



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.03.2006
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Proposal for a

COUNCIL REGULATION

extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from the Philippines, whether declared as originating in the Philippines or not

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/1996 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ('the basic Regulation'), as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 in the anti-circumvention investigation concerning imports of tube or pipe fittings, of iron or steel originating in the People's Republic of China and consigned from the Philippines.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Following an expiry review, by Regulation (EC) No 964/2003, the Council imposed definitive anti-dumping duties of 58,6% 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 and extended the measures to imports of the same fittings consigned from Taiwan, with the exception of those produced by three Taiwanese companies.

In December 2004, by Regulations (EC) No 2052/2004 and (EC) No 2053/2004 the Council extended the above-mentioned definitive anti-dumping duties to imports consigned from Indonesia and Sri Lanka.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The present investigation was initiated in August 2005 following a request lodged by the Defence Committee of the Steel Butt-Welding Fittings Industry of the EU.

The investigation showed that there has been a change in the pattern of trade involving exports of tubes or pipe fittings from the People's Republic of China and the Philippines to the Community. The investigation also showed that there is insufficient due cause or economic justification, other than to avoid the anti-dumping duty due on tubes or pipe fittings originating in the People's Republic of China, for this change in the pattern of trade. Moreover, imports of tube or pipe fittings from the Philippines are made at dumped prices and increased to an extent that undermines the effects of the existing measures.

In view of these findings, which are further detailed in the attached draft Council Regulation, it is proposed to extend the antidumping duty of 58,6% imposed on imports of tube or pipe fittings originating in the People's Republic of China to imports of tubes or pipe fittings consigned from the Philippines, whether declared as originating in the Philippines or not.

- **Legal basis**

Council Regulation (EC) No 384/1996 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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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 Community¹ ('the basic Regulation') 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) Following an expiry review, by Regulation (EC) No 964/2003² ('the original Regulation'), the Council imposed definitive anti-dumping duties of 58,6% 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 ('tube or pipe fittings' or 'the product concerned'), originating, inter alia, in the People's Republic of China ('the PRC') and extended the measures to imports of the same fittings consigned from Taiwan, with the exception of those produced by three specific Taiwanese companies.
- (2) In December 2004, by Regulations (EC) No 2052/2004 and No 2053/2004, the Council extended the above-mentioned definitive anti-dumping duties to imports of the same tube or pipe fittings consigned from Indonesia³ and Sri Lanka⁴ respectively.

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 139, 6.6.2003, p. 1.

³ OJ L 355, 1.12.2004, p. 4.

⁴ OJ L 355, 1.12.2004, p. 9.

2. Request

- (3) On 23 June 2005, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of tube or pipe fittings originating in the PRC by means of the transshipment and incorrect declaration of origin via the Philippines. The request was submitted by the Defence Committee of the Steel Butt-Welding Fittings Industry of the European Union on behalf of four Community producers, representing a major proportion of the Community production of certain tube and pipe fittings.
- (4) The request alleged and submitted sufficient prima facie evidence that there had been a change in the pattern of trade following the imposition of the anti-dumping measures on imports of tube or pipe fittings originating in the PRC, as shown by a significant increase in imports of the same product from the Philippines.
- (5) This change in the pattern of trade was alleged to stem from the transshipment of tube or pipe fittings originating in the PRC via the Philippines. It was further alleged that there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duties on tube or pipe fittings originating in the PRC.
- (6) Finally, the applicant alleged and submitted prima facie evidence showing that the remedial effects of the existing anti-dumping duties on tube or pipe fittings originating in the PRC were being undermined both in terms of quantities and prices and that dumping was taking place in relation to the normal values previously established for the tube or pipe fittings originating in the PRC.

