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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 763/2000

of 10 April 2000

extending the definitive anti-dumping duty, imposed by Regulation (EC) No 584/96 on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China to imports of certain tube and pipe fittings, of iron or steel, consigned from Taiwan, whether declared as originating in Taiwan or not, and terminating the investigation in respect of imports from three Taiwanese exporters

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 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures

(1) By Regulation (EC) No 584/96 [2] (hereinafter referred to as 'the definitive Regulation') the Council imposed an anti-dumping duty of 58,6 % on imports of tube and pipe fittings, of iron or steel, (hereinafter referred to as 'fittings') originating in the People's Republic of China (hereinafter referred to as 'the PRC').

2. Request

(2) On 10 June 1999, the Commission received a request, pursuant to Article 13(3) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'), from the Defence Committee of the EC steel butt-welding fittings industry. This request was submitted on behalf of Community producers of fittings, whose collective output is known to represent about 90 % of the total Community production of fittings.

(3) The request alleged the existence of circumvention of the anti-dumping duties imposed by the definitive Regulation on imports of fittings originating in the PRC. According to the request, the circumvention practice consisted of transhipment of fittings originating in the PRC via Taiwan to the Community.

3. Initiation

(4) By Regulation (EC) No 1683/1999 [3] the Commission initiated an investigation and directed, pursuant to Articles 13(3) and 14(5) of the Basic Regulation, the customs authorities to register imports of fittings consigned from Taiwan as of 31 July 1999. The Commission advised the authorities of the PRC and Taiwan of the initiation of the investigation.

4. Investigation period

(5) The investigation covered the period from 1 July 1998 to 30 June 1999 (hereinafter referred to as the 'IP').

5. Collection of data from interested parties

(6) Questionnaires were sent to Community importers as well as exporters located in the PRC and Taiwan which were mentioned in the request, exporters known from the original investigation and other interested parties who came forward within the prescribed time limit. Replies to the questionnaires were received from six unrelated importers and three Taiwanese exporters. The Commission carried out verification visits at the premises of the following companies:

Unrelated importer:

— Tubos y Calibrados de Cataluña SA, Barcelona, Spain.

Taiwanese exporters:

— Nian Hong Pipe Fittings Co., Ltd, Kaohsiung, Taiwan

— Rigid Industries Co., Ltd, Kaohsiung, Taiwan

— Chup Hsin Enterprise Co. Ltd, Kaohsiung, Taiwan.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p.18).

[2] OJ L 84, 3.4.1996, p. 1.

[3] OJ L 199, 30.7.1999, p. 26.

B. **RESULTS OF THE INVESTIGATION**

1. **General considerations/degree of cooperation**

(7) The request of the Community industry alleged that there has been a change in the pattern of trade following the imposition of anti-dumping duties on imports of fittings into the Community from the PRC through an increase of Taiwanese exports. The Community industry also alleged that the remedial effects of the anti-dumping duty on imports from the PRC have been undermined both in terms of quantities and prices and that there is evidence of dumping in relation with the normal value established in the previous investigation.

(8) The purpose of the investigation was to examine whether anti-dumping measures on imports of fittings originating in the PRC were being circumvented by imports of the same product originating in this country and transhipped, without undergoing substantial transformation, through Taiwan in accordance with Article 13(1), second sentence of the Basic Regulation.

(9) No cooperation was received from producers or exporters of fittings in the PRC. However, information was obtained from three cooperating exporters in Taiwan, which produced and purchased fittings and exported them to the Community during the IP. Together, these three Taiwanese exporters accounted for 19,66 % in volume and 16,42 % in value of the total imports of fittings from Taiwan to the Community during the IP as reported by Eurostat at TARIC level.

2. **Product under consideration and like product**

(10) The product under consideration is as defined in the original investigation, which is tube and pipe fittings (other than cast 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 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).

(11) The investigation showed that the fittings exported to the Community from the PRC and those consigned from Taiwan to the Community have the same basic physical and chemical characteristics and have the same uses, and 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**

a) *Cooperating Taiwanese exporters*

(12) Exports to the Community made by cooperating exporters in Taiwan increased by 300 % from 1994 to the IP at the same time as the imposition of measures on Chinese fittings. The existence of a change in the pattern of trade was therefore established in their respect.

b) *Non-cooperating Taiwanese exporters*

(13) As far as the non-cooperating exporters axe concerned the Commission had to establish the exports to the Community on the basis of facts available pursuant to Article 18 of the Basic Regulation. Findings in respect of exports to the Community following the imposition of measures were based on Eurostat data at TARIC level. Due account was taken, in the case of Taiwan, of the exports of the cooperating exporters. Findings in respect of the exports of the product concerned from the same countries in 1994 and 1995 were based on adjusted Eurostat data at CN level.

