Council Regulation (EC) No 1001/2008 of 13 October 2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 1001/2008

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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)] (the basic Regulation), and in particular Articles 9 and 11(2) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) In August 2002, definitive anti-dumping measures on imports of certain tube and pipe fittings ('TPFs' or the 'product concerned') originating, *inter alia*, in the Republic of Korea and Malaysia (the 'countries concerned') were imposed by Council Regulation (EC) No 1514/2002[(2)] (the 'original investigation'). The anti-dumping duties in force for Malaysia are: 59,2 % for Anggerik Laksana Sdn Bhd and 75 % for all other companies; for the Republic of Korea the duty is 44 % for all companies.

(2) Outside the scope of this proceeding, anti-dumping measures are currently in force imposed by Council Regulation (EC) No 964/2003[(3)] on exports from the People's Republic of China (58,6 %) and Thailand (58,9 %), with the exception of two companies in Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan or not. The measures for the product concerned originating in China were extended to imports of the same product consigned from Indonesia by Council Regulation (EC) No 2052/2004[(4)], Sri Lanka by Council Regulation (EC) No 2053/2004[(5)] and the Philippines by Council Regulation (EC) No 655/2006[(6)], whether declared as originating in the Philippines, Indonesia, Sri Lanka or not.

2. Request for a review

(3) Following the publication of a notice of impending expiry[(7)] of the anti-dumping measures in force on imports of TPFs originating in the Republic of Korea

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1001/2008. (See end of Document for details)*

and Malaysia, the Commission received a request to review these measures pursuant to Article 11(2) of the basic Regulation.

(4) The request was lodged on 23 May 2007 by the Defence Committee of the Steel Butt-Welding Fittings Industry of the European Union (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain tube and pipe fittings.

(5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an expiry review[8] pursuant to Article 11(2) of the basic Regulation.

3. Investigation

(7) The Commission officially advised the applicant Community producers, the other Community producers, the exporting producers in the countries concerned, the importers/traders, users and their associations known to be concerned, as well as the representatives of the governments of both exporting countries, of the initiation of the review.

(8) The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set out in the notice of initiation.

(9) The Commission also gave interested parties 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.

(10) In view of the apparent high number of exporting producers in the Republic of Korea, importers/traders of the product concerned and Community producers, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to be able to decide whether sampling would be necessary and, if so, to select a sample, the Commission sent out sampling forms requesting specific information on the average sales volume and prices of each Community producer, exporting producer and importer concerned. No reply was received from any Korean exporting producer and eleven replies were received from importers. Only four Community producers replied to the sampling form. It was therefore decided that sampling was not necessary.

(11) Four Community producers replied to the questionnaire, but one sent a partial answer and failed to reply after a deficiency letter had been sent. Regarding Malaysia, two replies to the questionnaire were received, one from a newcomer company and the other from a company that later on refused the verification visit. No Korean exporting producers replied to the questionnaire. Two importers submitted a reply to the questionnaire.

(12) The Commission sought and verified all information deemed necessary for the purposes of determining the likely continuation or recurrence of dumping and injury and the Community interest. Verification visits were carried out at the premises of the following companies:

(a) applicant Community producers:

— Erne Fittings GmbH, Schlins, Austria,

— Interfit SA, Maubeuge, France,

— Virgilio Cena & Figli SpA, Brescia, Italy;

(b) newcomer producer in Malaysia:

Pantech Steel Industries Sdn Bhd, Selangor, Malaysia.

4. Investigation period

(13) The investigation of continuation or recurrence of dumping covered the period from 1 July 2006 to 30 June 2007 (the 'IP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2002 up to the end of the IP (the 'period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) 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 the Republic of Korea and Malaysia, currently classifiable within CN codes ex 7307 93 11, ex 7307 93 19, ex 7307 99 30 and ex 7307 99 90.

(15) TPFs are manufactured essentially by cutting and forming tubes and pipes. They are used to join tubes and pipes and come in different shapes: elbows, reducers, tees and caps, as well as different sizes and material grades. They are used mainly in the petrochemical industry, construction, energy generation, shipbuilding and industrial installations. When sold for use in the petrochemical industry, the global standard used is the ANSI standard. For other purposes, the most common standard used in the Community is the DIN standard.

