EUROPEAN COMMISSION

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2010/0061 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC)No 1001/2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel originating, inter alia, in Malaysia.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), in the proceeding concerning imports of certain tube and pipe fittings, of iron or steel originating, inter alia, in Malaysia.

- General context

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

- Existing provisions in the area of the proposal

In October 2008, definitive anti-dumping measures were re-imposed by Council Regulation (EC) No 1001/2008 on imports of certain tube and pipe fittings (TPFs' or the 'product concerned') originating, in the Republic of Korea and Malaysia following an expiry review pursuant to Article 11(2) of the basic Regulation. The anti-dumping duties in force for Malaysia are: 59,2% for Anggerik Laksana Sdn Bhd and 75% for all other companies; for the Republic of Korea the duty is 44% for all companies.

In September 2009, definitive anti-dumping measures were re-imposed by Council Regulation (EC) No 803/2009 on imports of the same product concerned originating, in the People's Republic of China (58,6%) and Thailand (58,9%), with the exception of two companies in Thailand. The measures for the product concerned originating in China were extended to imports of the same product consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in Taiwan, Indonesia, Sri Lanka and the Philippines or not.

- Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- Consultation of interested parties

Interested parties concerned by the proceedings have 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 request was lodged by Pantech Steel Industries Sdn Bhd (PSI, 'the applicant'), an exporting producer in Malaysia.

Having determined that sufficient evidence existed for the initiation of the review, the Commission initiated the case on 30 July 2009.

The investigation showed that the applicant has demonstrated that it fulfils the requirement to be granted new exporter status. Therefore, an individual margin of dumping must be determined within the frameork of the law for Pantech Steel Industries Sdn Bhd and its related companies. The review does not affect the date on which the measures initially imposed by Council Regulation (EC) No 1001/2008 will expire.

It is proposed that the Council adopts the attached proposal for a Regulation, which should be published in the Official Journal of the European Union on 29 April 2010 at the latest.

- Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version) and in particular article 11 (4) thereof.

- Subsidiarity principle

The proposal falls under the exclusive competence of the Union. 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 basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, 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: Council 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 Union budget.

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amending Regulation (EC)No 1001/2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel originating, inter alia, in Malaysia.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union.

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[1] (the basic Regulation), and in particular Article 11(4) thereof,

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

Whereas:

1. 1. PROCEDURE

1.1. Existing measures

(1) In October 2008, definitive anti-dumping measures were re-imposed by Council Regulation (EC) No 1001/2008[2] on imports of certain tube and pipe fittings (TPFs' or the 'product concerned') originating, inter alia, in Malaysia following an expiry review pursuant to Article 11(2) of the basic Regulation. The anti-dumping duties in force for Malaysia are 59,2% for Anggerik Laksana Sdn Bhd and 75% for all other companies.

1.2. Request for a review

(2) The Commission has received an application to initiate a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by Pantech Steel Industries Sdn Bhd (the applicant), an exporting producer in Malaysia (the country concerned).

(3) The applicant alleged that it did not export the product concerned to the Union during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 2000 to 31 March 2001 (the original investigation period) and that it is not related to any of the exporting producers of the product concerned which are subject to the anti-dumping measures described in recital (1).

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1 OJ L 343, 22.12.2009, p. 51.
2 OJ L 275, 16.10.2008, p.18.

(4) The applicant further alleged that it had entered into an irrevocable contractual obligation to export the product concerned to the Union in the near future.

1.3. Initiation of a new exporter review

(5) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Union industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 692/2009[3], a review of Regulation (EC) No 1001/2008 with regard to the applicant.

(6) Pursuant to Commission Regulation (EC) No 692/2009, the anti-dumping duty of 75% imposed by Regulation (EC) No 1001/2008 was repealed with regard to imports of the product concerned produced and sold for exports to the Union by the applicant. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

(7) Regulation (EC) No 692/2009 determined that if the investigation would show that the applicant fulfils the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable to imports of the product concerned from companies not individually mentioned in Article 1 of Regulation (EC) No 1001/2008.

1.4. Product concerned

(8) The product under review is 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, originating in Malaysia (the product concerned), currently falling within CN codes ex 7307 93 11, ex 7307 93 19, ex 7307 99 30 and ex 7307 99 90.