(14) Imports into the Community of fittings from the PRC have decreased substantially from 2 741 tonnes in 1994 to 95 tonnes in 1998, following the imposition of anti-dumping measures. At the same time, imports of fittings from Taiwan increased from 221 tonnes in 1994 to 3 745 in 1998, reaching a peak of 4 918 tonnes in 1997.

(15) The marked switch from imports from the PRC to those from Taiwan coincided with the entry into force of anti-dumping measures on PRC fittings at the end of 1995.

4. **Insufficient due cause or economic justification**

a) *Cooperating Taiwanese exporters*

(16) Niang Hong Pipe Fittings Co. Ltd is a manufacturer and exporter of fittings based in Kaohsiung, operating production facilities for the complete production process of some types of fittings. It only sells its own production a part of which is exported to the Community by another company, Chup Hsin.

(17) Rigid Industries Co. Ltd is, like Niang Hong, an integrated producer/exporter of fittings and also based in Kaohsiung. It only exports its own production of the product concerned to the Community and has exported limited quantities during the IP.

(18) Chup Hsin Enterprises Co. Ltd is also an integrated producer/exporter of fittings and also based in Kaohsiung. This company completes its range of manufactured products for the export market with fittings purchased from other local Taiwanese manufacturers, including Niang Hong, and from one Japanese producer.

(19) Given that none of the three companies purchased fittings from the PRC the change in the pattern of trade can be considered as having a due cause. Consequently the investigation with regard to these companies should be terminated.

b) *Non-cooperating Taiwanese exporters*

(20) In the absence of cooperation, and given that the above-mentioned substitution of imports from the PRC for imports from Taiwan took place immediately following the imposition of anti-dumping duties, it has to be concluded that the change in the pattern of trade stemmed from the imposition of the 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.

(21) Furthermore, in the absence of any reasonable economic justification, other than the imposition of the duty, for the change in the pattern of trade it may reasonably be concluded that transhipment of PRC fittings via Taiwan to the Community has taken place.

(22) This conclusion is reinforced by the following: imports from the PRC into Taiwan of one of the two categories of CN codes (7307 93) covering the product concerned are subject to a Taiwanese import regulation named MWO, which according to Taiwan's customs law means that imports are prohibited. However, Taiwanese custom statistics recorded imports under that particular code amounting to 3 700 tonnes from the PRC only for 1998.

(23) The investigation has moreover established, on the basis of evidence provided by the Taiwanese cooperating exporters, that it is possible to import goods from a third country into Taiwan and re-export them under a Taiwanese certificate of origin without undergoing any substantial transformation.

5. **Undermining of the remedial effects of the duty in terms of the prices and/or quantities of the like products (non-cooperating Taiwanese exporters)**

(24) It is evident from the figures in recital 14 that a clear quantitative change in the pattern of Community imports occurred since the imposition of measures, and that this marked change in trade flows undermined the remedial effects of these in terms of the quantities imported into the Community market. Indeed, the exports of Chinese fittings, estimated at 2 741 tonnes in 1994 prior to the imposition of measures, were replaced and even exceeded by exports of the non-cooperating Taiwanese exporters (accounting for 3 745 tonnes during the IP).

(25) Given the extremely low degree of cooperation, the large scale undermining of the effects of the measures in terms of quantities and that the Basic Regulation requires that undermining of the remedial effect of the duty be established in terms of either quantities or prices, it was found unnecessary to further investigate undermining in terms of prices.

6. **Evidence of dumping in relation to the normal values previously established for like or similar products (non-cooperating Taiwanese exporters)**

(26) In order to determine whether evidence of dumping could be found with respect to the fittings exported to the Community from Taiwan by the non-cooperating exporters during the IP, two approaches were followed, pursuant to Article 18 of the Basic Regulation. It is recalled that the Basic Regulation requires the establishment of evidence of dumping in relation to the normal values established in the original investigation, but that it does not require a new dumping margin to be established.

a) *Approach based on export data reported by Eurostat*

(27) In this first approach the export price was established on the basis of total export value and tonnes reported by Eurostat at TARIC level from which the quantities and values exported by the cooperating Taiwanese companies were deducted.

(28) In accordance with Article 13(1) of the Basic Regulation, the normal value to be used in an anti-circumvention investigation is the normal value established during the original investigation. At that time, Thailand was found to be an appropriate analogue market economy third country for the PRC, that was considered to be a non-market economy country.

(29) In the original investigation, normal value was determined per type of fitting. In the current anti-circumvention investigation, for the comparison with the export prices determined on the basis of Eurostat data, and given that Eurostat does not provide export price data per type of fitting but only per tonne and per TARIC code, the Commission estimated, pursuant to Article 18 of the Basic Regulation, that the product mix of the non-cooperating Taiwanese producers could reasonably be assessed on the basis of the product mix of export sales to the Community made by the three cooperating Taiwanese exporters. Consequently, the normal value per type as determined in the original investigation was weighted on the basis of the aforementioned product mix of these cooperating Taiwanese exporters. Thus, a weighted average normal value per tonne was established.

