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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 an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

(OJ L 323, 10.12.2009, p. 48)

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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 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 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. 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 (China). 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 (the original investigation).

2. Request for an expiry review

(2) Following the publication, in May 2008, of a notice of impending expiry of the anti-dumping measures applicable to imports of FA originating in China [3], the Commission received on 30 July 2008 a request for a review pursuant to Article 11(2) of the basic Regulation.

(3) The request was lodged by International Furan Chemicals BV (the applicant) on behalf of the sole producer in the Union representing 100 % of the Union production of FA. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission published a notice of initiation of this review in the *Official Journal of the European Union* [4].

3. Investigation

3.1. *Procedure*

(5) The Commission officially advised the applicant Union producer, the exporting producers in China, the Chinese authorities, the producer in the suggested analogue country, United States of

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 283, 31.10.2003, p. 1.
[3] OJ C 111, 6.5.2008, p. 50.
[4] OJ C 275, 30.10.2008, p. 21.

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America, the importers/traders and users in the Union known to be concerned, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(6) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(7) Replies to the questionnaire were received from the applicant Union producer, two traders, ten users, two associations of users, one exporting producer in China and the producer in the analogue country.

3.2. *Interested parties and verification visits*

(8) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

— Union producer and related companies:

  — TransFurans Chemicals BVBA, Geel, Belgium,

  — International Furan Chemicals BV, Rotterdam, the Netherlands,

  — Central Romana Corporation, LTD, La Romana, Dominican Republic,

— Exporting producers in China:

  — Zhucheng Taisheng Chemical Co. Ltd,

— Producer in the analogue country:

  — Penn Speciality Chemicals Inc., United States of America (USA),

— Unrelated importers/traders:

  — S. Chemicals, the Netherlands,

— Users:

  — Kiilto OY, Finland,

  — Mazzon Flli., Italy,

  — SATEF Hüttenes-Albertus, Italy,

  — Ashland Sudchemie Kernsfest, Germany,

  — Hüttenes-Albertus, Germany,

3.3. *Review investigation period and period under consideration*

(9) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2007 to 30 September 2008 (‘RIP’ or ‘Review Investigation Period’).

(10) The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 up to the end of the RIP (‘period considered’ or ‘period under consideration’).

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B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **The product concerned**

(11) The product concerned is the same as in the original investigation, i.e. FA originating in China, currently falling within CN code ex 2932 13 00.

(12) FA is a chemical product. It is a colourless to pale yellow liquid that is soluble in many common organic solvents. The raw material for the production of FA is furfural (FF), which is a chemical liquid obtained by processing different types of agricultural waste such as sugar cane, corncobs and rice hulls among others.

(13) FA is a commodity product. The main use of FA is the production of synthetic resins, used in the production of foundry moulds which are used to make metal castings for industrial purposes.

2. **Like product**

(14) As in the previous investigation, this investigation has shown that the basic physical and technical characteristics of FA produced and sold by the Union industry in the Union, FA produced and sold on the domestic Chinese market, FA imported into the Union from China as well as FA produced and sold in the USA are the same and that they have the same use.

(15) It was therefore concluded that all these products constitute one like product within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF CONTINUATION OF DUMPING**

(16) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.

(17) In accordance with Article 11(9) of the basic Regulation, the same methodology was used as in the original investigation. As an expiry review does not provide for any examination of changed circumstances, no further consideration was given to whether or not producers should be granted market economy treatment (MET).

1. **Preliminary remarks**

(18) It is recalled that in the original investigation a total of four Chinese exporting producers cooperated with the investigation and requested MET pursuant to Article 2(7)(b) of the basic Regulation. However, none of these Chinese exporting producers fulfilled all of the required conditions for granting MET and therefore all claims for MET had to be rejected. All of them were granted individual treatment (IT) since the investigation revealed that they fulfilled the required criteria. It is noted that the only Chinese exporter which cooperated with the present expiry review was granted IT in the original investigation.

(19) The only cooperating Chinese exporting producer accounted for 23,1 % of imports into the Union during the RIP. No reliable information on imports of the product concerned to the Union during the RIP could be gathered directly from the other exporting producers. Under these circumstances, and in accordance with Article 18 of the basic Regulation, for total import quantities and prices the Commission had to use facts available, i.e. Eurostat and the documentation submitted by the applicant in the request for the initiation of the review.

(20) The existing anti-dumping duties, ranging from EUR 84 to EUR 160/tonne, with a country-wide residual duty of

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EUR 250/tonne, correspond to the level of injury established during the previous investigation.