3. Initiation

- (7) By Regulation (EC) No 1288/20055 ('the initiating Regulation'), the Commission initiated an investigation into the alleged circumvention of the anti-dumping measures imposed on imports of tube or pipe fittings originating in the PRC by imports of tube or pipe fittings consigned from the Philippines, whether declared as originating in the Philippines or not and, pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports into the Community of tube or pipe fittings consigned from the Philippines, whether declared as originating in the Philippines or not, as from 6 August 2005.

4. Investigation

- (8) The Commission officially advised the authorities of the PRC and of the Philippines, the producers/exporters and the importers in the Community known to be concerned as well as the Community industry of the initiation of the investigation. Questionnaires were sent to producers/exporters in the PRC and in the Philippines as well as to importers in the Community named in the request or known to the Commission from the investigation which lead to the imposition of the existing measures on imports of tube or pipe fittings originating in the PRC ('the original investigation'). Interested parties were given the opportunity to make their views known in writing and to request

⁵ OJ L 204, 5.8.2005, p. 3.

a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being made on the basis of facts available.

- (9) No questionnaire replies were received from exporters/producers in the Philippines, even though the authorities of the Philippines had contacted several companies possibly involved in producing tube or pipe fittings. Moreover, no questionnaire replies were received from exporters/producers in the PRC.
- (10) Two importers in the Community co-operated and submitted replies to the questionnaire.
- (11) Verification visits took place at the premises of the following companies:

Importers

- Valvorobica Industriale S.P.A., Italy,
- General Commercial & Industrial S.A., Greece.

5. Investigation period

- (12) The investigation period covered the period from 1 July 2004 to 30 June 2005 ('the IP'). Data were collected from 2001 up to the end of the IP to investigate the alleged change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

- (13) As mentioned in recital (9), no producer/exporter in the PRC or the Philippines cooperated in the investigation. Three Philippine companies came forward and stated that they did not produce nor export the tube or pipe fittings as defined in the original Regulation, but only stainless steel fittings, a product which is not covered by the current investigation. Accordingly, findings in respect of tube or pipe fittings consigned from the Philippines to the Community had partially to be based on facts available in accordance with Article 18 of the basic Regulation.

2. Product concerned and like product

- (14) The product concerned by the alleged circumvention is, as defined in the original investigation, 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, currently classifiable within CN codes ex 7307 93 11 (TARIC code 7307 93 11*95), ex 7307 93 19 (TARIC code 7307 93 19*95), ex 7307 99 30 (TARIC code 7307 99 30*95) and ex 7307 99 90 (TARIC code 7307 99 90*95), originating in the PRC.
- (15) On the basis of the information available and the data supplied by the Philippine authorities and considering the change in the pattern of trade as described in the following section, it must be inferred, in the absence of any contrary evidence, that the

tube or pipe fittings exported to the Community from the PRC and those consigned from the Philippines to the Community have the same basic physical and chemical characteristics and have the same uses. They 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

- (16) Due to the non-cooperation of any Philippine company, the volume and the value of exports of the like product from the Philippines to the Community had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data were the most appropriate information available and were therefore used to establish the export quantities and prices from the Philippines to the Community.

Imports into the Community

IN TONNES	2001	2002	2003	2004	IP
Philippines	0	3	700	2 445	2 941
The PRC	1 324	772	677	1 153	1 411
Indonesia	0	983	1 294	0	0
Sri Lanka	0	332	302	39	0
Total EU imports	17 422	15 111	16 085	16 050	18 900

Source: Eurostat

- (17) As this table shows, imports of tube or pipe fittings from the Philippines into the Community increased from 0 tonnes in 2001 to almost 3 000 tonnes during the IP. The imports from the Philippines commenced in 2002, at a time when the original investigation was ongoing. In 2003, however the imports from the Philippines increased significantly to 700 tonnes. In 2004, imports from the Philippines to the Community more than tripled to 2 445 tonnes. It should be noted that following the extension of the original anti-dumping measures to imports of the like product consigned from Indonesia and Sri Lanka in December 2004, imports from these countries came to a complete stop. This complete halt of imports from Indonesia and Sri Lanka to the Community in 2004 coincided with the most substantial increase of imports from the Philippines.
- (18) At the same time, exports from the PRC to the Philippines remained at a low but stable level.

Exports from the PRC to the Philippines

IN TONNES	2001	2002	2003	2004	IP
Philippines	466	604	402	643	694

Source: Chinese Export Statistics

- (19) It must be noted, however, that the data used to establish the change in the pattern of trade, with special regard to those relating to exports from the PRC to the Philippines, should be seen in the light of the likelihood of false declarations of origin (see below in recital (22)) and might therefore not give a complete picture of the situation.
- (20) From the figures shown above, it is concluded that there has been a clear change in the pattern of trade which started after the conclusion of the original investigation and became apparent after the extension of the measures to imports of the like product from Indonesia and Sri Lanka. The pattern consisted of a sharp increase of imports of tube or pipe fittings from the Philippines into the Community, especially in 2004 and the IP, coinciding with a stop of imports from the two countries to which the original measures were extended.
- (21) It is clear from the above that due to the coincidence in time the Chinese exports transhipped via Indonesia and Sri Lanka have been re-directed at least partly via the Philippines when the original anti-dumping measures were extended to imports from Indonesia and Sri Lanka. This was the case in particular during the year 2004 and during the IP.

4. Insufficient due cause or economic justification

- (22) As already mentioned in recital (9) above, no Philippine producer/exporter cooperated in the investigation. Indeed, no evidence has been found during the investigation that any such producer would actually exist. Moreover, evidence collected during the investigation shows that tubes or pipe fittings have been in some cases declared as produced by Philippine companies that have submitted never having been involved in the manufacturing of the like product. This is corroborated by the information contained in the request for the initiation of anti-circumvention investigation, e.g. offers to potential importers containing the proposal of falsifying the documents of origin.
- (23) From the information referred to in recitals (17) and (20) above, it can be concluded that exports of tubes or pipes fittings produced in the PRC and channelled to the Community through Indonesia and Sri Lanka during the years 2002 until 2004 have been redirected to a large extent via the Philippines, starting in the year 2003 and continuing until the end of IP.
- (24) Moreover, although the volume of imports of the product concerned from the PRC to the Philippines did by far not reach the increase of imports consigned from the Philippines to the Community (see recital (18) above), the steep increase of exports from the Philippines to the Community also has to be seen in the light of the evidence found concerning false declarations or falsification of certificates of origin (see recital (22) above), the lack of genuine Philippine producers of tube or pipe fittings and the decrease of exports from Sri Lanka and Indonesia to the Community. It is the totality of these elements which explain the absence of an economic justification for the change in the pattern of trade observed.
- (25) In the absence of cooperation by any exporting producer in the Philippines and the PRC and of any contrary evidence, it is therefore concluded that, given the coincidence in time with the investigations which lead to the extension of the original measures to imports from Indonesia and Sri Lanka, the change in the pattern of trade

stemmed from the existence of the anti-dumping duty rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1), third sentence of the basic Regulation.

5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like product

- (26) Based on the trade flow analysis made in recital (17) above, a clear quantitative change in the pattern of Community imports of tube or pipe fittings occurred. Imports declared as originating in the Philippines were negligible on the Community market until June 2003. After the said date imports declared as originating in the Philippines suddenly emerged and increased rapidly to 2 941 tonnes during the IP. This volume represents 3% of the Community consumption calculated on production figures submitted by the applicants and imports based on Eurostat data. It is therefore clear that the marked change in trade flows undermined the remedial effects of the anti-dumping measures in terms of the quantities imported into the Community market.
- (27) With regard to prices of the products consigned from the Philippines and in the absence of co-operation and of any contrary evidence, Eurostat data show that average export prices of imports from the Philippines during the IP were lower than the average export prices established for the PRC in the original investigation. It has been established that prices of imports from the Philippines are around one third lower than those of imports originating in the PRC both during 2004 and the IP. Moreover, it was found that the average export prices of the Philippine exports to the Community were below the injury elimination level of Community prices as established in the original investigation. Hence, the remedial effects of the anti-dumping duty imposed are undermined in terms of prices. Detailed information can be found in the table below:

EUR/kg	2004	IP
Philippines	0,97	1,07
PRC	1,57	1,50
Difference	- 38%	- 29%

- (28) On the basis of the above, it is concluded that the change in trade flows, together with the substantial increase in imports made at very low prices from the Philippines have undermined the remedial effects of the anti-dumping measures in terms of both quantities and prices of the like product.

6. Evidence of dumping in relation to the normal values previously established for the like product

- (29) In order to determine whether evidence of dumping could be found with respect to the product concerned exported to the Community from the Philippines during the IP, export prices established on the basis of Eurostat data were used pursuant to Article 18 of the basic Regulation.
- (30) In accordance with Article 13(1) of the basic Regulation, these export prices were compared with the normal value previously established for the like product. In the

original investigation, Thailand was found to be an appropriate market economy analogue country for the PRC for the purpose of establishing normal value.

- (31) 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 costs, on the basis of the information contained in the request.
- (32) In accordance with Article 2(11) of the basic Regulation, the comparison of a weighted average normal value as established in the original investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, showed dumping for the imports of tube or pipe fittings consigned from the Philippines. The dumping margin found, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, was in excess of 60%.

C. MEASURES

- (33) In view of the above finding of circumvention within the meaning of Article 13(1), third sentence of the basic Regulation and in accordance with Article 13(1), first sentence of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC should be extended to imports of the same product consigned from the Philippines, whether declared as originating in the Philippines or not.
- (34) The duty extended should be the one established in Article 1(2) of the original Regulation.
- (35) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measures shall be applied on registered imports from the date of registration, the anti-dumping duty should be collected on imports of tube or pipe fittings consigned from the Philippines which entered the Community under registration imposed by the initiating Regulation.
- (36) Although during this investigation no genuine exporting producer of tube or pipe fittings was found to exist in the Philippines or made itself known to the Commission, new exporting producers which would consider lodging a request for an exemption from the extended anti-dumping duty pursuant to Article 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of, for instance, the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales, the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-spot verification visit. The request 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 sales.

- (37) Importers could still benefit from exemption for registration or measures to the extent that their imports are from exporting producers, which are granted such an exemption, and in accordance with Article 13(4) of the basic Regulation.
- (38) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of this Regulation accordingly. Subsequently, any exemptions granted will be monitored to ensure compliance with the conditions set therein.

D. PROCEDURE

- (39) Interested parties were informed of the essential facts and considerations on the basis of which the Council intended to extend the definitive anti-dumping duty in force and were given the opportunity to comment. No comments which were of a nature to change the above-mentioned conclusions were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Council Regulation (EC) No 964/2003 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 99), ex 7307 93 19 (TARIC code 7307 93 19 99), ex 7307 99 30 (TARIC code 7307 99 30 98) and ex 7307 99 90 (TARIC code 7307 99 90 98) and originating in the People's Republic of China is hereby extended to 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 95), ex 7307 93 19 (TARIC code 7307 93 19 95), ex 7307 99 30 (TARIC code 7307 99 30 95) and ex 7307 99 90 (TARIC code 7307 99 90 95) consigned from the Philippines, whether declared as originating in the Philippines or not.
2. The duty extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Commission Regulation (EC) No 1288/2005 and Articles 13(3) and 14(5) of Council Regulation (EC) No 384/96.
3. 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 European Union must be signed by a person authorised to represent the applicant. The request shall be sent to the following address:

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

2. The Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 964/2003 from the duty extended by Article 1, and propose the amendment of this Regulation accordingly.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 2 of Regulation (EC) No 1288/2005.

Article 4

This Regulation shall enter into force on the day following that of 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,

For the Council
The President