COUNCIL REGULATION (EC) No 268/2006

of 14 February 2006

amending Regulation (EC) No 1212/2005 imposing a definitive anti-dumping duty on imports of certain castings originating 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 Articles 8 and 9 thereof,

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

Whereas:

A. **PROCEDURE**

(1) The Council by Regulation (EC) No 1212/2005 [2] (the definitive Regulation) imposed definitive anti-dumping duties on imports of certain castings originating in the People's Republic of China (original investigation).

B. **NEW EXPORTER REVIEWS**

(2) In the original investigation sampling was applied to the Chinese exporting producers. The non-sampled companies which were granted market economy treatment (MET), in accordance with the provisions of Article 2(7)(c) of the basic Regulation, were attributed the 0 % dumping duty which was established for the sole sampled company which was granted MET. The non-sampled companies which were granted individual treatment (IT), in accordance with the provisions of Article 9(5) of the basic Regulation, received the weighted average duty of 28,6 % established for the sampled companies that were granted IT. A country-wide duty of 47,8 % was imposed on all other companies.

(3) Pursuant to Article 11(4) of the basic Regulation, a new exporter review to determine individual dumping margins could not be initiated in this proceeding, as sampling was used in the original investigation. However, in order to ensure equal treatment between any new exporting producer and the cooperating companies not included in the sample of the original investigation, it is considered that provision should be made in order to respectively impose the duty applicable to the companies which received MET (0 %) or the weighted average duty of companies with IT (28,6 %), to any new exporting producers which can demonstrate that they meet the criteria set in Article 2(7)(c) of the basic Regulation in order to be granted MET or otherwise the criteria of Article 9(5) in order to be granted IT, and that they would therefore be entitled to a review pursuant to Article 11(4) of the basic Regulation.

C. **UNDERTAKINGS**

(4) Upon publication of the definitive Regulation, no undertakings could be accepted by the Commission. During the investigation leading to the imposition of definitive measures, several exporting producers had indicated their intention to offer a price undertaking but failed to submit sufficiently substantiated undertaking offers within the deadlines set in Article 8(2) of the basic Regulation. Nevertheless, as set out in recital 152 of the definitive Regulation, the Council, in view of the complexity of the issue for the economic operators in question (predominantly small- and medium-sized enterprises) and given that the definitive disclosure was not preceded by a provisional disclosure, considered that they should exceptionally be allowed to complete their undertaking offers beyond the said deadline.

(5) Subsequent to the deadline mentioned above, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) together with twenty cooperating companies or groups of cooperating companies offered an acceptable joint undertaking.

(6) The Commission by Decision 2006/109/EC [3], accepted the undertaking offer. The Decision sets out in more detail the reasons for accepting this undertaking. The Council recognises that the undertaking offer eliminates the injurious effect of dumping and limits to a sufficient degree the risk of circumvention.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

[2] OJ L 199, 29.7.2005, p. 1.

[3] See page 59 of this Official Journal.

(7) To further enable the Commission to effectively monitor compliance with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional upon the presentation of a commercial invoice containing at least the elements listed in the Annex to this Regulation. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(8) To further ensure the effective respect of the undertaking, the importers should be made aware that any violation of the undertaking may lead to the retrospective application of the anti-dumping duty for the relevant transactions. Therefore, it is necessary to implement legal provisions providing for the incurrence of a customs debt at the level of the appropriate anti-dumping duty whenever one or more conditions for the exemption are not respected. A customs debt should therefore be incurred whenever the declarant has chosen to release the goods for free circulation, i.e. without collection of anti-dumping duty, and one or several conditions of that undertaking are found to have been violated.

(9) In the event of a breach of the undertaking, the anti-dumping duty may be recovered, provided that the Commission has withdrawn the acceptance of the undertaking in accordance with Article 8(9) of the basic Regulation, by referring to that particular transaction and, accordingly, by declaring the relevant undertaking invoice as invalid. Therefore, pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

(10) The companies concerned and the CCCME have been informed of the essential facts, considerations and obligations upon which the acceptance of the undertaking is based.

(11) It should be noted that in the event of a breach or withdrawal of the undertaking or in case of a withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty shall automatically apply, pursuant to Article 8(9) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1212/2005 is hereby amended as follows:

1. the following paragraph shall be added to Article 1:

'4. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

— it did not export to the Community the product described in paragraph 1 during the investigation period (1 April 2003 to 31 March 2004),

— it is not related to any of the exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by this Regulation,

— it has actually exported to the Community the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

— it operates under market economy conditions defined in Article 2(7)(c) of the basic Regulation or alternatively that it fulfils the requirements to have an individual duty in accordance with Article 9(5) of the basic Regulation,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend paragraph 2 by adding the new exporting producer (i) to the companies subject to the duty rate of 0 % applicable to companies to whom market economy treatment was granted in accordance with Article 2(7)(c) of the basic Regulation or (ii) to the companies subject to the weighted average duty rate of 28,6 % applicable to companies to whom individual treatment was granted in accordance with Article 9(5) of the basic Regulation respectively.';

2. the following Article shall be added after Article 1:

'Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Commission Decision 2006/109/EC [1], as from time to time amended shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community, and

— such imports are accompanied by a valid undertaking invoice. An undertaking invoice is a commercial invoice containing at least the elements and the declaration stipulated in the Annex, and

— the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation whenever it is established, in respect of goods described in Article 1 and exempt from anti-dumping duty under the conditions listed in paragraph 1, that one or more of such conditions are not fulfilled. The second condition set out in paragraph 1 shall be considered as not being fulfilled where the undertaking invoice is found not to comply with the provisions of the Annex. It shall also be considered as not fulfilled where the undertaking invoice is found not to be authentic and where the Commission has withdrawn the acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a Regulation or Decision which refers to (a) particular transaction(s) and declares the relevant undertaking invoice(s) as invalid.

3. Importers shall accept as a normal trade risk, that the non-fulfilment, by any party, of one or more of the conditions listed in paragraph 1 and further defined in paragraph 2 may give rise to a customs debt incurred pursuant to Article 201 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2]. The customs debt incurred shall be recovered upon withdrawal by the Commission of the acceptance of the undertaking.

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[1] OJ L 47, 17.2.2006, p. 59.

[2] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).';

3. Article 2 shall be renumbered Article 3;

4. the Annex to this Regulation shall be added to Regulation (EC) No 1212/2005.

Article 2

This Regulation shall enter into force on the day following 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, 14 February 2006.

For the Council
The President
K.-H. GRASSER

ANNEX

'ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of certain castings to the Community which are subject to an undertaking.

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".

2. The name of the company mentioned in Article 1 of the Commission Decision 2006/109/EC accepting the undertaking issuing the commercial invoice.

3. The commercial invoice number.

4. The date of issue of the commercial invoice.

5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.

6. The exact description of the goods, including:

   — product code number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2, etc.),

   — plain language description of the goods corresponding to the PCN concerned,

   — company product code (CPC) (if applicable),

   — CN code,

   — quantity (to be given in tonnes).

7. The description of the terms of the sale, including:

   — price per tonne,

   — the applicable payment terms,

   — the applicable delivery terms,

   — total discounts and rebates.

8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the invoice and the following signed declaration:

   "I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by (COMPANY), and accepted by the European Commission through Decision 2006/109/EC, I declare that the information provided in this invoice is complete and correct." '