(30) 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, insurance and commissions. As the functions of the companies that transhipped the product concerned through Taiwan to the Community can be considered similar to those of a trader acting on a commission basis, an adjustment of 6 % considered as a reasonable estimate for selling general and administrative expenses and profit was deducted from the export price as determined above.

b) *Approach based on cooperating importers' data*

(31) On this second approach the export price was established on the basis of the limited information on import prices by type of fittings submitted by the cooperating importers, representing around 14 % of the imports of fittings from Taiwan in terms of volume, in respect of their purchases from non-cooperating Taiwanese exporters.

(32) As explained in recital 28, the normal value to be used in an anti-circumvention investigation is the normal value established during the original investigation. In the original investigation, normal value was determined per type of fitting. These normal values were thus directly compared with the individual export price per type of fitting established on the basis of the information submitted by the cooperating importers.

(33) For the purpose of a fair comparison between the normal value and the export price, the methodology explained in recital 30 was used.

c) *Conclusion*

(34) In accordance with Article 2(11) and (12) of the Basic Regulation, the comparison of weighted average normal values with weighted average export prices expressed as a percentage of the cif Community frontier price, revealed, when following either methodology explained in recitals 27 to 33, a significant level of dumping.

C. **REQUESTS FOR EXEMPTION FROM THE EXTENSION OF THE DUTY**

(35) The Commission received requests for exemption from the extension of the duty from eight importers. Given that the definitive anti-dumping duty on imports of fittings originating in the PRC will not be extended to fittings produced and exported by the Taiwanese exporters that did not circumvent these measures, it was considered that no exemption should be granted at this stage.

D. **MEASURES**

(36) In view of the above finding of circumvention within the meaning of Article 13(1), second sentence of the Basic Regulation, the existing anti-dumping measures on fittings originating in PRC should be extended to the same product consigned from Taiwan, whether the product is declared as originating in Taiwan or not, with the exception of products manufactured by the three cooperating exporters, pursuant to Article 13(1), first sentence of the Basic Regulation.

(37) In accordance with Article 14(5) of the Basic Regulation, which provides that measures may be applied against registered imports from the date of registration, the anti-dumping duty on imports of fittings consigned from Taiwan which entered the Community under registration imposed by the Commission Regulation initiating this investigation, with the exception of those fittings exported by the three cooperating exporters, should be collected.

(38) Companies requesting an exemption pursuant to Article 13(4) of the Basic Regulation will normally be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted and the Commission would normally also carry out an on-the-spot verification visit.

(39) The non-extension of the duties to the three individual Taiwanese companies specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to these companies. The non-extension is thus exclusively applicable to imports of products produced and consigned by these specific legal entities mentioned. Imported products produced or consigned by any other company not specifically mentioned in the operative part of this Regulation with its name and address including entities related to those specifically mentioned, cannot benefit from the exception and should be subject to the duty rate imposed by the definitive Regulation.

(40) Any claim requesting the application of this exception would have to be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production and export sales. The Commission, if appropriate, would, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from the exception.

E. **PROCEDURE**

(41) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to propose the extension of the definitive anti-dumping duty in force and were given the opportunity to comment,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 584/96 on imports of certain tube and pipe fittings of iron and steel 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) originating in the People's Republic of China, is hereby extended to imports of the same fittings consigned from Taiwan (whether these fitting are declared as originating in Taiwan or not) (TARIC additional code A999), with the exception of those produced and exported by Chup Hsin Enterprise Co. Ltd, Kaohsiung (Taiwan) (TARIC additional code A098), Rigid Industries Co., Ltd, Kaohsiung (Taiwan) (TARIC additional code A099) and Niang Hong Pipe Fittings Co., Ltd, Kaohsiung (Taiwan) (TARIC additional code A100).

2. The duty extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Regulation (EC) No 1683/1999 and Articles 13(3) and 14(5) of Regulation (EC) No 384/96, with the exception of those produced and exported by Chup Hsin Enterprise Co. Ltd, Rigid Industries Co., Ltd and Niang Hong Pipe Fittings Co., Ltd, Kaohsiung (Taiwan).

3. The TARIC codes to be declared for the products originating and/or consigned from Taiwan are: 7307 93 11 91, 7307 93 19 91, 7307 99 30 92 and 7307 99 90 92.

4. The provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the Community and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Unit C-3
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 295 65 05

2. The Commission, after consulting the Advisory Committee, shall authorise, by decision, the exemption of imports which do not circumvent the anti-dumping duty imposed by Regulation (EC) No 584/96 from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 1683/1999.

Article 4

This Regulation shall enter into force on the day following that of 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 Luxembourg, 10 April 2000.

For the Council
The President
J. GAMA