2. **Dumping in the investigation period**

2.1. *Analogue country*

(21) In the original investigation the United States of America (the USA) was used as an appropriate market economy country for the purpose of establishing the normal value for China. In the notice of initiation of the current investigation the Commission indicated its intention to use the USA as analogue country. Interested parties were invited to comment on this intention. The USA was considered appropriate in view of the size and openness of its domestic market and the fact that one US producer had agreed to cooperate fully in the investigation.

(22) An importers' association opposed the choice of the USA as analogue country, arguing that there was only one main producer in the USA and that domestic prices were extremely high. One Chinese exporting producer claimed that the level of competition in the USA was lower than that on the Chinese domestic market and therefore the markets were not comparable. It was found, however, that while there was only one producer on the market in the USA, imports also played a role which ensured a sufficient level of competition on this sizeable market. Furthermore, none of the known producers contacted in other possible analogue countries, including Thailand, Turkey and South Africa, agreed to cooperate.

(23) Based on the above, it was concluded that the USA was the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

2.2. *Normal value*

(24) Pursuant to Article 2(7)(a) of the basic Regulation normal value was established on the basis of verified information received from the producer in the USA.

(25) The Commission first established that the total domestic sales of the US producer were made in sufficient quantities and could thus be considered representative within the meaning of Article 2(2) of the basic Regulation.

(26) It was subsequently examined whether the product concerned sold in representative quantities on the analogue country's domestic market could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was found that the sales volume on a per type basis, sold at a net sales price equal to or above the cost of production, represented 80 % or more of the total sales volume and the weighted average price of that type was equal to or above the cost of production. Therefore the actual domestic prices, calculated as a weighted average of the prices of all domestic sales made during the RIP, irrespective of whether these sales were profitable or not, could be used.

(27) Normal value was thus determined, as set out in Article 2(1) of the basic Regulation, on the basis of prices paid or payable, in the ordinary course of trade, by independent customers on the domestic market of the analogue country.

2.3. *Export price*

(28) The only Chinese exporting producer which cooperated was granted IT in the original investigation. In accordance with Article 2(8) of the basic Regulation the export price of the product concerned for this company was established on the basis of the export prices actually paid or payable to the first independent customer located in the Union.

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(29) Given that cooperation from China was very low, the countrywide dumping margin applicable to all other exporters in China was calculated using the Chinese export statistics.

2.4. *Comparison*

(30) In order to ensure a fair comparison of 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. Appropriate adjustments concerning transport, insurance, and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

2.5. *Dumping margin*

(31) In accordance with Article 2(11) of the basic Regulation the weighted average normal value established for the USA was compared with the weighted average export price of the cooperating Chinese exporting producer on an ex-works basis. This comparison showed the existence of significant dumping, the dumping margin amounting to more than 40 %.

(32) Based on Eurostat and Chinese statistics, for all other Chinese exports to the Union the margin of dumping was also found to be substantial, in the same range as above.

3. **Development of imports should measures be allowed to lapse**

3.1. *Preliminary remark*

(33) It is recalled that measures have been in force since October 2003.

3.2. *Evolution of production and capacity utilisation in China*

(34) In the absence of meaningful cooperation by the Chinese exporting producers during the current investigation no verifiable data was available on their capacity and capacity utilization.

(35) According to the applicant's estimate, the total production capacity in China in 2006 amounted to around 364 900 tonnes of FA per year.

(36) According to the China National Chemical Information Center ([1]), 'China's production capacity for furfural and furfuryl alcohol has undergone unduly rapid expansion in recent years. The overall slackness of downstream consumption sectors such as furan resins has led to a serious oversupply in the furfural and furfuryl alcohol market'(.) 'Furfural and especially furfuryl alcohol production in China still has to depend on exports'. This source also states that there were more than 300 FA producers in China in 2005. The total annual production capacity of FA was 240 000 tonnes and the output was around 140 000 tonnes.

(37) According to the estimation of the sole cooperating Chinese exporting producer, total production of FA in China in 2008 amounted to 200 000 tonnes.

(38) In any event, Chinese production capacity continues to be substantial. Furthermore, despite the measures in place, Chinese exports to the Union continued to increase. Whatever the source

([1]) The China National Chemical Information Center (Chem China) was established in October 1992 after the merger of the Scientific and Technological Information Research Institute of the Ministry of the Chemical Industry established in 1959 and the Economic Information Center of the Ministry of the Chemical Industry established in 1984. http://www.chemchina.com.cn/chempwas/en/7under_8.htm

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of information it is clear that Chinese production capacity largely exceeds Union consumption.

