examined in the present investigation. As regards market share, it was found that the Community industry had been unable to regain previously lost market share. Thus, the Community industry could not fully benefit from the

([1]) OJ L 322, 25.11.1997, p. 1.

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earlier imposition of definitive measures on imports originating in the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic.

(37) In view of the above, the provisional findings as regards the material injury suffered by the Community industry are confirmed.

F. **CAUSATION**

(38) In the absence of any new information the provisional findings as described in recitals 68 to 73 of the provisional Regulation are confirmed.

G. **COMMUNITY INTEREST**

(39) In view of the findings of the Commission mentioned in paragraph 30, it has been examined whether the imposition of anti-dumping measures could raise concerns about competition on this market. In the light of the fact that the anti-competitive practice were found to have taken place in a period prior to that considered in this proceeding, there is no reason to conclude that the imposition of anti-dumping measures in the present proceeding would have an impact on the competition on this market in the future.

(40) In the absence of any new information on Community interest, the provisional findings as described in recitals 74 to 83 of the provisional Regulation are confirmed.

H. **ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(41) The methodology used for establishing the injury margin as described in recitals 86 and 87 of the provisional Regulation is confirmed.

(42) The injury margins revised to take into account the comments made by interested parties, which have been described above in recital 27, subsequent to the disclosure of provisional findings are set out below:

Croatia: 23 %,

Ukraine: 38,5 %.

2. **Form and level of the definitive measures**

(43) The conclusions reached above as to dumping, injury, causation and Community interest call for definitive measures. In view of the diversity of product types, the anti-dumping duty should be in the form of *ad valorem* duties.

(44) In accordance with Article 9(4) of the basic Regulation, for all exporting producers the level of the duty is based on the lower of the injury or the dumping margin. These duties expressed as a percentage of the free-at-Community frontier prices amount to:

Croatia: 23 %,

Ukraine: 38,5 %.

(45) Subsequent to the imposition of provisional anti-dumping measures, the exporting producer in Croatia and the exporting producers in Ukraine in conjunction with the Ukrainian authorities offered price undertakings of the same type as those accepted by the Commission from other producers in Central and Eastern Europe in 1997 under Regulation (EC) No 2320/97. The elimination of the injury is achieved by two means: first, a price undertaking covering imports up to an agreed volume

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threshold and, second, an *ad valorem* duty levied on imports over and above that threshold.

(46) To ensure that the quantity of imports exempted from the *ad valorem* duty does not exceed the quantity specified in the price undertaking, exemption from the anti-dumping duty is conditional upon the presentation to Member States' customs services of a valid production certificate clearly identifying the producer, and containing an exact description of the goods and a signed declaration by the producer.

(47) In order to enable the Commission to monitor compliance with the undertakings effectively, the producers have also agreed to provide the Commission with regular and detailed information on their sales for export to the Community, and to keep available copies of the production certificates for subsequent verification.

(48) As regards Ukraine, the undertaking offered by the Ukrainian exporting producers is a joint one, reflecting Ukraine's status as a non-market economy country, and is underpinned by guarantees given by the Ukrainian authorities to ensure adequate monitoring, particularly with regard to the anti-dumping duty-free threshold.

(49) The price undertakings up to a certain volume threshold and the *ad valorem* duty for the remainder of the imports are therefore considered an adequate means of removing the injury suffered by the Community industry. In the event of any breach, or suspected breach, of an undertaking, the Commission would swiftly impose provisional or definitive duties in accordance with Articles 8(9) and (10) of the basic Regulation.

(50) The Commission has accepted these undertakings.

I. COLLECTION OF PROVISIONAL DUTIES

(51) In view of the magnitude of the dumping margins found for the exporting producers, and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty under the provisional Regulation should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on the following imports originating in Croatia and Ukraine:

— seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm (falling within CN codes 7304 10 10 and 7304 10 30);

— seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled (falling within CN code 7304 31 99);

— other tubes of circular cross-section, of iron or non-alloy steel, of an external diameter not exceeding 406,4 mm (falling within CN codes 7304 39 91 and 7304 39 93).

