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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 584/96

of 11 March 1996

imposing 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, Croatia and Thailand, and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (1), and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (2), and in particular Article 12 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 2318/95 (3), hereinafter referred to as 'the provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China, Croatia and Thailand.

By Regulation (EC) No 149/96 (4), the Council extended the validity of this duty for a period of two months expiring on 4 April 1996.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. Some of these parties also presented written submissions making known their views on the provisional findings.

(3) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive duty and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the interested parties were examined and, where appropriate, considered in the Commission's definitive findings.

(5) Owing to the complexity of the investigation and the large volume of data and submissions received from the parties concerned, resulting in numerous requests for extension of deadlines, which were granted by the Commission when justified by the circumstances, the investigation could not be concluded within the period specified in Article 7 (9) of Regulation (EEC) No 2423/88.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(6) Having excluded stainless steel fittings from the scope of the proceeding for the reasons stated in recitals 9 and 10 of the provisional duty Regulation,

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
(3) OJ No L 234, 3. 10. 1995, p. 4.
(4) OJ No L 23, 30. 1. 1996, p. 1.

the Commission had, for the purpose of the preliminary findings, determined that all other steel fittings under consideration, originating in the exporting countries concerned, were identical to, or closely resembled, those produced and sold in the Community and were to be considered 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

(7) The two cooperating Chinese exporters and one independent importer of the Chinese product (hereinafter called 'the Chinese parties') claimed that fittings originating in China were, due to their inferior quality, not like products to the fittings produced in the Community. Furthermore, it was argued that the range of uses for the Chinese product was limited, in that it was often rejected by customers and that it had to be re-worked in some cases before resale.

(8) With respect to these arguments, the Commission has established during the investigation that while there are some quality differences between the Chinese fittings and the Community products, all fittings are manufactured using basically the same production technology and in accordance with internationally recognized standards and specifications, resulting in products which are alike in their essential physical and technical characteristics. It was also established that the Chinese fittings are marketed through similar distribution channels, that their basic application and use are identical and that there is a high degree of interchangeability with the fittings commercialized in the Community by other operators. Thus, the investigation has shown that the Chinese fittings are competing with the fittings imported into the Community from Croatia and Thailand and with those produced and sold by the Community industry. This applies also to those fittings which are resold after re-working. Therefore, the allegations made by the Chinese parties with regard to the 'like product' issue are rejected.

(9) As no comments have been presented by the other parties concerned regarding the product under consideration and the like product, the findings set out in recitals (7) to (12) of the provisional duty Regulation are confirmed.

D. DUMPING

1. Normal value

(a) *Choice of analogous country*

(10) One of the cooperating Chinese exporters contested the choice of Thailand as a suitable analogous market economy, alleging that the costs of production for the tube or pipe fittings concerned in Thailand and in the People's Republic of China were not comparable. It was argued that Thailand had no domestic production of steel tubes, which are the basic raw material to manufacture the fittings in question, and had therefore to rely exclusively on imported steel tubes. It was alleged that China, however, had a large domestic capacity and production of these steel tubes and that the input costs of the Chinese fittings producers for the basic raw material were therefore significantly lower comapred to those of the Thai producers.

(11) It should first be noted that the Chinese exporter did not produce any evidence to substantiate its claim. In addition, no suggestion as to the choice of a more appropriate analogous country has been received, neither form the Chinese exporter in question nor from any of the other parties concerned.

(12) Furthermore, it has to be pointed out that the People's Republic of China is a non-market economy country, i.e. a country where the means of production, in full or in part, belong to, or depend on, the State. This involvement prevents the establishment of reliable domestic prices and costs which could otherwise be used to establish normal value.

(13) As concerns more specifically the determination of normal value in Thailand, the Commission, at the stage of provisional findings, had already taken account of the particular situation of the Thai producers with regard to their supply of steel tubes used as the basic raw material for the production of the fittings concerned. In fact, since there is no production of steel tubes in Thailand, the entire raw material in the form of steel tubes was imported by the Thai producers and purchased at world market prices. The on-spot verification revealed that import charges and indirect taxes were assessed on all imported steel tubes. It was found, however, that these charges were refunded in respect of those fittings which were exported to the Community. For the purpose of ensuring a fair comparison, therefore, and in accordance with Article 2 (10) (b) of Regulation (EEC) No 2423/88, normal value in Thailand was reduced by an amount corresponding to import charges and indirect taxes levied on the steel tubes used to manufacture the tube fittings concerned which were sold on the domestic market in Thailand.

