Implementing Regulation of the Council (EU) No 363/2010 of 26 April 2010 amending Regulation (EC) No 1001/2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings of iron or steel originating, inter alia, in Malaysia

IMPLEMENTING REGULATION OF THE COUNCIL (EU) No 363/2010

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amending Regulation (EC) No 1001/2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings of iron or steel originating, *inter alia*, in Malaysia

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[(1)] (the basic Regulation), and in particular Article 11(4) thereof,

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

Whereas:

1. **PROCEDURE**

1.1. **Existing measures**

(1) In October 2008, definitive anti-dumping measures were reimposed by Council Regulation (EC) No 1001/2008[(2)] on imports of certain tube and pipe fittings ('TPFs' or the 'product concerned') originating, *inter alia*, in Malaysia following an expiry review pursuant to Article 11(2) of the basic Regulation. The anti-dumping duties in force for Malaysia are 59,2 % for Anggerik Laksana Sdn Bhd and 75 % for all other companies.

1.2. **Request for a review**

(2) The Commission has received an application to initiate a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by Pantech Steel Industries Sdn Bhd (the applicant), an exporting producer in Malaysia (the country concerned).

(3) The applicant alleged that it did not export the product concerned to the Union during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 2000 to 31 March 2001 (the original investigation period) and that it is not related to any of the exporting producers of the product concerned which are subject to the anti-dumping measures described in recital 1.

(4) The applicant further alleged that it had entered into an irrevocable contractual obligation to export the product concerned to the Union in the near future.

1.3. **Initiation of a new exporter review**

(5) The Commission examined the prima facie evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee, and after the Union industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 692/2009[3], a review of Regulation (EC) No 1001/2008 with regard to the applicant.

(6) Pursuant to Regulation (EC) No 692/2009, the anti-dumping duty of 75 % imposed by Regulation (EC) No 1001/2008 was repealed with regard to imports of the product concerned produced and sold for exports to the Union by the applicant. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

(7) Regulation (EC) No 692/2009 determined that if the investigation showed that the applicant fulfilled the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable to imports of the product concerned from companies not individually mentioned in Article 1 of Regulation (EC) No 1001/2008.

1.4. **Product concerned**

(8) The product under review is tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, originating in Malaysia (the product concerned), currently falling within CN codes ex 7307 93 11, ex 7307 93 19, ex 7307 99 30 and ex 7307 99 90.

1.5. **Parties concerned**

(9) The Commission officially advised the Union industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(10) The Defence Committee of the steel butt-welding fittings industry of the European Union representing the Union industry (the Union industry) made its views know in writing to the Commission services. The Defence Committee challenged the reliability of the basis for the export price. Documents were also provided allegedly showing attempts to circumvent the measures and information was given about the level of price of the product concerned available for EU importers.

(11) The Commission sent an anti-dumping questionnaire to the applicant and its related companies and received a reply within the deadline set for that purpose.

(12) The Commission also sent anti-dumping questionnaires to unrelated importers located in the European Union but no cooperation was obtained.

(13) The Commission sought to verify all the information it deemed necessary for the determination of the new exporter status and dumping, and verification visits were carried out at the premises of the applicant and a related company in Malaysia:

— Pantech Steel Industries Sdn Bhd (the applicant),

— Pantech Corporation Sdn Bhd (related trading company).

1.6. **Investigation period**

(14) The review investigation period of dumping covered the period from 1 July 2008 to 30 June 2009 (‘review investigation period’ or ‘RIP’).

2. RESULTS OF THE INVESTIGATION

2.1. New exporter qualification

(15) The investigation confirmed that the company had not exported the product concerned during the original period of investigation and that it had started to export to the European Union after this period. The company entered into an irrevocable contractual obligation to export during the RIP. This took the form of three orders from the same importing group in the EU.

(16) These orders were, after the RIP, completed by export transactions under approximately the same conditions with negligible differences in price and quantities. While the quantities involved were limited, they were nevertheless found sufficient to establish a reliable dumping margin. This is because the levels of prices charged were further supported by other information at the Commission services’ disposal, including export prices of the exporter concerned to third countries, which confirmed the pattern of behaviour found in the transactions under scrutiny.

(17) As concerns the other conditions for the recognition of a new exporter status, the company was able to demonstrate that it did not have any links, direct or indirect, with any of the Malaysian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(18) Accordingly, it is confirmed that the company should be considered a ‘new exporter’ in accordance with Article 11(4) of the basic Regulation, and thus an individual margin should be determined for it.

2.2. Dumping

Determination of normal value

(19) The applicant produces the fittings and sells the product concerned domestically and on export markets. The investigation revealed a complex sales organisation on the domestic market involving unrelated distributors and related trading companies, whereby unrelated distributors purchase the product concerned from the producer and then resell it to the related traders that then sell the goods onwards to

unrelated customers on the domestic market. De facto, the unrelated distributors act as agents for the applicant.

(20) Based on the above, and taking into account the fact that the sales of the related trading companies can be linked back to the applicant, the prices charged to the final consumer by these related trading companies are considered as the first price in the ordinary course of trade and therefore form the basis for the normal value determination.

(21) In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume was at least 5 % of the total export sales volume to the Union. The Commission established that tube and pipe fittings were sold domestically by the applicant in overall representative volumes.

(22) The Commission then identified those product types of tube and pipe fittings sold domestically by the trading companies which were identical or directly comparable to the types sold for export to the European Union.

(23) An examination was also made by the Commission as to whether the sales of tube and pipe fittings sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers. As it was found that there were sufficient sales in the ordinary course of trade, normal value was based on the actual domestic price.

(24) In the few cases where the type of product concerned was not sold on the domestic market during the RIP, the normal value was constructed by adding to the exporter's manufacturing costs of the exported types, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable profit margin.

Export price

(25) The product concerned was exported directly to independent customers in the Union. Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable as referred to in recital 16.

Comparison

(26) The normal value and the export prices were compared on an ex-works basis.

(27) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments for insurance, handling, loading and ancillary expenses, and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(28) The applicant claimed that if the Commission would use the normal value based on the domestic sales of the related trading companies, an adjustment for differences in level of trade should be granted between the domestic market and the EU market. It further argued that sales to the EU market were done at distributor level