II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 77/2010

of 19 January 2010

amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in the People's Republic of China

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], repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [2] ('the basic Regulation'), and in particular Article 11(4) of Regulation (EC) No 1225/2009,

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 of ironing boards originating, *inter alia*, in the People's Republic of China (PRC) are definitive anti-dumping duties imposed by Council Regulation (EC) No 452/2007 [3]. Pursuant to the same Regulation, anti-dumping duties were also imposed on imports of ironing boards originating in Ukraine.

B. CURRENT INVESTIGATION

1. Request for a review

(2) This 'new exporter' review was initiated on the basis of a request lodged, and information provided, by Greenwood Houseware (Zhuhai) Ltd ('the applicant' or 'Greenwood Houseware'), an exporter from the PRC. 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 regards to ironing boards. Furthermore, it claimed that it had not exported ironing boards to the Community during the original investigation period ('the original IP', i.e. the period from 1 January 2005 to 31 December 2005), but had started to export ironing boards to the Union thereafter.

2. Initiation of a 'new exporter' review

(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 consulting the Advisory Committee and after the Union industry had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 356/2009 [4], a review of Regulation (EC) No 452/2007 with regard to the applicant and commenced its investigation.

(4) Pursuant to the Commission regulation initiating the review, the anti-dumping duty of 38,1 % imposed by Regulation (EC) No 452/2007 on imports of ironing boards produced by the applicant was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take the 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 ironing boards originating, *inter alia*, in the PRC, i.e. ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest, currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00 and originating in the PRC.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 56, 6.3.1996, p. 1.
[3] OJ L 109, 26.4.2007, p. 12.
[4] OJ L 109, 30.4.2009, p. 6.

4. **Parties concerned**

(6) The Commission officially advised the applicant, the Union industry via its representatives 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/individual treatment (MET/IT) claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose.

(8) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT and for the determination of dumping. Verification visits were carried out as follows:

(a) Exporting producer in the PRC

Greenwood Houseware (Zhuhai) Ltd, People's Republic of China

(b) Related to the exporting producer companies

Brabantia S&S, Hong Kong

Brabantia S&L Belgium NV, Overpelt, Belgium

Brabantia Belgium NV, Overpelt, Belgium

Brabantia International BV, Valkenswaard, Netherlands

Brabantia Branding BV, Valkenswaard, Netherlands

Brabantia Export, Valkenswaard, Netherlands

Brabantia S&L (UK) Ltd, Bristol United Kingdom

Brabantia UK Limited, Bristol, United Kingdom

(9) In the light of the need to establish a normal value for the exporting producer in the PRC in case MET might not be granted, a verification to establish normal value on the basis of data from an Union industry producer took place at the premises of the following company:

Vale Mill Ltd, Rochdale, United Kingdom

5. **Investigation period**

(10) The investigation of dumping covered the period from 1 October 2007 to 31 March 2009 ('the investigation period' or 'IP'). The 18 month long investigation period was selected in order to use the data also in a parallel refund investigation relevant to the applicant.

C. **RESULTS OF THE INVESTIGATION**

1. **'New exporter' qualification**

(11) The investigation confirmed that the applicant had not exported the product concerned during the original IP and that it had begun exporting to the Union after this period. During the original IP the applicant's related trading company exported ironing boards purchased from one other Chinese producer. However this was only trading activity not in breach of Article 11(4) of the basic Regulation.

(12) 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 ironing boards originating in the PRC.

(13) Therefore, 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**

(14) 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 Article 2(1) to (6) of the basic Regulation for those exporting producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

1. business decisions and costs are made in response to market conditions, without significant State interference, and costs reflect market values;

2. firms have one clear set of accounting records which are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

(15) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation and was invited to complete a MET claim form. It replied to the MET claim form within the given deadline.

(16) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the company in question.

(17) It was considered that MET should not be granted to the applicant on the basis that it did not meet the second and the third criteria as laid down in Article 2(7)(c) of the basic Regulation.

(18) As far as criterion 2 is concerned it was established on the spot that fundamental International Accounting Standards (IAS) principles and in particular IAS 1 were disregarded (i.e. accrual principle, off-setting, lack of fair representation of transactions, wrong reporting of basic information relating to the tax regime applicable to the company) both in the accounts and in their audit, which put into question the reliability of the company's accounts. Consequently, it was concluded that the company has not shown that it fulfils criterion 2.

