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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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COUNCIL REGULATION (EC) No 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.

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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

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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.

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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

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calculated for the purposes of establishing the level of measures to be definitively imposed.

(29) One exporting producer questioned the level of the profit margin of 5 % that was used for the purpose of establishing the non-injurious price of the Community industry, claiming it was too high. It also claimed that this level of profit margin was not sufficiently explained in the disclosed document.

(30) As to the first claim, it is recalled that, in view of the negative impact on the profitability of the Community industry resulting from the price depressive effect caused by the dumped imports, as indicated in recital 71 of the provisional Regulation, the calculation of the non-injurious price was based on a level of profit that the Community industry might have reasonably achieved in the absence of injurious dumping. As explained in the recital 114 of the provisional Regulation, a profit margin of 5 % was deemed reasonable, since this level of profit corresponds to the actual level of profit that the Community industry could achieve in 1997, on a Community market free of dumped imports. Indeed, at that time, measures were in place against China, Croatia and Thailand and the market share of imports from the countries concerned was still relatively low. Moreover, it was considered that this profit margin would allow the Community industry to make the necessary investments. As to the second claim, it should be noted that the Commission explained in sufficient detail in the disclosure document on which basis it calculated the level of profit margin used for the non-injurious price, as also explained in recital 114 of the provisional Regulation. The claims have therefore to be rejected.

(31) In addition, the same level of profit was also used for the establishment of the injury margin in the proceeding concerning the abovementioned countries, and there is no reason to believe that significant changes in circumstances have occurred since then.

(32) The use of a profit margin of 5 % of turnover for the calculation of the non-injurious price is therefore confirmed.

(33) On the basis of the above, the methodology used for establishing the injury elimination level as described in recitals 112 to 115 of the provisional Regulation is confirmed.

(34) As mentioned above in relation to price undercutting margins, injury margins were reviewed and amended for one of the exporting producers in Slovakia.

2. **Form and level of the duties**

(35) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed in respect of the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia. This duty should be imposed at the level of the dumping margins found, except for the Republic of Korea, where the injury margin was found to be lower than the dumping margin.

(36) On the basis of the above, the definitive duties are as follows:

Country	Company	Anti-dumping duty (%)
Czech Republic	All companies	22,4
Malaysia	Anggerik Laksana Sdn Bhd	59,2
	Others	75,0
Russia	All companies	43,3
Republic of Korea	All companies	44,0

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Country	Company	Anti-dumping duty (%)
Slovakia	All companies	15,0

3. **Collection of provisional duties**

(37) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

(38) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ([1]) forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

4. **Undertakings**

(39) It is recalled that one exporting producer in Slovakia has offered a price undertaking in accordance with Article 8(1) of the basic Regulation. This price undertaking was accepted in the provisional Regulation.

(40) Subsequent to the imposition of provisional anti-dumping measures, one exporting producer in the Czech Republic offered a price undertaking in accordance with Article 8(1) of the basic Regulation. By doing so, it has agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. The company will also provide the Commission with regular and detailed information concerning its exports to the Community, meaning that the undertaking can be monitored effectively by the Commission. Furthermore, the sales structure of this exporting producer is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(41) To further enable the Commission to effectively monitor the compliance of the company with its undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(42) In view of this, the offer of the undertaking is therefore considered acceptable by the Commission and the company concerned

([1]) European Commission, DG Trade, Directorate B, J-79 — 3/35, B-1049 Brussels.

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has been informed of the essential facts, considerations and obligations upon which acceptance is based.

(43) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Articles 8(9) and (10) of the basic Regulation.

(44) The above undertaking is accepted by Commission Decision 2002/675/EC [1],

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tube and 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 codes 7307 93 11*91 and 7307 93 11*99), ex 7307 93 19 (TARIC codes 7307 93 19*91 and 7307 93 19*99),ex 7307 99 30 (TARIC codes 7307 99 30*92 and 7307 99 30*98) and ex 7307 99 90 (TARIC codes 7307 99 90*92 and 7307 99 90*98) and originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for the products manufactured by:

Country	Company	Definitive anti-dumping duty (%)	TARIC additional code
Czech Republic	Mavet a.s., Trebic	17,6	A323
	All other companies	22,4	A999
Malaysia	Anggerik Laksana Sdn Bhd, Selangor Darul Ehsan	59,2	A324
	All other companies	75,0	A999
Russia	All companies	43,3	
Republic of Korea	All companies	44,0	
▼C2 Slovakia	Bohus s.r.o.,, Nálepkova 310,976 45 Hronec	7,7	A329
	All other companies	15,0	A999

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2a. Notwithstanding paragraph 2, where imports of the product concerned are subject to payment of a safeguard additional duty pursuant to Article 1(3) of Regulation (EC) No 1694/2002 [2], the rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for the products manufactured by:

[1] See page 34 of this Official Journal.
[2] OJ L 261, 28.9.2002, p. 1.

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Country	Company	Rate of AD duty applicable when safeguard additional duty is payable					TARIC additional code
		to 28.3.03	29.3.03 to 28.9.03	29.9.03 to 28.3.04	29.3.04 to 28.9.04	29.9.04 to 28.3.05	
Czech Republic	Mavet a.s., Trebic	0 %	0 %	0 %	0 %	0 %	A323
	All other companies	0 %	1,1 %	1,1 %	3,2 %	3,2 %	A999
Malaysia	Anggerik Laksana Sdn Bhd, Selangor Darul Ehsan	35,5 %	37,9 %	37,9 %	40 %	40 %	A324
	All other companies	51,3 %	53,7 %	53,7 %	55,8 %	55,8 %	A999
Russia	All companies	19,6 %	22 %	22 %	24,1 %	24,1 %	
Republic of Korea	All companies	20,3 %	22,7 %	22,7 %	24,8 %	24,8 %	
Slovakia	All companies	0 %	0 %	0 %	0 %	0 %	A999

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3. Notwithstanding paragraph 1, the definitive anti-dumping duty shall not apply to imports released into free circulation in accordance with Article 2.

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

Article 2

1. Imports declared for release into free circulation under the following TARIC additional code which are produced and directly exported (i.e. shipped and invoiced) by the company below to a company in the Community acting as an importer shall be exempt from the anti-dumping duty imposed by Article 1 provided that such imports are imported in conformity with paragraph 2 of this Article.

Country	Company	TARIC additional code
Czech Republic	Bovex s.r.o., Hercikova 4, 612 00 Brno	A387
Slovakia	Bohus s.r.o., Nálepkova 310, 976 45 Hronec	A329

2. Imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(a) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(b) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

Article 3

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 358/2002 on imports of certain tube and pipe fittings, 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 and originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia shall be definitively collected at the rate of the duty defini-

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tively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

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.

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ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of tube and pipe fittings to the Community which are subject to the undertaking.

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 2(1) issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
   - Product Code Number (PCN),
   - description of the goods corresponding to the PCN (e.g. 'PCN 1 …', 'PCN 2 …'),
   - company product code number (CPC) (if applicable),
   - CN code,
   - quantity (to be given in tonnes and pieces).
7. The description of the terms of sale, including:
   - price per tonne and per piece,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
8. Name of the company acting as an importer to which the invoice is issued directly by the company.

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9. The name of the official of the company that issued the undertaking invoice and the following signed declaration: 'I, the undersigned, certify that the sale for direct export by [company name] to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company name], and accepted by the European Commission through Regulation (EC) No 358/2002 and/or Decision 2002/675/EC. I declare that the information provided in this invoice is complete and correct.'