(39) The Union market is a large and stable market for FA and given the existence of high anti-dumping measures in the USA (ranging from 43 % to 50 % and renewed in July 2006) on imports from China, it is expected that if existing measures are allowed to lapse Chinese producers would have every incentive to ship spare capacities to the Union.

(40) On the basis of the above it may be concluded that, in the light of the huge capacity available in China and the existence of anti-dumping duties in another important market, the USA, there is a strong likelihood of increased dumped imports into the Union should measures be allowed to lapse.

3.3. *Volume and price of imports from China to the Union*

(41) During the RIP imports of the product concerned from China amounted to approximately 21 000 tonnes. The unit price was EUR 1 210 per tonne on average (see recital (57)). During the same period the average Union unit selling price was far above this price making the Union market very attractive to Chinese exporters should the measures be allowed to lapse.

3.4. *Volume and prices of Chinese exports to third countries*

(42) Based on the data provided by the cooperating Chinese exporting producer it was found that this company exported larger quantities to third countries than to the Union and at prices significantly below those of Union producers on the Union market and also below Chinese export prices to the Union.

(43) This is confirmed by publicly available Chinese statistics which showed that for most of the investigation period Chinese companies exported mainly to Asian countries at prices far below those of their exports to the Union market. In these circumstances, if measures are allowed to lapse, Chinese exporting producers may re-direct these sales to the higher priced Union market but still at dumped prices that would undercut those of the Union industry.

(44) Limited information is available on the domestic prices in China.

(45) However, based on the questionnaire reply from the sole cooperating Chinese company, this company sold the product concerned on its domestic market at a price far below that of its exports to third countries and to the Union.

3.5. *Conclusion*

(46) The investigation showed that, whilst the import volumes of the product concerned in the RIP were relatively high, the level of dumping found for these imports was significant.

(47) In view of the spare capacity available in China, which largely exceeds total Union consumption, the significant difference in prices charged to the Union and third countries and the resulting attractiveness of the Union market, as showed in recital (41) above, to the Chinese exporting producers, it is concluded that there is a strong likelihood of increased dumped imports into the Union should measures be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

(48) As in the original investigation, there is only one producer of FA in the Union: TransFurans Chemicals, Belgium (TFC). Accordingly, the production of TFC constitutes the total Union production within the meaning of Article 4(1) of the basic Regulation.

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(49) The Union production is fully integrated in a single economic entity which consists of three companies and operates as follows:

(50) TFC transforms the raw material, furfural, delivered by the mother company Central Romana Corporation (CRC), Dominican Republic, into the product concerned. International Furan Chemicals (IFC) situated in the Netherlands acts as the worldwide sales agent for the product concerned produced by TFC. TFC, IFC and CRC are related through common ownership.

(51) Based on the above, TFC and its related company IFC constitute the Union industry within the meaning of Articles 5(4) and 4(1) of the basic Regulation. It should be noted, that in order to make a meaningful assessment of certain injury indicators, it was necessary to take into account also certain data from CRC.

E. SITUATION ON THE UNION MARKET

1. Preliminary remark

(52) Given that the Union industry comprises only one company, specific data relating to the Union industry, as reported in the verified questionnaire replies, consumption and the market share of the Chinese exporting producers as well as other third countries' imports have been ed in order to preserve the confidentiality of the data submitted in accordance with Article 19 of the basic Regulation.

2. Union consumption

(53) Union consumption was calculated on the basis of the combined volume of sales by the Union industry in the Union of its own produced FA, imports from China as well as imports from other third countries.

(54) With regard to the import volumes from the country concerned, and as during the original investigation, Chinese official export statistics were used rather than Eurostat import statistics, since the former appeared to be more accurate in view of the fact that certain data in Eurostat concerning this product were classified as 'secret' and therefore not publicly available. As far as the import volumes of other third countries are concerned Eurostat statistics were used since no other more reliable information was available.

Table 1 Union consumption (based on sales volume)

	2005	2006	2007	RIP
Index	100	108	158	166
Y/Y trend		8 %	47 %	5 %

Source: verified questionnaire reply of the Union *industry, Eurostat, Chinese official export statistics*

(55) On this basis and as shown in table 1 above, Union consumption increased significantly during the period under consideration, i.e. by 66 %.

(56) It is noted that the above development may be affected by the possible existence of secret data concerning imports of Thailand as mentioned below in recital (61).