1.5. Parties concerned

(9) The Commission officially advised the Union industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(10) The Defence Committee of the steel butt-welding fittings industry of the European Union representing the Union industry ('the Union industry') made its views know in writing to the Commission services. The Defence Committee challenged the reliability of the basis for the export price. Documents were also provided allegedly showing attempts to circumvent the measures and information was given about the level of price of the product concerned available for EU importers.

(11) The Commission sent an anti-dumping questionnaire to the applicant and its related companies and received a reply within the deadline set for that purpose.

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[3] OJ L 199, 31.7.2009, p.9.

(12) The Commission also sent anti-dumping questionnaire to unrelated importers located in the European Union but no co-operation was obtained.

(13) The Commission sought to verify all the information it deemed necessary for the determination of the new exporter status and dumping, and verification visits were carried out at the premises of the applicant and the following related company in Malaysia:

– Pantech Steel Industries Sdn Bhd (the applicant),

– Pantech Corporation Sdn Bhd (related trading company)

1.6. Investigation period

(14) The review investigation period of dumping covered the period from 1 July 2008 to 30 June 2009 ('review investigation period' or 'RIP').

2. RESULTS OF THE INVESTIGATION

2.1. New exporter qualification

(15) The investigation confirmed that the company had not exported the product concerned during the original period of investigation and that it had started to export to the European Union after this period. The company entered into an irrevocable contractual obligation to export during the RIP. This took the form of three orders from the same importing group in the EU.

(16) These orders were, after the RIP, completed by export transactions under approximately the same conditions with negligible differences in price and quantities. While the quantities involved were limited they were nevertheless found sufficient to establish a reliable dumping margin. This is because the levels of prices charged were further supported by other information at the Commission Services' disposal including export prices, of the exporter concerned, to third countries which confirmed the pattern of behaviour found in the transactions under scrutiny.

(17) As concerns the other conditions for the recognition of a new exporter status, the company was able to demonstrate that it did not have any links, direct or indirect, with any of the Malaysian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(18) Accordingly, it is confirmed that the company should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation, and thus an individual margin should be determined for it.

2.2. Dumping

Determination of normal value

(19) The applicant produces the fittings and sells the product concerned domestically and on export markets. The investigation revealed a complex sales organisation on the domestic market involving unrelated distributors and related trading companies, whereby unrelated distributors purchase the product concerned from the producer and

then resell it to the related traders that then sell the goods onwards to unrelated customers on the domestic market. De facto, the unrelated distributors are acting as agents for the applicant.

(20) Based on the above, and taking into account the fact that the sales of the related trading companies can be linked back to the applicant, the prices charged to the final consumer by these related trading companies are considered as the first price in the ordinary course of trade and therefore form the basis for the Normal Value determination.

(21) In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume was at least 5% of the total export sales volume to the Union. The Commission established that tube and pipe fittings were sold domestically by the applicant in overall representative volumes.

(22) The Commission then identified those product types of tube and pipe fittings sold domestically by the trading companies which were identical or directly comparable to the types sold for export to the European Union.

(23) An examination was also made by the Commission as to whether the sales of tube and pipe fittings sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers. As it was found that there were sufficient sales in the ordinary course of trade, normal value was based on the actual domestic price.

(24) In the few cases where the type of product concerned was not sold on the domestic market during the RIP, the normal value was constructed by adding to the exporter's manufacturing costs of the exported types, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable profit margin.

Export price

(25) The product concerned was exported directly to independent customers in the Union. Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable as explained in recital (16).

Comparison

(26) The normal value and the export prices were compared on an ex-works basis.

(27) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments for insurance, handling, loading and ancillary expenses, credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(28) The applicant claimed that if the Commission would use the normal value based on the domestic sales of the related trading companies, an adjustment for differences in level of trade should be granted between the domestic market and the EU market. It further

argued that sales to the EU market were done at distributor level whereas, in the domestic market, the applicant used to sell an important part of the tube and pipe fittings as part of larger consignments in oil and gas project market where fittings often play an ancillary role only to that of the main pipes, valves and other major components, and that this market was at a different level of trade.

(29) After having analysed the sales conditions on the domestic market and in particular the sales price patterns, the investigation showed that the applicant did not demonstrate, in accordance with Article 2(10) of the basic Regulation, a consistent and distinct difference in functions and prices for the different levels of trade in the domestic market of the exporting country. Therefore no adjustment was taken into account.