(b) *Final findings on normal value*

(14) As no new evidence has been submitted by the other parties since the imposition of the provisi-

onal duty, the findings on normal value with regard to all exporting countries concerned as set out in recitals (13) to (27) of the provisional duty Regulation are considered therefore to be definitive.

2. Export price

(15) Export prices for all producers and exporters of the countries concerned were determined as explained in recitals (28) to (31) of the provisional duty Regulation and are, in the absence of any relevant new arguments, considered definitive.

3. Comparison

(16) Normal values, by product type, were compared at an ex-factory level with the export price for the corresponding type at the same level of trade, based on a weighted average for the entire investigation period. Adjustments were made, where appropriate, in respect of differences affecting price comparability, i.e. import charges and indirect taxes, transport, insurance, handling and ancillary cost as well as packing, payment terms and salesmen's salaries. Since no relevant new information was provided, the findings and conclusions as laid down in recital (32) of the provisional duty Regulation are therefore confirmed.

4. Dumping margin

(17) The weighted average dumping margins definitively established for the countries and companies in question, expressed as percentages of the cif Community frontier prices, customs duty unpaid, are the following:

People's Republic of China:	58,6 %
Croatia:	58,6 %
Thailand:	
— Awaji:	39,5 %
— Benkan:	51,3 %
— TTU:	63,4 %.

(18) With regard to the dumping margins for producers and exporters of the countries concerned which did not cooperate in this proceeding, the findings to apply the highest dumping margin found for an exporter in the country concerned as set out in recital (36) of the provisional duty Regulation are, in the absence of any new arguments, hereby confirmed.

E. COMMUNITY INDUSTRY

(19) The Chinese parties challenged the Commission's finding in recital 40 of the provisional duty Regulation that the complainant producers represented a major proportion of Community production of the fittings in question and could therefore be considered to be the Community industry in terms of Article 4 (5) of Regulation (EEC) No 2423/88. They argued, in particular, that following the exclusion of stainless steel fittings fittings and one Italian producer from the scope of the investigation, the remaining producers could not be considered sufficiently representative of the Community industry. They claimed further that the sales of the complainant producers largely comprised purchased fittings from other producers.

(20) With regard to the first argument, the investigation revealed that fittings of stainless steel accounted only for a small proportion and were found not to exceed 1 % of the total production of the complainant producers.

(21) As far as the exclusion of one complainant producer is concerned, it is confirmed that the Italian producer Tectubi, mentioned in recital (5) of the provisional duty Regulation, withdrew from the complaint on the grounds that the products it manufactured were outside the scope of the investigation and were not imported into the Community from the exporting countries concerned. When the Commission determined whether the production of the five remaining producers constituted a major proportion of the total Community production, the output of this producer was indeed excluded. On this basis, the remaining producers supporting the complaint and having cooperated represented 85 % of the total Community production of the products in question during the investigation period.

(22) With regard to the purchase of fitting types by complainant producers, it should be recalled that almost all producers in this particular branch of the industry rely to a certain degree on the purchase of certain fitting types for the reasons set out in recital (38) of the provisional duty Regulation. In this respect, the investigation revealed that, for each of the complainant producers, the volume of purchased fittings for resale represented less than 5 % of their total production of the products concerned. This clearly corresponded to usual commercial behaviour of producers which had to supplement the range of products manufactured by them with a small proportion of imports in order to satisfy the requirement of the customers and to compete in the Community market.

(23) In consideration of the above, the findings laid down in recitals (37) to (40) of the provisional duty Regulation with regard to the definition of Community industry are confirmed.

F. INJURY

1. Cumulation of dumped imports

(24) The Chinese parties contested the Commission's findings on cumulation of the dumped imports and claimed that, due to their inferior quality, fittings from China did not compete in the Community market either with fittings manufactured by Community producers, or with those imported from Croatia and Thailand. The first aspect of this argument has already been dealt with in recitals (7) and (8).

(25) It was found during the investigation that the products in question imported from China, Croatia and Thailand were, on a type-by-type and dimension-by-dimension basis, alike in all respects, interchangeable and marketed in the Community within a comparable period and under similar commercial policies. The import volumes from each of these countries during the period under consideration were significant and the price trends similar.