2. Like product

(16) As in the original proceeding, the investigation has shown that the TPFs produced in the countries concerned, sold domestically and/or exported to the Community, have the same basic physical, technical and chemical characteristics and end uses as the products sold in the Community by the applicant Community producers and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OF DUMPING

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1001/2008. (See end of Document for details)*

(17) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the measures would be likely to lead to a continuation of dumping.

1. Preliminary remarks

(18) As mentioned above, in the absence of cooperation from any exporting producers in Korea and Malaysia, except for one newcomer company, this examination had to be based on information available to the Commission from other sources. In this respect, and in accordance with the provisions of Article 18 of the basic Regulation, Eurostat data referring to the 8-digit CN code, checked against other sources, were used to establish import quantities and prices. Facts available were used to calculate the dumping margin, i.e. in this case the information contained in the request and US statistics.

(19) Due to the current small volume of imports of TPFs from Korea and Malaysia in the EU, the Commission had to use data from another country. The USA was considered appropriate, since the market is of a similar size, with many domestic producers but also with a large proportion of imports, making this market a very competitive one. In addition, the USA is the major destination for exports from Korea and Malaysia.

2. Dumping of imports during the investigation period

(a) Normal value

(20) In accordance with Article 18 of the basic Regulation, and in the absence of any cooperation from Korean or Malaysian exporting producers, except for one newcomer company, the normal value was based on the data provided in the request, i.e. estimated cost of manufacturing to which was added 12,3 % and 15,1 % for SGA and 5,6 % and 6 % for profit for Korea and Malaysia respectively, both expressed as a percentage of turnover. It is considered that the above percentages are rather conservative.

(b) Export price

(21) In accordance with Article 18 of the basic Regulation, and in the absence of cooperation from both Korean and Malaysian exporting producers, except from one newcomer company, the export price was calculated by using the Korean and Malaysian export prices for the product concerned to the USA, derived from the USA import statistics. These figures were adjusted by product types in proportion to the tonnage of each product type based on information provided in the request.

(c) Comparison

(22) The weighted average normal value was compared with the weighted average export price of TPFs, in accordance with Article 2(11) of the basic Regulation, both at ex-works level.

(23) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs.

(d) Dumping margin

(24) The comparison of constructed normal value and constructed export price showed the existence of dumping in both countries concerned, the dumping margin being equal to the amount by which the normal value established exceeded the export price. The dumping margin found, as a percentage of the CIF Community-frontier import price, was 15,1 % for Korea and 61,3 % for Malaysia.

3. Developments of imports should measures be repealed

(a) Preliminary remarks

(25) Further to the analysis of the existence of dumping during the IP, the likelihood of continuation of dumping was also examined. In the absence of cooperation from any Korean or Malaysian exporting producers, except for one newcomer company, and given the lack of publicly available information on the TPF industry, the conclusions below rely mainly on the facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data, the review request, and US statistics.

(b) Korean and Malaysian production capacity

(26) The capacity available in both Korea and Malaysia is estimated at 35 300 tonnes and their export capacity at 20 000 tonnes. This represents more than one quarter of the Community consumption.

(c) Korean and Malaysian export prices to the Community

(27) As mentioned in the preliminary remarks, the exports of the product concerned from the two countries concerned to the Community market are almost non-existent. With regard to the exports to other third countries, it is alleged in the request that the exports of the product concerned to the USA are made at dumped prices.

(d) Conclusion on the likelihood of a continuation of dumping

(28) In the light of the above, i.e. the high dumping margins, the huge spare capacity available in these countries together with their high export capacities, it may be concluded that dumped imports from these two countries to the EU would resume if the measures were allowed to lapse. In addition, despite the high level of the anti-dumping duties imposed on their exports which virtually ceased, none of the exporting producers in Malaysia requested an interim review. Furthermore, it should be borne in mind that the Korean exporting companies have never cooperated in the original investigation. The absence of cooperation in this investigation also suggests that these