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COUNCIL REGULATION (EC) No 1514/2002

of 19 August 2002

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tube and pipe fittings, of iron or steel originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia

(OJ L 228, 24.8.2002, p. 1)

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►**C1** Corrigendum, OJ L 351, 28.12.2002, p. 116 (1514/2002)

►**C2** Corrigendum, OJ L 53, 28.2.2003, p. 65 (1514/2002)

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tube and pipe fittings, of iron or steel originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia

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], and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 358/2002 [2] (the 'provisional Regulation'), imposed a provisional anti-dumping duty on imports of certain tube and pipe fittings (TPFs), of iron or steel, falling within CN codes ex 7307 93 11, ex 7307 93 19, ex 7307 99 30 and ex 7307 99 90, originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia.

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 April 2000 to 31 March 2001 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1996 to 31 March 2001 ('period under consideration').

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional anti-dumping duties on imports of certain tube and pipe fittings originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments, the product description and the definition of the like product as set out in recitals 9 to 12 of the provisional Regulation are confirmed.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 56, 27.2.2002, p. 4.

▼B

D. **DUMPING**

1. **General methodology**

(8) In the absence of any comments, the general methodology for establishing the dumping margins as set out in recitals 15 to 28 of the provisional Regulation is confirmed.

2. **Dumping margins**

(9) In the absence of any comments, the determination of the normal value, the export price and the comparison for the Czech Republic, Malaysia, Republic of Korea, Slovakia and the determination of the market economy status and analogue country for Russia, as described in recitals 29 to 60 of the provisional Regulation, are confirmed.

(10) The definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, are confirmed as follows:

Country	Company	Dumping margin (%)
Czech Republic	Mavet a.s., Trebic	17,6
	Bovex s.r.o.	22,4
Malaysia	Anggerik Laksana Sdn Bhd	59,2
Republic of Korea		83,9
Slovakia	Bohus s.r.o.	7,7
	Zeleziarne Podbrezova a.s.	15,0
Russia		43,3

E. **COMMUNITY INDUSTRY**

(11) In the absence of any comments, the provisional findings concerning the determination of the Community industry as described in recitals 61 to 62 of the provisional Regulation are confirmed.

F. **INJURY**

1. **Community consumption**

(12) In the absence of any new information, the provisional findings concerning the Community consumption as described in recitals 63 to 64 of the provisional Regulation are confirmed.

2. **Imports from the countries concerned**

Cumulative assessment of the effects of the imports concerned, volume, market share and prices of the imports concerned

(13) The provisional Regulation concluded that the imports originating in the countries concerned should be assessed cumulatively since the criteria set out in the Article 3(4) of the basic Regulation were met. Indeed, the dumping margins found for all the countries concerned were more than *de minimis*, the volume of imports were not negligible and the cumulative assessment was considered appropriate in view of the conditions of competition both between the imports and between the

▼B

imports and the like Community product. These similar conditions of competition were evidenced by the fact that the imported TPFs and those of the Community industry were alike and distributed via the same trade channels under similar commercial conditions. Moreover, all import volumes were substantial and resulting in significant market shares, which increased between 1996 and the IP, and were made at prices significantly undercutting the prices of the Community industry thus leading to a price depression of the Community industry's prices.

(14) In the absence of any comments under these headings, the provisional findings as described in recitals 65 to 67 of the provisional Regulation are confirmed.

Price undercutting

(15) One Slovak exporting producer questioned the methodology used by the Commission for the calculation of the price undercutting margins. This relates more specifically to the method of the so-called 'zeroing', by which the positive margins for the models that are overcutting are disregarded. This argument is based on the conclusions reached by the WTO Appellate Body in the bed linen case [1] by which, on the facts of the case concerned, the practice of zeroing when establishing the existence of margins of dumping, which in that case was established by a comparison of the weighted average normal value with the weighted average export price as established by the Commission, was found to be inconsistent with the Article 2.4.2 of the WTO Anti-Dumping Agreement.