(19) As far as criterion 3 is concerned, it was established on the spot that the company was benefiting from specific tax schemes carried over from the non market economy system. Indeed, the on-the-spot verification established that during the IP the applicant did not pay any income tax as it was still in its first two profitable years of the special tax program applied to foreign enterprises (Two Free, Three Year Half) where companies are exempted from income tax during the first two profitable years and are subject to half the applicable tax rate (set at 25 %) for the following three years which in this particular case entails that the company will enjoy the 50 % reduction of income tax rate until 2012. The company was also exempt from payment of a set of taxes including city maintenance tax, embankment protection fee, customs duty and VAT on equipment purchases. The investigation also revealed the existence of significant distortions with respect to land use rights (LUR) relevant to the applicant pointing to the conclusion that the land use rights does not correspond to market economy conditions. Account taken of all the above, it was consequently concluded that the company has not shown that it fulfils criterion 3.

(20) The applicant and the Union industry were given an opportunity to comment on the above findings. The Union industry agreed with the above findings but also claimed that the Commission should have evaluated the impact of distorted steel prices on the Chinese market. With regard to Criterion 2, the applicant claimed that it complies with the IAS and, with regards to Criterion 3, it submitted comments and explanations concerning its tax regime and the LUR issues raised by the Commission.

(21) With respect to the comments of the Union industry it is noted that the issue of distorted steel prices on the Chinese market was not investigated due to the other clear shortcomings found with respect to MET. No conclusion is therefore reached on this point.

(22) The Commission carefully reviewed and examined the comments submitted by the applicant. With respect to Criterion 2 the explanations provided did not undermine the factual basis on which the accounting discrepancies were established while the explanations of the applicable IAS rules were found to be not relevant. As regards Criterion 3 and in particular the protection fee, customs duty and VAT exemptions, the explanations and information provided by the applicant were accepted. Nevertheless other explanations and information provided by the applicant could not undermine the clear shortcomings linked to Criterion 3, namely that the allocation of land is linked to business undertakings, the construction of public facilities without compensation and the lack of LUR price variation in time. In view of the remaining clear shortcomings linked to Criterion 3, this criterion continues not to be met.

(23) On the basis of the above, it was concluded that the applicant has not shown that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

3. **Individual treatment**

(24) Pursuant to Article 9(5) of the basic Regulation, a country-wide duty, if any, is established for countries falling under Article 2(7)(a), except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and can thus be granted IT.

(25) Greenwood Houseware claimed IT in the event that it would not be granted MET.

(26) On the basis of the information available, it was established that the company fulfilled the requirements foreseen in Article 9(5) of the basic Regulation. It was therefore concluded that the applicant could be granted IT.

4. **Normal Value**

4.1. *Analogue country*

(27) According to Article 2(7)(a) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value should be established on the basis of the price or constructed value in an analogue country.

(28) In the notice of initiation the Commission indicated its intention to use Turkey as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited the interested parties to comment thereon. Turkey has already been used as an analogue country in the original investigation.

(29) No comments were received on the selection of Turkey as analogue country for the establishment of normal value.

(30) The Commission sought cooperation from producers in Turkey. Letters and relevant questionnaires were sent to three companies in Turkey. None of these companies cooperated with the investigation or submitted any relevant information. The Commission contacted all known producers in Turkey again, however no replies were submitted. The Union industry and the applicant were informed of the aforesaid situation and asked to provide any relevant comments with respect to methods to be used for the selection of market economy third country. No comments were received.

(31) In view of the above, it was considered appropriate, in accordance with Article 2(7)(a) of the basic Regulation to ask the Union industry whether it intended to cooperate in order to allow the Commission to obtain necessary information to establish normal value.

(32) Letters and relevant questionnaires were sent to the Union industry producers in order to obtain necessary information to establish normal value and Greenwood Houseware was invited to comment thereon.

(33) No comments on using the information obtained from Union industry for establishment of normal value were received from Greenwood Houseware.

(34) One European producer submitted all the necessary information in due time for the determination of normal value and agreed to cooperate in the investigation. It was therefore decided to establish normal value on this basis.

4.2. *Determination of normal value*

(35) Following the choice of using the Union industry's data, normal value was calculated on the basis of the information verified at the premises of the cooperating Union producer, Vale Mill Ltd.