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3. **Volume, market share and prices of imports from China**

Table 2 Imports from China in volume, market share and import price

	2005	2006	2007	RIP
Imports in tonnes	16 010	10 635	19 245	21 002
Index	100	66	120	131
Market share (index)	100	62	76	79
CIF Import price EUR/ tonnes	887	738	893	1 210
Index	100	83	101	136

Source: Chinese official export statistics

(57) The import volume from China increased by 31 % during the period considered, from 16 010 tonnes in 2005 to 21 002 tons in the RIP, while market share decreased by 21 % during the period considered. This development has to be seen against the background of the significant increase of Union consumption by 66 % during the same period.

(58) It should be noted that the Union industry was itself importing between 5 000 and 9 000 tons during the RIP of the product concerned from China which it re-sold on the Union market. The Union industry was therefore also the main importer of the product concerned from China. Imports were done by the Union industry because, producing already at full capacity (see recitals (64) and (65) below), it was not able to meet the demand in the Union market.

(59) Average import prices from China increased over the period considered by 36 %, i.e. from 887 EUR/ton in 2005 to 1 210 EUR/ton during the RIP.

(60) The comparison of the CIF import price at Union frontier charged to independent customers, including post-importation costs, with the Union industry's ex-works prices, for the same product types, revealed that Chinese import prices were not undercutting the Union industry's sales price during the RIP.

4. **Volume, market share and prices of imports from other third countries**

Table 3 Imports from other third country markets

	2005	2006	2007	RIP
Thailand				
Tonnes	673	208	10 660	11 450
Index	100	31	1 584	1 701
Market share indexed	100	28	1 017	1 044
Import price in EUR/ tonne	1 059	822	1 086	1 302
Index	100	78	103	123
South Africa				
Tonnes	890	0	123	2 695
Index	100	0	14	303
Market share indexed	100	0	8	183

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	2005	2006	2007	RIP
Import price in EUR/ tonne	682	0	930	1 301
Index	100	0	136	191
Other third countries				
Tons	160	11	193	239
Index	100	7	120	149
Market share indexed	100	0	75	100
Import price in EUR/ ton	1 790	7 500	3 051	3 368
Index	100	419	170	188

Source: Eurostat

(61) It is noted that Eurostat data for Thailand show an increase in import volume from insignificant quantities in 2005 and 2006 to 10 660 tonnes in 2007 and 11 450 tonnes during the RIP, with a significant increase in its market share from an index of 100 to 1 044 during the period under consideration. However, it is noted that Eurostat data contained some secret data with regard to Thai imports during 2005 and 2006 and the increase in imports and market share was in fact lower as shown above. Import prices from Thailand increased by 23 % over the period considered and were above Chinese prices as well as above the Union industry's prices during the RIP.

(62) Although imports from South Africa increased during the period considered, they remained at a relatively low level with price levels similar to the Thai imports.

(63) Imports from other third countries did not represent significant volumes.

5. Economic situation of the Union industry

5.1. *Production, production capacity and capacity utilisation*

(64) The Union industry's production increased by 8 % during the period under consideration. The production capacity of the Union industry remained stable during this period.

(65) Capacity utilisation increased by 8 % during the period considered, as such reaching full capacity. The Union industry was from 2006 onwards producing above its theoretical installed capacity.

Table 4 Union production

	2005	2006	2007	RIP
Index	100	104	106	108
Y/Y trend		4 %	1 %	2 %

Source: verified questionnaire reply of the Union industry

Table 5 Union production capacity

	2005	2006	2007	RIP
Index	100	100	100	100
Y/Y trend		0 %	0 %	0 %

Source: verified questionnaire reply of the Union industry

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Table 6 Capacity utilisation

	2005	2006	2007	RIP
Index	100	104	106	108
Y/Y trend		4 %	1 %	2 %

Source: verified questionnaire reply of the Union industry

5.2. *Inventories*

(66) Stocks decreased by 50 % during the period considered which was due to the high demand during this period, in particular during the RIP, and the Union industry's insufficient capacity to supply the Union market. As a consequence, stocks were continuously reduced.

Table 7 Inventories

	2005	2006	2007	RIP
Index	100	81	89	50
Y/Y trend		–19 %	10 %	–44 %

Source: verified questionnaire reply of the Union industry

5.3. *Sales, market share and prices*

Table 8 Sales volumes and values

	2005	2006	2007	RIP
Sales in volume — index	100	151	147	134
Y/Y trend		51 %	–2 %	9 %
Sales in value — index	100	127	156	175
Y/Y trend		27 %	23 %	12 %

Source: verified questionnaire reply of the Union industry

(67) The Union industry sales volume increased by 51 % from 2005 to 2006, reaching a peak in 2006, but then continuously decreased. At the same time, the market share of the Union industry decreased by 19 %. This is due to the fact that demands to the Union industry increased more than the overall increase in sales volume. As mentioned above, since the Union industry already produced at full capacity it was not able to increase its sales volume to the same extent as the increase in consumption.

