Council Regulation (EC) No 2053/2004 of 22 November 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not

COUNCIL REGULATION (EC) No 2053/2004

of 22 November 2004

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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 Article 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures

(1) Following an expiry review, the Council imposed by Regulation (EC) No 964/2003[(2)] (the original Regulation), *inter alia*, definitive anti-dumping duties of 58,6 % on imports of tube or 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, falling within CN codes ex 7307 93 11 (TARIC code 7307 93 11 99), ex 7307 93 19 (TARIC code 7307 93 19 99), ex 7307 99 30 (TARIC code 7307 99 30 98) and ex 7307 99 90 (TARIC code 7307 99 90 98) and originating in the People's Republic of China (PRC).

2. Request

(2) On 20 January 2004, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of tube or pipe fittings originating in the PRC. The request was submitted by the Defence Committee of the Steel Butt-Welding Fittings Industry of the European Union on behalf of four Community producers.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 2053/2004. (See end of Document for details)*

(3) The request alleged that there had been a change in the pattern of trade following the imposition of the anti-dumping measures on imports of tube or pipe fittings originating in the PRC, as shown by a significant increase in imports of the same product from Sri Lanka.

(4) This change in the pattern of trade was alleged to stem from the transhipment of tube or pipe fittings originating in the PRC via Sri Lanka. It was further alleged that there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duties on tube or pipe fittings originating in the PRC.

(5) Finally, the applicant alleged that the remedial effects of the existing anti-dumping duties on tube or pipe fittings originating in the PRC were being undermined both in terms of quantities and prices and that dumping was taking place in relation to the normal values previously established for the tube or pipe fittings originating in the PRC.

3. Initiation

(6) The Commission, by Regulation (EC) No 395/2004[(3)] (the initiating Regulation) initiated an investigation into the alleged circumvention of the anti-dumping measures imposed on imports of tube or pipe fittings originating in the PRC by imports of tube or pipe fittings consigned from Sri Lanka, whether declared as originating in Sri Lanka or not and pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports of tube or pipe fittings consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, under CN codes ex 7307 93 11 (TARIC code 7307 93 11 94), ex 7307 93 19 (TARIC code 7307 93 19 94), ex 7307 99 30 (TARIC code 7307 99 30 94) and ex 7307 99 90 (TARIC code 7307 99 90 94) as from 4 March 2004. The Commission advised the authorities of the PRC and Sri Lanka of the initiation of the investigation.

4. Investigation

(7) Questionnaires were sent to the producers/exporters in the PRC (there were no known producers in Sri Lanka) as well as to importers in the Community named in the request or known to the Commission from the investigation which lead to the imposition of the existing measures on imports of tube or pipe fittings originating in the PRC (the previous investigation). Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.

(8) No producer or exporter in the PRC submitted a reply to the questionnaire and no reply to the questionnaire was submitted by any importer in the Community. No producers or exporters in Sri Lanka made themselves known or submitted questionnaire replies.

5. Investigation period

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 2053/2004. (See end of Document for details)*

(9) The investigation period covered the period from 1 January 2003 to 31 December 2003 (the IP). Data from 2000 up to the end of the IP were used to investigate the change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(a) Sri Lanka

(10) No producers or exporters of tube or pipe fittings originating in Sri Lanka cooperated in the investigation. In fact, the authorities of Sri Lanka informed the Commission that no Sri Lankan companies were registered as manufacturers of tube or pipe fittings as defined in the initiating Regulation. The only feedback received from importers was statements that they did not import tube or pipe fittings from Sri Lanka. It was made clear to importers and to the authorities of Sri Lanka that non-cooperation might lead to the application of Article 18 of the basic Regulation. These parties were also made aware of the consequences of non-cooperation.

(b) PRC

(11) No Chinese producers or exporters cooperated in the investigation.

(12) It was made clear to these companies that non-cooperation might lead to the application of Article 18 of the basic Regulation. These parties were also made aware of the consequences of non-cooperation.

2. Product concerned and like product

(13) The product concerned by the alleged circumvention is tube or 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, currently classifiable within CN codes ex 7307 93 11 (TARIC code 7307 93 11 94), ex 7307 93 19 (TARIC code 7307 93 19 94), ex 7307 99 30 (TARIC code 7307 99 30 94) and ex 7307 99 90 (TARIC code 7307 99 90 94).

