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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.2009
COM(2009)663 final

Proposal for a

COUNCIL REGULATION

concluding the 'new exporter' review of Regulation (EC) No 1338/2006 imposing a definitive anti-dumping duty on imports of chamois leather originating in the People's Republic of China, levying retroactively and imposing an anti-dumping duty with regard to imports from one exporter in this country and terminating the registration of these imports

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of chamois leather originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1338/2006 imposing a definitive anti-dumping duty on imports of chamois leather originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 3 July 2009 the Commission initiated a 'new exporter' review of Council Regulation (EC) No 1338/2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of chamois leather originating in the People's Republic of China, repealed the duty with regard to imports from one exporter in this country and made these imports subject to registration. The company concerned is Henan Prosper Skins & Leather Enterprise Co., Ltd. ('the applicant').

During the investigation, the applicant provided false and misleading information within the meaning of Article 18(1) of the basic Regulation, and refused to cooperate. Finally, the applicant withdrew its request for a review. It was considered appropriate to continue the investigation *ex officio* and base findings with regard to the applicant on facts available within the meaning of Article 18 of the basic Regulation. On that basis it was concluded that an anti-dumping duty set at the level of the duty applicable to 'all companies' imposed by Regulation (EC) No 1338/2006 should be imposed retroactively on the applicant.

It is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the Official Journal of the European Union as soon as possible.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 and in particular article 11(4) thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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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 Community¹ ('the basic Regulation'), and in particular Articles 11(4) thereof,

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

Whereas:

1. MEASURES IN FORCE

- (1) By Regulation (EC) No 1338/2006², the Council, following an investigation ('the original investigation'), imposed a definitive anti-dumping duty on imports of chamois leather originating in the People's Republic of China ('PRC'). The measures in force consist of an *ad valorem* definitive country-wide duty rate of 58,9%.

2. CURRENT INVESTIGATION

- (a) *Request for a review*

- (2) Subsequent to the imposition of the definitive anti-dumping measures, the Commission received a request for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The request was based on the claim that the exporting producer, Henan Prosper Skins and Leather Enterprise Co. Ltd. ('the applicant')

- did not export chamois leather before or during the investigation period of the original investigation,

- was not related to any of the exporting producers subject to the measures imposed by Regulation (EC) No 1338/2006,

¹ OJ L 56, 6.3.1996, p. 1.

² OJ L 251, 14.9.2006, p. 1.

- had started to export chamois leather to the Community after the end of the investigation period of the original investigation,

- operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively claims individual treatment in conformity with Article 9(5) of the basic Regulation.

(b) *Initiation of a 'new exporter' review*

(3) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review pursuant to Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 573/2009³, a review of Regulation (EC) No 1338/2006 with regard to the applicant.

(4) Pursuant to Article 2 of Commission Regulation 573/2009, the anti-dumping duty imposed by Council Regulation (EC) No 1338/2006 on imports of chamois leather produced by the applicant was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register the imports of chamois leather produced by the applicant.

(c) *Product concerned*

(5) The product concerned by the current review is chamois leather as defined in the original investigation, i.e. chamois leather and combination chamois leather, whether or not cut to shape, including crust chamois and combination crust chamois leather ('chamois leather') originating in the People's Republic of China, currently falling within CN codes 4114 10 10 and 4114 10 90.

(d) *Parties concerned*

(6) The Commission officially advised the Community industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(e) *Review investigation period*

(7) The investigation of dumping covered the period from 1 July 2008 to 30 June 2009 ('review investigation period' or 'RIP').

3. WITHDRAWAL OF COOPERATION AND OF THE REQUEST FOR A 'NEW EXPORTER' REVIEW

(8) The Commission sent a questionnaire to the applicant and received a reply within the deadlines set. During the verification of the applicant's questionnaire reply at their premises, the applicant provided false and misleading information within the meaning of Article 18 (1) of the basic Regulation. Furthermore, the applicant decided to cease

³ OJ L 172, 2.7.2009, p. 3.

cooperation altogether and the verification had to be terminated without being completed. On 21 September 2009, the applicant formally withdrew its application for a 'new exporter' review.

- (9) The applicant was informed that the information supplied by it could not be considered reliable and would be rejected and was invited to provide further explanations within a given deadline in accordance with Article 18(4) of the basic Regulation. The applicant did not supply any further explanation.
- (10) In the above circumstances, despite the withdrawal of the application, it was considered appropriate to continue the investigation *ex officio* and base findings with regard to the applicant on facts available within the meaning of Article 18 of the basic Regulation.
- (11) In the absence of other information, the duty rate to be applied to the applicant is set at the level of the country-wide duty.

4. CONCLUSION OF THE INVESTIGATION AND RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

- (12) In the light of the above findings, it was concluded that imports into the Community of chamois leather and combination chamois leather, whether or not cut to shape, including crust chamois leather and combination crust chamois leather, currently falling within CN codes 4114 10 10 and 4114 10 90, originating in the People's Republic of China, produced and sold for export to the Community by Henan Prosper Skins & Leather Enterprise Co., Ltd (TARIC additional code A957) should be subject to an anti-dumping duty at the level of the antidumping duty imposed by Council Regulation (EC) No 1338/2006 on all companies in the People's Republic of China and that that rate of anti-dumping duty should be re-imposed and levied retroactively on imports of the product concerned, which have been made subject to registration pursuant to Article 3 of Commission Regulation (EC) No 573/2009.

5. DISCLOSURE AND DURATION OF THE MEASURES

- (13) The applicant, the Community industry and the representatives of the exporting country were informed of the essential facts and considerations leading to the above conclusions and were given an opportunity to comment. No comments of a nature as to warrant a change of the above conclusions were received.
- (14) This review does not affect the date on which the measures imposed by Regulation (EC) No 1338/2006 will expire pursuant to Article 11(2) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. The new exporter review initiated by Commission Regulation (EC) No 573/2009 is hereby concluded and an anti-dumping duty set at the level of the anti-dumping duty applicable according to Article 1(2) of Council Regulation (EC) No 1338/2006 to all companies in the People's Republic of China is hereby imposed on imports identified in Article 1 of Commission Regulation (EC) No 573/2009.

2. An anti-dumping duty set at the level of the anti-dumping duty applicable according to Article 1(2) of Council Regulation (EC) No 1338/2006 to all companies in the People's Republic of China is hereby levied with effect from 3 July 2009 on imports of chamois leather which have been registered pursuant to Article 3 of Commission Regulation (EC) No 573/2009.

3. The customs authorities are hereby directed to cease the registration carried out pursuant to Article 3 of Commission Regulation (EC) No 573/2009.

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

Article 2

This Regulation shall enter into force on the day following that of 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,

For the Council
The President