Table 9 Union industry's market share

	2005	2006	2007	RIP
Index	100	140	93	81
Y/Y trend		40 %	–34 %	–13 %

Source: verified questionnaire replies of the Union industry, Eurostat, Chinese export statistics

(68) Unit selling prices of the Union industry first decreased by 16 % from 2005 to 2006, and increased afterwards continuously. Over the total period considered, average prices of the Union industry increased thus by 31 %.

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Table 10 Union industry sales prices

	2005	2006	2007	RIP
Index	100	84	106	131
Y/Y trend		–16 %	26 %	23 %

Source: verified questionnaire reply of the Union industry

5.4. *Factors affecting Union prices*

(69) The pressure from demand throughout the period considered led to, as a consequence, a significant increase in prices. The high demand during the RIP even caused temporary shortages on the Union market.

(70) Price levels on the Union market were generally high throughout the period considered. The dumped imports from China did not exert any significant price pressure during this period. Thus, the same increasing trend can also be observed for the Chinese imports and the imports from the other third countries, with the exception of 2006, when both volumes and prices dropped.

(71) The sales margins were less influenced by the full cost of production, and the price increases were mainly due to market developments. This is also evidenced by the exceptional increase in cost in 2006 (due to an exceptional increase in the fuel oil costs for the production of FF) which did not have a direct impact on the Union industry's sales price which decreased during this same year.

5.5. *Employment, productivity and wages*

(72) Employment remained overall stable during the period considered, while productivity increased by 6 % during the same period which is due to the increase in production volume. The processing of FF into FA is a rather simple process and therefore not very labour intensive. The average wages decreased by 4 % during the period considered.

Table 11 Employment

	2005	2006	2007	RIP
Index	100	106	105	102
Y/Y trend		6 %	–1 %	–3 %

Source: verified questionnaire reply of the Union industry

Table 12 Productivity

	2005	2006	2007	RIP
Index	100	98	100	106
Y/Y trend		–2 %	2 %	6 %

Source: verified questionnaire reply of the Union industry

Table 13 Wages

	2005	2006	2007	RIP
Index	100	102	95	96
Y/Y trend	—	2 %	–6 %	1 %

Source: verified questionnaire reply of the Union industry

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5.6. *Profitability*

(73) The profitability of the Union industry increased overall significantly from 2005 to the RIP, i.e. by 43 % and reached a very high level during the RIP, exceeding by far the target profit set during the original investigation (15,17 %). It is noted that the profitability of the Union industry reached high levels throughout the period considered with the exception of 2006. In 2006, the exceptional high costs for fuel oil, which is one of the main cost factors for the production of FF, combined with low sales prices resulted in losses for the Union industry.

Table 14 Profitability

	2005	2006	2007	RIP
Index	100	–27	125	143
Y/Y trend	—	–127 %	562 %	14 %

Source: verified questionnaire reply of the Union industry

5.7. *Investments, return on investments and ability to raise capital*

(74) Investments increased during the period under consideration although the total amount was not significant, being equivalent to only a small percentage of the profits obtained. The Union industry did not invest in new capacities but these investments were rather in repairs and maintenance. The investigation also showed that the return on investments, i.e. pre-tax net profit of the like product expressed as a percentage of the net book value of fixed assets allocated to the like product, increased notably during the period considered.

Table 15 Investments

	2005	2006	2007	RIP
Index	100	116	150	187
Y/Y trend		16 %	29 %	25 %

Source: verified questionnaire reply of the Union industry

Table 16 Return on investments

	2005	2006	2007	RIP
ROI	4,3 %	–6,1 %	8,3 %	18,4 %

Source: verified questionnaire reply of the Union industry

(75) The investigation did not bring into light any evidence that the Union industry has major problems in raising capital.

5.8. *Cash flow*

(76) Cash flow followed a similar trend as profitability, increasing significantly during the period under consideration.

Table 17 Cash flow

	2005	2006	2007	RIP
Index	100	–167	294	661
Y/Y trend		–267 %	276 %	125 %

Source: verified questionnaire reply of the Union industry

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5.9. *Growth*

(77) The Union industry did not directly benefit from the growth of the market during the period considered, since, while it increased its sales volume it lost overall market share. However, this situation is due to the Union industry's decision to maintain its production capacity at the same levels throughout the period considered. Indeed, although profitability was high, and demand was increasing, no investments were made to increase capacity.

5.10. *Magnitude of the dumping margin*

(78) During the RIP, despite the measures in force substantial dumping continued albeit at lower levels than established in the original investigation, based both on the data obtained from the sole cooperating exporting producer and the calculations based on facts available (Chinese statistics).

5.11. *Recovery from the effects of past dumping*

(79) Even if the Union industry has had the chance to recover from past dumping, in particular in terms of sales volume, sales prices and profitability, dumping margins are still significant.

5.12. *Export activity of the Union industry*

Table 18 Export volume of the Union industry

	2005	2006	2007	RIP
Index	100	82	78	96
Y/Y trend	—	–18 %	–5 %	23 %

Source: verified questionnaire reply of the Union industry

(80) The Union industry's main export market is the USA. Although decreasing in 2006 and 2007, export levels of 2005 were almost reached in RIP. It should be noted that the volume exported to the USA was significant, i.e. it corresponded to 25 % of its total production volume during the RIP, while on the other hand large volumes of the product concerned were also imported by the Union industry from China to satisfy the demand of their customers in the Union. The Union industry own production of FA was exported to the more lucrative USA market where prices were at even higher levels than on the Union market.

6. **Conclusion on the situation of the Union industry**

(81) The anti-dumping measures had a clear positive impact on the situation of the Union industry. All main injury indicators, such as production (+ 8 %) and sales volume (+ 34 %), sales value (+ 75 %), average sales price (+ 31 %), investments (+ 87 %), profitability (+ 43 %), cash flow (+ 561 %), stocks (– 50 %) and productivity (+ 6 %) have shown positive developments. In particular, profit levels of the Union industry were high throughout the period considered with the exception of 2006.

(82) As far as the market share of the Union industry is concerned, the decreasing trend could not be considered as pointing to injury. Indeed, the Union industry, already producing at maximum capacity, could not supply the increasing demand, which had, despite increasing sales volumes, a negative effect on its market share.

(83) In conclusion, in view of the positive development of the indicators pertaining to the Union industry, it is considered to be in a good situation and it could not be established that material injury has continued. Therefore, it was examined whether there is a likelihood of recurrence of injury should measures be allowed to lapse.

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F. **LIKELIHOOD OF RECURRENCE OF INJURY**

1. **Summary of the analysis of the likelihood of the continuation of dumping and the recurrence of injurious dumping**

(84) It is recalled that even with the measures in force, the exporting producers in China were still dumping at significant levels, as explained in recital (31) above. Removal of the measures could, if the export prices were reduced commensurately, lead to even higher dumping margins.

(85) As mentioned above, the incentive to increase export volumes to the Union is considerable, since the other major export market for China, i.e. the USA has high anti-dumping measures in place against China with prohibitive character and this market is therefore practically not accessible for Chinese exports.

(86) Furthermore it was found that the Chinese producers had significant spare capacities due to a structural overcapacity in China caused by a decrease of domestic demand in China due to a shrinking market after the Olympic Games in 2008 and the effect of the global economic crisis.

(87) It was also found that Chinese export prices to third countries were at lower levels than those to the Union.

(88) It was therefore concluded that there was a likelihood of continuation of dumping and a risk of an increase of the volume of imports exerting a downward pressure on prices in the Union, at least in the short term, if measures were repealed.

(89) It is normally the case that an increase of dumped imports would exercise a downward pressure on the sales price level and would negatively affect the Union industry's profitability as well as its financial recovery that was observed during the RIP.

2. **Impact of the dumped imports on the Union industry — indications and likely development during the post RIP period**

(90) The market share of the Union Industry went down already as from 2006, and this during a period of increasing consumption, whilst from the same year onwards the market share of the Chinese imports increased. In view of these mixed indicators (i.e. overall recovery by the Union Industry, but loss of market share), the post-RIP developments were examined to get a clearer picture of likely future trends. It should also be recalled that the likelihood of recurrence of injury caused by a downward pressure on prices may also be influenced or accentuated by the evolution of the global economy and its effects on demand and consumption.

(91) Additional information was collected in order to determine whether the conclusions drawn on the basis of the analysis of the period considered and more in particular the RIP, remain valid after the RIP. In this regard, the Union industry submitted information on the development of their sales prices in the Union covering the period from October 2008 to April 2009 as well as on Chinese import volumes and average import prices during the same period.

(92) On this basis, a clear and continuous downward trend of the Union industry's sales prices on the Union market could be observed, i.e. sales prices in April 2009 decreased by 35 % as compared to the average sales price during the RIP. As far as sales volumes of the Union industry are concerned, while there is no continuous downward trend, sales in April 2009 were 33 % lower than in March 2009. There were indications that orders to the Union industry have been decreasing.

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(93) As far as the Union industry's profitability is concerned, the negative development has been significant. Thus, profit levels shrank continuously and dropped by almost 80 % in April 2009 when compared to the profit level reached during the RIP. Thus, the Union industry's profit levels have not reached the target profit set during the original investigation since March 2009 and fell in April 2009 far below it.

(94) As far as the Chinese imports are concerned, Chinese import prices followed a continuous downward trend, however less accentuated than the decrease in import volumes and the decrease in the Union industry sales prices on the Union market. The Chinese import prices, while mostly still slightly above the Union industry's sales price, were in some months undercutting them, which shows that the price pressure on the market from these imports has increased. Similarly at the end of this period the Chinese prices were found to be underselling the Union industry prices.

(95) On the basis of the above, and given the clear downward trend of the Union industry's financial situation, it was concluded that a recurrence of injury is likely should measures be allowed to lapse.

(96) It is noted that due to the global economic crisis, demand in the Union has decreased significantly which has had a negative impact on the sales volumes, sales prices and profitability on the Union market. The financial position of the Union industry has deteriorated, making the Union industry particularly vulnerable and thus more easily affected by dumped imports from China. This situation will likely further deteriorate in case of a surge of such imports should measures be allowed to lapse.

3. Conclusions on the likelihood of recurrence of injury

(97) In summary it is considered that in case measures were repealed, there is a short-term likelihood of a significant increase of dumped imports from China to the Union with downward pressure on prices as a consequence and a recurrence of injury to the Union industry.

(98) It is noted, however, that in general the situation of the Union industry during the period considered was positive – whereby it was on the whole able to recover from past dumping and made substantial profits towards the end of the period. It is thus considered that less time than the standard five years may be needed for the Union industry to be able to recover from the current precarious situation, which may in any event be a temporary phenomenon, and to prevent injury from recurring should measures be allowed to lapse. In the medium term, demand on the Union industry may increase again. Should this be the case, and on the basis of the specifics of the Union market and in particular the need for the Union users of a fast and reliable source of supply, it is considered that the Union industry may in the medium term recover from any injury suffered or that a recurrence of injury would no longer be likely. The situation could thereafter be reviewed.

G. UNION INTEREST

1. Preliminary remark

(99) In accordance with Article 21 of the basic Regulation it was examined whether the continuation of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of Union interest was based on an appreciation of all the other various interests involved, i.e. those of the Union industry, those of the importers/traders as well as the users of the product concerned.

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(100) It should be recalled that in the original investigation, the imposition of measures was not considered to be against the Union interest. Furthermore, the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures are in place.

(101) On this basis it was examined whether there are compelling reasons which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case, despite the above conclusions on the likelihood of continuation of dumping and recurrence of injury.

2. **Interest of the Union industry**

(102) It is recalled that dumping during the RIP was still present and that there exists a likelihood of continuation of dumping of the product concerned originating in China and the likelihood of recurrence on injury to the Union industry.

(103) The Union industry has proven to be a viable and competitive industry, confirmed by the positive development of all main injury indicators during the period considered. The previously imposed anti-dumping measures have contributed to the price level as established during the RIP which allowed the Union industry to restore its profitability.

(104) Therefore it is in the interest of the Union industry to maintain measures against the dumped imports from China.

3. **Interest of unrelated importers/traders**

(105) The Commission sent questionnaires to all known unrelated importers/traders. Only one importer/trader cooperated with the investigation.

(106) The investigation showed that the volumes traded by the cooperating unrelated importer during the period under consideration were not significant, and sales of the product concerned represented only a small part of its total sales.

(107) It is considered that continuation of the measures will not change the current situation of the importers/traders. It is clear that the importers may also rely on other sources of supply, as can be seen from the market share held by other third countries, in particular Thailand which showed that competition on the Union market is ensured.

(108) On the basis of the above, it was considered that the continuation of the measures would not significantly affect the importers/traders.