(14) In the absence of cooperation by any parties in Sri Lanka and considering the change in the pattern of trade as described in the following section, it must be inferred, in the absence of any contrary evidence, that the tube or pipe fittings exported to the Community from the PRC and those consigned from Sri Lanka have the same basic physical and chemical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. Change in the pattern of trade

(15) As stated in recital 4, the change in the pattern of the trade was alleged to stem from transhipment via Sri Lanka.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 2053/2004. (See end of Document for details)*

(16) As no Sri Lankan company cooperated in the investigation, exports from Sri Lanka to the Community had to be established on the basis of the facts available, pursuant to Article 18 of the basic Regulation. Eurostat data, which were the most appropriate information available, were therefore used to establish the export prices and quantities from Sri Lanka to the Community.

(17) Imports of tube or pipe fittings from Sri Lanka increased from 0 tonnes in 2000 to 302 tonnes in the IP. These imports from Sri Lanka commenced in July 2002, at a time when the previous investigation was ongoing. Imports into the Community of tube or pipe fittings from the PRC increased from 44 tonnes in 2000 to 287 tonnes in the IP. However, this increase in exports from the PRC must be read together with the level of exports achieved in the period under consideration in the original investigation pursuant to Regulation (EC) No 584/96[4]. Indeed, the volume of the Chinese exports in the IP amounted to less than 10 % of the volume exported in the period under consideration in the original investigation. In the light of the above, and in the absence of any contrary evidence, it was found that imports consigned from Sri Lanka were compensating for some of the previous imports from the PRC.

(18) From the figures above, it is concluded that there has been a clear change in the pattern of trade which started with the previous investigation leading to the imposition of the existing measures on imports of the product concerned originating in the PRC and developed rapidly after the imposition of these measures.

4. Insufficient due cause or economic justification

(19) In the absence of cooperation by any parties in Sri Lanka or the PRC and of any contrary evidence, it is concluded that, given the coincidence in time with the previous investigation which led to the imposition of the existing measures, the change in the pattern of trade stemmed from the existence of the anti-dumping duty imposed on imports of the product concerned originating in the PRC rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation.

(20) It is therefore concluded that no reasonable grounds other than avoiding the existing anti-dumping duties on imports of tube or pipe fittings originating in the PRC can be established for the change in the pattern of trade observed.

5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like products

(21) Based on the trade flow analysis made above, it was found that a change in the pattern of Community imports was linked to the fact that there were anti-dumping measures in place. Imports declared as originating in Sri Lanka were absent from the Community market until June 2002. After said date imports declared as originating in Sri Lanka substantially increased, amounting to 302 tonnes during the IP. This volume represents 0,6 % of the Community consumption during the IP of the previous investigation. Attention must be paid to the fact that imports of the product concerned into the Community are very fragmented among a number of different exporting

countries. In particular, for the IP, Sri Lanka held 2,5 % of total import volumes of the product concerned into the Community, whereas the largest exporting country during said year (the Slovak Republic) held 12 %. In addition, Sri Lanka is the 12th largest exporter of the product concerned to the Community, out of a list of 36 exporting countries.

(22) With regard to prices of the products consigned from Sri Lanka and in the absence of cooperation and of any contrary evidence, Eurostat data revealed that average export prices of imports from Sri Lanka during the IP were lower than (i) the average export prices established for the PRC in the previous investigation; and (ii) the prices of the Community industry. It has been established that prices of imports from Sri Lanka were more than 12 % lower than the Chinese export prices during the IP.

(23) On the basis of the above, it is concluded that the change in trade flows, together with the abnormally low prices of exports from Sri Lanka have undermined the remedial effects of the anti-dumping measures in terms of the quantities and prices of the like products.

6. Evidence of dumping in relation to the normal values previously established for like or similar products

(24) In order to determine whether evidence of dumping could be found with respect to the product concerned exported to the Community from Sri Lanka during the IP, export prices established on the basis of Eurostat data were used pursuant to Article 18 of the basic Regulation.

(25) Article 13(1) of the basic Regulation requires evidence of dumping in relation to the normal values previously established for the like or similar products. In the previous investigation, Thailand was found to be an appropriate market economy analogue country for the PRC for the purpose of establishing normal value.

(26) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of transport and insurance. In the absence of other information relating to these factors, the data contained in the request was used.

(27) In accordance with Articles 2(11) and 2(12) of the basic Regulation, the comparison of a weighted average normal value as established in the previous investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the cif price at the Community frontier, duty unpaid, showed dumping for the imports of tube or pipe fittings consigned from Sri Lanka. The dumping margin found, expressed as a percentage of the cif price at the Community frontier, duty unpaid, was 34,3 %.

C. MEASURES

(28) In view of the above finding of circumvention within the meaning of Article 13(1) of the basic Regulation, the existing anti-dumping measures on imports of the