2. The rates of duty applicable to the net, free-at-Community frontier price of imports of the product described in paragraph 1 shall be as follows:

Country	Manufacturer	Rate of duty	Taric additional code
Croatia	All companies	23 %	A999
Ukraine	All companies	38,5 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

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Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and sold for export to the Community by the companies listed in paragraph 4 which have offered undertakings accepted by the Commission and provided that the conditions in paragraphs 2 and 3 are met.

2. When the declaration for release for free circulation is presented, exemption from the duty shall be conditional upon presentation to the competent Member States' customs services of a valid, original production certificate issued by one of the companies listed in paragraph 4. The production certificate shall conform with the requirements for such certificates set out in the undertaking accepted by the Commission, the essential elements of which are listed in the Annex.

3. The production certificate referred to in paragraph 2 must be presented within three months of its date of issue. The quantities presented to the Member States' customs services for imports into the Community free of anti-dumping duty shall not exceed those stipulated on the certificate. When quantities stipulated on the certificate are exceeded, the excess shall be subject to the duty, and be declared under the relevant Taric additional code of Article 1(2).

4. Imports accompanied by a production certificate shall be declared under the following Taric additional codes:

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Country	Manufacturer	TARIC additional code
Croatia	Zeljezara Sisak d.d., Sisak	A064

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Article 3

Member States' reports to the Commission pursuant to Article 14(6) of Regulation (EC) No 384/1996, shall indicate for each release for free circulation, the year and month of import, the CN, Taric and Taric additional codes, the type of measure, the country of origin, the quantity, the value, the anti-dumping duty, the Member State of import and, where appropriate, the serial number of the production certificate.

Article 4

The amounts secured by way of provisional anti-dumping duties imposed pursuant to Regulation (EC) No 1802/1999 shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 5

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

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

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ANNEX

Main elements of the production certificate referred to in Article 2(2) (*)

(a) The number of the certificate.

(b) Identification showing whether the certificate is an original or a copy.

(c) The date of expiry of the certificate.

(d) The following text:

'Production certificate issued by [name of the company] pursuant to Article 2(2) of Council Regulation No 348/2000 for the exports to the European Company within Taric additional Code [*Taric additional code*] of certain seamless steel pipes and tubes.'

In the case of imports from Ukraine

'Production certificate authenticated by the Ministry of […] of Ukraine for monitoring pursuant to Article 2(2) of Council Regulation No 348/2000 for the exports to the European Community within Taric additional Code [*Taric additional code*] of certain seamless steel pipes and tubes.'

(e) The name and full address of the relevant exporting producer, including telephone and fax numbers and possible identification number such as national registration number for incorporated companies.

(f) The name and full address of the customer of the relevant exporting producer, including telephone and fax numbers, to whom the product has been sold and invoiced by this exporting producer.

(g) The number of the commercial invoice to which the production certificate relates.

(h) The exact description of the goods, including:

— a product description sufficient to identify the product, which will be identical to the product description on the invoice,

— CN code,

— quantity (in metric tonnes).

(i) In the case of imports from Croatia, the name of the official of the company responsible for the issue of the certificate, and the following signed declaration,

'I, the undersigned, certify that the sale for export to the European Community of the goods covered by this certificate is being made within the scope and under the terms of the undertaking by [*name of the relevant exporting producer*], and within the permitted volume for anti-dumping duty-free imports into the European Community set out in the Undertaking accepted by the Commission pursuant to Decision 2000/…/EC [Decision C(2000) 271/2]. I declare that the information provided in this certificate is complete and correct.'

In the case of imports from Ukraine, the following signed declaration by the exporting producer:

'I, the undersigned, certify that the sale for export to the European Community of the goods covered by this certificate is being made within the scope and under the terms of the undertaking by [*name of the relevant exporting producer*], and within the permitted volume for anti-dumping duty-free imports into the European Community set out in the Undertaking accepted by the Commission pursuant to Decision 2000/…/EC [Decision C(2000) 271/2]. I declare that the information provided in this certificate is complete and correct.'

(j) In the case of imports from Ukraine, space for stamp and signature of an authorised person in the Ministry of […] of Ukraine.

(k) Space for use by the competent authorities of the Community.

(*) Each box on the certificate will be in four languages for Croatia, i.e. the language of the country of the producer, English, French and German for Croatia and in two languages for Ukraine, i.e. the language of the country of the producer and English.