Council Regulation (EC) No 692/2005 of 28 April 2005 amending Regulation (EC) No 2605/2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS) originating, inter alia, in the People's Republic of China

COUNCIL REGULATION (EC) No 692/2005

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amending Regulation (EC) No 2605/2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS) originating, *inter alia*, in the People's Republic of China

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 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:

A. MEASURES IN FORCE

(1) The measures currently in force on imports into the Community of certain electronic weighing scales (REWS) originating in the People's Republic of China (PRC) are definitive anti-dumping duties imposed by Council Regulation (EC) No 2605/2000[(2)]. Pursuant to the same Regulation, anti-dumping duties were also imposed on imports of REWS originating in Taiwan and the Republic of Korea.

B. CURRENT INVESTIGATION

1. Request for a review

(2) After the imposition of definitive anti-dumping duties on imports of REWS originating in the PRC, the Commission received a request to initiate a 'new exporter' review of Regulation (EC) No 2605/2000, pursuant to Article 11(4) of the basic Regulation, from two related Chinese companies, Shanghai Excell M&E Enterprise Co., Ltd and Shanghai Adeptech Precision Co., Ltd (the applicant). The applicant claimed 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 REWS. Furthermore, it claimed that it had not exported REWS to the Community during the original investigation period (the original IP, i.e. the period from 1 September 1998 to 31 August 1999), but had started to export REWS to the Community thereafter.

2. Initiation of a 'new exporter' review

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 692/2005. (See end of Document for details)*

(3) The Commission examined the 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 Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 1408/2004, a review of Regulation (EC) No 2605/2000 with regard to the applicant and commenced its investigation.

(4) Pursuant to the Commission Regulation initiating the review, the anti-dumping duty of 30,7 % imposed by Regulation (EC) No 2605/2000 on imports of REWS produced by the applicant 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

(5) The product concerned by the current review is the same as that in the investigation that led to the imposition of the measures in force on imports of REWS originating in the PRC (original investigation), i.e. electronic weighing scales for use in the retail trade, having a maximum weighing capacity not exceeding 30 kg, which incorporate a digital display of the weight, unit price and price to be paid (whether or not including a means of printing this data), normally declared within CN code ex 8423 81 50 (TARIC code 8423 81 50 10) and originating in the PRC.

4. Parties concerned

(6) The Commission officially advised 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.

(7) The Commission also sent a market economy treatment (MET) claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, including the MET claim, and a verification visit was carried out at the premises of the applicant.

5. Investigation period

(8) The investigation of dumping covered the period from 1 July 2003 to 30 June 2004 (the investigation period or IP).

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 IP and that it had begun exporting to the Community after this period.

(10) Furthermore, the applicant was able to demonstrate that it was not related to any of the exporters or producers in the PRC which are subject to the anti-dumping measures in force on imports of REWS originating in the PRC.

(11) In this context, 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 originating in 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 economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards (IAS) and are applied for all purposes,

— no distortions carried over from the non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

(13) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation. It is the Community's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET. Therefore, Shanghai Adeptech Precision Co., Ltd and Shanghai Excell M&E Enterprise Co., Ltd were invited to complete a MET claim form. Both companies replied to the MET claim form within the given deadline.

(14) The Commission sought all information deemed necessary and verified all information submitted in the MET applications at the premises of the companies in question.

(15) It was considered that MET should not be granted to the applicant on the basis that the two related Chinese companies did not meet the first two criteria laid down in Article 2(7)(c) of the basic Regulation.

(16) As regards the first criterion, the Articles of Association of one of the two related Chinese producers allow its State-controlled partner, which does not hold any capital of the company and was presented as performing the functions of a mere landlord, to claim compensation if the company did not achieve its production, sales and profit targets. Moreover, the approval of the local authorities was necessary to recognise buildings as fixed assets and to start amortising the land use rights. Furthermore, one of the Chinese producers had never paid rent for the land use rights and benefited from

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bank guarantees provided free of charge by a third party. Under these circumstances and in view of the fact that the company could not show that its business decisions are made in response to market signals, reflecting market values and without significant State-interference, it was found that this criterion is not met.