Dumping margin

(30) In accordance with Article 2(11) of the basic Regulation, and taking into account that there were only 3 orders at virtually the same point in time during the RIP and that the price of the raw material, which accounts for most of the cost of manufacturing, has varied significantly during the RIP, the dumping margin was established on the basis of a comparison on a transaction to transaction basis between the normal value and the export price.

(31) The comparison showed the existence of dumping at a level of 49,9%, expressed as a percentage of the CIF Union-frontier price.

(32) In addition, the investigation confirmed that the export prices of the applicant to other third countries with important quantities are significantly lower than those to the European Union, suggesting the existence of dumping on third markets.

3. AMENDMENT OF THE MEASURES BEING REVIEWED

(33) In the light of the results of the investigation, it is considered that a definitive anti-dumping duty should be imposed at the level of the dumping margin found.

(34) The dumping margin, established for the RIP, of 49,9% is below the country-wide injury elimination level of 75% which was established for Malaysia in the original investigation. It is therefore proposed that a duty which is based on the dumping margin of 49,9% be imposed and that Council Regulation (EC) No 1001/2008 be accordingly amended.

4. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

(35) In the light of the above findings, the anti-dumping duty applicable to the applicant shall be levied retroactively on imports of the product concerned which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 692/2009.

5. MONITORING CLAUSE AND POSSIBLE FURTHER REVIEW

(36) It should be noted that the companies concerned have a complex system of distribution which also involves importing the product concerned from other countries under measures. Also, there is a certain risk of duty avoidance due to the high difference in the duty rates between the different exporting companies inside Malaysia. Therefore,

special measures are needed to ensure the proper application of the anti-dumping duties.

(37) These special measures consist of the presentation to the customs authorities of the Member states of a valid commercial invoice which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(38) Furthermore, the Council notes that the Commission has informed it that it will invite the company concerned to submit regular reports to the Commission in order to ensure proper follow up of their sales of product concerned to the Union and the price and other conditions related thereto, as well as information regarding developments in the company's domestic sales prices. The Council notes that in particular if such reports are not submitted, or where such reports disclose that measures may not be adequate to eliminate the effects of injurious dumping, it may be necessary to initiate an interim review in accordance with Article 11.3 of the basic Regulation. The Council also notes that the Commission has the possibility to *ex officio* initiate an interim review pursuant to Article 11(3) of the basic Regulation, in particular once one year has passed after entry into force of this Regulation (although a previous review may also be warranted). It is noted that at this point in time the Commission expects that it will be appropriate to conduct such a review after one year given the circumstances of this case. In this context, it is important to note that the duty established for the company concerned by this Regulation is based on only a limited number of orders.

6. DISCLOSURE AND DURATION OF THE MEASURES

(39) The parties concerned were informed of the essential facts and considerations on the basis of which it was intended to impose on imports of tube and pipe fittings from the applicant an amended definitive anti-dumping duty and to levy this duty retroactively on imports made subject to registration. Their comments were considered and taken into account were appropriate.

(40) This review does not affect the date on which the measures imposed by Council Regulation (EC) No 1001/2008 will expire pursuant to Article 11(2) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. In Article 1(2) of Regulation (EC) No 1001/2008, the following shall be inserted into the table under producers in Malaysia:

Country	Company	Rate of duty (%)	TARIC additional code
Malaysia	Pantech Steel Industries Sdn Bhd	49,9	A961

2. The duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Regulation (EC) No 692/2009.

The customs authorities are hereby directed to cease the registration of imports of the product concerned originating in Malaysia produced by Pantech Steel Industries Sdn Bhd.

3. In Article 1 of Regulation (EC) No 1001/2008 the following paragraph is added: "The application of the individual duty rates specified for Pantech Steel Industries Sdn Bhd shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply."

4. The addition of the above paragraph in the Regulation (EC) No 1001/2008 implies that Article 1(3) of this regulation is to be renumbered to Article 1(4).

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

Article 2

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
[…]

ANNEX

*"A declaration signed by an official of the entity issuing the commercial invoice, in the following format**, must appear** on the valid commercial invoice referred to in Article 1(3):*

(1) The name and function of the official of the entity issuing the commercial invoice.

(2) The following declaration: "I, the undersigned, certify that the (volume) of [product concerned] sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct and that the invoiced price is final and will not be compensated, in part or in whole, via any practice."

Date and signature"