(26) Under these circumstances and in the absence of any new relevant information, the conclusions laid down in recitals (41) to (44) of the provisional duty Regulation with regard to cumulation of the dumped imports are confirmed.

2. Prices of the dumped imports

(27) Prices of the dumped imports from the exporting countries concerned were found to be significantly below the prices charged by the Community producers on the Community market during the investigation period. The prices of the exporters concerned were compared with the sales prices on the Community market charged by the complainant producers, on a per-product-type basis and on the basis of weighted average prices at the same level of trade.

(28) The Chinese parties claimed adjustments on behalf of differences in quality between their products exported to the Community and those sold by the complainant producers.

(29) It should be stressed that, as is set out in recital (50) of the provisional duty Regulation, the import prices were, for the purpose of a fair comparison at a comparable level of trade, adjusted by an importer's mark-up which was established at 12 % with regard to the product imported from Croatia and Thailand. In the case of the Chinese product, however, an additional adjustment of 7 %, estimated on the basis of evidence provided regarding the re-working cost of rejected fittings, was granted for such material differences and had already been taken into account in establishing the price undercutting margins referred to in recital (51) of the provisional duty Regulation.

(30) The claim made by the Chinese parties has therefore to be rejected, and the margins of price undercutting established provisionally for all exporting countries are confirmed.

3. Situation of the Community industry

(31) It was claimed by the Chinese parties that the Community producers were profitable during the years 1990, 1991 and 1992 and therefore suffered no injury.

(32) With regard to this claim, the investigation has shown that all the producers concerned were either in a situation of minimal and reducing profits or recurring losses, with an aggravation of these trends during the period of investigation.

4. Final conclusion on injury

(33) In the light of the above and in the absence of any other arguments, the conclusions as set out in recitals (59) and (60) of the provisional duty Regulation that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88 are confirmed.

G. CAUSE OF INJURY

(34) In the provisional duty Regulation, the Commission concluded that the dumped imports from the exporting countries in question caused material injury to the Community industry, on the grounds that the Community producers lost 11,5 % of the Community market between 1989 and the investigation period, while the dumped imports gained 11,8 % of the market in the same period. Moreover, almost all economic indicators of the Community industry were negative and there was a clear coincidence between the increase in dumped imports at low prices undercutting the Community producers' prices and the deterioration of the situation of the Community industry.

(35) The Chinese parties claimed that the fittings imported from China could not have caused injury to the Community industry because these fittings are, due to their inferior quality, not a like product within the meaning of Regulation (EEC) No 2423/88. It was also claimed that the significant increase in imports of certain fittings of the products concerned from other third countries not covered by this proceeding, such as Austria (a third country at the time) and Switzerland, should have been taken into consideration when injury was determined.

(36) With regard to the first argument, the Chinese fittings and those produced and sold in the Community are to be regarded as a like product as definitively established in recitals (6) to (9). This argument is therefore to be rejected.

(37) With regard to the increase of certain imports from Austria and Switzerland, it was found during the investigation that total imports of the fittings under consideration from Switzerland declined from 2 813 tonnes in 1989 to 2 153 tonnes in 1993, and that those originating in Austria were relatively stable at 6 251 tonnes in 1989 and 6 641 tonnes in 1993. Compared to the evolution of imports from the above countries, imports from China had jumped from 451 tonnes in 1989 to 4 146 tonnes in 1993, i.e. by more than 800 %.

(38) Moreover, according to Eurostat data, average prices of imports of the like product from Switzerland and Austria and from most of the other third countries not subject to the proceeding were found to be significantly higher than those of the dumped imports, and there was no indication that the imports from these countries were dumped. It is therefore considered unlikely that the imports from other third countries have caused injury to the Community industry. In any event, even if they had contributed to the injury suffered by the Community industry, it remains that the dumped imports from the three exporting countries concerned have, taken in isolation, caused material injury to the Community industry.

The preliminary findings with regard to causation as set out in recitals (61) to (69) of the provisional duty Regulation are therefore confirmed.

H. COMMUNITY INTEREST

(39) As was stated in recital (70) of the provisional duty Regulation, in assessing the Community interest, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition should be given special consideration. In recital (71) to (75) of the provisional duty Regulation, the Commission, for the purpose of the provisional findings, had determined that, in accordance with Article 11 of Regulation (EEC) No 2423/88, the imposition of provisional anti-dumping measures was in the interests of the Community.