(17) Concerning the second criterion, the applicant was found to be in breach of certain international accounting standards (IAS). As regards IAS 1, the applicant breached three fundamental accounting concepts: the accrual basis of accounting, prudence and substance over form. The applicant also failed to comply with IAS 2 on inventories, buildings were not recognised and depreciated in line with IAS 16 and the land use rights were not amortised according to IAS 38. Finally, IAS 21 on the effect of changes in foreign exchange rates and IAS 36 on the impairment of assets were also breached. The fact that the audit reports were silent as regards most of the breaches of the IAS indicates that the audit was not carried out in accordance with IAS.

(18) It should also be underlined that the auditor's report concerning the financial year 2001 of one of the two related Chinese producers had already noted the problems regarding inventories, while the auditor's reports concerning the financial years 2002 and 2003 noted that the company had not established the relevant policy on provisions for impairment of assets. These were thus recurrent problems that have been raised year after year by the auditor to no avail. This is another element that clearly indicates that the accounts of the applicant are not reliable.

(19) The applicant and the Community industry were given an opportunity to comment on the above findings. After consultation of the Advisory Committee, the applicant was informed that MET could not be granted. The Community industry made no comments. The applicant claimed that there was no State interference, that costs reflected market values and that the abovementioned IAS were not applicable in its case.

(20) In particular, one of the two related Chinese producers claimed that a compensation claim relating to the performance of a company could normally be found in a joint venture agreement under market economy conditions. The other producer considered that it was normal that a company enjoyed a rent free period during the construction phase of a project. Finally, it considered that depreciation of buildings and amortisation of land use rights were not a company-specific issue and there was not any benefit accruing to the Chinese authorities.

(21) These arguments had to be rejected. Firstly, although the mere existence of a joint venture such as the one in the current investigation does not indicate State interference, the Articles of Association contain mechanisms that allow the State to interfere. In particular, the right of the Chinese partner (i.e. the local authorities) to claim compensation is not limited to the case where rent is not paid. The rights of the Chinese partner are thus wider than those of a mere landlord. Secondly, rent was due to the State for the first years of operation. Any exemption from such payment obligation should have been provided for in the contract. Finally, the fact that the applicant admitted that depreciation of buildings and amortisation of land use rights are not determined by

the companies themselves reinforces the conclusion that the State could significantly interfere in the business decisions of the applicant.

(22) The applicant's main argument on criterion 2 was that the IAS have not been adopted by the accounting profession in the People's Republic of China (PRC). The applicant admitted that they were not followed, but considered that the IAS mentioned by the Commission were not applicable in the IP. However, it was found that all the IAS provisions set out in recital 17 were in force during the IP.

(23) In its comments to the final disclosure, the applicant argued that the determination not to grant MET to the two related Chinese producers was not made within three months of the initiation of the investigation as provided for in Article 2(7)(c) of the basic Regulation. According to the applicant, this had an influence on the Commission's decision not to verify the information provided by some of its related companies and by the producer in the analogue country, which had a prejudicial effect on the outcome of the investigation.

(24) As regards the argument concerning the three-month time limit, the non-respect of such time limit does not entail any apparent legal consequences. It should be noted that the MET claims received were deficient and required a number of substantial clarifications and additional information which delayed the investigation. The two related Chinese exporting producers were given, on their own request, extensions of the time limits to submit these clarifications and additional information. Furthermore, as they could not receive the verification team at the beginning of October 2004, the verification visits only took place in the second half of that month, thus further delaying the MET determination. It was, therefore, concluded that a valid MET determination could be made or adopted also after the three-month period.

(25) The Commission verified all information it considered necessary during the on-the-spot investigation at the premises of the applicant and accepted all information provided by its related companies in order to calculate the export price. Therefore, the fact that verification visits were not carried out at the premises of these related companies had no detrimental effect to the applicant. Concerning the producer in the analogue country, the findings are set out in recitals 29 to 41.

(26) In view of the above findings, it was concluded that the conditions set out in Article 2(7)(c) of the basic Regulation were not met by the applicant and, therefore, MET should not be granted.

3. Individual treatment (IT)

(27) The applicant also claimed IT in the event that it was not granted MET. On the basis of the information submitted, it was found that the two related Chinese companies met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.

(28) It was therefore concluded that IT should be granted to the applicant.

4. Dumping

Normal value