Commission Regulation (EC) No 1408/2004 of 2 August 2004 initiating a 'new exporter' review of Council 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, repealing the duty with regard to imports from two exporters in this country and making these imports subject to registration

COMMISSION REGULATION (EC) No 1408/2004

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96[(1)] of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation) and in particular Article 11(4),

After consulting the Advisory Committee,

Whereas:

A. REQUESTS FOR A REVIEW

(1) The Commission has received an application for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by two related companies, Shanghai Excell M & E Enterprise Co., Ltd and Shanghai Adeptech Precision Co., Ltd (the applicant). The applicant is an exporting producer in the People's Republic of China (the country concerned).

B. PRODUCT

(2) The product under review is electronic weighing scales having a maximum weighing capacity not exceeding 30 kg, for use in the retail trade, 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) originating in the country concerned (the product concerned), normally declared within CN code 8423 81 50. This CN code is given only for information.

C. EXISTING MEASURES

(3) The measures currently in force are definitive *anti-dumping* duties imposed by Council Regulation (EC) No 2605/2000[(2)] under which imports into the Community of the product concerned originating in the People's Republic of China, and produced by

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1408/2004. (See end of Document for details)*

the applicant, are subject to definitive *anti-dumping* duties of 30,7 % with the exception of several companies expressly mentioned which are subject to individual duty rates.

D. GROUNDS FOR THE REVIEW

(4) The applicant alleges that it operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation, that it did not export the product concerned to the Community during the period of investigation on which the investigation leading to the *anti-dumping* measures was based, i.e. the period from 1 September 1998 to 31 August 1999 (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 abovementioned *anti-dumping* measures.

(5) The applicant further alleges that it has begun exporting the product concerned to the Community after the end of the original investigation period.

E. PROCEDURE

(6) Community producers known to be concerned have been informed of the above application and have been given an opportunity to comment. No comments have been received.

(7) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a 'new exporter' review, pursuant to Article 11(4) of the basic Regulation, with a view to determine whether the applicant operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively whether the applicant fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation and, if so, the applicant's individual margin of *dumping* and, should *dumping* be found, the level of the duty to which its imports of the product concerned into the Community should be subject.

(a) Questionnaires

(8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the applicant.

(b) Collection of information and holding of hearings

(9) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

(c) Market economy status

(10) In the event that the applicant provides sufficient evidence that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, duly substantiated claims must be submitted within the specific time limit set in Article 4(3) of this Regulation. The

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Commission will send claim forms to the applicant, as well as to the authorities of the People's Republic of China.

(d) Selection of the market economy country

(11) In the event that the applicant is not granted market economy status but fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation, an appropriate market economy country will be used for the purpose of establishing normal value in respect of the People's Republic of China in accordance with Article 2(7)(a) of the basic Regulation. The Commission envisages using Indonesia again for this purpose as was done in the investigation which led to the imposition of measures on imports of the product concerned from the People's Republic of China. Interested parties are hereby invited to comment on the appropriateness of this choice within the specific time limit set in Article 4(2) of this Regulation.

(12) Furthermore, in the event that the applicant is granted market economy status, the Commission may, if necessary, also use findings concerning the normal value established in an appropriate market-economy country, e.g. for the purpose of replacing any unreliable cost or price elements in the People's Republic of China which are needed in establishing the normal value, if reliable required data are not available in the People's Republic of China. The Commission envisages using Indonesia also for this purpose.

F. REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS

(13) Pursuant to Article 11(4) of the basic Regulation, the *anti-dumping* duties in force should be repealed with regard to imports of the product concerned which are produced by the applicant. At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic Regulation, in order to ensure that, should the review result in a determination of dumping in respect of the applicant, *anti-dumping* duties can be levied retroactively from the date of the initiation of this review. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the proceeding.

G. TIME LIMITS

(14) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in recital (8) of this Regulation or provide any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission,

— interested parties may comment on the appropriateness of Indonesia which, in the event that the applicant will not be granted market economy status, is envisaged as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China,

— the applicant should submit duly substantiated claims for market economy status.