(36) The domestic sales of the Union producer of the like product were found to be representative compared to the product concerned exported to the Union by the exporting producer in the PRC.

(37) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the PRC was established on the basis of verified information received from the sole cooperating Union producer, i.e. on the basis of prices paid or payable on the Union market for comparable product types, where these were found to be made in the ordinary course of trade, or on constructed values, where no domestic sales in the ordinary course of trade for comparable product types were found, i.e. on the basis of the cost of manufacturing of ironing boards manufactured by the Union producer plus a reasonable amount for selling, general and administrative (SGA) expenses and for profit. The profit margin used is in line with the one used in the original investigation.

5. **Export price**

(38) The applicant made all export sales to the Union through related trading and broker companies located both outside the Union (one company registered in Hong Kong) and inside the Union (25 companies registered in various Member States of the Union).

(39) As all export sales to the Union were made through related trading companies, the export price was established on the basis of the prices of the product when sold by the related trading companies to the first independent buyer in accordance with Article 2(9) of the basic Regulation.

(40) Greenwood Houseware used a large number of related companies for sales to the first independent buyer in the Union. The product concerned was first entered into free circulation in the Union by one company related to the applicant company and then sold to different related companies that performed trading and other activities for the applicant in various Member States of the Union The applicant requested to limit the dumping calculations to the transactions referring to its three main related parties, selling in the Netherlands, the United Kingdom and Belgium, that represented a major proportion of its sales in the Union. In view of the high total number of related sales parties and the time constraints in concluding the investigation it is considered appropriate to base findings on dumping on the aforesaid main markets of the applicant in the Union. The Commission verified the totality of export sales from the PRC via Hong Kong and up to the point where the product concerned entered into free circulation in the Union and resold to its various trading companies. It was only at this point that the Commission limited its assessment of dumping to the three main markets mentioned above.

(41) As a consequence, and in accordance with Article 2(9) of the basic Regulation, export prices were constructed on the basis of the prices at which the imported product was first resold to independent customers in the Netherlands, the United Kingdom and Belgium. A deduction had to be made for all costs incurred between importation and resale, including selling, general and administrative costs by the importing companies during the IP. These costs were verified on spot at the respective companies.

(42) Profit margins covering the applicant's operations in respect of the product concerned during the IP also had to be deducted. In this respect, the actual profit of the related traders could not be used since the relationship between the exporting producer and the related traders made these profit levels unreliable. In addition the company explained on spot that they did not normally account for such profitability rates in the manner required by the investigation. The applicant therefore suggested that the Commission used the normal profit level used in the previous investigation. In the absence of other figures as explained above, it was therefore decided to use the rate set in the original investigation.

6. **Comparison**

(43) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin for Greenwood Houseware was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

(44) The comparison was made on an ex-factory basis and at the same level of trade.

(45) 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 differences in indirect taxes, transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs and commissions have been granted where applicable and justified.

7. **Dumping Margin**

(46) The comparison showed the existence of dumping. This dumping margin expressed as a percentage of the net, free-at-European Union-frontier price, duty unpaid is 22,7 %.

D. **RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY**

(47) In light of the above findings, the anti-dumping duty applicable to the applicant should be levied retroactively on imports of the product concerned which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 356/2009.

E. **DISCLOSURE**

(48) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to impose on imports of ironing boards from the applicant an amended definitive anti-dumping duty and to levy this duty retroactively on imports made subject to registration.

(49) All interested parties were given an opportunity to comment. Their comments were considered and taken into account where appropriate but they were not of a nature as to change the conclusions.

(50) This review does not affect the date on which the measures imposed by Regulation (EC) No 452/2007 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 452/2007 is hereby amended by inserting the following:

'Country	Manufacturer	Rate of duty (%)	TARIC additional code
PRC	Greenwood Houseware (Zhuhai) Ltd	22,7 (*)	A953

(*) The duty hereby imposed shall be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Commission Regulation (EC) No 356/2009 (**). Customs authorities are hereby directed to cease the registration of imports of the product concerned originating in the People's Republic of China and produced by Greenwood Houseware (Zhuhai) Ltd.
(**) OJ L 109, 30.4.2009, p. 6.'

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, 19 January 2010.

For the Council
The President
E. SALGADO