(16) Accordingly, it should be noted that the WTO Appellate Body in any event exclusively examined the practice of 'zeroing' when used to establish the existence of dumping margins. In addition, the WTO Anti-Dumping Agreement does not set out any methodological requirements for the calculation of price undercutting.

(17) In any event, in the current case, in view of the very few models for which no undercutting was found, the application of the 'zeroing' methodology does not lead to significantly different results, the difference between applying zeroing or not amounting to less than 1 %. In other words the undercutting margins would remain significant even if no zeroing was applied. The argument had therefore to be rejected.

(18) The Community industry argued that no adjustment for level of trade should be made in order to establish the price undercutting margin. Indeed, both the exporting producers and the Community industry supply the same category of customers, and therefore act on the same level of trade. It was further claimed that consequently only an adjustment covering customs clearance cost was justified.

(19) A further analysis of the information available established that both the Community industry and the exporting producers generally supply the same type of customers in the Community, i.e. wholesalers. This was also supported by the fact that the three cooperating unrelated importers, whose activity is the one of wholesalers, were supplied by both the Community industry and the exporting producers from the countries concerned. The argument was therefore accepted and the undercutting margins revised accordingly. The revised adjustment was limited to an amount covering exclusively the customs clearance costs, on the basis of the information provided by the cooperating unrelated importers.

(20) The Community industry further questioned the level of the undercutting margin calculated for one of the Slovak exporting

[1] European Communities: Anti-dumping duties on imports of cotton-type bed linen from India, WT/DS/AB/R, 1.3.2001.

▼B

producers. It was argued that this level of undercutting was inconsistent with the average price level as given by international trade statistics as well as market information.

(21) The calculations of the price undercutting margins were accordingly reviewed, and a clerical error was found in the calculation of the export price used for the establishment of this exporting producer's margin of undercutting. The margin was therefore revised.

(22) Taking the above into consideration, the definitive revised weighted average price undercutting margins found per country, expressed as a percentage of the Community industry prices, are as follows:

— Czech Republic: from 19 % to 21 %,

— Malaysia: from 52 % to 72 %,

— Russia: 26 %,

— Republic of Korea: 23 %,

— Slovakia: from 15 % to 36 %.

3. **Situation of the Community industry**

(23) It is recalled that the introduction of the measures against China, Croatia and Thailand had a positive impact on the economic situation of the Community industry. Most of the injury indicators showed a positive development between 1996 and 1998. Production, capacity utilisation and sales volume went up, resulting in a gain in market shares and increasing employment. The profitability indicators such as profits/losses as a percentage of turnover, return on investments and cash flow also developed favourably. However, after 1998, the economic situation of the Community industry generally deteriorated: while production remained relatively stable and capacity utilisation, employment and wages slightly increased, crucial indicators such as the volume of sales and market shares decreased as well as profitability, return on investments cash flow and prices. On the basis of the above and of the findings regarding productivity, investments, growth and magnitude of dumping, it was therefore concluded, at a provisional stage, that the Community industry suffered material injury.

(24) In the absence of any comments, the facts and figures as set out in recitals 72 to 87 of the provisional Regulation are confirmed.

4. **Conclusion on injury**

(25) In the absence of any further comments on the findings other than those set out above, the conclusion reached as set out in recital 88 of the provisional Regulation is confirmed.

G. **CAUSATION**

(26) In the absence of any new information submitted on causation, the findings and the conclusion reached as set out in recitals 89 to 97 of the provisional Regulation are confirmed.

H. **COMMUNITY INTEREST**

(27) In the absence of any new information submitted on the Community interest, the findings and the conclusion reached as set out in recitals 98 to 111 of the provisional Regulation are confirmed.

I. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(28) Based on the methodology explained in recitals 112 to 115 of the provisional Regulation an injury elimination level has been