(40) The Chinese parties argued that the adoption of anti-dumping measures would not be in the interests of the Community user industry. This claim was not substantiated by any relevant evidence. In addition, no observations were received from any Community user of the product concerned imported from China, Croatia or Thailand following the imposition of provisional anti-dumping duties.

(41) In the absence of any further substantiated evidence, the conclusion reached in recital (75) of the provisional duty Regulation, that it is in the Community interest to impose anti-dumping measures to eliminate the injurious effects of the dumped imports under consideration, is confirmed.

I. UNDERTAKING

(42) Having been informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, the Croatian producer and the three Thai producers which cooperated in this investigation offered undertakings concerning their exports of the products in question to the Community. After examination of these offers, the Commission considered the undertakings as acceptable since they would eliminate the injurious effects of dumping pursuant to Article 10 (2) (b) of Regulation (EEC) No 2423/88 and could be satisfactorily monitored.

(43) The Commission consulted the Advisory Committee on the acceptance of these undertakings and, since some objections were raised, sent a report on these consultations to the Council. In accordance with Articles 9 and 10 (1) of Regulation (EEC) No 2423/88, the undertakings offered were accepted by Commission Decision 96/252/EC [1].

(44) Notwithstanding the acceptance of the undertakings offered by the Croatian and Thai exporters, a residual duty should be imposed on imports of the products concerned originating in Croatia and Thailand, in order to underpin the undertakings by avoiding their circumvention.

(45) As far as the People's Republic of China is concerned, the two cooperating Chinese exporters informed the Commission, following the disclosure of definitive findings, of their intention to propose an offer of an undertaking together with, allegedly, an offer of the Chinese authorities (MOFTEC) with regard to the control of the exports to the Community. However, no concrete offer from the Chinese exporters concerned nor any proposal from the Chinese authorities with a view to establishing an export control system was received by the Commission.

In these circumstances, it has been concluded that definitive measures with regard to the People's Republic of China should be imposed in the form of *ad valorem* anti-dumping duties.

J. DUTY

(46) Provisional measures took the form of *ad valorem* anti-dumping duties. They were, depending on the country concerned, imposed in accordance with the

[1] See page 46 of this Official Journal.

'Lesser duty rule' at rates based either on the injury elimination margin or the dumping margin established. Where the injury margin was lower than the respective dumping margin found, the duty was based on this lower level. In all other cases the provisional duty was limited to the dumping margin. Since no change in dumping and injury findings was made, the provisional findings as set out in recitals (76) to (82) of the provisional duty Regulation are hereby confirmed.

(47) For exporters in each of the exporting countries concerned who neither replied to the Commission's questionnaire nor otherwise made themselves known, and in the absence of any comments on the approach outlined in recital 81 of the provisional duty Regulation, the highest level of duty established for an exporter in the country concerned should apply.

(48) For the reasons outlined in recital 34 of the provisional duty Regulation, a single duty has been established for all producers and exporters concerned of the People's Republic of China.

(49) On this basis, definitive anti-dumping duties, in the form of *ad valorem* duties, should be imposed as follows:

	Rate of duty
— People's Republic of China	58,6 %
— Croatia	38,4 %
— Thailand	58,9 %.

This duty should not apply to imports of the products concerned manufactured and exported to the Community by the Croatian and Thai exporters from which undertakings have been accepted.

K. COLLECTION OF PROVISIONAL DUTY

(50) In view of the level of dumping margins found and the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty for all companies should be definitively collected in full,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed 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*90), ex 7307 93 19 (Taric code 7307 93 19*90), ex 7307 99 30 (Taric code 7307 99 30*91) and ex 7307 99 90 (Taric code 7307 99 90*91) and originating in the People's Republic of China, Croatia and Thailand.

2. The rate of duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

	Rate of duty	Taric additional code
People's Republic of China	58,6 %	—
Croatia	38,4 %	8881
Thailand	58,9 %	8851

with the exception of imports of the products concerned which are manufactured and sold for export to the Community by the following companies from which undertakings have been accepted:

— Croatia (Taric additional code 8880):

  — Zeljezara Sisak, Zagreb,

— Thailand (Taric additional code 8850):

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

  — Thai Benkan Co. Ltd, Prapadaeng-Samutprakarn,

  — TTU Industrial Corp. Ltd, Bangkok.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 2318/95 shall be definitively collected in full.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 March 1996.

For the Council

The President

L. DINI