Implementing Regulation of the Council (EU) No 195/2010 of 1 March 2010 amending Regulation (EU) No 1202/2009 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

IMPLEMENTING REGULATION OF THE COUNCIL (EU) No 195/2010

of 1 March 2010

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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 Articles 9(4) and 11(4) thereof,

Having regard to the proposal submitted by the European Commission (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 tonne for four cooperating Chinese producers, while the country-wide duty was set at EUR 250 per tonne.

(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);

(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 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 (EC) 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.

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 1 to 6 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 summarised 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

(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 the 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 the fact 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 measure 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 tonne. 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 tonne.

E. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY