Council Regulation (EC) No 1496/2004 of 18 August 2004 amending Council Regulation (EC) No 964/2003 imposing a definitive anti-dumping duty on imports of certain tube or pipe fittings originating, inter alia, in Thailand

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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 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and existing measures

(1) The measures currently in force on imports of certain tube or pipe-fittings, of iron or steel originating in Thailand are a definitive anti-dumping duty imposed originally by Council Regulation (EC) No 584/96[(2)], as amended by Council Regulation (EC) No 1592/2000[(3)] and confirmed, following an expiry review investigation, by Council Regulation (EC) No 964/2003[(4)].

(2) The measures applicable to these imports consist of an *ad valorem* duty, except for two Thai exporting producers from which undertakings were accepted by Commission Decision 96/252/EC[(5)], as amended by Commission Decision 2000/453/EC[(6)].

(3) In April 2001, the Commission simultaneously initiated an expiry review investigation[(7)] pursuant to Article 11(2) of the basic Regulation and an *ex officio* interim review pursuant to Article 11(3) of the basic Regulation. The review pursuant to Article 11(2) of the basic Regulation was concluded by Regulation (EC) No 964/2003 maintaining the existing measures. However, the interim review, pursuant to Article 11(3) of the basic Regulation, remained open at the conclusion of the expiry review.

2. Grounds for the review

(4) In April 2001, the Commission initiated, on its own initiative, an *ex officio* interim review, pursuant to Article 11(3) of the basic Regulation, in order to examine

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1496/2004. (See end of Document for details)*

the appropriateness of the form of the measures concerning the imports originating in Thailand. In this respect, it should be noted that enforcement problems have been encountered in the monitoring of the undertakings accepted from two exporters in Thailand, i.e. Awaji Sangyo (Thailand) Co. Ltd and TTU Industrial Corp. Ltd (the exporters concerned), with consequences on the remedial effect of the measures. After consulting the Advisory Committee, the Commission initiated an investigation limited to the form of the measures. The initiation of the review was announced simultaneously to the initiation of the expiry review by which the existing measures were confirmed.

(5) The Commission officially advised the applicant Community producers, the exporting producers in Thailand, importers/traders, user industries, and associations of users known to be concerned, as well as the representatives of the Thai Government of the initiation of the review. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) Following disclosure of the results of the investigation pursuant to Article 11(2) of the basic Regulation, a Thai exporting producer, Awaji Sangyo (Thailand) Co. Ltd (the applicant), lodged a request in April 2002 for an interim review of the anti-dumping measures applicable to it, limited to its situation of dumping, pursuant to Article 11(3) of the basic Regulation. The request alleged that changed circumstances of a lasting nature had led to a considerably reduced normal value, which in turn has reduced or eliminated dumping so that the continued imposition of the measures at the existing level in respect of its imports was no longer necessary to offset dumping.

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission published a notice of initiation[8] and commenced an investigation.

(8) The Commission officially advised the representatives of the exporting country and the applicant of the initiation of the interim review limited to dumping and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing. The Commission also sent a questionnaire to the applicant.

(9) The Commission sought and verified all information it deemed necessary for the purpose of the determination of dumping and carried out a verification visit at the premises of the applicant.

(10) The investigation limited to dumping covered the period from 1 January 2001 until 31 December 2002 (the investigation period or IP).

B. PRODUCT CONCERNED AND LIKE PRODUCT

Product concerned

(11) The product concerned subject to the interim reviews is the same as the product concerned in the previous investigations, i.e. certain 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 (product concerned or tube or pipe fittings), originating in Thailand. It is currently classifiable 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).

Like product

(12) As in the previous investigations, these investigations have shown that the tube or pipe fittings of iron or steel, produced in Thailand and sold domestically and/or exported to the Community have the same basic physical and chemical characteristics as the tube or pipe fittings sold in the Community by the Community producers and, therefore, are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING WITH REGARD TO THE APPLICANT

1. Normal value

(13) As far as the determination of normal value is concerned, it was first established whether the applicant's total domestic sales of the like product were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, this was found to be the case since the applicant's domestic sales volume constituted at least 5 % of its total export sales volume to the Community.

(14) It was then examined whether the applicant's domestic sales were sufficiently representative for each of the product types exported to the Community. This was considered to be the case when, during the IP, the total domestic sales volume of a product type represented 5 % or more of the total sales volume of the same type exported to the Community. On this basis, it was found that domestic sales of all but one product type exported to the Community were representative.

(15) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question. In cases where the sales volume of a product type, sold at a net sales price equal to or above the calculated unit cost of production, represented 80 % or more of the total sales volume of that type, and where the weighted average price of that type was equal to or above the unit cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of a product type represented 80 % or less, but at least 10 % of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable domestic sales of that type only.

(16) In cases where the volume of profitable sales of any type of fittings represented less than 10 % of the total sales volume of that type on the domestic market, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

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(17) Wherever domestic prices of a particular type sold by the applicant could not be used in order to establish normal value, another method had to be applied. In this regard, in the absence of other exporting producers and of any other reasonable method, constructed normal value was used.

(18) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer concerned on the domestic market constituted reliable data. Actual domestic SG&A expenses were considered reliable since the domestic sales volume of the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

2. Export price

(19) Since all export sales of the product concerned were made directly to an independent customer in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable when sold for export to the Community.

3. Comparison

(20) For the purposes of a fair comparison by type on an ex-factory basis and at the same level of trade, due allowance was made for differences which were claimed and demonstrated to affect price comparability between the export price and the normal value. These adjustments were made in respect of import charges, discounts, transport, insurance, handling costs, packing, credit and commissions in accordance with Article 2(10) of the basic Regulation.

4. Dumping margin

(21) In order to calculate the dumping margin, the Commission compared the weighted average normal value to the weighted average export price to the Community.

(22) The comparison, as described above, showed the existence of dumping for the applicant. The dumping margin established, expressed as a percentage of the total cif value at Community frontier level, duty unpaid, was 7,4 %.

5. Lasting nature of changed circumstances and likelihood of recurrence of dumping

(23) In accordance with the Commission's normal practice, it was examined whether the changed circumstances could reasonably be said to be of a lasting nature.

(24) It was found that there were no reasons to expect that the domestic sales prices and normal value would not remain stable for the foreseeable future.