EUROPEAN COMMISSION

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2010/0033 (NLE)

Proposal for a

COUNCIL REGULATION

amending Council Implementing Regulation (EU) No 1202/2009 of 7 December 2009 imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China following a 'new exporter' review pursuant to Article 11(4) of Regulation (EC) No 1225/2009

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 ('the basic Regulation') in the proceeding concerning imports of furfuryl alcohol originating in the People's Republic of China following a 'new exporter' review.

- **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**

Council Regulation (EC) No 1202/2009 concerning the extension of the anti-dumping measures applicable to imports of furfuryl alcohol from the People's Republic of China, imposed by Regulation (EC) No 1905/2003, for an additional period of two years.

- **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**

On 17 June 2009, the Commission initiated a 'new exporter' review of Regulation (EC) 1905/2003 imposing definitive anti-dumping measures on imports of furfuryl alcohol

originating in the People's Republic of China ('PRC').

The attached proposal for a Council Regulation is based on the definitive findings on dumping which showed that market economy treatment (MET) should be granted to the applicant and that the applicant was found to be dumping. The anti-dumping duty on imports of furfuryl alcohol from the applicant is therefore established at EUR 142 per ton, corresponding to a dumping margin of 14.87%.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published no later than 15 March 2010.

- **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.

- **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 above-mentioned 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 instrument: Regulation.

Other means would not be adequate for the following reason:

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

BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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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 9(4) and 11(4) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) In October 2003, the Council, by Regulation (EC) No 1905/2003[2], imposed definitive anti-dumping measures in the form of a specific duty on imports of furfuryl alcohol (FA) originating in the People's Republic of China (PRC). The specific duty amounts ranged from EUR 84 to EUR 160 per ton for four cooperating Chinese producers, while the country-wide duty was set at EUR 250 per ton.

(2) In December 2009, following an expiry review, the Council, by Regulation 1202/2009[3], extended the anti-dumping measures applicable on imports of FA from PRC, imposed by Regulation (EC) No 1905/2003 for an additional period of two years.

B. CURRENT PROCEDURE

1. Request for a review

(3) Subsequent to the imposition of definitive measures, the Commission received a request for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The request was based on the claim that the exporting producer Henan Hongye Chemical Company Ltd and its related companies Puyang Hongjian Resin Science & Technology Development Company Ltd and Puyang Hongye Imp. & Exp. Commerce Company ltd (the applicant)

(i) did not export FA before or during the investigation period of the original investigation (1 July 2001 to 30 June 2002);

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1 OJ L 343, 22.12.2009, p. 51.
2 OJ L 283, 31.10.2003, p. 1.
3 OJ L 323, 10.12.2009, p. 48.

(ii) was not related to any of the exporting producers subject to the measures imposed by Regulation (EC) No 1905/2003;

(iii) had started to export FA to the Union after the end of the investigation period of the original investigation;

(iv) operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively claims individual treatment in conformity with Article 9(5) of the basic Regulation.

2. Initiation of a 'new exporter' review

(4) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review pursuant to Article 11(4) of the basic Regulation. After consulting the Advisory Committee and after the Union industry concerned had been given the opportunity to comment, the Commission initiated, by Commission Regulation (EC) No 512/2009[4], a review of Regulation (EC) No 1905/2003 with regard to the applicant.

(5) Pursuant to Article 2 of Regulation (EU) No 512/2009, the anti-dumping duty imposed by Regulation (EC) No 1905/2003 on imports of FA produced by the applicant and sold for export to the Union was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. Product concerned

(6) The product concerned by the current review is the same as that described in the original Regulation, i.e. FA originating in the PRC, currently falling within CN code ex 2932 13 00.

4. Parties concerned

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

5. Review investigation period

(8) The investigation of dumping covered the period from 1 June 2008 to 31 May 2009 (review investigation period).

C. RESULTS OF THE INVESTIGATION

1. 'New exporter' qualification

(9) The investigation confirmed that the applicant had not exported the product concerned during the original period of investigation and that it had begun exporting to the Union after this period.

(10) Furthermore, the applicant was able to demonstrate that it was not related to any of the exporting producers in the PRC subject to the anti-dumping measures in force with regard to the product concerned.

(11) Accordingly, it is confirmed that the applicant should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation.

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[4] OJ L 153, 17.06.2009, p. 6.

2. Market economy treatment (MET)

(12) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from the PRC, normal value shall be determined in accordance with paragraphs of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in summarised form below:

1. business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values;
2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards[5] and are applied for all purposes;
3. there are no significant distortions carried over from the former non-market economy system;
4. bankruptcy and property laws guarantee legal certainty and stability;
5. currency exchange-rate conversions are carried out at market rates.

(13) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the applicant.

(14) The investigation showed that all five criteria laid down in Article 2(7)(c) of the basic Regulation were met by the applicant. It was therefore considered that MET should be granted to the applicant.

3. Dumping

Normal value

(15) As far as the determination of normal value is concerned, the Commission first established whether the total domestic sales of the product concerned made by the applicant were representative in comparison with its total export sales to the Union. In accordance with Article 2(2) of the basic Regulation, domestic sales are considered representative when the total domestic sales volume is at least 5 % of the total export sales volume to the Union. The Commission established that FA was sold domestically by the applicant in overall representative volumes.

(16) An examination was also made as to whether the sales of FA sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales of FA 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 of profitable sales.

Export price

[5] International accounting standards refer to all major recognised international standards of accounting, including US GAAP and the works of the International Accounting Standard Committee Foundation ('IASCF') effectuated by the International Accounting Standards Board ('IASB'), covering the International Accounting Standard Board Framework ('IASBF'), the International Accounting Standard ('IAS'), the International Financial Reporting Standards ('IFRS') and the International Financial Reporting Interpretations Committee publications ('IFRIC').

(17) As the product concerned was exported directly to an independent customer in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export price actually paid or payable.

Comparison

(18) The comparison between normal value and export price was made on an ex-works basis.

(19) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Allowances for transport costs, freight and insurance costs, bank charges, packing costs and credit costs were granted where they were found to be reasonable, accurate and supported by verified evidence.

Dumping margin

(20) Pursuant to Article 2(11) of the basic Regulation, and taking into account that there was only one export transaction to the Union during the review investigation period and that the price of the raw material, which accounts for most of the cost of production, and of the domestic sales fluctuated substantially during that period, 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.

(21) The dumping margin for the applicant thus calculated is 14.87%, expressed as a percentage of the net, free-at-Union-frontier price, duty unpaid.

D. AMENDMENT OF MEASURES BEING REVIEWED

(22) In view of the findings of the investigation and in accordance with the lesser duty rule, it is concluded that a definitive anti-dumping should be imposed for the applicant at the level of the dumping margin found, which is in this case lower than the injury margin in the original case.

(23) Regarding the form of the measure, it was considered that the amended anti-dumping duty should take the same form as the duties imposed by Regulation (EU) No 1202/2009, i.e. the form of a specific amount per ton. The anti-dumping duty, calculated on the basis of the dumping margin expressed as a percentage of the net, free-at-Union-frontier price, duty unpaid, to imports of FA from the applicant is therefore established at EUR 142 per ton.

E. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

(24) 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 Commission Regulation (EC) No 512/2009.

F. DISCLOSURE

(25) The parties concerned were informed of the essential facts and considerations on the basis of which it was intended to impose on imports of FA from the applicant an amended definitive anti-dumping duty and to levy this duty retroactively on imports made subject to the registration. Comments were received from the Union industry, which however, were not of a nature to change the above conclusions.

(26) This review does not affect the date on which the measures imposed by Regulation (EU) No 1202/2009 will expire.

HAS ADOPTED THIS REGULATION:

Article 1

1. The table in Article 1(2) of Council Implementing Regulation (EU) No 1202/2009 is hereby amended by adding the following:

Company	Rate of anti-dumping duty (EUR/tonne)	TARIC additional code
Henan Hongye Chemical Co. Ltd and its related companies Puyang Hongjian Resin Science & Technology Development Company ltd, Hongye Chemical Company ltd and Puyang Hongye Imp. & Exp. Commerce Company ltd	142	A955

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 Commission Regulation (EC) No 512/2009.

The customs authorities are hereby directed to cease the registration of imports of the product concerned originating in the People's Republic of China produced and sold for export to the Union by Henan Hongye Chemical Company Ltd and its related companies Puyang Hongjian Resin Science & Technology Development Company Ltd and Puyang Hongye Imp. & Exp. Commerce Company Ltd.

3. 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