COMMISSION REGULATION (EC) No 395/2004

of 2 March 2004

initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 964/2003 on imports of certain tube or pipe fittings, of iron or steel, originating, *inter alia*, in the People's Republic of China by imports of certain tube or pipe fittings, of iron or steel, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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] (the 'basic Regulation'), and in particular Article 13(3) and Article 14(3) and (5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. **REQUEST**

(1) The Commission has received a request pursuant to Article 13(3) of Regulation (EC) No 384/96 to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain tube or pipe fittings, of iron or steel, originating, *inter alia*, in the People's Republic of China.

(2) The request was lodged on 20 January 2004 by the Defence Committee of the Steel Butt-Welding Fittings Industry of the European Union on behalf of four Community producers.

B. **PRODUCT**

(3) The product concerned by the possible circumvention is 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, normally declared under CN codes ex 7307 93 11 (TARIC code 7307 93 11 94), ex 7307 93 19 (TARIC code 7307 93 19 94), ex 7307 99 30 (TARIC code 7307 99 30 94) and ex 7307 99 90 (TARIC code 7307 99 90 94) (the 'product concerned'). These codes are given for information only.

(4) The product under investigation is certain tube or pipe fittings, of iron or steel, consigned from Sri Lanka (the 'product under investigation') normally declared under the same codes as the product concerned.

C. **EXISTING MEASURES**

(5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 964/2003 [2].

D. **GROUNDS**

(6) The request contains sufficient prima facie evidence that the anti-dumping measures on imports of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China are being circumvented by means of transhipment and incorrect declaration of origin via Sri Lanka of certain tube or pipe fittings, of iron or steel.

(7) The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from the People's Republic of China and Sri Lanka to the Community has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change.

This change in the pattern of trade appears to stem from the transhipment and incorrect declaration of origin of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China via Sri Lanka.

Furthermore, the request contains sufficient evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined in terms of quantities. Significant volumes of imports of certain tube or pipe fittings, of iron or steel, from Sri Lanka appear to have replaced imports of the product concerned originating in the People's Republic of China.

Finally, the request contains sufficient evidence that the prices of certain tube or pipe fittings, of iron or steel, are dumped in relation to the normal value previously established for the product concerned.

Should circumvention practices via Sri Lanka covered by Article 13 of the basic Regulation other than transhipment and incorrect declaration of origin be identified in the course of the investigation, the investigation may cover these practices also.

[1] OJ L 56, 6.3.1996, p. 1, as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

[2] OJ L 139, 6.6.2003, p. 1, as last amended by Regulation (EC) No 2212/2003 (OJ L 332, 19.12.2003, p. 3).

E. **PROCEDURE**

(8) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of certain tube or pipe fittings, of iron or steel, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) *Questionnaires*

(9) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Sri Lanka, the exporters/producers and to the associations of exporters/producers in the People's Republic of China, to the importers and to the associations of importers in the Community which cooperated in the investigation that lead to the existing measures and to the authorities of the People's Republic of China and Sri Lanka. Information, as appropriate, may also be sought from the Community industry.

(10) In any event all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(11) The authorities of the People's Republic of China and Sri Lanka will be notified of the initiation of the investigation.

(b) *Collection of information and holding of hearings*

(12) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) *Exemption of registration of imports or measures*

(13) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(14) The possible circumvention takes place outside the Community. Article 13 of the basic Regulation is aiming at countering circumvention practices without affecting operators which can prove that they are not involved in such practices, but it does not contain a specific provision providing for the treatment of producers in the country concerned which could establish that they are not involved in circumvention practices. Therefore, it appears necessary to introduce a possibility for producers concerned to request an exemption from the registration of imports of their exported products or from measures on these imports.

(15) Producers wishing to obtain an exemption should apply for it and submit any requested questionnaire reply within the appropriate time limits, in order for it to be established that they are not circumventing the anti-dumping duties within the meaning of Article 13(1) of the basic Regulation. Importers could still benefit from exemption from registration or measures to the extent that their imports are from producers which are granted such an exemption, and in accordance with Article 13(4).

F. **REGISTRATION**

(16) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of the registration of such imports consigned from Sri Lanka.

G. **TIME LIMITS**

(17) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission.

(18) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. **NON-COOPERATION**

(19) In cases in which any interested party refuses access to or otherwise does not provide necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(20) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of facts available. If an interested party does not cooperate or cooperates only partially, and findings are therefore based on facts available in accordance with article 18, the result may be less favourable than if it had cooperated,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, in order to determine if imports into the Community 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 94), ex 7307 93 19 (TARIC code 7307 93 19 94), ex 7307 99 30 (TARIC code 7307 99 30 94) and ex 7307 99 90 (TARIC code 7307 99 90 94), consigned from Sri Lanka, whether originating in Sri Lanka or not, are circumventing the measures imposed by Council Regulation (EC) No 964/2003.

Article 2

The Customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by Regulation, may direct Customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption of registration and having been found not to be circumventing the anti-dumping duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Interested parties may also apply to be heard by the Commission within the same 40 day time limit.

4. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for authorisation of certificates of non-circumvention must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone, fax and/or telex numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ([1]) and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate B
J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877

Article 4

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

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

Done at Brussels, 2 March 2004.

For the Commission
Pascal LAMY
Member of the Commission

([1]) This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of Council Regulation (EC) No 384/96 and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).