Council Regulation (EC) No 964/2003 of 2 June 2003 imposing definitive anti-dumping duties on imports of certain tube or pipe-fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan or not

COUNCIL REGULATION (EC) No 964/2003

of 2 June 2003

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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)] ('basic Regulation'), and in particular Article 11(2) and (3) thereof,

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

Whereas:

A. PREVIOUS INVESTIGATION

(1) By Regulation (EC) No 584/96[(2)], the Council imposed a definitive anti-dumping duty on imports of certain tube or pipe-fittings, of iron or steel, originating in the People's Republic of China ('China'), Croatia and Thailand. The measures applying to these imports consisted of an *ad valorem* duty, except for three Thai exporting producers from which undertakings were accepted by Commission Decision 96/252/EC[(3)]. In July 2000, the anti-dumping measure applicable to the imports of one of these three companies was repealed, following an interim review requested by this company, pursuant to Article 11(3) of the basic Regulation and which showed the absence of dumping[(4)].

(2) Pursuant to Article 13(3) of the basic Regulation, the anti-dumping measures on imports from China have been extended by Regulation (EC) No 763/2000[(5)], to cover certain imports of the product concerned which are consigned from Taiwan, based on the findings in an anti-circumvention investigation.

B. PRESENT INVESTIGATION

(3) Following the publication, in September 2000, of a notice[(6)] of the impending expiry of the anti-dumping measures in force, the Commission received a request for an expiry review lodged by the Defence Committee of EU Steel Butt-welding Fittings Industry, on behalf producers representing a major proportion of the total Community production of certain tube or pipe-fittings of iron or steel. The request

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 964/2003. (See end of Document for details)*

alleged that injurious dumping of imports originating in China and Thailand ('the countries concerned') would be likely to recur if measures expired. The applicant Community producers did not request the initiation of an expiry review concerning imports originating in Croatia on the grounds that available statistics show very low exports worldwide and, accordingly, no reliable evidence concerning the likely recurrence of injurious dumping. Consequently, the measures applicable to imports originating in Croatia expired on 4 April 2001.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation[7], pursuant to Article 11(2) of the basic Regulation.

(5) At the same time, likewise after consultation of the Advisory Committee, the Commission initiated an ex officio interim review pursuant to Article 11(3) of the basic Regulation, in order to examine the appropriateness of the form of the measures concerning the imports originating in Thailand.

(6) The investigation regarding the continuation and/or recurrence of dumping and injury covered the period from 1 April 2000 to 31 March 2001 ('IP'). The examination of the trends relevant for the assessment of a likelihood of a continuation and/or recurrence of injury covered the period from 1 January 1996 up to the end of the IP ('period under review').

(7) The Commission officially advised the applicant Community producers, the exporters and exporting producers in China and Thailand, importers/traders, user industries, and associations of users known to be concerned, as well as the representatives of the Chinese and Thai Governments of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(8) The following Community producers replied to the questionnaire, and verification visits were carried out at their premises:

(a) Erne Fittings GmbH & Co — Schlins, Austria

(b) Interfit — Maubeuge, France

(c) Siekmann Fittings GmbH & Co. KG — Lohne, Germany

(d) Virgilio CENA & Figli S.p.a.– Brescia, Italy.

(9) The two following exporting producers in Thailand replied to the questionnaire and verification visits were also carried out at their premises:

(a) TTU Industrial Corp., Ltd, Bangkok

(b) Awaji Sangyo (Thailand) Co., Ltd, Samutprakarn.

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(10) The Commission sent questionnaires to 57 unrelated importers/traders, 23 user industries and 5 associations of user industries. Two questionnaire replies by importers have been received and these were subsequently verified on spot:

(a) INRABO S.R.L — Bologna, Italy

(b) IRC Spa — Cortemaggiore, Italy.

C. ONGOING INVESTIGATION CONCERNING OTHER COUNTRIES

(11) By a notice[8] published in the Official Journal dated 1 June 2001, the Commission initiated an investigation concerning imports of the same product and originating in the Czech Republic, the Republic of Korea, Malaysia, Russia and Slovakia. This proceeding was initiated upon receipt of a complaint lodged by the Defence Committee of EU Steel Butt-welding Fittings Industry, and containing sufficient prima facie evidence of injurious dumping practices caused by imports originating in these five countries. Definitive anti-dumping measures were imposed against imports originating in those countries in August 2002[9].

D. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(12) The product concerned is the same as in the original investigation, 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'), 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).

(13) Tubes or pipe fittings are used to join tubes or pipes and come in several different shapes (elbows, tees, reducers and caps), material grade and sizes. They can accordingly be categorised in different types according to these characteristics. They are mainly used in primary industries, such as chemicals, oil refining, energy generation, construction and shipbuilding.

(14) As in the previous investigation, this investigation has shown that the tube or pipe fittings of iron or steel, produced in the countries concerned, sold domestically and/or exported to the Community have the same basic physical and chemical characteristics as the products sold in the Community by the applicant Community producers and are considered to be like products, within the meaning of Article 1(4) of the basic Regulation.

E. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING
PRELIMINARY REMARK

(15) Under Article 11(2) of the basic Regulation, the purpose of this type of review is to determine whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping. Since the imports of the product under consideration from China and Thailand (with the exclusion of one exporting producer

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which is no longer subject to anti-dumping measures) were below the *de minimis* threshold in the IP, the analysis will not only focus on the likelihood of a continuation of dumping, but also on whether the removal of the measures would be likely to lead to a recurrence of dumping in significant volumes. It should be noted that in the original investigation the market shares of China and Thailand were 8,5 % and 2,6 % respectively.

(16) The two Thai exporting producers for which undertakings are currently in force cooperated in the investigation by replying to the questionnaire which was sent out by the Commission. No information was submitted by any Chinese exporting producer and therefore the findings related to their situation had to be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation. In accordance with Article 11(9) of the basic Regulation, the Commission employed the same methodology as in the original investigation (see recitals 17 to 31 below).

LIKELIHOOD OF A CONTINUATION OF DUMPING

Thailand

Normal value

(17) As far as the determination of normal value is concerned, it was first established for the two cooperating Thai exporting producers whether their total domestic sales of the like product were representative in comparison with their total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, this was found to be the case.

(18) The Commission subsequently identified those product types, sold domestically by the companies concerned, that were identical or directly comparable to the types sold for export to the Community.

(19) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value either because they had not been sold on the domestic market or not in the ordinary course of trade, another method had to be applied. In the absence of any other reasonable method, constructed normal value was used.

(20) 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, a reasonable percentage for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

Export price

(21) Since all export sales of the product under consideration were made directly to independent customers 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.

Comparison

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(22) For the purposes of a fair comparison by product 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. These adjustments were made in respect of import charges, transport, insurance, handling costs, packing, credit and commissions in accordance with Article 2(10) of the basic Regulation.

(23) One Thai exporting producer claimed an adjustment for credit cost on the grounds that it was standard practice to grant 30 to 90 days of credit to known domestic customers. This claim was rejected because the applicant failed to show, e.g. by means of contracts or a description of the payment terms on the invoices, that this was a factor taken into account in the determination of the prices charged.

(24) Both Thai companies claimed an allowance for import charges. Pursuant to Article 2(10)(b) of the basic Regulation these requests were granted where it was demonstrated that the materials on which import duties were payable had been physically incorporated into the products concerned sold on the domestic market and that the import duties had not been collected or were refunded in respect of the product exported to the Community. Only one of the two companies was able to demonstrate this.

Dumping margin

(25) In order to calculate the dumping margin, the Commission compared the weighted average normal value to the average export price to the Community at ex-factory level and at the same level of trade. This comparison showed the existence of dumping for both companies concerned, ranging from about 23 to about 88 %.

China

Analogue country

(26) The existing measures provide for a single countrywide duty on all imports into the Community of tube and pipe fittings originating in China. Accordingly, normal value was determined on the basis of information obtained in a market economy third country (‘the analogue country’).

(27) Thailand had served as an analogue country in the original investigation. In the notice of initiation of this expiry review it was therefore envisaged to choose Thailand again as analogue country for the purpose of establishing normal value. Since it was found that the findings of the previous investigation were still valid, i.e. prices were governed by market forces, several producers competed on the Thai market and the production technology and process were, to a large extent, similar between China and Thailand, as no interested party commented on this choice of analogue country and since the Thai exporting producers cooperated, Thailand was, therefore, in accordance with Article 2(7) of the basic Regulation, considered to be an appropriate and not unreasonable choice of analogue country for establishing normal value in respect of China for the product concerned.

Normal value