Council Regulation (EC) No 2052/2004 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 Indonesia, whether declared as originating in Indonesia or not

COUNCIL REGULATION (EC) No 2052/2004

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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, by Regulation (EC) No 964/2003[(2)] (the original Regulation), the Council imposed, *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. Initiation

(2) The Commission had at its disposal sufficient *prima facie* evidence that the anti-dumping measures on imports of certain tube or pipe fittings originating in the PRC were being circumvented by means of transhipment and incorrect declaration of origin via Indonesia. Sufficient evidence for the opening of the proceeding concerning Indonesia could only be obtained by the Commission, by an inquiry with the customs authorities of a Member State, which showed that the goods were not originating

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in Indonesia. Therefore, the Commission decided to initiate on its own initiative an investigation according to Article 13 of the basic Regulation.

(3) Pursuant to some investigations carried out during 2003 by the customs authorities of one Member State, *prima facie* evidence was obtained, which showed in particular that regarding imports into that Member State, practices had been detected of shipments declared as originating in Indonesia, which had in fact been shipped and originating from the PRC. According to Eurostat data, imports declared as originating from Indonesia into this Member State represented two thirds of imports declared as originating in Indonesia into the Community during 2003. The significant increase of imports, following the imposition of the anti-dumping measures on imports of tube or pipe fittings originating in the PRC appeared to constitute a change in the pattern of trade, for which there was insufficient due cause or economic justification other than the existence of the anti-dumping duties on tube or pipe fittings originating in the PRC.

(4) Finally, it appeared that the remedial effects of the existing anti-dumping duties on imports of 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.

(5) The Commission therefore initiated on its own initiative an investigation by Regulation (EC) No 396/2004[3] (the initiating Regulation) 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 Indonesia, whether declared as originating in Indonesia 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 Indonesia, whether declared as originating in Indonesia or not, under CN codes ex 7307 93 11 (TARIC code 7307 93 11 93), ex 7307 93 19 (TARIC code 7307 93 19 93), ex 7307 99 30 (TARIC code 7307 99 30 93) and ex 7307 99 90 (TARIC code 7307 99 90 93) as from 4 March 2004. The Commission advised the authorities of the PRC and Indonesia of the initiation of the investigation.

3. Investigation

(6) Questionnaires were sent to producers and exporters in the PRC (there was no known producer in Indonesia) as well as to importers in the Community known to the Commission from the investigation which led 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.

(7) No producer or exporter in the PRC submitted a reply to the questionnaire and no producers or exporters in Indonesia made themselves known or submitted questionnaire replies. Three replies to the questionnaire were submitted by unrelated importers in the Community. One of the importers did not further cooperate.

4. Investigation period

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(8) The investigation period covered the period from 1 January 2003 to 31 December 2003 (IP). Data from 2000 up to 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) Indonesia

(9) No producers or exporters of tube or pipe fittings originating in Indonesia cooperated in the investigation. The authorities of Indonesia did not supply any additional information. It was made clear to the authorities of Indonesia that non-cooperation may lead to the application of Article 18 of the basic Regulation. Three unrelated importers supplied a questionnaire reply. One importer, who had submitted a response to the questionnaire where necessary information for ascertaining the existence of circumvention lacked, did not clarify the deficiencies pointed out by the Commission in a deficiency letter as a reaction to its initial questionnaire reply and was therefore declared non-cooperating. The imports of the two other importers represented 5,5 % of total imports declared as originating in Indonesia during the IP. Overall, it can therefore be concluded that there was no cooperation from producers and very low cooperation from importers.

(b) PRC

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

(11) It was made clear to these non-cooperating companies that non-cooperation may lead to the application of Article 18 of the basic Regulation.

2. Product concerned and like product

(12) 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 93), ex 7307 93 19 (TARIC code 7307 93 19 93), ex 7307 99 30 (TARIC code 7307 99 30 93) and ex 7307 99 90 (TARIC code 7307 99 90 93).

(13) Given the very low level of cooperation it must be inferred that the tube or pipe fittings exported to the Community from the PRC and those consigned from Indonesia 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

(14) As already stated the *prima facie* evidence suggested that the change in the pattern of trade stemmed from transhipment and an incorrect declaration of origin of

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the product, as imports were declared as originating in Indonesia, whereas evidence existed that the goods originated in the PRC.

(15) As no Indonesian company cooperated in the investigation, exports from Indonesia 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 in such a situation, were therefore used to establish the export prices and quantities from Indonesia to the Community.

(16) Imports of tube or pipe fittings declared as originating in Indonesia increased from 0 tonnes in 2000 to 866 tonnes in the IP. These imports from Indonesia commenced in January 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 of the original investigation[(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 of the original investigation. In the light of the above, and in the absence of any contrary evidence, it was found that imports consigned from Indonesia were compensating for some of the previous imports from the PRC.

4. Insufficient due cause or economic justification

(17) In the absence of cooperation by any parties in Indonesia and 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 rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1), second sentence of the basic Regulation.

(18) 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, could 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

(19) Based on the trade flow analysis made above, it was found that a change in the pattern of Community imports is linked to the fact that there were anti-dumping measures in place. Imports declared as originating in Indonesia were absent of the Community market until January 2002. After said date imports declared as originating in Indonesia substantially increased, amounting to 866 tonnes during the IP. This volume represents 1,7 % of the Community consumption during the IP of the previous investigation.

(20) With regard to prices of the products consigned from Indonesia and in the absence of cooperation from exporters and of any contrary evidence, Eurostat data revealed that average export prices from Indonesia during the IP were even lower than the average export prices established for the PRC in the previous investigation and

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therefore lower than the prices of the Community industry. It has been established that during the IP average export prices from Indonesia were around 34 % below the average export prices from the PRC.

(21) On the basis of the above, it is concluded that the change in trade flows, together with the abnormally low prices of exports from Indonesia 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

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

(23) 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 the appropriate market economy analogue country for the PRC for the purpose of establishing normal value.

(24) 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 used in the previous investigation was used.

(25) 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 Indonesia. The dumping margin found, expressed as a percentage of the cif price at the Community frontier duty unpaid, was 60,5 %.

C. MEASURES

(26) 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 product concerned originating in the PRC should be extended to the same product consigned from Indonesia, whether declared as originating in Indonesia or not.

(27) The duty extended should be the one established in Article 1(2) of the original Regulation.

(28) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measures shall be applied against registered imports from the date of registration, the anti-dumping duty should be collected on imports of tube or