4. **Interest of users**

(109) The Commission sent questionnaires to all known unrelated users. Eight users cooperated with the investigation, representing 44 % of the total imports from China. The investigation showed that these users were importing directly the product concerned from China. Additionally two user associations replied submitting their comments.

(110) The main industrial users of FA in the Union are the furan resin manufacturers. The investigation showed that despite measures in force, at least some of the users reached still quite high profit margins during the RIP.

(111) The users also pointed out that the Union industry should remain an important source of supply in order to grant short term availability of the product concerned and a certain reliability and consistency of the supply.

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(112) Considering the above, it was considered that the continuation of the measures would not have a significantly negative effect on the industrial users.

5. **Conclusion on Union interest**

(113) Given the above, it is concluded that there are no compelling reasons, on the grounds of Union interest, against the prolongation of the anti-dumping measures.

H. **ANTI-DUMPING MEASURES**

(114) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments and claims subsequent to disclosure.

(115) It is clear that the Union industry was able to profit from the measures in force and its situation improved significantly over the period considered with respect to most injury indicators. The Union industry realised high profit margins during the RIP and sales and production volumes reached their maximum levels. On the basis of the positive economic development of the Union industry during the period considered, it could not be established that material injury continued.

(116) Nevertheless, the investigation showed on one hand that, despite an increase in consumption, the Union industry lost market share while the Chinese imports increased their market share. On the other hand the investigation also revealed that spare capacities exist in China and that high dumping continued during the RIP.

(117) In addition, the investigation on the likelihood of recurrence of injury showed that the situation of the Union industry deteriorated after the RIP and lead to injury towards the beginning of the second quarter of 2009. It also revealed that there were significant spare capacities available in China and the incentive to direct these spare capacities to the Union should measures be allowed to lapse was high. This expected surge of dumped imports is likely to increase the price pressure in the Union with a negative effect on the Union industry's price and profit levels. It was therefore established that there was a likelihood of recurrence of injury, should measures be allowed to lapse, at least on the short term.

(118) This would have an even more negative impact in the context of the current economic crisis, which has lead to a contraction in consumption after the RIP. In this scenario the impact of increased dumped imports would multiply its negative effects on the Union industry.

(119) Finally, it is considered that should the economy recover in the medium term, demand for FA in the Union will increase. Under these circumstances, the Union industry will be able to increase its sales volume accordingly.

(120) Therefore it follows from the above that as provided in Article 11(2) of the basic Regulation, the anti-dumping measures applicable on imports of FA from China, imposed by Regulation (EC) No 1905/2003 should be maintained for an additional period of two years without prejudice to the other provisions of Article 11 of the basic Regulation.

(121) Following disclosure, the Union industry claimed that the definitive measures should be extended for five years arguing that the sudden change in market conditions after the RIP would show that any future developments in the market are uncertain and highly difficult to predict. Thus, the assessment of the Union Institutions, i.e. that the economy may recover in the medium term and that the demand for FA in the Union may consequently

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improve would not be sufficiently accurate. However, as mentioned above in recitals (117) to (119), it was considered that the developments after the RIP, including the effects of the economic crisis, are likely to be of a short term nature warranting the imposition of measures for no more than two years. Therefore, the claims of the Union industry in this respect had to be rejected.

(122) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:

The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(123) Should the exports by one of the four companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of furfuryl alcohol, currently falling within CN code ex 2932 13 00 (TARIC code 2932 13 00 90), originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable for the product described in paragraph 1 shall be as follows:

Companies	Rate of anti-dumping duty (EUR per ton)	TARIC additional code
Gaoping Chemical Industry Co. Ltd	160	A442
Linzi Organic Chemical Inc.	84	A440
Zhucheng Taisheng Chemical Co. Ltd.	97	A441
Henan Huilong Chemical Industry Co. Ltd.	156	A484
▼M1 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
▼B All other companies	250	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is appor-

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tioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1], the amount of the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. The application of the individual duty rates specified for the four companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex of this Regulation. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It and shall expire on 10 December 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

[1] OJ L 253, 11.10.1993, p. 1.

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ANNEX

The valid commercial invoice referred to in Article 1(4) of this Regulation must include a declaration signed by an official of the company, in the following format:

1. The name and function of the official of the company which has issued the commercial invoice.

2. The following declaration: ‘I, the undersigned, certify that the [volume] of furfuryl alcohol currently classifiable within CN code ex 2932 13 00 (TARIC additional code) sold for export to the European Union covered by this invoice was manufactured by [company name and address] in the People’s Republic of China; I declare that the information provided in this invoice is complete and correct.’

3. Date and signature.